



**MEETING DATE: 08/11/16  
ITEM NO. 1**

**DESK ITEM B**

**COUNCIL AGENDA REPORT**

DATE: AUGUST 11, 2016

TO: MAYOR AND TOWN COUNCIL

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: ARCHITECTURE AND SITE APPLICATION S-13-090 AND VESTING TENTATIVE MAP APPLICATION M-13-014. PROPERTY LOCATION: SOUTHERLY PORTION OF THE NORTH 40 SPECIFIC PLAN AREA, LARK AVENUE TO SOUTH OF NODDIN AVENUE. APPLICANT: GROSVENOR USA LIMITED. PROPERTY OWNERS: YUKI FARMS, ETPH LP, GROSVENOR USA LIMITED, SUMMERHILL N40 LLC, ELIZABETH K. DODSON, AND WILLIAM HIRSCHMAN.  
CONSIDER A REQUEST FOR THE CONSTRUCTION OF A NEW MULTI-USE, MULTI-STORY DEVELOPMENT CONSISTING OF 320 RESIDENTIAL UNITS, WHICH INCLUDES 50 AFFORDABLE SENIOR UNITS; APPROXIMATELY 66,800 SQUARE FEET OF COMMERCIAL FLOOR AREA, WHICH INCLUDES A MARKET HALL; ON-SITE AND OFF-SITE IMPROVEMENTS; AND A VESTING TENTATIVE MAP.  
APNS: 424-07-024 THROUGH 027, 031 THROUGH 037, 070, 083 THROUGH 086, 090, AND 100.

REMARKS:

Attachment 24 contains public comments received between 11:01 a.m. August 9, 2016 and 11:00 a.m. August 11, 2016.

At the August 9, 2016 meeting the Town Council asked staff to respond to a number of questions. The following are the questions followed by staff responses in italic font:

1. Is additional environmental review required because the City of San Jose is evaluating potential new development (e.g., Samaritan Medical Center) after the completion of the North 40 Environmental Impact Report (EIR)?

PREPARED BY: JOEL PAULSON  
Community Development Director

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Reviewed by: N/A Assistant Town Manager \_\_\_\_\_ Town Attorney \_\_\_\_\_ Finance

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REMARKS (Continued):

*The Town Council certified a Program EIR for the North 40 Specific Plan on January 20, 2015 (Resolution 2015-002). An Initial Study was prepared to analyze the proposed uses and improvements associated with the Phase 1 project (Exhibit 3 of Attachment 1). The Initial Study concludes that the proposed development applications for Phase 1 comply with the environmental analysis completed with the certified EIR, and therefore no additional environmental analysis is required for the proposed applications. The recommended conditions of approval (Exhibit 6 of Attachment 1) include a condition requiring implementation of the applicable mitigation measures from the adopted Mitigation Monitoring and Reporting Program.*

*Comments and question came up again during public comment period regarding doing additional CEQA analysis based upon the cumulative impact of proposed projects that were not included in the certified EIR. An EIR must analyze cumulative impacts whenever a proposed project's individual impacts have the potential to combine with related impacts from other projects to compound environmental harm. CEQA establishes that the environment for which the Project is evaluated is established at the time of issuance of the Notice of Preparation (NOP) (Guidelines Section 15130(b)), and the NOP for the North 40 Specific Plan was issued on February 13, 2013.*

*Recent case law has confirmed that agencies have discretion to set a reasonable cutoff date to determine which projects should be included in the cumulative impact analysis. Gray, 167 Cal. App. 4th at 1127-1128. "Projects are constantly being fed into the environmental review process, [t]he problem of where to draw the line on 'projects under review' that must be included in the cumulative impact analysis of a particular project could be solved by the use of a reasonable cutoff date which could be set for every project according to a standard procedure." San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal. App. 3d at 74. Thus, the Town had the discretion to set the date of the NOP as the cutoff date to determine which projects should be included in the cumulative impacts analysis and has complied with CEQA. For this project, the cutoff date was established as of the date of the NOP.*

*More importantly, as a "by right" development, additional CEQA analysis is not required because the proposal (A&S) is not a "project" as defined by CEQA. In other words, the applicant voluntarily completed a new Initial Study beyond the State law requirements and the Town cannot require further CEQA analysis.*

2. Actual traffic counts are different than the calculations in the EIR. This should require additional environmental review.

