

## COMMITTEE MEMORANDUM

**TO:** Finance and Citywide Projects Committee Members

**FROM:** Jimmy L. Morales, City Manager

**DATE:** February 23, 2018

**SUBJECT:** A DISCUSSION REGARDING THE NORTH BEACH TOWN CENTER REDEVELOPMENT PROPOSAL

### **HISTORY**

On or about June 7, 2017, the City engaged Tom Blazejack, to prepare an appraisal, as required by Section 82-39 of the City Code, with respect to a proposal submitted by North Beach Town Center Development, LLC's ("Developer") for the City to convey two of its Parking Lots (P80 and P84) in North Beach, in exchange for the Developer's conveyance to the City of a public parking garage unit or structure, which would be constructed as part of the Developer's proposed mixed use project.

Between July, 2017 and December, 2017, the City and the Developer held various meetings to discuss the differences in valuation. As part of the appraisal discussions, the City and the Developer agreed that the results of the November, 2017 referendum regarding the proposed F.A.R. increase in the Town Center districts in North Beach could affect the valuation of the respective parcels. The decision to incorporate the F.A.R. referendum results as part of the appraisal analysis inured to the benefit of the Developer, as the Developer's properties benefited more from the FAR increase than the City's properties.

On December 21, 2017, Blazejack submitted its revised appraisal analysis, based on the increased F.A.R. associated with the November referendum approved by the voters, attached hereto as **Attachment "A."** As the analysis reflects, the higher overall value of City's properties resulted in an **\$800,000** variance between the City properties and Developer properties ("Appraisal Variance").

### **Developer's Initial Proposal (Subsequently Withdrawn)**

On January 5, 2018, the Developer submitted a proposed Development Agreement ("DA") which, as noted more fully below, the Developer has recently

withdrawn. As proposed in the DA, the City would convey to Developer Lot P80 and P84, without any current consideration or payment to City at the time of the conveyance. The City would pay the Developer \$25,000 per parking space, for the Developer to design and construct a 247 space municipal parking garage with ground floor retail. The project would be condominiumized, with the City owning the public garage portion and the Developer owning the ground floor retail. As proposed in the DA, the City would also provide, in perpetuity, 2 hour free parking at the 247 space City garage, for the benefit of the Developer's retail tenants.

On January 18, 2018, the City submitted a proposed Reimbursement and Indemnity Agreement to the Developer, to provide for the Developer to cover the City's outside counsel and other due diligence review costs relating to the transaction (including the cost of the Blazejack appraisal, which the Developer has paid for). On January 31, 2018, the Developer executed the City's Reimbursement Agreement.

On February 13, 2018, the City provided its initial comments to the proposed DA. In the City's comments, one of the City's main concerns involved the proposed legal structure and timing for the conveyance of the City's properties, as the proposed structure created the risk that, in the event of a Developer default or bankruptcy prior to completion of the project, the City would have conveyed title to its properties without compensation. In its comments, the City also proposed an alternative to the Developer's proposal for 2 hour free parking. Free 2 hour parking will significantly reduce the revenues for the City garage, and would likely result in annual operating losses at this garage, in perpetuity, with such losses to be borne by the City.

Recently, on February 14, 2018, Developer submitted a new proposal, with significant program changes and a new proposed structure and financial terms.

#### **Revised Project Summary / Term Sheet**

On February 16, 2018, the Developer submitted a new proposed term sheet outlining the revised deal structure, a copy of which is attached as **Attachment "B"** ("Term Sheet").

The Developer's proposed project is as follows:

- The project between **Abbott and Byron** consists of 2 separate structures, consisting of 126,869 SF of retail in four stories, and a parking garage with a total of 471 parking spaces, as follows:
  - 371 of the parking spaces to be municipal parking spaces in a separate parking structure, on parcels owned by the City (the "Town Center Garage");

- 100 of the parking spaces are for the sole use of the retail tenants as part of Developer's retail building.
- Approximately 3,200 sq. ft. for ground floor retail (to be owned by the City);
- Developer and the City to share an entrance to the Town Center Garage, and provide developer with dumpsters and loading dock spaces; Developer to be responsibility for proportionate share of common area/easement area expenses.
- The project between **Abbott and Harding** consists of existing office buildings at 42,456 SF; a new 134-unit residential building with 42,538 SF of ground floor retail uses; and a separate 275 space parking garage that will serve the residential building and office tenants only.

