

Memorandum

To: Shannon Allen, Principal Planner
City of Berkeley Planning and Development Department

From: Mark Rhoades, Rhoades Planning Group

Date: February 17, 2015

Re: 2211 Harold Way Community Benefits

Based on the two ZAB meetings regarding the proposed community benefits package for the 2211 Harold Way project and the direction gained from those discussions, the project team believes it would be helpful to provide more detail regarding the original community benefit proposal, and to propose alternatives for the City's review and consideration. Specifically, the purpose of this memo is to provide:

1. A summary of the original community benefits proposal.
2. A discussion of proposed alternatives to the community benefits package.
3. Independent documentation from two Bay Area general contractors, which provides additional cost detail and will assist the City in determining the actual cost and value of the proposed community benefits package.
4. Examples of methodology used by other Bay Area jurisdictions to determine appropriate project-provided community benefit, for reference, which serves to assist in determining a fair total value for the comprehensive community benefits package.

This memo is supplementary to the previously submitted community benefit information provided to the City on October 20, 2014. The community benefit alternatives described below do not result in any significant changes to the project overall, but rather are solely proposals to address the ZAB's specific requests.

1. Summary of Original Community Benefit Proposal

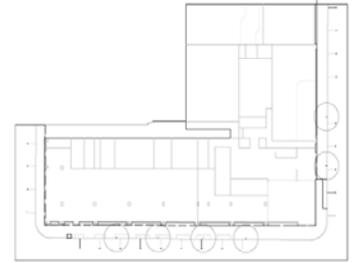
The original project community benefit proposal was designed to provide an array of direct benefits to the greater Berkeley community. The specific benefits included were derived from conversations with numerous groups and individuals, as documented in that proposal. As indicated in the original submittal, the proposed community benefits were in addition to the substantial additional tax revenue and other benefits that the project will provide the City, the project itself, and the level of sustainability the project represents, which are recognized benefits to the Berkeley community pursuant to the myriad policy statements of the Downtown Area Plan.

The original community benefit proposal was crafted to specifically address the language in the Downtown Area Plan's implementing ordinance, which provides a clear roadmap for the required type and level of community benefit required by a project in the plan area (emphasis added):

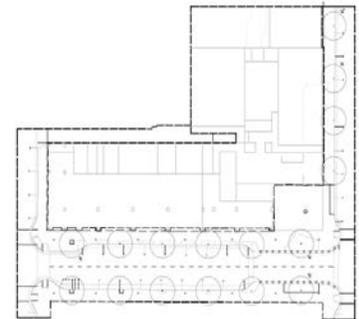
In order to approve a Use Permit for buildings over 75 feet in height under Section [23E.68.070.B](#), the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the

City, beyond what would otherwise be required by the City. **These may include, but are not limited to:** affordable housing, supportive social services, **green features, open space, transportation demand management features, job training, and/or employment opportunities.** The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.

The original community benefit package included exactly the types of benefits contemplated by and described in the Zoning Ordinance and Downtown Area Plan. For example, the proposed TDM measures would transform the project site into a publicly accessible multi-modal neighborhood transportation hub with electric bike share, enhanced street bike parking corral and publicly accessible fix-it stations, more car share spaces than required by the Zoning Ordinance, and a public-facing transit screen that provides a utility far beyond the baseline bus and BART screen provided in the BART plaza. In addition, TRANSFORM's data concludes that the reduced trips from cargo bikes for residents, pedestrian trunks, and a second AC Transit pass for each unit would benefit the broader Berkeley community with decreased automobile trip generation. As originally proposed, the TDM package itself would provide the greatest TDM value and benefit ever provided by an infill project in Berkeley's downtown. The entire City of Berkeley would benefit from these unique TDM amenities, which were proposed to go well beyond what could otherwise be required by the City.



City Standard for Harold Way



Previous Improvement Proposal
for Harold Way

Similarly, the proposed bio filtration swales in the public right of way were designed to accommodate the City's existing street stormwater run-off and not that of the project. (The project's runoff is accommodated completely on-site.) This proposed community benefit would have helped ease the load on the City's aging and inadequate storm sewer infrastructure. The swales also would have created a generally enhanced ambiance and pedestrian experience for the downtown visitor and would have helped the City's ability to comply with applicable state and federal stormwater regulations with no required capital expenditure by the City. The City's Chief Resilience Officer has indicated that treatment of storm water runoff generated in the public right of way is a high-priority community-wide benefit. The US Green Building Council's LEED standards also give extra consideration to pedestrian and water treatment streetscape features indicating their potential significance as broader community benefits.

