



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve Findings of Exception to the requirements of the Affordable Housing Ordinance to allow payment of fees in lieu of reserving six affordable units on the project site to be included in the previously adopted Resolution approving a Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment to develop a 40-unit residential condominium building, up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22 acre site located at 2001 Tarob Court</b>
<b>Category:</b>	Consent Calendar-Community Development
<b>Meeting Date:</b>	9/17/2019
<b>Staff Contact:</b>	Ned Thomas, Planning Director, 408-586-3073
<b>Recommendation:</b>	Approve Findings of Exception to the requirements of the Affordable Housing Ordinance to allow payment of fees in lieu of reserving six affordable units on the project site to be included in the previously adopted Resolution approving Site Development Permit (SD18-0014), Conditional Use Permit (UP19-0009), Vesting Tentative Map (MT18-0004), and Environmental Assessment (EA19-0002) to allow development of a 40-unit residential condominium building, up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22-acre site at 2001 Tarob Court

### **Background:**

On August 20, 2019, the City Council held a public hearing on the proposed development. The City Council voted 4-0 (Mayor Tran absent) to adopt the resolution to tentatively approve the proposed project subject to Council review and approval of the required findings, provided in writing by the City Attorney, for an exception to the requirements of the Affordable Housing Ordinance to allow payment of fees in lieu of reserving six affordable units on the project site. The City Council directed the City Attorney and staff to prepare findings to support the fee-in-lieu exception to the Affordable Housing Ordinance and to place the final resolution on the consent agenda for Council review at their next meeting to approve the findings of exception.

### **Timeline of Project Application:**

The following timeline clarifies the timing of the application for this project in relation to adoption of the City's Affordable Housing Ordinance on June 12, 2018 and the in-lieu fee in March 5, 2019. The applicant submitted project plans on November 2, 2018. At that time, the applicant acknowledged an awareness of the City's affordable housing requirements and stated an intent to provide six affordable units on the project site. The applicant later requested an exemption after the City adopted an in-lieu fee of \$33/sf for residential projects.

<b>DATE</b>	<b>ACTION</b>
October 3, 2017	Council amends General Plan and TASP to allow residential development on four former industrial parcels (551 Lundy Place, 1992 and 2001 Tarob Court, and 675 Trade Zone).
October 17, 2017	Council rezones four former industrial parcels (8.7 acres) from Industrial Park to Multi-family High Density with Transit-Oriented Development Overlay (R3-TOD)

June 12, 2018	Council adopts Affordable Housing Ordinance. Effective date is July 20, 2018.
November 2, 2018	True Life Cos. submits application for 40-unit condo project at 2001 Tarob Court.
March 5, 2019	Council adopts Affordable Housing In-lieu fee of \$33/sf for residential project.
May 8, 2019	True Life Cos. submits letter requesting an exception to the Affordable Housing Ordinance to pay the in-lieu fee rather than build six affordable units on the project site.
July 31, 2019	Planning Commission recommends approval of the proposed project.
August 20, 2019	Staff presented draft Resolution to approve project with on-site affordable units and deny applicant's request for an exception to the Affordable Housing Ordinance. Council adopts the resolution tentatively approving the project contingent on staff preparing legal findings and Council review and approval of the required findings for approval of a fee-in-lieu exception to the Affordable Housing Ordinance.
Sept. 17, 2019	Staff will return to Council with draft findings to support the fee-in-lieu exception to the Affordable Housing Ordinance in order to allow the Council to approve the findings.

### **Analysis:**

The proposed project is consistent with the development standards and goals of the Transit Area Specific Plan and the Multifamily High Density (R3) Zoning District with Transit-Oriented Development (TOD) Overlay. The project includes a mix of two and three bedroom units and is within the allowable density range for the R3-TOD designation (21-40 units per acre). The project also complies with the setbacks, maximum height limitations, and parking requirements. All of the current findings for approval of the Site Development Permit, Conditional Use Permit, and Vesting Tentative Map can be made for the proposed project.

*Affordable Housing Ordinance Requirements* – Section XII-3.00 of the Milpitas Municipal Code (MMC) requires all new residential development projects of ten units or more designed and intended for permanent occupancy to designate 15% of the total number of dwelling units within the development as affordable units. The cover letter that accompanied the applicant's original submittal of plans on November 2, 2018 states the developer's intent to build six (6) affordable units on the project site rather than pay the in-lieu fees (See Attachment E). The application form that accompanied the applicant's original submittal of plans also indicates the developers' intent to provide six new affordable units on the project site (See Attachment F, Section 5).

MMC Section XII-1-4.00 provides an exception to the 15 percent affordable requirement subject to approval by the City Council. In a written response to the second round of staff review comments dated May 8, 2019, the applicant states a desire to pay the new in-lieu fee rather than reserve six affordable units on the project site. The applicant also acknowledges an awareness of recent Council action in establishing the in-lieu fee of \$33/sf for residential projects (See attachment G). All exceptions to the requirements of the Affordable Housing Ordinance must be approved by the City Council based on specific findings related to community benefits and project location. With an average unit size of 1,420 square feet, the minimum affordable housing in-lieu fee for this project will be approximately \$1.875 million. The final fee amount will be determined once the City has reviewed the building permit application for the final square footage. The applicant has also offered to pay additional funds into the Affordable Housing Fund, the Public Art Fund, and other community benefit projects.

