



TOWN OF LOS GATOS
OFFICE OF THE TOWN ATTORNEY

MEMORANDUM

To: Mayor & Council
From: Robert Schultz, Town Attorney *RWS*
Date: May 24, 2016
Subject: North 40 Subdivision Map Act and Permit Streamlining Act Deadlines

Summary

My office has received numerous inquiries regarding the deadline for the Planning Commission and Town Council to make a decision on the North 40 Vesting Tentative Map and Architecture & Site (A&S) Application submitted by Grosvenor USA Limited and SummerHill Homes ("Developer"). This memorandum addresses those deadlines.

On March 18, 2016, the Developer submitted a revised application for a Vesting Tentative Map and A&S approval. On April 18, 2016, Town Staff notified the Applicant that their application for the Vesting Tentative Map was deemed complete but determined that the A&S application was not deemed complete "until the story poles have been completed".

Based upon the Subdivision Map Act and Permitting Streamlining Act, once a Vesting Tentative Map and A&S application is deemed complete, the Town has 80 days to make a decision on the Vesting Tentative Map and 60 days on an A&S application. In order to accommodate the Study Session requested by Town Council, the Developer and the Town have entered into a Time Extension Agreement that requires the Planning Commission to make recommendations to the Town Council on the Vesting Tentative Map Application and A&S Application by August 31, 2016 and requires the Town Council to approve or disapprove the Developer's A&S Application and Vesting Tentative Map Application by September 7, 2016. The Time Extension Agreement is attached hereto.

Legal Analysis

The Subdivision Map Act sets forth certain statutory time periods for reporting and acting upon maps, depending on which advisory agency is charged with approving the map. Within the Subdivision Map Act, Government Code Section 66452.1 provides as follows:

- (a) If the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, it shall make its written report on the tentative map to the legislative body within 50 days after the filing thereof with its clerk.

(b) If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, it shall take that action within 50 days after the filing thereof with its clerk and report its action to the subdivider.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

Pursuant to Town Code Sec. 24.10.020, the Planning Commission is the advisory agency for the Town under the Subdivision Map Act and is authorized to approve, conditionally approve, or disapprove all maps **except vesting tentative maps**. Therefore subsection (a) above is applicable and the date for which the Planning Commission would have to make a recommendation to the Town Council without the Time Extension Agreement is June 7, 2016. The Time Extension Agreement allows the Planning Commission to make its recommendations to the Town Council by August 31, 2016.

Within the Subdivision Map Act, Government Code Section 66452.2 provides as follows:

(a) If there is an advisory agency which is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, at the next regular meeting of the legislative body following the filing of the advisory agency's report with it, the legislative body shall fix the meeting date at which the tentative map will be considered by it, which date shall be within 30 days thereafter and the legislative body shall approve, conditionally approve, or disapprove the tentative map within that 30-day period.

Based upon the Subdivision Map Act, the Town Council has until July 7, 2016 to approve, conditionally approve, or disapprove the vesting tentative map (50 days + 30 days = 80 days) without the Extension Agreement. Based upon the Town Council's request for a study session and since Town Council is on recess in July, a Time Extension Agreement was necessary and allows the Town Council to approve, conditionally approve, or disapprove the vesting tentative map by September 7, 2016.

In addition to the time limits contained in the Subdivision Map Act, there are time limits contained in the Permit Streamlining Act that also must be adhered to. The Permit Streamlining Act was enacted in order to expedite the processing of permits for development projects. The Permit Streamlining Act achieves this goal by (1) setting forth various time limits within which state and local government agencies must either approve or disapprove permits and (2) providing that these time limits may be extended once by agreement between the parties.

Within the Permitting Streamlining Act, Government Code Section § 65943, provides as follows:

(a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

The Town and Developer have disagreed on when the 60 day period began. The Developer asserts that the A&S Application was complete as of April 18, 2016, the same date that the Vested Tentative Map was deemed complete, and therefore the Town has until June 17, 2016 to approve or disapprove the A&S Application. The Town's position is that the Developer must complete and certify that it is in compliance with the Town's story pole requirements before the Town can deem the A&S application complete and for the sixty day period timeline to begin. Since the Developer did not certify its compliance with the Town's story pole requirements until May 4, 2016, the Town position is that the Town has until July 3, 2016 to approve or disapprove the A&S Application.

The Subdivision Map Act and the Permit Streamlining Act timelines allow the above deadlines to be extended once upon mutual written agreement of the project applicant and the public agency for a period not to exceed 90 days from the date of the extension. The Permit Streamlining Act specifically states that no other extension, continuance, or waiver of these time limits either by the project applicant or the lead agency shall be permitted.

Conclusion

In order to resolve our disagreements on the timeline and to accommodate the Study Session and July recess, the Town and Developer have entered into an agreement to extend the deadlines to a date certain. The agreement entered into between the Town and the Developer is attached hereto and provides that the Town has until September 7, 2016 to take final action on the Vesting Tentative Map and A&S Application.

