



COMMUNITY DEVELOPMENT BOARD

PLANNING AND DEVELOPMENT DEPARTMENT

STAFF REPORT

MEETING DATE: September 16, 2014
AGENDA ITEM: F.1.
CASE: DVA2014-07005
REQUEST: Review of, and recommendation to the City Council, of the second amendment to the first amended and restated Development Agreement between K & P Clearwater Estate, LLC (the property owner) and the City of Clearwater.

GENERAL DATA:

Agent..... J. Paul Raymond, Esq., and Macfarlane, Ferguson & McMullen.
Applicant / Owner..... K & P Clearwater Estate, LLC.
Location..... 100 Coronado Drive; directly south of Pier 60 between Coronado Drive and South Gulfview Boulevard, north of Second Street.
Property Size..... 2.75 acres
Future Land Use Plan..... Resort Facilities High (RFH)
Zoning..... Tourist (T) District
Special Area Plan..... *Beach by Design*; Beach Walk District
Adjacent Zoning.. North: Tourist (T) District
South: Tourist (T) District
East: Tourist (T) District
West: Open Space/Recreation (OS/R) District
Existing Land Use..... Vacant (overnight accommodations approved and site plans under permit review).
Proposed Land Use..... Overnight accommodation use of a total of 450 rooms (163.6 rooms/acre) and a maximum of 37,000 square feet (0.31 FAR) of amenities accessory to the hotel.



ANALYSIS:

Site Location and Existing Conditions:

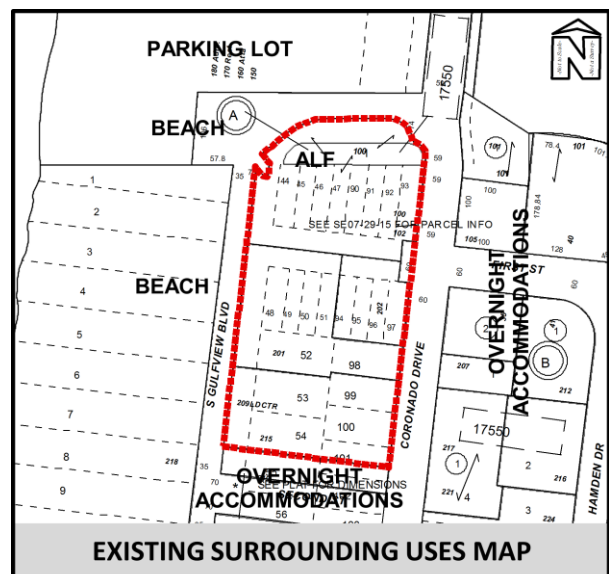
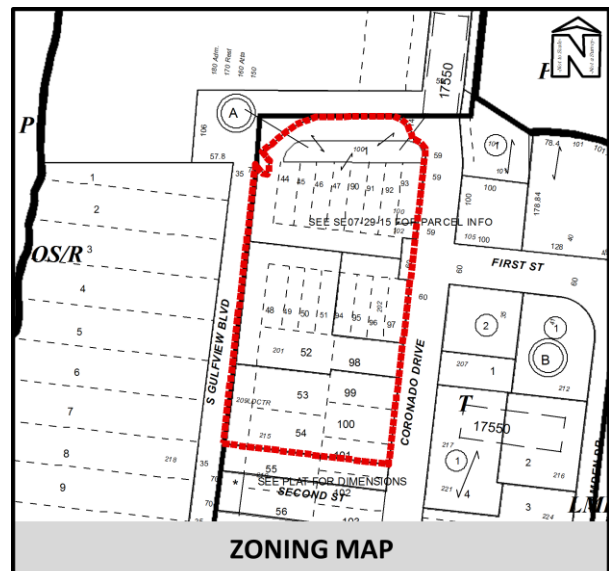
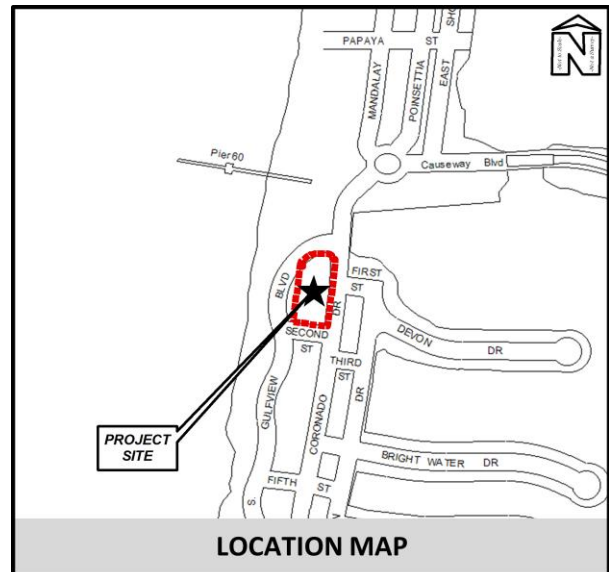
The 2.75-acre subject property is located directly south of Pier 60 between Coronado Drive and South Gulfview Boulevard, north of Second Street. While the subject property is currently used as a temporary public parking lot, it was previously developed with various motels (Days Inn, Beach Towers Motel, Spyglass Motel and Golden Beach Motel) and numerous retail sales and restaurant uses. The overall property includes several vacated and dedicated rights-of-way.