The Developer's revised term sheet, in its most basic terms, provides:

- City to convey the P80 Lot and P84 Lot to Developer as outlined in red in Attachment "B"; , and Developer to convey to City the parcels outlined in blue in Attachment "B";
- City to receive upfront payment of \$800,000 at the time of conveyance (representing the appraisal variance between the City and Developer properties);
- City to pay Developer approximately **\$12,514,000** to design and construct the 371 space Town Center Garage, consisting of a construction cost cap of \$33,730, net of the following credits to the City:
  - Contribution of \$387,000 for 3225 sq. ft. retail space (at \$120 per sq. ft.);
  - Contribution of \$439,200 for garage/loading dock easement rights (at \$120 per sq. ft.);
  - Contribution of \$700,000 for the 2 hour free parking validation for retail tenants.
  - [Note: when factoring in the upfront payment to the City of \$800,000 to the above contributions, the Developer's total contribution is \$2,326,200, representing \$6,270 per public parking space.]
- Developer proposes that City waive concurrency fees for the retail spaces on Developer's property (estimated at approximately \$733,000).
- Customers of Developer's retail tenants in the adjacent building between Abbott & Byron (and not office tenants, retail or residential tenants in the

building between Abbott & Harding), to receive two hour free parking through a validation system;

- The portion of the project consisting of the City's Town Center Garage would include one shared entrance, for use by City customers and the users of the 100 parking spaces in the Developer's adjacent building. Developer and City to execute an Easement Agreement, to provide Developer with garage access, along with 5 loading spaces and 2 trash compactor spaces;
- City to operate the Town Center Garage; Easement Agreement to provide for Developer to pay its proportionate share of CAM costs.

## **ANALYSIS**

### **1. Increased Size of the Project.**

The initial proposal contemplated a 247 space parking garage. The new proposal increases the size of the garage to 371 parking spaces.

As a general matter, adding parking garage inventory in North Beach (whether it's a 247 space garage, as previously proposed, or a larger garage) may potentially align well with the City's policy goals, if funding can be identified and prioritized over other competing policy goals of the City Commission.

There is a possibility that a 371 space garage may ultimately be underutilized, in view of the current parking rate policy in North Beach. Currently, the City does not charge for parking after 6:00 p.m. in any on-street parking or parking lot in North Beach (as the rationale for the policy was to facilitate parking for residents in the evenings).

Unless there is a change in policy with respect to the City's parking charges after 6:00 p.m. in North Beach, the availability of free parking after 6:00 p.m. is a factor that may weigh against a 371 space parking garage and in favor of a smaller garage, as customers may elect to use free parking spaces instead of the Town Center Garage. Further, as discussed more fully below, the potential for reduced revenues at this facility, and the likelihood of annual operating losses, is compounded when considering the proposed 2 hour free parking for retail tenants, discussed further below.

In the new proposal, the Developer proposes that, with the exception of a 3,200 sq. ft. ground floor retail component, the entire project and available height be used for the 371 parking spaces. Finally, as the City Commission previously indicated an interest in exploring workforce housing options for parking projects in North Beach, the Administration requests direction or confirmation as to the proposed program scope for the project (i.e., to exclude any workforce housing as part of the project).

## **2. The \$12,514,000 Funding Appropriation Required for the Project.**

The increased size of the project will significantly increase the required City funding for design and construction of the Town Center Garage. In the prior iterations of the transaction, 247 parking spaces, at \$25,000 per space, the City would pay the Developer approximately \$6,175,000 for design and construction costs of the Town Center Garage.

With the new proposal, for 371 spaces at approximately \$33,730 per space, the City Commission would need to identify approximately **\$12,514,000** to fund the Town Center Garage. As there is currently no capital budget appropriation for this project, a funding plan will need to be identified and in place prior to executing a Development Agreement.

