

July 12, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Ketil Freeman, Council Central Staff
Subject: Council Bill 119294 – Amendment to the Capitol Hill Station Development Agreement

On July 18th the Planning, Land Use and Zoning (PLUZ) Committee will hold a public hearing and may vote on a recommendation for Council Bill (CB) 119294. CB 119294 would amend the development agreement, which governs transit-oriented development above and adjacent to Sound Transit’s Capitol Hill light rail station, to facilitate development of affordable housing on one site subject to the development agreement.

This memo: (1) provides background on the development agreement, (2) describes how CB 119294 would amend the development agreement, and (3) describes a substitute exhibit to the bill.

Background

In 2013 the City passed [Ordinance 124242](#) authorizing execution of a development agreement between the City and Sound Transit. The development agreement establishes use and development standards for several sites controlled by Sound Transit at the Capitol Hill light rail station and contemplates development of a site, referred to as Site B-North in the development agreement, with housing affordable to households earning up to 60 percent of area median

income. See Figure 1 below for the location of Site B-North.



Figure 1 – Ordinance 124242, Exhibit 2 to Exhibit A, p.5.

At the time execution of the development agreement was authorized, the City and Sound Transit anticipated that Site B-North would be developed with approximately 86 affordable units.

On May 21, 2018 the City issued a Master Use Permit (Master Use Permit

3021177-LU) to Schemata Workshop, Inc., on behalf of a development entity for Capitol Hill Housing, to develop Site B-North with 110 units of affordable housing, a community meeting space, and below-grade accessory parking for an adjacent development.

Development of Site B-North will be partially financed with an \$8.7 million loan from the City's Low-income Housing Fund. The Office of Housing and a private lender have identified a needed clarification to the development agreement to finalize underwriting for the development.

Amendments to the development agreement must be approved by the City and Sound Transit.

CB 119294

The amendments to the development agreement would:

1. Clarify the affordable housing obligation by replacing a reference to the Seattle Municipal Code with a reference to the Office of Housing's regulatory agreement to facilitate financing of the development. This change would not change the affordability requirement from 60 percent of area median income.
2. And, make other changes to conform the terms of the development agreement to the issued master use permit for Site B-North, such as specifically authorizing below grade accessory parking for the adjacent site.

Substitute Exhibit

Since introduction of CB 119294, staff have identified some clerical edits to Exhibit A to the bill. Exhibit A sets out the amendments to the development agreement. The edits would (1) clarify how Site B-North is identified for the purposes of a lot boundary adjustment that was approved for the site and (2) add a recording number, which was not available at the time of introduction, for a condominium declaration. The substitute Exhibit A is attached to this memo.

Next Steps

The PLUZ Committee will hold a public hearing on CB 119294 on July 18, 2018. The Committee may suspend the Council Rules to allow for a vote on the same day. If that occurs, the Full Council could vote on the Committee's recommendation as early as July 23, 2018.

Attachment: Substitute Exhibit A

cc: Kirstan Arestad, Central Staff Director

Ex A - First Amendment to Development Agreement

~~V1a~~V2a

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Central Puget Sound Regional Transit Authority
Attn: Real Property Division
401 S. Jackson Street
Seattle, WA 98104-2826

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
BETWEEN**

**THE CITY OF SEATTLE
AND
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**

**REGARDING
CAPITOL HILL STATION TRANSIT ORIENTED DEVELOPMENT**

Between: THE CITY OF SEATTLE, WASHINGTON

And: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
(SOUND TRANSIT)

ABBR. LEGAL DESCRIPTION: PARCELS A THROUGH D, INCLUSIVE, OF LOT BOUNDARY ADJUSTMENT RECORDED UNDER RECORDING NO. 20131113900003; LOTS A AND B OF LOT BOUNDARY ADJUSTMENT RECORDED UNDER RECORDING NO. 20131107900003; AND LOTS A AND B OF LOT BOUNDARY ADJUSTMENT RECORDED UNDER RECORDING NO. 20131113900005.

