

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: May 15, 2012

RE: Preliminary City Commission authorization to enter into a Development Agreement per Section 90-679 of the Land Development Regulations. The proposal is being made by White Street Partners, LLC, contracted prospective purchasers of the site and housing

Location: Peary Court Housing Complex (RE# 00006730-000000, Alternate Key# 1006939)

BACKGROUND

The City's Land Development Regulations allow the City Commission, at its sole discretion, to enter into Development Agreements with property owners. Section 90-679 of the Code requires the City Commission to first make a preliminary determination regarding their willingness to enter into such an Agreement prior to the normal process of submitting a proposed Development Agreement that is considered by the Planning Board and City Commission.

HISTORY AND THE ON-GOING APPROVAL REQUESTS

On April 6, 2011, the City was notified that the United States Navy, with its concessional housing partner, Southeast Housing, LLC, would be pursuing the sale of the property known as the Peary Court Housing Complex (RE# 00006730-000000), and all of the structures on it, to a private entity. The property is located within a Military (M) Future Land Use designation and corresponding zoning district. As such, should the property be sold to a non-military entity, the Future Land Use Element and Future Land Use Map of the City of Key West Comprehensive Plan must be amended, and subsequent amendments to the City's Land Development Regulations would be required to update the zoning district and the City's Official Zoning Map.

An application was made by Southeast Housing, LLC for the amendments to the Comprehensive Plan. That application was heard by the Planning Board, and a recommendation made to your Commission, which is the subject of a hearing scheduled for the May 15, 2012 City Commission meeting. Staff has prepared a separate Executive Summary of that requested action. It should be reviewed in light of this separate request for a Development Agreement Initiation.

Subsequent to the application for a Comprehensive Plan and Zoning designation, the City was notified by Southeast Housing, LLC that the contracted purchaser, White Street

Partners, LLC was authorized to participate in the Comprehensive Planning process (see copies of attached Letters of Authorization from Southeast Housing LLC Attachment 1). Following that action, White Street Partners submitted an application for the Initiation of a Development Agreement, and a draft of that agreement (please see Attachment 2).

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.*

Further, Sections 90-677 through 90-692 guide the submittal, review, approval and administration of any development agreement negotiated by your Commission. Salient and applicable points from these sections of the Code are:

Sec. 90-677. - Applicability.

- (a)The city may, by ordinance, establish procedures and requirements, as provided in F.S. §§ 163.3220—163.3243, to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.
- (b)The entry into a development agreement by the city shall in no way whatsoever limit or modify any legislative power of the city to adopt ordinances, resolutions or regulations or to make executive or legislative decisions of any kind which it had the power to make prior to the entry into such development agreement, except to the degree that the development agreement, by its express terms and not by implication, gives vested rights to the property owner as to certain development permissions, required improvements and similar matters. No development agreement shall, by its express terms or by implication, limit the right of the city commission to adopt ordinances or regulations or to adopt policies that are of general application in the city, except as is expressly provided by F.S. §§ 163.3220—163.3243.

Sec. 90-678. - Initiation of process by applicant.

A property owner desiring to enter into a development agreement with the city shall make a written request for such development agreement to the city administrative official and pay the fee as is established by resolution of the city commission. Such written request shall identify the lands which are desired to be subject to the development agreement and shall identify all legal and equitable owners having any interest in such property. Such ownership interest shall be certified by a title company or an attorney at law licensed to practice law in the state. If any partnership, joint venture or other entity, other than an individual, owns a legal or equitable interest in the subject property, all principals and other persons with interest in such partnership or joint venture shall be revealed. If any corporation owns a legal or equitable interest in the subject property, the officers and directors and any shareholder owning more than ten percent of the interest in the corporation shall be revealed.

Sec. 90-679. - Preliminary actions by city commission.

Upon receipt of a request to enter into a development agreement with the city, the city administrative official shall place the matter on the agenda of the city commission. The city commission, after considering staff comments, shall, in its sole and absolute discretion, determine whether or not to enter into a development agreement and to pursue negotiations with the property owner.

Sec. 90-682. - Content.

Sub Section (a) (10) provides that “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.”

Further Sub Section (a) (11) provides that “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.”

ANALYSIS

1. Section 90-678 has not been met, as the individuals, partnerships, principals and others making up White Street Partners are not known. This should be presented in writing to the satisfaction of the City Attorney, prior to any action so that the Commission and the public knows who will responsible for implementing the agreement, and that the entity has the financial capability to carry out the requirements of any such agreement.

