

EXECUTIVE SUMMARY



To: Bogdan Vitas Jr., City Manager

Through: Nicole Malo, Planner II

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: May 21, 2013

RE: **Development Agreement Modification - 3800, 3820, 3824, 3840, 3850 and 3852 N. Roosevelt Blvd (RE#00064940-000000, AK#1065455; 00064950-000000, AK# 1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250)** – Request for a Modification to a Development Agreement for property located in the General Commercial (CG) zoning district per Section 90-689 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Request: To amend a Development Agreement approved through Resolution 09-059 for the project previously known as the Key West Resort and Conference Center

Location: 3852, 3850, 3824, 3840, 3820, and 3800 North Roosevelt Boulevard

Legal Description: RE#00064940-000000, AK#1065455; 00064950-000000, AK#1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250

Zoning: CG – General Commercial Zoning District

Attachments:

1. Proposed Development Agreement and Exhibits
 - A. Legal Descriptions
 - B. Original Parking Variance – Resolution 07-083
 - C. 2007 Development Plan Approval
 - D. 2009 Development Agreement Resolution 09-059
 - E. 2013 Conceptual Site Plan
 - F. List of Easements Encumbering Property
 - G. Concurrency Analysis
 - H. Development Schedule and Phase 2 Development Commitments
 - I. Final FEMA Site Development Calculations
2. Planning Board Resolution 2013-24, Staff Report and Package
3. Supplementary Information

Strategic Plan: The proposed Amended Development Agreement is consistent with the 2011 Strategic Plan, specifically the Economic Growth element that encourages small scale redevelopment projects that enhance the “Key West experience” and promotes workforce development; the Environment element that encourages beautification of the island and sustainable design and improves the streetscape; and the Quality of Life element. This Amended Development Agreement provides for the phased redevelopment of a project that is much smaller in scale than what was previously proposed, encourages the sustainable redevelopment of existing infrastructure, enhances the onsite experience within each hotel for the visitors and employees, beautifies the visual urban experience at the entrance to Key West, and provides 26-36 units of affordable housing for various income types.

Project Background:

On March 4, 2009 the City Commission approved a Development Agreement for the Key West Resort and Conference Center project via Resolution 09-059 (Development Agreement Exhibit D). The Major Development Plan and Conditional Use for the project was originally approved by the City Commission via Resolution 07-164 and a parking variance was approved by the Board of Adjustment via Resolution 07-083 (Development Agreement Exhibit B and C).

Since the 2007 Development Plan and subsequent Development Agreement, the ownership of the property has changed and in response to market force shifts, the current Owner has submitted a request to amend the 2009 Development Agreement, allowed by that Development Agreement and the Land Development Regulations. The proposed Agreement would significantly downsize the impacts of proposed development on the site and allow the owner to renovate the buildings and uses currently on the properties.

The Owner has chosen not to request extension of the 2009 Development Agreement which will effectively be dissolved and superseded by this Development Agreement. Concurrent with the Development Agreement modification request the Owner has also submitted a Major Development Plan application for the first phase of the proposed renovation plan; although, this Agreement is considered and drafted as a standalone document supported by a Conceptual Site Plan (Development Agreement Exhibit E).

After meeting with the Planning Department several times to review the procedures required and the proposals requested, the applicant submitted a draft Development Agreement, which was modified in response to staff and legal comments, including at the Development Review Committee on March 6, 2013. On April 18, 2013 the Planning Board heard the Development Agreement and Major Development plan and recommended both for approval to the City Commission. The Major Development Plan is contingent on the approval of the Development Agreement.

The **2009 Development Agreement** in place at this time encumbers approximately 17 acres, with six contiguous properties known as 3852, 3850, 3824, 3840, 3820, and 3800 North Roosevelt Boulevard. It allows the construction of a 450 room hotel, 33 timeshare

units, 21 residential units with lock-outs, a 20,500 square foot conference center, 21,000 square feet of retail space, a themed restaurant and bar with 7,000 square feet of consumption space, and fifty work force housing units (see Supplemental Information).