ASSESSOR'S TAX PARCEL NO.(S): 6003002025, 6003002020, 6003501105, 6003501135, 6003001380, 6003001385, 6003001315, 6003001380

REFERENCE OF AFFECTED DOCUMENTS: 20150504000410

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

Between

THE CITY OF SEATTLE

And

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Regarding

CAPITOL HILL STATION TRANSIT ORIENTED DEVELOPMENT

This First Amendment to Development Agreement (“Amendment”) is entered into by and between THE CITY OF SEATTLE (“City”), a Washington municipal corporation, and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority created pursuant to Chapter. 81.104 RCW and Chapter 81.112 RCW (together the “Parties”).

RECITALS

- A. Sound Transit and the City entered into that certain Development Agreement recorded on May 4, 2015 under King County recording number 20150504000410 (the “Development Agreement”) with respect to the development of the real property legally described on Exhibit A hereto, comprising five sites referred to as Sites A, B-North, B-South, C, and D.
- B. Pursuant to the Development Agreement, Site B-North is to be developed as “Affordable Housing” for households with incomes not exceeding 60% of “median income” as defined in SMC 23.84A.025 (“Median Income”). The Parties did not intend for the below-grade portions of Site B-North to be developed as Affordable Housing.
- C. As anticipated in the Development Agreement, the City approved a lot boundary adjustment (“LBA”) to establish legal lots that correspond to certain Development Agreement Sites. *See* LBA No. 3015588, recorded under King County recording number 20131113900003. “Parcel C” in the LBA corresponds to Site B-North.
- D. Schemata Workshop, Inc., applied for and received a Master Use Permit, permit number 3021177-LU (the “MUP”), approving a development (the “Project”) on Parcel C (corresponding to Site B-North), to consist of a 110-unit affordable housing project, serving households with incomes at or below 60% of Median Income, with a community center, located above a 30-stall parking garage accessory to development proposed for LBA Parcel D (corresponding to Site B-South).

E. Parcel C (corresponding to Site B-North) has been subjected to the Washington Condominium Act, RCW Chapter 64.34, pursuant to a Condominium Declaration for Station House Condominium (“Declaration”) executed by Sound Transit, as Declarant, dated as of _____, 2018 and recorded under King County Recording No. 20180619000672. The Declaration created two condominium units: the “Affordable Housing Unit” and the “Garage Unit.” The Parties do not intend for the Garage Unit to be developed as Affordable Housing.

F. To facilitate financing for the Project, the Parties desire to amend Section 2.5 and related provisions of the Development Agreement to modify the definition of “Affordable Housing” and to reflect that, pursuant to the MUP and consistent with the Parties’ intent in the Development Agreement, Site B-North may consist of affordable housing dwelling units (which may include affordable live-work units), a manager’s unit, a community center, and below-grade parking.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Sound Transit hereby agree to amend the Development Agreement as follows:

1. Recital K of the Development Agreement is amended as follows [*new text underlined, deleted text struck through*]:

K. Sound Transit will dispose of Sites A, B-South, and C by means of a competitive process that will begin with a Request for Qualifications (“RFQ”), followed by a Request for Proposals (“RFP”). Responses for Sites A, B-South, and C will be evaluated concurrently to allow developers to submit individual proposals for each parcel and allow master developers to complete for two or more parcels with a single development proposal. Sound Transit will dispose of Site D through a similar process if Seattle Central Community College does not acquire Site D pursuant to a prior agreement with Sound Transit. Sound Transit will dispose of Site B-North in cooperation with the City’s Office of Housing by offering that Site for development exclusively as affordable housing. The timing of these processes will depend upon site availability after construction of the Station is complete, as determined by the Sound Transit Board.

2. Section 2.5 of the Development Agreement is amended as follows (with Section 2.6, unchanged, shown for context) [*new text underlined, deleted text struck through*]:

2.5 Site B-North shall be developed exclusively as Affordable Housing, which development may also include: affordable live-work units that do not include retail use, a manager’s unit; a below-grade parking garage accessory to a site other than Site B-North; and a community center consistent with Section 2.6. For purposes of this Agreement, “Affordable Housing” means affordable housing as

defined in SMC 23.84A.016, for households with: (a) that is subject to income and rent restrictions in any regulatory agreement required by The City of Seattle Office of Housing or its successor agency with respect to the development or financing of the housing on Site B-North; or (b) in the absence of any such regulatory agreement, serving residents with household incomes at the time of initial occupancy not exceeding 60% of area “median income” as defined in SMC 23.84A.025, with rents that do not exceed 30% of 60% of median income. “Affordable Housing” may include live-work units that do not include a retail use.

