



DATE: October 29, 2019

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Appeal of Planning Commission Approval of a Three Story, 40-Unit Townhouse Style Development on a 1.66-acre Site Located at 21229 Oak Street (APN 415-0170-019-00, 415-0170-020-00, 415-0170-021-00, 415-0170-022-00, 415-0170-023-00, 415-0170-024-00, 415-0170-025-00, 415-0170-029-02) Requiring Site Plan Review Application No. 201800932. Ann E. Maris PhD, Organizer, Grove Way Neighborhood Association (Appellant); Steven Kodama, Kodama Diseno Architects (Applicant)/ Robert Chen (Owner)

RECOMMENDATION

That the City Council denies the appeal and upholds the Planning Commission's approval of Site Plan Review Application 201800932 to allow the construction of a 40-unit townhouse style development based on the analysis in this report and contained within the attached Findings, subject to the Conditions of Approval, per the attached Resolution (Attachment II).

SUMMARY

The appellant is requesting denial of Site Plan Review No. 201800932 based on: that the neighborhood was not adequately included in the planning review process; that the development should be considered in light of all other developments and not as an isolated building in an established functional neighborhood; that the project should not be exempt from CEQA; that the developer should provide additional public amenities; and that the County and the Castro Valley Municipal Advisory Council should have been informed of this proposed development.

On July 25, 2019, the Planning Commission heard public testimony, considered the appeal, and voted 5:0 to deny the appeal and uphold the Planning Director's decision. On August 5, 2019, the appellant filed an appeal of the Planning Commission decision (Attachment III).

BACKGROUND

The 72,503 square foot (1.66 acre) project site consists of eight parcels (APN 415-0170-019-00, 415-0170-020-00, 415-0170-0421-00, 415-0170-022-00, 415-0170-023-00, 415-0170-0424-00, 415-0170-025-00, 415-0170-029-02) which are vacant and were acquired by the State prior to the abandoned 238 By-Pass Road Project. Several years ago, Caltrans embarked on selling these lands to the public. While the City of Hayward entered into a purchase

agreement for several parcels, the applicant purchased the subject property in 2016 and later submitted an application for Site Plan Review and a Tentative Tract Map in February 2018. In 2019, the applicant revised the project application and decided to move forward with just Site Plan Review and postpone the Tentative Tract Map until a future date.

On April 19, 2019, the Site Plan Review application was approved administratively by the Planning Director and on May 6, 2019, the appellant, Ann E. Maris, PhD, organizer of the Grove Way Neighborhood Association (GWNA) appealed the decision based on the reasons indicated in Attachment IV. In addition, the appellant requested that the developer provide the following revisions/amenities, which are detailed in Attachment IV:

1. Providing a walkway through to Hill's Coffee Shop on Foothill Boulevard.
2. Suggests 50% of the units be affordable ownership units.
3. View of development from Hill's Coffee Shop be of landscaping.
4. Provide a stoplight at Apple and Foothill Boulevard intersection.
5. That majority of the plantings be native plants and deciduous trees should be selected to provide passive winter warming of units.
6. That views of the Bay are not blocked from Gary Street homes.
7. That the Park In-Lieu fees go toward preserving open space in other Grove Way Caltrans parcels, such as Ruby Meadow and Parcel 8, and or the Foothill Trail.

At the hearing, the appellant and four other residents spoke. The appellant expressed that a plan should be developed with the community for the Caltrans properties before any projects be approved. She believes there should be a public benefit to the community, and she suggested relocating the group open space to align with the Hills Coffee Shop so that residents in the surrounding area could walk through the group open space to the coffee shop. In addition, she felt that more affordable units should be provided to reflect the needs of the community. Other speakers spoke about the need for open space, affordable housing, and the need for the City, County and HARD to work together with the community to develop a plan for the former Route 238 properties that lie in Hayward and Alameda County's jurisdiction.

