



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: January 17, 2017

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Approving A Transportation Facility Impact Fee Credit Of \$728,633.13 To Wareham Property Group, On Behalf Of ES West Associates, LLC, For The EmeryStation West/Transit Center Project**

RECOMMENDATION

Staff recommends that the City Council consider whether to grant a Transportation Facility Impact Fee credit to Wareham Property Group, on Behalf of ES West Associates, LLC, for providing public facilities in the EmeryStation West/Transit Center project that would otherwise be eligible for funding by the impact fee.

BACKGROUND

Wareham Property Group, on Behalf of ES West Associates, LLC, has submitted a letter, dated November 2, 2016, requesting that the City Council approve a credit and reimbursement of the \$728,633.13 Transportation Facility Impact Fee paid as part of the building permit fees for the EmeryStation West/ Transit Center project (see Attachment 1).

The EmeryStation West/Transit Center project was approved by the City Council by Resolution No. 10-33 on February 16, 2010 (see Attachment 2). The project, located immediately to the north of the Amtrak station, is a seven story, 165-foot tall office/lab building with about 248,300 gross square feet of floor area, 148 car parking spaces on two levels, four bus bays for Amtrak buses adjacent to the rail platform, and ground level retail and transit-oriented space. (See renderings in Attachment 3.) The project was approved under the Interim Zoning Regulations that were in effect from November 12, 2009 to March 7, 2013, and received a development bonus for height over 100 feet pursuant to those regulations. A building permit was issued on November 4, 2016 and the project is now under construction.

On July 15, 2014, the City Council adopted Ordinance No. 14-008 adding Article 19 of Chapter 5 of Title 9 to the Emeryville Municipal Code, titled "Development Impact Fees". This Article establishes the authority for the City to impose fees on development projects for the purpose of mitigating the impacts that the projects may have upon the City's ability to provide public facilities. Also on July 15, 2014, the City Council adopted Resolution No. 14-105, establishing an updated Transportation Facility Impact Fee. By this resolution, the City Council approved and adopted a "Transportation Impact Fee Update" study,

including a list of transportation improvement projects to be funded by the fee. Two projects related to the EmeryStation West/Transit Center project are included in this list.

Sections 9-5.1911 through 9-5.1913 of the Planning Regulations, as added by Ordinance No. 14-008, provide that the City Council may approve a development impact fee credit for a development project that includes the construction of public facilities that would otherwise be eligible for funding by the impact fee (see Attachment 4.) However, Section 9-5.1911(f) stipulates that “no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with Section 9-4.204 of these Planning Regulations for providing the specified public facility”.

The building permit fees for the EmeryStation West/Transit Center project paid by Wareham on November 2, 2016, totaling approximately \$4.3 million, included a Transportation Facility Impact Fee of \$728,633.13 for which Wareham is requesting a credit and refund. (See fee chart and construction valuation estimate, Attachment 5.) This fee is based on 255,661 square feet of private Research and Development space at \$2.85 per square foot, the rate adopted by the City Council as part of the fiscal year 2016-2017 Development Impact Fee chart. Note that there is no Transportation Facility Impact Fee for the public “Transit Center” portion of the project, which includes the public parking, bus bays, and accessory retail space. Also note that the fees paid by Wareham included an Affordable Housing Impact Fee of \$1,086,558.18 and a Parks and Recreation Facility Impact Fee of \$682,614.20. Wareham is not requesting a credit for those impact fees.

DISCUSSION

Section 9-5.1911(a) and (b) stipulate that a development impact fee credit must be based on the specified public facilities proposed to be provided by the applicant, with a cross-reference to the description of the specified public facilities in the relevant implementing resolution, and the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit (see Attachment 4). As noted above, Section 9-5.1911(f) stipulates that an applicant is not entitled to a fee credit if a development bonus was received for providing the same public facilities for which a fee credit is claimed.

Thus, there are two relevant questions for the Council to consider in deciding whether to approve the requested fee credit: (1) What public facilities are included in the project that would otherwise be eligible for funding by the Transportation Facilities Impact Fee, and what was the cost to the applicant of providing those facilities? and (2) Did the applicant receive a development bonus for providing those same public facilities? These two questions are discussed below.

Public Facilities Included in the Project

The two public facilities provided by the EmeryStation West/Transit Center project that are included in the Transportation Facilities Impact Fee are: (1) Transit Center Plaza and Platform Extension, and (2) Public Parking and Bus Bays at Transit Center (see

Attachment 6). Both projects are also included in the 2016-17 through 2020-21 Capital Improvement Program (CIP) adopted by the City Council on June 21, 2016, although at slightly different costs than shown in the Transportation Facilities Impact Fee study (see Attachment 7). Each project is discussed below.