*No, additional analysis is not necessary. The EIR contains the required traffic analysis based on established methodologies.*

REMARKS (Continued):

3. Please respond to Angelia Doerner's comments in her e-mail.

*Government Section 65915(c)(3)(A) provides that an applicant "shall be ineligible for a density bonus or any other incentives or concessions " if the proposed development is eliminating units "occupied by lower or very low income households unless the proposed housing development replaces those units" with "at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy."*

*This provision in the density bonus statute requires that a project "replace" all rental housing that was occupied by very low and low income households in the past five years. If the project does not replace the housing with new housing available at the same income levels (very low or low), it is not eligible for a density bonus. The Initial Study found that there were 16 existing units on the North 40 that were to be demolished in order for Phase 1 to proceed. The applicants (Grosvenor and SummerHill) do not currently lease most of the units and do not have income information for most of the tenants, especially over the last five years. However, even if it is assumed that all of the existing units are or have been occupied by very low income households, the project proposes to provide 49 very low income units and therefore meets the statutory requirements to "replace" the units.*

*More importantly, the original project application was made in 2013. The statute specifically exempts applications made before January 1, 2015 from the replacement housing provision. Section 65915(c)(3)(C).*

4. Provide information regarding the Terraces of Los Gatos.

*The Terraces contain Independent Living Units (175), Assisted Living Units (45), Skilled Nursing Units (59), and Memory Care Units (16). The total parcel size is 9.2 acres. Using the most conservative approach, only counting Independent Living Units, the density is 19.02 dwelling units per acre. If you add the 10 new Assisted Living Units that are one bedroom units (10 of the total 45 on-site), the density is 20.11 dwelling units per acre.*

*Using the least conservative approach, counting all the units, the density is 32.07 dwelling units per acre.*

5. Provide the survey information referenced by Mr. Gemignani.

*Please see Attachment 25.*

REMARKS (Continued):

6. Can the affordable units be age restricted?

*The Town cannot require a developer to provide age restricted units. However, the applicant is proposing to provide age restricted units.*

7. What stormwater standards apply?

*Stormwater impacts were considered in the EIR and have to be mitigated. The project is considered a regulated project due to its total proposed impervious area. Per the stormwater permit, last updated on November 19, 2015, this requires the project to implement low impact development (LID) source control (i.e., biotreatment/bioretention), site design (reduction in runoff, disturbed areas, and impervious cover), and stormwater treatment (storing, infiltrating, and biotreating).*

*Since this regulated project will also create and/or replace one acre or more of impervious cover, hydromodification management is required as well. With this requirement, the project must manage post-development flow and volume to match that of the pre-development levels for the site (Exhibit 6 of Attachment 1, Condition 137, Stormwater Development Runoff). The applicant has included these measures in the application with proposed bioretention areas, tree well filters and an on-site hydromodification vault, all of which have been reviewed by the Town's stormwater consultant.*

8. Why is there 2 to 5 feet of fill throughout the project (the speaker had an image which depicted fill on all but the southernmost portion of the development site)?

*Modifications to the site elevation are design elements that the applicant's engineers incorporated into the project. Current project information demonstrates a net off haul of material from the site, meaning the materials for the fill areas will be from existing materials moved from elsewhere on the site. The additional materials will be off hauled from the site.*

9. Does the fill reduce building cost?

*Using materials from on-site, versus exporting existing material and importing all new material, will likely provide a cost savings to the developer and is preferred to lessen construction impacts on neighboring streets.*

10. Are there hazardous materials or archaeological elements on site that the fill will cover or cause to be exposed?

REMARKS (Continued):

*Mitigation Measures CR-3 and CR-4 in the North 40 EIR addresses archaeological elements if they are discovered on-site during any grading or construction activities. Mitigation Measure HAZ-1 requires the reduction of any impacts from contaminated soils to a less than significant level.*

