



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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CITY COUNCIL STAFF REPORT

Agenda Date: May 15, 2018

Subject:

Tentative Map application to allow the subdivision of 3 parcels into 5 parcels – 4 residential and 1 common (private street), Tree Removal Permit to allow the removal and replacement of seven (7) protected trees and associated environmental review. (Application No(s): TM-2015-01, TR-2016-28 (EA-2015-04) Applicant: Welkin International (Cai Xing Xie); Location: 10234 Scenic Blvd., APN#357-08-014, 047)

Recommended Action:

1. Planning Commission recommends that the City Council deny the Project by concurring with the Planning Commission's Resolution No. 6856 and the findings therein, attached hereto as Attachment A, by taking the following actions:
 - a. Deny the Tentative Map Application to allow the subdivision of three parcels into five parcels – four residential and one common (private road); and,
 - b. Deny the Tree Removal Permit to allow the removal and replacement of seven protected trees.

Alternative Action:

2. Alternatively, if the Council finds that the site is physically suitable for the density of the Project, then staff recommends that the Council consider following staff's original recommendation to approve the Project by adopting the three Resolutions and the findings therein, which are attached hereto as Attachment B, C and D listed below:
 1. Adopt a Mitigated Negative Declaration and a Mitigation Monitoring and Report Program for the proposed project (Attachment B); and,
 2. Approve the:
 - a. Tentative Map Application to allow the subdivision of 3 parcels into 5 parcels – 4 residential and 1 common (private road) (Attachment C); and,
 - b. Tree Removal Permit to allow the removal and replacement of seven (7) protected trees (Attachment D).

Planning Commission Hearing:

The item was heard before the Planning Commission on April 10, 2018. Staff recommended approval of the project based on the attached draft resolutions presented to the Planning Commission (see Attachment E, F and G).

However, based on the information presented and the comments received, Planning Commission recommends that the City Council deny the project. Planning Commission recommends denial of the project based on the finding that the site is physically unsuitable for the intensity of development contemplated under the approved subdivision based on the following:

- The increase in driveways from two to three will contribute to unsafe driving and road conditions on Scenic Blvd.
- While the zoning and land use of the project site allows for the construction of four (4) dwelling units with the potential for each unit to have an accessory dwelling unit on the site, the necessary improvements in relation to grading, drainage, and other infrastructure improvements cannot support the density given the development on a slope and building constraints.
- The project will require the removal of seven (7) protected tree, including Tree #39. Tree #39 is a 32-dbh Coast Live Oak located on Parcel 5. In order to provide access to Parcel 3 and Parcel 4, the tree is proposed to be removed.

Discussion:

Project Data:

| | |
|-----------------------------------|---|
| General Plan Planning Area | Monta Vista North Neighborhood |
| General Plan Designation | Low Density (1-5 DU/Ac.) |
| Zoning Designation | R1-7.5 (minimum lot size of 7,500 sq. ft.) |
| Total Gross Lot Area | 45,533 sq. ft. (1.045 acres) |
| Total Net Lot Area | 45,240 sq. ft. (1.039 acres) (excluding private road and dedications) |
| Proposed Lot Areas: | |
| Parcel 1: | 7,512 (0.172 acres) |
| Parcel 2: | 7,501 (0.172 acres) |
| Parcel 3: | 7,500 (0.172 acres) |
| Parcel 4: | 14,456 (0.322 acres) |
| Parcel 5 (private road): | 8,264 (0.189 acres) |
| On-street Parking Provided | Two per lot |
| Project Consistency with: | |

| | |
|---------------------------------|--------------------------------|
| General Plan: | Yes |
| Zoning: | Yes |
| Environmental Assessment | Mitigated Negative Declaration |

Background:

The project site encompasses three (3) legal lots that comply with the General Plan land use designation and Zoning – one that fronts Scenic Boulevard and two developable lots, sharing access by a common driveway, behind it. However, only one of the three lots is currently developed with a single-story single-family home. There are a few accessory structures located on one of the other two lots and the third lot is vacant. There are also 73 trees of varying species, size, and health on site. The property was owned by a single property owner for a number of decades and was sold in 2015 to the current property owner.

The applicant, Lei Yuan of Welkin International, representing the property owner, is seeking entitlements to subdivide three (3) parcels into five (5) parcels, four (4) residential and one (1) private street.

The project site is located approximately 60 feet east of the intersection of Carmen Road and Scenic Boulevard in the Monta Vista North Neighborhood. The property is bounded by Single-Family Residential properties zoned



R1-10 on the south, west and north, one property zoned R1-7.5 and the City-owned Blackberry Farm zoned Public Recreation (PR). In addition, a single-family cluster (R1C) development (The Meadows) is located further east along Scenic Boulevard. Scenic Boulevard which ends in a cul-de-sac, begins at Carmen Road, and serves approximately 20 single-family homes and an additional 28 homes in a cluster development. The properties on the east side of Carmen Road slope down toward Stevens Creek, which runs through Blackberry Farm in a north-south direction roughly parallel to Carmen Road.

