Downtown Revitalization Plan and Project Financing Agreement Frequently Asked Questions/Responses

August 2, 2011

Site Plan Questions

Where is the Project located?

The existing Desert Fashion Plaza is spread over 13 acres, located between North Palm Canyon Drive, Tahquitz Canyon Way, Museum Drive, Belardo Road, and Amado Road. The current development has more than 288,000 square feet of enclosed retail and circulation space, including 115,000 square feet of three former anchor tenants — Saks Fifth Avenue (50,000 square feet), I. Magnin (40,000 square feet), and Bank of America (25,000 square feet).

What is the new street configuration?

There would be a new connection between Palm Canyon Drive and the Palm Springs Art Museum, as well as a new reconnection of Belardo Road from Tahquitz through the project. In addition, the Project would reconstruct Andreas from Palm Canyon Drive to Belardo.

What are the special features of the plan?

The Project will contain a new state of the art multiplex movie theater. The renovated building along Palm Canyon (Block A-1) will have a new exterior facade; new buildings (Blocks A-2 and C) will be a mix of one- and two-story design with Class A retail and restaurant space. All streets will be finished with decorative interlocking pavers and no curbs and will contain submersible bollards that can be electronically raised so that interior streets and other areas can be used for special events and functions as needed; all new public areas will be enhanced with public art and sculpture to serve as a place for pedestrian activities and public functions.

In addition, the City would acquire all of the parking on the site and two “museum pads” to be conveyed to the City and would be open green space. There is also a provision for the creation of public restrooms within the project.

Is there sufficient public plaza space in the design?

The project proposes demolishing property at the most valuable corner – the 100% corner in downtown – and placing a public space at least 90-100’ deep there. The entire street grid created by the project and purchased by the City through the Project Funding Agreement will also be designed with landscaping, architectural shading and decorative interlocking pavers, and no curbs, to maximize its use for events. All of it will be available to be closed off for special events and public activities. Additionally, the new plan creates a 60’ x 140’ plaza along the pedestrian way from the corner to the center street. That also doesn't count the two "museum pads" to be purchased by the City which will be open green space for a long period of time.

Is there adequate parking for the Revitalization Plan?

The project also includes 1,061 parking spaces (282 at-grade, 670 below-grade, and 109 above-grade). A parking deck accessed from Museum Drive is located in the site's northwest corner. An underground parking garage extends from beneath the northern portion of the property to its southwest corner. Even at full build out of the plan, there is adequate public parking to serve the Project and the Downtown area.

Shouldn't the city study a larger traffic circulation pattern, such as the whole downtown, to include in the Plan?

There was a full EIR certified on the Museum Market Plaza Specific Plan in 2009, which is the basis for this Project. To undertake an examination of a larger study area would push this project scope beyond the boundaries of the Specific Plan, which would create problems from a consistency (and CEQA) perspective.

Shouldn't the new through-street to the Palm Springs Art Museum be pedestrian only?

The Specific Plan shows a vehicular street through to the museum. The new Andreas Road and the new Belardo extension are all vehicular: the intent is to re-integrate this block – which has been merged into a monolithic "superblock" – back into the downtown street grid. That requires full circulation, including vehicles. However, all streets in the Project will be designed with landscaping, architectural shading and decorative interlocking pavers, and no curbs, to maximize its use for events. All of them will be available to be closed off for special events and public activities, when needed.

How does the amount of proposed housing compare to the Museum Market Plaza Specific Plan?

The Revitalization Plan being proposed by Wessman actually includes three mixed use residential buildings, in Block D, E, and G. Those buildings would be built in future phases. Therefore, there could ultimately be several hundred residential units on the site: fewer than the "up to 900" residential units approved in the Specific Plan but nonetheless a significant and more feasible commitment to residential development.

How much space would the City end up owning?

The City would end up owning just over 50% of the surface land area on the site, or about 299,000 square feet. In addition, it would acquire another 85,000 square feet of parking garage and underground parking structures.

Community Participation Questions

What was the community participation and input into the Downtown Revitalization Plan?

In late 2010, as the City was considering eminent domain on the Desert Fashion Plaza, the City Council wanted to include a greater level of potential public uses, amenities, facilities, and services in the project than would otherwise be considered in any private development program or project. The Council felt a strong need for community participation and input.
To that end, the Council approved a community input process to occur during January and February. The City Council hired MIG, Inc. to conduct community design workshops to help determine the community "vision" for the mall. The first workshop held was held on January 26, and approximately 200 people attended. The 2nd and 3rd community workshops were held in February, with the final meeting the largest of the three.

