Agenda Report

December 16, 2013

TO: Honorable Mayor and City Council

FROM: Planning and Community Development Department

SUBJECT: DEVELOPMENT AGREEMENT BETWEEN THE NORTON SIMON ART FOUNDATION AND THE CITY OF PASADENA TO MAINTAIN EXISTING LAND USE REGULATIONS FOR THE PROPERTY AT 267-337 W. COLORADO BOULEVARD AND 55-77 N. ST. JOHN AVENUE (RUSNAK-PASADENA AUTOMOBILE DEALERSHIP)

RECOMMENDATION:

It is recommended that the City Council:

1. Find this proposed Development Agreement is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15061 (the "General Rule") because entering into the Development Agreement does not have the potential for causing a significant effect on the environment; and

2. Find that:
   a. The proposed development agreement is in the best interest of the City;
   b. The proposed development agreement is in conformance with the goals, policies and objectives of the General Plan and the purpose and intent of any applicable specific plan, and the Zoning Code;
   c. The proposed development agreement would not be detrimental to the health, safety and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City; and
   d. The proposed development agreement is consistent with the provisions of California Government Code Sections 65864 through 65869.5.

3. Approve a Development Agreement between the Norton Simon Art Foundation and the City of Pasadena to maintain current planning and zoning codes, rules and regulations including the General Plan and West Gateway Specific Plan for property at 267-337 W. Colorado Boulevard and 55 -77 N. St. John Avenue (Rusnak-Pasadena Automobile Dealerships property).

4. Direct the City Attorney to draft an ordinance within 60 days consistent with the provisions set forth herein.

PLANNING COMMISSION RECOMMENDATION:

On July 24, 2013, the Planning Commission recommended that the City Council deny the development agreement by a vote of 4-3. The specific reasons for their decision are further discussed on Page 3 of this report.

BACKGROUND:

In August 2012, the Norton Simon Art Foundation submitted an application for a development agreement with the City of Pasadena for property at 267-337 W. Colorado Boulevard and 55-77 N. St. John Avenue. The subject property has an area of 5.7 acres and is currently occupied by a luxury brand automobile dealership (Rusnak-Pasadena Automobile Dealerships). Four of the buildings on the property are historically significant and make up the West Colorado Street Historic Auto Row.

Per the proposed agreement, Norton Simon would use good faith efforts to maintain a luxury brand dealership and extend the existing lease or negotiate a new lease for an additional 15 years (the current lease is set to expire in two years at the end of 2015). In return, the applicant would preserve its right to develop the property in the future in accordance with the City's current planning and zoning codes. This includes the current 2004 General Plan and the 1998 West Gateway Specific Plan.

Since the Planning Commission decision, staff and the applicant have continued to work together to modify the terms of the agreement to address many of the Commission's concerns. The original proposal included "grace periods" of up to five years for the agreement to remain in effect, even if the agreement or use terminated early. This was to allow the applicant additional time to propose a new project. In no event would the agreement continue for more than 23 years.

Under the modified proposal, if the applicant fails to enter into a lease extension or lease to extend the use of the property, the agreement would expire at the end of the existing lease. If the applicant enters into a lease extension or a lease to extend the use for less than five years after the effective date (i.e. three years after the current lease expires), the agreement would terminate at the end of the lease extension or lease. Meaning, there would be no "grace periods" for either of these scenarios.

If the applicant enters into a lease extension or lease to extend the use for five years or more of the effective date, the agreement would include a "grace period" of three years following the termination of the lease extension or lease. In addition, the use would need to be maintained as a luxury brand automobile dealership. In no event would the agreement continue for more than 23 years from the original effective date. However, in the event a complete application is submitted within the three year "grace period", the application may continue to be processed under the terms of the agreement provided that the application is diligently pursued.

The full text of the agreement can be found in Attachment B of this staff report. The modified "Terms of Agreement" can be found in Section #5, Page 6. No new project or modifications to the property are proposed at this time.