Based on the reduced parking demand the Parking System has experienced in the last several years, and the City Commission's prior decisions to utilize a portion of the Parking System surplus fund balances for contributions to the General Fund and transportation (after satisfying all Parking Revenue Bond covenant requirements), the identification of full funding for this Project may prove challenging and may require reprioritizing previously appropriated capital projects, depleting Parking System surplus fund balances, and reducing (or eliminating) planned contributions to the General Fund or transportation. As of September 30, 2017, the preliminary Parking System fund balance is \$28,238,170 (of which \$9,068,000 is committed in FY 2017/18 for the General Fund and transportation, \$11,361,541 was appropriated for Parking capital projects, and \$861,000 was appropriated for the Parking FY 2017/18 operating budget; leaving an available balance of \$6,947,629). Use of the \$6.9 million available balance would leave no funding for the General Fund or Transportation in FY 2018/19 and no funding for future Parking capital needs.

In addition, as of September 30, 2017, the estimated available balance in North Beach Parking Impact Fees is \$2,837,053, of which \$300,000 were appropriated

for 72<sup>nd</sup> Street Parking Garage design, leaving a balance of \$2,837,053 available for appropriation.

Funding for this garage will likely require release of funds from some other previously appropriated Parking capital project.

### **3. Two (2) Hour Free Parking for Retail Tenants.**

The new Term Sheet proposes that the Developer would pay the City \$700,000 for 2 hour free parking validations for its adjacent retail tenants (in the building between Abbott & Byron), in perpetuity, with the payment to be received as a credit against amounts otherwise due to the Developer for design/construction of the Town Center Garage.

The Developer submits that the free parking provision is critical for the Developer to secure retail tenants. A similar “free parking” model was undertaken once before at the 5<sup>th</sup> and Alton Parking Garage (“Alton Garage”).

The Alton Garage is the only parking garage with 2 hour free parking and has had challenges with operating losses since inception. Calendar year 2017 operated at a loss and both Fiscal Year 2017/18 and Calendar Year 2018 are projected to have operating losses as well.

Importantly, as part of the Alton Garage transaction, in exchange for the 2 hour free parking for that project, the developer for that project agreed to an annual contribution of \$313,500, subject to a 2.5% increase each year for inflation (hence the \$394,738 retail contribution for FY16/17, as noted in the Income Statement).

In FY 16/17, the Alton Garage generated an operating loss of \$166,000, even after taking into account the annual Developer retail contribution in the amount of \$394,738 (which is not proposed for the Town Center Garage project) and valet rental payments of \$376,220 (which the Administration believes would be unlikely to be realized at the Town Center Garage for some time).

Without the annual Developer contribution and the valet revenues, the annual operating loss at the Alton Garage in FY16/17 would have been **\$936,000**. Further, the FY16/17 operating losses at the Alton Garage were mitigated by the \$389,000 in parking revenues from transient users. As the Alton Garage is located in a more densely developed area of the City, and in a highly prominent

location at a main entrance to the City, the Administration believes that transient rental revenues at the Alton Garage could be higher than would be realistically achieved at the Town Center Garage (particularly given the current parking rate policy in North Beach after 6:00 p.m.).

If a free parking option is included at the Town Center Garage, the City should realistically expect significant annual operating losses at the Town Center Garage, especially if there is no annual contribution from the Developer, similar to the annual contribution at the Alton Garage.

Developer's Offer of One-Time Credit of \$700,000 for Free Parking in Perpetuity

The Developer has proposed a one-time \$700,000 payment to the City for the 2 hour free parking rights for Developer's retail tenants, in perpetuity. This proposal is considerably lower than the contribution the City receives for 2 hour free parking at the Alton Garage. By way of comparison, since 2010, the City has received over \$2.4 million for the free parking component at the Alton Garage (and will continue to receive in excess of \$400,000 per year going forward).

In addition, the Developer's proposed \$700,000 would be applied as a credit against the City's construction/capital costs, as opposed to a payment to offset annual operating impacts.

If the City Commission desires to provide 2 hour free parking for retail tenants of the Developer's project, the City and Developer should discuss further options with respect to compensation to the City.

