



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 07/24/2017

ITEM NO: 1

DATE: JULY 20, 2017

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.

THE PUBLIC HEARING IS BEING HELD PURSUANT TO A COURT ORDER DIRECTING THE TOWN COUNCIL TO SET ASIDE THE DENIAL OF THE NORTH FORTY DEVELOPMENT APPLICATIONS AND RECONSIDER THE APPLICATIONS UNDER THE PROVISIONS OF GOVERNMENT CODE §65589.5(J) KNOWN AS THE HOUSING ACCOUNTABILITY ACT.

PREPARED BY: ROBERT SCHULTZ
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

RECOMMENDATION:

After opening and closing the public hearing, it is recommended that the Town Council:

1. Adopt a resolution (Attachment 1) to set aside Resolution 2016-046 denying the Vesting Tentative Map and Architecture and Site applications; and
2. Continue the hearing to a date certain, August 1, 2017, to allow the full Council to be present for deliberations and a decision on the Vesting Tentative Map and Architecture and Site applications.

BACKGROUND:

North Forty Specific Plan and Environmental Impact Report

On June 17, 2015, following several public hearings, the Town Council adopted the North 40 Specific Plan, providing detailed land use and development guidance for the area bounded by Highway 17 to the west, Los Gatos Boulevard to the east, Lark Avenue to the south, and Highway 85 to the north.

The Specific Plan implements the General Plan through this detailed guidance for new development. The approval of the North 40 Specific Plan also amended the zoning of the 44-acre area to North 40 Specific Plan to allow a total of 270 housing units and 501,000 square feet of non-residential uses. The Specific Plan can be found at the following link: www.logatosca.gov/DocumentCenter/View/15472.

As part of the Specific Plan preparation process, the Town also prepared and circulated an Environmental Impact Report (EIR) that analyzed the potential environmental consequences of the Specific Plan, in accordance with the California Environmental Quality Act (CEQA). The EIR can be found at the following link: www.logatosca.gov/DocumentCenter/Index/413. The Town Council certified the Final EIR on June 17, 2015.

These documents are the regulatory framework for the consideration of the Phase 1 applications. The rescission or modification of the Specific Plan would have no bearing on the Phase 1 applications.

Proposed Development Applications

While the Specific Plan was going through its extensive public process, Grosvenor USA Limited, Eden Housing Inc., and Summerhill Homes LLC (Applicants) submitted Architecture and Site (A&S) and Vesting Tentative Map (VTM) applications for the portion of the Specific Plan area south of Noddin Avenue. After the Specific Plan was approved, revised plans were submitted to the Town for the previously submitted applications. The applications were deemed complete

PAGE 3 OF 16
SUBJECT: NORTH 40
DATE: JULY 20, 2017

BACKGROUND (Cont'd):

on May 4, 2016 and the development plans for the applications can be found at the following link: www.losgatosca.gov/DocumentCenter/View/16090.

The proposed development in the A&S application includes: 260 residential condominiums/rowhomes, 10 rental apartments (including two live-work units), 49 affordable senior rental units, one additional unit to be reserved for a moderate-income manager of the senior units, and 66,791 square feet of commercial floor area. The VTM proposes to subdivide the 20.7-acre Phase 1 project area into 113 lots to provide for up to 320 residential units and commercial space.

To enable the development of the 50 units that exceeded the 270-unit maximum allowed by the Specific Plan, the Applicants requested approval of a density bonus pursuant to the State Density Bonus Law due to its inclusion of the 49 very low income units. In addition, the Applicants requested waivers or reductions of two standards relating to building heights. The Applicants' applications also requested modifications to the Town's Below Market Price (BMP) Program standards, including the requirements that the affordable units be dispersed throughout the development and be sized and designed consistent with the rest of the units, in order to allow Applicants to use the 49 senior units to satisfy the BMP ordinance.

The Specific Plan and certified EIR require off-site improvements within the Town and Caltrans right-of-ways. The Applicants proposed to build the required improvements along Lark Avenue for the full build out of the Specific Plan area, and interim improvements for Phase 1 along Los Gatos Boulevard. Specific on-site and off-site improvements are discussed in the Report to the Planning Commission for its March 30, 2016 meeting and can be found at the following link: http://losgatos.granicus.com/GeneratedAgendaViewer.php?view_id=5&clip_id=1521. If the Applicants' applications are approved, full implementation of the improvements in the right-of-ways would require continued coordination between the Applicants, the Town, and Caltrans. The Town Council considered the applications over the course of four public hearings, held during August and September 2016. The transcripts can be found at the following link: <http://www.losgatosca.gov/1729/North-40-Specific-Plan-Area>. After carefully considering its own General Plan, Housing Element, Specific Plan, the public's comments and evidence, and the Applicants' submittals, the Town Council voted to deny the Applications on September 1, 2016. The Council based this decision on the Project's inconsistencies with the Town's General Plan, Housing Element, and Specific Plan, as set forth in Resolution 2016-046 adopted on September 6, 2016 (Exhibit A to Attachment 1).

