

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Bruce Heflin, Assistant Town Manager

SUBJECT: Report on the Status of 140 West (Rosemary/Church Street Parking Lot)

DATE: January 25, 2010

PURPOSE

The purpose of this report is to review the history and key points of the Town's Development Agreement with Ram Development Company to develop the 140 West project on the Rosemary/Church Street Parking Lot in downtown Chapel Hill (formerly known as Lot 5). In addition, this report provides information from Ram Development Company on the status of the project.

BACKGROUND

We provide a capsule summary of the history of the 140 West project by year in Attachment 1.

The Town Council began planning for the project with the adoption of the Downtown Small Area Plan in 2000. This plan identified the West Rosemary/Church Street Parking Lot (Lot 5) as one of the "opportunity areas" in downtown. Subsequently, the Council formed a committee in 2002 and began work on identifying an economic development strategy for downtown parking lot sites it owned.

In 2003, the Council adopted principles and priorities and hired an economic development consultant. In the following year, the Council prepared a marketing study, a building program, conceptual master plans, and a financial feasibility analysis. In late 2004, it issued a Request for Qualifications to potential development firms, and received six proposals. In 2005, the Council issued a Request for Proposals, with two firms responding.

On October 24, 2005, the Town Council authorized a Memorandum of Understanding with Ram Development Company, which outlined the basic terms and conditions of the relationship between the parties for the future development of two downtown sites owned by the Town of Chapel Hill. The sites were the West Rosemary/Church Street Parking Lot and the Wallace Deck site on East Rosemary Street, including the corner lot at Rosemary and Henderson Streets. The Council authorized the Town Manager, with the participation of a Council Committee, to negotiate a Development Agreement, based on the concepts described in the Memorandum of Understanding.

The Town Negotiating Team brought forward a revised proposal for a Council public forum on November 20, 2006. The revised proposal focused on the development of the Lot 5 site only. On February 12, 2007, the Council authorized the Manager to execute a Development

Agreement with Ram Development Company. The Council has approved three Amendments to the Agreement. The Agreement and Amendments are online at:
<http://townhall.townofchapelhill.org/projects/dedi/documents/agreement/>

On June 27, 2007, the Council approved a Zoning Atlas Amendment and Special Use Permit for development of 140 West on the West Rosemary/Church Street Parking Lot. Ram Development Company subsequently submitted detailed plans to receive a Zoning Compliance Permit for the project in 2008. Staff review and developer responses continued through November 2008. In December, 2009 Ram Development Company submitted additional information to staff in order to complete the review of detailed plans. Ram Development Company expects to receive a Zoning Compliance Permit for starting construction of the building over the next four months.

Ram opened a marketing office in September 2008 in downtown Chapel Hill.

In June, 2009 Ram received an administrative extension of the start date for beginning construction in the special use permit from June 27, 2009 to June 27, 2010, with a requirement to submit quarterly status reports. Subsequently, the North Carolina General Assembly enacted Session Law 2009-406 generally extending all permits by three years that were active during the period January 1, 2008 to December 31, 2010. The effect of this law on 140 West is to extend the construction start date to June 27, 2013 and the original completion date to June 27, 2015.

DISCUSSION

Key Points of the Development Agreement

The Development Agreement specifies the project will consist of the following:

- An approximately 330-space underground parking garage (the “Lot 5 Parking Garage”) of which not less than 161 spaces will be owned by the Town and available for public use, plus 10 to 15 on-street parking spaces.
- Approximately 28,540 square feet of retail/commercial space.
- 137 “for sale” condominiums of which 21 will qualify as affordable housing.
- Approximately 27,215 square feet of public open space.
- The buildings will be LEED-certified; and will achieve silver certification with a 20 percent increase in energy efficiency, if the project budget permits.
- A public arts budget equal to 1 percent of the total development budget.

Key provisions of the Agreement include:

- The Developer will provide a minimum of \$12.5 million of equity.
- The Town will lease to the Developer the building pad for the residential/retail building to be constructed on Lot 5 for a term of 99 years, in consideration of various tangible and intangible benefits such as LEED certification, the public plaza, public art, underground public parking, affordable housing, design quality, and increased tax and parking revenues.

