



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Adopt a Resolution approving 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
Category:	Public Hearings-Community Development
Meeting Date:	8/20/2019
Staff Contact:	Lillian Hua, Associate Planner, 408-586-3073
Recommendation:	<ol style="list-style-type: none"> 1) Conduct a public hearing and move to close the hearing following comments. 2) Consider the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR). As a separate and independent basis, consider the exemption from environmental review under the California Environmental Quality Act (CEQA) 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). 3) Adopt a Resolution approving Site Development Permit (SD18-0014), Conditional Use Permit (UP19-00090, 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 and denying the applicant's request for an exception to the Affordable Housing Ordinance.

Background:

On November 2, 2018, the True Life Companies submitted an application for the 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. The project area is located on the west side of Lundy Place in the Trade Zone/Montague Sub District of the Transit Area Specific Plan (TASP). The application includes four entitlement requests to approve the future development of a multi-family residential building, as follows:

1. Site Development SD18-0014: To allow the development of a four-story building with up to 40 residential units on the 1.22 acre site; and
2. Conditional Use Permit UP19-0009: To allow the condominium use; and
3. Vesting Tentative Map MT18-0004: To establish 40 residential condominium spaces and related easements and to record site easements; and
4. Environmental Assessment EA19-0002: To review and assess all the requested entitlements for consistency with the 2008 Transit Area Specific Plan EIR.

On July 31, 2019, the Planning Commission held a public hearing on the proposed development and unanimously approved staff's recommendation to adopt a resolution recommending that the City Council approve the above applications. The Planning Commission also discussed at length the applicant's request to pay the affordable housing in-lieu fee instead of providing affordable units within the project. The Planning Commission recognized that the City Council is the final decision making body for the request and

recommended that the City Council consider allowing the applicant to pay the affordable housing in-lieu fee exception. The Commission also recommended that staff continue to explore other affordable housing options with the applicant. During the discussion, the applicant disclosed that the 15% inclusionary requirement would significantly decrease the project's financial viability. They also disclosed that they did not intend to construct the project but would likely sell the entitled property to a builder. The applicant sold other recently entitled projects in the vicinity (1980, 1992 Tarob Court, and 551 Lundy Place) to Toll Brothers, and several of those projects are currently under construction. At the time of entitlement in 2017, the applicant agreed to pay a 10% affordable in-lieu fee.

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.

The applicant is also requesting a fee exception to the Affordable Housing Ordinance. Pursuant to MMC Section XII-3.00, all new residential development projects of ten units or more designed and intended for permanent occupancy are required to construct 15% of the total number of dwelling units within the development as affordable units, unless approved for an exception as set forth in MMC Section XII-1-4.00. All exceptions require City Council approval. With an average unit size of 1,420 square feet, the estimated affordable housing fee for this project is \$1.8 million. Attachment E outlines the applicant's reasons for why they feel an exception is justified for their project and how they meet the findings associated with exceptions.

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*

Applicant Justification: The applicant asserts that paying the affordable housing in-lieu fee should be an alternative, not an exception. The applicant also suggests that building new affordable housing units only provides a few new residents with the opportunity to live in Milpitas at an affordable rate compared to their neighbors in the same new development. The applicant claims that paying the fee will allow the City to subsidize affordable housing rents and allow residents to remain in their homes.

Staff Analysis: The exception requested does not exceed the minimum affordable requirements. The applicant is providing the minimum required fee-in-lieu, which does not exceed the minimum affordable requirements. The affordable housing fund is used to produce very-low, low-, and moderate-income ownership or rental housing in the City. If the applicant were to build six Below Market Rate (BMR) units on site, it would allow six low-income households the opportunity to have permanent housing in the City. Since the applicant has requested to pay the in-lieu fee, those contributions can only be used to assist future developers to build affordable units, and not to subsidize rents in existing low-income housing. Therefore, the exception would further delay the construction of new affordable units in the City and would not exceed the minimum affordable requirements.

