

## **List of Attachments for Public Hearing No. 1**

**Conduct a Public Hearing and Adopt a Resolution repealing Paragraph Number 7 in Resolution No. 8220 Related to Exemption on Land Use Conversions while Continuing Exemption for Properties East of California Circle (Staff Contact: Adam Petersen, 408-586-3274)**

### **Attachments:**

- 1-A. Resolution Repealing Paragraph Number 7 in Resolution No. 8220
- 1-B. Planning Commission Staff Report – 01/14/2015
- 1-C. Planning Commission Meeting Minutes – 01/14/2015
- 1-D. Adopted Planning Commission Resolution No. 15-002
- 1-E. Adopted City Council Resolution No. 8220

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING PARAGRAPH NO. 7 FROM CITY COUNCIL RESOLUTION NO. 8220 RELATING TO EXEMPTIONS TO LAND USE CONVERSION**

**WHEREAS**, on January 15, 2013, the Milpitas City Council adopted Resolution No. 8220 approving amendments to the Land Use and Circulation Elements of the Milpitas General Plan; and

**WHEREAS**, amendments to the Land Use Element of the Milpitas General Plan included adding General Plan Land Use Policy 2.a-I-2, which prohibits the conversion of employment/sales tax generation properties to residential uses until there is an eighty percent (80%) build out of the Midtown and Transit Area Specific Plan areas; and

**WHEREAS**, City Council Resolution No. 8220 included Paragraph No. 7, which exempted properties west of McCarthy Ranch Road north of Highway 237 and properties east of California Circle to Penitencia Creek from complying with General Plan Policy 2.a-I-2; 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 City Council determines this project categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption, since the project has no potential to cause a significant effect on the environment because the project will not allow any industrial land conversion to residential; and

**WHEREAS**, on January 14, 2015, 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 and adopted Resolution No. 15-002 recommending the City Council repeal Paragraph No. 7 in Resolution No. 8220 relating to exemptions to land use conversion, while continuing the exemption for properties east of California Circle to Penitencia Creek; and

**WHEREAS**, on February 3, 2015, the City Council held a duly noticed public hearing on the subject application and considered evidence presented by City staff and other interested parties.

**NOW THEREFORE**, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

1. The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The proposed project is categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption, because the project has no potential to cause a significant effect on the environment, since repealing Paragraph No. 7 in Resolution No. 8220 is a legislative act that does not approve any land use conversion or construction.
3. There are no specific findings required under the Milpitas Municipal Code or State law for the City Council to repeal Paragraph No. 7 in City Council Resolution No. 8220. Although no specific findings are required, the City Council does find repealing Paragraph No. 7 in City Council Resolution No. 8220 is consistent with the City’s General Plan and Zoning Code. Specifically, the amendment will focus residential development in the Midtown and Transit Area Specific Plans, consistent

with Policy 2.a-I-2 by removing other areas of the City from residential conversion until 80% of the Midtown and Transit Areas are built out. Additionally, amending the Resolution will also preserve properties from converting to residential uses that instead are intended for employment and income-producing purposes and will increase economic development and revenues in the City.

Further, the City Council finds amendment to Resolution No. 8220 will not adversely affect the public health, safety and welfare. The amendment will focus residential development in areas that anticipate and have planned for significant future residential development. Further, amending the Resolution will help the City achieve long-term fiscal sustainability by focusing residential development in areas with the infrastructure to accommodate residential development.

4. Based on the findings set forth herein, the City Council of the City of Milpitas hereby repeals Paragraph No. 7 from Resolution No. 8220, while continuing the exemption for properties east of California Circle to Penitencia Creek from compliance with General Plan Land Use Policy 2.a-I-2.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



## MILPITAS PLANNING COMMISSION STAFF REPORT

January 14, 2015

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**APPLICATION:** RESOLUTION AMENDMENT – GP14-0005 – Repealing Paragraph Number 7 in City Council Resolution No. 8220 relating to land use conversion.