Site History:

The subject site has been the subject of three Level II Flexible Development applications, and four Level III Applications for a Development Agreement with subsequent amendments. The history of the site as related to the current request is provided below.

Level II Approvals:

- On October 19, 2004, the Community Development Board (CDB) approved a Flexible Development application for the construction of a 350-unit hotel with associated amenities and 75 attached dwellings as a mixed-use development (FLD2004-02013).
- On May 17, 2005, the CDB approved a Flexible Development application (FLD2004-02013A) amending the prior project to modify the location of an elevated pedestrian walkway over South Gulfview Boulevard.
- On October 21, 2008, the CDB approved FLD2008-05013. This application consisted of a “resort hotel” containing 250 overnight accommodation rooms and 200 interval ownership/ timeshare rooms – a total of 450 rooms (163.6 rooms/acre on total site) with 250 rooms being granted to the project from the Destination Resort Density Pool, and a



maximum of 37,000 square feet (0.31 FAR on total site) of amenities accessory to the hotel at a height of 150 feet (to roof deck). Also included with the application was the vacation of the former pedestrian bridge landing area right-of-way on the northwest corner of the site and the dedication of additional right-of-way at the intersection of S. Gulfview Boulevard and Coronado Drive.

- On November 13, 2013 the Community Development Coordinator approved a request for a minor revision to the site plan approved as part of FLD2008-05013, above. The minor revisions included the following:
 - Ballroom/Banquet Facility: The ballroom remains in the same location, but the height of has been reduced by 22 feet. The spa that was previously located above the ballroom has been relocated to the 'Connecting Element' that connects the two towers.
 - Connecting Element: This building massing has been setback approximately 30 feet from Coronado Drive. This building component was also reduced in height by 47 feet.
 - Building Podium: The building podium between the towers in the approved design is four levels above Beach Walk, at a height of approximately 38 feet – with the pool deck located on top of the raised platform. The proposed design has reduced the podium structure between the towers in height. The top of the podium/pool deck is now approximated five feet above Beach Walk. The half level separation from Beach Walk to the pool/amenity deck and restaurant is accessible by way of flanking sets of steps as well as a set of flanking ADA compliant ramps.

