



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 22, 2012

COUNCIL DISTRICT: 4

**SUBJECT: DEVELOPMENT AGREEMENT – RIVERVIEW APARTMENT
DEVELOPMENT, LLC**

RECOMMENDATION

Recommend approval to the City Council of an ordinance approving a proposed Development Agreement with Riverview Apartment Development, LLC, a Delaware Corporation (The Irvine Company) for the development of real property in North San Jose.

BACKGROUND

The proposed Development Agreement between The Irvine Company and the City of San Jose is the vehicle to lay out the agreement reached between City staff and the developer to modify a previously approved development replacing a 12 story residential tower with 5 stories and loft over a 20 foot tall retail, with payment of a contribution to facilitate high rise development in another location. The discussions between Irvine and the City have progressed over the past four months.

DEVELOPMENT AGREEMENT ORDINANCE FINDINGS

Development Agreements are required by the City Municipal Code to meet certain findings to be considered for approval by the City Council. The findings with the appropriate information documenting how the proposal conforms to the requirements of the Municipal Code for each finding area are as follows:

1. *The proposed development is consistent with the General Plan and all applicable specific or area plans; and*

The proposed ordinance would set forth the substance of a Development Agreement between the developer and the City regarding the amount of a contribution offered by the developer to modify a previously approved high rise building with a lower

building, and would establish the timing of the contribution. The specific project that would benefit from the Development Agreement is subject to a Planned Development Rezoning that would allow up to 1,329 multifamily units, a 5.1 acre public park and between 10,000 and 25,000 square feet of retail uses. The rezoning is consistent with the Envision 2040 General Plan and the North San José Area Development Policy in that it is on lands designated for the housing overlay and does not displace driving industry companies.

2. *The proposed development should be encouraged in order to meet important economical, social, environmental or planning goals of the City; and*

The proposed project will make an extraordinary contribution to high rise housing of \$3,000,000 in addition to payment of all normal taxes and fees; this will allow the City to facilitate construction of high rise housing in other areas of the city where projects may have been suspended due to the lack of financial resources to build the projects. This contribution is beyond what any other market-rate builder has provided in the NSJADP area or city-wide.

3. *The development agreement would facilitate the development of the subject property in the manner proposed; and*

The approval of the Development Agreement would allow the developer to make a contribution to the City for high rise development that would meet the City's goals, and also give certainty for the developer to proceed through the permitting process to be ready to make the financial contribution to the City.

4. *The proposed development meets all of the findings listed for criteria a, or b, or c below.*

- a. *The developer will incur unusually substantial costs in order to provide public improvements, facilities or services from which the public will benefit; and*

The proposed project will be making an extraordinary contribution to high rise development of \$3,000,000 that will allow the City to create or extend incentives to high rise development in the City which will encourage high rise projects that have been suspended due to the lack of financial resources to build the projects and encourage new developments to proceed. This contribution is beyond what any other market-rate builder has provided in the NSJADP area or citywide.

- b. *The developer has made commitments to a very high standard of quality and agreed to development limitations beyond that required by existing city zoning code;*

The proposed project is high quality architecturally at a level demonstrated by Irvine in their previous projects in North San Jose. The proposal also includes by agreement the use of Type III construction on at least the block that was approved with the high rise. The use of Type III construction incurs added construction costs over traditional residential podium buildings and is a type of construction that the City would like to encourage in North San Jose.

ANALYSIS

The development is organized on a series of development blocks to create a more walkable community and allow flexibility in changing development types block to block creating greater visual interest. The development also includes creation of a 5.1 acre public park along the Guadalupe River. Construction is underway on the first block by the original developer of the project. Irvine has entered into agreements with the original developer to purchase and construct the remaining five blocks.

The proposed Development Agreement would result in Irvine making a monetary contribution to the City of San José of \$3,000,000 as consideration for the City's modification of the previously approved approximately 12 story residential high rise building on one of the 6 development blocks of the site. The project was approved in 2007 for a variety of housing types with a total of 1,579 dwelling units and up to 45,000 square feet of retail allowed.

The high rise building was an important consideration of the City reserving residential units from the NSJADP. The proposal to replace that tower with a traditional 4 story podium building was not supportable by the staff. The costs of constructing towers is in excess of the podium costs and a number of developers across the city have attempted to change their previous approvals to go to lower heights while retaining most, if not all, of their housing units approvals. Staff has supported some of those changes looking at the area and specific circumstances.

Because market-rate units in the NSJADP are highly coveted by other developers, staff took the position that the project needed to do a type of construction different than the traditional 4 story residential building and have negotiated with Irvine that the building on the high rise block be built with Type III construction and is 5 stories and loft over a 20 foot tall retail allowing the building to be over 80 feet tall.

Staff has also worked with the applicant's architect and Building Division staff to explore a modified form of the traditional 4 story podium to add lofts to the upper floor units to add additional height along North First Street on parcel 3, creating a more dominate urban building form.

Lastly, because the developer's goal was to reduce construction costs, staff negotiated that a portion of those cost reductions would return to the City in the form of a contribution to be used to facilitate high rise development in the City. That amount is \$3,000,000 payable to the City when a Building Permit is pulled for Block 1, the former high rise site. This would achieve the City Council's goal of encouraging high rise development by allowing the city to offer incentives beyond what the City could afford to offer previously.

The proposed Development Agreement does not change any timing requirements that the project already is under to remain in compliance with the previously approved Satisfaction Agreement between the City and the original developer.

OUTCOME

Approval of the ordinance that would approve the substantive terms of the Development Agreement will provide certainty to the developer to proceed with the Building Permit process for the Type III mixed use building and to make the financial contribution to the City supporting high rise incentives in the City.

COORDINATION

The proposed Development Agreement has been coordinated with the City Attorney's Office.

CEQA

An Initial Study (IS) and Addendum to the North San Jose Area Development Policies Update Program Environmental Impact Report (EIR) were prepared by the Director of Planning, Building, and Code Enforcement for the Planned Development Rezoning for the site approved in 2007 and proposed Development Agreement.

Based on the analysis in the Initial Study and Addendum, the City concludes that the Final Program EIR adequately discloses and addresses the environmental effects of the Development Agreement as part of the 32,000 units that the Program EIR analyzed. Furthermore, the City finds that this project would not result in any significant environmental effects not already identified and addressed in the Final Program EIR.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For additional information, please contact Joseph Horwedel at (408) 535-7900.