M E M O R A N D U M

TO: Mayor and Council Members

FROM: Mandy DeMayo, Interim Director, Housing Department

DATE: April 11, 2024

SUBJECT: **April 18, 2024 Council Agenda Item 36 - Authorize a fee-in-lieu of affordable housing for 1501 E. 6th Street**

The Housing Department (Housing) has reviewed the request to provide a fee-in-lieu for a residential mixed-use development located at 1501 East 6th Street, Austin, TX 78702, also known as Centro East. A request to provide a fee-in-lieu payment is permitted as part of the density bonus section of the Plaza Saltillo TOD Regulating Plan, specifically Section 4.3.3(D), and requires the approval of the City Council.

The proposed development is in City Council District 3 and the TOD Mixed Use subdistrict. The applicant is proposing a 341,408 square foot development with 260 proposed multifamily units ranging from studios to 3-bedroom units with ground-floor commercial space. The proposal is for new development on a site with no existing structures. The proposed development seeks a density bonus, as described in the Regulating Plan, in the form of waivers of Site Development Standards, including maximum FAR, maximum density, and compatibility standards.

To receive the density bonus, the Regulating Plan requires on-site affordable housing or, if approved by Council, a fee-in-lieu payment. The Plaza Saltillo TOD Regulating Plan permits the donation of a fee-in-lieu of on-site affordable housing under Section 4.3.3(D) if the property owner/developer can demonstrate a compelling reason not to provide the required on-site housing.

The TOD regulating plan establishes a fee-in-lieu of $13 per square foot of bonus area. The fee-in-lieu shall be calculated in accordance with the Plaza Saltillo Regulating Plan, Section 4.3.3(D)(2). The pending application for the site estimates a bonus area of 222,750 square feet, resulting in a potential fee of $2,895,570 if approved. These are estimates based on initial project designs.

Applicant Justification

The applicant has provided a letter, attached as Exhibit A, with justifications for providing a fee-in-lieu rather than the onsite affordable units. Those justifications, as described by the applicant, are:

- Current macroeconomic realities, including high interest rates and high development costs, prevent feasibility of development.
- Affordability requirements of the Plaza Saltillo TOD Density Bonus are uniquely challenging.

Staff Recommendation
Housing staff do not recommend approval of the request to provide a fee in lieu of the on-site affordable units. Challenging market factors, whether site-specific or macroeconomic, are not uncommon in affordable housing development. Staff do not consider these challenging market factors to be a compelling reason to recommend approval of a fee-in-lieu of on-site affordable units.

Staff from the Housing and Planning Departments are currently engaged in efforts to evaluate the effectiveness and feasibility of existing density bonus programs. If staff find that recalibration of this bonus program is needed, we hope these efforts at calibration and stakeholder engagement will yield meaningful improvements that allow our density bonus programs to continue producing on-site affordable housing.

Should you have any questions, please contact me at 512-974-1091 or via email at MandyDeMayo@austintexas.gov or Brendan Kennedy, Housing Department, Program Manager II, at 512-978-1594 or via email at Brendan.Kennedy@austintexas.gov.

cc: Jesús Garza, Interim City Manager
Veronica Briseño, Assistant City Manager

Attachment: Exhibit A, 1501 E. 6th St. Request for Fee-In-Lieu

Exhibit A

ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744
512-435-2300

FACSIMILE 512-435-2360

April 5, 2024

Via email

Mandy DeMayo, Interim Director
Housing Department
City of Austin
1000 E. 11th St.
Austin, Texas 78704

Subject: Density bonus application for 1501 E. 6th St. (the project known as "Centro East")

Dear Ms. DeMayo,

On behalf of 6th & Onion East, LP (the "Applicant"), please accept this follow-up to our letter dated October 27, 2023, in which the Applicant requested to pay a fee in lieu of on-site affordable units under the Plaza Saltillo Transit-Oriented Development ("TOD") Regulating Plan (the "Regulating Plan") for the Centro East project.

Pursuant to feedback from City legal, the Regulating Plan currently precludes the city from accepting a proposal for partial on-site affordability and partial fee payment. As a result, the Applicant is requesting the ability to pay the full fee in lieu of on-site affordable housing, estimated at approximately $2.9 million.

'Compelling Reason' for Fee-in-Lieu Approval

Section 4.3.2.D. of the Regulating Plan allows an applicant to request the ability to pay a fee in lieu of providing on-site affordable units if they can "demonstrate a compelling reason."

In this case, the compelling reason is existential: this single request will ultimately determine whether the Centro East project is able to move forward and provide much-needed housing and commercial amenities directly adjacent to a rail station.

Simply put, the current macroeconomic environment and the need to recalibrate the current Plaza Saltillo TOD bonus program have already prevented this project from moving forward – and are threatening to derail it entirely. This fee-in-lieu request is the applicant's last remaining option to achieve financial feasibility for the Centro East project in this challenging environment.

