City of Sunnyvale

Agenda Item

20-0352 **Agenda Date:** 7/27/2020

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Introduction of an Ordinance Approving and Adopting a **DEVELOPMENT AGREEMENT** between the City of Sunnyvale and Martin A. Kasik and Sharon K. Kasik, Trustees of The Kasik Family 1990 Living Trust (the "Kasik Trust"), Kelly Kasik (a/k/a Kelly Kasik Stahl), an individual ("KKS"), and Kerry Cathleen Kasik, an individual ("KCK")
File #: 2020-7216
Address: 100 Altair Way (APN 209-07-007)
Zoning: Current DSP Block 1a/Proposed DSP Block 1
Applicant / Owner: 100 ALTAIR LLC (affiliated with the Minkoff Group) (applicant) / Martin A And Sharon K Kasik Trustee (current owner)
Environmental Review: Environmental Impact Report
Project Planner: Trudi Ryan, tryan@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Downtown Specific Plan
Existing Site Conditions: Mixed use retail/office/residential
Surrounding Land Uses:
- **North:** Plaza del Sol and 6-story Class A Office
- **South:** Very High density residential (The Lofts)
- **East:** Plaza del Sol, retail and Very High Density Residential (The Lofts)
- **West:** 6-story Class A Office

Issues: Benefits to the City and the Developer
Staff Recommendation: Recommend to City Council: Introduction of an Ordinance Approving and Adopting a Development Agreement between the City of Sunnyvale and 100 Altair LLC.

BACKGROUND

Description of Proposed Project

The project site is about one-half acre in size and is currently developed with a mix of 20 residential units (apartments) and ground floor office and retail (about 14,300 square feet).

The Development Agreement (DA) would allow development of a Class A office that exceeds the maximum office square footage and maximum height in an updated Downtown Specific Plan (DSP); the DSP will be considered for update by the City Council on August 11, 2020. The updated DSP allows increased height and development intensities to be considered through incentive programs or a Development Agreement. The available square footage is 20,588 square feet and 141,333 square feet is proposed; the proposed maximum height for Block 1 of the DSP is 100 feet and 125 feet is requested.

See Attachment 4 for a map of the project site, vicinity and mailing area for notices.

Previous Actions on the Site

The western portion of the site was approved for a mixed use residential/retail/office development in 1983; construction was completed in 1986. The eastern portion of the site was developed prior to 1964. A U.S. Post Office moved into the site in 1966. A variety of tenants have occupied the retail and office spaces.

On May 3, 2016 the City Council initiated a Downtown Specific Plan (DSP) Amendment study for the site. The study was later incorporated into a larger study that includes sites in DSP Block 18 and Block 22. An Environmental Impact Report (EIR) has been prepared for the DSP amendment and zoning code modifications, which will be considered at the same August 11, 2020 City Council meeting, prior to consideration of this Development Agreement. At the time the DSP amendment study was initiated the developer was considering a 103,000 square foot office building. The Council action to initiate the study of office did not include a maximum amount to study.

EXISTING POLICY

The following are key goals and policies from the Land Use and Transportation Chapter of the General Plan and the adopted and the pending update to the Downtown Specific, which pertain to the proposed project. A more complete list of General Plan and Downtown Specific Plan goals and policies is available in Attachment 5.

General Plan Goals and Policies:

GOAL LT-2: ENVIRONMENTALLY SUSTAINABLE LAND USE AND TRANSPORTATION PLANNING AND DEVELOPMENT - Support the sustainable vision by incorporating sustainable features into land use and transportation decisions and practices.

Green Development

- **Policy LT-2.1** Enhance the public's health and welfare by promoting the city's environmental and economic health through sustainable practices for the design, construction, maintenance, operation, and deconstruction of buildings, including measures in the Climate Action Plan.

Greenhouse Gas Reduction

- **Policy LT-2.2** Reduce greenhouse gas emissions that affect climate and the environment though land use and transportation planning and development.

GOAL LT-14 SPECIAL AND UNIQUE LAND USES TO CREATE A DIVERSE AND COMPLETE COMMUNITY - Provide land use and design guidance so that special and unique areas and land uses can fulfill their distinctive purposes and provide a diverse and complete community fabric.