On July 25, 2019, the Planning Commission denied the appeal and upheld the Planning Director's decision by a vote of 5-0. On August 5, 2019 the appellant filed an appeal to the City Council asserting that the project does not provide benefits to the existing neighborhood, expressed concerns about increase traffic, believes that smaller one bedroom affordable units should be provided rather than expensive, market rate three bedroom townhouses and that the park in lieu fees from the development should go toward preserving open space on the neighboring Caltrans parcels (Attachment III).

DISCUSSION

Existing Conditions. The 1.66-acre project site is located on Oak Street between Apple Avenue and Grove Way. The project site is surrounded by vacant parcels and a mixture of single and multi-family residential dwellings to the north, and a variety of commercial businesses to the south, including National Mattress Discount Center, Hills Coffee Shop, and Foothill Food & Liquors. The project site gently slopes from Oak Street down to the rear of the property and although vacant, there are 10 mature trees on the site, including four proposed to be

preserved and one tree (a Date Palm) to be relocated. Oak Street is the dividing jurisdictional line between the City of Hayward and County of Alameda (Castro Valley).

Project Overview. The applicant proposes 40 townhouse units, housed in six three-story buildings. All the units would be 3 bedrooms, 2 ½ baths and contain attached two-car garages, including 14 garages designed as tandem garages with openings on the rear side of the building. Twenty-four units will also include a family room on the ground level. Each townhome will range in size from 1,327 to 1,441 square feet and all include a balcony for private outdoor space that ranges in size from 60 to 115 square feet. The project also includes new landscaping, frontage and site improvements, and two common open space areas.

The site and placement of the townhomes was designed to create a unique development that integrates into the surrounding neighborhood. The front row of the townhouse units will be oriented to Oak Street with the front doors opening to the residential neighbors across the street. The site grades have been developed to have a cut and fill balance to minimize import or export of the site material. The living units have been sculpted to fit the grade, to be able to tuck garages into the low side of the unit and avoid having the garage and driveway exposed to the public right-of- way.

Building Architecture. The project consists of contemporary townhouse style units facing the “H” shaped interior road or Oak Street. The units facing Oak Street are staggered to provide modulation of building cluster walls and to enhance the development as viewed from the street. The development includes three basic floor plan types with additional modifications to two of them. The buildings will be constructed of stucco and wood panel with composite shingle roofs. The building’s color palette consists of warm shades of brown, tan, salmon green, and gray and the window frames will be black. Architectural details feature a variety of deck sizes, contrasting building materials, and staggered roof lines. All units will be adapted to accommodate solar panels and incorporate energy conserving measures.

Parking and Circulation. Each home will contain a two-car garage or tandem carport. A 26-foot-wide private street is proposed to provide vehicular access to the site. The private street, which will be maintained by the property owner, or in the case that the developer moves with the Tentative Tract Map it would be the HOA, provides eight street parking spaces for guests and the street layout provides adequate turnaround space for fire apparatus. In addition, eight motorcycle parking spaces will be provided. The project includes a new sidewalk, curb and gutter, street trees and streetlights along the Oak Street frontage.

Landscaping and Common Open Space. The project proposes to plant 129 new trees throughout the project site and a varied palette of shrubs and groundcover in the common open space area and the area surrounding the building clusters. The proposed plant materials are drought tolerant and include native plants such as Yankee Point Ceanothus, Point Reyes’ Manzanita, Dwarf Coyote Brush and California Fescue.

