



DATE: March 31, 2015

CATEGORY: New Business

DEPT.: City Manager's Office/Community Development/Public Works

TITLE: **Seek Development Proposals for Downtown Parking Lots 4 (APN 158-20-069) and 8 (APN 158-20-004) Located on Hope Street Between West Evelyn Avenue and Villa Street**

RECOMMENDATION

Take the following actions to seek development proposals for Parking Lot 4 (no street address; APN 158-20-069) and Parking Lot 8 (no street address; APN 158-20-004) for hotel/mixed-use development and creation of additional parking supply in the downtown:

1. Direct staff to seek development proposals for the properties through an open and competitive Request for Qualifications/Request for Proposals (RFQ/RFP) process with the following basic terms and objectives:
 - a. Fifty-five (55) year ground lease, with four 10-year options, of both lots to a developer for a single, integrated development;
 - b. Preference for a unique hotel of at least a three-diamond quality, potentially with a modest retail or office component;
 - c. A net increase in the number of public parking spaces (currently a total of 149 on the two lots); and
 - d. Agreement by the hotel operator to allow enhanced access to hotel employees for labor organizing activities and an expedited union voting process.
2. Approve a midyear capital improvement project (CIP) titled "Marketing of Hope Street Lots" and appropriate \$525,000 in a new midyear CIP and transfer \$375,000 from the Strategic Property Acquisition Reserve to fund the marketing, evaluation of qualification statements and proposals, and engineering studies to develop the project. The balance is to be funded from Exclusive Right to Negotiate funds anticipated to be received. (Five votes required)

BACKGROUND

The City owns nine surface parking lots and two parking structures on City land in the downtown, encompassing approximately 1,600 public off-street parking spaces. Attachment 1 indicates the location of each lot and structure. In the current strong economic climate, City staff has received numerous unsolicited expressions of interest for the development of some of these sites. Development could address one or more public purposes such as increased parking supply, affordable housing, economic development, and/or revenue generation for the City.

In a Study Session on January 20, 2015, the Council expressed support for a mixed-use development on Lots 4 and 8, the Hope Street Lots, to include a signature hotel of at least three-diamond quality and perhaps a limited retail or office component. The Council was particularly interested in a unique hotel that complements the vitality of downtown Mountain View. Some members of the Council expressed willingness to consider development beyond the four-story limit set in the Downtown Precise Plan. This would require an amendment of the Downtown Precise Plan, which could be done during design review. The Council expressed strong support for a development that would increase the amount of public parking, given that downtown parking is often constrained.

Hotel Employee Compensation and Representation

Over the last several years, the City Council has received substantial testimony regarding the compensation typically provided to hotel workers, which is comparatively low, while the regional cost of living is comparatively high. The prospect of requiring a "labor peace" agreement as a condition of leasing City property has been suggested for other City ground leases. A labor peace agreement establishes a different and generally more favorable process for labor organizing than is provided for under Federal law. The National Labor Relations Act (NLRA) grants employees the right to form or join a union, and specifies a secret ballot process. Under the NLRA, unions have limited access to employees, typically in public, nonwork areas and during nonwork time.

A labor peace agreement can be required by the City if there is a legitimate governmental reason to do so. City ownership of the land being developed is considered a legitimate governmental reason. The City would not be a party to a labor peace agreement: the agreement is between a union and an employer/developer, and it outlines the process by which employees choose whether or not to unionize. A labor peace agreement usually ends when employees are organized through a "card check"

process and before a collective bargaining agreement is entered into. It does not establish compensation, benefits, or terms and conditions of employment for hotel employees; that is done only through the collective bargaining process.

Typical components of a labor peace agreement include:

- a. The process used for employees to indicate their desire to join a union, usually by signing a card ("card check") rather than by submitting a secret ballot through an election process supervised by the National Labor Relations Board (NLRB).
- b. Union access to the employer's premises to conduct its campaign and obtain signatures on the cards necessary to show they represent a majority of employees.
- c. Employer agreement to not opine about the pros and cons of a union or union contract.
- d. Definition of classifications subject to the union's organizing.
- e. Employer agreement to provide employee's personal information, such as home address and phone numbers, so that the union can contact them away from work.
- f. Prohibition on employees who would be subject to organizing efforts from engaging in picketing or other economic activity, i.e., work stoppage during the organizing phase or urging customer boycotts. This prohibition only lasts while the union is involved in organizing the employees. Once the union represents the employees and negotiations for a collective bargaining agreement begin, the union may apply economic pressure through work disruptions such as strikes or picketing.
- g. Agreement to have an arbitrator count cards with employee signatures to establish that the union has majority support instead of NLRB supervision of an election process.

