

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Appeal on Sierra Point Opus Office Project
DATE: For Council Meeting on August 1, 2011

Recommendation:

Adopt Resolution No. 2011-40 upholding the appeal and granting a 3-year extension on the original approvals for the project.

Background and Discussion:

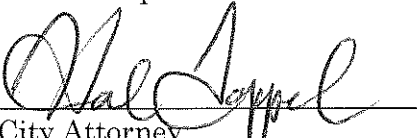
At its regular meeting on July 18th, the City Council approved an extension to the design permit, use permit and variance granted for the Sierra Point Opus Office Project. In order to induce the Council to grant such extension and in recognition of the need for additional time beyond that to complete the project, the applicant offered to upgrade the project to satisfy the requirements for LEED gold rather than LEED silver, as presently required. Such requirements would be determined at the time application is made for a building permit. In exchange, the City would enter into a development agreement with the applicant providing for the tentative parcel map and zoning approvals to remain in effect for a longer period of time.

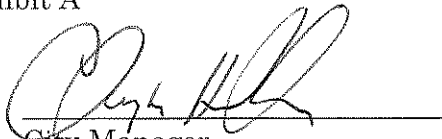
The proposed resolution provides for the future execution of a development agreement having a term of 10 years. This term is recommended because it is the same term as the existing development agreement between the City and the developer of the R&D project at Sierra Point and both project are of comparable size.

The resolution also provides that the zoning approvals would be extended if the City adopts an ordinance to coordinate land development approvals under the subdivision and zoning ordinances by having them all expire at the same time (which is legislation we expect to bring back to the City Council at a later date).

Attachments:

Proposed Resolution 2011-40 with attached Exhibit A


City Attorney


City Manager

RESOLUTION NO. 2011-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE UPHOLDING AN APPEAL FROM A DECISION OF THE PLANNING COMMISSION CONCERNING THE SIERRA POINT OPUS OFFICE PROJECT

WHEREAS, on behalf of owner Sierra Point, LLC, the Don Little Group ("applicant") applied to the City of Brisbane for an extension of the approvals of an office project consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175-space parking structure and 211 surface parking spaces on approximately 8.9 acres of vacant land located on the northwesterly side of Marina Boulevard, easterly of Highway 101 at Sierra Point ("the Project"), such approvals having originally been granted by the City Council in Resolution No. 2009-14 dated May 4, 2009, identified as Design Permit DP-5-07, Use Permit UP-3-08 and Variance V-1-08 (the "Original Approvals"), and such extension applications being identified as Design Permit DP-2-11, Use Permit UP-7-11, and Variance V-2-11; and

WHEREAS, on May 26, 2011, June 9, 2011 and June 23, 2011, the Planning Commission of the City of Brisbane conducted a hearing on said extension applications, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, following the conclusion of the hearing, on June 23, 2011, the Planning Commission denied the application for extension; and

WHEREAS, the applicant filed a timely appeal from the decision of the Planning Commission to the Brisbane City Council; and

WHEREAS, on July 18, 2011, the City Council conducted a de novo hearing on the appeal, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council has reviewed and considered the staff reports, minutes of proceedings conducted by the Planning Commission relating to the applications, and the written and oral evidence presented to the City Council at the public hearing on the appeal,

NOW, THEREFORE, be it RESOLVED by the City Council of the City of Brisbane as follows:

1. The appeal is upheld and the decision of the Planning Commission denying an extension is reversed. The Original Approvals granted by the City Council in Resolution No. 2009-14 for Design Permit DP-5-07, Use Permit UP-3-08, and Variance V-1-08 are extended for the period of time hereinafter specified, subject to the Conditions of Approval set forth in Exhibit A attached hereto and incorporated herein by reference.

2. The City Council finds and determines that there has been no changes in the design or environmental impacts of the Project and no change in any ordinances or regulations applicable to the Project since the Original Approvals were granted. Consequently, there is no need to reconsider the findings made by the Planning Commission in support of the Original Approvals, as set forth in Resolution DP-5-07/UP-3-08/V-1-08 adopted on February 26, 2009, as ratified and approved by the City Council in Resolution No. 2009-14 adopted on May 4, 2009.