The proposed impacts of development associated with this amended Agreement are significantly lower than the impacts of development associated with the 2009 Agreement. The proposal will allow the Owner the ability to redevelop the six contiguous properties in two (2) phases over a ten (10) year time period consistent with the attached Conceptual Site Plan and construction phasing schedule (Development Agreement Exhibit H). As stated in this Development Agreement, all development for construction of Phase 1 and Phase 2 shall be consistent with an approved Major Development Plan subject to the Comprehensive Plan and Land Development Regulations (LDR's) as established by the Development Agreement. The density allowed in the CG Zoning District is 16/dwelling units per acre and the allowed F.A.R is 0.8.

Phase 1 - The proposed Phase 1 Redevelopment consists of renovations to four (4) existing hotels located on Sites A, B, C, and D on the Conceptual Plan. Density, Intensity and Land Uses are established by the Comprehensive Plan in place at the time the Agreement is executed. Site improvements shall be consistent with the Land Development Regulations at the time of application submittal. Redevelopment is proposed as follows:

Site A - 3852 North Roosevelt Boulevard (RE# 00065060-000000): Renovation of 133 existing transient units. Demolition of existing restaurant to be replaced with a new building for lobby and registration uses.

Site B - 3850 North Roosevelt Boulevard (RE#00064940-000000): Renovation of 141 existing transient units. Demolish existing restaurant space to be replaced with a new building for lobby and registration uses.

Site C - 3824 North Roosevelt Boulevard (RE#00065550-000000): Renovation of 100 transient units. Demolish portions of existing lobby and reconstruct building for lobby and registration uses.

Site D - 3820 North Roosevelt Boulevard (RE#00065530-000000): Renovation of 145 transient units and existing ground floor areas. Ground floor renovations to include lobby and registration uses retail use and restaurant.

Phase 2 - The proposed Phase 2 Redevelopment consists of the redevelopment of the existing commercial uses on the remaining two parcels and the option to renovate the (16) sixteen existing units of affordable housing; additionally, the Owner shall develop at least 10 and no more than 20 affordable units as part of Phase 2:

Site E - 3840 North Roosevelt Boulevard and 1185 20th Street (RE#00064950-000000): Commercial development and the option to redevelop the existing affordable housing on site, with the potential of adding additional affordable units consistent with the densities, intensities and allowed uses established in the Development Agreement.

Site F - 3800 North Roosevelt Boulevard (RE#00065540-000000): Commercial development with the potential of adding additional affordable units consistent with the densities, intensities and allowed uses established in the Development Agreement.

Previous City Actions:

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| May 2, 2007 | City Commission Approval of Major Development Plan and Conditional Use Approval (per Resolution 07-164); |
| March 7, 2007 | Board of Adjustment Parking Variance (per Resolution 07-083) |
| May 7, 2008 | City Commission Preliminary Consideration of Development Agreement (per Resolution 08-192) |
| November 21, 2008 | Development Review Committee Review of Draft 2009 Development Agreement |
| January 27, 2009 | Planning Board Recommendation of approval of the 2009 Development Agreement (per Resolution 2009-001) |
| March 4, 2009 | City Commission approval of the 2009 Development Agreement for the Key West Resort and Conference Center project (per Resolution 09-059) |
| March 6, 2013 | Development Review Committee Review of Draft Amended 2009 Development Agreement, proposed as the Development Agreement for the Key West Hotel Collection |
| April 18, 2013 | Planning Board recommendation of approval of the Amended Development Agreement per Resolution 2013-24, and recommendation of approval of the Major Development Plan per Resolution 2013-25 |

In this case, the Development Agreement offers an opportunity for the applicant to modify the approved development, and extend approvals as long as a ten year period, as well as an opportunity for the City to ensure that public priorities are clearly addressed by the proposed project such as affordable housing. The balance of benefits for all parties is an important consideration as the draft agreement that has been reviewed by the Planning Board and shall be considered by the City Commission. 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.

