

City of Fairfield Planning Commission

RESOLUTION NO. 2021-09

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FAIRFIELD RECOMMENDING THAT THE CITY COUNCIL APPROVE A FOURTH AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND CANON STATION LLC

THE PLANNING COMMISSION OF THE CITY OF FAIRFIELD HEREBY RECITES, FINDS, DETERMINES, ORDERS, AND RESOLVES AS FOLLOWS:

SECTION 1. On January 4, 2021, an application for a Development Agreement Amendment (DA2021-01) was properly filed with the Community Development Department in accordance with the rules and regulations governing the official filing of such applications.

SECTION 2. The Planning Commission has held a duly noticed public hearing on April 14, 2021. City staff presented substantial factual information regarding the proposed Development Agreement Amendment in a staff report and through oral presentation before the Commission, and the Planning Commission considered all public testimony and information presented during the public hearing regarding these applications.

SECTION 3. An Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program for the Train Station Specific Plan were previously certified and adopted by the City Council on July 26, 2011; the EIR includes land within the Development Agreement Amendment, and the environmental effects of the Amendment have been adequately addressed in the EIR; no additional environmental review is required pursuant to the California Environmental Quality Act.

SECTION 4. The Planning Commission finds that the proposed Fourth Amendment to the Canon Station Amended and Restated Development Agreement is consistent with the City's General Plan and Train Station Specific Plan, and determines that the environmental effects of the amendment have been adequately addressed in the EIR prepared for the Train Station Specific Plan.

SECTION 5. The Planning Commission hereby recommends City Council adoption of the Fourth Amendment to the Development Agreement between the City of Fairfield and Canon Station LLC as contained in the attached Exhibit A.

SECTION 6. The record of proceedings shall be located at the City's Community Development Department and the Director of Community Development shall be the custodian of such documents.

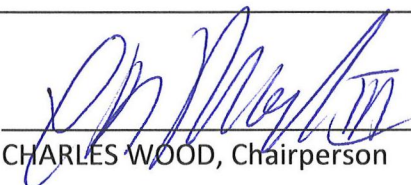
PASSED AND ADOPTED this 14th day of April, 2021.

AYES: COMMISSIONERS: Melissa CRUZEN / Jerome CHILDS / Michael COAN / Lericia EVANS / Chris MATTHEWS (Vice) / William WESLEY / Charles WOOD (Chair)

NOES: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE


CHARLES WOOD, Chairperson

ATTEST:


DAVID FEINSTEIN, Secretary

STAFF REPORT

Meeting

Date: April 14, 2021

To: Chairperson and Members of the Planning Commission

From: Community Development Department

Subject: **ITEM B: CANON STATION DEVELOPMENT AGREEMENT AMENDMENT**

Resolution No. 2021-09

Development Agreement (DA2021-01)

Location: Northeast Fairfield

Applicant: Canon Station LLC

Property Owner: Canon Station LLC

Public hearing on proposed Fourth Amendment to Amended and Restated Development Agreement between the City of Fairfield and Canon Station LLC.
(Planner: Dave Feinstein, 707-428-7448, dfeinstein@fairfield.ca.gov)

BACKGROUND INFORMATION

On August 16, 2011, the City Council entered into a Development Agreement with a developer, Canon Station LLC, regarding approximately 1,570 acres within the Fairfield Train Station Specific Plan Area (TSSP). Canon Station LLC is the developer of the One Lake neighborhood, known as Planning Area 4 of the TSSP. They are also the developer of a future neighborhood to the east of One Lake, known as Planning Area 5. Key provisions of the Development Agreement include the following:

1. For purposes of regulating new development, the Agreement vested the General Plan, Fairfield Train Station Specific Plan and PD Overlay Zone District, as they existed on August 16, 2011;
2. Vested the right to develop up to 3,101 dwelling units and 4.6 million square feet of office and industrial building floor area;
3. Provided for the transfer of approximately 100 acres of City-owned land to Canon Station in exchange for the 204-acre Kelley Property for public park and open space uses, cash and other considerations;
4. Construction of various public improvements by Canon Station including new fire station, park improvements and road improvements;

City of Fairfield
Community Development Department

Prepared by: DF

Reviewed by: DF

5. Establishment of various Community Facilities Districts (“CFDs”) to pay for infrastructure and municipal services, including public safety (police and fire), park maintenance and open space maintenance; and
6. Required that Canon Station preserve more than 1,000 acres in open spaces within and in the vicinity of the Train Station Specific Plan Area. Preservation is to be achieved by, among other provisions, establishing a conservation easement on these lands.

