



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 9, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Patrick Tang, City Attorney

SUBJECT: Developer Update on Hilltown/Hillcrest Site and Status of Development Agreement

RECOMMENDATION: Receive Report, Discuss, and Provide Direction, if any.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not applicable.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this item.

DISCUSSION: The City and Hercules Redevelopment Agency approved a Development Agreement (Attachment 1) with Santa Clara Valley Housing Group (SCVHG) in 2008 for a proposed development project on what is referred to as the Hilltown, or now Hillcrest, site bounded by Highway 4, San Pablo, the Alexandria subdivision, and Interstate 80. The scope of development proposed under the Development Agreement of 640 residential units and 4,000 square feet of retail on a site of 44 gross acres did not proceed given market conditions. More recently, SCVHG has been considering an alternative scope of development which has been reviewed in a community meeting and has been presented to the Planning Commission as a Conceptual Planned Development Plan. While still being refined, this scope generally consisted on the upper portion of the site being proposed for approximately 137 residential units on 8 acres of a 13 acre portion of the property, and the lower 6 acres being considered for a mix of retail and commercial development (and/or some additional housing) in response to City preferences.

With the Development Agreement being in its final year, and based on concerns about not being able to come to an agreement with the City as to an alternate scope of development other than that proposed under the Development Agreement, SCVHG began to explore the desirability of proceeding with the larger project provided for under the Development Agreement. That option is articulated in the November 9, 2017, letter from SCVHG, which is attached (Attachment 2). A key question raised by the developer was as to the validity of the Development Agreement.

The City Attorney's Office has reviewed that question and a summary of their initial thoughts are provided below:

SCVHG's legal counsel, Gerald Houlihan, has opined that the 2008 Development Agreement is still valid, and that SCVHG has a vested right to develop the project as described in the Agreement, without applying any amendments to its ordinances or design guidelines since 2008. As a practical matter, we believe there is now insufficient time for Developer to undertake its obligations prior to the expiration of the term of the Agreement. For example, Developer was scheduled to submit Final Map(s) and Site Improvement Plans to city for review at least 12 months prior to expiration of the Agreement. We understand that Developer has not done so, and there may be other actions listed on the Schedule for Performance which Developer has not completed, or that Developer failed to make commercially reasonable efforts to achieve on the timeline set forth in that Schedule. In order for Developer to perform under the Agreement, the Agreement appears to require, at a minimum, an extension to the term, which would require a Major Amendment. (Section 10.2.) A Major Amendment involves changes to the term and land use approvals and necessitates a public hearing before both the Planning Commission and City Council.

Mr. Houlihan has further opined that changes in redevelopment law do not affect the validity of the agreement. While we agree that the changes in redevelopment law do not invalidate the Agreement, it complicates its execution. Following the wind down of redevelopment agencies under ABx1 26 and AB 1484, a successor agency has taken over the enforceable obligations of the former Redevelopment Agency. Thus, the successor agency would need to agree to a Major Amendment. This may require involvement of the oversight board and/or Department of Finance.

In sum, the Agreement may still be valid, but there is insufficient time for the Developer to perform, so a Major Amendment would be required. And, the successor agency would need to approve a Major Amendment of the Agreement, and that might require additional oversight board and/or Department of Finance approvals.

Since that time, SCVHG has expressed an interest in possibly continuing to explore a reduced scope project in conjunction with some type of extension under the Development Agreement in case that effort does not result in a mutually agreeable scope. This option is articulated in the attached letter from the developer's counsel dated December 13, 2017 (Attachment 3). While staff and legal counsel have explored this idea on a preliminary basis, proceeding along this course would be a policy decision of the City Council.

The developer's presentation is being provided to update the City Council on the current status of the development alternatives and the status of the Development Agreement.

ATTACHMENTS:

1. Development Agreement
2. Letter dated November 9, 2017
3. Letter dated December 13, 2017

HILLTOWN/HILLCREST

SANTA CLARA VALLEY HOUSING GROUP



HILLTOWN DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT

- Effective Date: October 23rd, 2008
- Maximum Residential of 640 total units
 - Townhomes: 38 units
 - Courtyard Housing: 209 units
 - Row Houses: 200 units
 - Podium: 193 units
- Retail of 4000 square feet (may revert to residential)
- Total on-site parking of 1504 spaces (parking ratio of 2.35 per unit)
- To be constructed in 5 to 6 Phases (Owner's Discretion)



UPDATED DEVELOPED PLAN UPPER PORTION (HILLCREST)



- The Upper 13 acre pad consists of:
 - 49 Single Family Homes
 - 84 Detached Townhomes
 - Over 3.75 parking spaces per unit
 - Community Park
 - Public Walking Trail connecting to Lower Portion and adjacent sites

UPDATED DEVELOPMENT PLAN LOWER PORTION OPTIONS (HILLCREST)



POTENTIAL DEVELOPMENT

120 ROOM HOTEL
144 PARKING SPACES REQUIRED

126 DWELLING UNITS
239 PARKING SPACES REQUIRED

304 PARKING SPACES PROVIDED (TOTAL SITE)

POTENTIAL DEVELOPMENT

20,000SF RETAIL
80 PARKING SPACES REQUIRED

96 DWELLING UNITS
182 PARKING SPACES REQUIRED

262 PARKING SPACES PROVIDED (TOTAL SITE)



COMPARISON

Development Agreement and Owner Participation Agreement Plan (Hilltown)

- Utilizes the entire site to create 44 useable acres for:
 - 640 total units
 - 4000 sq/ft retail (may revert to residential)
 - 1504 total parking spaces (2.35 per unit)
 - Utilizes entire Site for Development
 - 5 to 6 Phases of Construction (Owner's Discretion)

Updated Plan (Hillcrest)

- Utilizes the two natural pads of the Hill to create 19 useable acres for:
 - Upper Pad: 133 detached units with 3.75 parking spaces per unit
 - Lower Pad: 80-120 residential units with either a 120 room hotel or 20,000 sq/ft retail
 - 25 Acres of Open Space with Public Walking Trails and Community Park
 - 2 to 3 Phases of Construction