Development Agreement Review Criteria (Section 90-682):

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.

(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 in Exhibit A of the Development Agreement and the identification of the owners is provided in the first clause of the agreement (p. 1) and per C. Terms of Agreement, Legal Description; Ownership and Equitable interests in the Property 1(p.7).

(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 C. Terms of Agreement, 2. Duration of Agreement; Renewal (p. 7).

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

The proposed development is described in Section C. Terms of Agreement, 4. Proposed Development: Phase 1 and Phase 2 Redevelopment Plan (p. 9); Section C. The allowed densities and intensities are described in Terms of Agreement, a. Uses, Densities and

Intensities (p. 10). Building Heights are described in C. Terms of Agreement, d. Building Heights (page 11).

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

The applicant has addressed the criteria cited in the Land Development Regulations applicable to the subject project under Section C. Terms of Agreement, 11. All Permits Approved or Needed (page 16) as well as Section C. Terms of Agreement, 13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions (page 17).

(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.

A description of the public facilities that will service the development are found in Section C. Terms of Agreement, 11. Concurrency and Public Facilities (p. 15). Additionally an updated Concurrency Analysis Report based on the 2013 Comprehensive Plan shall be provided as a condition of the Major Development Plan and attached to the Development Agreement as Exhibit G.

(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 showing that facilities will be available at the time of development is being revised to reflect the City's 2013 Comprehensive Plan amendments. The revised report, when ready will be Exhibit G of the agreement.

(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 does not include the reservation or dedication of land for public purposes. Section C. Terms of Agreement, 11, Additional Development Conditions. H. Impact fee (page 16) specifically requires payment of impact fees.

(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 rezonings.

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.

Required permits and approvals are outlined in Section C. Terms of Agreement, 11. All Permits Approved or Needed (p. 16).

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.

This issue is addressed in Section C. Terms of Agreement, 16. Laws Governing (p.17).

(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.

This issue is addressed in Section C. Terms of Agreement, 14.finding of Consistency (p.17).

(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.

Of particular importance are provisions relating to Affordable Housing page 11, Section C. Terms of Agreement, 8. Affordable Work Force Housing. As part of this Development Agreement the Owners have agreed to add 10-20 new affordable housing units to the site as part of Phase 2.

(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.

Section C. Terms of Agreement, 15. Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein (page 17), includes this provision.

(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 C. Terms of Agreement, 2. Duration of Agreement (see page 7). Phasing is proposed by the applicant. Phase 1 Redevelopment Plan is following a parallel approval track with this agreement and was recommended for approval by the Planning Board per Resolution 2013-24. Phase 2 Redevelopment application plan shall be submitted to the Planning Department no later than the end of 2014, per C. Terms of Agreement, 2. Duration of Agreement (see page 7).

(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. The minutes of the DRC Meeting and Planning Board Resolution 2013-24 are attached herein.

(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.

At a dually advertised public meeting held April 18, 2013 the Planning Board reviewed this Development Agreement, based on comments from Staff provided at the DRC Meeting held March 6, 2013. Minutes from that meeting and Planning Board Resolution No 2013-24 are attached herein.

Options / Advantages / Disadvantages:

Option 1. Approval of the Development Agreement as recommended by the Planning Board.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**
This action is consistent with the City's Strategic Plan.
2. **Financial Impact:** There is no direct financial impact to the City related to the project; although, the site improvements should increase the ad valorem tax yield for all six properties.

Option 2. Deny the approval of the Development Agreement.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**
This action is not consistent with the City's 2011 Strategic Plan that promotes small scale economic development, urban design improvements and quality of life improvements such as affordable housing.
3. **Financial Impact:** There is no direct financial impact to the city related to the project; although the City will not benefit from the increase in the ad valorem tax yield based on the site improvements for all six properties.

Recommendation: Option 1

The Planning Department and Planning Board recommend that the request for a Development Agreement be **approved**.