2. *The project is better served with the exception; or*

Applicant Justification: The applicant proclaims that the project will be better served as market rate housing since the adjacent Tarob Court projects are also market rate. The applicant argues that the menu of social assistance program available in Santa Clara County and the City of Milpitas are not located within the TASP Trade Zone/Montague sub-district. The applicant suggests that paying the affordable fee allows the City the flexibility to have funds on hand to support the under-housed population through projects that may be more likely to be located near established social services in the future.

Staff Analysis: The project is not better served with the exception. The applicant argues that social assistance programs are not available within the TASP Trade Zone/Montague Subdistrict. However, on June 12, 2018, City Council approved a 102-unit multifamily affordable housing development with community space and offices for supportive services located at 355 Sango Court, and these supportive

services will presumably be available to all low-income residents in the area. The TASP envisions a Tarob Court connection to Sango Court, so affordable units located within the proposed project would be located near supportive services. In addition, the entire Trade Zone/Montague Subdistrict will have a direct connection to the new Milpitas Transit Center and BART station once the extension of South Milpitas Boulevard is completed via a planned vehicle/pedestrian bridge over Penitencia Creek. This connection will benefit low-income households by providing easy access to public transportation as an alternative to owning a car.

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

Applicant Justification: The applicant proposes that the community benefits of the project are inherently created by the project. The scope of work includes the demolition of a non-conforming building and the redevelopment and beautification of the site with high-density housing consistent with the TASP. Moreover, the applicant claims that they have committed to meeting the goals of the City by producing a conforming R3-TOD high-density residential project within the TASP.

Staff Analysis: The community benefits do not exceed the project benefits. The project is not providing any community benefit to the City beyond existing regulatory requirements. Example of community benefits include contributions to the school district, Fire Department, Recreation Department, etc. A compliant project that meets the development standards of the zoning code is not inherently considered a community benefit, and therefore does not exceed the potential benefit of providing on-site affordable units.

Based on the justification statement staff analysis and the record as a whole, the applicant has not shown that the fee exception request can meet the findings pursuant to MMC Section XII-1-4.00. Staff recommends that the City Council deny the fee exception and that the applicant should provide the affordable units on site in accordance with the Affordable Housing Ordinance.

Policy Alternatives:

Alternative 1: Approve the application and the request for payment of fees in lieu of the Affordable Housing Ordinance inclusionary requirement by adopting the findings associated with the Site Development Permit, Conditional Use Permit, and Vesting Tentative Map and make findings in support of the Affordable Housing Exception Request

Pros: The City will receive approximately \$1.8 million to benefit the Affordable Housing Fund. The project conforms to the City's development policies and standards and will further implementation of the TASP in this area. As a result of the construction of the project, the City will also benefit from higher land valuation and tax revenue.

Cons: The City will lose the opportunity to add six Below Market Rate (BMR) units within the TASP area to the City's housing stock.

Reasons not recommended: As proposed, the project has failed to demonstrate that the Project qualifies for an exception request based upon the findings pursuant to the Affordable Housing Ordinance. Staff cannot make the findings to support of the affordable housing exception request. Since this project is the first project requesting a fee exception under the new Affordable Housing Ordinance, if the City Council approves the exception, it could set a precedent for future developments.

Alternative 2: Deny the application, including the request by not adopting the findings for approval of the Site Development Permit, Conditional Use Permit, or Vesting Tentative Map

Pros: The subject site could be combined with adjacent parcels to allow a larger project to be built at this location. A different project could be proposed that would implement the vision and goals of the TASP while also meeting the City's current ordinances and development standards, including the 15% inclusionary requirement for affordable housing.

Cons: Denial of the project would delay development of the site, and the City would not benefit from higher land valuation and tax revenue. Denial would further delay implementation of the TASP in this area along Tarob Court.

Reason not recommended: The project conforms to the City's development policies and standards and will further implement the TASP in this area. The City Council can make all of the current findings for the requested land use approvals subject to the findings and conditions of approval.

Fiscal Impact:

The project will have a net neutral fiscal impact to the City, as the applicant will pay all TASP fees and other assorted development fees to the City.

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:

- 1) Conduct a public hearing and move to close the hearing following comments.
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Attachments:

Attachment A:

- Resolution for Council Approval of Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment
- 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 Justification Letter for In-Lieu Fee Exception