
M E M O R A N D U M

DATE: April 4, 2008
TO: City Council Members
FROM: Russell Weeks
RE: Briefing: Proposed Ordinance Vacating a Portion of Air Space over Main Street
CC: Cindy Gust-Jenson, David Everitt, Lyn Creswell, Esther Hunter, Mary De La Mare-Schaefer, Ed Rutan, Jennifer Bruno, Lynn Pace, Joel Paterson, Sarah Church, Janice Jardine

This memorandum pertains to a proposed ordinance that would vacate a portion of air space above Main Street at about 50 South Main, to the extent necessary to build a skybridge as part of the City Creek Center, pursuant to Petition No. 400-06-38. Adoption of the proposed ordinance would constitute final design approval of the structure.

The City Council held a public hearing on the proposed ordinance at its April 1 meeting and is scheduled to make a final decision on the proposed ordinance at its meeting April 8.

It should be noted that the options and potential motions below are based in part on the following language contained in the ordinance transmittal that the Administration forwarded to the City Council for consideration: “The conveyance of the property interest from the City for the vacated portion of the above-referenced Main Street airspace shall be by separate lease from the City confirming the transfer of the leasehold interest as indicated in Exhibit A attached hereto. The term of that lease shall be tied to the life of the retail portion of the new City Creek project.”

OPTIONS

- Adopt the proposed ordinance.
- Do not adopt the proposed ordinance and deny Petition No. 400-06-38.
- Amend the proposed ordinance.

POTENTIAL MOTIONS

I. I move that the City Council adopt the ordinance vacating a portion of the airspace over Main Street, at approximately 50 South Main Street, to the extent necessary to construct a skybridge as part of the new City Creek Center, pursuant to Petition No. 400-06-38. *(This motion would adopt the ordinance the Administration transmitted to the City Council. It would tie the term of a lease negotiated by the Administration to “the life of the retail portion” of the City Creek project.)*

As a condition of approval, the petitioner shall secure approval from the Utah Department of Transportation to place a mid-block crosswalk on State Street to connect the City Creek Center to Social Hall Avenue on the east side of State Street. *(This item*

can be used for any of the motions listed. A variation of this item also is included below as a legislative intent.)

II. I move that the City Council adopt the ordinance vacating a portion of the airspace over Main Street, at approximately 50 South Main Street, to the extent necessary to construct a skybridge as part of the new City Creek Center, pursuant to Petition No. 400-06-38, with the following amendment:

That the language in the ordinance reading, “The term of that lease shall be tied to the life of the retail portion of the new City Creek project,” be replaced by, “The term of the lease shall be for ____ years with an option to renew for another ____ years.” (Council Members may choose any length of time they think appropriate.) *(This motion is designed to address the argument that “the life of the retail portion” is ambiguous.)*

III. I move that the City Council adopt the ordinance vacating a portion of the airspace over Main Street, at approximately 50 South Main Street, to the extent necessary to construct a skybridge as part of the new City Creek Center, pursuant to Petition No. 400-06-38, with the following amendment:

That the language reading, “The conveyance of the property interest from the City for the vacated portion of the above-referenced Main Street airspace shall be by separate lease from the City confirming the transfer of the leasehold interest as indicated in Exhibit A attached hereto. The term of that lease shall be tied to the life of the retail portion of the new City Creek project,” be replaced by the following language: “The conveyance of the property interest from the City for the vacated portion of the above-referenced Main Street airspace shall be by sale. Any sale would be contingent upon the City and the purchaser negotiating an agreement listing conditions under which the property would revert to City ownership.” *(This motion would change the disposition of the airspace from a lease to a sale.)*

IV. I move that the City Council deny Petition No. 400-06-38 and consider the next item on the agenda. *(This motion would prohibit the construction of a skybridge.)*

LEGISLATIVE INTENTS

The following legislative intents are meant to address issues raised by City Council Members:

1. It is the intent of the City Council that the City and the developer work with the Utah Department of Transportation to place a mid-block crosswalk on State Street that will connect the City Creek Center to Social Hall Avenue on the east side of State Street.
2. It is the intent of the City Council that the City, the developer and Salt Lake County work together to find ways to create synergy on the east and west sides of West Temple Street between South Temple and 100 South streets to mirror and reinforce pedestrian activity on both sides of West Temple Street. Steps should include providing for an outdoor vending area with water, power and other amenities in front of the planned Nordstrom store.

PREVIOUS INFORMATION

After presentations by the petitioner on March 15 and March 18, the City Council made the following remarks:

The Council noted at the March 18 presentation that Ordinance No. 13 of 2007 listed several criteria on which the Council would base a decision of whether to grant or deny an exception to the standard prohibition of skybridges in view corridors.