The table below provides a summary of the total length of the modified agreement:

Length of existing lease:	Length of extended or new lease:	Number of additional years of the agreement (grace period):	Total length of agreement:
2 years	None	0 years	2 years
2 years	1 to 4 years	0 years	3 to 6 years
2 years	5 to 18 years	3 years	10 to 23 years

Planning Commission Recommendation

The item was first presented to the Planning Commission on April 10, 2013. The Planning Commission was unable to make a recommendation and continued the item to a future date. On July 24, 2013, the Planning Commission recommended that the City Council deny the development agreement by a vote of 4-3.

The Commissioners stated that the Norton Simon Art Museum is a highly valued institution and the Rusnak-Automobile Dealership was a very important business in the community. They also felt it was important for the City to help maintain existing automobile dealerships and the revenues they generate. However, as part of its recommendation for denial, the Commission identified the following significant issues:

- There was no specific project associated with the agreement;
- The use of "grace periods" was too broad (applied in many situation) and its length was too long (up to five years);
- The maximum potential length of the agreement was too long (up to 23 years);
- Concerns that approval of the agreement would set precedence for other property owners to request similar agreements to maintain existing development standards; and
- Concerns that the property owner would be able to vest existing development standards when the City is considering to sunset the West Gateway Specific Plan. Such standards include Transfers of Development Rights (TDRs) where square footage from one property is transferred to another property.

As discussed on Page 2, the terms of the agreement have been modified to address many of the Commission's concerns. In particular, this includes limiting the applicability and length of time for "grace periods." Such "grace periods" now only apply if the use was extended for five years or more from the effective date. In addition, the maximum length of "grace periods" was reduced from five years to three years.

Staff Recommendation and Analysis

Staff recommends approval of the agreement, with the modified terms outlined on Page 2. Staff believes the four necessary findings can be made to support approval of the agreement.

Staff finds the proposed agreement is in the best interest of the City and the community. The existing luxury brand dealership generates significant revenues to the City through sales taxes and other taxes. It is consistently in the top ten percent of all sales tax generators. In addition, the business has approximately 300 employees with an annual payroll of nearly $20 million. Furthermore, as a luxury brand dealership, it attracts a large portion of its customers from outside Pasadena, making it a regional draw. Maintaining these revenues and visitors for many years into the future would be considered a benefit to the City and community.

No new project or modifications to the property are proposed at this time. If a proposed project were to move forward at some point in the future, it would be required to comply with all standards and regulations of the existing West Gateway Specific Plan. A future project would also need to comply with the City's Historic Preservation Ordinance, design review process and any updates to the Building Code. Furthermore, a future project would need to comply with all existing public hearing and noticing requirements to inform the public of the project and all provisions of the California Environmental Quality Act (CEQA) to review and disclose potential environmental issues.
The applicant has shared that reducing the length of the agreement is not a viable option. The additional length is needed to incentivize the dealership to make needed investments on the property.

The terms of the agreement appear to be unique. If another agreement is proposed for a property in Pasadena, it would be reviewed separately through a series of public hearings before the Planning Commission and City Council. Safeguards have been placed to terminate the agreement if the applicant is unable to secure a new lease or extend the existing lease for the dealership. The City will also conduct annual reviews to ensure the applicant is complying with the agreement and is negotiating a long term lease in good faith.

Regarding Transfers of Development Rights (TDRs), specific language is included in the agreement that TDRs would not apply to the subject property if that section was removed from the West Gateway Specific Plan or Zoning Code.

Finally, the draft General Plan Land Use Diagram presented to the City Council in April 2013 did not call for significant changes to the West Gateway Specific Plan area. However, approval of the agreement would eliminate any uncertainty in the planning process and provide for the orderly future development of the property. The property requires reinvestment to remain viable and competitive and the applicant would be reluctant to extend its lease unless it can preserve options for the future.

Existing Development Standards

The proposed agreement would maintain the existing rules and regulations outlined in the General Plan and Specific Plan including the list of permitted uses, maximum floor area ratio (FAR) and development standards. A broad mix of uses are currently permitted including auto sales, business, community-serving and neighborhood-serving uses. Mixed-use with housing and urban housing are also permitted at a maximum density of 48 units per acre (or 274 units for the property).

