

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO. 6908

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
RECOMMENDING DENIAL OF A DEVELOPMENT PERMIT (DP-2018-05),  
ARCHITECTURAL AND SITE APPROVAL (ASA-2018-05), VESTING TENTATIVE  
MAP (TM-2018-03), TREE REMOVAL PERMIT (TR-2018-22), USE PERMIT (U-2019-03),  
AND HEART OF THE CITY EXCEPTION (EXC-2019-03), TO DEMOLISH A 71,250  
SQUARE FOOT RETAIL CENTER (THE OAKS), REMOVE AND REPLACE 74  
PROTECTED TREES, AND CONSTRUCT A MIXED-USED DEVELOPMENT  
CONSISTING OF 267 HOUSING UNITS (88 ROWHOUSE/TOWNHOMES, 179  
SENIOR APARTMENTS OF WHICH 131 ARE SENIOR LICENSED ASSISTED LIVING  
UNITS AND 48 ARE AFFORDABLE OR BELOW MARKET RATE (“BMR”) SENIOR  
INDEPENDENT LIVING UNITS), 27 MEMORY CARE LICENSED ASSISTED LIVING  
RESIDENCES (“MEMORY CARE RESIDENCES”), AND 20,000 SQUARE FEET OF  
COMMERCIAL SPACE. LOCATED AT 21267 STEVENS CREEK BOULEVARD (APN:  
326-27-042, -043)

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The Planning Commission recommends that the City Council:

1. Find that this action is not subject to environmental review under Section 21080(b)(5) and 15270 of the California Environmental Quality Act (CEQA) guidelines because CEQA does not apply to projects which a public agency rejects or disapproves.
2. Deny the following permits, as set forth in the attached draft resolution: Development Permit (DP-2018-05), Architectural and Site Approval (ASA-2018-05), Vesting Tentative Map (TM-2018-03), Tree Removal Permit (TR-2018-22), Use Permit (U-2019-03), and Heart of the City Exception (EXC-2019-03).

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 14<sup>th</sup> day of July 2020, by the following roll call vote:

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AYES: COMMISSIONERS: Chair Moore, Vice Chair Wang, Saxena  
NOES: COMMISSIONERS: Takahashi, Fung  
ABSTAIN: COMMISSIONERS: none  
ABSENT: COMMISSIONERS: none

ATTEST:

          /s/Benjamin Fu            
Benjamin Fu  
Director, Community Development

APPROVED:

          /s/Kitty Moore            
Kitty Moore  
Chair, Planning Commission

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DENYING A DEVELOPMENT PERMIT (DP-2018-05), ARCHITECTURAL AND SITE APPROVAL (ASA-2018-05), VESTING TENTATIVE MAP (TM-2018-03), TREE REMOVAL PERMIT (TR-2018-22), USE PERMIT (U-2019-03), AND HEART OF THE CITY EXCEPTION (EXC-2019-03), TO DEMOLISH A 71,250 SQUARE FOOT RETAIL CENTER (THE OAKS), REMOVE AND REPLACE 74 PROTECTED TREES, AND CONSTRUCT A MIXED-USED DEVELOPMENT CONSISTING OF 267 HOUSING UNITS (88 ROWHOUSE/TOWNHOMES, 179 SENIOR APARTMENTS OF WHICH 131 ARE SENIOR LICENSED ASSISTED LIVING UNITS AND 48 ARE AFFORDABLE OR BELOW MARKET RATE ("BMR") SENIOR INDEPENDENT LIVING UNITS), 27 MEMORY CARE LICENSED ASSISTED LIVING RESIDENCES ("MEMORY CARE RESIDENCES"), AND 20,000 SQUARE FEET OF COMMERCIAL SPACE. LOCATED AT 21267 STEVENS CREEK BOULEVARD (APN: 326-27-042, -043)

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SECTION I: PROJECT DESCRIPTION

Application No.: DP-2018-05  
Applicant: KT Urban (Mark Tersini)  
Property Owner: 190 West St. James, LLC  
Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: FINDINGS FOR DENIAL:

WHEREAS, the City of Cupertino received an application for a Development Permit, Architectural and Site Approval, Vesting Tentative Map, Tree Removal Permit, Use Permit, and Heart of the City Exception as described in Section I of this resolution; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 vote that the City Council certify that the EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* ("CEQA") and reflects the independent judgment and analysis of the City, adopt Findings, adopt and require as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04); and

WHEREAS, on May 12, 2020 the Planning Commission recommended on a 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit

(ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to reflect the unit mix in Building 1; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was re-reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, based on substantial evidence in the record, on July 14, 2020, the Planning Commission recommended on a X-X vote that the City Council:

1. Find that this action is not subject to environmental review under Section 21080(b)(5) and 15270 of the California Environmental Quality Act (CEQA) guidelines because CEQA does not apply to projects which a public agency rejects or disapproves.
2. Deny the following permits: Development Permit (DP-2018-05), Architectural And Site Approval (ASA-2018-05), Vesting Tentative Map (TM-2018-03), Tree Removal Permit (TR-2018-22), Use Permit (U-2019-03), and Heart of the City Exception (EXC-2019-03); and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and on August 18, 2020, the City Council held a public hearing to consider the Project; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the City Council finds as follows with regard to this application:

1. Strategy 7 in the Housing Element of the General Plan requires that all residential development projects in the City provide below market-rate units as specified in the City's Residential Housing Mitigation Program. Zoning Code Section 19.172.020(A) further requires that all housing developers comply

with the Residential Housing Mitigation Program, and Zoning Code Section 19.172.030(A) further provides that the City Council shall adopt policies, rules, and regulations for implementation of the Residential Housing Mitigation Program. The City Council has adopted the BMR Housing Mitigation Program Procedural Manual (the Mitigation Manual) containing the policies, rules, and regulations for implementation of the Residential Housing Mitigation Program as required by Section 19.172.030(A). Compliance with the Mitigation Manual is required to comply with the City's Housing Element and Zoning Ordinance.

2. Section 2.3.4(D) of the Mitigation Manual requires that "[t]he BMR units shall be dispersed throughout the residential project."
3. The proposed project is inconsistent with the Mitigation Manual, section 2.3.4 (D), because all of the BMR units are contained in one building rather than being dispersed throughout the residential development. The request to waive this requirement to consolidate all senior BMR units in Building 2 is based on the applicant's reasoning that such units, if dispersed within Building 1, would not qualify for funding from Low Income Housing Tax Credit. This reasoning is financial and does not demonstrate that the standard contained in the Mitigation Manual physically precludes development of the project as proposed. No change is required in the physical design of the project to disperse the BMR units.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council of the City of Cupertino:

1. Find that this action is not subject to environmental review under Section 21080(b)(5) and 15270 of the California Environmental Quality Act (CEQA) guidelines because CEQA does not apply to projects which a public agency rejects or disapproves.
2. Deny the Development Permit (DP-2018-05), because the following findings cannot be made:
  - a. The project will not be conducted in a manner in accord with the Cupertino Comprehensive General Plan and the Zoning Ordinance in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential

Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance.

3. Deny the following permits: Architectural And Site Approval (ASA-2018-05), Vesting Tentative Map (TM-2018-03), Tree Removal Permit (TR-2018-22), Use Permit (U-2019-03), and Heart of the City Exception (EXC-2019-03), because they are dependent on approval of the Development Permit (DP-2018-05) and because following findings cannot be made:
    - a. Architectural and Site Approval: The project is not consistent with the General Plan and Zoning Ordinance, in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance.
    - b. Vesting Tentative Map: The proposed map is not consistent with the General Plan, in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan.
    - c. Tree Removal Permit: Because the Development Permit is denied, there is no basis to conclude that the existing trees restrict the economic enjoyment of the property by severely limiting the use of property in a manner not typically experienced by owners of similarly zoned and situated property.
    - d. Use Permit: The project will not be conducted in a manner in accord with the Cupertino Comprehensive General Plan and the Zoning Ordinance in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance.
    - e. Heart of the City Exception: The proposed development is not otherwise consistent with the City's General Plan, in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance.
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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of August, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	  _____ Date