Existing Plans

- **Policy LT-14.2** Support the following adopted specialized plans and zoning tools, and update them as needed to keep up with evolving values and new challenges in the community: Downtown Specific Plan, Lakeside Specific Plan, Arques Campus Specific Plan, Lawrence/101 Site Specific Plan, Precise Plan for El Camino Real, Moffett Park Specific Plan, Peery Park Specific Plan, and Lawrence Station Area Plan.

Future Plans

- **Policy LT-14.3** Use special area plans to guide land use and development in areas that support alternative travel modes, Village Centers, economic development, and a better jobs/housing ratio.

Special Zoning Tools

- **Policy LT-14.4** Use specialized zoning districts and other zoning tools to address issues in the community; and update as needed to keep up with evolving values and new challenges in the community.

Community Benefits

- **Policy LT-14.8** Ensure that development projects provide appropriate improvements or resources to meet the city's future infrastructure and facility needs; and provide development incentives that result in community benefits and enhance the quality of life for residents and workers.

DOWNTOWN SPECIFIC PLAN (*adopted 2003)*

Downtown Vision Statement *(no change proposed for 2020 update)*

"An enhanced, traditional downtown serving the community with a variety of destinations in a pedestrian-friendly environment."

From page 5-5 of the Draft Downtown Specific Plan

A. Maximum Development Levels

The maximum development potential is shown in Table 5-1. Additional development may be allowed through use of the State's Affordable Housing density bonus program (California Government Code section 65915 et. seq.), provision of community benefits, or a combination of both. If community benefits are being offered, a Development Agreement is required. The final development program is subject to environmental review.

B. Maximum Building Height

All land uses shall be subject to the maximum building heights specified in Table 5-1. Additional building height may be approved through the provision of open space and increased building setbacks around open space, as a concession associated with the State Housing Density Bonus provisions, Community Benefits, other citywide development incentive programs (such as a Green Building Program) or a combination of any of these techniques. All structures above the maximum height identified in Table 5-1 may require review and approval by the Federal Aviation Administration.

C. Commercial Core Community Benefits Bonus Program

A development agreement is required to memorialize the details and timeframe for providing community benefits. Examples of community benefits include, but are not limited to, the following.

- Affordable housing units;
- Contribution to a community benefit fund;
- Dedication of land for public improvements; and
- Additional public parking.

ENVIRONMENTAL REVIEW

A part of its review of the amendments to the Downtown Specific Plan (DSP), the City prepared a Draft and Final Environmental Impact Report (collectively, "EIR") (State Clearinghouse #2018052020) pursuant to the California Environmental Quality Act (CEQA). The EIR provided a program-level review of the environmental impacts of the DSP amendments as well as a project-level review of six specific development proposals within the DSP, including the development proposed by the applicant. Certification of the EIR included a Mitigation Monitoring and Reporting Program (MMRP) with provisions to reduce the potentially significant impacts to a less than significant level, although some impacts will remain significant and unavoidable after mitigation. A Statement of Overriding Considerations for significant unavoidable impacts to cultural and historic resources, noise, utilities, and traffic will be considered by the City Council as part of its action on the EIR. An adopted Statement of Overriding Considerations is deemed by the certification of the EIR to be applicable to subsequent projects that are consistent with or that implement the DSP's goals and objectives. As the lead agency, the City of Sunnyvale implements the adopted MMRP for each subsequent project that includes the approved mitigation measures of the EIR. The development projects that are the subject of the Development Agreement are within the scope of the DSP EIR and is therefore exempt from additional CEQA review, both because they were specifically analyzed in the EIR and because they have no significant impacts that were not analyzed as part of the programmatic EIR for development in the DSP area (CEQA Guidelines Section 15168(c)(2) and (4) and Public Resources Code Section 21094(c)).

DISCUSSION

Present Site Conditions

The half-acre mixed-use site is bounded by Aries Way on the west, Altair Way on the north, Taaffe Street on the east, and by one building of The Lofts residential development on the south. The site currently has ground floor retail and office (including a former Post Office) with 20 apartments on the second and third floors of the western half. About half of the ground floor space is vacant.

