



DATE: October 13, 2020

CATEGORY: New Business

DEPT.: Community Development

TITLE: **School Allocation of 355-415 East Middlefield Road Project Community Benefits**

RECOMMENDATION

1. Upon City receipt of community benefits from the 355-415 East Middlefield Road project, commit \$1.06 million (Option A-1) or \$1.94 million (Option A-2) in the East Whisman Public Benefit Fund to the Mountain View Whisman School District (MVWSD) and Mountain View-Los Altos Union High School District (MVLAUHSD).
2. Upon City receipt of community benefits from the 355-415 East Middlefield Road project, authorize the City Manager to enter into an agreement with MVWSD and MVLAUHSD for City funding for intended uses and with timing and reporting requirements similar to State developer fees, to support new school facilities directly serving the East Whisman area (Option B-1) or indirectly serving the East Whisman area (Option B-2), and in an amount not to exceed \$1.06 million (Option A-1) or \$1.94 million (Option A-2).

BACKGROUND

355-415 East Middlefield Road Project

On May 5, 2020, the City Council approved a 463-unit residential development at 355-415 East Middlefield Road, in the East Whisman Precise Plan area (Attachment 1 – [May 5, 2020 City Council Report](#)). The applicant for that development, SummerHill Homes, included with their application voluntary offers for school funding, if they or another developer proceed with the project (Attachment 12 to Attachment 1):

- SummerHill would provide \$4 million in total contributions, to be shared between the City, MVWSD and MVLAUHSD, of which approximately \$2.5 million is required for East Whisman community benefits (used for public improvements in the East Whisman area). This leaves approximately \$1.5 million available for

MVWSD and MVLAUHSD, which SummerHill would voluntarily contribute directly to the school districts (the City has no role in that contribution).

- SummerHill would donate to MVWSD and MVLAUHSD proceeds from resale of 10,000 square feet of development rights transferred from the Los Altos School District site in the San Antonio area, which were unused by the development. If these development rights are resold, subject to market uncertainties and City authorization of a landing site, they estimate at least between \$400,000 and \$750,000 would be available for MVWSD and MVLAUHSD.

The City had not yet adopted the Citywide School Strategy, which would have determined the school funding need attributable to this development. The City Council asked staff to return after adoption of the Citywide School Strategy to determine the amount of the \$2.5 million in required community benefits that the City would share with MVWSD and MVLAUHSD, based on the identified school funding gap per the School Strategy.

Adopted Citywide School Strategy

On June 23, 2020, the City Council adopted Policy K-26, the Citywide School Strategy, and a methodology for determining the MVWSD and MVLAUHSD funding shortfall to accommodate projected growth in the North Bayshore and East Whisman Precise Plan areas (Attachment 2 – [June 23, 2020 City Council Report](#)). This “funding gap” was based on an analysis of the following:

- The school districts’ projected land and facility needs based on 20,000 additional units; and
- The City’s opportunities to support school district land acquisition through transfers of development rights (TDR), funding for shared facilities, or incentives for land dedication; and
- The school districts’ opportunities for State grants, bonds, developer fees, and other funding; and
- The remainder, or “funding gap” when applied across all projected development, was estimated to be approximately between \$4.08 and \$6.12 per square foot for residential development and about \$16.50 to \$19.80 per square foot for office development. State law does not allow the City to require developments pay an additional fee to cover the “funding gap”; however, the information on the gap

provided transparency and a common understanding for developers to make voluntary contributions and help the schools in this effort.

As a result, the Citywide School Strategy removed the discussion on a “project-by-project” basis and provided clarity about the role played by each of the parties. Council supported that recommendation, but since the Summerhill project was approved before the adoption of the Citywide School Strategy, Council requested that staff bring back an item to discuss the potential to allocate some or all of the SummerHill project’s community benefit allocation towards the “funding gap.”

ANALYSIS

Options - School Strategy Share of Community Benefits Calculation

Staff has developed two options for the allocation of SummerHill’s \$2.5 million in community benefits, with different approaches to the “funding gap” range and the uncertainty around the TDR resale. Both options ensure the schools get some amount within the “funding gap” range.

Option A-1 – Low Funding Gap, Do Not Deduct TDR Resale

Option A-1 assumes the minimum school strategy “funding gap” amount, but does not deduct the estimated TDR resale value. If the TDRs can be resold, the school districts get that amount in addition to the minimum “funding gap” amount. If the TDRs cannot be resold, the school districts get the minimum “funding gap” amount.