Transit Center Plaza and Platform Extension

This project consists of a pedestrian plaza located between the Emeryville Amtrak Station and the proposed EmeryStation West office building, and an extension of the loading platform abutting the new bus bays in the Transit Center parking podium. The total cost as estimated in the Transportation Facilities Impact Fee is \$1,042,100, of which \$208,420 is included in the fee (see Attachment 6). The CIP cost estimate for this project is slightly more, at \$1,043,000 (see Attachment 7). Of this, \$834,077 is funded by a grant from the Federal Transportation Administration (FTA), and \$208,923 is the required 20% match, which is funded by the developer of the EmeryStation West/Transit Center project (i.e. Wareham). The CIP does not include any Transportation Facilities Impact Fee funding for this project. Since Wareham is covering the required match for the FTA grant, and since approximately the same amount is identified in the Transportation Facilities Impact Fee for this project although it is not being allocated to the project in the CIP, the Council may consider reimbursing Wareham the \$208,420 identified in the Transportation Facilities Impact Fee for this project.

Public Parking and Bus Bays at Transit Center

This project will provide 125 public parking spaces and bus bays serving Amtrak abutting the rail loading platform in the podium level of the EmeryStation West/Transit Center project. It also includes remediation of the highly contaminated site. The total cost as estimated in the Transportation Facilities Impact Fee is \$8,431,000, of which \$4,200,048 is included in the fee (see Attachment 6). The CIP cost estimate for this project is slightly less, at \$8,430,952 (see Attachment 7). Of this, \$4,230,952 is from the former Redevelopment Agency and is allocated to site remediation, and \$4,200,000 is a grant from the State Transportation Improvement Program (STIP) for construction of the project. Again, the CIP does not include any Transportation Facilities Impact Fee funding for this project, although the amount identified in the impact fee for the project is approximately the same as the estimated construction cost in the CIP.

According to the estimates prepared by the Building Division for the EmeryStation West/Transit Center project (see Attachment 5), the construction valuation of the parking podium and bus bays is \$5,943,915 (not including the retail space). This is \$1,743,915 more than the CIP allocates for construction of the public parking and bus bays, and is being funded by the developer (Wareham). Given that the Transportation Facility Impact Fee includes \$4,200,048 for this project, which has not been allocated to the project in the CIP, and Wareham is funding about \$1,743,915 of the project, the Council may consider reimbursing Wareham the \$728,633.13 in Transportation Facility Impact Fees that they have paid as a partial credit towards their contribution to the construction costs of the Public Parking and Bus Bays facility. (This would preclude any credit and refund

for the Transit Center Plaza and Platform Extension project, since together they would exceed the total amount of Transportation Facility Impact Fees paid by the applicant.)

Development Bonus

As noted above, the EmeryStation West/Transit Center project was approved under the Interim Zoning Regulations that were in effect from 2009 to 2013, and received a development bonus for height over 100 feet. The Interim Zoning Regulations had a different development bonus system than the one that is in effect today, and that is referenced in the regulations pertaining to development impact fee credits.

Under today's regulations, building height over 100 feet requires 100 bonus points, of which half must come from paying an increased Affordable Housing Impact Fee, and half must come from providing community benefits in one or more of seven categories: (1) Public Open Space, (2) Zero Net Energy, (3) Public Improvements, (4) Utility Undergrounding, (5) Additional Family Friendly Units [not applicable in this case], (6) Small Businesses, and/or (7) Flexible Community Benefit. Generally, community benefit points are awarded on the basis of 10 points per 1% of construction valuation. In this case, 50 points would be needed for community benefits, equal to 5% of construction valuation. The construction valuation of the project is approximately \$50.9 million, so a little over \$2.5 million in community benefits would be required under the current code.

The Interim Zoning Regulations, under which the project was approved, had a qualitative, rather than a point-based, bonus system. In order to be eligible for bonus height over 100 feet, a project had to provide "significant public benefits substantially beyond normal requirements" in three or more of the following fourteen areas that were listed in Section 9-4.407(b): (1) Public Open Space, (2) Family Friendly Development [not applicable], (3) Sustainable Design, (4) Transportation Demand Management, (5) Public Right-of-Way Improvements, (6) Undergrounding of Utility Wires, (7) Public Parking, (8) Neighborhood Centers [not applicable], (9) Recycled Water, (10) Small Businesses, (11) Water Reuse, (12) Alternative Energy, (13) Public Art, and (14) Alternative Public Benefit.