This item was originally scheduled for a public hearing on November 14, 2017. However, it was continued to a date uncertain, at the applicant's request to allow additional community outreach. The applicant has conducted additional outreach and resubmitted plans on March 21, 2018 with modifications to the plans to address concerns. These have been discussed in greater detail later in the staff report.

Analysis:

General Plan Conformance

The properties have a General Plan Use Designation of Low Density (1-5 DU/Ac.). The existing gross lot area of the site is 45,533 square feet (1.045 acres.) The net lot area (gross lot area minus area of dedications, streets and drainage easements) of the site is 45,240 square feet (1.039 acres.) Therefore, the proposed density of the project based on the net lot area is approximately 4.24 dwelling units/acre. Because the project proposes four (4) residential units, the project is consistent with the General Plan land use designation.

Zoning

The project site is zoned R1-7.5 (Single-Family Residential with a minimum lot size of 7,500 square feet). The proposed parcels will range in size from 7,500 square feet to 14,456 square feet, making the project consistent with the minimum lot size. Additionally, the resulting parcels are consistent with the other residential site development regulations for this zoning district, including requiring a minimum lot width of 60 feet measured at the front setback line.

Subdivision Design

The proposed project would create five (5) parcels where three (3) parcels currently exist. All of the existing structures on the site are proposed to be demolished prior to recordation of the final map. Two (2) of the parcels will front Scenic Boulevard with access from the street, while the two (2) remaining parcels will obtain access via a private street. The project would result in the development of one additional parcel with access from Scenic Boulevard. The proposed private street is located in the same location as an existing, unimproved, shared driveway that allows access to two (2) existing, legal, developable lots. The street is designed to be consistent with the Santa Clara County Fire Department standards for access for emergency and other vehicles. In addition, the project has been designed to maintain adequate site lines for driving distances. On-street parking for the site has been provided for two parking spaces (2) per unit with four (4) parking spaces located on Scenic Boulevard and an additional four (4) located on Parcel 5.

A preliminary site plan has been prepared to show how future development on the site would comply with R1 development standards as well as providing all required on- and off-street parking. Development of the homes are planned for a future time and all appropriate regulations will need to be met when plans are reviewed for permit review.

Since there are common areas that must be maintained by the owners with frontage on to the private road, the property owners must all participate in a maintenance agreement to the common property such as the street, retaining walls abutting the street, parking areas, any signage in the street and common landscaping. In addition to the maintenance agreement, reciprocal ingress/egress, public access, parking and other appropriate easements will be recorded against the common area. Both the maintenance agreement and easement agreements shall include clauses to require City approval prior to any changes being made to either document. In addition, both documents shall be reviewed and approved the City Attorney prior to recordation.

Upon review of the geological stability of the sloped portion of the site, it was found that the slope needed to be further stabilized. This will be done by constructing retaining walls with drilled piers on Parcel 4. This has been further discussed in the geological analysis within Appendix A of Attachment H. The height of each level of retaining wall has been limited to approximately six (6) feet in order to ensure that the mass of the retaining wall is minimized. Landscaping is required to be planted in front of the retaining wall to mask the mass and to provide screening for the walls.

Street Frontage Improvements

Currently, the paved portion of the street in front of the project site is approximately 21 feet wide. New curb and gutter and paving will be installed along the frontage of the property resulting in a 32-foot wide paved street. This will allow two (2) 12-foot wide lanes in each direction for vehicular access and eight (8) feet for on-street parallel parking on the south side of Scenic Boulevard for four (4) vehicles. While some of the properties further east of the project site are within the Stevens Creek Dam Failure Inundation zone, none of the properties are within the flood plain. In order to ensure clear signage in the event of dam failure, Scenic Boulevard has signage to direct people to higher ground toward Carmen Road. The project does not propose to remove any of the existing signage. Additionally, none of the proposed improvements or development conflicts with the City's adopted Stevens Creek Dam Failure Plan or any other adopted land use plan, but does improve access along Scenic Boulevard in this section by widening the roadway.

Trees

The arborist report concluded that there are over 100 trees on site. Because of the tree sizes and maturity, they were summarized and reviewed as 73 trees on the site. Trees on site are of varying species, size, and height. Of the 73 trees on site, 24 trees, most in direct conflict with the proposed building pads and driveway approaches for the proposed lots, are proposed to be removed by the project. Seven (7) of the 24 trees proposed to be removed are considered protected trees according to the City's Protected Trees ordinance. All seven (7) of the protected trees are Coast Live Oaks, which will be replaced with eleven (11) 24-inch box Coast Live Oak trees, consistent with the City's Ordinance.

