



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 8, 2009

APPLICATION: **Development Agreement No. DA09-0001**

APPLICATION
SUMMARY:

An agreement addressing extension of permit timelines, park dedication requirements, and other public benefits. The Landmark Tower is an approved mixed use project for 375 units and 148,805 square feet of commercial space. zoned Very High Density Mixed Use with High Rise and Site and Architectural Overlays (MXD3-H-S). Applicant: TP Pham LLC. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3214.

LOCATION: 600 Barber Lane (APN: 086-01-034)
 APPLICANT: TP Pham LLC, 1738 44th Street, San Francisco, CA 94122
 OWNER: TP Pham LLC, 1738 44th Street, San Francisco, CA 94122

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing following public testimony; and
2. Adopt Resolution No. 09-030 recommending authorization of execution of the development agreement to the City Council.

PROJECT DATA:

General Plan/

Zoning Designation:

Boulevard High Density Mixed Use/Very High Density Mixed Use (MXD-3)

Overlay Districts:

Site and Architectural (-S) and High Rise (-H)

CEQA Determination:

Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the project is exempt from CEQA since it does not have the potential to significantly affect the environment. Furthermore, pursuant to Section 15162 of the CEQA Guidelines, no further environmental documentation is required. An EIR was certified for this previously approved project, including the development of the high rise.

PLANNER:

Sheldon S. Ah Sing, Senior Planner

PJ#:

3214

ATTACHMENTS:

A. Resolution No. 09-030

LOCATION MAP



BACKGROUND

The project site is the former location for Billings Chevrolet. The Billings Chevrolet building was approved on May 27, 1992. The Site and Architectural approval was later amended on January 13, 1993 to include revisions in the height of the building and landscaping requirements. The building was consequently built and Billings Chevrolet opened for business. The existing building is approximately 20,000 square feet and includes outdoor display area, indoor showroom area and mechanic shop. The car dealership closed approximately in 2003 and is currently vacant.

On November 18, 2008, the City Council approved a proposal by the applicant for a General Plan and Zoning amendment and development proposal for a new 18-story mixed use building. The Council also certified an Environmental Impact Report with overriding considerations regarding the project.

The applicant expressed interest in extending the duration of the entitlements and to secure a waiver of park in-lieu fees in exchange to public access to the project’s rooftop garden and other obligations explained in this report. The request is submitted pursuant to the City’s Resolution No. 6642, outlining Development Agreements and the State Government Code Section 65864 et. seq.

PROJECT DESCRIPTION

The project site is approximately three acres and contains a 20,000 square foot building. The site was previously improved with the existing building, outdoor display area, utilities and landscaping. The project site is located along Interstate 880. Retail Commercial uses are located to the north and south of the site. Office buildings are located to the west. The east edge of the site is bounded by Interstate 880. The site is accessed by Highway 237, McCarthy Blvd., Bellew Drive and Barber Lane. See the vicinity map on the previous page.

The following table summarizes the approved development project.

Table 1:
Summary Project Information

Use/Standards	Statistics	Notes
Retail s.f.	148,805 s.f.	Floors 1-3
Office s.f.	48,690 s.f.	Floor 4
Residential Units	375	Condominium units, floors 3-18
Parking Required	1,322 spaces	Based on shared parking analysis
Parking Provided	1,392 spaces	
Height	277 feet	To top of spire
Residential Density	125 dwelling units per acre	
Commercial FAR	1.5	Includes office and retail

Development Agreement

Expiration of entitlements

Expiration of entitlements is governed by two Chapters of Title XI (Zoning, Planning and Annexation) of the City’s Municipal Code. Tentative Maps (Chapter 1, Section 4.06, Expiration of Tentative Maps Approval; Extension) have an initial life of two years and may be extended an additional year upon

request by the applicant and subsequent approval by the City Council. While the California Subdivision Map Act provides for additional time for extensions, local jurisdictions may adopt laws with their own provisions as the case with Milpitas.

Other entitlements, such as Conditional Use Permits and Site Development Permits (Chapter 10, Section 64.06, Expiration of Permit or Approvals) have an initial life of 18 months and may be extended by an additional 18 months upon request by the applicant and approval by the original decision-making body, which for the project was the City Council.