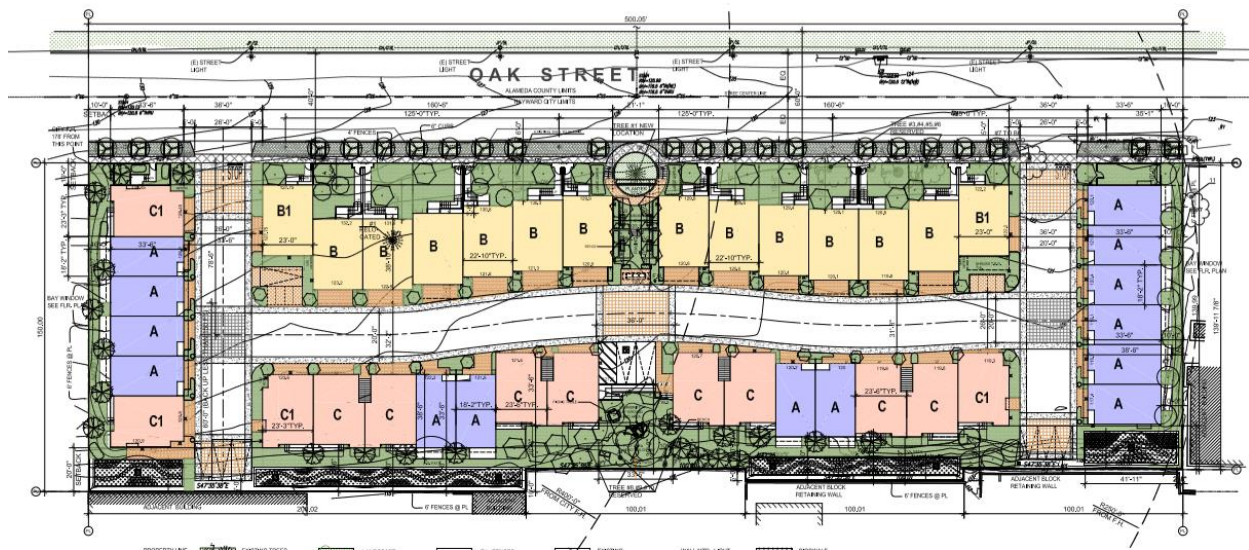
The project proposes two common open space areas. The upper common open space, located between Oak Street and the interior street, will contain seating areas on different levels and the tenant mailboxes. The seating areas will include flowering trees, shrubs, and benches. The relocated Date Palm will be planted at the top of the open space and provide a focal point for

the space as well as the development. At the lower end, the mailboxes are proposed to be centrally located to provide access from the interior street. A second common open space area will be located between the interior street and the south property line and include a picnic table, bench, landscaping, and a small play structure for children.

The units along Oak Street will have gated front yards for their private open space. The units along the sides of the project site will include private open space areas to the rear of the units. The units along the rear of the site will have shared private open space areas with fences and gates at the ends of each building cluster to allow for limited access for those who reside in the building cluster and provide maintenance areas for the bio-swale. All proposed landscaping and irrigation will meet the City's landscape water efficiency standards and the project has been designed to treat all rainwater and drainage on site before flowing off-site.

Tree Removals. The project requires the removal of six trees, which are protected by the City's Tree Preservation Ordinance.¹ The City's Tree Preservation Ordinance requires mitigation equal in value to the total appraised value of all protected trees to be removed through replacement trees or alternative forms of mitigation acceptable to the City Landscape Architect. The project proposes mitigation in the form of larger trees and/or providing more trees than required. As conditioned, the City's Landscape Architect will review the final landscape plan to confirm that the proposed mitigation cost matches or exceeds the appraised value of the removed trees prior to the issuance of a building permit.

Utilities and Street Improvements. The existing utilities that serve the project site, including sanitary sewer, water, and storm drain systems, have sufficient capacity to adequately serve the proposed development. On-site sewer and water utilities will be installed within the new public utility easement within the project site and connect to the existing utilities on Oak Street. A reduced version of the site plan that shows the overall building layout and landscaped areas is shown below.



¹Tree Preservation Ordinance: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART15TRPR

Hayward 2040 General Plan. The Housing Element adopted in December 2014 identified these and other vacant former Route 238 Oak Street properties in Hayward's jurisdiction as potential sites for residential development of up to 69 units with a realistic capacity of 26 units on 10 parcels. The site is comprised of 7 of the 10 parcels and will be providing 40 units.

The project site contains a Commercial High Density Residential² land use designation in the *Hayward 2040 General Plan*, which allows a residential density range of 17.4 to 34.8 dwelling units per net acre. Properties with the CHDR land use designation typically applies to commercial and residential properties located along arterial streets. Typical building types include townhomes, live-work units, multi-story apartment, condominium buildings, and commercial buildings. The project is consistent with the *Hayward 2040 General Plan* in that it is a multi-family residential development with a density of approximately 24.1 dwelling units per net acre, which is within the allowable density exclusive of a density bonus.