Level III Approvals:

- On February 17, 2005 the City Council approved a Development Agreement (DVA2004-00001) authorizing the following:
 - Use of 250 hotel rooms from the *Beach by Design* Destination Resort Density Pool;
 - Maximum building height of 150 feet;
 - Vacation of a portion of the right-of-way for Gulfview Boulevard between Coronado Drive and proposed Second Street;
 - Vacation of the First Street right-of-way between Coronado Drive and Gulfview Boulevard;
 - Dedication of right-of-way for proposed Second Street between Coronado Avenue and Gulfview Boulevard; and
 - Dedication of right-of-way for Coronado Drive between proposed Second Street and Gulfview Boulevard.
- On March 16, 2006, City Council approved an amendment to the above Development Agreement (DVA2004-00001A), which dealt with issues associated with Beach Walk construction and the timing of the dedication of land for Relocated 1st Street (to be known as Second Street once constructed), as well as for the construction of Relocated 1st Street.
- On December 18, 2008, the City Council approved an amended and restated Development Agreement (DVA2008-00001) as associated with FLD2008-05013. In addition to addressing those elements directly associated with the new development approval, the amendment also reestablished the "Effective Date" of the Development Agreement – extending the overall

life of the agreement until April 2019, but more importantly extending the developers deadline to commence construction until February 11, 2012.

- On January 12, 2012, the City Council approved an amendment to the above Development Agreement (DVA2008-00001A). The amendment clarified that the applicant is no longer seeking interval ownership/timeshare use for the units/rooms, provided a breakdown of the floor area dedicated to meeting space and added language to three sections of the Development Agreement stating that the applicant is requesting an extension of the Effective Date from February 11, 2009 to on or about February 11, 2012. Based upon this change, the applicant shall have an additional three years during which they must commence construction or lose the 250 overnight accommodation units having been received from the Destination Resort Density Pool.

Development Agreement:

The proposed amendment to the Development Agreement does not have a companion Level I or II development application, as the previously established parameters for the development are not being altered through this amendment. The primary purpose of this amendment is to clarify that certain obligations of the City and the Property Owner have been completed or otherwise satisfied, reinstates the inclusion of time share units, clarifies certain language and changes the Commencement Date.

The Development Agreement will be in effect for a period not to exceed ten (10) years and includes the following main provisions and amendments:

- Section 1.01
 - Paragraph 14: Reverses the deletion of this paragraph in the most recent amended Development Agreement (DVA2008-00001A) to reinstate the applicant's intent to establish a maximum of 200 time share units. The most recent amendment provided that the Applicant was no longer interested in interval ownership/timeshare usage;
 - Paragraph 16: provides a clarification differentiating between the 250 hotel units allocated from the Destination Resort Density Pool and those units designated as Interval Ownership;
 - Paragraph 29: Adds a specific unit count of 450 units to the sentence, "Resort Hotel Units means both Interval Ownership Units and Hotel Units."
 - Paragraph 34: Adds a new paragraph which clarifies what a "Timeshare Interest" is, allows that such units may be created and sold, the timeframes in which such units may be used, specifies that the creation of such units requires no further City approval and that a mixed use project (consisting of both hotel and timeshare units) is permitted.

- Section 2.03
 - Paragraph 1
 - Subparagraph c: The specific number of allotted units (250) is deleted and adds the inclusion of an Exhibit O which provides detailed descriptions of the amounts and types of provided amenities.
 - Subparagraph d: This clarifies that the area of the building labeled as “Timeshare” is where the Interval Ownership units are located.
- Exhibit C: Relates to Sec. 2.03 Paragraph 2 and basically adds a section to the beginning of the exhibit which provides that as long as the Resort Hotel is operated in accordance with the standards of the Wyndham Grand Resort that the requirements of Exhibit C are met. It also provides that the Interval Ownership Units will meet those same standards.
- Commencement Date: the Commencement Date throughout the document is moved to February 15, 2015.
- Section 3.03
 - Paragraph 2: This section was amended in the last version of the DVA and is amended again here to reference the fact that this is the second amendment, to provide a date certain (September 12, 2018) that the City agrees to reserve required capacity (the most recent version simply provided a three year time frame where this version is for three years seven months - February 15, 2015 to September 12, 2018) and the effective date is deleted since an effective date is provided elsewhere.
- Section 5.03
 - Paragraph 10: This is a new paragraph and provides that a Quit Claim Deed and Exhibit K, held in escrow, will be provided to the Developer when construction starts. Exhibit K contains an acknowledgement that all conditions with regard to right-of-way vacations have been met.
- Preliminary Plans/Exhibit B
 - The applicant proposes to substitute the site plans previously attached to the Development Agreement with the site plans approved by the CDB (FLD2008-05013) and subsequently amended through a minor revision on November 13, 2013 (outlined in the Site History section of this report, above).
- Section 5.04
 - Paragraph 7: This section was deleted in the last amendment and is largely, although not exactly, reinstated here. It provides that there will be shared use agreement with regard to various spaces, amenities and common areas which may be jointly used by occupants of the hotel units and timeshare units. It also provides that the Hotel and Timeshare components may be operated by more than one operator.
 - Paragraph 10. This provides an acknowledgement from the City that the Developer has met the requirements of the Performance Assurance Milestones.
 - Paragraph 11: This is a new paragraph and adds the aforementioned new Commencement Date of February 12, 2015.