3. As an inducement for the City Council to grant the extension of time for the Original Approvals, the applicant has agreed to construct the Project in accordance with the LEED gold standard in effect as of the time an application for a building permit is submitted to the City. In exchange for this upgrade to the Project, the City Council agrees to enter into a Development Agreement with the applicant or his designee, in form and substance to be approved by the City Council, providing for further extension of the Original Approvals for a period of time not exceeding ten (10) years from the effective date of such agreement.

4. The Original Approvals that have a specified duration are extended for a period of three (3) years to April 20, 2014, and may be further extended upon the occurrence of either or both of the following events:
 - (a) If the City adopts an ordinance providing for zoning approvals to expire at the same time as a tentative parcel map or tentative subdivision map for the same project and the tentative parcel map for this Project (TPM-1-08) has an expiration date after April 20, 2014, the Original Approvals shall be further extended to the same expiration date for the tentative parcel map for this Project (TPM-1-08).

 - (b) Upon the execution of a Development Agreement between the applicant or his designee and the City providing for an expiration date after April 20, 2014, the Original Approvals shall be further extended to the same expiration date set forth in such Development Agreement.

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the 1st day of August, 2011, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

 Cyril G. Bologoff, Mayor

ATTEST:

 Sheri Marie Spediacci, City Clerk

EXHIBIT A

CONDITIONS OF APPROVAL:

Design Permit DP-5-07/DP-2-11

Use Permit UP-3-08/UP-7-11

Variance V-1-08/V-2-11

- A. The project shall comply with the Mitigation Measures set forth in the adopted mitigated negative declaration and adopted Mitigation Monitoring and Reporting Program.
- B. All grading shall be contained on the site and shall comply with the provisions of Brisbane Municipal Code (BMC) Chapter 15.01. A separate grading permit shall be obtained from the City Engineer as required per Brisbane Municipal Code Chapter 15.01. The approval of the original Design Permit by the Planning Commission and by the City Council on appeal shall constitute approval of the proposed grading per BMC Sections 15.01.081 and 17.32.220.
- C. Prior to grading or building permit issuance plans shall be subject to review and approval by the San Mateo County Environmental Health Services Division.
- D. Grading plans shall clearly specify trees to be retained and trees to be removed. Trees to be removed shall be minimized to the extent feasible. Trees to remain shall be protected in place shall be surrounded by mesh construction fencing establishing a 5-foot protection zone around each tree trunk. A licensed arborist shall be present during grading and construction operations adjacent to trees to ensure adequate measures are taken for tree protection, and to consult as to the extent of required tree removal along the northerly project boundary during clay cap installation.
- E. Prior to issuance of grading or building permits, project applicant shall incorporate into the project design stormwater site design, source control, and treatment measures to the satisfaction of the City Engineer and in accordance with Provision C.3 of the San Mateo Countywide municipal stormwater permit. All added or replaced roadway surfaces must be managed in accordance with the current municipal stormwater requirements. This includes incorporating site design measures to reduce impervious surfaces and maintain existing vegetation and drainageways, source control measures to address potential pollutant sources, and treatment measures to improve stormwater runoff quality before discharging to the Bay. As such, roadway, sidewalk, and path widths should be minimized to reduce impervious surface area and vegetation, whether in the median or along the sides of roads, sidewalks, or paths, should be designed to provide stormwater quality benefits. Vegetated stormwater treatment measures should be designed in accordance with countywide guidance and address issues associated with infiltrating stormwater runoff on a former landfill. Vegetation should also be selected consistent with Bay Friendly Landscaping Guidelines to minimize irrigation, pesticide, and fertilizer needs.