The *General Plan* also provides goals and policies that serve as guiding principles and provide a host of strategies for future development in the City. The proposed project was evaluated and determined to be consistent with several goals and policies, including that it will increase the housing inventory for the City of Hayward, is located close to services and amenities, and is considered an in-fill development that will result in a more complete neighborhood. The project's consistency with the *Hayward 2040 General Plan* and its specific goals and policies is discussed in greater detail in the project findings (Attachment III).

Zoning Ordinance. The project site is located within the CO (Commercial Office) zoning district. Pursuant to Section 10-1.1100³, the CO district allows for multi-family residential units, including condominiums and townhomes. For Multi-Family Dwellings, the CO district refers to the criteria and standards contained in the RH (High Density Residential)⁴. The RH District allows a density of 17.4-34.8 units per net acre. The proposed project complies with all the development standards for the RH District including lot size, lot frontage, lot coverage, and building height.

North Hayward Neighborhood Plan. The North Hayward Neighborhood Plan⁵ was adopted in July 1994. At the time the neighborhood was being developed, a portion of Oak Street between Apple Avenue and Grove Way was zoned Agriculture and the remaining portion zoned Commercial Office. The neighborhood plan recommended that the remaining portion zoned Agriculture be rezoned to Commercial Office. The proposed development is consistent with the North Hayward Neighborhood Plan in that the proposed use is for residential use and is consistent with the Commercial Office District zoning.

² Hayward 2040 General Plan:
<https://www.hayward2040generalplan.com/land-use/mixed>

³ Commercial Office District:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.1100COOFDICO

⁴ High Density Residential:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.500HIDEREDIRH

⁵ North Hayward Neighborhood Plan
<https://www.hayward-ca.gov/sites/default/files/documents/NorthHaywardPoliciesStrategies.pdf>

Site Plan Review. The purpose of the Site Plan Review is to foster development that complies with the intent of City development policies and regulations and is operated in a manner determined to be acceptable and compatible with surrounding development. Per [Section 10-1.3025](#)⁶ of the HMC, the Planning Commission may approve or conditionally approve this application when all the required findings below are made:

- The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City;
- The development takes into consideration physical and environmental constraints;
- The development complies with the intent of City development policies and regulations; and
- The development will be operated in a manner determined to be acceptable and compatible with surrounding development.

Staff evaluated the project application and believes the Commission can make the required findings for approval, based on the detailed analysis included in Attachment II.

Affordable Housing Ordinance. The project must also comply with the City's Affordable Housing Ordinance⁷, which was adopted to increase the supply of affordable units for extremely low, very low, low, and moderate-income households. The applicant plans to provide affordable units on-site. If the development is an On-Site Rental development, six (6) percent of the dwelling units shall be rental Affordable Units or, in this case, three (3) dwelling units. If the applicant proceeds with the Tentative Tract Map to build for sale units, ten (10) percent of the units shall be for sale Affordable Units or, in this case, four (4) dwelling units. In either case, the developer will need to enter into an Affordable Housing Agreement with the City as a requirement in the Conditions of Approval.

Alameda County R-4 Zoning District (Multiple Residence Districts). The properties on the east side of Oak Street are in the County of Alameda's jurisdiction and are zoned R-4. The R-4 District was established to provide for larger types of multiple dwellings in relatively small areas generally near business uses or in the vicinity of major thoroughfares, together with appropriate community facilities and compatible types of group living quarters. The R-4 Zoning District allows a maximum density of 34.8 units per net acre, which is consistent with the project's density.

