

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager

Through: Donald Leland Craig, AICP, Planning Director

From: Nicole Malo, Planner

Meeting Date: May 1, 2012

RE: **Development Agreement - 1000 Atlantic Boulevard, Higgs Beach Park (RE#00058800-000000, 00058790-000100, 00058790-000000) - A Development Agreement with Monroe County for the redevelopment of Higgs Beach pursuant to Section 90-676 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

ACTION STATEMENT:

Request: A Development Agreement for a Master Plan for the redevelopment of Higgs Beach Park, pursuant to Chapter 90, Article IX, Development Agreements

Location: 1000 Atlantic Boulevard, Higgs Beach Park
RE# 00058800-000000, 00058790-000100, 00058790-000000

BACKGROUND:

The City's Land Development Regulations allow the City Commission, at its sole discretion, to enter into Development Agreements with property owners. On January 4, 2012 the City Commission indicated its interest in entering into a Development Agreement with Monroe County Board of County Commissioners for the redevelopment of Higgs Beach Park approved through Resolution 12-018. Subsequently staff began review of a draft Agreement with the applicant which was modified in response to staff and legal comments made over a several month period. The draft Development Agreement came before the Planning Board for the city's first public hearing on March 27, 2012 and was approved (Resolution 2011-013) as required under the code, prior to transmittal to the City Commission for the second required public hearing.

The Higgs Beach Park Master Plan proposal is for the redevelopment of county property located within the city in order to promote safety, enhance public facilities and improve recreational areas within the City. The Master Plan was recommended for approval by the Planning Board with nine conditions at a public meeting held October 20, 2011, via Resolution 2011-049. The Master Plan is on a parallel approval track with the Development Agreement and shall be heard for final approval by the City Commission at the same time as this request. The Master Plan envisions multi-phase construction to be

completed as grant money becomes available. The Development Agreement will allow the Master Plan to remain active for the maximum time allowed by Code; although, additional time may be required to complete the project. Please see the Executive Summary and Staff Report prepared for the evaluation of the Master Plan and Resolution 2011-049, attached to this report.

This Development Agreement between the City and County will grant the developer the right to:

1. Extend the timeframe for Development Plan implementation to ten years pursuant to City Code Section 90-684; and
2. Partner with the City as necessary when seeking grants or other funding sources for the implementation of the Master Plan; and
3. Allow Administrative Modifications to the Master Plan that may exceed the scope of a Minor Deviation as described in City Code Section 108-91, in order to permit changes that improve the safety and public health of the park users, which may be required due to technical or engineering considerations; and
4. Insure that the approved Master Plan is exempt from future changes to the City Code or Comprehensive Plan that would require redesign of approved elements during the term of this Agreement; and
5. Exempt the County from fees for this Development Agreement during the entire term of this Agreement including, but not be limited to, application fees, permit fees, and impact fees; and
6. Establish the responsibility of financing the completion of the roadway realignment plan, as shown on the approved Master Plan, through grant funding. The County is responsible for securing funding and the City shall provide as needed assistance. If the funding does not materialize the County staff and the City staff shall meet and make recommendations to their respective Boards to determine how to facilitate the completion of the roadway realignment plan; and
7. Requires that a development phasing schedule be submitted to the City Planner for review prior to the beginning of each construction phase.

The Land Development Regulations acknowledge the findings of the state legislature that enable Development Agreements under Florida Statute, as follows (see Section 90-676):

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.

(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

Given the site size and reliance upon public and grant funding for the Park development to serve both the citizens of Key West and its visitors, it appears appropriate to grant a Development Agreement. The Agreement gives the City a mechanism with which to control the timing and phasing of the development. While the Development Agreement process is not appropriate for every project, it is suitable for projects of this nature which allow a longer period of time for initiation and phasing of the project.

Previous City Actions

March 27, 2012	Planning Board recommended approval of the Development Agreement (per Resolution 2011-013)
October 20, 2011	Planning Board recommended approval of the Major Development Plan (per Resolution 2011-049)
January 4, 2012	City Commission Approval of Request for permission to enter into a Development Agreement with the City (per Resolution 12-018)
May 1, 2012	City Commission review of Major Development Plan and Development Agreement

Proposed Development Agreement

The City's Land Development Regulations set forth criteria for the contents of a Development Agreement. The specific criteria, as well as the location of the information within the Development Agreement, are addressed below:

Development Agreement Review Criteria (Section 90-682)

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

- (1) *A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.*

A legal description is included under the chapter entitled Higgs Beach Legal Description (Page 5), and attached as *Exhibit A* that also includes identification of the owners through the Monroe County Property Appraisers Record Card.

- (2) *The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.*

The proposed duration of the agreement is ten years, per Terms of Agreement, Section 2, Duration and Renewal (Page 5).

- (3) *The development uses permitted on the land, including population densities, building intensities and building heights.*

The development plan does not propose to change the existing permitted uses on the land and density is not applicable to this development plan. The proposed uses are described in Terms of Agreement, Section (D), Development Plan (Sub-section 3), New Development Plan (Master Plan) (Sub-section 5), Population Density, Building Intensity and Height (Sub-section 6). Additional information regarding Development Uses and Intensity is covered under *Exhibit D- Traffic Impact Analysis, Proposed Development and Concurrency Analysis*.