SummerHill’s Minimum School Strategy Funding Gap (1 x School Fee)	\$2.56 million
<u>SummerHill’s Contribution Offer</u>	<u>- 1.5 million</u>
Remainder School Strategy Need	\$1.06 million

If the City allocated \$1.06 million to the schools, \$1.44 million would remain of the \$2.5 million community benefits contribution, which could be used for public improvements in the East Whisman area.

Option A-2 – High Funding Gap, Deduct TDR Resale

Option A-2 assumes the maximum school strategy “funding gap” amount, but deducts the minimum estimated TDR resale value, to be conservative. If the TDRs can be resold,

the school districts may get more than the “funding gap” amount. If the TDRs cannot be resold, the school districts get slightly less than the maximum “funding gap” amount.

SummerHill’s Maximum School Strategy Funding Gap (1.5 x School Fee)	\$3.84 million
SummerHill’s Contribution Offer	- 1.5 million
<u>Estimated TDR Resale Value</u>	<u>- 0.4 million</u>
Remainder School Strategy Need	\$1.94 million

If the City allocated \$1.94 million to the schools, \$560,000 would remain of the \$2.5 million community benefits contribution, which could be used for public improvements in the East Whisman area.

Uses for Community Benefits in the East Whisman Precise Plan

If the City Council elects to provide community benefit funding to the schools, that funding would not be available for public improvements and other opportunities in the East Whisman area. Pursuant to the East Whisman Precise Plan, community benefits may be used for the following:

- Transportation improvements¹
- Utility improvements¹
- Nonprofit, small business, or neighborhood commercial spaces
- Open spaces or recreation facilities (beyond park land dedication requirements)
- Affordable housing (beyond inclusionary requirements)
- Other mutually agreed-upon community benefits

¹ Transportation and utility improvements will also be funded by the East Whisman impact fee, development of which is under way. However, some improvements may not have a nexus to new development since they may also serve existing development or may not address an identified impact. In addition, Council may adopt the impact fee at a level below the nexus amount. Any of these cases create need for additional community benefits funding for transportation and utility improvements.

Attachment 3 (Community Benefits Estimate Table) shows a preliminary calculation of the costs and likely community benefit portions of envisioned projects in East Whisman. This calculation presumes that Council will follow the precedent set in North Bayshore, and not levy an impact fee on residential uses in East Whisman. This total need is likely at least **\$70 million to \$75 million**. The expected revenue from community benefits over the development envisioned by the Precise Plan is approximately **\$62 million**. Staff expects all or nearly all of the expected community benefits revenue to be necessary to complete the envisioned projects for the East Whisman area. Any amount given to the schools would be deducted from the City's ability to provide these improvements and would have to be funded through an alternative funding source.

Summary

Staff is seeking Council direction on the final amount of this project's community benefits to be allocated to the school districts. These two options provide Council with a framework to discuss the allocation amount.

Option A-1: Allocate \$1.06 million to the school districts, leaving \$1.44 million for other community benefits.

Option A-2: Allocate \$1.94 million to the school districts, leaving \$560,000 for other community benefits.

The City received a letter from the school districts on October 7, 2020, which requested the Council consider allocating \$2.34 million to the school districts (Attachment 4—October 7, 2020 School District Letter). This is equal to Option A-2, without consideration of the TDR resale.

Agreement Terms

The City Council may wish to set terms on the funds provided. These terms may include the use of funds, time limits and reporting requirements, or geographic requirements. Staff does not recommend allocating funds to specific districts; instead, the City should allow the districts to determine their own split of the funds.

Use of Funds

Under State law, developer fees may be used for construction/reconstruction of school facilities and other costs attributable to the increased demand for public facilities reasonably related to the development. Staff recommends that these funds be used similarly, giving school districts the flexibility to use the funds in ways that expand school

capacity. However, developer fees may also be used for the study, administration, and adoption of such fees. Staff does not recommend these funds be used for that purpose since these funds are not associated with developer fees.