One criterion that could contribute to a City Council granting an exception reads:

All other reasonable alternatives for creating a successful at-grade link between opposite sides of the street have been evaluated and found not to be feasible due to:

1. *A safety concern or*
2. *Physical barrier or*
3. *Insufficient integration of both sides of the development via an at-grade link*

The Council requested that the petitioner present details of its research into alternatives, including depictions of the alternatives and reasons why the alternatives would not work.

Another criterion reads: *The skywalk would be designed such that impacts on an identified view corridor would be minimal.* However, at the March 15 briefing and at the January 23 Planning Commission meeting the petitioner said that it wanted the design of the proposed skybridge to be integrated visually into the overall project and help make the project a single unit.

The Council requested that the petitioner review how it arrived at the final design to help the Council and the public understand the process the petitioner used to reach the bridge's design.

The Council also said that to reach a decision it would discuss whether or not the petitioner met each criterion listed in Ordinance No. 13. This memorandum lists findings by the Planning Division staff. However, two things should be noted. First, the Planning Division staff's findings were based on information received before the petitioner's presentation on January 23. Second, as noted in the *Key Points* section of this memorandum, the Planning Commission forwarded a favorable recommendation to the City Council.

KEY POINTS

- The last paragraph of Ordinance No. 13 of 2007 appears to give the City Council fairly wide latitude to require a developer to meet Council goals for "specific project and skywalk related design or other urban planning policy elements, criteria or conditions as part of the related street vacation action."
- The Planning Commission has recommended approval of the proposed ordinance.

- The petitioner appears to indicate that it has met the conditions of Planning Commission recommendations.

ISSUES/QUESTIONS FOR CONSIDERATION

- Given the last paragraph of Ordinance No. 13 of 2007, if Council Members have concerns about the project that the proposed skybridge is part, consideration of the proposed ordinance probably is the last opportunity to raise them.
- The proposed ordinance calls for the leasing of airspace for the proposed bridge. Leasing is an option that the City Council has discussed, but sale of the airspace remains an option. The Council may wish to discuss any potential legal issues involving either option in a closed session.
- The proposed ordinance includes three conditions recommended by the Planning Commission:
 - The approved plan for the skybridge shall use transparent glass in lieu of the applicant’s proposal ... to minimize the visual impacts of the etched glass.
 - The permit for the City Creek project shall require that the amount of Main Street retail, as represented in the applicant’s most recent plan, be maximized to encourage the use of the crosswalk at ground level; and that all four restaurant retail spaces adjacent to the skybridge have one primary ingress on Main Street.
 - The approved plan for the interior of the skybridge shall be designed to include design elements and/or furniture to create a destination focal point.

The City Council may wish to evaluate those conditions in its consideration of the ordinance.

DISCUSSION/BACKGROUND

The proposed ordinance would authorize the leasing of part of the airspace above Main Street to build a “skybridge” across it. The ordinance also would vacate part of the airspace and declare the part “no longer needed or available as a public street.” The ordinance would limit the amount of airspace that would be leased “only to the extent necessary to construct a skybridge across Main Street.” Generally, municipalities are stewards of public streets. Ownership of streets includes the streets themselves and what is below and above them.

THE BRIDGE

The proposed bridge would link two parts of the City Creek Center development which is bordered by South Temple, State 100 South and West Temple streets. The bridge would be about 130 feet long and 28 feet wide.¹ The bottom of the bridge would clear electrical catenary wire and poles that are part of the Utah Transit Authority light rail station, roughly 25 feet. Representatives of the petitioner estimate that the enclosed bridge would rise roughly 16-feet to 18-feet above the actual walkway.

The petitioner depicts the enclosed bridge as having glass etched to suggest wetland reeds except for a space in the bridge's center. That area would be clear to provide a space for viewing.² According to representatives of the petitioner, the bridge would have a v-shaped, gull-wing roof that would do two things. The middle of the roof will provide water drainage that won't spill onto the UTA rail station or equipment below it, and the "wings" can be raised to ventilate the enclosed bridge.