What are the elements of the community plan?

The community plan was developed through the three community design workshops. What came out of those meetings were concepts and a plan that ended up bearing a tremendous resemblance to the Developer's plan. The two site plans were at least 80% the same in February, as the Developer incorporated input from the community workshops into his plan. Elements of the Community Plan included:

- East-West connection between Palm Canyon Drive and the Museum, as well as Belardo Road connection
- Open space plaza along Museum Drive
- Movie theaters could move "into" the northern part of the mall
- Museum expansion sites on either side of roadway, across from Museum
- New or remodeled retail space along Palm Canyon

Public Benefit Questions

When completed, what public benefits does the proposed Downtown Revitalization Plan provide to the City?

The public-private partnership that would facilitate the development of the Project would create public benefits in many different ways. These include:

1. Additional property taxes and sales taxes generated by the Project;
2. The elimination of blight at a key location in the city; and
3. Spillover benefits from the increased vitality and economic activity in the entire Downtown.

The two direct sources of public benefit are property taxes, most of which accrue to the

Redevelopment Agency, and sales taxes. It is estimated that in 2015, the year this Project is complete, the Project would produce approximately $369,000 in property taxes to the Redevelopment Agency. At full stabilization, this Project would produce over $400,000 per year in property taxes.

Additional property tax benefits would come with the development of the Phase II improvements on Blocks D, E, and G. Assuming they are completed by the "stabilization" year 2021, those buildings would produce an additional $430,000 per year in property tax revenue. Therefore, ultimately, the Revitalization Plan would produce in excess of $830,000 per year in property taxes for the Redevelopment Agency.

In terms of sales taxes, even at the current rate the Project is estimated to produce over $615,000 per year for the City. Any increased sales tax rate would also increase revenues from the project. If the rate happened to be increased by 1.0% sometime in the next five years, at stabilization the project would produce over $1,230,000 per year in sales taxes for the City. Under the Agreement with the Developer, there is no sales tax sharing and the City keeps all the revenue.

Additionally, the ultimate development of residential units in Phase II and Class A office space in the Downtown in the later part of Phase I and in Phase II will also help begin to shape Downtown into a true 24-hour community, where residents really can live, shop, dine, play and even work.

Wouldn't the increased tax revenue from the tenants of the Project's newly developed street-front square-footage alone able to pay for the roads, parking garages and public areas funded by the city?

While the taxes received as direct public benefits from the Project would be significant and welcome by the City, it is incorrect to say that the tax revenue from the Project's tenants alone would be able to pay for the roads, parking garages and public areas funded by the City. Even if the City's projections were accurate, the entire tax revenue stream would only support about $20 million in public investment. Remember that every previous Desert Fashion Plaza redevelopment proposal has had a shortfall between the "after-development value" and the cost to construct due to the difference in cost between building the Project and the value of the property based on those future rents.

Have other communities experienced benefits from similar projects?

It has been the experience of other communities which have undertaken major, transformative projects that the indirect benefits often exceed the direct benefits, even when the community retains all the tax revenues from the project itself. Communities have found that street reconstruction and public improvement projects also facilitate private investment in downtowns, with the downtown retail vacancy rate falling even with addition of new retail square footage, and that average rents increase significantly during that time. Downtown Palm Springs is actually beginning from a stronger economic base than many such communities, but a doubling of property values in the area, based on dramatically improved sales in the Downtown, is quite conceivable.

Other significant mixed-use projects find that their average visitor spends many times the national average per visit. The creation of a desirable shopping and entertainment destination combined with higher-end retail tenants is a formula for increased economic benefit area-wide.

Other spillover benefits of entertainment-oriented projects include new restaurants opening nearby and existing businesses showing increased sales. Most communities also found that their projects expanded the number and types of businesses and enhanced the economic vitality of the community, added additional housing to downtown, and reused underutilized or blighted areas.

What about job creation?

An investment of $80-100 million in the Phase I project would also create hundreds of construction jobs as well as hundreds of permanent jobs in the community.

<u>Financial Analysis Questions</u>

Was any retail marketing study provided to justify project?

