



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 05/16/2023

ITEM NO: 9

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DATE: May 11, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard, and Authorize the Town Clerk to Submit for Recordation

**RECOMMENDATION:**

Authorize the Town Manager to execute a Notice of Completion and Certificate of Acceptance (Attachment 1) for specified improvements completed by SummerHill N40 LLC ("SummerHill") for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard, and authorize the Town Clerk to submit for recordation.

**BACKGROUND:**

On August 1, 2017, the Town Council adopted Resolution 2017-045 approving 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 including a market hall; on-site and off-site improvements; and a vesting tentative map on property zoned as part of North 40 Specific Plan.

On September 7, 2018, the Town Council approved the final map for Tract 10441 – North 40 Phase 1, accepting the dedications, and authorizing the Town Manager to execute a Subdivision Improvement Agreement ("Agreement") (Attachment 2), Landscape Maintenance Agreement, Public Storm Drainage Conveyance Agreement, and Agreement for Private Improvements in the Public Right of Way.

**PREPARED BY:** James Watson  
Senior Engineer

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Reviewed by: Town Manager, Finance Director, Parks and Public Works Director, Town Engineer, and Town Attorney

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**BACKGROUND (continued):**

On October 4, 2018, the Town Manager executed the Agreement between the Town and SummerHill for the construction of certain improvements required by various Conditions of Approval (“Required Improvements”) stipulated in the Architectural and Site Plan Review process. The Agreement stipulated 18 “Plans”, identified as “a” through “r”, to be prepared by SummerHill to complete the Required Improvements.

The Agreement required SummerHill to furnish the Town bonds with each bond guaranteeing the subdivider performance of the Plans. Nine Faithful Performance Bonds and nine Labor and Material Bonds were included in the Agreement as shown in Table 1 below. Both bond types were assigned the same number for each group of Plans insured. The Faithful Performance Bond and Labor and Materials Bond with number 748731 were not assigned a Plan and will not be released until the completion of all required improvements.

| <b>Plan(s)</b>          | <b>Faithful Performance Bond and Labor and Materials Bond Number</b> | <b>Plan(s) Status</b>                                                           |
|-------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------|
| “a”, “b”, “c”           | 728666                                                               | Incomplete                                                                      |
| “d”                     | 748728                                                               | Complete – Bonds to be released                                                 |
| “e”, “f”, “g”           | 748729                                                               | Complete – Bonds to be released                                                 |
| “h”, “i”, “j”, “k”, “l” | 748730                                                               | Incomplete                                                                      |
| None specified          | 748731                                                               | Incomplete; won’t be released until the completion of all required improvements |
| “m”                     | 748732                                                               | Complete – Bonds to be released                                                 |
| “n”, “o”, “p”, “q”      | 748733                                                               | Incomplete                                                                      |
| “r”                     | 748734 and 748735                                                    | Complete – Bonds to be released                                                 |

**Table 1: North 40 Summerhill Bond Summary**

**DISCUSSION:**

The improvements described in the Agreement included landscaping, street lighting, traffic signal modifications, storm and sanitary sewer improvements, utility connections and modifications, pavement, curb, gutter, striping, and signage, bike lane improvements, and rough grading.

SummerHill has now completed the work described in 13 of the 18 Plans identified in the Agreement. Plans still in the process of completion are “a”, “b”, “c”, “j”, and “o”. Staff

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DISCUSSION (continued):

recommends that the Town Council issue a Notice of Completion and Certificate of Acceptance for the Plans described in the Agreement listed below:

- d. Los Gatos North 40 Tract 10441 In tract Rough Grading Plans dated August 14, 2018 by Mackay & Somps;
- e. Los Gatos North 40 Phase 1 Offsite Los Gatos Blvd Phase A Improvement Plans dated July 27, 2018 by Mackay & Somps;
- f. Los Gatos Blvd & Walker Street Traffic Signal Plan dated August 2018 by Fehr & Peers;
- g. Walker Street & Los Gatos Blvd Phase A Signing and Striping Plan dated August 2018 by Fehr & Peers;
- h. Los Gatos North 40 Phase 1 Offsite Lark Avenue and Los Gatos Boulevard Improvement Plans dated June 4, 2018 by Mackay & Somps;
- i. North 40 Phase 1 Public Street Lighting Plans dated June 2018 by Giacalone;
- k. Lark Avenue & Los Gatos Boulevard Traffic Signal plans dated June 2018 by Fehr & Peers;
- l. Lark Ave & Los Gatos Blvd Signing and Striping Plans dated June 2018 by Fehr & Peers;
- m. Los Gatos North 40 Offsite Lark Avenue Caltrans Right of Way Improvement Plans dated March 12, 2018 including plans by Mackay & Somps, Finn Design Group, Van Dorn Abed, Fehr & Peers, and Giacalone;
- n. Los Gatos North 40 Phase 1 Lark Avenue Bike Lane Improvement Plans dated March 15, 2018 by Mackay & Somps;
- p. Lark Ave & Oka Road Traffic Signal Plans dated June 2018 by Fehr & Peers;
- q. Lark Avenue Signing and Striping Plans dated June 2018 by Fehr & Peers; and
- r. Los Gatos North 40 Phase 1 Off Site Storm and Sanitary Sewer Improvement Plans dated September 13, 2017.

The execution and recordation of the Notice of Completion and Certificate of Acceptance is required to finalize the Town's acceptance of the Subdivision Improvements and release of the eight bonds. The bonds for the improvements that still need to be completed will remain in place and will not be released until those improvements have been completed.

The requested Council action would initiate a two-year warranty period and permits the Town Clerk's Office to release the eight associated bonds securing the above listed plans (see Table 1 above). The four Labor and Materials bonds and four Faithful Performance bonds would be released in full, and SummerHill N40 LLC will issue a 2-year Guarantee and Warranty Security in the amount of 10 percent of the original value to guarantee the repair and/or replacement of defective materials and workmanship, as described in the Agreement.

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CONCLUSION:

Authorize the Town Manager to execute a Notice of Completion and Certificate of Acceptance for specified improvements completed by SummerHill for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard, and authorize the Town Clerk to submit the documents to the County for recordation.

FISCAL IMPACT:

The improvements within the public right-of-way are dedicated to and accepted by the Town through the subdivision process and the approval of the final map. These improvements become part of the Town's infrastructure to be maintained after the expiration of the two-year warranty period. However, pursuant to a Landscape Maintenance Agreement, SummerHill Homes is responsible to install and maintain the landscaping improvements and utilities that provide utility service to the landscape improvements along Lark Avenue and Los Gatos Boulevard. This Landscape Maintenance Agreement contains a provision to allow SummerHill to transfer this responsibility to a future property owners association.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) for the project was certified by Town Council on January 20, 2015.

Attachments:

1. Certificate of Acceptance and Notice of Completion
2. Subdivision Improvement Agreement