Amendments to plans since November 2017

As previously discussed, the applicant requested postponement of their application to conduct additional public outreach in November 2017. Based on the comments received during the outreach with the neighbors, the applicant has made the following changes to the plans:

- *Vehicle turnaround on Parcel 1 and Parcel 2:* Due to safety concerns voiced by the neighbors, even though the proposal met the City's requirements for sight distances, vehicle turnaround areas have been added to Parcel 1 and Parcel 2. The turnaround area is intended to allow cars to turnaround on site and to not to have to back into Scenic Boulevard. This has been added as a condition of approval to the Tentative Map for any future development on these two parcels.
- *Continued effort to save Tree #39:* The applicant, in good faith, will continue to work with the Fire Department and Arborist to attempt to save Tree #39 (a 32" DBH Coast Live Oak tree) located on Parcel 5. Tree #39 has been indicated for removal, in the event they are not able to save the tree. A condition of approval has been added to this effect. In the event that the existing tree cannot be retained, two 24" box replacement trees shall be planted, in accordance with the Protected Tree Ordinance.
- *Guard Rail:* A structural guard rail shall be placed adjacent on Parcel 5. A condition of approval has been added to require the review and approval of the design of this rail by staff, prior to approval of the grading plan. Should the rail be visible, it is expected to also be decorative.
- *Landscaping:* The applicant is proposing to plant additional landscaping in front of the structural guard rail, and additional landscaping plantings at each tier of the retaining wall on Parcel 4. This landscaping is also subject to the City's Landscape Ordinance (CMC Chapter 14.15.) Therefore, the applicant is also required to submit a landscape submittal in conformance with the Municipal Code.

Environmental Review:

The Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) was placed in the newspaper and mailed to notify neighbors and interested parties that a Draft Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared in accordance with the California Environmental Quality Act (CEQA) and available for review.

The IS/MND (Attachment H) was presented to the Environmental Review Committee (ERC) at its meeting of October 19, 2017. The ERC voted unanimously to recommend that the Planning Commission find that the IS/MND has been prepared in accordance with CEQA and adopt it. Mitigation measures for the project will be added as conditions of approval to reduce the impacts of the project to a less than significant level as follows:

- *Air Quality:* Construction shall comply with Bay Area Air Quality Management District (BAAQMD) Best Management Practices for reduction of construction emissions and, during construction, the construction contractor(s) shall use construction equipment with Tier 3 Engines with Level 3 Diesel Particulate Filter (DPF) that meet the United States EPA Certified Tier 3 emissions standards for all equipment of 50 horsepower or more.
- *Biological Resources:* Nesting surveys will be required when nests of raptors and other birds are in active use as required by the Federal Migratory Bird Treaty Act and the California Department of Fish and Game.
- *Cultural Resources:* In the event that cultural resources or fossils are discovered during construction, all work shall be halted to determine significance of the discovery as well as necessary mitigations.
- *Geology and Soils:* The project shall be carried out in accordance with recommendations contained in the geotechnical investigations (Civil Plans modified to include final layout easements, and details of the proposed rock catchment fence, shear pen wall, and drainage mitigation measures, as well as the updated Civil Plans and Details to be reviewed by the Project Geotechnical Consultant).
- *Temporary Noise Impacts:* Construction shall comply with the City's Noise Ordinance and implement measures to reduce construction noise and vibration reducing equipment.

Comments were received from the public before, and during, the ERC hearing expressing concerns regarding impacts to the neighboring residences. Most of the comments were not directly related to the environmental effects of the proposed development and have been discussed further in the Public Noticing and Community Outreach section below.

The only comment received that was related to the environmental effects of the proposed project was regarding concerns about the traffic from the proposed project. As part of the environmental analysis, the IS/MND reviewed the traffic impacts associated with the project. The analysis estimated that the proposed project would result in three (3) AM peak hour trips and four (4) PM peak hour trips. This trip generation does not trigger thresholds for additional traffic review and, therefore, the project would have a less than significant impact on circulation (traffic.)

Other Department/Agency Review:

The City's Public Works Department, Building Division, Cupertino Sanitary, and the Santa Clara County Fire Department reviewed the project and have no objections. Their pre-hearing comments/conditions have been incorporated as conditions of approval in the draft resolutions.

In compliance with the Subdivision Map Act requirements, notices have been sent to the two school districts that will serve the new parcels. However, no comments have been received on the project as of the date of production of this staff report. The applicant will be required to pay the appropriate school impact fees upon development of the lots with homes.

The City's collection and disposal service provider, Recology, has confirmed services can be provided to the development. However, the receptacles for the development must be placed on Scenic Boulevard. The City's Municipal Code requires that all trash containers be placed no more than 24-hours prior to the scheduled collection time, and be removed from the collection area within 12 hours after collection.