- (4) *All documents required to comply with criteria cited in the land development regulations applicable to the subject project.*

The criteria for compliance cited in the Land Development Regulations are found in, Terms of Agreement: Section 4, New Development Plan (Master Plan); Section 5, Population Densities, Building Intensities and Height; Section 6, Set Backs and Floor Elevations; Section 9, Storm Water Runoff; Section 10, Parking; Section 11, Additional Redevelopment Terms: a. Energy Conservation, b. Landscaping, c. Schools and Affordable Housing, d. Access to Historic Sites (pages 5-9); Section 15, Required Permits and Approvals; Section 15, Finding of Consistency; and Section E. Local Laws and Policies Governing Agreement (Page 10).

- (5) *A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to*

events or thresholds in the development, may be substituted for the certain dates required under this subsection.

Public facilities which will service the development can be found under Purpose of Agreement (6) (Page 4); Terms of Agreement, Section 8, Public Facilities and Utilities, Section 9, Stormwater Runoff (Page 7). In addition, the applicant has included a chapter on Concurrency Analysis, see *Exhibit D* which covers: Traffic Impacts; Potable Water and Sanitary Sewer, Recreation, Solid Waste and Drainage.

- (6) *The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.*

Not applicable. A concurrency analysis has determined that facilities will be available at the time of development.

- (7) *A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.*

The agreement is for the dedication of the land for a public park.

- (8) *If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.*

Not applicable.

- (9) *A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:*

a. Any required comprehensive plan amendments or re-zonings.

Not applicable.

- b. *Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.*

A description of potential required permits and approvals for the development are outlined under Terms of Agreement, Section 15, Required Permits and Approvals (Page 9).

- c. *If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.*

These terms are addressed under the Terms of Agreement, Section 2, Duration (Page 5), Section 7, Phasing (Page 6), Section 12, Agreement Between City and County Regarding Grant Funding (Page 8), Section 13, Approval of Minor Modifications (Page 8); and Section F, Breach of Agreement and Cure Provisions (Page 10).

- (10) *A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.*

The department finds that the Development Agreement is consistent with the city's Comprehensive Plan and Land Development Regulations in the Terms of Agreement, Section 17, Finding of Consistency (Page 9). No amendments to the Comprehensive Plan or regulations are required as part of this agreement.

- (11) *The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.*

October 20, 2011 the Planning Board recommended for approval the Development Plan with nine (9) conditions that shall be heard by the City Commission in conjunction with this Development Agreement. Planning Board conditions are as follows:

1. City Commission approval of the Intergovernmental Agreement
2. Staff approval of a composting facility is required by the City's Planning and Engineering Departments. Operations maintenance of the composting center shall be provided by the County and will remain in its adjacent location as proposed on the site plans.
3. The recycling center shall be screened from view by a fence and vegetation approved by the City's Urban Forester.
4. The applicant is responsible for designing and submitting a Signage Plan that is compatible with Section 108-285 of the Code to the Planning Department for approval before implementation.
5. Construction on the site including the development of Nature Visitors Center is required to be consistent with Chapter 255.2575(2). Florida Statutes which requires compliance with an accepted third party environmental standard (see Attachment for the full language of the relevant section of the statute).
6. Lighting shall be designed to "Dark Sky" lighting standards and shall meet energy efficiency standards established by an accepted third party environmental standard consistent with F.S Chapter 255.2575(2).
7. Tree Commission approval is required for each phase of the removal/relocation and replacement of the Landscape Plan.
8. The wetland areas of the Whistling Duck Pond and the F.A.A Tower are required to be noted on the Landscape Plan. An upland/wetland jurisdictional line needs to be set for the area and work within the area requires environmental permitting and possible mitigation.
9. Revise design of scooter and bicycle parking areas to separate uses and add additional bollards or bicycle friendly parking areas throughout the park.

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

This particular statement can be found under the Terms of Agreement, Section 18, Compliance with Permits, Terms, Conditions and Restrictions Not Identified (Page 10), for addressing this issue.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

The proposed duration of the agreement is ten years, per Terms of Agreement, Section 2, Duration/ Renewal (Page 5). No timeline is proposed for construction to begin due to the need for grant funding and public dollars to begin construction, see Terms of Agreement, Section 7, Phasing (Page 6),

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

This report responds to this requirement.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the Planning Board, and its recommendation along with the development review committee's recommendation shall be provided to the City Commission.

This report and associated backup documentation from the Planning Board hearing and DRC meeting responds to this requirement.

Options/Advantages/Disadvantages:

Option 1: Approve the Development Agreement.

- 1. Consistency with the City's Strategic Plan, Vision, and Mission:** Facilitating the redevelopment of city parks and recreation areas is consistent with the City's Strategic Plan, Vision, and Mission.
- 2. Financial Impact:** There is not an anticipated financial impact to the City related to this request. Although long term property values in and around the park should be improved through long-term infrastructure improvements.

Option 2: Deny the Development Agreement.

- 1. Consistency with the City's Strategic Plan, Vision, and Mission:** The denial of the request is not consistent with the City's Strategic Plan, Vision, and Mission.
- 2. Financial Impact:** There is not an anticipated financial impact to the City related to this request. However, denying the request may cause the city to lose the opportunity for a significant improvement to one of the city's most significant public recreational resources.

Recommendation

The Planning Department recommends **approval** of the request for a Development Agreement as approved by the Planning Board.