2. Alternative Community Benefit Proposal

Public discussions by the ZAB indicated that the current ZAB members do not consider the following components of the original community benefit proposal as "significant additional community benefits":

- Additional Transportation Demand Management (TDM) Features
- Plaza at Harold Way and Kittredge Street
- Harold Way Streetscape Improvement Package.

In response to the ZAB's direction, the alternative community benefits proposal table, below, shows all the significant community benefits originally proposed by the project, provides documentation of

additional benefits that could be removed or reduced, and proposes to remove the significant community benefits rejected by the ZAB from the overall community benefit package.

Alternative Community Benefits Proposal in Response to ZAB Direction	
DAP/Municipal Code Requirements	644 square feet privately-owned public open space at the Harold/Kittredge corner
	Streets and Open Space Improvement Plan (SOSIP) fees
	Dynamic signage and vehicle detection systems for the garage
	Parking unbundled from residential units
	One free AC Transit Pass per unit and for on-site employees
	5 car sharing spaces
	Compliance with Alameda County storm water quality and retention requirements and Bay Friendly landscaping requirements
	Replacement of sidewalks, street trees, and street asphalt to compensate for construction-related degradation and consistency with DAP/SOSIPs streetscape improvement standards
	10% of units affordable at 50% of Area Median Income
	LEED Gold rating or equivalent
Proposed Additional and Significant Community Benefits (Could be removed or reduced to provide funding for alternative benefits)	Full Project Labor Agreement / 100% union participation
	Cinema/Theater Construction/Lease Subsidy
Previously Proposed Additional and Significant Community Benefits Rejected by ZAB	Second AC Transit Pass per unit
	SmartWalk Transit Screen
	Additional 6 Electric Vehicle Charging Stations
	BART Bike Station
	Cargo Bikes
	Pedestrian Carts
	Public Bike Fix Stations
	Public Bike Corral
	Public Shared Electric Bikes
	Shared Street Construction & Sidewalk Improvements West Side of Harold Way
Publicly Accessible Plaza of @ 1,800 + SF	

The project team received feedback from the ZAB and members of the community that the proposed Project Labor Agreement is a significant community benefit. In order to assist the City to understand and fully document the value of this significant community benefit, additional information regarding value is provided below.

We also heard from the ZAB and members of the community that the retention of cultural performance space in the downtown area is important, and therefore we have retained the cinema/theater construction as part of the alternative community benefit proposal. We have provided additional documentation of the value of this benefit below.

As an alternative to the presently proposed movie cinema, the project team understands some members of the ZAB may prefer the project to include live community performance space. The project team is open to further discussing the details of this alternative proposal with the City. The project plans currently include approximately 20,000 square feet of cinema space comprising 9 theaters in a two level space which stretches from under the retail promenade on Shattuck to the garage and new residential structure.

In order to assist the City in better understanding the value of the current cinema/theater construction proposal, we have attached specific independent proposals for the theater construction. In addition, the table below summarizes the theater subsidy calculation. While the cost of the theaters is approximated at \$16.5 million (see below), there would be some rent received from the tenant so the entire \$16.5 Million should not be documented as a "significant community benefit." As described below, the rent that would be expected in order to justify the construction of the theater complex in an open market forum would exceed the current rent paid by the theater for a similarly-sized space by more than 100% - even at the lowest return expectation. While there has not been any detailed contract negotiation with the tenant, we believe the market rent for this space would not justify its development as a cinema/theater. This was our original conclusion which was reflected in the original proposal for the site and did not include any theaters.

