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ADDENDUM TO MEMORANDUM OF LAW ML-2006-21

DATE: September 18, 2006

TO: Honorable Mayor and City Council
Nancy Graham, President, Centre City Development Corporation

FROM: Huston Carlyle, Chief Deputy City Attorney

SUBJECT: Navy Broadway Complex and City's retention of specified control in the development of the property

INTRODUCTION

Although the question was not initially raised, and therefore not responded to in the Memorandum of Law issued last Friday, it is felt that the following information would be useful for the City Council's informational hearing scheduled for September 19.

QUESTION PRESENTED

Does the City Council retain any specified control over the development of the property at the Navy Broadway Complex?

SHORT ANSWER

Yes. There are several provisions in Section 5 of the Development Agreement reserving to the City specified areas of control in the development of the property at the Navy Broadway Complex.

ANALYSIS

Section 5.2f of the Development Agreement states as follows:

“The Developer shall not begin construction on any increment of the Project unless and until appropriate assurance has been provided to the City for the completion of those related public improvements described in Attachment 4 of Exhibit C.”

Attachment 4 of Exhibit C may not have been attached to the Development Agreement previously provided. Accordingly, it is attached to this Addendum.

Section 5.3 of the Development Agreement states that the “construction standards and specifications for buildings and structures developed on the Property only shall be those City construction standards and specifications in effect at the time that any building permits are issued.” (emphasis added)

“Property” is defined in the Development Agreement as “that portion of the Navy Broadway Complex, as parcelized by Developer Lease(s), which is not to be occupied, in whole or in substantial part, by the Navy.” In other words, the City’s current construction standards and specifications for the buildings and structures developed on the Property, except the “Navy building(s),” shall be applicable. The application of such standards and specifications is within the purview of the City.

Section 5.5 of the Development Agreement permits the City to impose fees and charges “intended to cover City costs associated with processing permits for the development of the Property, including fees and charges for applications, inspections and plan review, which are existing or may be revised or adopted during the term of this Agreement.” Again, the definition of “Property” would exclude the “Navy building(s),” but would include everything else. Additionally, “development impact fees and similar charges shall be applicable to the Property only if such fees or charges are generally applicable to other similar developments within Centre City.” (emphasis added)

Section 5.6 obligates the City to issue building and other related permits for the development of the Property “in a timely manner.” However, given the language in Section 5.3, that obligation arises only after the City is satisfied that the buildings and structures developed on the Property shall be constructed in accordance with the City’s current construction standards and specifications. To assist the City relative to the concept of “timely manner,” Section 5.6 obligates the Developer to “provide City with a preliminary schedule for its development which will note anticipated dates for required performance of certain activities by the City, such as the review of plans and specifications, the issuance of building and related permits, and similar matters.” The City and the Developer will then meet and agree upon such a schedule.

Section 5.9 contemplates the lease by the Navy to the City of a parcel approximately 1.9 acres in size at no cost to the City for a period of 65 years to be used as open space in order to “promote public access and visibility from adjacent ground level uses.” If the Navy contemplates the development of a subterranean parking garage under all or a portion of the 1.9 acre parcel, the Development Agreement obligates the Navy and the City to work cooperatively so that such garage does not adversely impact the City’s plans for the development of the open space.

CONCLUSION

In conclusion, there are several provisions in the Development Agreement set forth in Section 5 wherein the City retains specified areas of control in the development of the property at the Navy Broadway Complex. These include (1) obtaining appropriate assurances from the Developer (prior to any construction on any increment of the Project) that the Developer will be able to complete those related public improvements set forth in the Development Agreement; (2) applying the City's current construction standards and specifications for buildings and structures developed on the Property prior to the issuance of building and other related permits by the City; (3) imposing applicable fees and charges intended to cover City costs associated with processing permits for the development of the Property, including fees and charges for applications, inspections and plan review, as well as the imposition of development impact fees and similar charges if generally applicable to other similar developments with Centre City; and (4) coordinating the design and development of a subterranean garage below the City's open space parcel to eliminate any adverse consequences relative to the City's plans for the development of said open space.

MICHAEL J. AGUIRRE, City Attorney

By _____
Huston Carlyle
Chief Deputy City Attorney

Attachment

cc: Elizabeth S. Maland, City Clerk