11. Is truck traffic from imported fill part of the EIR analysis?

*The EIR considered short term construction impacts associated with the air quality effects. Additional environmental analysis is not needed. In addition, based on the project as proposed, there would be a net off haul of material. Truck traffic will be managed through construction requirements, including a prescribed haul route. The Architecture and Site application Conditions of Approval (Exhibit 6 of Attachment 1, Condition 111)*

12. How many truckloads of import or export are anticipated?

*Information on the amount of projected off haul is preliminary. The project information anticipates off hauling approximately 26,000 cubic yards of dirt. Staff anticipates between 2,100 and 2,600 truckloads over the course of the project. If the project was not using the material on site for fill, the total off haul of material could increase to 5,000 truck loads or more.*

13. How does the fill affect the overall height of the project? Does that increase the net building height?

*Yes, raising the grade in relation to that of the existing grade would increase the height of the project as the finished grade would be higher than if the area was not filled.*

14. Did Council request Samaritan project in the Traffic Impact Analysis (TIA) as additional data?

*An initial project referred to as "Samaritan Court" as well as a Samaritan Emergency Room expansion were provided to the Council as additional information in 2015. Subsequently the Samaritan Court project was replaced with a project called the Samaritan Master Plan. That project's NOP was issued in August of 2015 and Draft EIR was available for comment in Summer 2016. The Town has provided comment on the Draft EIR.*

15. Does the additional information from the new Samaritan project justify a new TIA for the North 40?

*No. Projects such as the Samaritan Master Plan are required to conduct their own EIR and mitigate impacts for the project. The mitigation for Samaritan cannot be a requirement of the North 40.*

REMARKS (Continued):

16. What is the value of off-site traffic improvements?

*The Town maintains a list of future roadway improvement projects through the Traffic Impact Fee program. This list contains approximately \$11.8M worth of projects that will be fully or partially addressed by the North 40 project. With the exception of the bike lane over Highway 17, these projects are required of the proposed Phase 1 development as mitigation.*

17. Are there conflicts between landscaping and stormwater improvements?

*Staff has requested a composite exhibit overlaying the landscape plan on the stormwater and infrastructure plans.*

*Yes, conflicts have occurred with past projects and are resolved as staff reviews the Improvement Plans for detailed infrastructure construction prior to their approval. Any conflicts are resolved to ensure all required mitigation plantings and landscaping are able to be installed along with required infrastructure and required stormwater solutions.*

18. Does staff plan to attend the Samaritan Medical Center community public meeting?

*Parks and Public Works staff will attend the Samaritan project meeting on August 23 at 7 p.m. in the Cambrian Library Community Room.*

19. Are we requiring widening of LGB (East side of LGB)?

*No, the widening of Los Gatos Boulevard north of Lark Avenue to Samaritan Drive is not required with these applications. The applicant will improve the west side of Los Gatos Boulevard. The full right-of-way on the east side of Los Gatos Boulevard has not been dedicated to the Town. As those properties redevelop over time, the Town will require right-of-way dedication.*

20. Do we have the funds to widen Los Gatos Boulevard north of Lark Avenue?

*The Town has not identified funding to acquire the property and construct improvements on the east side of Los Gatos Boulevard.*

21. Can we require additional open space?

*The Specific Plan requires 30 percent open space and the application exceeds this requirement by providing 39 percent open space, of which at least 85 percent is open to the public.*

REMARKS (Continued):

*In order to require more public access to open space there must be an essential nexus to the impacts of the proposed project, and the requirement must be roughly proportional to those impacts of the project. Since the EIR for the Specific Plan identifies no such impact, and the Town does not have a Quimby Act Ordinance requiring public open space in new developments, the Town cannot require additional open space.*

22. How can the Town influence its future Regional Housing Needs Allocation (RHNA) number?

*Every eight years, the Council of Governments (the Association of Bay Area Governments for the 9-County Bay Area) receives a housing number from the California Department of Finance for the entire region. ABAG creates a new methodology to allocate the regional need to every County and then every city within each County. The Town can influence the future RHNA by commenting on the methodology and by appealing the number assigned to Los Gatos. In addition, the Town Manager is on a Cities Association Subcommittee exploring the viability of establishing a Santa Clara County subregion in which the cities and the County would determine its own methodology for distributing the regional need to each of the 15 cities and the unincorporated County area.*

23. Is there a mandate to put housing on the North 40?

*Yes, the North 40 Specific Plan, General Plan, and Housing Element all call for housing on the North 40.*

Attachment 26 also contains the applicant's responses to issues raised in public testimony, additional information, and the applicant's power point presentation is included in Exhibit D of this Attachment.

