

RESOLUTION NO. 13-013

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING DENIAL TO THE CITY COUNCIL OF GENERAL PLAN AMENDMENT NO. GP12-0002, SPECIFIC PLAN AMENDMENT NO. ST12-0002, ZONING AMENDMENT NO. ZA12-0003, PLANNED UNIT DEVELOPMENT NO. PD12-0002, MAJOR TENTATIVE MAP NO. MT12-0002, SITE DEVELOPMENT PERMIT NO. SD12-0001 & CONDITIONAL USE PERMIT NO. UP12-0010, PRESTON PROPERTY RESIDENTIAL PROJECT, A REQUEST TO CHANGE THE GENERAL PLAN, SPECIFIC PLAN AND ZONING LAND USE DESIGNATION FROM HEAVY INDUSTRIAL TO HIGH DENSITY MULTI-FAMILY RESIDENTIAL AND PARKS AND OPEN SPACE WITH PLANNED UNIT DEVELOPMENT. THE PROJECT PROPOSES 213 DWELLING UNITS WITH ON AND OFF-SITE IMPROVEMENTS LOCATED AT
133 BOTHELO LANE**

WHEREAS, on October 17, 2011, an application was submitted by KB Home, 5000 Executive Parkway, #125, San Ramon, CA 94583, to request to change the General Plan, Specific Plan and Zoning land use designation from Heavy Industrial to High Density Multi-family Residential and Parks and Open Space with Planned Unit Development. The project proposes 213 dwelling units with on and off-site improvements. The property is located within the Heavy Industrial with Site and Architectural Overlay (M2-S) zoning district and within the Midtown Specific Plan (APNs: 086-26-029, 086-26-030, 086-27-002, 086-27-003, 086-27-008, 028-23-018, 086-26-032); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated February 28, 2012 to public agencies and interested parties for consultation on the scope of the EIR. The Draft EIR (SCH No. 2012022075) was circulated between November 15, 2012 and January 2, 2013; and

WHEREAS, on April 10, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project's environmental impacts are addressed in the project's Final EIR.

Section 3: General Plan Amendment Findings:

a. The proposed amendment is internally inconsistent with those portions of the General Plan which are not being amended in that Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project:

i. Policy 2.a-G-6. The project location is incompatible with the surrounding uses. Neither the Union Pacific rail yard nor the Union Pacific rail lines are changing their use or activities in the foreseeable future. The project does not create the required connections with the Midtown community and specifically does not include a crossing over the Union Pacific rail line to obtain access with Main Street. The project is inconsistent with the policies of the Midtown Specific Plan.

ii. Policy 2.a-I-3. The project proposes demolition of economically viable industrial properties to be used for residential. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to the this policy.

b. The proposed amendment will adversely affect public health, safety and welfare in that the project introduces new residents to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail yard. The site currently represents a "buffer" from the rail yard.

Section 4: Specific Plan Amendment Findings:

a. The proposed specific plan amendment is inconsistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan in that Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.

b. The uses proposed in the specific plan amendment are incompatible with adjacent uses and properties in that the project is adjacent to an active rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan.

c. The proposed specific plan amendment will adversely affect the public health, safety and welfare in that the project introduces new residents to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail yard. The site currently represents a "buffer" from the rail yard.

Incidents at the Rail Yard occurred in 2007 and 2009 where ethanol isopropanol (a clear and flammable liquid at room temperature with odor resembles that of a mixture of ethanol and acetone) leaked. Although, the project EIR states that the Federal Government has standards in

place to ensure safety, the project proposes introducing residents to be adjacent to potential accidents.

d. The proposed specific plan amendment will create internal inconsistencies within the specific plan in that the project is inconsistent with Land Use Goal 1, Land Use Policies 3.9, 3.17; Circulation Goals 1 and 2, and Circulation Policy 4.17 of the Midtown Specific Plan:

i. The project is adjacent to an active rail line and rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan.

ii. The project brings new residents to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail line and rail yard.

Incidents at the Rail Yard occurred in 2007 and 2009 where ethanol isopropanol (a clear and flammable liquid at room temperature with odor resembles that of a mixture of ethanol and acetone) leaked. Although, the project EIR states that the Federal Government has standards in place to ensure safety, the proposed project introduces residents in close proximity to potential accidents.

iii. The project location is incompatible with the surrounding uses. Neither the Union Pacific rail yard nor the Union Pacific rail lines are changing their use or activities in the foreseeable future. The project does not create the required connections with the Midtown community and specifically does not include a crossing over the Union Pacific rail line to obtain access with Main Street. The project is inconsistent with the policies of the Midtown Specific Plan.

iv. The project proposes demolition of economically viable industrial properties to be used for residential. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to the this policy.

v. While the proposed mitigation addresses some of the circulation and access issues. The applicant does not propose a crossing over the Union Pacific rail line for access to Main Street. Main Street is the major focus roadway in the Midtown Specific Plan.

