



**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
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**CITY COUNCIL STAFF REPORT**  
 Meeting: June 21, 2016

Subject

Petitions for Reconsideration of the April 19, 2016 City Council decision to deny appeals of a Planning Commission decision to deny an appeal of a Director’s approval of a Two-Story Permit (R-2015-08) to allow the construction of a new 5,140-square-foot single-family residence and a Minor Residential Permit (RM-2015-08) to allow a second story balcony on the new residence. (Application No. R-2015-08 and RM-2015-08; Applicant: WEC & Assoc. (Kingkay Capital, LLC); Petitioners: Jan Kucera Jr., and Matthew R. and Angela M.D. Miller; Location: 21900 Oakview Lane; APN: 326-19-105). Council adopted Resolution No. 16-040; Denying the Appeal and upholding the Planning Commission’s decision per Planning Commission Resolution No. 6798 and 6799 (Paul abstaining)

Recommended Action

1. Adopt Resolution No. 16-069 (Attachment A) denying the petition, which does not meet the requirements of Cupertino Municipal Code (CMC) Section 2.08.096.

Discussion

*Background*

The following is a summary of the events that occurred regarding this project leading up to the reconsideration request:

January 8, 2016	R-2015-08 and RM-2015-08 administratively approved (Attachment B).
January 21, 2016	Administrative decision appealed by Matthew R. and Angela M.D. Miller, property owners of 21884 Oakview Lane.
February 23, 2016	Planning Commission denies appeal and upholds administrative decision on a 5-0 vote to approve R-2015-08 and RM-2015-08 (Attachment C, D & E).
February 24, 2016	Planning Commission decision appealed by Jan Kucera Jr., property owner of 21917 Oakview Lane.
March 1, 2016	Planning Commission decision appealed by Matthew R. and Angela M.D. Miller, property owners of 21884 Oakview Lane.

April 19, 2016	City Council denies appeals and upholds decision on a 4-0 vote (Paul abstaining) to approve R-2015-08 and RM-2015-08 (Attachment F, G & H).
April 29, 2016	Petitioned by Matthew R. and Angela M.D. Miller, property owners of 21884 Oakview Lane (Attachment I).
May 2, 2016	Petitioned by Jan Kucera Jr., property owner of 21917 Oakview Lane (Attachment J).

***Basis for Reconsideration***

The City of Cupertino’s Municipal Code, Section 2.08.096, provides procedures for interested parties to petition the City Council to reconsider its decisions. A petition for reconsideration shall specify in detail each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding. The grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by:
  - a. Not preceding in a manner required by law; and/or
  - b. Rendering a decision which was not supported by findings of fact; and/or
  - c. Rendering a decision in which the findings of fact were not supported by the evidence.

***Reconsideration Petition***

The petitions for reconsideration submitted by Jan Kucera Jr., and Matthew R. and Angela M.D. Miller (Attachments I & J) consists of three pages each contesting the project approval and lists claims for reconsideration of the Council’s April 19<sup>th</sup> decision on the grounds of criteria #1-#5. Each of the grounds for the reconsideration as submitted by the petitioners and the City’s findings of fact and responses to each of the grounds are listed below.

If the reconsideration is granted, the Council may conduct a hearing and reconsider its decision in light of the new evidence presented. Reconsideration of this item constitutes the third full hearing conducted by the City.

**1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.**

City finding: The petitioners have offered no new relevant evidence that could not have been produced at any earlier city hearing.

Petition	Response
<p>A. The petitioners (Millers) state that they have new evidence that the house should not be built on this site.</p> <p>B. The petitioner (Kucera) states that advice from an attorney validated that his property is on a slope (more than 10 ft. drop across his property) and that the Planning Department never visited his property to see the natural slope drop-off. Therefore, he claims that the 28 ft. height limit (CMC Section 19.28.070 (J)) is clearly being violated in reference to his property at 21917 Oakview Lane.</p>	<p>A. The petitioners did not provide any new relevant evidence in their petition for City review and failed to specify the particular ground(s) for reconsideration.</p> <p>B. Building height was discussed at both the Planning Commission and City Council hearings and is highlighted in both staff reports. Total building height is a vertical measurement of the highest point of exterior construction of the proposed building to the natural grade of the subject site, and not a measurement of the proposed building to the natural grade of any other property. Furthermore, the proposed building height is 25 feet 4 inches and therefore, within the maximum 28 feet total building height regulation for properties, such as this one, that are located within the R-1 Zone.</p>

**2. An offer of relevant evidence which was improperly excluded at any prior city hearing.**

City finding: The petitioners have offered no relevant evidence that was improperly excluded at any prior City meeting, nor have the petitioners proven that any evidence was previously excluded by the City Council.