Time Limits and Reporting Requirements

Under State law, the school district must identify the purpose for which a developer fee is to be used within five years of collection, or they must return it to the developer. If they have identified a purpose but have not collected all necessary funds for the intended purpose, they must also identify when all those funds will be available. These requirements are the same as other impact fees under State law. Staff recommends that these funds have similar timing and reporting requirements as the State developer fee since that provides a convenient structure around which to report on the funds. If the school districts cannot find a purpose for the funding within five years of receipt, the funds would be returned to the City,² and the City can determine whether to reallocate the funds to the school districts.

The October 7, 2020 school district letter requested that the Council consider setting the beginning of the five-year clock at project building permit, rather than receipt of funds. However, community benefit funds would not be provided by the developer until just before the building permit is issued, and would not be provided if the project is delayed or suspended. After appropriation and preparation of agreements, it is very likely that receipt by the school districts will be well after the project's building permit is issued, giving the districts even more time to determine the use of the funds.

Geographic Requirements

Staff has developed two options for where the funds could be spent. Option B-1 would require the funds to be spent to expand capacity at a school directly serving East Whisman students. Option B-2 would allow the school districts more flexibility to use the funds elsewhere.

Option B-1: Community benefit funds are intended to be used for projects and improvements serving the East Whisman area and the City would be limited to using the funds to the East Whisman area. Therefore, one interpretation of "community benefits" would limit use of the funds to create or expand capacity in schools that East Whisman students would reasonably attend. Under these terms, school districts would not be able to use the funds at a distant school.

² Since this is an agreement between the City and the school districts, the funds would go back to the City, not to the developer.

Option B-2: The City Council, however, could choose to expand the use of the funds beyond schools that would directly serve students generated by the East Whisman Precise Plan area. This flexibility should be on the condition that the funds create capacity at a school in the East Whisman area through reasonable attendance boundary adjustments over time. In other words, the funds could indirectly serve the East Whisman area.

The October 7, 2020 school district letter requested that Council select Option B-2.

Summary of Staff Recommendations

Staff recommends the City Council commit either \$1.06 million (Option 1) or \$1.94 million (Option 2) from the community benefit funds to be received and authorize the City Manager to enter into an agreement with the MVWSD and MVLAUHSD to provide school funding with the following terms:

- The funds shall be used for purposes consistent with the limitations of State developer fees, except shall not be used for the study, administration, or adoption of such fees.
- A purpose for which the funding shall be used shall be reported within five years of receipt, consistent with the requirements for State developer fees.
- The City Council has two options for the geography requirements:
 - Option B-1: The funds shall be used to create or expand schools that East Whisman students would reasonably attend.
 - Option B-2: The funds may be used elsewhere, if they can indirectly create capacity at schools that East Whisman students would reasonably attend.

NEXT STEPS

Since approval, staff has recently learned that SummerHill has indicated that they are unlikely to proceed with the project, which makes the community benefit funding uncertain. Staff recommends that Council should still make a determination on the school allocation of community benefits and agreement terms since:

- The permits are valid for SummerHill or whoever wishes to purchase them for at least another year and a half and potentially longer if a permit extension is pursued;

- This is the last outstanding Council decision related to the development, so any future builder or staff will have clear direction on how to proceed;
- Council requested this decision item during the recent Citywide School Strategy discussion, and taking the decision now will enable a more streamlined discussion because the issues are fresh in everyone's mind and it is the same Council; and
- The school districts were made to understand that this discussion would take place. Even if the money doesn't change hands, the discussion of terms may have potentially important ramifications on future school/City agreements independent of this project.

If the project proceeds, the funds could be expected in the next year or two, at which point the City will appropriate the funds and develop the agreements with the school districts, based on Council direction.

FISCAL IMPACT

Providing funds to the school districts would redirect to the school districts \$1.06 million (Option 1) or \$1.94 million (Option 2), which would otherwise be used for other improvements and projects in the East Whisman area.

ALTERNATIVES

1. Allocate a different amount of community benefits funds to the school districts.
2. Do not allocate community benefits funds to the school districts.
3. Modify or identify alternate terms for the agreement to allocate community benefit funds to the school districts.

PUBLIC NOTICING

The Council agenda is advertised on Channel 26, and the agenda and this Council Report appear on the City's website. The developer, property owner, and school districts were directly notified of the meeting. Other interested stakeholders were notified of this meeting via the e-mail notification system for the Citywide School Strategy.

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- Attachments:
1. [May 5, 2020 City Council Report](#)
 2. [June 23, 2020 City Council Report](#)
 3. Community Benefits Estimate Table
 4. October 7, 2020 School District Letter