The City Council could require a labor peace agreement as a condition of leasing the Hope Street Lots. Given that compensation and representation of hotel workers would impact hotel operating costs and has been a subject of community concern, staff recommends that the City Council address this question now so that clear direction to potential proposers and potential employee representatives can be incorporated in the RFQ/RFP.

Rather than requiring a labor peace agreement for the lease and development of the Hope Street Lots, staff recommends that the following provisions be incorporated in the RFQ/RFP process:

1. Require potential developers and hotel operators to disclose anticipated compensation for workers as a part of the proposal process; and
2. Require potential developers and hotel operators to agree to greater employee protections in a unionization process than would be required under Federal law. Protections could include the following obligations, which could be required for a 90-day period after hotel operations commence:
 - a. Requiring the employer to allow union access to employees on the employer's premises, in nonworking areas, during nonwork hours, for 10 hours a week;
 - b. Requiring the employer to agree not to interfere with or challenge a valid petition presented to the NLRB for a representative (union) election and agree to an expedited election process;
 - c. Requiring the employer to agree to resolve any disputes in the unionization process via arbitration, rather than through the NLRB, as this can take an extended period of time.

Aside from these provisions, any unionization effort would be governed by Federal law.

This option attempts to provide opportunities for employees to consider unionization via an expedited secret ballot process, without drawn-out dispute resolution procedures, while allowing the employer to retain their ability to present to employees their position on the value of compensation they offer. It is important to note that these provisions would not be considered a labor peace agreement, and may not provide protection from economic disruption. The provisions would terminate after a set period of time, proposed at 90 days, and any future collective bargaining agreement would supersede these provisions.

Lot 4

Lot 4 is an irregular-shaped, nearly 1.1-acre parcel, ideally located in the Historic Retail District of downtown and in close proximity to the Transit Center. Virgin Hotels recently expressed interest in this site, as have other hotel and office developers.

Number of Spaces: 88

Size: 46,391 s.f. (1.065 acres)

Irregular Configuration

Permitted Uses (Downtown Precise Plan):

- Area H. Historic Retail District
- Restaurants
- Business services
- Offices
- Medical services
- Hotels
- Theatres
- Bars and nightclubs

Parking Lot development requirements (page 80)

Maximum height: 55' and 4 stories

Building coverage: 100% (No FAR stated)

Environmental Site Condition: Unknown



The Downtown Precise Plan allows for a wide range of uses or combination of uses on Lot 4 with an allowable lot coverage of 100 percent and a building height limit of four stories. For both Lots 4 and 8, the Council may be willing to consider a higher building height to achieve the objectives set for development. The property has 195' of frontage on Hope Street, access from Villa Street, and limited access from Evelyn Avenue. The Downtown Precise Plan would require any development of Lot 4 to provide on-site parking for any proposed development, as well as replacement of the current 88 public parking spaces. Providing required parking will likely necessitate constructing two to three floors of underground parking, an important cost component in development proposals. Through a public/private partnership, it could be possible to provide additional public parking to increase the inventory of downtown public parking. Partnering with a developer could also result in the additional parking being provided more quickly and perhaps at a lower cost compared to a stand-alone, City-built parking structure that would have to compete against other desired capital projects for limited City funding. Under State law, a City contribution toward parking costs would require the payment of prevailing wages during construction, likely affecting the overall cost of a development proposal.

Lot 8

Lot 8 is a rectangular-shaped, 0.65-acre surface lot located on the east side of Hope Street directly across from Lot 4 and close to the Transit Center.

- Number of Spaces:** 61
Size: 28,500 s.f. (0.65 acre)
Permitted Uses (Downtown Precise Plan):
- Area G. Transit Center Block
 - Retail
 - Offices
 - Art galleries
 - Personal and business services
 - Residential (50 D.U.s per acre; 2-4 floors)
- Provisional Uses:**
- All of the above
 - Theatres
 - Hotels
 - Other
- No parking lot development requirements**
Maximum height: 4 stories
Maximum FAR: 1.85
Environmental Site Condition: Unknown



The Downtown Precise Plan allows for a range of commercial uses in addition to residential development. With a maximum FAR of 1.85, the property could conceivably be developed with 52,725 square feet of space and a maximum of four stories. As is true for Lot 4, development of Lot 8 would need to provide on-site parking for any proposed development, as well as replacement of the current 61 public parking spaces.

