



Agenda Report

DATE: SEPTEMBER 14, 1998

TO: PASADENA COMMUNITY DEVELOPMENT COMMISSION

FROM: CYNTHIA J. KURTZ, ACTING CHIEF EXECUTIVE OFFICER

SUBJECT: MODIFICATION OF CERTAIN CONDITIONS, COVENANTS, AND RESTRICTIONS WITH RESPECT TO PROPERTY LOCATED AT 170 NORTH FAIR OAKS AVENUE TO ALLOW A HOTEL, PARKING STRUCTURE AND ANCILLARY COMMERCIAL USE IN CONFORMANCE WITH THE PASADENA COMPREHENSIVE GENERAL PLAN, PASADENA MUNICIPAL CODE AND THE DOWNTOWN REDEVELOPMENT PROJECT

RECOMMENDATION:

It is recommended that the Pasadena Community Development Commission (the "Commission") approve the terms and provisions of, and authorize its Acting Chief Executive Officer to execute and cause to be recorded on behalf of the Commission, a Notice of Conditional Modification of Covenants, Conditions and Restrictions for property located at 170 North Fair Oaks Avenue, Pasadena, CA.

BACKGROUND:

A. General

By letter dated April 1, 1998, Ameriko, Inc., owners of property located at 170 North Fair Oaks Avenue, requested that the Commission remove certain restrictions on the property which require the property to be developed as an office building with off-street surface parking (please see Attachment No. 1). The stated reason was that Ameriko desires to sell the property to Accord Interests, LLC, which plans to develop the property into a hotel. The Commission as successor to the Pasadena Redevelopment Agency ("PRA") holds certain conditions, covenants and restrictions ("CC&Rs") to property located at 170 N. Fair Oaks Avenue (the "Property") in the Downtown Redevelopment Project area (please see Exhibit No. 1). These CC&Rs were placed on the Property in the form of a grant deed on July 18, 1978 as the result of a Disposition and Development Agreement between the PRA and D and D Venture; the CC&Rs restrict the Property to use as a two-story office building of 43,000 sq ft., with a 105-space parking lot (which faces onto Raymond Avenue). Based upon a review of the administrative record, the restrictions were never factored into the sales price for the Property when it was sold by the PRA to D and D Venture. These CC&Rs run with the land and are due to expire on December 29, 2005, less than seven years from now.

The Property is currently in escrow for purchase by Pasadena Hotel Associates, LLC (with ACCORD/PAS LLC, as its managing member) (the "Developer") for the development of a proposed Courtyard by Marriott hotel (the "Hotel"). The Hotel is planned to have 314 guest rooms and suites, 6,000 sq. ft. of meeting room space, a 124-seat restaurant, full lobby bar, business center, exercise facility, pool and a 399-space structured parking garage. According to the Developer, the planned "Pasadena Courtyard by Marriott" will be one of the first urban-oriented Courtyards by Marriott, with proximity to activities as well as to business centers. A General Plan amendment was approved by the City Council on August 10, 1998, to allow the Hotel to be six stories in height within the adopted 60 ft. height limit; the Hotel also will require a conditional use permit for major projects, a conditional use permit for alcohol sales, a zoning variance for the number of stories permitted in the General Plan, a zoning variance for loading area screening, design review of the prepared project, and a sign exception. The hearing date for the conditional use permits, concept design review, variances, and a sign exception has been scheduled for September 28, 1998.

B. Request for Modification of CC&Rs on the Property

The Developer of the proposed Hotel cannot develop the Property as a hotel use and be in conformance with the existing CC&Rs on the Property. The current owner of the Property, AMERIKO, in a letter dated April 1, 1998, to the Commission, stated that it would agree to request the Commission to release the CC&Rs for compensation based upon their appraised value as determined by mutually agreed-upon appraisal instructions. The Commission agreed to have the Property appraised in accordance with these mutually agreed upon instructions and engaged the services of Lea Associates (paid for by the Developer and selected independently by the Commission). Lea Associates, a MAI appraiser, prepared an appraisal on behalf of the Commission; also, the Developer of the proposed Courtyard by Marriott, also had a MAI appraisal prepared. A set of appraisal instructions were agreed to and both appraisals were completed. The appraisal which the Commission contracted for with Lea Associates was received on August 12th, 1998, which determined a market value of the CC&Rs as \$0.00. The MAI appraisal completed for the Developer also indicated the value at \$0.00. Although the Commission does not have the obligation to remove the CC&Rs, it may do so; in addition, the Commission can ask for consideration for doing so. However, because the CC&Rs were never factored into the land sales price to D and D Venture, as discussed above, the removal of such CC&Rs on the Property becomes a matter of policy for the Commission.

In view of the appraisal results and in consideration for modification of the covenants, the Developer is offering the following: The Developer has agreed to use its best efforts to explore with third parties (which may include the Commission and/or the City of Pasadena) during the time period prior to the commencement of construction the feasibility of constructing two levels of subterranean parking as part of the parking structure to be developed and constructed for the Hotel for the purpose of making such subterranean parking spaces available for use by others.

