



MEETING DATE: 09/01/16
ITEM NO. 4

DESK ITEM H

COUNCIL AGENDA REPORT

DATE: SEPTEMBER 1, 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:

The Town Attorney deemed it important to remind the Council that if it fails to approve or disapprove the Vested Tentative Map and/or the A&S Application by September 7, 2016, that the project is subject to being "deemed approved." The "deemed approved" remedy appears in the Permit Streamlining Act ("PSA"), Government Code section 65920 et seq., first adopted in 1977, at section 65950 and section 65956, as well as in the Subdivision Map Act ("SMA") sections 66452.4, 66452.5 and 66458, first adopted in 1974. A "deemed approved" permit confers the same privileges and entitlements as a regularly issued permit.

However, the Vested Tentative Map and A&S may not be deemed approved until the Town is provided with notice of the applicant's intent to invoke the Act, and an opportunity to hold a

PREPARED BY: JOEL PAULSON
Community Development Director

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

REMARKS (Continued):

public hearing to decide whether to approve or deny the project. The purpose of the notice is to provide the agency with a final opportunity to hold a public hearing and actually make a decision on the project, thereby avoiding the effect of a deemed-approved permit.

It is also important for Council to remember that a majority decision is required since a motion always fails without an affirmative majority vote. For example, if the Town Council is unable to pass a majority motion or even if the vote is two in favor and two opposed, with one abstention, the motion is defeated. It is important to remember the potential danger that these scenarios will result in a project being “deemed approved” under the automatic approval provisions of the Permit Streamlining Act or Subdivision Map Act. Based upon the Permit Streamlining Act, Subdivision Map Act, and the Extension Agreement entered into by the Town and the Applicant, it is imperative that the Town Council reach a majority decision on this matter before September 7, 2016, so that we avoid any possibility that the project is “deemed approved” unilaterally.

In response to Attorney Moncharsh’s concerns regarding the project’s accessibility for seniors, the proximity to local services for future residents is not judged solely on the basis of the existing surrounding neighborhood and it is expected that neighborhood serving commercial uses will be built in the area. Also, as set forth in staff’s and outside counsel’s previous analysis, the applicant’s demand for the density bonus percentage of 35% is based on the percentage of low-income housing that will be provided, not on the age restriction that will be imposed on the residents. Therefore, Attorney Moncharsh’s analysis for denying the project application’s density bonus based on senior-housing-related factors are not relevant to the Council’s determination of whether the project meets the requirements for the density bonus. As previously stated, staff and outside counsel maintain that the project meets the requirements for the 35% density bonus for very low income units.

Finally, many of the General Plan policies that Attorney Moncharsh cites in support of her analysis that the project is not consistent with local planning policies are subjective, not mandatory, specific, and objective polices. Therefore, staff and outside counsel do not share Attorney Moncharsh’s certainty that a court would rule in the Town’s favor regarding any findings of inconsistency with subjective policies. As has been continually stated, the Town can only modify or deny the project based upon its determination that the application does not comply with objective North 40 Specific Plan standards and criteria. This conclusion is confirmed by the correspondence from HCD set forth as Attachment 36.

As a final note, Governor Brown’s plan to streamline approval for housing projects, which would have made sweeping changes to local rules governing housing, failed to get support in the Legislature and is no longer under consideration this year. However, a measure to expand incentives for developers who agree to build low-income housing is on the Governor’s desk awaiting signature. The bill from Assemblyman Richard Bloom (D-Santa Monica) strengthen the state’s rules requiring local governments to approve housing projects that allow developers to build at higher densities, have lower parking requirements or receive other concessions if they reserve a portion of their projects for low-income residents. The Bill contends that local

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REMARKS (Continued):

governments use ambiguities in the law to stall projects that otherwise should be approved and that the Bill would help the state's problems with rising housing prices. This is one of three bills Gov. Jerry Brown endorsed in May as part of a legislative package to increase housing supply as a way to reduce costs.

Attachment 37 contains public comments received between 11:01 a.m. August 26, 2016 and 11:00 a.m. September 1, 2016.

A recent court case requires the Council to make affirmative findings for the proposed subdivision application. Attachment 38 contains the revised findings that should be used if the Town Council's action on the proposed applications is for approval.

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

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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
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 (previously received with Desk Item B 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

Attachments (previously received with Desk Item C Report):

27. Public comments received between 11:01 a.m. August 11, 2016 and 11:00 a.m. August 12, 2016

Attachments (previously received with Desk Item D Report):

28. Public comments received between 11:01 a.m. August 12, 2016 and 11:00 a.m. August 15, 2016
29. Letter from the applicant's attorney, received August 12, 2016

Attachment (previously received with Desk Item E Report):

30. Public comments received between 11:01 a.m. August 15, 2016 and 11:00 a.m. August 16, 2016

Attachment (previously received with Desk Item F Report):

31. Public comments received between 11:01 a.m. August 16, 2016 and 11:00 a.m. August 19, 2016

Attachments (previously received with Desk Item G Report):

32. Response to August 16, 2016 Council meeting from the applicant, received August 25, 2016 (includes Exhibits A-G)
33. Public comments received between 11:01 a.m. August 19, 2016 and 11:00 a.m. August 26, 2016
34. Memorandum from outside legal counsel Remy, Moose and Manley, dated August 26, 2016
35. Memorandum on Housing Element Law and Litigation
36. Letter from the Department of Housing and Community Development, dated August 25, 2016

Attachments received with this Desk Item H Report:

37. Public comments received between 11:01 a.m. August 26, 2016 and 11:00 a.m. September 1, 2016
38. Revised Findings