THE ISSUE

On April 17, 2007, the City Council adopted Ordinance No. 13 of 2007. The ordinance amended the Salt Lake City Downtown Master Plan and Urban Design Element to allow the City Council to authorize exceptions to the Master Plan's prohibition of "skywalks or other obstructions that would block view corridors Main, State, West Temple, South Temple, 100 South, 200 South, 300 South and 400 South streets." The ordinance allows the City Council to grant "up to one exception per view corridor" – if the City Council finds the exception is justified under "extenuating circumstances and minimum requirements." The circumstances and requirements are a favorable recommendation by the Salt Lake City Planning Commission and:

- A. *A unified development proposal which includes no less than 7.5 acres of retail/residential mixed use located on each of the two blocks on opposite sides of one of the streets listed above is submitted by the property owner/developer to the Planning Commission, and the unified development contains no other skywalk.*
- B. *All other reasonable alternatives for creating a successful at-grade link between opposite sides of the street have been evaluated and found not to be feasible due to:*
 1. *A safety concern or*
 2. *Physical barrier or*
 3. *Insufficient integration of both sides of the development via an at-grade link*
- C. *A finding is made that a compelling public interest exists through substantial demonstration of each of the following:*
 1. *The proposed development would contribute to the objective of creating an active, vibrant streetscape by connecting people easily from upper levels to the street level corridor and maximizing public movement through architectural elements such as elevators, escalators, or grand entrances.*
 2. *The skywalk would be designed such that impacts on an identified view corridor would be minimal.*
 3. *The proposed development utilizes urban design, architectural elements and visual connections including pedestrian linkages that actively enhance the project's relationship to surrounding blocks and economic development opportunities for those blocks.*
- D. *Application of street level urban design elements for an entire project that enhance a primary pedestrian focus, requiring components including but not limited to all of the following:*
 1. *Maximize permeable block faces through actions including but not limited to:*
 - a) *Landscaped project entrances on each block face that open the block with pedestrian corridors, and;*
 - b) *Maximize visual permeability into a store or by a legitimate display window, and*
 - c) *Maximize outward facing retail on all block faces.*
 2. *Enhanced pedestrian amenities on all block faces such as but not limited to shading devices, signage and seating.*

3. *Uses on all external block faces that support pedestrian activity including but not limited to restaurants, residential, or retail uses comparable to internal commercial activity.*

After recommendation from the Planning Commission, the City Council (as the land use authority) shall have final approval of a skywalk as part of the street vacation process authorized by State Code. The Council may choose, on an individual project basis, to add specific project and skywalk related design or other urban planning policy elements, criteria or conditions as part of the related street vacation action.

As the last paragraph of the ordinance indicates, the City Council appears to have fairly wide latitude to require a developer to meet Council goals for “specific project and skywalk related design or other urban planning policy elements, criteria or conditions as part of the related street vacation action.”

The issue before the City Council then, is not only to determine whether the proposed skybridge meets requirements outlined in Ordinance No. 13 of 2007 but to determine whether there are “specific project and skywalk related design or other urban planning policy elements, criteria or conditions” related to the proposed street vacation that the City Council may choose to add.

It should be noted that the Planning Commission on January 9, 2008, adopted a motion to grant limited planned-development approval of building footprints for the project and the issuance of building permits for underground improvements. It also adopted a motion to grant a conditional-use to allow additional building setback for property located at about 50 East 100 South.³

In addition, the Planning Commission on January 23, 2008, granted planned development approval for the City Creek Center project, declared the air-rights at about 50 South Main Street as surplus property, recommended City Council approval of the partial street closure requested in Petition No. 400-06-38, and recommended that the City Council approve the final design for the proposed skybridge.⁴

THE ORDINANCE

- The proposed ordinance would vacate a portion of the airspace above Main Street at about 50 South Main Street, “to the extent necessary” to build a skybridge as part of the City Creek Center project.
- The City would retain “all portions of the subsurface, surface, and airspace of Main Street located on all sides of the partial street closure ...”
- The City would convey the vacated property “by separate lease.” The term of the lease “shall be tied to the life of the retail portion” of the project.
- The ordinance contains several conditions including the following three recommended by the Planning Commission:
 - The approved plan for the skybridge shall use transparent glass in lieu of the applicant’s proposal ... to minimize the visual impacts of the etched glass.
 - The permit for the City Creek project shall require that the amount of Main Street retail, as represented in the applicant’s most recent plan, be maximized to encourage the use of the crosswalk at ground level; and

that all four restaurant retail spaces adjacent to the skybridge have one primary ingress on Main Street.

- The approved plan for the interior of the skybridge shall be designed to include design elements and/or furniture to create a destination focal point.