2. Section 90-680 requires that a development agreement be submitted in the form of a Development Plan. If the City Commission agrees to enter into a Development Agreement, staff will hold the processing of the development agreement, until a full and complete application is submitted and scheduled for DRC review. Staff will proceed with the Comprehensive Plan application if this companion item is adopted for transmission to the Florida Department of Economic Opportunity.
3. If the City Commission wishes it may establish as a point of official position a framework for direction to staff for negotiation, any item that it believes meets the requirements of section 90-682 (a)(11). For example, the Commission may establish that no transient units of any kind, inclusive of timeshare, vacation rentals, bed and breakfasts, gated community, transient rentals, hotels, motels or any rentals less than 28 days be allowed, or that a minimum amount of affordable housing units be created from the existing in place units consistent with demonstrated need and the Comprehensive Plan. Such direction would serve to frame the negotiations with staff prior to returning the completed Development Agreement to the Planning Board and the City Commission for review and approval. The present draft of the agreement submitted by White Street Partners provides that affordable housing (22 units) will be provided from Build Permit Allocation System (BPAS) allocations which the City presently does not have. All existing BPAS allocations have been reserved for "beneficial use" purposes to serve vacant lots of record, and other such situations in order to avoid "takings" litigation which in the opinion of the City Attorney may should such allocations not be available, puts the City at risk.

Further, it is the staff's opinion that there is no guarantee that the City will receive new BPAS allocations from any source even though there are several venues the staff is pursuing to capture new BPAS allocations, inclusive of the state sponsored Hurricane Evacuation Modeling workshops and an implementing Memorandum of Understanding. Additionally, the City may receive 23 BPAS allocations should the Harborside Development, Settlement Agreement and amended 380 Development Agreement be approved by the City Commission and the state Department of Economic Opportunity. These of course cannot be guaranteed and are subject to separate challenge by any qualified third party.

If these BPAS allocations are not available, then it is staff's opinion that the present Development Agreement, as written, would be tantamount to the re-development of Peary Court moving ahead without any provision of any type of affordable housing, and because the Development Agreement would terminate in ten years, any obligation for affordable housing whatsoever, would vanish as if it never existed.

Finally, the attorney representing White Street Partners has requested that the City process the Development Agreement concurrently with the Comprehensive Plan amendment and Re-zoning request. While recently approved state legislation, SB 7081 allows landowner/applicant the ability to submit and have processed concurrent zoning of a property with a Comprehensive Plan Amendment this allowance does not apply to development Agreement. The ability to do so lies with the City

Commission. It is staff's opinion that a development agreement only be processed when the Comprehensive Plan designations and Zoning are in place. Unlike development agreements in the past which have been consistent with or required only minor, if any, changes to the Comprehensive Plan or Zoning, this property requires the creation of a whole new land use category and zoning, Historic Special Medium Density Residential (HSMDR) and subsequent Land Use Regulations that the Staff has not yet even drafted. To pursue a Development Agreement now without a Comprehensive Plan or Zoning in place would be burdensome to staff and confusing to the public because the standards for measurement of the consistency of the Development Agreement would not have been generated or vetted by sufficient public involvement processes.

Should the Commission give the applicant preliminary authorization to move forward with an application for a Development Agreement, the applicant would be required to provide an amended draft agreement, together with Major Development Plan application as well as other information required by the code. The draft agreement would be reviewed by the Development Review Committee and then heard by the Planning Board and then be submitted to the City Commission for public hearing.

RECOMMENDATIONS

Staff recommends the adoption of Option 1 as described below.

Options / Advantages / Disadvantages:

Option 1. Approve the preliminary request by the applicant to consider a Development Agreement for the Peary Court project, with the following minimum parameters to direct the negotiations between the staff and the applicant:

- a. No transient uses, structures or rental periods of less than 28 days for any new or existing structures of any kind be allowed.
- b. That at a minimum 30% of the existing structures be designated, occupied, rented and/or sold as affordable housing meeting the City's work force housing definitions and occupancy as contained in Sections 122-1465 through 122-1474, Land Development Regulations. That the Development Agreement be processed only after the Comprehensive Plan designation and Zoning of the Property have been approved by both the City and the state, and are effective.
- c. That the requirements of Section 90-678 be fully complied with to the satisfaction of the City Attorney.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide a reasonable use of the property consistent with the Comprehensive Plan and consistent with the mission and vision of the city.

2. **Financial Impact:** The processing of the Development Agreement as proposed would not interfere with the placement of the Peary Court as privately owned property on the City and County tax rolls.

Option 2. Do not approve the request and require the applicant to use the new Comprehensive Plan designation and implementing Land Development regulations, to be developed, to allow re-development and improvement of the property.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would also result in the redevelopment of the property consistent with the proposed Comprehensive Plan designation and all other existing policies and Land Development Regulations, inclusive of the prohibition of transient uses and units and the requirement of affordable housing consistent with the mission and vision of the city.
2. **Financial Impact:** The lack of a development agreement would not prevent the transfer of the subject property to private ownership.