Prior to City Council approval to the requested exception, affirmative findings to the following must be made:

1. *The exception requested exceeds the minimum affordable requirements; and*

Based on the current in-lieu housing fee of \$33 per square foot for residential projects, the applicant shall pay approximately \$1.875 million to the City's affordable housing fund to meet the minimum affordable requirements for the proposed project. In addition, the applicant shall pay an additional \$200,000 to the affordable housing fund to meet the required finding for approval of the exception. Pursuant to Resolution no. 8852, the affordable housing fee is based on the building permit application date. The residential affordable housing fee is \$33 per square foot until June 30, 2020, and the fee will be adjusted by the Rate Index for the next fiscal year after June 30, 2020.

2. *The community benefits exceed the project benefits.*

Pursuant to MMC Section XI-10-14, private residential development of 20 or more dwelling units shall devote an amount not less than one-half of one percent of Building Development Costs for acquisition and installation of Publicly Accessible Art on the project site or contribute the value into the Public Art Fund for acquisition and placement of Public Art throughout the City. The applicant has agreed to double the required contribution to the City's Public Art fund to provide a community benefit. The applicant shall pay no less than one percent of building development costs, with the actual fee amount determined at the time of building permit issuance.

As an additional community benefit, the applicant shall also pay \$100,000 toward the cost of aesthetic enhancements to the planned vehicle/pedestrian bridge that will extend South Milpitas Boulevard over Penetencia Creek and into the Tarob Court neighborhood. With the payment of additional funds to the design of the South Milpitas Boulevard bridge, the community benefits will exceed the project benefits.

Based on the record as a whole, staff recommends that the fee exception request by the applicant meets the findings pursuant to MMC Section XII-1-4.00. Staff recommends that the City Council approve the exception to the requirements of the Affordable Housing Ordinance and allow the payment of fees in lieu of reserving six affordable units on the project site.

**Policy Alternatives:**

**Alternative 1: Not approve the findings granting an exception to the requirements of the Affordable Housing Ordinance.**

**Pros:** The City will add six Below Market Rate (BMR) units to its housing stock, benefiting the community and Milpitas residents. This is the first project requesting a fee exception under the new Affordable Housing Ordinance, and a decision to grant the exception could set a precedent for other projects to fee-out.

**Cons:** The applicant may abandon the project and the project site may remain an industrial office. The City would lose the opportunity to further implement the TASP in this area. The City would also lose the additional monetary contributions towards the Public Art fund, Affordable Housing Fund, and the aesthetic enhancement of the South Milpitas Boulevard culvert bridge.

**Reasons not recommended:** With commitments to pay addition funds to the Affordable Housing fund, Public Art fund, and other community benefits, the applicant has demonstrated that the Project qualifies for an exception to the requirements of the Affordable Housing Ordinance. Staff is able make the findings to support of the affordable housing exception request.

**Fiscal Impact:**

The project will pay an additional \$200,000 to the Affordable Housing Fund, increasing the contribution from approximately \$1.875 million to \$2.075 million. The final fee amount will be determined once the City has reviewed the building permit application for the final square footage. In addition, the application will pay double the required contribution to the Public Art Fund from 0.5% to 1% of building valuation and contribute \$100,000 toward the cost of aesthetic enhancements to the planned South Milpitas Boulevard culvert bridge.

**California Environmental Quality Act:**

The Planning Division conducted an initial environmental assessment (P-EA19-0002) of the project in accordance with the California Environmental Quality Act (CEQA). The assessment concluded that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are associated with the Project. The assessment also concluded that an Addendum to the TASP EIR is the appropriate document to address these modifications rather than a subsequent EIR. The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum.

As separate and independent bases, the project is exempt from further CEQA review pursuant to CEQA Guidelines Sections 15182 (Project Consistent with a Specific Plan), 15183 (Project Consistent with the General Plan), and 15168 (Projects Consistent with a Program EIR).

**Recommendation:**

Approve Findings of Exception to the requirements of the Affordable Housing Ordinance to allow payment of fees in lieu of reserving six affordable units on the project site to be included in the previously adopted Resolution approving Site Development Permit (SD18-0014), Conditional Use Permit (UP19-0009), Vesting Tentative Map (MT18-0004), and Environmental Assessment (EA19-0002) to allow development of a 40-unit residential condominium building, up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22-acre site located at 2001 Tarob Court

**Attachments:**

Attachment A:

- Previously Adopted Resolution Approving Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment, now including required findings of exception.
- Exhibit A (CEQA Addendum) to Resolution for Council Approval

Attachment B: Planning Commission Staff Report (dated July 31, 2019)

Attachment C: Signed Planning Commission Resolution no. 19-022

Attachment D: Project Plans

Attachment E: Applicant's Cover letter Submitted with Application dated November 2, 2018

Attachment F: Original Application Form dated Sept. 26, 2018

Attachment G: Applicant's Letter requesting Affordable Housing Exception dated May 8, 2019