As noted above, the project was approved by the City Council by Resolution No. 10-33 on February 16, 2010. That resolution including the following finding for granting the height bonus (see Attachment 2):

"... the proposed project will provide significant public benefits substantially beyond normal requirements in three or more of the areas listed in Section 9-4.407(b):

"The project provides public benefits in the categories of 'public open space', 'public parking', 'public-right-of-way improvements', 'alternative energy' and 'transportation demand management' as described below. The open space/terrace on the third level is approximately 15,600 square feet and the public plaza between Emery Station West and the Amtrak Station is approximately 20,600 square

feet. The proposed public open space constitutes about 31 per cent of total site area (36,200 divided by 116,741) which is above the 10 per cent threshold needed to qualify for bonus in this category. In addition, the project will provide a minimum of 125 public parking spaces and will include widening of the railroad platform as well as sidewalks along Horton Street. The project will provide on-site generation of one of the following: wind power, solar power or cogeneration facilities (See Condition of Approval Number VII.A.11). In the ‘transportation demand management’ category, the project will provide electric vehicle charging stations, car pod and campus wide showers and locker facilities.”

Although the listed public benefits for which the development bonus was granted include the plaza, platform extension, and public parking, this does not necessarily disqualify the project from receiving a Transportation Facility Impact Fee credit, because additional public benefits were also included. The project included public benefits in five of the fourteen categories, including Public Open Space, Transportation Demand Management, Public Right-of-Way Improvements, Public Parking, and Alternative Energy. In addition to the plaza, platform extension, and public parking that are eligible for Transportation Facility Impact Fee funding, the public benefits provided by the project also included Public Open Space in the form of a 15,600 square foot landscaped terrace that will be open to the public; Public Right-of-Way Improvements in the form of widened sidewalks along Horton Street; Alternative Energy in the form of on-site generation of wind, solar, and/or cogeneration power; and Transportation Demand Management in the form of electric vehicle charging stations, a car-share pod, and shower and locker facilities.

Thus, even without the features that are eligible for Transportation Facility Impact Fee funding, the project would still provide at least three public benefits and would therefore still be eligible for the bonus height over 100 feet. Therefore, it could be argued that the project is eligible for an impact fee credit because it did not depend solely on the public benefits to be funded by the impact fee to earn the development bonus.

FISCAL IMPACT

Granting a Transportation Facility Impact Fee credit to this project will result in a refund of fees already paid, and will reduce the balance in the Transportation Impact Fee Fund (Fund 250) by the refunded amount. It should be noted that, although the Transit Center Plaza and Platform Extension, and the Public Parking and Bus Bays at Transit Center projects are not funded by the Transportation Facility Impact Fee in the CIP, there are 12 other CIP projects that are funded by the Transportation Facility Impact Fee, totaling \$4,567,000 (see Attachment 8). However, the CIP anticipates that there will be a balance of a little over \$1 million remaining in the Transportation Facility Impact Fee fund after these projects are completed, so granting a refund of up to \$728,633.13 to Wareham will not reduce the funding for these 12 projects, but will reduce the remaining balance in the fund to about \$290,000.

LEGAL CONSIDERATIONS

The City Attorney has reviewed this report and accompanying resolution.

CONCLUSION

Staff recommends that, based on the discussion above, attached documents, evidence submitted at or prior to the January 17, 2017 City Council meeting, and public testimony at the meeting, the City Council should determine whether Wareham Property Group, on Behalf of ES West Associates, LLC, should be granted a credit for all, or a portion of, the \$728,633.13 Transportation Facility Impact Fee already paid for the EmeryStation West/Transit Center project. A resolution approving such a credit is attached for the Council's consideration.

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Carolyn Lehr, City Manager

Attachments:

1. Letter from Wareham Property Group, on Behalf of ES West Associates, LLC, dated November 2, 2016, requesting credit of Transportation Facility Impact Fee
2. Resolution No. 10-33, dated February 16, 2010, approving the EmeryStation West/Transit Center project
3. Renderings of EmeryStation West/Transit Center Project
4. Planning Regulations Section 9-5.1911 – 9-5.1913, Development Impact Fee Credits
5. Building Division fee chart and construction valuation estimate, EmeryStation West/Transit Center project
6. Projects Eligible for funding from Transportation Facility Impact Fee
7. Capital Improvement Program sheets for “Transit Center Plaza and Platform Extension” and “Transit Center – Public Parking and Bus Bays” projects
8. Capital Improvement Program fund balance projections – Transportation Facility Impact Fee