Litigation

On October 6, 2016, the Applicants filed a lawsuit against the Town asserting that: (1) the Town of Los Gatos violated the Town's Housing Element; (2) the Town violated the State's Housing

BACKGROUND (Cont'd):

Accountability Act; and (3) the Town violated the State Density Bonus Law. The lawsuit requested the Court to direct “the Town to comply with its clear, mandatory, and ministerial duty to approve the project in compliance with the Town’s Housing Element, the Housing Accountability Act, and the Density Bonus Law.”

On June 9, 2017, the Santa Clara County Superior Court issued a Decision and Judgment against the Town (Attachment 2). The Decision and Judgment directs the Town of Los Gatos to set aside Town Resolution 2016-046 denying the Vesting Tentative Map and Architecture and Site applications and to reconsider the Project under the provisions of Government Code §65589.5(j) known as the Housing Accountability Act (HAA) (Attachment 3).

The Decision and Judgment determined that the findings adopted by the Town Council were discretionary determinations made under subjective policies in the Specific Plan, instead of under objective policies as required by the HAA. The Decision and Judgment states that the Town must reconsider the Applicants’ project under the HAA, and if during the course of reconsideration, the Town determines to again deny the project, the Town shall specify the applicable, objective General Plan, Specific Plan, and zoning standards which the project failed to comply. If the Town determines that the Project does so comply and the Council still denies the applications, then the Town shall make written findings, supported by substantial evidence in the record, that: (1) the project would have a specific, adverse impact upon the public health or safety based on information available at the time the applications were deemed complete unless the project is disapproved; and (2) there is no feasible method to satisfactorily mitigate or avoid that specifically identified adverse impact other than the disapproval of Applicants' applications. The Decision and Judgment acknowledged that, “Although the Town was required by law to apply the criteria of the (Subdivision) Map Act, the Map Act does not relieve or preclude the Town from the provisions of...the HAA...” which are discussed in more detail below.

DISCUSSION:

The Court’s Decision and Judgment

The Court Decision and Judgment directs the Town to reconsider the Project under the provisions of Government Code §65589.5(j) of the Housing Accountability Act (HAA). The HAA was originally enacted in 1982 and is often referred to as California’s “Anti NIMBY law.” *Schellinger Brothers v. City of Sebastopol, 179 Cal.App.4th 1245, 1253 (2009).*

The intent of the legislation was to address the “problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created.”

DISCUSSION (Cont'd):

The HAA requires local governments to approve any “housing development project,” including specified mixed use projects, if they comply with “applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete...” The Court Decision and Judgment determined that the Applicant’s “project is within the statutes definition of a housing development project.” Subdivision (j) of Section 65589.5 reads:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

- (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

Objective Standards

The HAA does not define the term “objective standard.” The following are definitions of that term found within these two dictionaries:

1. Law Dictionary: A standard that is based on factual measurements, in the absence of a biased judgement or analysis.
2. Business Dictionary: Benchmark, criteria, or model based on verifiable measurements or bias free (neutral) analysis and judgment.

DISCUSSION (Cont'd):

In other words, objective standards are typically quantifiable or numerical standards and anyone evaluating a project against the standards would arrive at the same conclusion. Examples within the North 40 Specific Plan include building heights, setbacks, open space requirements, etc.

The Decision and Judgment now requires the Town to reconsider the project under the HAA and requires the Town to make a very specific set of findings if it again wants to deny the Project. In order to continue to deny this Project, the Town must cite to specific written objective identified written Policies and cannot deny the project for subjective reasons like neighborhood character, aesthetics, or other difficult-to measure criteria. As explained in *Honchariw v. County of Stanislaus (2011)200 Cal.App.4th 1066, 1074-7*, the HAA was intended to “take away an agency’s ability to use what might be called a ‘subjective’ development ‘policy’.”