➤ Section 16.01

▪ Paragraph 1

- Subparagraph f: this is a new subparagraph and it provides that a transfer of ownership to any mortgage lien holder due to a foreclosure or similar event does not require the consent of or notice to the City.

The Community Development Board (CDB) has been provided with the most recent Development Agreement.

The City Council may enter into Development Agreements to encourage a stronger commitment on comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, and to reduce the economic cost of development. The CDB is required to review the proposed Development Agreement and make a recommendation to the City Council.

SUMMARY AND RECOMMENDATION:

The Development Review Committee (DRC) reviewed the application and supporting materials at its meeting of September 4, 2014, and deemed the development proposal to be legally sufficient to move forward to the Community Development Board (CDB), based upon the following findings of fact and conclusions of law:

Findings of Fact:

The Planning and Development Department, having reviewed all evidence submitted by the applicant and requirements of the Community Development Code (CDC), finds that there is substantial competent evidence to support the following findings of fact:

1. That the 2.75-acre subject property is located directly south of Pier 60 between Coronado Drive and South Gulfview Boulevard, north of Second Street;
2. That the subject property is located within the Tourist (T) District and the Resort Facilities High (RFH) Future Land Use Plan category;
3. That any development proposal on the subject property is subject to the requirements of *Beach by Design* and the Design Guidelines contained therein as the property is located within the Beach Walk character district;
4. That the subject property is subject to a vested Level II Flexible Development application (FLD2008-045013) approved by the CDB on October 21, 2008 with conditions and as amended through a minor amendment on November 13, 2013 with no change in any condition;
5. That the subject property is subject to a Development Agreement (DVA2008-00001) as amended (DVA2008-00001A);
6. An amended Development Agreement (DVA2014-07005) must be approved by City Council;
7. That the proposal is to construct a Destination Resort Hotel and is subject to the approved site plan (FLD2008-045013) and Development Agreement as amended (DVA2008-00001 and DVA2008-00001A);

8. That the site is currently used as an off-street parking facility and that site plans have been submitted for site work as consistent with the approved site plan associated with FLD2008-04013;
9. The proposal includes no material changes to the approved site plan and/or Development Agreement, as amended, with regard to landscaping, setbacks, height, parking or FAR; and
10. There are no active Code Compliance cases for the subject property.

Conclusions of Law:

The Planning and Development Department, having made the above findings of fact, reaches the following conclusions of law:

1. That the amendment to the previously approved Development Agreement complies with the standards and criteria of Section 4-606, Community Development Code;
2. That the amendment to the previously approved Development Agreement is consistent with and furthers the Visions, Goals, Objectives and Policies of the Comprehensive Plan; and
3. That the amendment to the previously approved Development Agreement is consistent with the Visions, Goals, Objectives and Policies of *Beach by Design* and the Beach Walk character district.

Based upon the above, the Planning and Development Department recommends the **APPROVAL** of, and recommendation of same by the Community Development Board to the City Council, of the second amendment to the first amended and restated Development Agreement between K & P Clearwater Estate, LLC (the property owner) and the City of Clearwater for the property generally located at 100 Coronado Drive.

Prepared by Planning and Development Department Staff: _____
Mark T. Parry, Planner III

ATTACHMENTS: Photographs