The City and the developer have undertaken a number of retail assessments of the site over the past 8 years, using, among others, the Buxton Companies of Fort Worth, Texas, to identify potentially suitable tenants. Buxton is one of the country's leading retail analytics firms. In addition, the developer is undertaking a comprehensive retail branding effort as part of this project. It is the experience of the City and developer that there is significant quality tenant interest in the site and location – what has been lacking is a feasible project with an actual timetable for completion.

Why does this developer have such a large gap?

The City's economic consultant, Keyser Marston Associates (KMA), has estimated that the Project requires approximately $45 million in economic incentives or support. The feasibility shortfall is due to the difference in cost between reconstructing or tearing down and building a new center, and the value of the property based on future rents.

Weren't other developers able to propose projects without City funds?

Every previous Desert Fashion Plaza redevelopment proposal had a shortfall between the "after-development value" and the cost to construct.

Why did KMA use the developer's assumptions to calculate Net Operating Income (NOI)? Why didn't KMA do their own analysis and reach their own assumptions?

The estimated construction costs were determined by KMA to be reliable for the proposed project, but there were differences in other assumptions, and KMA used their own analysis to calculate NOI and arrive at their estimated gap. KMA determined the hard cost numbers to be on the high side of the range. The significant differences were in the soft cost assumptions, the financing cost assumptions, and the after-construction valuation assumptions to arrive at their number. KMA used their own analysis to arrive at their estimated gap.

Wouldn't the prime street frontage in the Project provide the Developer with enough income to pay for the entire Project, allowing the City to recover the funds it commits through tax revenues from the tenants renting the thousands of square-feet of what are now vacant buildings?

This is incorrect. Every previous Desert Fashion Plaza redevelopment proposal has had a shortfall between the "after-development value" and the cost to construct. The after-development value is determined by calculating all of the projected rents less operating expenses and multiplying by a factor that determines the economic return of those funds. The feasibility shortfall described above is due to the difference in cost between building the Project and the value of the property based on those future rents.

Are projected rents in the pro forma significantly above current market average for Palm Canyon Drive, or are they comparable with other new Class A space? Where is other Class A space located?

The only comparable Class A space in Palm Springs is in Plaza Mercado. Other new shopping centers in town, Smoketree Commons and The Springs, are Class A but not comparable locations. Other Class A space in the Valley would be new development on El Paseo, which commands higher rents than in Palm Springs. The projected rents for this project are in line with Plaza Mercado, which is known (Wessman owns both properties) – but the risk to the developer is that Mercado has much less space than the mall, and nearly all of it is on Palm Canyon Drive. This center has retail space on Palm Canyon, but also on the new Museum Way, on Andreas, on Belardo, and even facing an interior courtyard. The common experience in downtown is that these types of retail space tend to receive less rent than Palm Canyon Drive frontage, and that the blended rents would be more in line with the overall downtown average.

Does the $43 million in City funding (to acquire assets and construct improvements) make the Project a "go?"

The introduction of public financing reduces the amount of debt and equity the developer needs to produce a return on and therefore increases the return to a market return. The Agreement provides that the Developer would move forward with the Project at that economic return.

If the Project would only receive a rate of return of 4.5%, versus a market demand of 9.5%, would the Project be able to attract any solid and attractive financier or developer?

As mentioned above, every previous Desert Fashion Plaza redevelopment proposal has had a shortfall between the “after-development value” and the cost to construct. It would be true in this project even with a different developer. The feasibility shortfall is due to the difference in cost between rebuilding the center or tearing down and building a new center and the value of the property based on future rents. The low natural return on the project has been an impediment to its redevelopment for nearly 15 years: the City participation in this instance would cause the Project to move forward.

Since the $43 million is slightly higher than 50% of the $81 million Keyser Marston estimated for the complete project construction costs, is this a reasonable amount?

The more accurate number is in excess of $100 million as the true development cost because the $81 million development cost estimate does not include the land acquisition cost borne by Wessman ($17 million paid for it in 2001), nor any tenant relocation or lost income from current tenants, all of which are project costs. When all the project costs are totaled, the City’s share of the overall costs will be closer to 35% than 50%, and most of the City’s costs are in the realm of constructing public infrastructure, acquiring new open space, or acquiring public parking spaces. The requested assistance is also comparable, as a percentage of overall project costs, to the two previous owners’ redevelopment proposals.

In comparing this Project to those in other cities, are there any current comparables that are underway since 2010, and not those done during a period of high real estate valuations?