Staff has consistently stated that the proposed project meets all the Town’s objective standards. The proposed applications went through the Town’s development review process, including review and evaluation by Planning, Building, Fire, and Engineering staff, referrals and evaluations by outside agencies, and review by the Town’s Consulting Architect, Historic Preservation Committee (HPC), and Conceptual Development Advisory Committees (CDAC). The Report to the Planning Commission for its March 30, 2016 meeting (Link: http://losgatos.granicus.com/GeneratedAgendaViewer.php?view_id=5&clip_id=1521) discusses the technical issues of parking, open space, trees, demolition, General Plan conformance, and results of discussions with the Town’s Consulting Architect, HPC, and CDAC. Additional information regarding development intensity can be found in the Report to the Planning Commission for its July 12, 2016 meeting (available at: http://losgatos.granicus.com/GeneratedAgendaViewer.php?view_id=5&clip_id=1559). Based on the analysis in earlier reports, the proposed applications meet the technical requirements of the Specific Plan. These are: Development Capacity, Development Standards, and Design Guidelines. From the March 30, 2016 Planning Commission Staff Report, staff concludes:

Based on the analysis provided above, the proposed applications meet the technical requirements of the North 40 Specific Plan, the goals and policies of the General Plan, and the Town’s Housing Element. The proposed traffic impacts will be mitigated based on the required traffic mitigation fees and implementation of the proposed right-of-way improvements. The Commission should consider the recommended conditions of approval to ensure the proposal meets the Specific Plan and other Town Codes, policies, and guidelines.

DISCUSSION (Cont'd):

In addition, the Decision and Judgment states that “There is substantial evidence in the record to support Applicants’ contention that the Project is consistent with objective standards.” The Decision and Judgment made these additional determinations in regard to the Town’s original findings for denial:

- The Town’s findings has no findings of compliance or lack of compliance with objective standards under the Town's Housing Element or the HAA, and recites only findings of subjective criteria.
- There is no specific allocation requirement in the Specific Plan.
- The Town’s finding that the proposed project overly concentrates all of the residential units on the southern portion of the North 40 Specific Plan area and finds the allocation excessively disproportionate and inconsistent with the Specific Plan is a discretionary determination of a subjective policy.
- The Town’s finding that the proposed project is inconsistent with the North 40 Specific Plan Section requirements for lower intensity residential uses in the Lark District is a discretionary determination of a subjective policy in the Specific Plan.
- The Town’s finding that buildings 18 through 27 are inconsistent with the Lark District is a discretionary determination of inconsistency with a subjective policy.
- The Town’s finding that buildings 24 and 25 are inconsistent with the Specific Plan as it eliminates a fourth access point off of Los Gatos Boulevard is not a requirement and there is no objective factor or subjective goal or vision which a fourth access is material.
- The Town’s finding that the project is inconsistent with North 40 Specific Plan as it does not address unmet housing needs for seniors and Gen Y is a discretionary determination of a subjective policy.
- The Town’s finding that the project is inconsistent with the Residential Unit Size Mix and should have smaller units to come closer to the income distribution of affordable housing identified in the Town's Housing Element is neither a requirement nor objective standard, but rather, an example how the North 40 site could assist the Town to meet affordable housing needs of the community.
- The Town’s finding that the project, specifically buildings 18 through 27, would result in an anomaly of residential uses within an existing commercial land use context is primarily a subjective policy.
- The Town’s finding that the only promised Below Market Rate housing is 49 units above Market Hall and the remainder would have home values estimated at \$900,000 to \$1,500,000 requiring a 20 percent down payment and income of approximately \$130,000 to \$200,000 per year is not an objective requirement, but a subjective goal.

DISCUSSION (Cont'd):

Adverse Impact on Public Health or Safety

If the Town Council agrees with staff's and the Court's analysis that the proposed project meets all of the Town's objective standards, then it can only deny the project if it determines:

1. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

Examples of public health and safety standards include, but are not limited to, geologic instability, persistent hazardous materials in the soils, or remote location without adequate infrastructure or access to municipal services.

The EIR, as required by State law, analyzed the potential consequences of development of the North 40 Specific Plan. The Council adopted a resolution certifying the EIR and adopting its Mitigation Monitoring and Reporting Program (available at: http://losgatos.granicus.com/GeneratedAgendaViewer.php?view_id=5&clip_id=1422). As an infill site within the Town, the EIR determined that the significant adverse impacts to Transportation and Traffic, and Cultural Resources could not be mitigated to a less than significant level. As a result, the Council identified specific policy objectives that would be satisfied with the implementation of the Specific Plan that override these impacts (Statement of Overriding Considerations). This Statement is included in the EIR resolution consistent with State law. This means that these impacts cannot now be used as public health and safety concerns for the denial of the applications.

