

## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JUNE 25, 2002

The Council of the City of San José convened in adjourned regular session at 4:45 p.m. in City Council Chambers at City Hall for a joint meeting with the Redevelopment Agency Board.

Present: Council Members - Campos, Chavez, Cortese, Dando, LeZotte, Reed, Shirakawa, Jr., Williams, Yeager; Gonzales.

Absent: Council Members - Diquisto (excused.)

### **7.2 Adoption of resolutions:**

- (a) By the Agency Board approving the Retail Entertainment and Arts Loan Assistance Program to loans for building improvements to Downtown buildings to enhance the retail environment and improve the stability and diversity of downtown and Neighborhood Business Districts; and**
- (b) By the City Council and Agency Board approving the Small Business Loan Program to provide reduced-rate financing, targeted to downtown and Neighborhood Business Districts, to stabilize and grow small retail businesses.**

Documents filed: Memorandum from City Manager Del Borgsdorf and Redevelopment Agency Executive Director Susan F. Shick, dated June 25, 2002, recommending (1) the Agency Board adopt a resolution approving the creation of the Retail, Entertainment, and Arts Loan Assistance Program, and (2) the City Council and Agency Board adopt resolutions approving the creation of the Small Business Loan Program (SBLP).

Discussion/Action: Council Member LeZotte noted that it did not appear from the memorandum that there was a strong demand for the program. RDA Executive Director Shick responded that the program links tenants and landlords and that she believes there is a strong demand for the program. The following individuals spoke on the issue: William Garbett, Judy Stabile, Olga Smith, Janice Snyder, and Eric Snavel. Council Member Chavez moved approval of the Staff recommendation and recommended the loan programs be revisited based on feedback received over a six-month trial period. Council Member Reed seconded the motion. Member Dando asked if there was flexibility to use funds for tenant needs other than capital, and stated that it was important to look at businesses staying in business. She added that businesses were recruited to locate downtown, and that she would like to see an opportunity to assist them. Executive Director Shick responded that this could be considered, and if Staff identifies additional gaps that information would be brought back to the Council. On a call for the question, the motion carried unanimously, and Resolution No. 71139, entitled: "A Resolution of the Council of the City of San José Approving the Small Business Loan Program to

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Provide Reduced-Rate Financing, Targeted to Downtown and Neighborhood Business Districts, to Stabilize and Grow Small Retail Businesses”, and Redevelopment Agency Resolution No. 5324 were adopted. Vote: 10-0-1-0. Absent: Diquisto.

## 7.1 Public Hearing and;

- (a) **Adoption of a resolution by the City Council approving the sale of the project site (generally located on the commercial properties on the southwest and southeast corners of Story and King Roads) to BHV San Jose, LLC Accepting the 33433 Summary Report and Re-Use Appraisal, and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Story Road Redevelopment project Area and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the Disposition and Development Agreement (DDA).**
- (b) **Adoption of a resolution by the Agency Board approving the proposed DDA between BHV San Jose, LLC, and the Redevelopment Agency for the redevelopment of the commercial property at the southeast and southwest corners fo Story and King Roads, authorizing the Executive Director to negotiate and execute purchase and sale agreements for site acquisition required under the DDA, technical amendments required by the Developers lender, and the master lease and sublease agreement for the Mercado, and authorizing the Executive Director to convey property to the developer once the conditions of conveyance have been met.**
- (c) **Adoption of a resolution by the Agency Board approving the Business Relocation Program for the Proposed retail redevelopment of the southwest and southeast corners of Story and King Roads**

**CEQA: Mitigated Negative Declaration (STORY ROAD)**

Documents filed: (1) Memorandum from Mayor Gonzales, Vice-Mayor Shirakawa, Council Members Campos, Diquisto and Williams, dated June 24, 2002, recommending the City Council/Agency Board take the actions recommended by Agency staff to approve the sale and DDA with BHV San José, LLC for development of the southwest and southeast corners of Story and King Roads as a neighborhood retail project and acceptance of the 33433 summary report and reuse valuation. (2) Memorandum from City Attorney Richard Doyle dated June 25, 2002, transmitting a previously issued information memorandum responding to Board Member questions regarding the Story/King Retail Project (3) Memorandum from Redevelopment Agency Executive Director Susan F. Shick, dated June 25, 2002, recommending that after a public hearing, the following actions be taken: (a) adoption of a resolution by City Council approving the sale of the project site to BHV San José, (b) adoption of a resolution by the Agency approving the proposed DDA between Blake Hunt Ventures and the Redevelopment Agency. (4) Memorandum from Redevelopment Agency Executive Director Susan F. Shick, dated June 25, 2002, recommending adoption of a resolution approving the