Based on the City's regulations, the entitlements for the project will have the potential of running out of time before the final map is recorded. The applicant of the project has stated that because of market conditions, the development of the site would most likely not occur before the expiration of any allowable extensions by the Municipal Code.

A Development Agreement is a means that would allow the entitlements to run concurrently for a specified time, agreeable by the applicant and the City to allow for the development of the project in a reasonable amount of time. Staff and the applicant are proposing a 10-year effective period for the agreement.

Park in-lieu fees

Residential subdivision projects require applicants to either dedicate land, pay a fee, or do both for the purposes of providing park and recreational facilities commensurate to the amount of population being added by the project.

Based on the population density of the project using the Midtown Area formula because of the high density composition of the project, the City Council required that the applicant pay \$5,459,174 for the 2.28 acres of required public parkland that would otherwise be dedicated, but not proposed by the applicant. The applicant further submitted a study that showed the proposed average population per unit density would be closer to 1.45 persons. Using that number, the in-lieu is reduced to \$2,091,833.

The applicant is requesting that the park in-lieu fee be waived in its entirety. In exchange for the fee waiver, the applicant will be required to open the project's roof garden to public. This amenity will allow for a unique perspective for many of a view of the valley, the bay and the nearby mountains that would otherwise only be enjoyed by owners of units within the building.

Community Facilities District

One of the conditions of approval for the development project is to annex into the city's 2005-1 Community Facilities District (2005-1 CFD). The CFD allows for financing of certain public services, such as park and street lighting maintenance by adding a tax to each dwelling unit, payable yearly, which helps reduce the burden on the City's General Fund.

The 2008-1 Communities Facilities District was established primarily for development within the Transit Area Specific Plan last year. The 2008-1 CFD funds not only the types of public services covered by the 2005-1 CFD, but additionally also funds fire and police services, flood and storm drain maintenance, and street and road maintenance. Property owners that are subject to the 2008-1 CFD special tax would therefore provide funding for a broader range of public services.

Under the terms of the proposed development agreement, the applicant would be required to annex its property into the 2008-1 CFD and pay the special tax collected therein. Since the project includes “market-rate” units, the total tax levied on each unit would be \$510 per year or \$200 more than what would have been otherwise levied under the 2005-1 CFD.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3 Encourage economic pursuits, which will strengthen and promote development through stability and balance.</i>	Consistent. The proposed project is consistent with Implementing Policy 2.a-I-3 because it will strengthen and promote many businesses in the City of Milpitas.
<i>2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	Consistent. The project complies with Policy 2.a-I-7 in that it will provide opportunities to expand employment.
<i>2.a-I-12 Use zoning for new residential developments to encourage a variety and mix in housing types and costs.</i>	Consistent. The proposed project meets Policy 2.a-I-12 in that it provides for-sale, high density residential condominiums that the City does not currently have.
<i>2.a-G-3 Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent. The proposed project meets Policy 2.a-G-3 by offering a unique housing need that, in recent studies, is in demand by working people and families that seek high quality, high density, for sale residential units with amenities that are within walking distance.

Zoning Ordinance

The land use is consistent with its surrounding land uses and the project meets the development regulations. The park area requirement is discussed in detail in the previous section.

ENVIRONMENTAL REVIEW

The City Council certified a Final Environmental Impact Report for the development project that included a “mitigation monitoring and reporting program” for impacts with significant impacts that could be mitigated and “statements of overriding consideration” for impacts where there were no feasible mitigation measures available to reduce the impacts.

The Planning Division conducted an initial environmental assessment of this project (the development agreement) in accordance with the California Environmental Quality Act (CEQA). Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the project will not have the potential to significantly affect the environment. The project is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. The development agreement in and of itself does not have the potential to cause a significant effect on the environment. The development agreement merely extends the length of entitlements previously subjected to CEQA consideration, changes the level of previously approved special taxation obligations, and opens the roof top garden to the public.