As of April 29, 2013, the remaining development capacity (or caps) for the Specific Plan was 407,000 square feet of non-residential uses and no remaining housing units. However, square footage can be converted to housing units at a rate of 850 square feet per housing unit.

The maximum square footage for the property includes the square footage of all existing buildings on the site and an additional FAR of 0.4. This formula was established to allow for equal distribution of the caps established in the Specific Plan. Existing buildings can be demolished and the square footage reconstructed on site without impacting FAR (buildings of historic significance would still be subject to the City's Historic Preservation Ordinance). For the subject property, the maximum square footage would equal an FAR of 0.94 (133,000 sf of existing + 99,500 sf of new for a total of 232,500 sf).

In addition, the Specific Plan includes a provision that allows a Transfers of Development Rights (TDRs), where one property can transfer a portion or all of its additional FAR of 0.4 to another property (subject to Zoning Administrator approval). However, if the TDR provisions were to be removed for properties within the Specific Plan area at some time in the future, the subject property would also not be able to utilize TDRs. This is because none of the other properties in the Specific Plan would be able to transfer square footage from their property to the subject property. Also, if future regulations permitted greater levels of development, the subject property would be held to comply with existing standards. Therefore, a project would not be able to create a "hybrid" of current and future standards.

Proposed General Plan

The draft General Plan Land Use Diagram presented to the City Council in April 2013 did not call for significant changes to the West Gateway Specific Plan area. The map shows an FAR of up to 1.0, which is consistent with the 0.94 currently allowed on the subject property (before TDRs). The plan also calls for a variety of commercial uses along Colorado Boulevard that would complement the Central District. However, housing or mixed-use with housing was not shown as a preferred land use on the subject property.

COUNCIL POLICY CONSIDERATION:

The proposed development agreement is consistent with the City's General Plan. As previously discussed, the existing luxury brand automobile dealership generates significant revenues to the City through sales taxes and other taxes and revenues and is among the top ten percent of revenue generators of businesses in the City. One of the Plan's Seven Guiding Principles states that "Economic vitality will be promoted to promote jobs, services, revenues and opportunities." General Plan Objective #12 discusses fiscal health and the need to encourage a business climate that contributes to the City's fiscal health. General Plan Policy 12.1 states "Retail: encourage retail and sales-producing businesses to remain, expand in, or come to, Pasadena and promote healthy retail areas."

In addition, the proposed development supports two of the City Council's Strategic Planning Goals. This includes maintaining fiscal responsibility and stability and supporting and promoting the local economy.

ENVIRONMENTAL ANALYSIS:

The implementation of the development agreement has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Title 14, Chapter 3, Section 15061, ("General Rule") of the CEQA Guidelines. Section 15061 (b)(3) sets forth CEQA's general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, such as entering into the Development Agreement, may have a significant effect on the environment, the activity is not subject to CEQA. The proposed Development Agreement does not propose any changes to the property's existing structures or its use as a luxury brand automobile dealership, and instead is targeted at maintaining the status quo. If a proposal for a new project moves forward at some point in the future, the City would consider whether additional environmental analysis must be done, and would complete such analysis at the more appropriate time if and when a specific project is proposed.

FISCAL IMPACT:

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements. The anticipated impact to other operational programs or capital projects as a result of this action will be none. However, the approval allows for the long term lease extension to a major sales tax generator, which if implemented could result in an excess of one million dollars or more per year in sales tax for the City.

Respectfully submitted,

VINCENT P. BERTONI, AICP
Director of Planning & Community Development Department

Prepared by:

Jason C. Mikaelian, AICP
Senior Planner

Concurred by:

Kelvin Parker
Principal Planner

Approved by:

MICHAEL J. BECK
City Manager

Attachments:

Attachment A – Findings
Attachment B – Proposed Development Agreement
Attachment C – July 24, 2013 Planning Commission Staff Report
Attachment D – April 10, 2013 Planning Commission Staff Report