



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 13

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DATE: November 25, 2020  
TO: Mayor and Town Council  
FROM: Robert Schultz, Town Attorney  
SUBJECT: Approval of Proposed Settlement Agreement between the Town of Los Gatos and SummerHill Homes LLC to Resolve the Damage Claim filed By SummerHill Regarding the Denial of SummerHill's Application to Remove Underground Parking from the North 40 Phase 1 Construction of the Market Hall

**RECOMMENDATION:**

Staff recommends that the Town Council approve the proposed settlement agreement between the Town of Los Gatos and SummerHill Homes LLC to resolve the damage claim filed by SummerHill regarding the denial of SummerHill's application to remove underground parking for the North 40 Phase 1 construction of the Market Hall.

**BACKGROUND:**

The application for a modification to the existing Architecture and Site application to remove underground parking for construction of the market hall (S-20-012) was considered by the Planning Commission on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020. On September 28, 2020 the Planning Commission received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Planning Commission closed the public hearing and discussed the project. After completing its deliberations, the Commission denied the application.

The decision of the Planning Commission was appealed on October 1, 2020 by SummerHill. The appellant provided the reasons for the appeal to the Town Council, wherein the Planning Commission's decision was an error or abuse of discretion and was not supported by substantial evidence in the record.

**PREPARED BY:** ROBERT SCHULTZ  
Town Attorney

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Reviewed by: Town Manager, Assistant Town Manager, Community Development Director and Parks and Public Works Director

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BACKGROUND (cont.):

On October 20, 2020 the Town Council heard the appeal filed by SummerHill. The Town Council received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Town Council closed the public hearing and discussed the project. After completing its deliberations, the Town Council denied SummerHill's appeal of the Planning Commission's decision the application.

On November 11, 2020, SummerHill filed a claim against the Town pursuant to the Government Claims Act for damages arising from the Town's denial of the Application to remove underground parking for construction of the Market Hall (Attachment 1). The claim alleges the denial of the Application was wrongful, in that it violated a number of laws, including the Housing Accountability Act, the Housing Element Law, State and Federal Constitutional requirements, and the Federal Civil Rights Act. The Claim further alleges that as proximate result of the Town's unlawful denial of the Application, SummerHill would suffer damages in excess of Five Million Dollars (\$5,000,000).

DISCUSSION:

After the Town received the Government Claim seeking damages from SummerHill, the Town Attorney met in closed session with Town Council on November 15, 2020 and November 24, 2020 to discuss the merits of the claim and potential settlement. Pursuant to Council direction, the Town Attorney with support from Town staff, has been negotiating with SummerHill a settlement that would address all parties' concerns. If the parties reach tentative agreement prior to the December 1 Council meeting, staff will provide an Addendum or Desk Item with the proposed settlement agreement for Council's consideration.

COORDINATION:

The Town Attorney coordinated with the Community Development Department, Parks and Public Works Department, and the Town Manager in the review of the proposed settlement agreement.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required for the approval of the proposed settlement agreement.

Attachments:

1. Government Claim filed by SummerHill