

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL AND CITY
OF SAN JOSE FINANCING
AUTHORITY BOARD

FROM: Kim Walesh

SUBJECT: EXCHANGE OF PROPERTY
WITH TOD BROKAW, LLC,
NORTHERN BOUNDARY
AIRPORT WEST SITE

DATE: October 25, 2010

Approved

Date

11/4/10

COUNCIL DISTRICT: 3
SNI AREA: N/A

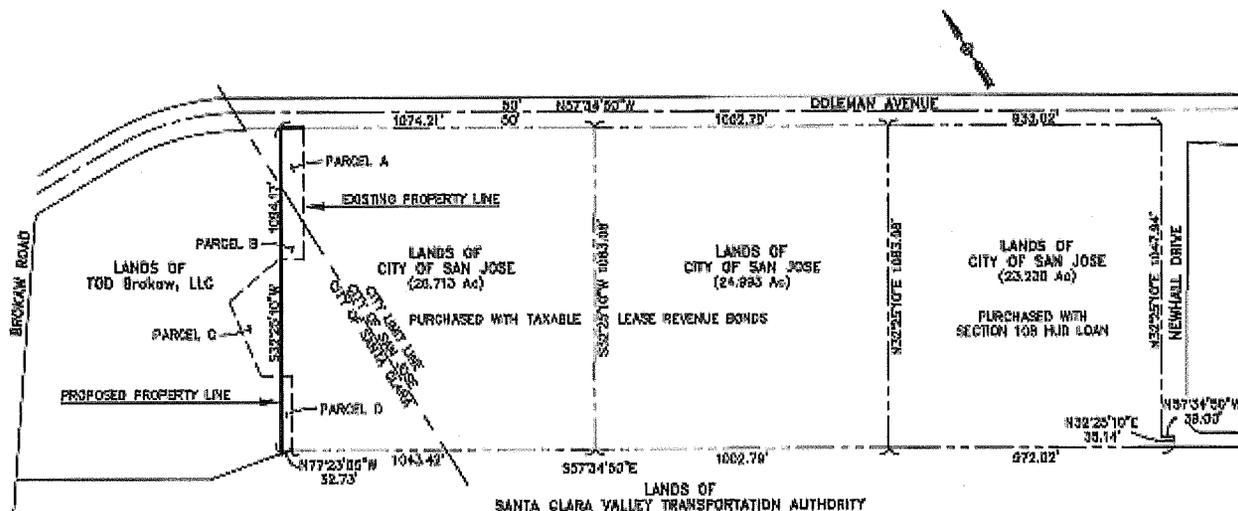
RECOMMENDATION

1. Adoption of a resolution by the San José City Council:
 - a. Authorizing the City Manager or the City Manager's designee to negotiate, execute and deliver an Agreement for the Exchange of Interests in Real Property with TOD Brokaw, LLC for property located at and adjacent to 1125 Coleman Avenue; and a First Amendment to Site and Facility Lease and a First Amendment to General Sublease Agreement relating to the City of San José Financing Authority's Taxable Lease Revenue Bonds, Series 2008F (Land Acquisition Refunding Project); and authorizing other actions related to the exchange of properties.

2. Adoption of a resolution of the City of San José Financing Authority Board:
 - a. Authorizing the Executive Director, or Executive Director's designee, to negotiate, execute and deliver a First Amendment to Site and Facility Lease and a First Amendment to General Sublease Agreement relating to the City of San José Financing Authority's Taxable Lease Revenue Bonds, Series 2008F (Land Acquisition Refunding Project); and authorizing other actions related to the exchange of properties.

OUTCOME

The proposed actions will allow the City and TOD Brokaw LLC to exchange properties and modify an irregular boundary between the respective adjacent parcels so that the property line is straightened and both parcels can be developed in an orderly fashion. The property in question is the City's Airport West property and the property immediately to the north, owned by Ed Storm and Deke Hunter.



PARCELS PROPOSED TO BE TRANSFERRED FROM TOD BROKAW, LLC TO CITY OF SAN JOSE:
 0.480 Ac - PARCEL A
 0.333 Ac - PARCEL B
 0.211 Ac - PARCEL D
 1.024 Ac = TOTAL

PARCEL PROPOSED TO BE TRANSFERRED FROM CITY OF SAN JOSE TO TOD BROKAW, LLC:
 1.004 Ac - PARCEL C

BACKGROUND

In 2005, the City of San Jose purchased the 74.8 acre property located at 1125 Coleman Avenue from FMC. The property is now known as Airport West. The northern 52 acres of the property were purchased through the issuance of Lease Revenue Bonds through the City of San José Financing Authority (the "Authority") in 2005. The remaining property was purchased in May of 2006 through a Section 108 HUD loan. In 2008 the Authority issued its taxable lease revenue bonds, Series 2008F (Land Acquisition Refunding Project) to refund the Series 2005 bonds.

The northern 52 acre portion of the City owned Airport West property includes six acres that are located within the City of Santa Clara and has a very irregular boundary, making future development of property on both sides of the property line less efficient.

