



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: July 27, 2021

Subject

Consider recommending approval of a Vesting Tentative Map to replace a previously approved Vesting Tentative Map (TM-2018-03) for the Westport Cupertino development project to create a separate parcel for the age restricted senior below market rate building. City approval would be a Vesting Tentative Map; (Application No(s): TM-2021-002; Applicant(s): KT Urban (Mark Tersini); Location: 21267 Stevens Creek Boulevard; APN #326-27-042, -043

Recommended Actions

Staff recommends that the Planning Commission consider the evidence presented and determine whether the project can be recommended for approval in accordance with the draft resolution (Attachment 1) to approve the Vesting Tentative Map (TM-2021-002).

Discussion

Planning Commission Hearing on June 22, 2021

The Planning Commission conducted a public hearing on June 22, 2021 and moved (3-0, Saxena and Madhhipatla absent) that the item shall be postponed to a later date for further clarification on the following:

- Legal review on the conformance of the parcellation of Building 2 with the General Plan, as well as justifying its decoupling from the Parcel B.
- Removing the requirement for the developer to provide a Class IV bike lane on the southern side of Stevens Creek Boulevard, adjacent to De Anza College.

Project Data:

General Plan Land Use Designation	Commercial/Residential
Special Planning Area	Heart of the City Specific Plan (West Stevens Creek subarea)
Zoning Designation	P(CG, Res)

Net/gross lot area	7.9 acres/8.1 acres ¹	
Project Consistency with:		
General Plan:	Yes	
Zoning:	Yes	
Project Comparison	Project Approval August 18, 2020	Current Application
Residential Units	267	No change
Height of Structures	Building 1 - 79.5 feet	
	Building 2 – 74.5 feet	
	Townhouses – 30 feet	
	Rowhouses – 30 feet	
Setbacks		
Front	35 feet from the face of curb	No change
Side	17.6 feet	
Parking	463	
Common Open Space per Heart of the City		
Residential	44,945 s.f.	No change
Commercial (Retail)	2,915 s.f.	
Retail Frontage		
Stevens Creek Boulevard frontage	60%	No change
Rear of building	26%	
Building Area	544,435 s.f.	

Background:

Site and Location Description

The project site is known as the Oaks Shopping Center and is located in the Heart of the City Specific Plan Special Area within the Oaks Gateway of the West Stevens Creek subarea. The shopping center is on an approximately 8.1 gross-acre site bounded by Stevens Creek Boulevard to the south, Mary



Figure 1 Location of The Oaks Shopping Center and the proposed Westport Cupertino redevelopment.

¹ The net acreage is a result of the subtraction of an existing Public Roadway Easement along the property's Mary Avenue frontage.

Avenue to the east and north, and Highway 85 to the west. The surrounding uses are the Glenbrook Apartments to the north, De Anza College to the south (across Stevens Creek Boulevard), and the Cupertino Senior Center to the east (See Figure 1).

Westport Cupertino Development

The Cupertino City Council, on August 18, 2020, approved permits to allow construction of a mixed-use development on an 8.1 gross-acre site currently occupied by the Oaks Shopping Center. The primary components of the project are listed below.

- Two residential/commercial buildings:
 - Building 1 is a six-story building with 131 senior licensed assisted living units, 27 memory care residences, and 17,600 square-feet of ground-floor retail/commercial space.
 - Building 2 is a six-story building with 48 BMR senior independent living units and 2,400 square feet of ground-floor retail/commercial.
- 70 single-family residential townhouses and 18 single-family residential rowhouse condominiums.
- A one-level, below-ground garage with 191 parking spaces.
- 44,945 square feet of Residential Common Open Space
- 2,915 square feet of Commercial Common Open Space
- 386 onsite and offsite tree replacements, for the 73 protected development trees proposed to be removed and/or relocated.

The approval included a vesting tentative map (VTM) (TM-2018-03) that would divide the property into two separate parcels [one 4.7 acre and one 3.1 acre parcel]. The applicant is now requesting a revised VTM to divide the property into three parcels, separating the BMR building (Building 2) in its own individual parcel.