Furthermore, the proposed development agreement does not necessitate the conduct of additional CEQA review, pursuant to Section 15162 of the CEQA Guidelines. The proposed entitlement extension and public access rights to the roof top garden do not substantially change the applicant's project or the circumstances under which the project is undertaken in a manner which will require major revisions of the previously completed Final Environmental Impact Report.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public regarding the project.

CONCLUSION

The development agreement as drafted includes substantial benefits to the developer and the City. The extension of time would allow for the appropriate planning for finance, construction and marketing of a complex and expensive project. The exchange of park area in-lieu fees for access to the roof garden would provide a unique amenity that would otherwise only be enjoyed by owners of units within the building. In addition, by annexing into the 2008-1 CFD, there will be additional funding available for public services, further reducing the burden on the City's General Fund.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission recommend authorization for execution of the Landmark Tower Development Agreement, subject to the attached Resolution and Development Agreement, to the City Council.

Attachments:

A. Resolution No. 09-030

RESOLUTION NO. 09-030

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING THE MILPITAS CITY COUNCIL AUTHORIZE EXECUTION OF A DEVELOPMENT AGREEMENT FOR THE LANDMARK TOWER PROJECT LOCATED AT 600 BARBER LANE

WHEREAS, on November 18, 2008, the City Council approved the Landmark Tower project, which included the redevelopment of a former automobile dealership with an 18-story mixed use building (375 dwelling units, 148,805 square feet of retail, 48,490 square feet of office) and an attached eight story parking garage; a rezone and general plan amendment to Very High Density Mixed Use with High Rise and Site and Architectural Overlays. The project site is located at 600 Barber Lane (APN: 086-01-034); and

WHEREAS, on June 12, 2009, an application was submitted by TP Pham, LLC (“developer”), to secure an extension of time for development entitlements and a waiver of park in-lieu fees for the project through the execution of a new development agreement ("Project"); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission recommend that the City Council determine this project exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines because staff determined that the project is consistent with the certified EIR for the Landmark Tower project and can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Furthermore, the Project does not cause any substantial changes to the proposed development that would necessitate further environmental documentation under Section 15162 of the CEQA Guidelines; and

WHEREAS, on July 8, 2009, the Planning Commission held a duly noticed public hearing on the Project for compliance with City of Milpitas Resolution No. 6642 (Procedures and Requirements for the Consideration of Development Agreements) and Government Code Section 65864 et seq.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The Planning Commission has reviewed the environmental determination by staff in accordance with CEQA and determined that the project has been completed in compliance with CEQA and the CEQA Guidelines prior to making recommendations to the City Council on the Project. It further recommends that the City Council find this project exempt

from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines and/or not subject to further CEQA documentation requirements under Section 15162 of the CEQA Guidelines.

Section 3: The proposed Development Agreement between the City of Milpitas and TP Pham, LLC, for the Landmark Tower project, complies with all the applicable procedural and eligibility requirements for the amendment of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 et seq.

- a. A valid application was submitted to the Planning & Neighborhood Services Director by an applicant with proper legal standing.
- b. The proposed development agreement is consistent with the Milpitas General Plan and other applicable plans, policies and regulations of the City currently in effect
- c. The proposed development agreement would eliminate uncertainty in land use planning and help ensure the orderly development of the Landmark Tower project. The proposed agreement would help ensure the commercial viability of the project and promote the project's consistency and synergy with the surrounding office, retail, commercial and other uses.
- d. The proposed development agreement would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed public access to the roof top garden area, public amenity guarantees, and special tax commitments would provide high level views of the surrounding area and support public services on levels not previously provided for in the area of the project.
- e. The proposed development agreement would also be beneficial to the health, safety, and general welfare of the community by providing a high density mixed use development that provides residential, commercial and employment opportunities in a relatively compact space.

Section 4: The Planning Commission of the City of Milpitas hereby recommends the Milpitas City Council authorize, execute and adopt the Development Agreement for the Landmark Tower, subject to the above Findings, and development agreement attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on July 8, 2009.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 8, 2009, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	OTHER
Cliff Williams			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			
Mark Tiernan			