Attachment:

Time Extension Agreement

**TIME EXTENSION AGREEMENT PURSUANT TO THE
PERMIT STREAMLINING ACT AND SUBDIVISION MAP ACT**

This Extension Agreement (“Agreement”) is made this 17th day of May, 2016, by and between the Town of Los Gatos, a California Municipal Corporation (“Town”) on the one hand, and Grosvenor USA Limited and SummerHill Homes on the other hand, in order to extend certain time limits imposed by State law that apply to the Town’s consideration of applications for the North Forty Phase 1 Development Project, all as more particularly detailed in the following recitals.

WHEREAS, the Town Council of the Town of Los Gatos (“Town Council”) certified the Final Environmental Impact Report (“EIR”) for the North 40 Specific Plan (“Specific Plan”) on January 5, 2015, and subsequently approved the Specific Plan itself on June 17, 2015; and

WHEREAS, Grosvenor USA Limited is the developer of approximately 20.7 acres of real property within the Specific Plan area; and

WHEREAS, SummerHill Homes is the development partner of Grosvenor USA Limited with respect to the proposed development; and

WHEREAS, for the sake of simplicity, both Grosvenor USA Limited and SummerHill Homes will be together referred to as “Developer” in the remainder of this agreement; and

WHEREAS, Developer is seeking, through a vesting tentative subdivision map and Architecture and Site (“A&S”) approval, authorization to develop within the North 40 Specific Plan area 20.7 acres as a multi-story development consisting of 320 residential units, which includes the following: 50 affordable senior units; approximately 66,800 gross square feet of neighborhood commercial floor area, including a market hall; and on-site and off-site improvements (the “Project”); and

WHEREAS, Developer’s vesting tentative map and A&S applications apply to Assessor’s Parcels Numbers (“APNs”) 424-07-024 through 424-07-027, 424-07-031 through 424-07-037, 424-07-070, 424-07-083 through 424-07-086, 424-07-090, and 424-07-100; and

WHEREAS, on March 18, 2016 Developer submitted a revised application for a vesting tentative map and A&S approval; and

WHEREAS, on April 18, 2016, Town staff by e-mail notified Developer of the completeness of its vesting tentative map application but asserted that the A&S

application was “not technically deemed complete...until the story poles have been completed”; and

WHEREAS, on April 26, 2016, attorney Andrew L. Faber of Berliner and Cohen LLP, on behalf of Developer, asserted Developer’s contention that the Town must also treat the A&S application as complete as of April 18, 2016, as the Town had no legal authority for requiring the completion of the story pole process before accepting the A&S application as complete; and

WHEREAS, the Town disagrees with Mr. Faber’s contention that the A&S application was complete as of April 18, 2016, as the Town asserts that the Developer must complete and certify that it is compliance with the Town’s story pole requirements before the Town can deem the A&S application complete; and

WHEREAS, because the Developer did not certify that it is compliance with the Town’s story pole requirements until May 4, 2016, the Town asserts that is date the A&S application was deemed complete; and

WHEREAS, Developer does not agree with Town’s assertion as to the date the A&S application should be deemed complete; and

WHEREAS, Mr. Faber’s letter also invoked a provision of the Subdivision Map Act (“SMA”), Government Code section 66452.1, which provides in subdivision (a) that an advisory agency not authorized by local ordinance to approve, conditionally approve or disapprove a tentative map shall make its written report to the legislative body within 50 days after the filing thereof with its clerk; and

WHEREAS, subdivision (c) of Government Code section 66452.1 further provides, in pertinent part, that this 50-day period for action “commence[s] after certification of the [EIR] ... or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code” [that is, the California Environmental Quality Act or “CEQA”]; and

WHEREAS, subdivision (a) of Government Code section 66452.2 further provides that, if the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove a tentative map, at the next regular meeting of the legislative body following the filing of the advisory agency’s report, the legislative body shall fix the meeting date at which the tentative map will be considered by it, which date shall be within 30 days thereafter, and the legislative body shall approve, conditionally approve or disapprove the tentative map within that 30-day period; and

WHEREAS, subdivision (b) of Town Code Section 24.10.020 states that the Planning Commission will report to the Town Council on its recommendations regarding vesting

tentative maps but does not have authority to approve, conditionally approve or disapprove vesting tentative maps, and as a consequence the Planning Commission does not have authority to approve or disapprove the A & S application, which must be approved or disapproved by the Town Council; and

WHEREAS, within the Permit Streamlining Act (“PSA”), Government Code section 65952.1, subdivision (b), provides that development projects consisting of proposed subdivisions also subject to the SMA shall comply with the timelines set forth in Government Code sections 66452.1 and 66452.2; and

WHEREAS, as part of the PSA, Government Code section 65950, subdivision (a)(4), provides that agencies must approve or disapprove a development project they determine to be exempt from CEQA within 60 days of such a determination; and