On December 16, 2014, the Agreement was amended and restated by the parties. Key provisions above, however, were not modified. Since that time, the City Council has approved three amendments to the 2014 Amended and Restated Agreement. The City and Canon Station LLC are each seeking a fourth amendment.

PROPOSED AMENDMENTS

The proposed amendment addresses seven topics covered by the Development Agreement, as follows:

1. Construction of a new Fire Station. During preparation of the TSSP, the City concluded that a new fire station would be needed to serve the easternmost portion of Canon Station’s project. Because the station is only needed to serve Canon Station’s development, not other parts of the TSSP, the existing Development Agreement obligates Canon Station LLC to fund the new station. The Agreement also obligates Canon Station to design and construct the station, with delivery of an operable station to occur by the 500th dwelling unit.

The City’s Fire and Public Works staff now prefer to have greater control over the design and construction of new Fire stations. Staff also wishes to consider a site for the station on Peabody Road rather than one on Huntington Drive acquired by the Developer. The proposed amendment transfers responsibilities for site acquisition and station design and construction from the Developer to the City.

2. Terms for a Community Facilities District that funds construction of the Fire Station. The existing Development Agreement authorizes Canon Station to form a Community Facilities District (CFD) to fund infrastructure that serves their development. This infrastructure includes the planned Fire Station. Under the CFD, the developer is able to obtain funds up front to construct infrastructure via bond(s). The bonds would be repaid over time by the eventual beneficiaries, the homeowners, as a part of their annual property tax bill. The proposed Development Agreement amendment modifies terms to ensure that the City, rather than the Developer, can get repaid from the CFD for costs to acquire land for and to construct the Fire Station. The amendment also modifies terms to

set appropriate dollar limits for the City's repayment from appropriate phases of bond issuance. The amendment also increases the maximum combined assessment of ad valorem property tax and CFD special taxes from 1.5% to 1.65%. This change is to account for an increase in anticipated costs to construct the Fire Station since adoption of the original Development Agreement.

3. Timing for establishment of the Conservation Easement. The current Development Agreement requires a conservation easement to be placed on approximately 1,000 acres of land surrounding Canon Station's development to create a permanent undeveloped greenbelt. The Agreement Conservation easement was to be established prior to subdivision and development of Canon Station's land. Because Canon Station is using the preserved greenbelt to satisfy State laws pertaining to protection of endangered species, various terms pertaining to the Conservation Easement are subject to State review and approval. State involvement was not anticipated when the City and Developer agreed to the timing provision that requires the Conservation Easement to be established prior to subdivision. The State process for approval is time consuming and, through no delay of their own, the Developer is currently still waiting for the State to complete its approval. As a result, the Conservation Easement cannot be recorded yet. The proposed amendment modifies the timing requirement for recordation of the Conservation Easement to the earlier of the 500th unit in the One Lake neighborhood, or the first subdivision Canon Station's next phase, Planning Area 5.
4. Compensation for Canon Station's purchase of City Property. Through the Development Agreement, Canon Station acquired approximately 100 acres of land from the City. The Development Agreement sets the value for the land, and timing for payment by Canon Station. Payment occurs via a set formula whenever Canon Station subdivides land that was formerly City Property. The Development Agreement includes a termination date. It does not, however, specify how the City will be paid if the Developer has not subdivided all City land at the time the Agreement expires. The proposed Amendment makes clear that Developer shall pay any outstanding balance at the time the Agreement expires.
5. Timing for construction of certain Park and Linear Park improvements. The Development Agreement establishes the required timing for Canon Station to construct various Park and Linear Park improvements that serve One Lake and Planning Area 5. These requirements are contained in Development Agreement Exhibits 13-1 and 13-2. Since adoption of the Development Agreement, various circumstances warrant reconsideration of the timing for various park improvements. These include: 1) modified phasing of development within the One Lake neighborhood, 2) construction in the first phase –

rather than a later phase - of a 190-unit apartment project, 3) revised planning for the park around the project's lake, and 4) determination that grading of the former railroad bed where the Linear Park will be built requires approval from the State's Department of Toxic Substances Control (DTSC), a process that will take longer than had been anticipated. The proposed amendment modifies Exhibits 13-1 and 13-2 to account for these factors. The amendments push some park improvements to a later phase, such as the park connecting the lake with the Linear Trail. Some move to an earlier phase, such as park improvements on the south side of the lake. The timing for the two Linear Park segments to be constructed with the One Lake Neighborhood are revised to allow time for DTSC to issue its required approvals.