Vesting Tentative Map

The project is currently approved with two separate parcels (see Figure 2 on the next page). The approved VTM for the Westport Cupertino project created one 4.7 acre and one 3.1-acre parcel. The 4.7-acre parcel (Parcel A) includes the 88 townhome and rowhouse condominiums and the 3.1-acre parcel (Parcel B, outlined in red in Figure 2) includes all the senior housing and retail portions of the projects.

The applicant, Mark Tersini of KT Urban, is requesting that Building 2 be separated from Parcel B into a new Parcel C (see Figure 3 on the next page). The purpose of the request is to decouple the construction financing and schedule of Building 2, the affordable senior apartment building, from Building 1. The resultant Parcel C will be 0.6 acres and the

revised Parcel B will be 2.5 acres. Please refer to Attachment 2 for the revised VTM plan sheets.

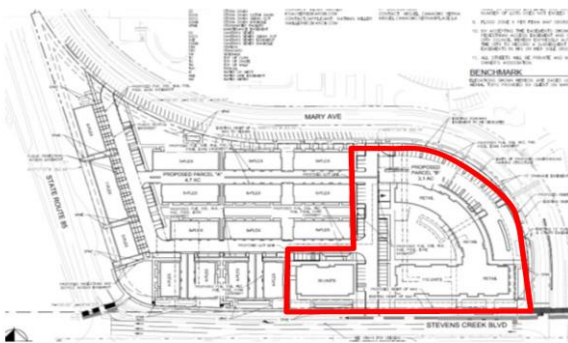


Figure 3 Approved Vesting Tentative Map (TM-2018-02) with Parcel B outlined in red.

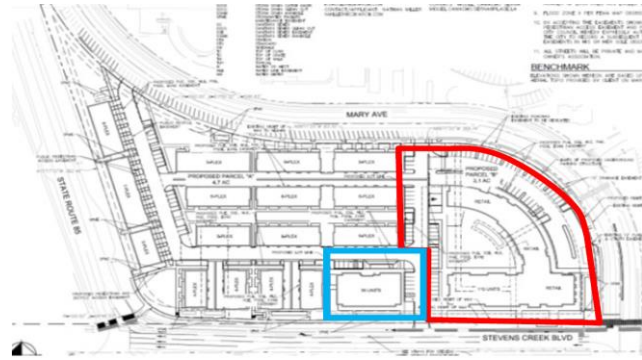


Figure 2 Proposed Parcel C (blue) and revised Parcel B.

The applicant and its affordable housing partner, The Pacific Companies, have submitted justification letters (Attachments 3 and 4) supporting their request to add a third parcel. These are included the following reasons:

- Under California law BMR projects relying on tax credits must be owned by single-asset entities: the owner must own only the BMR project; the BMR building must therefore be on its own lot so that the master developer may convey it to the BMR developer. Moreover, lenders and investors will not provide financing unless the project is on its own parcel.
- Condition III.11 (*Concurrent Development of BMR and Market-Rate Housing*) of Development Permit Resolution No. 20-106, part of the original project approval, states: "...Developer has transferred the parcel on which the senior BMR housing will be constructed to an affordable housing developer or its affiliate...". This must be completed before the City may issue Certificates of Occupancy for the BMR building and the townhome/rowhouse portions of the development. Again, the BMR must be on its own lot for the required conveyance.

The points presented by the applicant and its partner are consistent with staff's understanding of tax credit requirements. Further, the Development Permit condition outlined above anticipated that Building 2 would be developed separately from Building 1 and the townhome/rowhouses on Parcel A.

The City Council on August 18, 2020 had found that the Vesting Tentative Map (TM-2018-03) was consistent with the City's General Plan because the development project site is permitted to have up to 30 dwelling units an acre, and that it qualified for a density bonus. Further, the development was consistent with the intent of the policies of the General Plan for a high-density mixed-use development on this site. The current proposal does not propose any revisions to the approved project and nor does it seek to increase

any density on the site. Therefore, the proposed revised VTM is equally consistent with the General Plan.

Bike Improvements and Transportation Impact Fees (TIF)

The August 2020 project approval included a Condition IV.2 to Resolution No. 20-106, requiring installation of bike improvements along the south side of Stevens Creek Boulevard in lieu of payment of the transportation impact fee (TIF). It provided that “[t]he value of the improvements shall be equivalent to the Transportation Impact Fee required of the project.” Initially, the City based its TIF calculation on the trips generated from the number of proposed residential units, as well as the commercial square footage of the project, using the broad land-use categories outlined in the TIF fee program. Since the cost of the proposed bike improvements along the south side of Stevens Creek Blvd was estimated to be roughly equivalent to the TIF, the improvements were added as a condition.