The Administration would much prefer, and recommends, a model similar to that utilized for the Sunset Harbour Garage, as discussed further below. The Sunset Harbour Garage is a successful public/private project that has allowed for significant retail and restaurant activation in the Sunset Harbour area, and has served the neighborhood's general parking needs, without having to provide any free parking whatsoever to retail tenants. The FY16/17 net income for the Sunset Harbour Garage is \$383,148, all of which is used to further support the City's Parking System, and a portion of which is used to support the General Fund and transportation.

Based on the concern for annual operating losses at the Town Center Garage, the Administration's recommendation is that a free parking component at the Town Center Garage **not** be included as part of the transaction. Instead, the recommendation is to provide for public parking at the standard (below market)

parking garage rates of \$1 per hour. The City's current rates are well below market, and are more than sufficient to support retail and restaurant development.

**4. City Commission's Policy in Favor of Design Criteria For Future Conversion of Public Parking Garages for Other Uses (i.e., Workforce Housing).**

The Developer has agreed, as part of its proposed pricing to the City for the design and construction of the Town Center Garage, to incorporate the City's design criteria to permit new parking garage structures to be converted to other uses if parking demand declines in the future. However, if the City Commission grants rights to 2 hour free parking validation in perpetuity, the City and the Developer will need to develop a structure that would release the City of the perpetual free parking covenant (i.e., in an amount proportionate to the underutilization of the Town Center Garage, if any), to permit the City to convert parking floors for other uses such as workforce housing, if demand for parking continues to decline in the future. The Developer has indicated it is open to discussing potential options further.

**5. Developer's Request for Waiver of Concurrency Fees for its Retail Spaces.**

The Developer has requested that the City Commission waive concurrency fees for the retail space on Developer's property, which for this project will approximately \$733,000 (roughly equal to the Developer's proposed one-time \$700,000 payment to the City for 2 hour free parking in perpetuity). The proposed waiver requires a Comprehensive Plan amendment; 30 day agency comment period; and an amendment to the City's Land Development Regulations. To date, the City Commission has only waived concurrency fees for sidewalk cafés, which are considered a temporary use as sidewalk cafes are approved through revocable permits. The City **has not** waived concurrency fees for any "brick and mortar" project.

**6. Loading Area Layout**

Based on the Planning Department's initial review, the Developer's proposed loading area, with all vehicles backing in/out from Byron Avenue, is in contravention of City Code requirements and may prove problematic. The Administration will need to work with the Developer to determine an acceptable approach which may result in changes to the square footage and the associated Developer contribution, etc.



## **7. Pending Legislative Changes Required for the Developer's Project**

The proposed project will require a number of legislative changes, including as follows:

- Comp Plan amendment and LDR amendment to implement the F.A.R. increase to 3.5;
- Comp Plan amendment and LDR amendment to rezone GU properties;
- Comp Plan amendment and rezoning, if Developer requires rezoning of the Developer's properties to TC-1 (Developer to specify if Developer is proposing any new uses or height increases);
- Ordinance to increase the height for the City parking garage to 75 feet; and
- Comp Plan amendment and LDR amendment to waive concurrency.

In addition to the foregoing, as the transaction involves a sale of City-owned property, pursuant to Section 1.03(b)(4) of the City Charter, and Section 82-37 of the City Code, the transaction will require approval by a 4/7ths vote of the Planning Board, and a 6/7ths vote of the City Commission. The Development Agreement will require approval of the City Commission following two readings/public hearings.

## **8. Parking System Bond Covenants**

Once the financial terms are finalized, the City will request its Parking System rate consultant (the Walker Consultants) provide an opinion, as required pursuant to the City's Parking Master Bond Resolution, that the proposed disposition will not have a material adverse effect on the Net Revenues of the Parking System.

## **CONCLUSION**

Direction from the Finance Committee and the City Commission on the foregoing items is requested, to assist the parties in finalizing terms.

### **Attachments:**

- A Blazejack Appraisal Summary
- B Developer's February 16, 2018 Term Sheet

JLM/KGB/ES/MMM