General Project Description

The proposed development is a 141,333 square feet of Class A office with four levels of underground parking. The proposal is for seven stories (125 feet to the top of the parapet). The building is proposed as all electric and would include a roof garden on most of the roof area. The project also includes off-site enhancements to the street to provide a visual and pedestrian connection to Plaza del Sol.

Development Agreement (DA)

A DA is a tool used by some cities to assist in providing certain assurances for a developer and a city. A DA is essentially a contract between the City and the developer that the City Council approves through adoption of an ordinance. A DA outlines the obligations of the developer and must describe the benefit to both the developer and the City. The City has entered into DAs with other project sponsors, including Lockheed Martin Missiles and Space (1995), Regis Homes of Northern California (1996 - Navair Manor), Murphy Square (2000), Applied Materials (2003), Landbank Investments (2015) and Jay Paul (2006, 2014, 2016).

A DA is commonly used to guarantee development approvals to the landowner and to provide additional benefits to both the City and a developer that could not otherwise be obtained through standard land use approvals. The City has primarily used DAs for major development projects that may take longer to complete construction.

The Downtown Specific Plan amendments have been written to enable additional housing units, additional square footage of non-residential uses, and greater height, subject to density bonus laws, incentive programs or a DA. Some increases in land use intensity would be possible without a DA; however, the total project proposed for the site would not be possible without a DA.

The project applicant (developer and future owner) is identified as “Landowner” in the DA. The term of the DA would be six years with one possible extension up to five years for good cause, supported by substantial evidence. The DA identifies the terms and obligations of both parties, the general and vested entitlements, and identification of the mutual benefits to both parties. The full draft of the DA is found in Attachment 2. Below are summaries of the respective benefits outlined in the DA.

City Benefits
The DA includes the following benefits to the City:

- Community Benefit Fund Contribution of three Million Dollars ($3,000,000).
- Design and construction of off-site street improvements between the project site and Plaza del Sol, valued at two million five hundred thousand dollars ($2,500,000). Exhibit B of the DA illustrates this feature.
- All electric building, the building will be constructed as all electric; there will be no natural gas connection for this building.
- Point of Sale for Project Construction. Landowner to designate the City as the point of sale for California sales and use tax purposes during Project construction.

Developer Benefits
Benefits to the developer contained in the DA:

- Density Bonuses: Bonus office of 120,745 gross square feet over the maximum allowed in the 2020 updated Downtown Specific Plan.
- Additional Height: Additional 25 feet of height to the top of the parapet for a total height of 125 feet (excluding additional height allowed for mechanical equipment, penthouses, etc.)

Other Provisions

- The term of the DA is for six (6) years with an additional five years subject to approval by the City Manager, for good cause.
- Protections against initiatives, referenda and moratoriums.
- The project would not be subject to any new taxes or impact fees for five years, except for citywide general and special taxes.
- Subsequent reviews required - A Special Development Permits (SDP) is required for site plan, architectural review, operating standards, etc. Miscellaneous Plan Permits (MPP) may be required, consistent with provisions in the zoning code. Other approvals such as tentative and final maps, encroachment permits, etc. would also apply.
- General provisions regarding review, responsibilities of each party, procedures for default, etc.

FISCAL IMPACT
In addition to the specific benefits outlined in the DA, the project would be expected to pay normal fees and taxes including increased property taxes, retail sales tax indirectly from employee and

business purchases from other Sunnyvale businesses.

A direct economic benefit for the proposed project would be the fees the developer would pay as part of the permitting process which are required development impact fees (even without a DA). The amount is expected to be slightly more than $3.2 million dollars in one-time revenue: housing mitigation fees ($1.8 million), traffic impact fees ($532,000), construction taxes ($88,000), and general plan maintenance fees ($24,000). School impact fees would be paid directly to the Sunnyvale School District and the Fremont Union High School District. The fees would be based on a fixed cost per net new square footage.