These macroeconomic challenges are affecting projects across the entire region and are not specific to this Applicant or to the Centro East project. KUT summarized these dynamics in a February 2024 article:

> *"In the middle of 2022, interest rates began to rise. Buying land and paying for construction became more expensive.*
>
> *Some developers sold off projects. Others held onto developments, but adjusted their plans, no longer guaranteed easy cash by building apartments.*
>
> *…*
>
> *'If everybody stopped building because things are more expensive, you could end up in a situation where you are back in the undersupply situation again and rents start rising,' Julia Coronado, a professor of finance at UT Austin, said. It's the way a capitalist market works — if there is no money to be made, no one will build. 'That is the name of the game.'*
>
> *Economists and real estate experts argue now is the time for the government or philanthropic institutions to find ways to make building cheaper — ensuring a profit for developers and continued falling rents.*
>
> *'I really don't like this analogy because I don't like cars. But this is kind of that place where we have to make sure that we keep our foot on the gas pedal,' [Awais Azhar, deputy director of HousingWorks Austin] said."*

These challenges are compounded by the need to recalibrate the Plaza Saltillo TOD Regulating Plan's bonus provisions. As discussed in our October 27, 2023 letter, this Regulating Plan establishes one of the highest thresholds for participation in the city, calculating affordability set-asides based on *total square footage* but then requiring an Applicant to provide that space in *net rentable square feet*.

The city has also recognized this issue: the Housing Department indicated in its November 14, 2023 presentation to the Council's Housing and Planning Committee that "Calibration [is] needed to increase participation" for the Plaza Saltillo TOD bonus program. By our count, only about 37 percent of completed and under-construction site plans for private projects developing in the Plaza Saltillo TOD actually included on-site affordable housing.

Without the ability to pay a fee in lieu of on-site units, the Centro East project will not be feasible, leading to the following outcomes:

- **Loss of 260 housing units**, contributing to a widening deficit in the housing pipeline.
- **Loss of affordable housing**, including losing the $2.9 million the Applicant would otherwise have paid to the city's Housing Trust Fund.

- **Loss of a mixed-use, transit-supportive project** with active ground-floor uses directly adjacent to the Plaza Satillo rail station.

The Applicant has not arrived at this request lightly. We understand that the city strongly prefers that applicants provide on-site affordable units – and have only brought this request forward due to the dangers that the current macroeconomic environment and the current program requirements pose to the overall project's feasibility.

We believe that this information constitutes a "compelling reason" to approve paying a fee in lieu under the Regulating Plan. Thank you for your consideration – and I am available to discuss this request and answer questions.

Sincerely,

Michael J. Whellan

Attachment A – Plaza Saltillo TOD Calibration Discussion

Currently, the Plaza Saltillo TOD calculates affordability based on *total* square footage – including commercial space, amenity areas, and other space not used for residential units – while simultaneously requiring that affordable space be based on *net rentable* residential square footage. In this case, that calculation would effectively require the Applicant to provide over 14 percent of their net rental residential area as affordable housing.

In contrast, other density bonus programs calculate affordability either based on *incremental* bonus area (Downtown Density Bonus, East Riverside Corridor, North Burnet/Gateway, and Planned Unit Developments) or on residential uses alone (Vertical Mixed Use) (Figure 1).

The Plaza Saltillo TOD's 'hard-trigger, all-uses-included' design – in which *any* amount of bonus area triggers a commitment based on *total* square footage owed as *net rentable* space – makes it particularly sensitive to feasibility issues. While a strong economy may have temporarily boosted feasibility for projects in this area over the past several years, the current macroeconomic headwinds threaten to tip more projects into infeasibility. By our count, only about 37 percent of completed and under-construction site plans for private projects developing in the Plaza Saltillo TOD actually included on-site affordable housing – despite having several years with a strong economy.

In this case, it is not financially feasible to provide the full amount of on-site affordable housing. Instead, the Applicant is requesting to meet their affordability commitment by paying a fee in lieu of on-site housing, up to a maximum of $2.9 million, based on the fee-in-lieu rate of $13 per bonus square foot. This payment represents a meaningful commitment to affordable housing in Austin: the fee-in-lieu rate for the Plaza Saltillo area is higher than that of any other density bonus program in the entire city – greater even than the fees required in Downtown Austin.

Figure 1. Density Bonus Program Fee-in-Lieu Rate Comparison

Density Bonus Program	Calculation Basis	Uses Considered
Downtown Density Bonus	Incremental	Nonresidential and Residential
Planned Unit Development	Incremental	Nonresidential and Residential
North Burnet/Gateway	Incremental	Nonresidential and Residential
East Riverside Corridor	Incremental	Nonresidential and Residential
Vertical Mixed-Use	Total	Residential Only
Transit-Oriented Development	**Total**	**Nonresidential and Residential**

Figure 2. Density Bonus Program Fee-in-Lieu Rate Comparison

Density Bonus Program	Fee Per Bonus Square Foot
Downtown Density Bonus	$3 to $12
Planned Unit Development	$8
North Burnet/Gateway	$8
East Riverside Corridor	$1
Martin Luther King Jr. TOD	$12
Plaza Saltillo TOD (and Lamar/Justin TOD)	**$13**

Exhibit A

Attachment B – Housing Department Briefing Slide on Plaza Saltillo Bonus

CITY OF AUSTIN: GEOGRAPHICALLY SPECIFIC DENSITY BONUS PROGRAMS

PLAZA SALTILLO TOD, Est. 2009

A Transit Oriented Development (TOD) Regulating Plan next to the Plaza Saltillo Commuter Rail station that incorporates an optional affordable housing bonus.

Policy Considerations

- Calibration needed to increase participation
- Zoning cases for additional entitlements instead of utilizing the density bonus program
- More consideration needed for non-residential community benefits