- 2.6** Notwithstanding the limitations imposed by Sections 2.2, 2.4, and 2.5, a community center as defined in SMC 23.84A.018 shall be permitted within the first 40 vertical feet on Sites A, B-North, C, and D. The area of any community center shall be exempt from FAR calculations.
3. Section 5.1 of the Development Agreement is amended as follows [*new text underlined, deleted text struck through*]:
- 5.1** Site B-North shall be developed consistent with Sections 2.5 and 2.6 ~~exclusively as Affordable Housing.~~
4. Section 11.1 of the Development Agreement is amended as follows [*new text underlined, deleted text struck through*]:
- 11.1** During the MUP process, DPD may approve applications that vary in minor ways from the requirements of this Agreement. A minor variation is one that: (a) is consistent with the intent of this Agreement to achieve high-quality transit-oriented development near the Station; (b) will not result in significantly greater impacts than are allowed by this Agreement; and (c) will provide at least as much open space, amenity area, and Affordable Housing and Affordable Units as would a project that does not vary from the requirements of this Agreement. A minor variation may not approve greater height than is authorized by this Agreement. Any variation reflected in plans approved by DPD for permit purposes is considered to comply with this Agreement for all purposes. For purposes of this Agreement, “DPD” shall include the Seattle Department of Construction and Inspections and any successor City department.
5. Section 13.1 of the Development Agreement is amended as follows [*new text underlined, deleted text struck through*]:
- 13.1** Sound Transit will offer Site B-North ~~to not for profit developers for development solely as of~~ Affordable Housing consistent with Sections 2.5 and 2.6. Sound Transit will provide for City participation in the RFQ/P process for

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this Site so that the City may assist in evaluating the proposals and may offer appropriate City financing.

Substitute Exhibit A

IN WITNESS WHEREOF, each of the parties has executed this Amendment by its authorized representative.

**CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,**
a Washington municipal corporation

By: _____
Peter Rogoff
Chief Executive Officer

Date: _____

Approved as to form:

By: _____
Sound Transit legal counsel

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Peter Rogoff is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the Central Puget Sound Regional Transit Authority to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

WITNESS my hand and official seal this ___ day of _____, 2018

NOTARY PUBLIC in and for the State of
Washington residing at _____

My appointment expires _____

Print Name _____

THE CITY OF SEATTLE,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Authorized by Ordinance No. _____

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he is authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

WITNESS my hand and official seal this ___ day of _____, 2018

NOTARY PUBLIC in and for the State of
Washington residing at _____

My appointment expires _____

Print Name _____

Acknowledged and Consented to:

MEPT CAPITOL HILL STATION JOINT VENTURE LLC, a Delaware limited liability company

By: Gerding/Edlen Development Company, LLC, an Oregon limited liability company, its Manager

By: GEDI, Inc., an Oregon corporation, its Manager

By: _____
Name: Jill Sherman
Its: Vice President

STATE OF WASHINGTON)

COUNTY OF KING)) SS.

I certify that I know or have satisfactory evidence that Jill Sherman is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledge it as the Vice President of GEDI, Inc., the Manager of Gerding/Edlen Development Company, LLC, the Manager of MEPT Capitol Hill Station Joint Venture LLC, a Delaware limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____, 2018

Notary name printed or typed: _____
Notary Public in and for the State of _____
Residing at _____
My appointment expires: _____

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Exhibit A

Legal Description

Parcels A through D, inclusive, of Lot Boundary Adjustment recorded under Recording No. 20131113900003.

Lots A and B of Lot Boundary Adjustment recorded under Recording No. 20131107900003.

Lots A and B of Lot Boundary Adjustment recorded under Recording No. 20131113900005.

Situate in the City of Seattle, County of King, State of Washington.