



City of Sunnyvale, Article 6 Developer Review Data Request of Evidence

Date: November 9, 2015

To: Deanna Santana, City Manager
City of Sunnyvale

From: Scott P. Johnson, CPA – Partner, MGO Advisory Services

RE: Data Documentation Request for Evidence per Article 6.1 - Changes in Developer

Criteria:

Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, retail, residential projects of similar size, scope and nature involving a mix of national, regional and local tenants, (ii) has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed use real estate, to timely commence and complete the construction thereof, (iii) possesses a good business character and reputation, and (iv) has prior development projects and an operating presence in California. Developer shall provide reasonable evidence to the Agency demonstrating the proposed transferee's satisfaction of the foregoing criteria.

Request from Developer:

Article 6.1

(i) and (iv) Criteria:

Developer has the experience in and has completed major mixed-use commercial, retail, residential projects of similar size, scope and nature involving a mix of national, regional and local tenants; and has prior development projects and an operating presence in California.

Methodology:

MGO will prepare a matrix and populate by documenting the following:

- a. Review the Developer's website and/or perform online research to obtain pictures, addresses and other evidence of their previously completed mixed-use and major commercial development projects, (due to time constraints, we will be looking at approved applications only), noting the number of total developments;
- b. Request from developer the following for each project for a total of three or more projects:
 - i. Obtain references from at least three clients, within the last five years, with a focus on mixed use projects of equal scale/similar size to Town Center. MGO will develop questions and conduct the interviews with references.
 - ii. Request for information for no more than three projects:

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- a) Location/address of past mixed use projects of similar size, scope and nature involving a mix of national, regional and local retail and entertainment tenants centered around a pedestrian oriented street.
- b) Square feet of commercial/retail space.
- c) Number of housing or rental units.
- d) Name of anchor retail and/or commercial tenants (make phone [or if local, in person] inquiry of no more than three major tenants).
- e) Property management firm employed at start of project's operation (phone interview with property manager).
- f) Provide each Project's implementation timeline.
- g) Did any of these projects include any RDA, sales tax sharing agreements, TIF agreements or any other public financial contribution? If so, indicate specific provisions of agreements.
- h) Provide information on any community benefits provided by the developer for each project.
- i) Resume for project manager for Sunnyvale Town Center.
- j) Organizational chart or other documentation describing the organizational structure of the developers.
- k) Business roles and financial interests of the partners, and description of how decision-making authority is delegated.
- l) CEQA challenges and outcomes.

Request from various Cities: Obtain the above development projects' Entitlement records from respective Cities, and review name and type of businesses seeking occupancy in the retail and commercial sections of the completed project; assess consistency with project information supplied by Developer. Prepare results in a matrix.

- Past Development project's Entitlement Records and review name and type of businesses seeking occupancy in the retail and commercial sections of the completed project.
- CEQA challenges and outcomes.
- Information regarding the tenants in the projects, especially those tenants that did their own tenant improvements and interacted with the City.

Contact the Chamber of Commerce and/or the city/county's Economic Development department to find out how many local businesses lease/rent space in the development at its inception and five years later. If time allows, we will contact Planning, Building departments to inquire about entitlement processes, working relationship with staff, responsiveness to Council and community concerns, but we anticipate uncovering this information through public records such as city council staff reports, and planning commission meeting minutes. Although interviews are preferable, due to the time-sensitive nature of this project, we will rely heavily on public records.

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(ii) Financial Capacity Analysis

Article 6 Criteria: Determine if the Developer has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed use real estate, to timely commence and complete the construction thereof (developer entity and all individual principles of the entity).

Methodology:

To determine if the developer has adequate financial capacity, we will perform a fiscal review of the proposed Developer's financials to determine adequate financial capacity by looking at the proposed Developer's solvency as well as its liquidity. We will also obtain two references from two lending institutions with substantial experience in California mixed use real estate.

We will collect the following from the Developer and/or its financial institutions:

- Most recent five (5) years audited and/or interim financial statements, tax returns and any other financial data provided by the developer's Certified Public Accountants.
- References of at least two lending institutions with substantial lending experience in California mixed use real estate to show developers' financial capacity (from past projects).
- Contact information of current lending institutions.
- Request from Bank/Financial/Lending Institutions - Request for Developer's credit reports from two of three major national credit reporting agencies.
- **Developer to provide** the following:
 - a. Intended vision for each of the assets being acquired; such as land uses, timing of commencement of construction, level of investment, etc.
 - b. A statement in writing of its ability and willingness to use best efforts to carry out the obligations in the DDA in a timely manner. 6.1bii
 - c. Evidence demonstrating that it has and is committing the necessary financial resources to (a) Purchase the asset at closing and (b) construct the contemplated development. If property sale is to be phased, please indicate phasing schedule and financing for each phase.
 - i. What conditions, if any, may be attached to the transfer or assignment of each phase of the project?
 - ii. Please state all conditions upon which the assignee does not close and go forward with all or portions of Town Center.
 - iii. For the implementation of Town Center to proceed, what actions will be requested of the City Council and/or the Oversight Board?
 1. Address by component: office, residential, built retail and to be built retail. Examples might be: amendment to ADDOPA, approval to open the residential as apartments, approval to allow office uses in the retail, approval to delay the timing of the phase to be built retail until the direction for the Macy's property is known. If so, please explain.