Public Noticing and Community Outreach:

The following table is a brief 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>14 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>) 53 notices mailed to property owners within 300 feet (<i>at least 10 days prior to the hearing</i>) | <ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>five days prior to the hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>five days prior to the hearing</i>) |

The noticing has been completed for the Planning Commission and City Council hearings.

In addition to the standard noticing and information on the City's website, the applicant held two outreach meetings on November 5 with the property owners within 300 feet of the project site in order to provide information to the neighbors and to conduct public outreach. A total of eighteen people attended the meeting and voiced their concerns or were supportive of the project. As mentioned previously, the applicant has made changes to the plans to address many of the concerns indicated below.

Staff received comments from neighbors and other interested members of the public. Their concerns and staff responses are summarized below:

- *Concern regarding the number of driveways proposed on Scenic Boulevard:* Currently, the project site has two (2) points of access. One driveway along Scenic Boulevard and a shared driveway that extends to the rear. As previously discussed, the project will result in three (3) points of access, a net increase of one (1). The proposed project is also improving the street conditions for this section of Scenic Boulevard and all improvements are being designed using the Department of Public Works' standards which address issues such as sight lines and distances. As previously mentioned, the applicant is also proposing to provide vehicle turnarounds on Parcels 1 and 2 of the development. This has been added as a condition of approval.
- *Concerns regarding the proposed on-street parking and street width:* As discussed above, the paved portion of the street will be widened from approximately 21 feet to 32 feet. Twenty-four feet of the street will be for vehicular access, consistent with the travel lanes in other parts of the City, with the remaining eight (8) feet used as on-street parking along the project site. This will improve the street frontage and better define the extent of the right of way and travel lanes.
- *Concerns regarding on-street parking for construction vehicles:* As with all construction projects, the applicant is required, as a condition of approval, to prepare a construction management plan which includes a plan to ensure that construction vehicles are parked on the site to the maximum extent possible and that a construction manager be identified on signage on the construction fencing around the site to whom, queries and complaints regarding construction, including construction parking and noise, can be directed.
- *Concerns about the proposed Tree Removals:* The project will result in the removal of 24 trees on site. The applicant is proposing removal of trees that are either in direct conflict with the proposed building pads, driveway access or in poor health. As noted above, only seven (7) of the trees proposed for removal are considered protected and will be replaced consistent with the City's ordinance. The remaining 17 trees may be removed without any permits from the City.

Applicant Community Outreach:

In November 2017, the applicant requested a postponement of this item from the November 14, 2017 Planning Commission meeting, in order to conduct additional outreach with the neighborhood regarding concerns from the project. A summary of the changes proposed as a result of this additional outreach has been provided earlier in this report.

In addition to meeting neighbors individually and corresponding by email, the applicant held neighborhood meetings on the following dates:

- Saturday, November 4, 2017 from 11:00am – 12:30pm
- Sunday, November 5, 2017 from 4:30pm – 5:30pm
- Sunday, January 28, 2018 from 11:00am – 12:00pm
- Saturday, February 10, 2018 from 11:00am – 12:00pm

Permit Streamlining Act:

The application is subject to the California Environmental Quality Act (CEQA), Guideline 15107, which states that the IS/MND must be adopted 180 days after the application is accepted as complete. Sixty days after adoption of the IS/MND, the lead agency must approve, disapprove or conditionally approve the project. In this case, the application and IS/MND are being concurrently presented. The application was initially deemed complete on October 19, 2017. However, the applicant asked to place the application on hold to conduct additional outreach on November 13, 2017. The application was deemed complete again on March 21, 2018. Therefore, final action on the project must be completed by September 17, 2018.

Next Steps:

The City Council may deny (Attachment A) or approve the project (Attachment B, C, and D). The City Council's decision on the project is final.

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| <u>Prepared by:</u> | Erick Serrano, Associate Planner |
| <u>Reviewed by:</u> | Benjamin Fu, Assistant Director of Community Development |
| <u>Approved for Submission by:</u> | Aarti Shrivastava, Assistant City Manager David Brandt, City Manager |

ATTACHMENTS:

- A – Draft Resolution No. 6856 to deny the Project
- B – Draft Resolution to approve the tentative map (TM-2015-01)
- C – Draft Resolution to approve the IS/MND (EA-2015-04)
- D – Draft Resolution to approve the Tree Removal Permit (TR-2016-28)
- E – Planning Commission Resolution Recommending Approval of the Environmental Assessment
- F – Planning Commission Resolution Recommending Approval of the Tentative Map
- G – Planning Commission Resolution Recommending Approval of Tree Permit
- H – ERC Recommendation, IS/MND including Technical Appendix
- I – Plan Set
- J – Arborist Report