The River, which is a close-by project, was mentioned in the narrative in section on other projects. Rancho Mirage spent about $16 million on acquisition and we understand they spent several million in additional funds for the project. However, most of that acquisition was done 12 or 13 years ago before real estate prices really escalated. Many of the projects described in the staff report, such as Long Beach and Roseville, were also done around the same time – 10 years ago. Unfortunately, there are not a lot of projects being developed today, though the use of other projects done during the “period of high real estate valuations” doesn’t necessarily affect the fundamental analysis of this project. First, as mentioned above, the KMA analysis isn’t derived from any comparable on any other project (like an appraisal may), and their number shows a significant gap even *excluding* land cost. Plus, one positive effect of “high real estate valuations” in project pro formas is higher anticipated rents, which increases the after-construction value of the project and potentially reduces the gap.

<u>Agreement Questions</u>

Why would the City purchase land from Wessman for so-called future use if the Museum is prepared to acquire land for expansion through its own capital campaign?

The acquisition of the parcel for Art Museum purposes is a long-term strategy. First, it provides a way for the City to help improve the feasibility of the Project; second, it removes from the private development equation a difficult-to-develop parcel based on its distance from Palm Canyon; third, it preserves the right of the City and Museum to control the mass and quality of the development that would occur there; fourth, both parcels would remain as green open spaces for the foreseeable future; and, fifth, ultimately the Museum would probably only develop on one or the other parcels, and not both, giving the City an opportunity to find an additional user or keep the valuable open space. The Museum's priorities over the short- and medium term are the development of the Santa Fe Savings Building at 300 South Palm Canyon Drive into a museum asset.

What happens should Mr. Wessman be incapacitated?

The Wessman Development Company and Wessman's estate would bear the responsibility for completing the project. It is not dependent solely on John Wessman, the individual.

Several phrases in the documents use terms such as "substantial" and "reasonable." Are these typical?

"Substantial" and "reasonable" are common terms in these agreements.

The developer retains a Right of First Refusal for Blocks H1 and H2: "…at any time in the future…" Does this mean forever, since there is no time limit defined for this?

The parcels are to be acquired by the City for "public" or "cultural" use, such as the museum expansion, which is in the City's authority to acquire and develop. Such a provision is not much different than a right of reverter that the City would grant to the owner if it acquired the property under eminent domain. If the City instead chose to sell the property for a commercial use – or a use other than the use described in the agreement – the seller and the current owner of the adjacent property would have the most vested interest in acquiring it.

Why was the Art Museum singled out for special treatment? Would the City consider using the land it acquires in the Fashion Plaza redevelopment for another non-profit?

The acquisition of the parcel for Museum benefits the City and the Project as much as the Museum. Not only does the acquisition provide a way for the City to help improve the feasibility of the Project and reduce the "superblock" problem in the Project because of its distance from Palm Canyon, it preserves the right of the City and Museum to control the mass and quality of the development that would occur there. Not only is the Museum a significant regional cultural asset located in Downtown, the City's ability to help the Museum expand and thrive in its current location will pay economic dividends for the Project itself and the Downtown as a whole.

Both parcels would remain as green open spaces for the foreseeable future, and even when they decide to develop, the Museum would probably only develop on one of the parcels. At the point the Museum moves forward with the development of one of the parcels (under a separate agreement with the City), the City would have an opportunity to find an additional user – probably another cultural use -- or keep the valuable open space.

Is there a requirement for any type of "Performance Bond" on the developer's part?

The default provisions and the personal guarantee provisions accomplish the same goal.

If the developer fails to provide funding for its share of the construction, does this financing failure trigger default or would the city be forced to extend the timeline?

Such an event would trigger a default and the City would be entitled to its remedies. Defaults do not automatically move the milestone dates. The schedule can only be moved by mutual agreement of the parties, but the Agreement can be modified when all parties agree.

Shouldn't the developer be required to deposit into escrow due diligence such as proof of leasing, development fees, etc.?

Wessman is the managing general partner of Palm Springs Promenade, LLC. It is not a new LLC but was the entity that purchased the mall in 2001. Wessman, as the managing partner, is providing a personal guarantee for the potential shortfall amount out of "non-LLC assets." It is somewhat unusual for a public entity to be able to pierce an LLC's liability protections and receive a personal guarantee from the principals, but this agreement accomplishes that. Failure of the project – a default – would allow the City to acquire the remaining balance of the project from Wessman or call the personal guarantee to be able to complete the improvements.

The Agreement contains a personal guarantee that would be "…secured by a pledge of unencumbered real property…" Does the developer indeed possess such "unencumbered" real property?

