

February 14, 2010

RE: FIRST AND MAIN

Doug and James,

I am confirming a few ideas regarding First and Main, so we are prepared for the next steps and ready to explain them. (Because of confidentiality I refer to the existing proposal that has been discussed in closed session as "EP", and the new developer assembling First Street property as "ND". Even with that protection, this note is confidential.)

"ND" may well submit a proposal for First and Main, and will probably ask for a meeting with you this week. "ND" proposes to assemble all parcels from First and Main to Randy Lamb's project privately, and use them in a way that makes Downtown a stronger place and a stronger economy. In "ND's" view that includes public subterranean parking and relocating Safeway to a better site if possible, then creating a development or a public space that adds significant quality and function to Downtown. (Status of "ND's" investment as of this past week: in contract on the Jerry Ivy building Coldwell Banker used to occupy; opened discussions with Steve Berndt and will need time to complete that negotiation, and, less important but still an indicator, negotiating on the Cottage Green site across First St. I can update you on other activities separately.)

As a City we need the following (not in order):

- Specific verifiable information from both "ND" and "EP" (and any developer) that allows us to evaluate qualifications and proposals comparatively.
 - Commitment and ability to self-finance/provider equity for the acquisition, construction and take-out costs.
 - Commitment and track record to complete project within an aggressive and specific time frame, and to tenant the building with strong retailers/office tenants that will bolster DT retail/add daytime population.
 - Commitment to work closely with the City to achieve the public benefits.
 - Guarantees to fund and complete
- Written evaluation criteria. We have documented our public benefits. Do we seek as many of the following as possible in a strong proposal: landmark building, near-term project completion, ability to tenant in way that strengthens District with people and retail uses, assemblage with Safeway, subterranean private and public parking, be part of parking district, include public space, quality and size of retail space, strong relationship/activation of the street. In other words, if "ND" is able to assemble and develop from Main St. to 100 First St., would that be competitive? Would we give a developer 120 days to put the Safeway deal together concurrently with negotiating the City deal?
- A clear process for considering more than one proposal in a short time-frame, including steps to secure a signed development contract relatively quickly thereafter
- To minimize conflict and controversy both within Los Altos and with the real estate development community.

We'll also need to be clear on the basis for evaluating more than one proposal as:

- Public requirement to consider legitimate proposals once they are known,
- Using short-term RFQ to systematize known /potential developer interest overall.

Therefore, I'm providing a draft for your comment. It is a way of presenting information and our position in the face of this change. This could be the basis for briefings and for public relations statements. All this is based on existing outreach, planning documents and the opportunity study, plus developer selection process.

DRAFT: Information and Position

We need to adjust our process regarding First and Main at this point because we have new, active development interest.

1. The interest appears serious, and has potential strong benefits for Los Altos.
2. Whether we select this new developer or not, we have a public sector obligation to hear all legitimate developers.

These are both compelling reasons to adjust our process, and we can't afford to ignore them. Therefore we will move from a highly confidential, one-developer process to a more standard multiple-developer process where we can compare developer qualifications and commitments.

The new developer has

- expressed interest in First and Main
- asked for the opportunity to respond to an RFQ or RFP, and
- begun to assemble a development site related to First and Main.

We are also aware of development interest by still more parties, but believe they are waiting for us to invite submittals. We need to check whether they are prepared to compete at this time. Given the economy, they may not be.

The approach for this change in process at First and Main is based on three principles, outlined in sections A – C, below:

A. A government makes real estate decisions differently and with more obligations than a private party:

- Fiduciary responsibility to balance public benefit and revenue to City
- Public process and legal requirements typically require that we evaluate all proposals
- Disclosure
- Avoid conflicts of interest or favoritism – in appearance and fact
- Manage Council review; manage public comment and support

B. We can use established principles of public real estate development process and law

- Use RFQ to compare development qualifications and require specific commitments from developers

- Don't limit discussion to any one party when we know there is other interest
- An RFQ will take time, but it can be managed relatively quickly and provides safeguards (see Note on Process, below)

C. We can issue an RFQ on a short time-frame that requests the commitments, qualifications and financing each provides, and documents our criteria for evaluation.

- This standard process protects both "EP" and "ND" as well as the City and the public interest (no one benefits by acting outside of formal process).
- We know there is more expressed interest than "EP" and "ND": (Tig Tarlton, Craig Semmelmeier, maybe Jon Rayden, Safeway). We might want to make this more public just to cover bases.
- Not issuing an RFQ begs the question of whether we are maximizing the potential benefit to Los Altos
- Not issuing begs the question of why and how we select just one or two parties to consider
- There is a nagging question about why we are working only with one party which has pursued us while others are thinking the development initiative on First and Main is deferred pending a new RFP, or that we are still working with Safeway. Not reaching these people appears to dismiss process, disclosure and fiduciary responsibility. If the process becomes controversial, this can begin to look much worse than it looks today.

How did this situation arise? The progression of City actions makes sense:

- City issued an RFP but no submittals came to fruition, largely due to the market decline and City's unwillingness to drop land price due to market. September 08 – February 09.
- City asked the neighboring owner, Safeway, for a proposal on First and Main to solve need for new Safeway, and achieve more efficient land development on shallow site with limited access. Spring 09 – October 09.
- Received unsolicited, unexpected proposal from unknown party, "EP". October 09.
- Invited Safeway to submit a proposal given the proposal fro, "EP." October 09.
- Learned of "ND's" interest, (i.e., interest in Los Altos is stronger than we had imagined in the depressed economy) but had no evidence that "ND" could achieve its land acquisition plan. November 09.
- Learned that "ND" was acquiring private property, wanted to assemble the First St frontage, wanted to attempt a relocation of Safeway, and expressed desire to respond to an RFP from the City, January '10.
- Learned that "ND" was in contract on Jerry Ivy building and opened conversations with Safeway's Berndt. February 2010.
- Realized that we had a fiduciary responsibility to examine the benefits of both proposals ("EP" and "ND") because both developers have apparent ability to perform.

NOTE ON PROCESS – First draft

The RFQ process could be:

- A short-term (two weeks) RFQ that reaches all the people we know who are potentially interested and determines whether they have current interest. If so,.
- It requests qualifications –
 - ability to self-finance acquisition and construction loan
 - identity and track record of development team,
 - confirmation that the developer supports City goals for the site and will work with City.
 - In other words, the RFQ keeps the advantages the City currently has with both “EP” and “ND”; it isn’t taking a step back.
- Then develop a short list based on the RFQ responses (likely to include only “EP” and “ND”)
- Ask for development contract terms/commitments from (short list) qualified developers that gives City the basis for choosing one. This is short of a full RFP that involves development proposals and architectural work and a review panel. It would include:
 - Criteria for selection based on ability to self-finance and track record (above), but also,
 - Provision of public benefits (landmark building, timeframe for completion, ability to tenant in way that strengthens District, assemblage, subterranean private and public parking, part of parking district, public space, quality and size of retail space, activating the street).
 - Financial benefits to City, and,
 - Ability to complete project within a time certain.
- Complete negotiations with the selected developer, and take agreement to Council for approval.

END OF DRAFT: POSITION AND RATIONAL

Doug and James,

I need your thoughts so I can stay on target with this. I’ll checking for e-mail or phone response from you. I can come talk to you about this on Tuesday, and would prefer to meet first thing in the morning and then leave to resume my little vacation. This is so important, I’d be glad to work actively this week from off-site.

When is the next Closed Session on First and Main expected? I think it is only fair to let “ND” know when we need a proposal, and I assume we need it prior to the next Closed Session. Do you agree?

Anne
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