October 25, 2010

Subject: Property Exchange with TOD Brokaw, LLC Related to Airport West and Adjacent Property
Page 3

The adjoining property is owned by TOD Brokaw, LLC ("TOD Brokaw"). TOD Brokaw is a company held by Ed Storm and Deke Hunter of Hunter Storm Properties. Mr. Storm and Mr. Hunter have requested that the City work with them to create a uniform, regular property line to facilitate the orderly development of both properties.

In the process of approving the purchase and refinancing of the City's Airport West property several associated documents were developed by staff and approved by the City Council. In moving forward the currently requested exchange agreement to simplify the property line, all the relevant documents must be changed to reflect the new property line. The concept of the exchange agreement is straightforward, straightening out the property line. The steps required to achieve the simplified property boundary are numerous, but also straightforward.

ANALYSIS

The actions required to accomplish the requested exchange agreement are numerous, due to the many actions taken to purchase and finance the City's Airport West property to date. All documents that reference the existing irregular property line must be changed to reflect the new property line. While several documents must be amended the action, at its heart, is straightforward simplifying the northern property boundary so that both properties can be developed efficiently.

The documents include:

Exchange Agreement

The City and TOD Brokaw have negotiated a property exchange agreement (the "Exchange Agreement") to modify irregular boundaries between their respective parcels so subsequent development on both properties can be optimized. City staff from the City Attorney's Office, the General Services Department Real Estate Division, the Public Works Department, the Planning, Building, Code Enforcement Department and Office of Economic Development have participated in the negotiations of the Exchange Agreement with TOD Brokaw.

The Exchange Agreement provides for the City and TOD Brokaw to exchange properties of equivalent area from each side of the current boundary line. The proposed property line is depicted on Attachment A. As the exchange of property includes property located in the City of Santa Clara, TOD Brokaw has obtained approval of a lot line adjustment from the City of Santa Clara.

The proposed exchange of property requires modification of existing easements and other property interests recorded against both the City's and TOD Brokaw's properties. City staff has reviewed the proposed amendments to the existing easements and other recorded documents in order to ensure that these accurately reflect the proposed transaction.

October 25, 2010

Subject: Property Exchange with TOD Brokaw, LLC Related to Airport West and Adjacent Property
Page 4

Operating Leases

In connection with the issuance of the Series 2008F Bonds, the City, as owner of the 52 acre site (referred to the Project in the bond documents), leased the Project to the Authority in a Site and Facility lease dated as of June 1, 2008. The Authority, leased the Project back to the City pursuant to two subleases, both dated as of June 1, 2008. The Operating Sublease was for Airport uses. As the Airport uses have terminated as of June 30, 2010, the Operating Lease will be formally terminated retroactive to July 1. A second sublease known as the General Sublease remains in effect.

Legal Descriptions and Recordings

The exchange of property with TOD Brokaw requires amendments to the legal descriptions to the Site and Facility Lease and the General Sublease (the "Series 2008F Lease Amendments") to reflect the revised boundary line. Additionally, TOD Brokaw has requested that the City and the Authority agree that the Series 2008F Leases and other documents recorded by the City and the Authority in connection with the Series 2008F Bonds be subordinated to the amendment to the recorded memorandum outlining various responsibilities of FMC and the City related to hazardous materials on the property. Since the original memorandum was recorded prior to the documents related to the Series 2008F Bonds, staff also recommends that the proposed subordinations be approved.

Approvals

The Series 2008F Lease Amendments and the subordination agreements require the approval of the City and the Authority. Additionally, the credit provider for the Series 2008F Bonds, Bank of America, N.A., must give its consent and the City's bond counsel must provide a legal opinion. Bank of America representatives have reviewed the proposed Exchange Agreement, the amendments to the Series 2008F Leases and the subordinations and Amendments and given their conceptual consent, subject to their review of final documents.

Fees

The Exchange Agreement does not include payment by either party. Hunter Storm will not be required to pay the City for the exchange of property nor will the City have a cost to complete the transaction. However, TOD Brokaw has agreed to pay the City costs in connection with the approval of the Exchange Agreement. These include the recovery of City staff time associated with the project and the fees of the City's bond counsel and Bank of America's counsel, which will be paid directly by TOD Brokaw

Option Agreement Modifications

The 52-acre Airport West property is also subject to Option Agreements with Coleman Airport Partners LLC, in which Ed Storm is a partner. The City and Coleman Airport Partners LLC are discussing proposed revisions to the Option Agreements and at a later date the City and Coleman Airport Partners LLC will amend the option agreements to reflect the modification of the site description approved by the Council and Authority.

October 25, 2010

Subject: Property Exchange with TOD Brokaw, LLC Related to Airport West and Adjacent Property
Page 5

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The requested actions trigger none of the criteria described above, never-the-less staff has posted this memorandum, the draft of the Exchange Agreement (without its attachments) and amendments to the Lease Agreements on the City's web-site for review by members of the public.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Department of Planning, Building, and Code Enforcement, the General Services Department, Real Estate Division, and the Public Works Department.

CEQA

Addendum to an EIR Resolution 71716, File No. PP10-004

//s//
KIM WALES
Chief Strategist and Acting Chief
Development Officer

For questions please contact Nanci Klein, Division Manager, (408) 535-8184.