



**DATE:** October 16, 2018

**CATEGORY:** Unfinished Business

**DEPT.:** Community Development

**TITLE:** **Affordable Housing Options for  
355-415 East Middlefield TDR  
Gatekeeper Project**

### **RECOMMENDATION**

Provide input on potential alternative mitigations for SummerHill's affordable housing obligations for the 355-415 East Middlefield TDR Gatekeeper project. If the City Council wishes to grant an alternative mitigation pursuant to the current BMR program, direct the applicant to work with staff on Alternative 2.

### **BACKGROUND**

On January 16, 2018, the City Council authorized the City Manager to execute a Memorandum of Understanding between the City and the Los Altos School District (LASD) that establishes a framework for a Transfer of Development Rights (TDR) process, designed to support acquisition of a new public school site in the San Antonio Precise Plan area. At the same meeting, the City Council also authorized the assignment of staff resources for consideration of six Gatekeeper applications requesting additional floor area through the TDR process. One of these Gatekeeper project requests was by SummerHill Homes ("Applicant") to purchase 10,000 square feet of TDRs for a 250-unit residential development composed of flats and condominiums totaling a floor area ratio (FAR) of 2.26 on a 6-acre site located at 355-365, 401, and 415 East Middlefield Road.

On April 17, 2018, the City Council considered an item to discuss the Applicant's Gatekeeper project because the Applicant requested several deviations from what was submitted as part of the original Gatekeeper request as well as from potential future East Whisman Precise Plan (EWPP) requirements. These requests included:

- An increase in the number of residential units from 250 units to 447 units.
- A mix of both rental and ownership units, instead of only ownership units, with the following composition: 265 apartments, 134 condominiums, and 48 flats.

- Support for heights up to seven stories versus the EWPP preferred alternative of five to six stories.
- An increase in FAR, from 2.26 to 2.87, which is above the EWPP preferred alternative of 2.50 FAR.
- Providing 10 percent affordable rental units and payment of the 3 percent in-lieu fee for the ownership units to meet the project's affordable housing obligation, which is below the 15 percent requirement for rental projects as part of the City's modified Below-Market-Rate (BMR) affordable housing program.

The Applicant felt that these deviations were necessary for the project's financial viability. The City Council approved the Applicant's requests, except for the response that the Applicant had to provide 15 percent affordable rental units (and meet the affordable housing obligations for ownership housing). In response, the Applicant provided a brief summary of alternatives to meet the BMR requirements. The BMR program provides developers of market-rate residential projects the ability to submit a request for alternative mitigations to meet their affordable housing obligations through other means. Such requests may be granted at the sole discretion of the City Council, if the City Council determines that such alternative will further affordable housing opportunities in the City to a greater extent than the affordable housing obligation. The City Council asked for a future Study Session to be held to discuss the alternative mitigations after staff had an opportunity to review them.

## **ANALYSIS**

The Applicant has provided staff with four affordable housing alternatives, shown in Table 1 below. Based on their analysis, the Applicant believes that the four alternatives (the last four columns of Table 1) are roughly equivalent to – but not greater than – the existing BMR requirement (the second column of Table 1) but that the negative financial impact of the alternatives slightly increases going from Alternative 1 towards Alternative 4.

At the time of the TDR Gatekeeper authorization hearing and the City Council's consideration of the Applicant's request in mid-April for deviations, the BMR requirement for rental projects was 10 percent. The requirement for 15 percent affordable rental units (Phase I BMR modifications) did not go into effect until April 28, 2018. The Phase II study of BMR modifications (currently under way) includes adding the moderate-income category to the existing low-income category for rental projects

per Council direction. Additionally, a potential framework for equivalency between affordable housing income categories is also being studied. It is currently anticipated that the Phase II BMR modifications would be brought for Council consideration early in the second quarter of 2019.

The Applicant’s alternatives below provide the City Council potential alternative mitigations to respond to its desire for moderate-income units prior to completion of Phase II BMR modifications, but the Applicant has stated they would comply with the current BMR requirements if Council does not support any of the alternatives.

**Table 1: Applicant’s Proposed Alternatives to Gatekeeper Project’s BMR Affordable Housing Requirement**

	<b>Existing BMR</b>	<b>“Interim Equivalency”</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>	<b>Alternative 4</b>
<b>Rental</b>	<b>39 total units (only Low)</b>	<b>71 total units (only Mod)</b>	<b>53 total units (only Mod)</b>	<b>52 total units (Low/Mod)</b>	<b>66 total units (Low/Mod)</b>	<b>65 total units (Low/Mod)</b>
Low	- 15% Low (39 units)	- 0% Low (0 units)	- 0% Low (0 units)	- 8% Low (21 units)	- 5% Low (13 units)	- 10% Low (26 units)
Mod	- 0% Mod (0 units)	- 27% Mod (71 units)	- 20% Mod (53 units)	- 12% Mod (31 units)	- 20% Mod (53 units)	- 15% Mod (39 units)
<b>Ownership</b>	<b>~ \$7 million in-lieu</b>	<b>~ \$7 million in-lieu</b>	<b>~ \$7 million in-lieu</b>	<b>~ \$7 million in-lieu</b>		

The issue of “equivalencies” between low- and moderate-income units has come up several times in the recent past, and inquiries from developers on this topic have increased in frequency. In light of this, and in the interim between the Phase I and Phase II BMR modifications, staff has worked with Economic Planning Systems to consider a potential framework for equivalency under the current BMR program to try and assess scenarios such as the one presented here. Staff cautions that the interim equivalency analysis incorporated data and assumptions used several years ago to inform the existing BMR program and adjusted certain data/assumptions by inflation to approximate current values. Because the current BMR program does not include a moderate-income category nor a framework for equivalency, an unofficial determination is that the 15 percent low-income requirement is equivalent to a 27 percent moderate-income requirement. This would mean that the Applicant should provide 71 moderate-income rental units and a \$7 million in-lieu payment for the ownership units (the third column of Table 1). Based on this framework, staff does not believe any of the Applicant’s alternatives is equivalent. However, staff’s assessment is

that Alternative 2 comes closest to the BMR requirements while providing some moderate-income units. Again, this is an interim framework for use prior to completion of the BMR Phase II modifications, which could yield different results.

### **NEXT STEPS**

Input from the City Council on the Applicant's affordable housing requirement will be incorporated as part of the Applicant's project review and entitlement process. The project is anticipated for Council hearing the third quarter of 2019.

### **FISCAL IMPACT**

The Applicant's BMR requirement includes a potential in-lieu fee for the ownership portion of the project. The Applicant seeks Council input on alternative mitigations, two of which do not include an in-lieu fee payment. Depending on Council's input on how the Applicant shall satisfy the affordable housing requirement, the project may or may not have an in-lieu fee payment.

**ALTERNATIVES** – Provide other direction.

### **PUBLIC NOTICING**

Agenda posting, copy to SummerHill and the Wagon Wheel Neighborhood Association, and notice to properties within 500'.

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WC/2/CAM  
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