C. Staff Recommendation

Staff is recommending that the restrictions on the Property be modified from the existing restriction as set forth in Paragraph 5) a) of the Grant Deed 78-776605 as follows:

Existing: “5) a) Grantee shall construct on the Site a two story office building, including a drive-thru banking facility, of approximately 43,000 square feet (gross) with off-street parking for approximately 105 automobiles. The development shall be of an urban character consistent with other new developments in the vicinity.”

Proposed: “5) a) The Site shall be developed, improved, used and maintained as either (1) a two-story office building, including a drive-thru banking facility, of approximately 43,000 square feet (gross) with off-street parking for approximately 105 automobiles, or (2) as a hotel, together with appurtenant parking and other related improvements.”

Also, staff is further recommending that paragraphs of the Grant Deed already fulfilled by the completion of the existing development be deleted.

In order effectuate this recommended modification to the Grant Deed, staff recommends that the Commission enter into a “Notice of Conditional Modification of Covenants, Conditions, and Restrictions” as prepared by the Interim Real Estate Manager and as reviewed by the City Attorney’s Office and executed by Pasadena Hotel Associates, LLC. In consideration for the Commission’s agreement to modify the CC&R’s, Pasadena Hotel Associates, LLC as “Owner” would agree to use its best efforts to explore with third parties, which may include the Commission and/or the City, during the time period prior to commencement of construction of the Hotel, the feasibility of constructing two levels of subterranean parking as part of the parking structure to be developed and constructed for the Hotel for the purposes of making such subterranean parking spaces available for use by third parties.

It would be understood and agreed by both the Commissioner and the Owner that such subterranean parking shall be constructed, if at all, provided that: (a) plans, specifications, condominium documents, and all agreements relating to the construction and operation of the subterranean parking are provided to the Owner by third parties and are acceptable in form and content to the Owner, the Hotel operator and any lending institution chosen by the Owner to fund the construction of the Hotel; (b) the cost of construction of the subterranean parking is agreed upon through bid by Owner’s contractor based upon the difference between the cost of construction of a parking structure with subterranean parking and provided that land cost shall not be included within the calculation of the cost thereof; provided, further, such costs shall include all costs arising from or relating to the construction of such subterranean parking, including, without limitation, all architectural, engineering, construction interest, legal, construction draw and inspections, and title endorsement fees; (c) the cost of construction of the subterranean parking shall be paid for by third parties, and shall be placed in a construction escrow with Owner’s construction

lender and shall be separately accounted for and disbursed by such lender as a percentage of completion of the subterranean parking spaces in accordance with such other requirements as such lender may require; (d) the design, operation, ingress and egress of the parking structure, as well as the restrictions adopted by the condominium association for the parking structure, shall be acceptable to the Owner's lender and to the Hotel operator; and (e) the form of ownership of the subterranean parking spaces shall be as a condominium interest owned by the third parties. The third parties shall fund all moneys required pursuant to subparagraph (c) above in accordance with the requirements of Owner's lender, but in no case prior to issuance of a building permit for the Hotel.

This recommended conditional modification would fulfill the City's objectives for development in this area based upon the following adopted plans:

1. Comprehensive General Plan and Zoning Code

The Property is designated in the adopted Comprehensive General Plan ("the General Plan") as "Central District Specific Plan Area" which is designated in the General Plan to include a diverse mix of land uses designed to create the primary business, financial, retailing and governmental center of the City. The General Plan further calls for the creation of an exciting urban core with diverse economic, housing, cultural and entertainment opportunities.

The Property is located within the CD-15 zoning district which allows hotel and motel.

2. Downtown Redevelopment Plan

The Property is located within the "Disposition Land Use Area 2: Memorial Park" which allows residential, institutional, commercial and public uses.

D. Review by Community Development Committee (the "Committee")

The Committee was scheduled to consider this item at its regular meeting of September 10, 1998. Staff will forward in writing the Committee's actions regarding this item to the Commission for consideration at its September 14, 1998 meeting.

FISCAL IMPACT:

The recommended modifications of the existing restriction will allow the proposed Hotel project to complete the entitlement process, subject to the granting of the requested variances, conditional use permits, design review approvals, and sign exception as described above. The project will have a positive impact on tax increment revenue from the Downtown Redevelopment Project Area with a net increment of approximately \$135,000 based upon a project value of \$17,170,000. The project also would generate one-time payments to the General Fund of approximately \$150,000 in Construction Tax as well as

approximately \$350,000 in New Development Impact Fees and \$80,000 in Public Art fees. Also, the Hotel is expected to generate a total of approximately \$1.0 - \$1.2 million annually in Transit Occupancy Tax, of which approximately \$400,000 to \$490,000 would be an annual revenue to the General Fund and approximately \$780,000 to \$935,000 of which would be an annual revenue to the Pasadena Center Operating Company. As an indirect economic impact, the guests of the Hotel who are expected to spend an average of \$130 per day in nearby businesses located in Old Pasadena, Downtown, and the Civic Center, thereby retaining/enhancing sales taxes to the General Fund.

Respectfully submitted,


CYNTHIA J. KURTZ,
Acting Chief Executive Officer

Prepared by:



MARSHA V. ROOD
Development Administrator

Concurrence:



MICHAEL ESTRADA
Assistant Commission Counsel

ATTACHMENTS: Attachment No. 1: Letter from Ameriko dated April 1, 1998
Exhibit No. 1: Description of Property