6. Process for amending the Agreement. Currently, Amending the Development Agreement requires approval by the City Council. As noted above, at various points, Staff and the Developer have learned that matters generally outside the parties' control can cause unanticipated delay. Two examples are requirements for State approval of Conservation Easements and for Linear Park grading. At present, addressing these challenges requires a time-consuming process for the City Council to amend the Agreement, or time-consuming and expensive consult with legal counsel to determine if an alternate path is allowed. The proposed amendment creates an administrative process that allows certain amendments to be approved by the City Manager. Substantive amendments would still require City Council approval. Substantive amendments include those that affect: 1) the term for the agreement, 2) permitted uses, 3) monetary contributions by the developer, 4) terms for reservation or dedication of land, 5) terms pertaining to future discretionary actions, 6) terms pertaining to development regulations, and 7) amendments that affect rights or obligations of Assignees, and amendments that affect obligations of Canon Station LLC to its Assignees, unless Assignee(s) authorize such changes in writing.
7. Force Majeure. The Force Majeure section of the Development Agreement contains terms to ensure that neither the City nor the Developer can be deemed in default of the Agreement if failure to perform is due to a specified list of actions that are out of a party's control. In light of COVID-19 the proposed amendment adds matters pertaining to epidemics, pandemics, quarantines, and related matters to the list of reasons a party would not be deemed in breach of the Development Agreement.

ANALYSIS FOR PLANNING COMMISSION

1. General Plan and Specific Plan Consistency: Government Code Section 65868.5 requires that a Development Agreement be consistent with the General Plan and any Specific Plan. The General Plan designates land within the TSSP as the Train Station Specific Plan "Special Study Area". The Specific Plan identifies the land subject to the Development

Agreement as Planning Areas 4, 5, 6,7 and 8. The City Council previously found that the existing Development Agreement to be consistent with the General Plan and Specific Plan. Regarding the numbered amendments described earlier:

- a) The General Plan requires that fire stations be located so that 80% of housing units be located within a five-minute response area for the Fire Station that serves them. To ensure compliance with this standard, during preparation of the TSSP, the City commissioned a fire station Needs Assessment Report. Under the amendment, the City would seek to build the station on a site along Peabody Road identified in in the Needs Assessment Report as meeting the TSSP's five-minute response requirements.
- b) The General Plan includes policies that require new residential development to fund the cost for its infrastructure needs, including fire stations. Policy 14-45 of the TSSP authorizes use of CFDs to fund infrastructure that is not otherwise funded by a Development Impact Fee. The planned fire station is not funded by a Development Impact Fee. The amendment that that increases the maximum assessment to 1.65% of combined ad valorem property tax and CFD costs ensures that new development will pay the anticipated cost for the station;
- c) The General Plan contains various policies that promote preservation of open space lands. The TSSP includes policies (e.g., policy 4-35) that direct the City to seek conservation easements on land within Planning 7, and policies 7-13, 7-14 that direct land preservation of Canon Station's open spaces by the first subdivision in Planning Area 4 or 5. A deed restriction is already in place to ensure that land subject to these policies is permanently preserved consistent with these policies. The Development Agreement amendment continues to ensure that the final form of the preservation is a Conservation Easement;
- d) Neither the General Plan nor the TSSP contains provisions regarding how the City should be paid for land it sells. The amendment simply ensures that the City will be paid at or prior to termination of the agreement;
- e) The General Plan contains policies regarding the amount of Neighborhood parks that must be developed to serve new developments. It does not contain any policy or direction regarding linear parks. The Specific Plan includes Table 9-1 that identifies 6.2 acres of neighborhood park that must be developed to serve Planning Area 4 while meeting General Plan requirements. Under the proposed amendment to the Development Agreement, Canon Station is required to develop more than 15 acres of neighborhood park in Planning Area 4, well exceeding

minimum requirements of the General or Specific Plans. Lake Park Phase I, which is already constructed, nearly meets the minimum required for Planning Area 4. The change to timing for park delivery under the Development Agreement Amendment continue to ensure that the minimum park requirements of the General and Specific Plans will be fully satisfied prior to buildout of Planning Area 4. The amendments do not affect any park delivery in remaining Planning Areas. The TSSP identifies the location of the Linear Park, but does not include any requirements for timing of construction. Thus the proposed revisions to Linear Park timing, continue to build the Linear Park as outlined in the TSSP, but do not violate any timing provisions;

- f) Amending the Development Agreement to add an additional amendment process is an administrative matter. Amendments pursuant to a new amendment process will be evaluated for General Plan and TSSP consistency when they are proposed.
 - g) Amending the Development Agreement to add an additional force majeure provision is an administrative matter. Neither the General Plan nor TSSP contain directives that mandate consideration of pandemic or similar circumstances as basis for a Development Agreement breach.
2. Environmental Review: An Environmental Impact Report (EIR) was previously prepared and certified by the City for the Train Station Specific Plan in 2011. The City previously found that the impacts of development under the existing Development Agreement are within the scope of the EIR certified by the City Council in 2011 for the Fairfield Train Station Specific Plan. The proposed changes are consistent with the Train Station Specific Plan, and none poses environmental impacts greater than those that were found to be within the scope of the TSSP's EIR.
3. Correspondence: Notice of this public hearing was published in the Daily Republic on April 4, 2021. No correspondence has been received as of the printing of this staff report.