Comments were also made regarding school impacts. Staff is providing the following information regarding school impacts:

*As has been stated at the Study Session and many public hearings, the Leroy F. Greene School Facilities Act of 1998, or Senate Bill 50 (SB 50), restricts the ability of local agencies, such as the Town of Los Gatos, to deny land use approvals on the basis that public school facilities are inadequate. SB 50 authorizes school districts to levy developer fees to finance the construction or reconstruction of school facilities to address local school facility needs resulting from new development. SB 50 establishes the base amount of allowable developer fees for school impacts. In January 2016, the State Allocation Board (SAB) increased Level 1 Fees to \$0.56 per square foot of enclosed and covered space in any commercial or industrial development, and \$3.48 per square foot for residential development (SAB, 2010). Public school districts can, however, impose higher fees than those established by the SAB, provided they meet the conditions outlined in the act.*

REMARKS (Continued):

*The North 40 Specific Plan included both private and public schools as permitted uses within the North 40 Specific Plan Area. Developers and School Boards can voluntarily consider additional arrangements. For the southern portion of the North 40 Area, the Los Gatos Union School District Board entered into an agreement with the prospective developers regarding school issues.*

Comments were also made regarding density onus, concessions, and waivers. Staff is providing the following information:

*The Density Bonus Law is a potentially powerful tool for developers. Although the Density Bonus Law has existed for over thirty years, both developers and cities have struggled with its application. The statute "is confusing, convoluted, and subject to endless debate about its requirements." A.B. 2280 Bill Analysis, Staff Comments, at 11 (Cal. Apr. 21, 2008).*

*The State Density Bonus Law is designed to implement "an important state policy to promote the construction of low-income housing and to remove impediments to the same. The purpose of the State Density Bonus Law is to encourage cities to offer bonuses and incentives to housing developers that will "contribute significantly to the economic feasibility of lower income housing in proposed housing developments (Government Code § 65917). As recognized by California courts, "the Density Bonus Law reward[s] a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations." Friends of Lagoon Valley v. City of Vacaville, 154 Cal. App.45 4th 807*

*The Density Bonus Law provides that requests for a density bonus and incentives must be granted "when an applicant for a housing development seeks and agrees to construct a housing development" that meets one or more of the statute's thresholds. Applicants for density bonuses may also request specific incentives or concessions from cities. Thus, when an applicant seeks a density bonus for a housing development that includes the required percentage of affordable housing, Section 65915 requires that the city not only grant the density bonus, but provide additional incentives or concessions where needed based on the percentage of low income housing units. The applicant is not seeking any incentives under the Density Bonus Law.*

*In addition to, and separate from, requests for incentives, a density bonus applicant may request a waiver or reduction of development standards that would have the effect of physically precluding the construction of the project at the densities permitted. "Development standard" means a site or construction condition, including, without limitation, local height, setback, floor area ratio, onsite open space, and parking area ratio requirements that would otherwise apply to residential development under local ordinances, general plan elements, specific plans, charters, or other local condition, law, policy, resolution, or regulation.*

REMARKS (Continued):

*The waivers or reductions of development standards requested by the applicant are discussed at length within the applicant's Density Bonus Letter (Exhibit 19) provided by Barbara Kautz, Partner with Goldfarb Lipman Attorneys. The applicant's Density Bonus Letter provides supporting documentation explaining why certain development standards, if applied, would preclude the applicant from being able to provide the necessary density.*

*The requested waivers and reductions in development standards are:*

- Definition of height: The Specific Plan's definition of height aligns with that in Town Code (29.10.020) and includes the measurement from existing or proposed grade (whichever is lower) to the ridge directly above the grade. The applicant is requesting an exception to the inclusion of existing grade due to the topographical constraints in certain locations on the site. The proposed application would utilize the 35-foot maximum height as established by the proposed/finished grade. The proposed grade varies from the existing grade between zero to five feet depending on the location.*
- Maximum permitted height for the senior/mixed use market hall building: The Specific Plan permits the mixed use/market hall building to be up to 45 feet in height, and does not permit the standard exceptions to height provided within Town Code. The proposed mixed use/market hall building includes several areas that exceed 45 feet in height. The requested exception would allow the senior/ mixed use market hall building to have a maximum height of 51 feet.*