Average Cost to construct Theaters						\$ 16,500,000			
Approximate Total Square Feet of Cinema Space						20,000			
Net Return	Monthly Rent / SF	Estimated	Gross Rent	Current		Projected	Projected 10	Projected 20	
on Investment	Equivalent	NNN Charges	Equivalent	Rent / SF Gross	Difference	Subsidy Year 1	Year Subsidy	Year Subsidy	
6.000%	\$ 4.13	\$ 0.90	\$ 5.03	2.04	\$ 2.99	\$ 716,400	7,844,380	17,406,636	
6.500%	\$ 4.47	\$ 0.90	\$ 5.37	2.04	\$ 3.33	\$ 798,900	8,747,732	19,411,169	
7.000%	\$ 4.81	\$ 0.90	\$ 5.71	2.04	\$ 3.67	\$ 881,400	9,651,084	21,415,702	
7.500%	\$ 5.16	\$ 0.90	\$ 6.06	2.04	\$ 4.02	\$ 963,900	10,554,436	23,420,235	
8.000%	\$ 5.50	\$ 0.90	\$ 6.40	2.04	\$ 4.36	\$ 1,046,400	11,457,788	25,424,768	
Net return on Investment is what any developer would expect for the risk and cost to build									
Assumes the rent per SF for the new cinemas would be the same as the existing									
Assumes the rent grows 2% per year for 20 years									
Current NNN Charges for retail tenants average approximately						\$ 0.79			

3. Independent Documentation of Community Benefit Value

This section provides further detail regarding the value of each of the community benefits proposed.

- i. Project Labor Agreement
 - To gain further detail about the value of the proposed Project Labor Agreement, the project team has asked for independent documentation from two different Bay Area contractors to estimate the increase in cost between the proposed full Project Labor Agreement and a typical project that would use minimal levels of union labor. One contractor estimated an average increase in cost roughly between 5% and 10% of the total construction cost, which for this project would be a value between \$7,500,000 and \$13,000,000. A second contractor estimated the cost at approximately \$11,750,000. Please see the attached letters from Suffolk Construction and Rudolph & Sletten General and Engineering Contractors for further details about the assumptions included in these estimates.
 - We would assign a value to this benefit of \$11M
- ii. Cinema/Theater Construction
 - The project team also asked these independent contractors to provide estimates for the cost of constructing new movie theaters to the specifications of Landmark Theatres. One contractor estimated the theater construction costs to be approximately \$16,000,000 to \$17,000,000. A second contractor estimated the construction budget for the cinema portion of the project to be \$16,070,000 including all finishes. Please see the attached letters from Suffolk Construction and Rudolph & Sletten General and Engineering Contractors for further details.
 - We would assign a value to this benefit of \$16M. Half of the construction cost, plus approximately half of the 20 year rent subsidy.

Therefore, we believe that these two community benefits alone should be valued at \$27 Million.

4. Land Value Recapture Methods used by Neighboring Jurisdictions

The project team understands that the task of determining a basis for the provision of community benefits is a difficult one. While implementation of the “significant community benefit” requirement is new to the City of Berkeley, land value recapture strategies are frequently used in other jurisdictions to gain community benefits from development projects. We have conducted our own research into the methods used by other cities, in the hopes that this information may be useful to the City and to the ZAB in determining the appropriate level of “significant additional community benefit” that should be provided to the City by this particular project.

We have identified two general processes that jurisdictions use for land value recapture for community benefit. The first is a negotiated process of identified programmatic and financial benefits for a variety of purposes. For instance, for various development projects the City of Walnut Creek has negotiated a combination of community benefits funding and a cash payment. The second methodology represents a flat payment based on a project’s rentable square footage. For instance, the City of Mountain View has assessed a flat rate of \$20 per square foot of rentable area for two major projects that they approved at the end of 2014.

City	Project Name	Project Value	Benefits Value	Methodology/Examples of Benefits
Walnut Creek	Broadway Plaza (Macerich) Development Agreement	\$250,000,000- \$300,000,000	<5% of total estimated project cost	Cash payment of \$5,000,000, contribution to the free shuttle, public plaza and access space, and increased connectivity with the traditional downtown
Richmond	Chevron Modernization Project	\$1,000,000,000	8% of total project cost	Annual payment to the City to fund various community programs
Mountain View	420 San Antonio Rd (Pillar Group/Kalic)	\$200,000,000 5.7 Acres; 373 D.U.; 10,000 SQF retail.	\$20 per net rentable square foot of floor area.	Direct Cash Payment to City
Mountain View	405 San Antonio Rd (Merlone Geier Partners)	\$400,000,000 Phase 2: 9.9 acres, 1,080,800 GSF; 360,909 SQF office; 107,835 SF retail/commercial; 1410 seat cinema, 167 room hotel.	Phase 2: \$7M-\$9M.	Direct Cash Payment to City
Berkeley	Berkeley Plaza	\$120,000,000	\$27 M approx. 23% of total project costs	Project labor agreement, new theaters

