



**COMMUNITY DEVELOPMENT DEPARTMENT**

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**CITY COUNCIL STAFF REPORT**

Meeting: September 7, 2021

**Subject**

Consider approving 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 Action**

Staff recommends that the City Council consider the evidence presented and determine whether the project can be approved in accordance with the draft resolution (Attachment A) to approve the Vesting Tentative Map (TM-2021-002).

**Discussion**

**Planning Commission Hearing on July 27, 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.

The project was reviewed at the July 27, 2021, Planning Commission Hearing clarifying the issues raised by the Commissioners at the prior hearing. The Planning Commission moved to recommend approval (4-0-1, Chair Wang absent). Please review Resolution No.6927 (Attachment B).

**Project Data:**

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

**Background:***Site and Location Description*


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

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 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).



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

#### *Westport Cupertino Development*

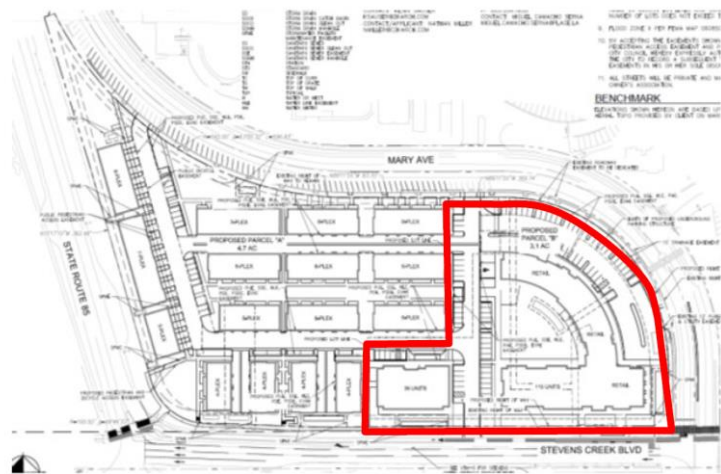
The Cupertino City Council, on August 18, 2020, approved permits to allow construction of a mixed-use development on an 8.1 gross-acre site currently occupied by the Oaks Shopping Center. The primary components of the project are listed below.

- 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.

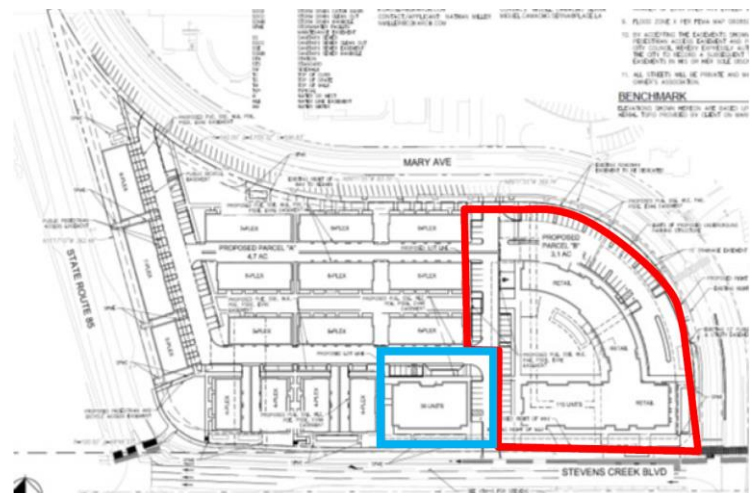
*Vesting Tentative Map*

The project is currently approved with two separate parcels (see Figure 2). 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.



**Figure 2 Approved Vesting Tentative Map (TM-2018-02) with Parcel B outlined in red.**

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). 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 Proposed Parcel C (blue) and revised Parcel B.**

The applicant and its affordable housing partner, The Pacific Companies, have submitted justification letters (Attachments D and E) 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."

The City calculated the TIF based on the adopted fee schedule for the project's multifamily residential and retail uses. For the senior living and assisted housing components of the project, the City calculated the TIF based on the per trip fee in the adopted fee schedule and project-specific calculations of proposed PM peak-hour trips. Please refer to the Attachments F - H for the Trip Generation Memoranda that have been submitted to the city throughout the project entitlement process. Credit was given for trips generated by existing retail uses, consistent with CMC Chapter 14.02. In lieu of paying part of the fee, the applicant will be required to construct bicycle improvements listed in the Traffic Impact Nexus Study, up to the amount of the TIF due for the project. The credit will be calculated based on the estimate cost of the project improvements in the Nexus Study.

The bicycle improvements along the project frontage on the north side of Stevens Creek Boulevard will be constructed with the project. The Applicant has declined to construct the bicycle improvements on the south side of Stevens Creek Blvd, as was previously proposed, and therefore will pay the TIF instead of receiving TIF credit for these facilities. Should the applicant be unable to obtain Caltrans approval for the improvements on the north side of Stevens Creek Blvd., 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.

*Parkland Dedication Fee*

The residential units within the project are subject to the payment of parkland fees in-lieu of parkland dedication per CMC Chapter 13.08 and Chapter 18.24.

The Below Market Rate (BMR) program manual, which was last amended by City Council May 19, 2020 per Resolution 20-055, authorizes the waiver of park fees for BMR units. Consistent with past practices, staff recommends that the parkland dedication in-lieu fees for the 48 BMR units, proposed with this project, be waived.

*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:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
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<ul style="list-style-type: none"> <li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li> <li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li> <li>▪ Public hearing notices were mailed to property owners within 300' (<i>10 days prior to the hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)</li> <li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li> </ul>
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### Fiscal Impacts

The project as approved on August 18, 2020, will most likely generate an enhanced source of property tax due to the property improvements that will result in a higher assessed value.

### Sustainability Impacts

Consistent with the prior approval, as an infill redevelopment priority housing development in a designated Priority Development Area and Transportation Planning Area, the proposed project would be consistent with the overall intent of the City's Climate Action Plan (CAP) to support reductions in GHG emissions, and the proposed project would not conflict any goals or measures to reduce GHG emissions in the CAP and impacts would be less than significant as analyzed in the EIR.

### Next Steps

The City Council's decision will be final unless reconsidered within 10 days of the decision.

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Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Benjamin Fu, Director of Community Development

Approved for Submission by: Greg Larson, Interim City Manager

### **ATTACHMENTS:**

A – Draft Resolution for TM-2021-002

B – Planning Commission Resolution No. 6927

C – Project Plans

D – Letter from Mike Kelly, The Pacific Company, to the Planning Commission, titled Westport Cupertino – Parcel Requirement, dated June 28, 2021.

E – Letter from Mark Tersini, KT Urban, to the Planning Commission, titled Westport Project Tentative Map Application No: TM-2021-002, dated June 28, 2021.

F – 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.

G – 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.

H - 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.