REQUIRED PLANNING COMMISSION FINDINGS

Under the City's procedures for review of DAs (Resolution No. 371-81) (Attachment 7), in order for the Planning Commission to recommend adoption of the development agreement, the Planning Commission must find that the development agreement is:

(1) Consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

(2) Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;

(3) In conformity with public convenience and good land use practice;

(4) Not detrimental to the public health, safety and general welfare;

(5) Of a beneficial effect on the orderly development of property and the preservation of property values;

(6) Consistent with the requirements of the resolution.

PUBLIC CONTACT

As of the date of staff report preparation, staff has received ##/no comments from members of the public regarding the Development Agreement.

- Notice of Preparation, May 1, 2019
- EIR Scoping Meeting, May 22, 2019
- Notice of Availability, November 22, 2019
- Draft EIR was Provided at the Reference Section of the City's Public Library, Community Center, and the City's One Stop Permit Center
- Planning Commission public hearing on DEIR: December 16, 2019

Outreach/Notification

- Sunnyvale Downtown Association: September 4, 2019
- Community Outreach Meeting at Washington Park: March 13, 2019
- Community Outreach Meeting at Washington Park: February 11, 2020
- On-line posting of Draft EIR and Draft DSP (November 2019)

- On-line posting of Final EIR, updated Draft DSP, zoning code amendments, and draft staff reports for related Downtown actions (July 2020)
- Notification to list of interested parties and general availability of information via social media and Update Sunnyvale were provided along with a link to Downtown Specific Plan web pages
- Downtown Specific Plan web pages: On-line posting of Final EIR, updated Draft DSP, zoning code amendments, four related Draft Reports to Planning Commission

Notice of Public Hearing

- **Notice of Public Hearing, Staff Report and Agenda:**
  - Published in the Sun newspaper.
  - Posted on the City of Sunnyvale's Web site.
  - Agenda posted on the City's official notice bulletin board.
  - 10,272 notices were mailed to property owners and tenants within 2,000 feet of the DSP boundary.
  - Email notices sent to Sunnyvale Downtown Association, Sunnyvale Chamber of Commerce, and all of the Sunnyvale Neighborhood Associations.

As of the date of staff report preparation, staff has received no comments from members of the public regarding the Development Agreement.

ALTERNATIVES

1. Make the findings required by Resolution No. 371-81 (Attachment 3 to the Report).
2. Do not make the findings required by Resolution No. 371-81.
3. Recommend to City Council the Introduction of an Ordinance Approving and Adopting a Development Agreement between the City of Sunnyvale and Martin A. Kasik and Sharon K. Kasik, Trustees of The Kasik Family 1990 Living Trust (the “Kasik Trust”), Kelly Kasik (a/k/a Kelly Kasik Stahl), an individual (“KKS”), and Kerry Cathleen Kasik, an individual (“KCK”) (Attachment 2 to the Report).
4. Recommend that City Council do not introduce the Ordinance and provide direction to the staff and developer on desired modifications.

STAFF RECOMMENDATION

Recommend to City Council, Alternatives 1 and 3: (1) Make the findings required by Resolution No. 371-81 (Attachment 3 to the Report); and, (3) Recommend to City Council the Introduction of an Ordinance Approving and Adopting a Development Agreement between the City of Sunnyvale and Martin A. Kasik and Sharon K. Kasik, Trustees of The Kasik Family 1990 Living Trust (the “Kasik Trust”), Kelly Kasik (a/k/a Kelly Kasik Stahl), an individual (“KKS”), and Kerry Cathleen Kasik, an individual (“KCK”) (Attachment 2 to the Report).

Staff recommends approval of the Development Agreement. The project would support community expectations for greenhouse gas reduction and an enhanced pedestrian environment in the downtown. The site is appropriate for additional office development due to proximity and easy access to the Caltrain station and the VTA bus transfer area across Plaza del Sol. Employees at the site will also help support downtown businesses.

Prepared by: Trudi Ryan, Director, Community Development
Reviewed by: Teri Silva, Assistant City Manager

20-0352 **Agenda Date:** 7/27/2020

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. *Not Used, Reserved for Report to Council*
2. Draft Ordinance and Development Agreement
3. Draft Planning Commission Findings
4. Vicinity Map
5. Relevant City Policy
6. Link to EIR and other Downtown Documents
7. Resolution No. 371-81