



DATE: March 31, 2015

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **Introduce an Ordinance Amending a Development Agreement Between the City of Mountain View and EMBP 455, L.L.C., Located at 575 East Middlefield Road**

RECOMMENDATION

Introduce an Ordinance Amending a Development Agreement Between the City of Mountain View and EMBP 455, L.L.C., for the Property at 575 East Middlefield Road (Attachment 1 to the Council report), to be read in title only, further reading waived, and set a second reading for April 14, 2015.

BACKGROUND

Verisign/EMBP 455, L.L.C. (now "Symantec") Development Agreement

A development agreement (DA) is a contract between the City and a developer through which the City agrees to "freeze" the existing zoning regulations, fees, and other aspects of an entitlement for a negotiated term, thus providing certainty for the developer, in exchange for negotiated public benefits. On March 9, 2010 (Attachment 2–2010 Council Report) the City Council approved a DA between the City of Mountain View and Verisign, and its signatory entity EMBP 455, L.L.C. ("EMBP"), for an approved Transit-Oriented Development (TOD) Permit office project, Heritage Tree Removal Permit, and a preliminary parcel map for a 102,419 square foot office



building at 575 East Middlefield Road. The TOD Permit allowed the applicant to construct at a 0.5 floor area ratio (FAR). Subsequently, Verisign, including EMBP, was acquired by Symantec and Symantec became the developer in the DA.

Triggers and Key Dates

The Effective Date of the subject DA is April 8, 2010 and the term was set at five years from the Effective Date, or April 8, 2015, with a possible extension of three years (up to eight years total) or April 8, 2018 if the following occurs:

1. Owner or its successors have dedicated an easement by parcel map or by separate instrument for the Class I bike trail;
2. Owner or its successors have improvement plans approved by the Public Works Director and enter into an improvement agreement with the City to ensure installation of these trail improvements by the fourth anniversary of the Effective Date of this Agreement; and
3. The trail is installed and accepted by City before the fifth anniversary of the Effective Date hereof.

The DA requires EMBP to provide a 14' wide trail easement and to construct a Class I bike trail within the 14' wide trail easement (10' wide path with two 2' wide shoulders) located along the eastern edge of the property between the adjacent EFL property (sometimes referenced as the "Sares Regis Parcel") at the south property line and near East Middlefield Road at the north property line (Attachment 3 – Bicycle Trail).

In June 2014, staff reminded the applicant in writing that the bike trail had to be installed and accepted by the City before April 8, 2015 per the stipulations in the DA and consistent with the entitlements for the TOD Permit office project, Heritage Tree Removal Permit, and the preliminary parcel map.

DA Amendment Request

Staff met with EMBP and they expressed a desire to install the bike trail in order to extend the term of the DA. However, they could not meet the original deadlines in the DA because of corporate restructuring, staff changes, and the reassessment of future growth needs. In May 2014, the City provided written notice to Symantec advising that the DA would expire if the applicant did not submit improvement plans and construct the trail as required by the DA. In December 2014, the applicant met with staff and

stated they wanted to install the trail in order to extend the term of the DA. The applicant subsequently submitted improvement plans in January 2015 and on February 9, 2015, submitted a letter requesting an amendment to the DA. Specifically, they are requesting a change to the timing of the installation the bike improvements (Attachment 4—Request Letter). The applicant has requested the following changes (Attachment 5—Strike-Out Changes to the Development Agreement):

- Extend the expiration date of the DA from five years (April 8, 2015) to six years (April 8, 2016) after the Effective Date;
- Change the date to enter into an improvement agreement with the City to ensure the installation of the trail improvements from the fourth anniversary of the Effective Date of the DA (April 8, 2014) to September 1, 2015;
- Amend the date the trail is installed and accepted by the City from the fifth anniversary of the Effective Date of the DA (April 8, 2015) to the sixth anniversary (April 8, 2016).

On March 11, 2015, pursuant to City Code Section 36.54.15, the Zoning Administrator held a public hearing to consider EMBP's request. At the conclusion of the hearing, the Zoning Administrator made a recommendation to Council to amend the DA consistent with the request made by EMBP.

ANALYSIS

Pursuant to City Code Section 36.54.40(a), the procedure for amendment of a DA is the same as for entering into a DA. On March 11, 2015, the Zoning Administrator held a public hearing and recommended that Council amend the March 9, 2010 DA with the changes requested by the applicant. The DA must be amended by Ordinance (see Attachment 1), pursuant to the City Code.

If the DA expires, the developer will lose the right to develop a 102,419 square foot office building and the City will not benefit from the bike/pedestrian trail negotiated as a community benefit. The bike path is a key component of the City's approval for mobility in this part of the City. The proposal is in the East Whisman area and the future of any potential community benefits would be determined by the East Whisman Precise Plan, which is expected to be started in the near future.

The project and DA were previously analyzed as part of the project Initial Study/Mitigated Negative Declaration adopted by Council in 2010. The amendment does not

propose changes to the project or the length of the DA; therefore, additional environmental analysis for the proposed amendment is not required.

FISCAL IMPACT

There is no direct fiscal impact to the proposed extension of the DA. The subject site has a total assessed valuation of \$41,700,423 and contributed \$486,236 in property taxes to the County of Santa Clara in the 2014-15 tax year. The City's share is about \$67,000 per year. The project will pay a Housing Impact Fee of \$693,623, the fee in effect at the time of the effective date of DA. The fee is based on the new building area of 102,419 square feet.

ALTERNATIVES

The City Council could decide not to amend the DA, which would allow the DA to expire. If the applicant wanted to redevelop the site, they would have to submit a new project application.

PUBLIC NOTICING

Notice of this hearing was published in accordance with Government Code Sections 65090 and 65091, and also provided to property owners within 300' of the project site.

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SP/3/CAM
804-03-31-15CR-E

- Attachments:
1. Ordinance Amending a Development Agreement Between the City of Mountain View and EMBP 455, L.L.C., for the Property Located at 455-575 East Middlefield Road
 2. [2010 Council Report for the Transit-Oriented Development Permit, Heritage Tree Removal Permit and Eight- Year Development Agreement for 575 East Middlefield Road](#)
 3. Map Showing Bike Trail
 4. Letter from EMBP 455, L.L.C., Requesting Amendment to the Development Agreement
 5. Development Agreement Amendment Language