- The ground lease will contain a provision giving the Developer, or subsequently the condominium association, the right to terminate the ground lease and acquire fee simple title to the air rights 50 years after the start of the ground lease for \$2,000,000.
- The Town will continue to have significant control over the development including approval rights as to the architectural design, primary building material and other elements of the project and all plans, specifications, schedules, cost budgets and documents relating to improvements to be owned by the Town. The Town would retain review rights for the retail mix.
- Following completion of the parking garage, the Town will purchase from the Developer the 161 public parking spaces at a purchase price corresponding to the Developer's cost for constructing the same but not to exceed \$7,245,000 (approximately \$45,000 per parking space, depending on the actual number of spaces that are fitted in the Town's level of the Garage).
- The Town will finance the purchase price of the 161 parking spaces. This financial commitment could be reduced in the event that the actual cost of development and construction of the Lot 5 Parking Garage is less than \$7,245,000. The Town may elect to audit the cost of constructing the public parking spaces, and "in the event said costs are less than \$7,245,000 (i.e. \$45,000 per public parking space), the Developer shall refund any excess within thirty (30) days of demand." If there is a refund due to the Town, the Developer will pay for the audit, up to a maximum of \$20,000.
- The Developer will provide \$200,000 for programming associated with the new public space.
- Annual condominium fees for the affordable housing units will be limited to 1.5 percent of the sales price of the affordable housing units, plus the prorated cost of any utilities that may be master-metered. The developer will provide \$25,000 to assist the Town in developing a Town-wide policy on affordable condominium fees. If adopted, this policy would supersede the 1.5 percent limit, at the developer's option.
- The Town will provide parking spaces for the affordable housing. Amendment #1 provides that Ram Development Company will make up to 5 spaces available for this purpose on the private parking level.

Town Project Ordinance Budget

The Town Council budgeted for future estimated Town costs related to the development of 140 West as a capital projects ordinance in May, 2007. The budget includes funds for environmental remediation, project administration/construction management, and legal costs. The Town is responsible for environmental remediation costs related to the site; these costs may be in the range of \$250,000. It is possible that remediation costs could be higher after more detailed engineering analysis and once actual soil conditions are excavated.

In addition, there would be costs associated with carrying out responsibilities for the Town's approval rights and review rights per the Development Agreement. These approval and review rights are important because they establish the baseline against which potential future incremental Town costs may occur as a result of Town-requested changes. In addition, construction management and on-site inspections for the parking garage would be required. Once the project goes to closing, there would be additional legal costs incurred to finalize the documents related to the transaction, and for representation at the closing.

Status of the 140 West Project

Attachment 2 contains a summary of the key milestones in the Development Agreement and the current status of each. The anticipated completion dates in the agreement are targets rather than requirements. We last reported to the Council on the status of these dates in a March 23, 2009 information report. At that time, it became clear that the project was affected by the major downturn in the economy and housing markets nationally as well as locally.

More recently, economic trends are beginning to show improvement, and Ram has resumed plan submissions to the Town in order to obtain a zoning compliance permit and building permit to begin construction.

Ram Development Company is now submitting quarterly reports to the Town Manager detailing its progress (please see Attachment 3). The August 2009 report indicated that Ram continued to be committed to constructing the project, and noted that market conditions had been improving. In addition, Ram stated that it had received substantially lower construction pricing, thus allowing Ram offer lower sales prices to residential buyers. Ram also indicated it was optimistic that the same market trends would also result in cost savings to the Town for the public parking spaces.

The December 2009 report stated that Ram had 33 new contracts since Labor Day, and that it continues to see increased traffic in the sales center. In the report, Ram Development Company remains optimistic that it can complete the budgeting and contractor selection process in the next ninety days and achieve savings for the project and the Town. Ram estimates it would submit a proposed budget in April 2010 to the Town. The Town has review rights for the project budget, and approval rights for the parking garage budget. Ram's estimated construction start date is June 2010.

RECOMMENDATION

That the Council receive this report.

ATTACHMENTS

1. Summary of Project History (p. 5).
2. Summary of Key Milestones of the Development Agreement (p. 7).
3. August 19, 2009 Quarterly Report from Ram Development Company (p. 9).
4. December 22, 2009 Quarterly Report from Ram Development Company (p. 11).