RECOMMENDATION

Staff recommends that the Planning Commission adopt Resolution No. 2021-09, forwarding the proposed Fourth Amendment to the Canon Station Amended and Restated Development Agreement to the City Council with a recommendation for approval.

Attachments:

1. Planning Commission Resolution No. 2021-09, with attached:
 - Exhibit A – Draft City Council Ordinance and Canon Station Development Agreement Amendment

**CITY OF FAIRFIELD
PLANNING COMMISSION
M I N U T E S**

Via Teleconference

April 14, 2021
Regular Meeting
6:00 p.m.

I. ROLL CALL

Present: Chairperson WOOD, Chuck
Vice-Chairperson MATTHEWS, Chris
Commissioner CHILDS, Jerome
Commissioner COAN, Michael
Commissioner CRUZEN, Melissa
Commissioner EVANS, Lerecia
Commissioner WESLEY, William

Absent: None

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Commissioner Childs.

III. INFORMATION ON SPEAKER CARDS

IV. APPROVAL OF AGENDA

Commissioner Childs made a motion to approve the agenda as proposed. The motion was seconded by Commissioner Cruzen. Voting was done by roll call, and the motion was approved unanimously.

V. APPROVAL OF MINUTES OF MARCH 24, 2021

Commissioner Wesley made a motion to approve the minutes of March 24, 2021. The motion was seconded by Commissioner Childs. Voting was done by roll call, and the motion was approved unanimously.

VI. PUBLIC COMMENTS

No persons spoke during Public Comments, and no comments were received via the planning@fairfield.ca.gov inbox.

VII. SCHEDULED MATTERS

ITEM A POPEYES DRIVE-THROUGH RESTAURANT

RESOLUTION 2021-08

A RESOLUTION OF THE FAIRFIELD PLANNING COMMISSION APPROVING DEVELOPMENT REVIEW (DR2021-003) AND USE PERMIT (UP2021-001) FOR A FOOD SERVICE ESTABLISHMENT WITH DRIVE-THROUGH SALES AND APPROXIMATELY 2,150 SQUARE FEET OF FLOOR AREA WITH A HEIGHT OF 21 FEET, 10 INCHES, AND SITE IMPROVEMENTS ON A 0.80-ACRE SITE AT 2322 EAST ALASKA AVENUE (APN: 0034-130-

430)

Associate Planner Anna Noel made a presentation on the item and answered questions. Planning Division Manager David Feinstein also answered questions.

The following person spoke during the public comment period:

- Sunny Ghai, project applicant

No comments were received via the planning@fairfield.ca.gov inbox.

Commissioner Coan made a motion to adopt Resolution 2021-08. The motion was seconded by Commissioner Childs. Voting was done by roll call, and the motion was approved unanimously.

ITEM B CANON STATION DEVELOPMENT AGREEMENT AMENDMENT

RESOLUTION 2021-09

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FAIRFIELD RECOMMENDING THAT THE CITY COUNCIL APPROVE A FOURTH AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND CANON STATION LLC

Planning Division Manager Dave Feinstein made a presentation on the item and answered questions.

No persons spoke during the Public Hearing, and no comments were received via the planning@fairfield.ca.gov inbox.

Commissioner Childs made a motion to adopt Resolution 2021-09. The motion was seconded by Commissioner Evans. Voting was done by roll call, and the motion was approved unanimously.

VIII. INFORMATION AND COMMUNICATIONS

A. DIRECTOR'S REPORT AND COMMISSIONER'S COMMENTS

Planning Division Manager Dave Feinstein provided an update on the City Council's discussion of potential changes to Commissioners' attendance standard. In addition, Mr. Feinstein noted that the next Planning Commission meeting would be on May 12, 2021, as the City Council will be holding a special meeting regarding Cannabis permitting on April 28.

IX. ADJOURNMENT TO NEXT MEETING OF May 12, 2021

Respectfully submitted,

DAVID FEINSTEIN
Planning Commission Secretary

DRAFT