The intent of collecting the TIF fee is to mitigate impacts from **net new** PM peak-hour trips. After the August 2020 approval, a trip generation study was completed with detailed calculations of existing and proposed PM peak-hour trips. The study considered industry standard factors, such as internal trip capture and mixed-used reductions. Please refer to the Attachments 4 - 6 for the Trip Generation Memoranda that have been submitted to the City throughout the project entitlement process and have been peer reviewed by both City Staff and the City’s traffic consultant, Hexagon.

A summary of the results of this analysis is presented in Table 1 below:

Land Use	Weekday Daily Trips	AM Peak Hour IN/Out	Total Peak Hour AM Trips	PM Peak Hour IN/OUT	Total Peak Hour PM Trips
Shopping Center 85% Occupancy	2,209	36/21	57	73/79	152
Approved Westport Cupertino Project	1,755	42/53	95	63/60	123
Net New Project Trips	(454)	6/32	38	(10/19)	(29)

Table 1 Trip Generation summary for the Westport Cupertino project.

The updated trip generation calculations showed the proposed project generating fewer PM peak-hour trips than the existing property uses. Therefore, the City cannot impose a TIF on the Westport project, since it does not generate or cause net new vehicular trips to the site.

Since no TIF is now required, these bike improvements, which were to be in lieu of the fee, are also not required. Therefore, Sheet VTM-6, Class IV Bikeway Design, has been

revised to remove the bike improvements along the south side of Stevens Creek Boulevard between Mary Ave and SR85.

This change is limited to the improvements on the south side of Stevens Creek Boulevard. Condition IV.5 of Resolution No. 20-106 requires the applicant to install bike improvements along the project frontage on the north side of Stevens Creek Boulevard. This condition is not changed and remains binding on the project. Should the applicant be unable to obtain Caltrans approval of the improvements within Caltrans jurisdiction at the time of project completion, the applicant may be required to deposit fees to the City that are equivalent to the value of the required work to ensure that this work can be completed at a future date.

Other Department/Agency Review

The City's Public Works Department has reviewed and added conditions to the project.

Environmental Review

An Initial Study was prepared and a Final EIR (State Clearinghouse 2019070377) was certified for the project. The Final EIR identifies mitigation measures to reduce the potentially significant environmental impacts of the project to less than significant levels. These mitigation measures were adopted and made conditions of project approval. The proposed changes to the project would not have any new or substantially more severe significant environmental impacts, because the creation of a new lot on the project site and the decision not to construct certain improvements would not have an adverse physical effect on the environment.

Public Outreach and Noticing

The following table is a summary of the noticing done for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>10 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ Public hearing notices were mailed to property owners citywide (<i>10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)

Next Steps

The Planning Commission's recommendation will be forwarded to the City Council for its decision on the project. The City Council's decision will be final unless reconsidered within 10 days of the decision.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for submission by: Benjamin Fu, Director of Community Development

ATTACHMENTS:

- 1 – Draft Resolution for TM-2021-002
- 2 – Project Plans
- 3 – Letter from Mike Kelly, The Pacific Company, to the Planning Commission, titled Westport Cupertino – Parcel Requirement, dated June 28, 2021.
- 4 – Letter from Mark Tersini, KT Urban, to the Planning Commission, titled Westport Project Tentative Map Application No: TM-2021-002, dated June 28, 2021.
- 5 – Memorandum from Frederick Venter, P.E. and Anthony Nuti, Kimley Horn and Associates to Mark Tersini, KT Urban, titled Westport Cupertino – Transportation Analysis, dated November 27, 2018.
- 6 – Memorandum from Frederick Venter, P.E. of Kimley Horn and Associates to Mark Tersini, KT Urban, titled Westport Cupertino – Alternative Proposal: Trip Generation Corporation, dated March 27, 2020.
- 7 - Memorandum from Frederick Venter, P.E. and Anthony Nuti, Kimley Horn and Associates to Mark Tersini, KT Urban, titled Approved Westport Trip Generation, dated June 7, 2021.