PETITIONER

In presentations to the Planning Commission and in discussions, the petitioner has indicated the following items about the proposed skybridge:

- The proposed bridge is a single element and not a part of a skywalk system like those that are found in Minneapolis, Minnesota; Des Moines, Iowa; or Spokane, Washington.
- The proposed bridge is an integral part of the City Creek Center development and is key to successfully retaining retail business now and in the future.
- The proposed bridge should be enclosed because UTA has raised concerns about the safety of pedestrians on the bridge and below as well as potential adverse problems with facilities and equipment due to throwing items off an open bridge.
- The petitioner also contends that Salt Lake City has enough bad weather to argue against having an open bridge. (It should be noted that, according to the National Weather Service, Salt Lake City receives between 1.23 inches and 2.09 inches of precipitation each month between September 1 and June 1; has on average 140 days per year of cloudy skies; and 127 days per year where the temperature is 32 degrees or lower, mostly December through February.)
- The proposed etched items in the glass on the bridge are meant to repeat a pattern that will appear throughout the project.⁵
- The petitioner has designed a number of features along Main Street to encourage pedestrian traffic. The petition also plans to develop “mini-anchors” of retail that connect directly to public streets but not to the retail “galleria” to encourage street-level pedestrian traffic.⁶

PLANNING COMMISSION

The proposed ordinance is based on a motion adopted by the Planning Commission after a January 23 public hearing. The Commission adopted the motion 6-3.

The motion found that there is a compelling public interest to allow an exception to the Downtown Master Plan and Urban Design Element to allow construction of a skybridge above Main Street. The motion included a favorable recommendation to the City Council to approve a partial street vacation to allow the leasing of air rights at fair market value for the life of the retail portion of the project. The Commission also recommended three conditions:

- The approved plan for the skybridge shall use transparent glass in lieu of the applicant’s proposal ... to minimize the visual impacts of the etched glass.
- The permit for the City Creek project shall require that the amount of Main Street retail, as represented in the applicant’s most recent plan, be maximized to encourage the use of the crosswalk at ground level; and that all four restaurant retail spaces adjacent to the skybridge have one primary ingress on Main Street.

- The approved plan for the interior of the skybridge shall be designed to include design elements and/or furniture to create a destination focal point.

Much of the Planning Commission discussion was based on the following findings by the Planning Division staff. (It should be noted that the staff’s findings were contained in a staff report written on January 18, 2007. The petitioner on January 23, 2007, presented the Planning Commission designs that attempted to address some concerns Planning Division staff raised in the findings.) The staff’s findings are below in standard type after the italicized portions of Ordinance No. 13 of 2007:

A unified development proposal which includes no less than 7.5 acres of retail/residential mixed use located on each of the two blocks on opposite sides of one of the streets listed above is submitted by the property owner/developer to the Planning Commission, and the unified development contains no other skywalk.

The project meets the criteria because the City Creek Center site has more than 7.5 acres on each of Blocks 75 and 76. There are no other proposed skywalks across any other public right-of-way fronting the City Creek Center.⁷

All other reasonable alternatives for creating a successful at-grade link between opposite sides of the street have been evaluated and found not to be feasible due to:

1. *A safety concern or*
2. *Physical barrier or*
3. *Insufficient integration of both sides of the development via an at-grade link*

All other reasonable alternatives were reviewed and appeared not to be feasible. The east and west portions of the planned project’s galleria do not align with a (street-level) crosswalk which may create a safety concern if pedestrians choose to jaywalk (to cross Main Street or reach a UTA light rail station) instead of following the Main Street sidewalk north to the crosswalk. ... The integration of the east and west sides of the complex is diminished by the lack of alignment with the crosswalk.

The staff report said safety “is still a concern because of the off-setting crosswalk” and that “the project needs better integration on both sides of the development via the proposed at-grade link.”⁸

A finding is made that a compelling public interest exists through substantial demonstration of each of the following:

1. *The proposed development would contribute to the objective of creating an active, vibrant streetscape by connecting people easily from upper levels to the street level corridor and maximizing public movement through architectural elements such as elevators, escalators, or grand entrances.*

The proposed skybridge met the criteria because it has elevators and escalators at the Main Street entries on both sides of the street and that the project “needs greater connection” (to the street-level corridor) because of the project’s proposed second level of retail.⁹

2. The skywalk would be designed such that impacts on an identified view corridor would be minimal.

The staff report said that although the skybridge appeared to add to existing obstructions on the Main Street view corridor, “with further refinement, additional impacts to the view corridor can be minimized.”

The report said that the City Creek Center project is designed as an open-air or semi-open-air development, so having an “enclosed element may be incongruent” with the project. The report also said that “art glass could be integrated into other areas of the project (other than the skybridge) if it is found that the art glass further reduces the transparency of the skybridge.”