## 7.1 (Cont'd.)

Business Relocation program for the proposed retail redevelopment of the southwest and southeast corners of Story and King Roads. (5) Memorandum from Redevelopment Agency Executive Director Susan F. Shick, dated June 25, 2002, providing supplemental information documenting blight on the site of the proposed Neighborhood Retail Project Redevelopment Agency Executive Director Susan F. Shick, dated June 25, 2002, recommending approval of the creation of the Retail, Entertainment, and Arts Loan (READ) Assistance Program, and approval of the creation of the Small Business Loan Program (SBLP), as specified therein. (7) Correspondence from West of Fourth Neighborhood dated June 24, 2002 on the proposed project. (8) Petition entitled "Vote of No Confidence" submitted by the merchants of the Tropicana Shopping Center and containing 55 signatures. (9) Correspondence from five individuals commenting on the proposed project.

Discussion/Action: Executive Director Shick provided an overview of the DDA between the Redevelopment Agency and the developer of the shopping center, focusing on the problem, strategy, and the project; and the developer made a presentation on the design being proposed. Executive Director Shick reviewed the obligations shown in the DDA that are broken down to the Agency's and the developer's responsibilities, i.e., the obligations, protections for the southwest corner tenants, and the schedule and next steps. Vice Member Shirakawa stated that he believes the project is good for the community, that revenue has been lost in that community, that there has been an ongoing deterioration of the shopping center and there has been an outcry from the community to make improvements there, and that there have been opportunities to make improvements for a long time. He emphasized that there is no proposal for eminent domain in Tropicana. Mayor Gonzales opened the public hearing and approximately 100 individuals spoke on the issue. Mayor Gonzales closed the public hearing.

Council Member Campos moved approval of the Staff recommendations and the recommendation in the memorandum from Mayor Gonzales, Vice Mayor Shirakawa, Jr., and Council Members Campos, Diquisto and Williams, dated June 24, 2002, and recommended the motion include direction to Staff that existing tenants of the Tropicana Shopping Center will be provided the opportunity to negotiate leases which eventually phase in the rental increase from current rates to fair market rates over the first five years after construction is completed. The motion was seconded by Vice Mayor Shirakawa, Jr. In response to comments that were made by speakers, Vice Mayor Shirakawa, Jr., clarified that he was not talking about merchants, but rather was talking about ownership in the context of putting investment back into the center and back into the community in general. He stated that he believes the project will not be successful without the merchants who are the anchor tenants, who drive the economy, who provide the jobs and services the community needs. He commented that there has been an implication that some Council Members care about the merchants more than others, but believes this is not true. He stated that he believes the document includes ample examples that the Council will protect the merchants as much as possible. He emphasized that current improvements at the center were forced by Code Enforcement action, by the

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Redevelopment Agency Board, and as Council representatives, and that they were not done by the owners out of the goodness of their hearts. He indicated that \$2.7 million in valuation of permits have been pulled for improvement at the shopping center. He requested that the Council support the project and move forward with the DDA, and hopes there is no need for the use of eminent domain; but instead that the ownership would come to an agreement and sell the property so that the project can move forward. He added that this is a great opportunity for investment in the community.