*There are very limited circumstances where the Town may deny a waiver. Under State Law, a waiver may only be denied if it would have a "specific, adverse impact upon health, safety, or the physical environment," or it would have an "adverse impact on any property listed in the California Register of Historical Resources." The Town does not have any other discretion or rationale for denying a requested waivers if they are necessary to accommodate additional density or concessions and incentives in the proposed project.*

*Another words, if the project meets the requirements of the Density Bonus Law, the Town must grant development standard waiver requests to ensure the project as designed is not physically prevented from being developed. Quoting the prohibition contained in section 65915(d)(1), the Wollmer court warned, "Had the City failed to grant the waiver and variances, such action would have had 'the effect of physically precluding the construction of a development' meeting the criteria of the density bonus law."*

REMARKS (Continued):

*A request for a development standard waiver neither reduces nor increases the number of incentives to which the developer is otherwise entitled. Furthermore, there is no limit on the number of waivers that may be issued. As with incentives, although a city might ask a developer to modify a requested development standard waiver, it cannot force the developer to do so. Instead, a city's refusal to waive or reduce development standards must be supported by one or more findings similar to those available for denying a request for an incentive.*

Attachments (previously received under separate cover):

1. March 30, 2016 Planning Commission Staff Report (includes Exhibits 1-21)
2. March 30, 2016 Planning Commission Addendum (includes Exhibits 22-23)
3. March 30, 2016 Planning Commission Desk Item (includes Exhibits 24-25)
4. April 27, 2016 Planning Commission Staff Report (no exhibits for this report)
5. July 12, 2016 Special Planning Commission Staff Report (includes Exhibits 26-31)
6. July 12, 2016 Special Planning Commission Addendum (includes Exhibits 32-33)
7. July 12, 2016 Special Planning Commission Desk Item (includes Exhibits 34-35)
8. July 13, 2016 Planning Commission Desk Item (includes Exhibits 36-39)
9. July 12, 2016 Special Planning Commission Meeting Verbatim Minutes
10. July 13, 2016 Planning Commission Meeting Verbatim Minutes

Attachments (previously received with August 9, 2016 Staff Report):

11. Required Findings and Considerations
12. Draft Resolution to deny the applications
13. Draft Resolution to approve the applications (includes Exhibit A, Findings and Exhibit B, Conditions of Approval)
14. Public comments received between 11:01 a.m. July 13, 2016 and 11:00 a.m. August 4, 2016
15. Additional information from the applicant, received July 29, 2016 (11 pages)

Attachments (previously received with the Addendum Report):

16. Public comments received between 11:01 a.m. August 4, 2016 and 11:00 a.m. August 5, 2016
17. Applicant's response to the Planning Commission recommendation on the applications, received August 5, 2016
18. Updated Vesting Tentative Map Sheet 1.1

Attachments (previously received with Addendum B Report):

19. Public comments received between 11:01 a.m. August 5, 2016 and 11:00 a.m. August 8, 2016

Attachments (previously received with the Desk Item Report):

20. Public comments received between 11:01 a.m. August 8, 2016 and 11:00 a.m. August 9, 2016

PAGE 11

MAYOR AND TOWN COUNCIL

SUBJECT: N. 40 PHASE 1 DEVELOPMENT APPLICATIONS/S-13-090 and M-13-014

AUGUST 11, 2016

Attachments (Continued):

21. Applicant's response to the Town Council staff report, received August 8, 2016
22. Photos of high density projects
23. Revised Draft Resolution to approve the applications (includes Exhibit A, Findings and Exhibit B, Conditions of Approval)

Attachments received with this Desk Item Report:

24. Public comments received between 11:01 a.m. August 9, 2016 and 11:00 a.m. August 11, 2016
25. Document referenced by Joseph Gemignani regarding survey results
26. Applicant's response to questions from the August 9, 2016 meeting