The developer personally, and as a corporate entity, actually has significant net worth. Much of the real property owned by the developer is free and clear, and the developer has undertaken a number of asset sales over the past few years to further "deleverage" properties in the portfolio. Even the Desert Fashion Plaza itself is free and clear.

What is the timing and sequence of when the parcels the City plans to acquire will be transferred into City ownership and when monies will be disbursed from the Acquisition Escrow?

The City shall acquire title to the acquisition parcels at the close of escrow, when the $32 million dollars has been placed into the project improvement fund. In this way, when the City undertakes the improvements on streets and the parking structures, it is improving its own property, not property owned by a private developer.

Shouldn't Wessman just give the City the properties developed as public right of way?

It has been suggested that normally in a development project the developer would dedicate the streets to the City. The City can only require dedication of general plan streets, and these are not. In addition, the cost of developing these streets – on land that had previously been buildings, or worse, parking structures – is extraordinarily high.

Eminent Domain Questions

Doesn't the Developer have a history of not moving to redevelop the property?

Since 2002, the developer has proposed at least four, and as many as six, previous projects on this site, depending on how different versions of site plans are counted. The Desert Sun has run stories on all of them, and most of them ran into some form of community opposition. This plan has been the best-received because of reduced height and density.

Will Council vote to keep eminent domain on the table?

The City Council considered the use of eminent domain in 2010 because the developer had not produced a financing plan for the development of the Specific Plan project. While all parties agreed in February to work on a deal to move the Revitalization Plan forward, Council made it clear that negotiations were to be "dual track," meaning that the City or Agency would have the option of returning to the eminent domain process if the parties failed to reach an agreement on the Project. The Agency eminent domain action remains on the Agenda as an alternative if the negotiation of an Agreement falls apart.

Why wouldn't the City just use eminent domain to avoid all of the costs of acquiring the street, open space and parking in the Project? Wouldn't that save money?

These questions overstate the power of eminent domain, and seem to suggest that using eminent domain would allow the City or Agency to acquire the property at no cost. In fact, quite the opposite is true: no government entity can "take" the property without compensating the owner the actual fair market value. In addition, the City can only use eminent domain for a valid public purpose such as streets or parks, and not for furthering private redevelopment (though the Redevelopment Agency can).

Given the magnitude of the likely price, the source of the funds would either have had to be another developer or through some sort of tax assessment. Staff estimates that the total amount necessary to acquire the property and develop the street infrastructure and major public asset (cultural center, gathering spaces) to be at least $40 million and probably more.

As a public agency, the City would also have had to pay relocation costs to the tenants displaced by the mall demolition. Some tenants, such as California Pizza Kitchen, pay substantial rent and still have term on their lease. Others are on shorter leases or on month-to-month but would still be entitled to some relocation expenses.

Even so, wouldn't it be better to acquire the whole property under eminent domain rather than own a portion of it?

The argument that "owning the entire parcel" is worth more than only acquiring the public portions, since the City would be able to sell off pads for private development and therefore reduce the net cost (or even make a profit) is actually not supported by the City's own economic analysis, which determined that the private development of the project would have a feasibility gap of $25 million, even with land cost at zero. That means that the potential sale of such a parcel to a developer would likely have to come with a subsidy from the City rather than any significant payment for the land.

Isn't it true that while the developer says he cannot function or find financing with this "threat" hanging over the project, he still can?

In the current commercial real estate financing environment, any uncertainty in a development deal makes financing more difficult. The project must contend with an uncertain economic climate nationally and at the state level, and the projected rents already do not support the amount of investment necessary to complete the project. Add to that a City's legal threat to compel an involuntary sale of the property, at whatever stage of the project or in whatever condition it happens to be in, at an appraised value, and it is difficult to see any lender or equity investor coming forward with construction funding for the Project.

Is it true that should a more significant developer come into the picture and the project not be making progress the council can rescind the eminent domain writ?

Once an eminent domain action is approved the City must proceed with acquiring the property: it cannot use such an action as something "hanging over" the head of a developer, or it may be liable to an "inverse condemnation" action brought by the owner. Even if the City/Agency were to go through the eminent domain process and obtained immediate possession of the property, however, no developer would come forward to develop the project until: (1) all claims with the owner (Wessman) were settled and there was no outstanding issue on potential valuation; or (2) the City/Agency indemnified the future developer from any risk of an adverse action on the part of the court, such as an increased price.