

City of Brisbane

Planning Commission Report

TO: Planning Commission For the Meeting of January 12, 2017

FROM: John Swiecki, Community Development Director

SUBJECT: 3000-3500 Marina Boulevard; Development Agreement DA-1-16; First Amendment of Development Agreement DA-1-11 for the Opus Office Center; Marcus LoDuca, applicant; Sierra Point LLC, owner; APN 007-165-020

Background:

In 2008, the City Council granted land use approvals for development of an office project (Opus Office Center) encompassing approximately 445,000 square feet of building area in an 8 and 10-story building and a 5-level parking structure on vacant land at 3000-3500 Marina Boulevard in Sierra Point. The approvals consisted of a design permit, use permit, variance, and tentative parcel map approval. In 2011, City Council granted extensions of these approvals contingent upon construction of the project to LEED Gold standards. This requirement was formalized through the adoption of Development Agreement DA-1-11 approved by the City Council in 2012. In addition to formalizing this requirement, the approved DA extended the life of the project approvals for 10 years (until June 2022). The property owner is now interested in further extending the term of these approvals.

Additionally, over the past few years, the City has been exploring options regarding Parcel R at Sierra Point. As shown on the attached Exhibit, Parcel R is an approximately 3.4 acre City-owned mostly vacant site located easterly of the easterly terminus of Sierra Point Parkway. In 1984, the City entered into a long-term ground lease to a developer in exchange for an upfront payment that helped finance the Marina. The ground lease had a 80-year term (renewable at the leaseholder's option for another 19 years) and authorized the leaseholder to develop Parcel R with up to 50,000 square feet of commercial space.¹ However, subsequent to the execution of the ground lease, 12,500 square feet of retail uses of the allowable 50,000 square feet was re-allocated to the Sierra Point Biotech project,² thereby reducing the maximum buildable square footage on Parcel R to 37,500 square feet. The leaseholder of Parcel R is also the owner of 3000-3500 Marina Boulevard and has been unsuccessful in attracting tenants interested in developing or occupying Parcel R as planned. Given the lack of development interest, the City has been exploring options to regain control of Parcel R to allow it to be used for public benefit before the ground lease expires.

¹ Brisbane, City of, 1984. *Ground Lease Agreement*. Recorded March 29.

² OPUS West Corporation, 2008. *Amended Combined Site and Architectural Design Guidelines, Sierra Point*.

Discussion:

In order to address both the applicant's desire to extend the development approvals for 3000-3500 Marina Boulevard and the City's interest in regaining control of Parcel R, the applicant has proposed a first amendment (Case DA-1-16) to Development Agreement DA-1-11. As a reminder a development agreement is a negotiated contract between a private entity and the City and the terms are binding on both parties.

DA-1-16 (attached as Exhibit 2) proposes the following:

- A. Establishing a new 10-year term for the development agreement (commencing upon its execution), superseding the current DA-1-11 expiration date of June 4, 2022, effectively extending the previous planning entitlements as well.
- B. Retaining the LEED Gold requirement established under DA-1-11.
- C. Clarifying procedures for City review of Research and Development (R&D) already permitted in the Sierra Point Commercial District (SPCRO) zoning district under Section 17.18.020.K of the Brisbane Municipal Code.
- D. Requiring the applicant to install solar panels on the roof of the parking structure.
- E. Requiring the applicant to quitclaim or otherwise terminate their existing leasehold and related development rights over "Parcel R" .
- F. Requiring the applicant to pay \$300,000 to the City of Brisbane for unspecified site preparation of Parcel R for unspecified future public use, and for the applicant to subsequently pay the City of Brisbane upon building permit issuance \$.50 cents/square foot of building area excluding the parking garage (subject to annual adjustment to reflect the change annually in the Engineering Cost Index), such funds to be used for unspecified future public improvements of Parcel R.

Recommendation:

That the Planning Commission adopt Resolution No. DA-1-16 recommending to the City Council that the proposed Ordinance Approving First Amendment to Development Agreement DA-1-11 for the Opus Office Center be adopted.

Environmental Determination:

As specified in Section 15162 of the CEQA Guidelines, an addendum to the Opus Office MND has been prepared and is attached which summarizes the revisions to the Opus Office Center project resulting from Case DA-1-16 and evaluates the impacts resulting from these revisions. The CEQA analysis is further discussed below.

In 2008 a Mitigated Negative Declaration was prepared for the Opus Office Center. This MND was also used for the approval of DA-1-11. In considering the current application, the CEQA Guidelines (Section 15164) allow for the preparation of an Addendum to an adopted MND "if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR (or MND) have

occurred.” CEQA Guidelines Section 15162 identifies the following conditions that would require preparation of a subsequent MND:

- Substantial changes in the project are proposed which require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of MND adoption, shows any of the following:
 - The project will have one or more significant effects not discussed in the MND;
 - The project will result in impacts substantially more severe than those disclosed in the MND;
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measure or alternative, or
 - Mitigation measures or alternatives that are considerably different from those analyzed in the MND would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

An evaluation was performed to determine if any of the above- noted conditions would result from DA-1-16 triggering the preparation of a new or supplemental MND, and this analysis concluded that DA-1-16 does not result in any of the conditions set forth in CEQA Guidelines Section 15162.

Applicable Regulations:

Development agreements are authorized and governed by Sections 65864 *et seq.* of the California Government Code. In addition to these state laws, procedures and requirements for consideration and adoption of development agreements have been established by the Brisbane City Council, as set forth in Resolution No. 88-10 adopted on April 25, 1988.

Analysis and Findings:

Part 2 of Resolution 88-10, paragraph 2, states that "The Planning Commission shall not recommend approval unless it finds the provisions of the [development] agreement are consistent with the General Plan and any applicable specific plans."

The project complies with this finding. The uses currently permitted pursuant to the Development Agreement are consistent with the General Plan. The existing General Plan also anticipates build-out of Sierra Point pursuant to the approved Site and Architectural Design Guidelines. The proposed Development Agreement amendment does not alter the currently approved land uses, nor does it modify the approved design guidelines. Continued build-out of the site in accordance with prior approvals would be consistent with the General Plan.

It should also be noted that the proposed Development Agreement amendment does not modify any of the land use approvals for this project previously granted by the City, which already include a finding and determination that the project is consistent with the Brisbane General Plan. The proposed Development Agreement amendment will simply grant the developer the vested right to proceed with the project in accordance with such approvals, subject to compliance with the LEED Gold standard and the newly added requirement to install solar panels on the roof of the parking structure.

The prospective use of and future site modifications to Parcel R have not yet been determined and are not impacted by DA-1-16. The City will undertake its own planning and environmental review process in the future to determine a land use program and site design for Parcel R.

Attachments:

1. Vicinity Map
2. Draft Planning Commission Resolution No. DA-1-16
3. Proposed Ordinance Approving Amendment to Opus Office Center Development
4. Agreement DA-1-11 (including proposed Development Agreement Amendment)
5. December 2016 Opus Office MND Addendum (A) and Technical Appendix (B)