Appeal. In response to the Appellant, the project is not an isolated building in an established neighborhood. Oak Street has several multi-family dwellings on both sides of the street and both the City and County's zoning allows for a maximum density of 34.8 units per net acre. The project is consistent with the General Plan, Zoning Ordinance, and North Hayward Neighborhood Plan that provides the framework for land use decisions and

⁶ Site Plan Review Findings:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.3000SIPLRE_S10-1.3025FI

⁷ Affordable Housing Ordinance:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART17AFHOOR

the General Plan Housing Element identifies this site as a potential for residential development.

In regard to the neighborhood not being adequately included in the Planning Review Process, the application went through the planning review process, which requires public noticing once an application is received and once a decision is made. At the onset of the review process, two hundred ninety-one public notices were mailed to the neighboring residents, businesses, property owners whose property was within 300 feet of the subject property including the North Hayward Task Force and the Prospect Hill Neighborhood (See Attachment V). In addition, Alameda County Planning, Alameda County Public Works & Flood Control, Oro Loma Sanitary Sewer District, HARD and EBMUD received notification about the project application.

In terms of the environmental review, CEQA allows for exemptions for projects that would not have a significant effect on the environment. In this case, the project qualified for exemption under Section 15332, Class 32. To meet the requirement to use this exemption, the project must be consistent with the General Plan, be under 5 acres, have no value for endangered, rare or threatened species, and would not result in any significant effects relating to traffic, noise, air quality or water quality. The project meets these requirements and the Infill Exemption was used.

Concern was also expressed about the developer providing additional public amenities. Should the project be approved, the developer will be providing street improvement along Oak Street, which includes streetlights, sidewalk, curb and gutter, and street trees. In addition, they will be paying Park-In Lieu fees and providing on-site Affordable Units.

In response to the request for community benefits,

- 1) Providing a walkway through the property to Hills Coffee Shop is not feasible as it would have to go through private open space and through a bio-swale and there's also a retaining wall separating the two properties and steps would have to be added to the Hillside Coffee Shop side of the property. In addition, Oak Street is a short block (600 feet) and access would only benefit a limited number of residents on Oak Street.
- 2) In terms of providing 50% Affordable units, the Affordable Ordinance only requires ten (10) percent of the units be affordable for For-sale units and six (6) percent for Rental units. There is no mechanism for the City require the developer to provide 50 percent affordable units.
- 3) With regards to views of the development from Hills Coffee Shop being greenery, the project proposes Flowering Cherry trees at the rear of the units. However, greenery would have to be installed on the Hills Coffee Shop property. The Hills Coffee Shop does not meet the landscaping requirement for a commercial property, and should any major improvement be made to the parking lot, they would have to comply with the City's landscape requirements.
- 4) With regards to providing a stop light at Apple and Foothill Boulevard intersection, there is no nexus to require the developer to do so.
- 5) With regards to views being blocked on Gary Street homes, Gary Street is about 20 feet higher than Oak Street and the proposed unit finish floor for the units will be

about five (5) feet below the Oak Street finish grade and views of the bay should not be blocked. The new building will screen out the backs of the commercial buildings and Foothill Boulevard and provide an attractive building to look down on.

- 6) With regards to planting, native plants have been specified and the bulk of the plants will be drought tolerant.
- 7) With regards to requiring the Park in-Lieu fees go toward preserving open space in other Grove Way Caltrans properties, the Hayward Park and Recreation District makes the determination how they would like the fees to be used and the City Council makes the decision on the appropriation of the fee.

The project is an attractive development that will improve the neighborhood and enhance the gateway to Hayward. Staff recommends that the appeal be denied.

Environmental Review. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332, Class 32, In-Fill Development Projects, of the CEQA Guidelines in that the proposed project would be consistent with applicable zoning designation and regulations. The project is less than five acres and is substantially surrounded by urban areas. The project site had no value as a habitat for endangered, rare or threatened species. Approval of the project would not result in any significant effects related to traffic, noise, air quality or water quality since the site is adequately served by all required utilities and public services.

ECONOMIC IMPACT

The proposed project would result in the development of a currently underutilized lots in an existing residential neighborhood. The proposed development would not require the expansion of public utilities or services and is not expected to have a negative impact on the City regarding public utilities or public services. Furthermore, the project would result in new residents moving into neighborhood, which should generate demand for goods and services in the neighborhood as well other areas of Hayward, thereby providing stimulus for new or existing jobs in the City's economy.