Conclusion

As stated above, we believe that the original community benefit proposal responds directly to the guidance provided by the DAP and implementing zoning standards. We also believe that the value of the benefits, when measured as a percentage of project cost, greatly exceeds those being recaptured by other communities.

We believe that the \$27 million value of the proposed alternative significant additional community benefits, provided by a project with a total cost approximately \$120 million, clearly exceeds the land value recapture approved by other jurisdictions. We also believe that it far exceeds the value anticipated by the City Council and Planning Commission in the implementing zoning language and underlying policies.

If the ZAB, and/or the City Council believe that the originally proposed community benefit package is a significant additional community benefit we would be open to the discussion of reincorporating those elements into the proposal.

We look forward to moving the project forward. If you have any questions please do not hesitate to contact us.

build
smart

SUFFOLK

January 30, 2015

Mr. Joseph Penner
Hill Street Realty
11150 Santa Monica Blvd., Suite 1010
Los Angeles, CA 90025

Dear Mr. Penner:

In response to your questions about some of the project parameters for the construction of the Residences at Berkeley Plaza to be located at 2211 Harold Way in Berkeley, CA, please refer to the following:

1. The difference between Union and Non-Union construction is estimated to be approximately \$ 11,750,000. This is based on the following trades being non-union; metals, thermal and moisture protection, window systems, flooring, painting, Mechanical and Electrical. The base union estimate was prepared with input from current historical pricing and subcontractor input for the major MEPS and skin trades from firms such as J.W. McClenahan, Broadway Mechanical, etc.. Non union pricing has been confirmed by subcontractor input from skilled non union subcontractors such as Helix Electric.
2. The anticipated construction duration is 26 to 30 Months from the notice to proceed including demolition. The cinema construction is assumed to be concurrent with the residential construction.
3. The construction budget for the Cinemas alone is \$ 16,070,000 including all finishes. In addition, approximately \$ 400,000 is included in the residential construction to assist the cinema structure in accommodating lateral loads.

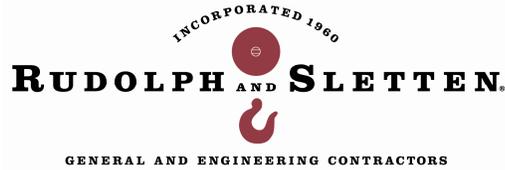
Please contact me at your convenience with any questions/comments.

Sincerely,



Peter Tuozzolo
Vice President of Preconstruction

Enclosure



January 22, 2015

Mr. Joe Penner
Hill Street Realty
11150 Santa Monica Blvd. Suite 1010
Los Angeles, CA 90025

RE: The Residences at Berkeley Plaza

Dear Mr. Penner,

Below please find our response to your questions regarding The Residences at Berkeley Plaza project:

- 1) Construction Duration: We have put together a very detailed schedule for the project and talked with many of the subcontractors that would be potentially performing the work. Based on our analysis, we determined that the construction duration from the start of demolition to the certificate of occupancy will be approximately 30 to 33 months.
- 2) Theater Construction Costs: We have put together a schematic level estimate for the new 9 theater configuration and determined the construction costs to be approximately \$16,000,000 to \$17,000,000.
- 3) Minimal Union Labor vs 100% Union Labor: The average increase in cost between minimal union labor and 100% union labor is roughly between 5% and 10% of the total construction costs. Therefore, the potential increase in cost to this project, which is preliminary estimated at \$130,000,000 (based on 100% union labor), would be between \$7,500,000 and \$13,000,000.

Please contact me at (650) 216-3671 if you have any questions or require any additional information in regards to this project.

Sincerely,
RUDOLPH AND SLETTEN, INC.

Mike Detata
Preconstruction Executive