Council Member Dando moved to amend the motion to exclude the Tropicana corner from the DDA and direct staff to negotiate the DDA with Blake Hunt Ventures to solely incorporate the properties on the southeast corner, or the site known as the Home Base site. She stated that she believes it would be a wise decision to move forward with at least the Home Base site so that the project is not delayed. Council Member Reed seconded the motion. Vice Mayor Shirakawa, Jr. stated that he would not support the amendment, and that he takes offense to it. Council Member Reed stated that he believes the City should move ahead in two phases, first the Home Base site, and then come back with a better plan for the Tropicana site that the merchants can support. He stated that he believes the project will not be successful without the merchants, that the City runs the risk, if it runs the projects together, of litigation over the Tropicana site, and that it will slow down not only the Tropicana site but the Home Base site as well. He stated that he believes Council Member Dando's motion allows the City to move forward with the Home Base, continue improvements, continue to make progress on the site without delaying the whole project, and get a better plan on the Tropicana site.

Council Member Chavez stated that she would not be supporting the proposed amendment, as she believes Council Member Campos and Vice Mayor Shirakawa, Jr., provided a clear vision and plan and supportive leadership in their community. She stated that she believes resources have been brought to the East side and the community has asked for investment to demonstrate respect for the community, which comes in the form of Tropicana. She stated that she believes the most transit-dependent community lives on the East side, which is why people walk to the Tropicana and why that shopping center has remained afloat in the absence of demonstrating respect for the people who shop and live in the area. She stated that she hopes neighbors who live in the area will begin to show pride in their community that encourages them to invest in their own property, and believes that the amendment is inappropriate given the work that has been done thus far by the Council and the community. Council Member Cortese stated that he would not be supporting the amendment. He stated that this part of San Jose was not carefully designed and built out, that the shopping center was a mistake in terms of public policy, and that the City of San Jose was involved in that. He stated that over a 40-year period that mistake has not been reversed, and there has not been the political will to go back and correct what the East side has been stigmatized with, criminal activity, under-maintained properties, loitering, vandalism, and all the things people think about when stereotyping the area. He stated that over the last 20 years, a lot of people have wondered how approximately a billion dollars can be spent downtown, but none of it was going to East-

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side San Jose; and finally, \$50 million is going to this corner and people are saying it is not right, get rid of it. He added that people are wondering why the amount is higher than what a private investor would invest in it, and explained that there is \$7 million in the proposal for merchants, not to fix up the shopping center, but to make it easier for them to transition between construction and five years down the road when they will eventually have to be on their own. He stated that in the original proposal there was not a lot of help for the merchants, but a lot of work has gone into taking care of them. Mayor Gonzales stated that he would not be supporting the amended motion, as he believes the amount of work, discussion and controversy warrants action on the original motion. On a call for the question, the amended motion failed. Vote: 2-8-1-0. Noes: Campos, Chavez, Cortese, LeZotte, Shirakawa, Jr., Williams, Yeager; Gonzales. Absent: Diquisto.

Mayor Gonzales called for Council discussion on the original motion. Council Member Dando stated she believes that whenever the Council talks about property rights, it goes to the heart of what this country is all about; and when talking about displacing small businesses and “mom and pops,” that is what this country is built upon. She explained that this is more than about giving money to the merchants, that the property owners would be taken care of and there is \$7 million in the plan for merchants; but that is not what they are asking for. She stated that there were a lot of great things accomplished in the downtown, but people were moved out and merchants moved in; however, they have not been able to survive even with three years or five years of subsidies. She added that there was talk of helping to relocate merchants displaced from the Town and Country demolition; however, she stated most of them have gone by the wayside, and a few that might move into Santana Row won't be able to afford it. She indicated that there has been a lot of discussion about public safety and stated that she believes the City has the finest Police Department to make sure crime is not rampant. She stated that there are many strip malls in the City where a leakage of retail dollars takes place but the City does not go in and take property away, and she believes the problems in the Tropicana area need to be resolved and by working with property owners can be resolved without demolishing and taking away what has already been accomplished. She stated the Council's action will speak volumes about previous comments of fear that eminent domain might play a bigger role in the Strong Neighborhoods Initiative (SNI) than the Council wants, and that it is important to look at neighborhoods and try to make them safer, better and cleaner, not divide them; not create divisive issues like this; and that she hopes the action by Council will not send fears to other SNI neighborhoods. She stated she believes government should take advantage of opportunities to work with neighborhoods, merchants and property owners; and when people are willing to invest private dollars, they should be encouraged. She stated she has no problem with \$50 million being available to a particular part of the City; and she believes that if the City offered this money to the Eastside community SNI, they would know how to use it and that they would gladly support the private money going into the Tropicana. She stated that she would not support the motion; that there is no need to rush the project.