FISCAL IMPACT

According to the City of Hayward Fiscal Impact Model (2017) prepared by Applied Development Economics, Inc., the project would generate an estimated \$45,233 in annual revenue from property and utility user taxes and approximately \$46,227 in annual costs related to City services, resulting in a net negative impact of approximately \$944 per year. Additionally, the project would generate an estimated \$1,725,133 in one-time revenue prior to occupation through the payment of various development impact fees such as park dedication fees, school impact fees, and utility fees (Attachment VIII).

STRATEGIC INITIATIVES

The project supports the Complete Communities strategic initiative. The purpose of the Complete Communities initiative is to create and support services and amenities that provide inclusive and equitable access with the goal of becoming a thriving and promising

place to live, work and play for all. This agenda item advances the following goals and objectives:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 4: Create resilient and sustainable neighborhoods.

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

The project also supports the Complete Streets strategic initiative. The purpose of the Complete Streets Strategic Initiative is to build streets that are safe, comfortable, and convenient for travel for everyone, regardless of age or ability, including motorists, pedestrians, bicyclists, and public transportation riders. This agenda item advances the following goal and objective:

Goal 1: Prioritize safety for all modes of travel.

Objective 3: Ensure that roadway construction and retrofit programs and projects include complete streets elements.

The project, as proposed, will create new housing opportunities that provide a mix of housing in the City and will require street improvement on Oak Street, that will include, sidewalks, curb and gutter, lighting and Street trees that will be designed to accommodate vehicles and pedestrians.

SUSTAINABILITY FEATURES

The project is required to meet CALGreen and 2016 California Energy Code standards for energy efficiency, as well as the City's requirements for water efficient landscaping. Additionally, the project will comply with the City standards for recycling of waste during construction and operation and will comply with the Municipal Regional Stormwater requirements for storm water runoff prevention and treatment.

PUBLIC CONTACT

Public Outreach. Following receipt of the project application, staff conducted the following public outreach:

- On May 1, 2018, a Notice of Receipt of Application was sent to all property owners and interested stakeholders within 300 feet of the subject property as well as the North Hayward Neighborhood Task Force and the Prospect Neighborhood Association (See Attachment V). Staff received three inquiries, one asking when the project would be completed, another requested a copy of the plans, and another wanted to bring

attention that his rear building wall was acting as a retaining wall and had some cracks as well as the site was draining to a sump in his building.

- On April 19, 2019, a Notice of Decision was published in the Daily Review newspaper and sent to all property owners and interested stakeholders within 300 feet of the subject property. Staff received four comments from the public regarding the project. One inquiry asked when the project would be completed as they were going to be evicted from their apartment. Another wanted to know what was proposed to retain the soil in the back of his building and two inquired about appealing the decision, one of which was the appellant.
- On July 11, 2019, a Notice of Public Hearing was sent to all property owners and interested stakeholders within 300 feet of the subject property as well as the North Hayward Neighborhood Task Force and the Prospect Neighborhood Association. The Appellant indicated to staff that she would forward the notice to the Grove Street Neighborhood Association members. Staff did not receive any additional public comments.
- On July 25, 2019, the appeal was heard by the Planning Commission.
- On October 18, 2019, a Notice of Public Hearing was sent to all property owners and interested stakeholders within 300 feet of the subject property as well as the North Hayward Neighborhood Task Force and the Prospect Neighborhood Association. Up to the time of the distribution of this report, we have not received any additional public comments.

NEXT STEPS

Following City Council denial of the appeal and approval of the Site Plan Review, the applicant may return to the City Council for approval of a Vesting Tentative Tract Map allowing for “for sale” development; if not, the applicant may then proceed with obtaining building permits for a rental development.

Prepared by: Carl Emura, Associate Planner

Recommended by: Laura Simpson, Director of Development Services

Approved by:



Kelly McAdoo, City Manager