By combining Lot 4 and Lot 8 into a single, integrated development, certain economies of scale and efficiencies could be achieved in construction and operations. The location is a gateway to the downtown from the Transit Center. A signature, mixed-use development at this location, such as a flagship hotel, potentially including conference space, combined with a small office and/or commercial component, would greatly contribute to the long-term vitality of the downtown. The combined development, with parking underneath Hope Street, could also be leveraged to increase the total number of public parking spaces provided in this part of the downtown. The Downtown Parking Garage Feasibility Study is on hold pending results of marketing the Hope Street Lots for development.

ANALYSIS

Staff recommends seeking development of the two properties for a long-term ground lease for a single, integrated project through an RFQ/RFP process. The desired outcome would be a unique hotel of at least three-diamond quality, potentially with conference space and a retail or commercial component, that provides a significant net increase in public parking in addition to the project meeting its on-site parking requirements.

The RFQ/RFP process considers not only the financial elements of the proposal (i.e., ground lease payments and Transient Occupancy Tax), but also considers the attractiveness of the development concept, the financial ability of the developer to perform, and the developer's history of successfully completing developments similar to that which they are proposing. The RFQ phase of the process allows multiple firms to provide information on their experience and capability to present proposals to the City. This can provide the City with a wider initial range of firms to consider, as the cost and effort to respond to an RFQ is significantly less than is required for an RFP. In turn, requesting proposals from a few highly qualified firms responding to the RFQ provides an incentive for strong, detailed development proposals as respondents know they are competing against a small field of other highly qualified firms and, therefore, are motivated to spend the resources necessary to develop a competitive proposal. Seeking a limited number of proposals also limits the amount of staff and consultant time required for proposal review and expedites the project. In recent years, the City has had success through the RFQ/RFP process in the marketing of the Franklin Street below-market-rate housing site, and more recently, the Moffett Gateway property.

If directed by Council to proceed with marketing the Hope Street Lots for development, staff will prepare, advertise, and distribute an RFQ to an expansive list of developers, brokers, and lenders from across the country. The RFQ is expected to be released in April 2015 with qualification statements due four weeks following release of the RFQ. The RFQ will describe project objectives, information about the property, current market conditions, and basic business terms. Qualification statements would then be reviewed by a team of City staff and subject matter expert consultants. The evaluation criteria would include, but not be limited to:

- Acknowledgement and acceptance of basic business terms, including:
 - Fifty-five (55) year ground lease, with four 10-year options;
 - A minimum three-diamond hotel development which provides a net increase in public parking spaces;

- Provision of a net increase in City revenues;
- Agreement by the hotel operator to provide on-site access to hotel workers during nonworking hours and an expedited voting process for labor organizing for a period of 90 days from the start of hotel operations;
- Payment of a nonrefundable \$150,000 Exclusive Right to Negotiate (ERN) Fee if selected as the developer;
- Proposed high-level development concept, including conceptual drawings;
- Development team description and qualifications;
- Relevant development experience; and
- Financing capability and capacity

Following the evaluation of qualification statements, staff will develop a short list of firms invited to participate in the RFP phase.

The RFP would be expected to be released in July 2015, with proposals due in September 2015. This amount of time is necessary in light of the fact that this would be an infill development of two parcels separated by an existing street, which is required to provide additional public parking (likely requiring at least two levels of underground parking). Significant design, engineering, and financial assessments will be required to put together a comprehensive and detailed proposal. In order to determine whether construction of greater than four stories would be financially feasible or of interest to the City Council, staff recommends that respondents be allowed to submit proposals which conform to the current Downtown Precise Plan limit of four stories as well as proposals which exceed the current limit.

The evaluation criteria used to recommend the top qualified development team and proposal to the City Council would include, but not be limited to, the following:

1. Conformance to the requirements of the RFP and agreement to the minimum business terms set forth in the RFP.
2. Quality and completeness of the proposal.
3. Commitment and approach to providing a net increase in public parking.

4. Nature and amount of City contributions or concessions to the project, if any, to achieve the goal of a net increase in public parking. (The RFP would advise proposers that any City contribution or concession would trigger a requirement to pay prevailing wage rates during construction.)
5. Proposed business terms to assure long-term revenues to the City.
6. Viability of the proposed development concept and the development team's proven ability to successfully build the project and meet the City's objectives.
7. Well-conceived development funding plan, including a project pro forma, and demonstrated financial capability to undertake the project.
8. Ability to meet the proposed project schedule, including anticipated dates for executing a ground lease and Disposition and Development Agreement (DDA), submitting a formal planning application, obtaining project approval, beginning construction, and opening.