- F. Prior to grading permit issuance the applicant shall file a Notice of Intent to comply with the statewide General Permit for Discharges of Storm Water Associated with Construction Activities, and shall prepare a Storm Water Pollution Prevention Plan (SWPPP) for construction activities on the site. The SWPPP shall include all provisions of the Erosion and Sediment Control Plan submitted by the previous applicant. In addition to the regulatory requirements for the SWPPP, the site-specific SWPPP shall include provisions for the minimization of sediment disturbance (i.e., production of turbidity) and release of chemicals to the Bay.
- G. Prior to issuance of a building permit:
1. The site plan shall be revised subject to Community Development Department review and approval to:
 - (a) Include no fewer than 1,373 parking spaces;
 - (b) Show that abutting parking bays shall be separated by a planter strip with a minimum 4' wide area clear of vehicular overhang. As an alternate, such parking bays shall be reconfigured to accommodate tree wells every 6-8 spaces.
 - (c) Redesign the main (northerly) driveway entrance to include a minimum 4-foot wide median, consistent with the requirements of the Sierra Point Design Guidelines.
 2. Building elevations shall clearly specify all roof-mounted equipment shall be screened, and all such screening shall be architecturally integral with the buildings.
 3. Building elevations shall be revised to incorporate a trellis/canopy element at all building entrances to Community Development Department Director review and approval.
 4. The westerly garage elevation shall be revised to incorporate trellis/popout elements at the northwesterly corner, center and southwesterly corners to break the garage plane and roofline, subject to approval by the Community Development Director. A darker accent shall also be applied to the upper level of the garage to further deemphasize its appearance. Vehicular and pedestrian entries shall incorporate architectural enhancements to promote wayfinding.
 5. Final specifications regarding project materials, colors and finishes shall be subject to Community Development Department review and approval.
 6. The applicant shall demonstrate compliance with the City's Green Building Requirements (Municipal Code Chapter 15.80) to the satisfaction of the City's Green Building Compliance Official as defined in the City Municipal Code.

7. The applicant shall demonstrate adequate ventilation of parking structure to the satisfaction of the Building Official, including exterior exhaust fan termination as applicable.
8. Tentative Parcel Map TPM-1-08 shall be recorded.
9. The applicant shall obtain BCDC approval of Bay Trail improvement plans including but not limited to trail alignment and surfacing, benches, lighting and amenities such as interpretational signage and/or public art. Per the Sierra Point Design Guidelines provide a minimum 15-foot wide planting area between the public parking area and trail alignment.
10. Easements as deemed necessary by the Community Development Director in a form acceptable to the City Attorney shall be recorded for the provision of public access and use of the Bay Trail and related improvements in perpetuity, including public use of designated public trail access parking spaces.
11. Detailed water-efficient landscaping and irrigation plans shall be submitted for approval by the Community Development Department. The final landscaping plans shall be consistent with the plant list established in the Sierra Point Design Guidelines and incorporate the following:
 - (a) vegetated swales consistent with the stormwater controls for the site;
 - (b) berming or hedging to screen parking areas adjacent to Marina Boulevard;
 - (c) replacement of mature trees removed along the northerly project boundary to accommodate installation of the final clay cap.
 - (d) columnar trees along the west side of parking structure to help screen and visually soften the appearance of this structure.
 - (e) details regarding hardscape, lighting, fencing, street furniture and employee gathering areas, consistent with the Sierra Point Design Guidelines.
 - (f) details regarding how access to the emergency vehicle roadway along the north edge of the project will be restricted.
 - (g) an integrated pest management plan prepared by a qualified professional acceptable to the City of Brisbane to eliminate fertilizer and/or pesticide runoff into the Bay.
 - (h) Removal of invasive, non native plant species along the upland portion of the northerly project boundary to the extent feasible without impacting habitat values. A qualified biologist shall mark the limits of acceptable plant removal before such work commences.

