

City Council **Additional** Announcements

February 17, 2009


A. Information for City Council Members

Attached is a memo from the City Attorney's Office relating to the CCRI project. Ed Rutan will attend to respond to questions.

MEMO

TO: Salt Lake City Council Members
Cindy Gust-Jenson

CC: Mayor Ralph Becker
David Everitt

FROM: Ed Rutan 

DATE: February 17, 2009

SUBJECT: Extension of Sunset Provision for Conditions Required for Vacation of Property Located at West Temple, South Temple, and 100 South

As part of the process of approving the City Creek Center ("City Creek"), the Council adopted Ordinance No. 5 of 2008 ("the Ordinance") that provided for the vacation of portions of the public streets to allow City Creek to build parking access ramps. (The Skybridge was the subject of a separate ordinance, Ordinance No. 17 of 2008 adopted in April, 2008). The Ordinance provided for the partial vacation of West Temple Street between South Temple and 100 South; South Temple Street between Main Street and State Street; and 100 South between Main Street and State Street. Three conditions were placed upon the vacation of the Property by the Ordinance:

- 1) City Creek pay the fair market value for the property being transferred to it;
- 2) All existing public and private utility infrastructure shall be maintained in accordance with a plan approved by the SLC Public Utilities department; and
- 3) All above-grade level structures should be minimized and any visual obstructions to pedestrian and pedestrian crossings should be minimized in accordance with a plan approved and accepted by the SLC Planning Director.

The Ordinance was adopted on February 19, 2008 and contained a sunset provision that stated that if the conditions had not been met by one year after the adoption of the Ordinance, in this case February 19, 2009, the Ordinance would become "null and void."

As of today, the second and third conditions have been met (as discussed below), but the first has not. City Creek has raised several concerns about the appraisal prepared on behalf of the City, and the City Attorney's Office and Property Management Department are currently reviewing these concerns.

In order to address the first condition, we are recommending that City Creek place in escrow by February 19, 2009 the full amount of the current appraisal with the understanding that if the agreed upon appraisal is at a lower amount the difference will be refunded to City Creek. Alternatively, the Council could vote by February 19th to extend the sunset provision's deadline.

Background

Subsequent to the adoption of the Ordinance, City Creek sought a license to begin construction on the ramps located on West Temple and South Temple as the construction schedule for City Creek called for the construction to begin before the appraisal and other negotiations necessary to determine fair market value were completed. The City, through the Mayor, executed such a license in May, 2008 with an expiration date of February 19, 2008. Since that time, City Creek has performed a significant amount of construction work on the West Temple and South Temple ramps and is scheduled to begin construction of the 100 South ramp. Negotiations have been ongoing for some time regarding the fair market value of the ramps, as well as other property to be transferred as part of the City Creek including the air rights for the Skybridge and vault space. These discussions were somewhat delayed by the time it took to finalize the appraisal, with such appraisal being provided to City Creek for review on January 16,

2009. City Creek has been reviewing the appraisal with its own experts and responded on February 13, 2009 with concerns related to the appraised value. Discussions are continuing between the administration and City Creek concerning the appropriate fair market value of the ramps. As a result, no payment has been made as required by condition number one of the Ordinance.

During this process, City Creek approached the City Attorney's office last week to extend the license agreement to allow further construction of the ramps, including beginning construction on 100 South, during the pendency of the discussion needed to finalize the transfer of property. In the course of working on such license, the Attorney's Office realized the impact of the sunset provision on the timing of extending the license agreement. We are recommending that City Creek place in escrow by February 19, 2009 the full amount of the current appraisal with the understanding that if the agreed upon appraisal is at a lower amount the difference will be refunded to City Creek.

I have also attempted to determine whether conditions two and three listed above have been met (condition one having obviously not been met). Director of Public Utilities Jeff Niermeyer has indicated that he believes City Creek is in compliance with condition two. Tim Transportation Director Tim Harpst has similarly indicated that he believes City Creek is in compliance with condition three by virtue of the weekly construction meetings and permitting process during which, among other issues, the pedestrian sight line issue is addressed and approved by the City.

The Ordinance provides that the City Council may extend the subset provision by resolution. The consequence of not extending the deadline is that the Ordinance becomes "null and void." If that occurs, the vacation of the streets would likely have to begin at square one and

proceed through the entire process once again. Should the Council wish to extend the sunset deadline to allow more time for the parties to reach agreement as to fair market value it must do so by resolution by February 19, 2009.

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