The report said the view corridor “already may be compromised by the existence of TRAX and other street improvements.” The report noted that Ensign Peak “is not readily identifiable from the street level and that “the view corridor is further impacted by the existence of telecommunication towers on the ridgeline.”¹⁰

3. The proposed development utilizes urban design, architectural elements and visual connections including pedestrian linkages that actively enhance the project’s relationship to surrounding blocks and economic development opportunities for those blocks.

The staff report said the project aligns well with adjacent street blocks except for the crosswalk on Main Street. The report recommended that “extra measures are needed to guide pedestrians to the crosswalk.”¹¹

D. Application of street level urban design elements for an entire project that enhance a primary pedestrian focus, requiring components including but not limited to all of the following:

- 1. Maximize permeable block faces through actions including but not limited to:*
 - a. Landscaped project entrances on each block face that open the block with pedestrian corridors, and;*
 - b. Maximize visual permeability into a store or by a legitimate display window, and*
 - c. Maximize outward facing retail on all block faces.*
- 2. Enhanced pedestrian amenities on all block faces such as but not limited to shading devices, signage and seating.*
- 3. Uses on all external block faces that support pedestrian activity including but not limited to restaurants, residential, or retail uses comparable to internal commercial activity.*

The staff report said the applicant had “maximized visual permeability and commercial activity on all block spaces except Main Street.” It said the design for Main Street needed additional work to maximize retail frontage there, in part because escalators cut into retail frontage.

According to the staff report:

The level of activity on Main Street should take priority over the activity of the galleria, particularly since the crosswalk and the galleria do not align and extra measures are needed to guide pedestrians to the crosswalk. This perhaps could be accomplished by turning the escalators perpendicular to Main Street (impacting galleria retail frontage rather than Main Street, considering the use of spiral escalators

that have a smaller footprint, or some other appropriate design solution.¹²

PETITIONER RESPONSE

At the January 23 public hearing representatives of the petitioner told the commission that the petitioner had complied with a number of issues raised by the Planning Division including:

- Re-evaluating safety issues along Main Street. The petitioner indicated that it had plans to plant an 18-inch-high hedge, bollards, a water feature to help guide people north and south along Main Street and a sculptural element which could be illuminated to guide pedestrians to the Main Street crosswalk.¹³
- Determining that repositioning escalators would result in a 22-foot by 40-foot space that would be “impossible” to lease to tenants the petitioner sought and that stairs and escalators would make “vertical transportation” visible and would allow for activity and animation on the street.¹⁴
- Some conditions in the Planning Division staff report seemed open-ended, and that the petitioner already had addressed them.¹⁵
- Four restaurants on Main Street “all would most likely have significant entrances from Main Street.”¹⁶

OTHER ISSUES

- According to the petitioner’s representatives, the City Creek Center project is part of a pilot program that follows criteria from the Green Building Council that may lead to a silver level of LEED certification for the entire project.¹⁷
- Planning Commissioner Prescott Muir raised concerns about the absence of display windows on the north side of the planned building that would house the Nordstrom department store.¹⁸
- Commissioner Muir also indicated Ordinance No. 13 of 2007 contained a contradiction in clauses C-1 and D-1-c.¹⁹

The clauses read:

C. A finding is made that a compelling public interest exists through substantial demonstration of each of the following:

- 1. The proposed development would contribute to the objective of creating an active, vibrant streetscape by connecting people easily from upper levels to the street level corridor and maximizing public movement through architectural elements such as elevators, escalators, or grand entrances.*

D. Application of street level urban design elements for an entire project that enhance a primary pedestrian focus, requiring components including but not limited to all of the following:

- 1. Maximize permeable block faces through actions including but not limited to:*

c) *Maximize outward facing retail on all block faces.*

Commissioner Muir said the Planning Commission's charge was to determine whether one clause or the other should predominate in the project.

¹ Excerpt: Planning Commission Minutes, January 9, Page 5.

² Please see attached graphics.

³ Please see attached chronology from Administration.

⁴ Ibid.

⁵ Planning Commission meeting minutes, January 23, 2008, Pages 5 and 11.

⁶ Ibid. Page 14.

⁷ Planning Division staff report, January 18, 2007, Page 2.

⁸ Ibid. Pages 2 and 3.

⁹ Ibid. Page 3.

¹⁰ Ibid. Page 3.

¹¹ Ibid. Page 4.

¹² Ibid. Page 4.

¹³ Planning Commission meeting minutes, January 23, 2008, Page 5.

¹⁴ Ibid. Pages 5 and 9.

¹⁵ Ibid. Pages 5 and 6.

¹⁶ Ibid. Page 14.

¹⁷ Ibid. Page 6.

¹⁸ Ibid. Page 9.

¹⁹ Ibid. Page 13.