Additional environmental analysis was conducted for the development applications in the form of an Initial Study. The Initial Study concluded that the proposed development applications for Phase 1 comply with the environmental analysis completed with the certified EIR, and therefore no additional environmental analysis was required for the proposed applications. The

DISCUSSION (Cont'd):

recommended conditions of approval (Attachment 4) include a condition requiring implementation of the applicable mitigation measures from the adopted Mitigation Monitoring and Reporting Program. No additional mitigation measures were required.

Housing Element

In addition to complying with the HAA, the Town must comply with Housing Element Law. Housing Element Law requires the Town to demonstrate how the community plans to accommodate its "fair share" of its regional housing needs. To do so, the Town must establish an inventory of sites designated for new housing that is sufficient to accommodate its fair share. The Town must also identify regulatory barriers to housing development and propose strategies to reduce or eliminate those barriers.

On May 5, 2015, the Town Council adopted the current Housing Element (available at: <http://www.losgatosca.gov/1735/General-Plan---Housing-Element>) and on May 20, 2015, the State certified the document as compliant with Housing Element law. The Town's Housing Element required adoption of the North 40 Specific Plan with certain development assumptions in order to meet existing and projected housing needs in the Town and to obtain certification of the Housing Element from the State. The Town's Housing Element (Action HOU 1.7) required the Town to rezone 13.5 acres within the North 40 Specific Plan Area to comply with a minimum density of 20 units per acre and establish "by-right" development for these units. More specifically, the Town's Housing Element states:

Additional opportunities for affordable housing are being facilitated through the consideration of the North 40 Specific Plan and associated rezoning of 13.5 acres with a minimum density of 20 units per acre to yield 270 units. The Specific Plan would provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through "by right development" in the consideration of Architecture and Site applications. This process involves site and architectural review and if a proposal meets the objective criteria in the Design Guidelines, then the project is approved. Therefore, the Planning application process and review is not an undue burden or constraint on the production of affordable housing.

The Town will re-zone 13.5 acres within the North 40 Specific Plan area within three years of Housing Element adoption at minimum a density of 20 dwelling units per acre to facilitate affordable housing production. After rezoning, owner occupied or multiple family development will be by-right as defined by not requiring a conditional use permit or other discretionary approval; however,

DISCUSSION (Cont'd):

design review according to the objective standards contained in the Specific Plan can occur.

Based upon the Town's Housing Element, the Town cannot require a Conditional Use Permit, Planned Unit Development Permit, or other discretionary review or approval for the applications. In addition, the applications are entitled to "by right" development. This means that pursuant to our Housing Element, the Town must only apply the objective standards found in the North 40 Specific Plan in its review, analysis, and determination whether to approve or deny the applications. These same legal principles are set forth under the HAA and are adopted in the Court's Decision and Judgment. The Town cannot use subjective criteria and findings to condition or deny the Applications under our Housing Element. As stated in the March 2016 Report, staff's evaluation determined that the proposed project meets all of the objective standards and policies of the Town.

State Density Bonus

The Town must also comply with the Density Bonus Law. The State Density Bonus Law is one of several California statutes designed to implement an important State policy to promote the construction of low-income housing and to remove impediments to the same. When the Legislature adopted the State Density Bonus Law, it declared that the housing shortage crisis must be addressed and that the State should rely on local governments to provide the necessary increased housing stock and that local discretion and powers shall not be exercised in a manner to frustrate the purposes of the State Density Bonus Law. The Density Bonus Law applies to the Town and it requires the Town to adopt an ordinance that specifies how the Town will comply with the statute.

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,

DISCUSSION (Cont'd):

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.

The proposed application includes 50 affordable senior rental units. 49 units are proposed to be very low and extremely low income and one manager unit would be moderate income. The proposed number of VLI units is in excess of 11 percent of the base number of units (237 units); therefore the application qualifies for the requested Density Bonus of 35 percent (83 units).

During the public hearings on this project last year, issues were raised that the proposed application does not meet the definition of senior housing. Pursuant to Civil Code 51.2 a housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

- (1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.
- (2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.
- (3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.
- (4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.
- (5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.
- (6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.
- (7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing

DISCUSSION (Cont'd):

Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

If the project is approved, the senior housing will be required to meet all of the above senior housing requirements.