## 7.1 (Cont'd.)

Council Member Williams stated that he has met with the community and the merchants, has visited the site, and that his concerns are for the merchants; and that whichever project is approved, that their rights would be made whole. He stated he believes the program being offered would definitely protect the merchants – the guarantee for rent protection and the fact that the cost can be negotiated. He indicated that merchants are concerned about rent increases, but with the agreement they will not have to pay the increase until after the rental portion is complete; they should look at what revenue there will be in the future. He stated that he wants to establish an oversight group made up of individuals and stakeholders to look at the progress of the project so that if things stop or problems do not get worked out, someone can tell the Council what is happening. He stated that his concerns have been satisfied and he is looking forward to continuing to make sure that commitments are realized.

Council Member LeZotte stated that she would be supporting the motion; however, just because she is supporting the DDA does not mean that she doesn't have grave concern with eminent domain and how it could be applied and misapplied at this site. She stated the plan is not necessarily what she wanted, but it is the only one before the Council, and explained that she has continued concerns about the merchants, how they will be treated, and how they will fare during the transition and as the Council moves forward. She added that she has concerns about gentrification, which may not be what the community wants, and she would hate to see existing businesses leave. She stated that she believes the Council has to be vigilant that the vision is carried out, and she wants to make sure that there is something in the DDA that if the Tropicana market does not do the improvements they are supposed to do, that there are ramifications. She added that she is concerned it is not part of the renovation Blake Hunt has to do. Council Member Reed stated that the DDA is a substantial improvement from a year ago; however, the merchants do not support it; therefore, he will not be supporting the motion. Council Member Williams recommended that establishment of an oversight committee be referred to the Rules Committee for consideration.

Mayor Gonzales stated that it is clear that the neighborhood involved with this project area feels strongly that attention is needed on the Tropicana Center. He explained that the Council has said eminent domain would be used only as a last tool; that they were not deciding on eminent domain as part of this motion, but rather deciding on the direction and vision for this shopping center. He added that eminent domain would only be used as a last means and only at the request of the Project Area Committee which has recommended this as part of the SNI, if need be; and they also said that they want to be sure the needs and services provided by the current merchants are maintained in the shopping center and in the vicinity. He stated the message to property owners in an SNI area is neighborhoods come to the City and request attention. On a call for the question on the original motion by Council Member Campos, and seconded by Fice Mayor Shirakawa, Jr., the motion carried, and the Staff recommendations and the memorandum from Mayor Gonzales, Vice Mayor Shirakawa, Jr., and Council Members Campos, Diquisto and Williams, dated June 24, 2002, were approved, with the direction to Staff

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that existing tenants of the Tropicana Shopping Center will be provided the opportunity to negotiate leases which eventually phase in the rental increase from current rates to fair market rates over the first five years after construction is complete; and Resolution No. 71140, entitled: "A Resolution of the Council of the City of San José Approving the Sale of the Project Site (Generally Located on the Commercial Properties on the Southwest and Southeast Corners of Story and King Roads) to BHV San José, LLC, Accepting the 33433 Summary Report and Re-Use Appraisal; and Finding that the Sale of the Property will Assist in the Elimination of Blight, is Consistent with the Implementation Plan for the Story Road Redevelopment Project Area and that the Consideration for the Property is not Less than the Fair Reuse Value for the Proposed Use, with the Covenants and Conditions and Development Costs Authorized by the Disposition and Development Agreement"; and Redevelopment Agency Resolution Nos. 5322 and 5323 were adopted. Vote: 8-2-1-0. Noes: Dando, Reed. Absent: Diquisto.

The Joint Redevelopment Agency/City Council meeting was adjourned at 10:50 p.m. Council Chambers, City Hall, San Jose.

**RON GONZALES, MAYOR**

**ATTEST:**

**PATRICIA L. O'HEARN  
CITY CLERK**

dc/mp-6-25-02