



**COUNCIL PRESIDENT PRO TEM BARBARA BRY
CITY OF SAN DIEGO
DISTRICT 1
MEMORANDUM**

DATE: August 18, 2020
TO: Honorable City Attorney Mara Elliot
FROM: Council President Pro Tem Barbara Bry
SUBJECT: RE: Response to August 6, 2020 Hearing Questions Regarding Item 603 – 101
Ash Street Project Status Update

Barbara Bry

Thank you for your responses to the questions I raised at the August 6th City Council hearing, but I would like to clarify they were directed to you to respond on behalf of the City Attorney's Office, not you personally. If you prefer, I can receive those answers directly from the staff attorneys who advised the Council at that time.

A review of the Council Committee hearing of September 26, 2016, appears to show that the committee members were told that the City was paying \$60 million more than they would have paid if the transaction were directly with the building owner.

Former Councilmember David Alvarez appears at that meeting to be the only Councilmember uncomfortable with the answers being provided. Unsatisfied with the responses to his questions, he ends his inquiries suggesting that he would seek clarification later. Was there subsequent communication in which Mr. Alvarez's questions were answered?

I appreciate your answer on the Charter Section 225 disclosure requirement. It is consistent with previously published comments that suggest that the key players all knew who the true owners were, despite the fact that city staff were careful not to disclose those names during public hearings. This is important because at least one Councilmember says he did not know the true owners at the time. In fact, as recently as last week, an article in the *Voice of San Diego* incorrectly implied that Mr. Manchester had sold his interest in the building earlier when, in fact, he was paid out of the bond funds secured by the City's lease.

I have attached a letter from Cisterra to the City, dated July 21, 2016, which makes it clear that Cisterra had already decided to let their option on the property lapse prior to being approached by Mr. Villa and other City representatives with a request to stay in the escrow.

Was your office aware of this letter at the time?

I ask because this letter suggests that Cisterra was unable to secure financing based on the proposed sales price. This suggests the parties were unable to secure an appraisal based on value and that the City could have waited until after the transaction fell out of escrow to negotiate directly with the building's owners an even lower price based on a proper appraisal.

Such an appraisal would have revealed all of the building deficiency issues. Instead, the City prevailed upon Cisterra to stay in the escrow and provided a long-term lease agreement that allowed Cisterra to access private financing based on the lease revenue from the City rather than on building value. All of these missteps suggest that the true overpayment is even higher than the \$60 million overpayment reported at the September 2016 hearing.

Was the City Attorney's Office aware of the difference between value-based financing vs. income-based financing? If so, was this shared with the Council?

Did anyone, at the time, suggest allowing the escrow to lapse?

If not, why not?

I am copying the Mayor's office in the interest of inviting their answers to these same questions.

cc: Honorable Mayor Kevin Faulconer
Aimee Faucett, Chief of Staff, Office of the Mayor
Kris Michell, Chief Operating Officer
Jessica Lawrence, Director of Policy and Council Affairs, Office of the Mayor

Enclosure: Letter from Cisterra Development to Cybele Thompson, former Director of Real Estate Assets, dated July 21, 2016.