The Applicants' Memoranda and Letters (Attachment 5) 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 and 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 waiver if they are necessary to accommodate additional density or concessions and incentives in the proposed project. In other 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. In *Wollmer v. City of Berkeley* the Court quoting the prohibition contained in section 65915(d)(l), warned, "Had the City failed to grant the waiver and variances, such action

DISCUSSION (Cont'd):

would have had 'the effect of physically precluding the construction of a development' meeting the criteria of the density bonus law."

During the public hearings on this project last year, issues were raised that the Applicants were "ineligible for a density bonus or any other incentives or concessions" since 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.

As mentioned in the March 2016 Staff Report, staff concluded that there are no specific, adverse impacts upon health, safety, or the physical environment from the granting of waivers for the definition of height related to grading and the maximum height being over 45 feet for the senior housing.

Town's Below Market Price (BMP) Guidelines

The Town's Below Market Price (BMP) Guidelines require that affordable units be comparable in size, type, and finish (i.e., materials) to the market rate units and that the location of the affordable units be dispersed throughout the development to the extent feasible. The Characteristics of BMP Units on page 4 of the BMP Guidelines (available at: <https://www.losgatosca.gov/DocumentCenter/View/2773>) discusses these requirements.

The Applicants are proposing the following deviations from the BMP guidelines: aggregating all of the affordable housing into a single affordable senior housing component, providing smaller units than the market rate units, and offering rental units when the market rate units are for sale units. The applicant has provided a response and justification to the proposed deviations

DISCUSSION (Cont'd):

from these Guidelines (Attachment 5). The BMP Guidelines are not objective standards and these modifications cannot be grounds for the denial of the application.

School Impacts

As has been stated at 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 established 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. Therefore, school impacts cannot be considered adverse public health and safety considerations.

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 also voluntarily consider additional arrangements. For the southern portion of the North 40 Area, the Los Gatos Union School District Board has entered into an agreement with the prospective developers regarding school issues (available at: <http://lg-ca.com/wp/wp-content/uploads/2016/04/LGUSD-Grosvenor-Agreement.pdf>).

Traffic Impacts

The EIR for the North 40 Specific Plan included a full Traffic Impact Analysis (TIA). The TIA studied the impact of the full build out of the North 40 Specific Plan on the existing roadways. The analysis concluded that the full build out would result in significant traffic impacts at several intersections, and identified mitigation measures to reduce those impacts to a less than significant level.

As noted in the March 30, 2016 Planning Commission staff report (available at: http://losgatos.granicus.com/GeneratedAgendaViewer.php?view_id=5&clip_id=1521) the Phase 1 TIA included in the Initial Study for the Phase 1 applications (Appendix D of the Initial Study in Exhibit 3 of the March 30, 2016 Planning Commission staff report) studied the potential traffic impacts specific to the Phase 1 development applications, and found that the Phase I development applications would generate a portion of the North 40 Specific Plan build out traffic. As required by the North 40 Specific Plan EIR, the Phase 1 applications, if approved,

DISCUSSION (Cont'd):

are required to pay traffic impact mitigation fees and construct on-site and off-site improvements as part of the required mitigation. In other words, the Initial Study and the additional traffic analysis did not find new significant impacts and therefore, no additional mitigation measures are required.

CONCLUSION:

As directed by the Court, the Town Council must rescind Resolution 2016-046 and reconsider the development applications consistent with State laws as discussed in this report. The Council should open the public hearing; listen to the verbal staff report, applicant's presentation, public testimony, and applicant's rebuttal; close the public testimony portion of the public hearing; and continue the matter to August 1, 2017 to begin deliberations when the full Council is present.

If the Council denies the applications, the Council needs to identify specific facts that support findings that objective standards are not satisfied by the applications and/or that there are specific public health and safety impacts that can only be addressed by denying the applications.

If the Council decides to approve the applications, it must identify facts to support findings of consistency with the General Plan, Specific Plan, Housing Element, and other applicable laws; and adopt a resolution with conditions of approval. Modifications to conditions may be considered as long as they do not reduce the number of housing units or render the project infeasible to construct.

Staff will be available at the meetings to assist the Town Council in its deliberations and decisions.

COORDINATION:

This report was coordinated with the Town Attorney's Office, Town Manager's Office, Community Development Department, and Parks and Public Works Department.

Attachments

1. Draft Resolution to rescind Resolution 2016-046 (Exhibit A contains Resolution 2016-046)
2. Decision and Judgement
3. Housing Accountability Act
4. Recommended Conditions of Approval
5. Applicants' rationale for Density Bonus and BMP modifications
6. Public Comment received before 11:00 a.m. July 20, 2017

PAGE 16 OF 16
SUBJECT: NORTH 40
DATE: JULY 20, 2017

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