- (i) Landscaping of the upland portion of the northerly boundary, using Bay native plant species to the maximum extent feasible and consistent with the requirements of mitigation measure BIO-1b.
- 12. The property owner shall enter into a standard landscape maintenance agreement with the City to the satisfaction of the City Attorney.
- 13. Exterior lighting plans shall be subject to Community Development and Police Department review and approval, and shall be consistent with the approved Sierra Point Design Guidelines.
- 14. The plans submitted for a building permit shall comply with the requirements of the Brisbane Municipal Code (BMC), the California Fire Code (CFC), the California Building Code (CBC) and the California Code of Regulations (CCR).
- 15. The applicant shall consult with the South San Francisco Scavenger Company to assure that the trash enclosure shall be of sufficient size to accommodate recycling receptacles, as well as trash dumpsters. Plans submitted for the building permit shall include trash enclosure details, relating its appearance to that of the building to the satisfaction of the Community Development Department.
- 16. Centralized mail facilities shall be provided to the specifications of the U.S. Postal Service.
- H. Prior to issuance of a Certificate of Occupancy, applicant shall submit for approval by the City Engineer an operation and maintenance plan for on-site stormwater treatment measures.
- I. Prior to issuance of a Certificate of Occupancy, Property Owner shall enter into and cause to be recorded on the property deed a Stormwater Treatment Measures Operation and Maintenance Agreement, which will serve as a signed statement by the Property Owner accepting responsibility for operation and maintenance of stormwater treatment measures until such time as the responsibility is legally transferred to another person or entity.
- J. Prior to September 1 of each year and until such time as a Certificate of Occupancy is issued, applicant shall submit a revised Erosion Control Plan detailing measures that will be implemented by October 15 to prevent sediment discharge in stormwater runoff during the rainy season.
- K. Any project phasing shall substantially comply with the phasing plan presented to the Planning Commission on December 18, 2008, with the exception that landscaped improvements along the entire Marina Boulevard frontage shall be included within phase 1 of the development. Phasing shall be designed to ensure that phase 1 can continue to operate in normal fashion during phase 2 construction so as not to impact adjacent properties.

- L. The required parking spaces shall not be used or converted to any other use that would impair their basic use as parking for motor vehicles per Brisbane Municipal Code Section 17.34.020.A.
- M. No signage is approved as part of this permit. A Sign Permit shall be obtained prior to the installation of any signs not otherwise exempt by the Municipal Code.
- N. Minor modifications may be approved by the Community Development Director in conformance with all requirements of the Municipal Code.
- O. The Applicant agrees to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside, modify, or annul the approval, permit or other entitlement given to the Applicant, or any of the proceedings, acts or determinations taken, done or made prior to the granting of such approval, permit or entitlement.
- P. Application for a Building Permit (via submittal of 5 sets of plans and payment of plan check fees) for the proposed improvements shall be made, and the improvements shall be completed to the satisfaction of the Building Official prior to granting of a certificate of occupancy.
- Q. An encroachment permit shall be obtained prior to any work within the public right-of-way.
- R. Staff and the applicant shall make a good faith effort to obtain emergency access vehicular rights for City of Brisbane emergency vehicles over the existing emergency access roadway at the south end of Sierra Point (within the City of South San Francisco).
- S. The applicant shall work with the City Engineer and Caltrans to restripe the northbound Sierra Point Parkway offramp from Highway 101 to convert the existing through/left turn lane to a shared through/left/right turn lane.
- T. Upon request of the applicant, the City Engineer will issue a "will serve" letter valid for that period of time the project is active, reserving the water supply for the project as determined in the Water Supply Assessment, subject to compliance with the mitigation measures set forth in the Mitigated Negative Declaration.
- U. The applicant shall have the option to either:
 - 1. install 4,500 square feet of photo-voltaic panels on the north half of the garage roof and decorative trellises on the south half of the garage roof; or
 - 2. install wind power equipment having the capability of generating wind power at least equivalent to the solar panels described in Option 1, subject to approval as to the capacity, design, and location of such equipment by the Planning Commission; or

- 3 install decorative trellises on both the north and south halves of the garage roof and make a cash contribution in the amount of \$360,000 to the City of Brisbane to fund off site renewable energy projects, as determined by the City.

In any case, the parking garage shall be pre-plumbed to accommodate the future installation of solar panels on the garage roof to the maximum extent feasible.

- V. The applicant shall make a good faith effort to work with the City of Brisbane and adjacent property owner to remove debris along the northerly and westerly project boundary.
- W. Five plug-in parking spaces shall be provided per floor of the parking garage, unless an alternate configuration is approved by the Community Development Department.