The Midtown Specific Plan Policy 3.9 states that rezoning may occur in this “future study area” after circulation and access issues are resolved. The project’s EIR includes three alternatives for the crossing of the Southern Pacific Railroad line. While the EIR’s focus is grounded in specific laws, guidelines and thresholds that restrict the analysis for procedural purposes, it does not circumvent the Midtown Specific Plan. **The issue of circulation and access for the site remains unresolved.**

vi. While the project proposes mitigation for some connections; the lack of a connection over the Union Pacific Railroad line to access Main Street is a significant deficiency.

vii. The project includes parking for its development on public streets, which is inconsistent with the City's site development standards. In addition, staff does not support a reduction in parking.

Section 5: Zoning Amendment Findings:

a. The proposed zoning amendment is inconsistent with the general plan in that Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.

b. The proposed zoning amendment will adversely affect the public health, safety and welfare in that the project introduces new residents to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail yard. The site currently represents a "buffer" from the rail yard.

Section 6: Site Development Permit Findings:

a. The layout of the site and design of the proposed buildings, structures, and landscaping are incompatible and not aesthetically harmonious with adjacent and surrounding development. The project proposes three private recreation areas. Two of the areas are adjacent to the Calaveras overpass and one is adjacent to the Union Pacific Rail Yard. These are not ideal locations for recreation space. There are two parking lots on the southern portion of the project that are incompatible with the existing adjacent uses.

b. The project is inconsistent with the zoning ordinance in that the project does not meet the intent of the Zoning Ordinance (Section 1.02) that ensures the most appropriate use of land throughout the city; to stabilize and conserve the value of property to provide adequate light, air and reasonable access; to secure safety from fire and other dangers and in general to promote the public health, safety, peace, morals, comfort and welfare.

c. The project is inconsistent with the general plan in that Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.

d. The project is inconsistent with the Midtown Specific Plan in that the project is inconsistent with Land Use Goal 1, Land Use Policies 3.9, 3.17; Circulation Goals 1 and 2, Circulation Policies 4.2, 4.13, 4.14, and 4.17 of the Midtown Specific Plan.

Section 7: Conditional Use Permit Finding:

a. The proposed use, at the proposed location will be detrimental or injurious to property or improvements in the vicinity and to the public health, safety and general welfare in that the project brings residents (children/seniors) to a nuisance (potential rail related noise, light and

glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail yard. The site currently represents a “buffer” from the rail yard.

Section 8: Planned Unit Development Findings:

a. The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the general plan, zoning ordinance or subdivision ordinance in that the project does not propose an intensity that is higher than what is existing.

b. Development of the site under the provisions of the Planned Unit Development will not result in public benefit not otherwise attainable by application of the regulations of general zoning districts in that while the project includes some on- and off-site improvements; these improvements are the minimum necessary to integrate a residential project at this location and do not constitute public benefit not otherwise attainable by application of the regulations of general zoning districts. This does not take into account the Midtown Specific Plan Policies to find a resolution for access and circulation to the site including the railroad crossing.

c. The proposed Planned Unit Development is inconsistent with the Milpitas General Plan in that Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.

d. The proposed development will not be in harmony with the character of the surrounding neighborhood and will have adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels in that the project proposes three private recreation areas. Two of the areas are adjacent to the Calaveras overpass and one is adjacent to the Union Pacific Rail Yard. These are not ideal locations for recreation space. There are two parking lots on the southern portion of the project that are incompatible with the existing adjacent uses.

Section 9: Major Tentative Map Findings:

a. The subdivision is not allowed under ordinance unless a General Plan, Specific Plan and Zoning Amendment are approved.

b. Based on the other findings herein, the project site is deemed unhealthful for occupancy.

Section 10: The Planning Commission of the City of Milpitas hereby recommends denial of General Plan Amendment No. GP12-0002, Specific Plan Amendment No. ST12-0002, Zoning Amendment No. ZA12-0003, Planned Unit Development No. PD12-0002, Major Tentative Map No. MT12-0002, Site Development Permit No. SD12-0001 & Conditional Use Permit No. UP12-0010, Preston Property Residential Project, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 10, 2013.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on April 10, 2013 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				