Petition	Response
<p>A. The petitioners (Millers) state that their computer malfunctioned and was not allowed to show evidence later in the meeting when the computer worked.</p> <p>B. The petitioner (Kucera) states that he ran out of time in his 10 minute presentation to show that the proposed building was violating the 28 ft. height limit with respect to his property.</p>	<p>A. The petitioners did not provide the evidence they claim were improperly excluded at previous city hearings in this petition, nor have the petitioners proven that any evidence was previously excluded by the City Council. Additionally, although the media for conveying the Millers' information may not be in proper order or in the form they envisioned, the petitioners were not prevented from presenting any evidence that they wished to convey to the Council in other forms.</p> <p>B. The petitioner did not provide relevant evidence that was excluded from any hearing as building height regulations were discussed at Planning Commission and City Council hearings and the project was found to be within the allowance as permitted by Cupertino Municipal Code (CMC 19.28.070 (J)). Furthermore, per the Flowchart for Agenda Items (Attachment L), included as part of the Planning Commission and City Council agenda cover sheets, applicants are permitted 10 minutes for their presentation; accordingly, the petitioner was given 10 minutes for his appellant statement, consistent with established time limits that apply to all appellants.</p>

**3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.**

City finding: The petitioners have not provided any proof of facts that demonstrate the Council proceeded without, or in excess of, its jurisdiction.

Petition	Response
<p>A. The petitioners (Millers) state that City staff was researching online in real time during City Council meeting to advise City Council members regarding applicable solar ordinances, and has yet to show how they do or do not apply.</p>	<p>A. The City Council responded to and requested information from the applicant, the petitioners, Planning staff, and the City Attorney prior to rendering their decision which is within their authority and jurisdiction.</p>
<p>B. The petitioner (Kucera) states that the facts show that the proposed house is not harmonious in scale and design with the neighborhood. He states that the original homes were 1,100 sq. ft. and 13 ft. high and that the proposed home is 5,140 sq. ft. and 25½ ft. high. He claims that this clearly violates the code and that a jury of peers will agree with these facts.</p>	<p>B. Both the Planning Commission and the City Council considered and discussed the findings for both the Two-Story and Minor Residential permit and acted upon the project accordingly and within their jurisdiction.</p>

**4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.**

City finding: The petitioners have not provided any proof of facts which demonstrate that the City Council failed to provide a fair hearing.

Petition	Response
<p>A. The petitioners (Millers) state that the City Council did not allow them to present all of their computer data that supported their appeal.</p> <p>B. The petitioner (Kucera) states that with the exception of Mr. Darcy Paul and Mr. Rod Sinks, the City Council ignored the fact that the developer maximized the proposed building size within one sq. ft. of the allowed square footage.</p>	<p>A. The petitioners were given 10 minutes for their appellant statement, consistent with established time limits that apply to all appellants. Furthermore, the petitioners were invited to the podium to respond to questions and provide additional clarification on multiple occasions during the hearing. The petitioners do not provide facts which demonstrate that the City Council failed to provide a fair hearing.</p> <p>B. The petitioner acknowledges that the project is within the square footage allowance as set forth in the Cupertino Municipal Code (CMC 19.28.070 (B)) and opinions regarding square footage of homes do not demonstrate that the City Council failed to provide a fair hearing.</p>

5. **Proof of facts which demonstrate that the City Council abused its discretion by:**
  - a. **Not preceding in a manner required by law; and/or**
  - b. **Rendering a decision which was not supported by findings of fact; and/or**
  - c. **Rendering a decision in which the findings of fact were not supported by the evidence.**

City finding: The petitioners have not provided any proof of facts that demonstrate the Council abused its discretion by not preceding in a manner required by law, rendering a decision which was not supported by findings of fact, or rendering a decision in which the findings of fact were not supported by the evidence.

Petition	Response
<p>A. The petitioners (Millers) state that City staff was not 100% sure that certain solar ordinances applied or did not apply, and all but one council member voted based on flawed advice.</p> <p>B. The petitioner (Kucera) states that the City Council is elected by the citizens of Cupertino to serve the Cupertino community and is not supposed to rubber stamp buildings by millionaire developers with no voting rights in the City of Cupertino. He states that sixteen citizens who vote, signed a petition that they “do not want” the proposed project in their neighborhood and that the Council is ignoring the concerns of these and favoring a non-voting developer.</p>	<p>A. The City Council proceeded in a manner required by law and rendered a decision supported by findings and facts including information from prepared written material and testimony as brought up at the hearing. As stated by staff at the public hearing, there is no solar-related ordinance or law that applies to this project.</p> <p>B. The City Council conducted the hearing in a manner required by law and rendered a decision based on the established regulations in the Cupertino Municipal Code and the findings and evidence brought forth in written material and testimony by staff and members of the public.</p>

Based on the above findings the petitioners do not provide relevant grounds/evidence for the reconsideration, staff recommends that the City Council deny the petitions for reconsideration and uphold the April 19, 2016 City Council decision.

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Prepared by: Ellen Yau, Assistant Planner  
Reviewed by: Catarina Kidd, Senior Planner

Benjamin Fu, Assistant Director of Community Development

Approved for Submission by: David Brandt, City Manager

Attachments:

- A. City Council Resolution No. 16-069
- B. Two-Story and Minor Residential Permits (R-2015-08 and RM-2015-08) Action Letter, 1/8/2016
- C. Planning Commission Staff Report
- D. Planning Commission Meeting Minutes of 2/23/2016
- E. Planning Commission Resolutions No. 6798 and 6799
- F. City Council Staff Report
- G. City Council Meeting Minutes of 4/19/2016
- H. City Council Action Letter and Resolution No. 16-040
- I. Petition for Reconsideration filed by Matthew R. Miller and Angela M.D. Miller received 4/29/2016
- J. Petition for Reconsideration filed by Jan Kucera Jr. received 5/2/2016
- K. Plan Set
- L. Flowchart for Agenda Items