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2. Are any of these actions by the City Council and/or the Oversight Board a condition for the assignee to close and take possession? If so, please explain.
- d. Stated total amount of capital accessible by Bidder for this transaction and anticipated sources of equity and debt. How much of funding is expected to be provided by Bidder?
- b) If Bidder is LLC or purchaser will be a LLC (or some other legal entity other than the Bidder):
 - a. Members of the LLC (or other legal entity) need to be identified.
 - b. Confirmation in writing from the members that they are legally bound to fund the obligations of LLC (or other legal entity).
- c) If Bidder is Developer that typically participates with an equity investor that funds the majority of the equity requirement:
 - a. Identify equity investor
 - i. Confirmation in writing from equity investor that it is committed to fund the obligations of the Bidder (Commitment letter must explicitly confirm the level of commitment to the City)
- d) If Bidder is foreign national, provide comparable data, information and generally accepted audited financial statements.
- e) Demonstrate that the Bidder has financed comparably sized projects by describing recent or current projects and how the projects are comparable to Town Center.
- f) The role of the Bidder should be provided in the description:
 1. Developer/owner and percentage ownership
 2. Builder/ General Contractor
 3. Advisor to owner
 4. Other
- g) Total project costs and date. Detail the amount and sources of capital and any other pertinent information, such as, equity investor and lender. Disclose how much of funding was provided by Bidder.

To assess financial capacity, we will conduct a trend analysis of following liquidity, solvency, and leverage ratios:

- **Liquidity Ratios** are used to determine a company's ability to pay off its short-term debt obligations. Generally, the higher the value of the *ratio*, the larger the margin of safety that the company possesses to cover short-term debts.
- **Solvency Ratios** measure a company's ability to meet its debt and other obligations. The solvency ratio indicates whether a company's cash flow is sufficient to meet its short-term and long-term liabilities.
- **Leverage Ratios** look at how much capital comes in the form of debt (loans) or assesses the ability of a company to meet financial obligations.

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Liquidity Ratios:	Solvency Ratios:	Leverage Ratios:
Accounts Payable Aging Indicator	Debt to Assets Ratio	Interest Coverage Ratio
Liquid Funds Indicator	Cash Flow from Operations to Total Liabilities	Debt to Equity
Acid Test/Quick Ratio		Debt Service Coverage
Net Income Ratio		Debt Service Coverage, pro forma
Current Ratio		
Days Cash on Hand		

Our report will provide a summary of a five-year trending along with a dashboard of these indicators to rate the strength/weakness of each ratio highlighting any red flags that may be evident of financial risks.

(iii) Developer Reputation Review

Article 6 Criteria: Developer possesses good business character and reputation.

To assess whether the developer (transferee) possesses a good business character and reputation, we will collect documentary or testimonial evidence on the following:

- a. Obtain references from at least three clients, within the last five years, with a focus on mixed use projects of equal scale/similar size to Town Center.
- b. Contact Secretary of State to ensure the firm is registered, identify the LLC structure and partnership information, and to ensure there are no pending legal actions against the firm. This information is contained in the Secretary of State's files, which we will review electronically or on-site.
- c. Contact Department of Consumer Affairs, Contractor's Licensing Board (if applicable) to ensure there are no pending disciplinary actions against the firm. Should we discover judgments, MGO will copy case number, claim, and final disposition. The City Attorney may then use LexisNexis if they require more information than provided.
- d. Perform a credit check, including any criminal and civil actions against the company; (data request submitted to the bank, request credit check from two national credit agencies). We will conduct a credit check on the individuals within the LLC to the extent we do not violate the Fair Credit Reporting Act.
- e. Interview two to three current and previous clients over the past five years to obtain an understanding of the firm's character and reputation; obtain references from at least three clients with projects of equal scale/similar size to Town Center.
- f. Contact the firm's financial institution and identify any potential negative relationship between the bank and the firm;
- g. Perform a review of county court records in the Bay area and Silicon Valley region for possible negative history, such as pending litigation and/or prior law suits ending in a settlement against the firm in areas where projects were identified in (d) above; if possible, we will include principals, not just the LLC or company. However, if they are out of State or very far away, we

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will not be able to investigate without incurring additional time and budget to the project. Identify any CEQA challenges and report on the outcomes.

- h. Conduct an online search of publicly available resources for negative and harmful information for and/or against the firm. As an option, we will consider using Gaming background standards; however, MGO will consult with the City Attorney to ensure we do not violate any local or State laws. (Further research to be conducted to determine the level of review we can achieve within the confines of the law.)

(iv) **Developer Experience and Presence in California**

Article 6 Criteria: Developer has prior experience with projects and operating experience in California.

Methodology:

- (v) To determine the extent the developer has prior development projects and an operating presence in California, we will:
 - a. **Developer to provide:** Names, locations and dates California projects were granted a certificate of occupancy from a local government agency.
 - b. Consult California Bureau of Real Estate records to determine whether developer is a California licensed Real Estate Broker and for evidence that he/she is actively engaged in business in California.
 - c. Interview leadership of professional associations, (e.g., Northern California Commercial Association of Realtors and International Council of Shopping Centers), to determine if developer is active in California.