WHEREAS, the Initial Study commissioned by the Town regarding the Project concluded that all impacts were adequately analyzed in the Specific Plan EIR, and no further CEQA analysis is necessary; and

WHEREAS, Mr. Faber’s letter further contended that, because the 50-day period under the SMA began to run on April 18, 2016, the period during which the Town’s Planning Commission could make its written report to the legislative body on Developer’s vesting tentative map application would end on June 7, 2016; and

WHEREAS, Mr. Faber’s letter also further contended that, because the 60-day time period under the PSA (Government Code section 65950, subdivision (a)(4)), for projects exempt from further CEQA review, also began to run on April 18, 2016, the parallel time period during which the Planning Commission must make its recommendation on the A&S application would end on June 17, 2016; and

WHEREAS, while the Town disagrees with all of Mr. Faber’s date calculations set forth above, the Town sees considerable value in reaching agreement with Developer as to the dates by which the Planning Commission and Town Council must take action to approve or disapprove the two pending applications; and

WHEREAS, the Town, in order to facilitate an agreement with Developer, is therefore willing to use the dates calculated by Mr. Faber as the starting points for considering time extensions under both the SMA and the PSA with the exception of the date on which Developer contends the A&S application was complete; and

WHEREAS, Developer, in order to facilitate an agreement with the Town, is willing for the purpose of this Agreement to use the Town’s date of May 4, 2016, as the date on which the A&S application was deemed complete; and

WHEREAS, using May 4, 2016 as the date that the A&S application was deemed complete, the 60-day PSA time period under Government Code section 65950, subdivision (a)(4), for projects exempt from further CEQA review, also began to run on May 4, 2016, meaning that the time period during which the Planning Commission must make its recommendation on the A&S application would end on July 3, 2016; and

WHEREAS, Government Code section 66451.1 of the SMA allows extensions of SMA timelines for acting on proposed maps by mutual consent of the applicant(s) and the local agency advisory body or legislative body; and

WHEREAS, a vesting tentative map application is a development project and is also subject to the provisions of the PSA, including Government Code section 65950; and

WHEREAS, Government Code section 65957 of the PSA allows one-time extension by mutual written agreement for a maximum of 90 days of the time limits set forth in, among other statutes, Government Code section 65950, including the 60-day time period to approve or disapprove a project after determining that a proposed project is exempt from CEQA; and

WHEREAS, the parties now intend to agree to an 85-day extension, commencing on June 7, 2016, and ending on August 31, 2016, for the Planning Commission to recommend to the Town Council that it approve, conditionally approve, or disapprove the vesting tentative map application, pursuant to Government Code section 66451.1 of the SMA; and

WHEREAS, the parties now intend to agree to a 66-day extension, commencing on July 3, 2016, and ending on September 7, 2016, for the Town Council to approve or disapprove the A&S application and the vesting tentative map application pursuant to Government Code section 65957 of the PSA; and

WHEREAS, the Developer and the Town are willing to agree to these extensions in order to facilitate the most thorough possible consideration of the two pending applications by the Planning Commission and Town Council. Except for the extensions of time herein, this Agreement is not intended to modify in any other way the respective rights and obligations of Developer or the Town under the SMA or the PSA with respect to the two pending applications.

NOW, THEREFORE, the Town of Los Gatos, Grosvenor USA Limited, and SummerHill Homes, through their respective authorized representatives, agree on the following:

1. All of the foregoing recitals are true and correct, and are to be treated as part of this Extension Agreement.

2. The date for the Planning Commission to make recommendations to the Town Council on whether to approve, conditionally approve, or disapprove Developer's vesting tentative map application is hereby extended to and including August 31, 2016 pursuant to Government Code section 66451.1; and
3. The date for the Town Council to approve or disapprove Developer's A&S application and vesting tentative map application is hereby extended to and including September 7, 2016 pursuant to Government Code section 65957.
4. This Agreement may be signed in counterparts. Each executed duplicate hereof shall be considered as an original. Facsimile or signatures on electronically transmitted documents in PDF form and copies of signatures shall have the same force and effect as original signatures.

Dated: May __, 2016

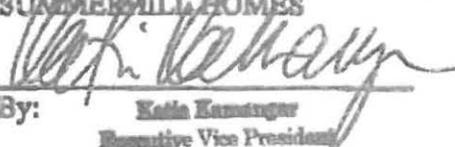
TOWN OF LOS GATOS

 By: Laurel Prevetti, Town Manager

Dated: May __, 2016

GROSVENOR USA LIMITED
 
 By: JAMES PATILLO Managing Director, Investor
 M.D. DEVELOPMENT Steve O'Connell

Dated: May __, 2016

SUMMERHILL HOMES
 
 By: Kella Kammerer Executive Vice President
 Jason Biggs Secretary

APPROVED AS TO FORM


 Robert Schultz, Esq.
 Attorney for Town of Los Gatos


 Andrew Faber, Esq.
 Attorney for Grosvenor USA Limited and
 SummerHill Homes