The time frame from initial marketing to project completion is expected to include the following milestones in Calendar Years (CY); this schedule is preliminary and will be refined once a developer is selected:

2nd Quarter 2015	Release Request for Qualifications
2nd Quarter 2015	Receive Qualification Statements
3rd Quarter 2015	Develop Short-List of Best Qualified Firms and Issue RFP
3rd Quarter 2015	Evaluation of RFP Submittals
4th Quarter 2015	City Council Selection of Developer
4th Quarter 2015	City and Selected Developer Enter into ERN Agreement and Commence Negotiations
2nd Quarter 2016	City/Developer Execute Ground Lease and DDA
3rd Quarter 2016	Developer Submits Development Plans and Application
2nd Quarter 2017	Entitlements and Environmental Review Complete
3rd Quarter 2017	Submit Construction Drawings and Apply for Building Permit
1st Quarter 2018	Building Plan Approval
2nd Quarter 2018	Construction Begins
2nd Quarter 2019	Project Complete

FISCAL IMPACT

Preparing the property for marketing, developing final evaluation criteria for the RFQ/RFP, and evaluating proposals will require the expertise and capacity of subject matter experts in marketing, evaluation of financial statements and project pro formas, evaluation of project features such as the hotel and parking, and engineering staff time and consultants to evaluate infrastructure requirements for the project.

Lots 4 and 8 are comprised of multiple legal lots and will have to be merged into single legal lots before development. During the marketing process and before a long-term ground lease could be signed, a land survey is needed and the estimated cost of a survey is \$30,000.

No recent environmental site condition studies of the Hope Street Lots have been conducted, and while there is no reason to suspect adverse environmental site conditions, a Phase I Environmental Site Assessment with perhaps a follow-on Phase II (if warranted), should be prepared as a matter of full disclosure to prospective proposers. The estimated cost of a Phase I and Phase II Environmental Site Assessment is \$35,000.

Development of the Hope Street Lots will require an assessment of infrastructure needs, including the feasibility and estimating the cost of relocating utilities, particularly if an underground connecting driveway between the two lots beneath Hope Street is required for the project. The cost for engineering studies, including consultant services and Public Works staff time is estimated to be \$35,000.

The marketing and leasing of the Hope Street Lots will have many of the same elements as the Moffett Gateway initiative, including a long-term ground lease for a mixed-use hotel development, with the added complexities of an urban infill development, a requirement for a net increase in public parking, and two to three levels of underground parking. For the Moffett Gateway project, consulting fees for marketing, development of evaluation criteria, evaluation of proposals, financial analyses, and legal fees in negotiating a ground lease and DDA totaled approximately \$300,000, some of which was offset by a \$125,000 ERN Fee paid by the selected developer. Consulting fees for the Hope Street Lots initiative are estimated to be \$350,000.

The total estimated project budget is as follows:

Land Surveying	\$ 30,000
Environmental Site Assessment	35,000
Engineering Studies	30,000
Consultant Services	<u>350,000</u>
Subtotal	445,000
Contingency (10%)	<u>45,000</u>
Subtotal	490,000
City Administration Fee (6.5%)	<u>35,000</u>
PROJECT COST	<u>525,000</u>
Less: Assumed ERN Fee	<u>(150,000)</u>
NET PROJECT COST	<u>\$375,000</u>

Funding in the amount of \$375,000 is recommended from the Strategic Property Acquisition Reserve, which has a current uncommitted balance of \$4.9 million. Any ERN Fee received after a successful RFP process would be allocated to the project to offset development expenses.

CONCLUSION

The marketing, leasing, and development of the Hope Street Lots support the strategic use of public land to help strengthen the local economic base. It also accomplishes a number of City goals, including contributing to the long-term vitality of the downtown, providing additional parking capacity comparatively quickly, and generating a long-term revenue stream to the City through Transient Occupancy Taxes from the hotel and potential ground lease payments. Marketing the properties through a competitive RFQ/RFP process will allow the City to select an experienced, respected, and well-capitalized developer which can construct a quality project in a timely manner.

ALTERNATIVES

Council could:

1. Decide not to market the Hope Street Lots;
2. Modify the recommended project objectives or proposed approach;
3. Require a labor peace agreement for hotel operations;
4. Appropriate project funds from one or more other sources;
5. Provide other direction.

PUBLIC NOTICING

Agenda posting, with copies to the Old Mountain View Neighborhood Association, Mountain View Chamber of Commerce, Central Business Association, the Downtown Committee, and UniteHERE Local 19.

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Attachment: 1. Map of Proposed Development Sites