**RECOMMENDATION:** Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to conversion of employment/sales tax generation properties to residential, while considering to continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

**LOCATION:**

Address/APN:

Properties west of McCarthy Ranch Drive and north of Highway 237 (APNs 022-56-005; -006; -007; -008; -009; 022-29-036; 022-30-035; -037; -038; -039); and

Properties east of California Circle and west of Penitencia Creek (APNs 022-37-011; -012; 017; -019)

Area of City:

Dixon Landing Business Park

**PEOPLE:**

Project Applicant:

City of Milpitas

Consultant(s):

NA

Property/Business Owner:

(APN 022-56-005; -006; -007; -008; -009) BRE/Milpitas LLC, Equity Property Tax Group LLC, PO Box A- 3879 Chicago, IL 60690-3879

(APN 022-29-036; -30-037; 30-039) McCarthy Ranch LP 15425 Los Gatos Blvd Unit 102 Los Gatos, Ca 95032

(APN 022-30-038) New Trend Tech Inc, 680 N McCarthy Blvd, Milpitas, CA 95035

(APN 022-30-35) City of Milpitas, 455 E. Calaveras Blvd, Milpitas CA 95035

(APN 022-37-011; -012) Everlasting Private Foundation, 19620 Stevens Creek Blvd, Suite. 200, Cupertino, CA 95014

(APN 22-37-019) BAP San Jose LLC, 81 Suttons Ln. Piscataway, NJ 08854

(APN 22-37-017) iStar Financial, 1 Sansome St 30<sup>th</sup> Floor, San Francisco, CA 94104

Project Planner: Adam Petersen, Senior Planner

**LAND USE:**

General Plan Designation: Industrial Park (INP)  
Zoning District: MP (Industrial Park) – PUP 31  
Overlay District: Site and Architectural Overlay (-S)

**ENVIRONMENTAL:**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is exempt pursuant to Section 15061(b)(3).



## BACKGROUND

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On January 15, 2013, the City Council adopted Resolution No. 8220 approving amendments to the Land Use and Circulation elements of the Milpitas General Plan. This amendment addressed long term planning and fiscal sustainability for the City when evaluating development proposals. Specifically, the amendment added General Plan Policy 2.a-I-2 to the Land Use Element. This policy states the following:

- **2.a-I-2 -- Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% buildout in the Midtown and Transit Area Specific Plans.**

The implementation of Policy 2.a-I-2 focuses residential development in the Midtown and Transit Area Specific Plans, where there is the existing infrastructure and plans to accommodate the anticipated growth. However, Resolution No. 8220 included Paragraph Number 7, which is an exception to Policy 2.a-I-2 for certain properties from complying with the Policy. Specifically, Paragraph Number 7 states:

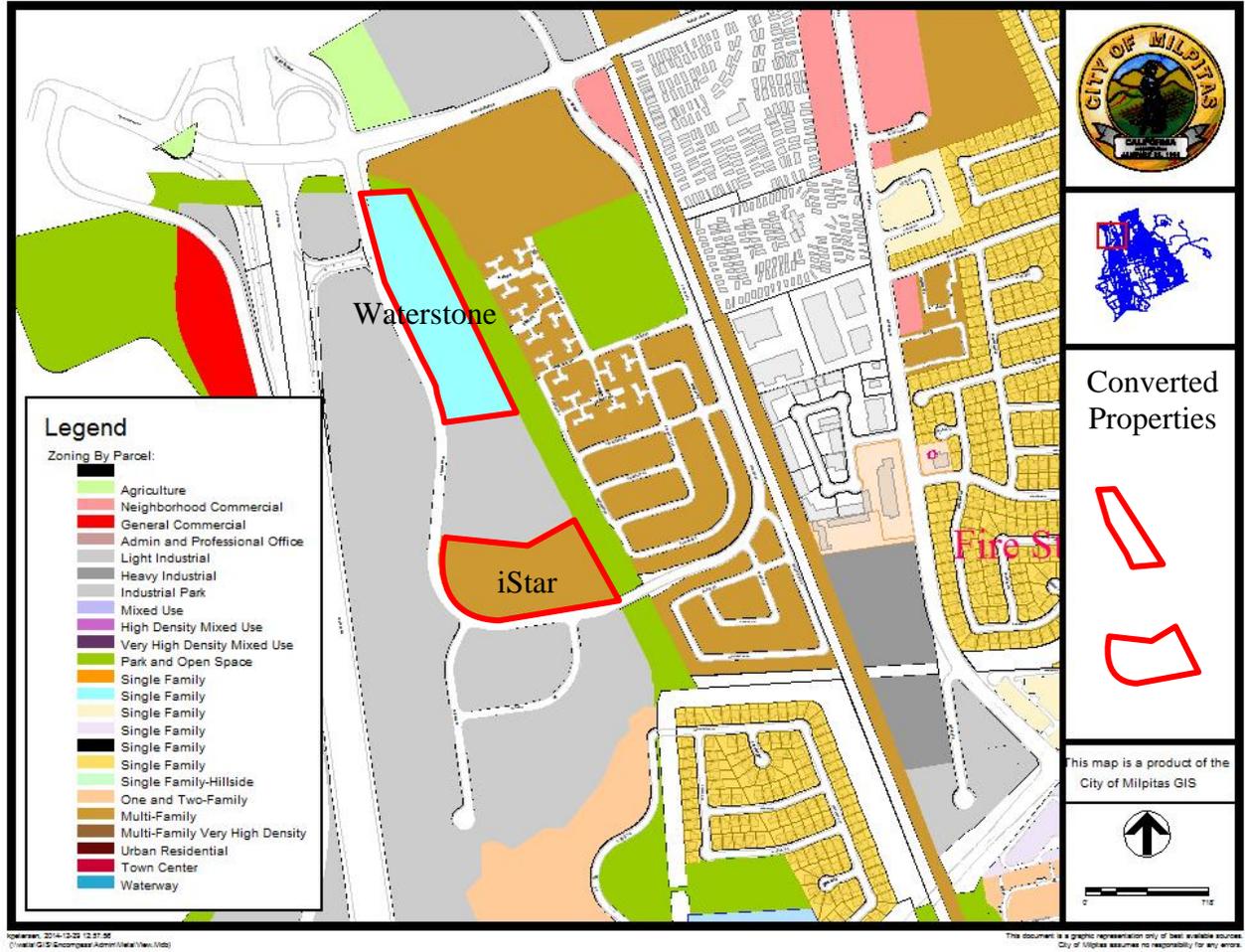
7. Implementing Policy 2.1-I-2 (sic) shall not apply to General Plan Amendment application for properties west of McCarthy Boulevard north of Highway 237 and for properties east side (sic) of California to Penitencia Creek.

This exemption has recently resulted in consideration and conversion of industrial properties located east of California Circle and west of Penitencia Creek to residential subdivision. Map 2 illustrates the two properties that have been converted from industrial to residential under the Policy exception. These two projects are as follows:

- Waterstone – APNs 022-37-011; -012 – Approved by City Council on November 19, 2013; and
- iStar – APNs 022-37-017 – Approved by City Council on November 18, 2014.

At the Mayor's request, staff has prepared this report and draft resolution to amend Resolution 8220 by repealing Paragraph Number 7. If the City Council approves the Mayor's recommendation, all employment/sales tax generation properties shall only be considered once there is 80 percent buildout of the Midtown and Transit Area Specific Plan areas and the focus of residential developments in the near future will be in these two Specific Plan areas only.

## Map 2 Industrial Properties Approved For Residential



## **PROJECT DESCRIPTION**

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The City of Milpitas is proposing an amendment to Resolution No. 8220 repealing Paragraph Number 7 relating to land use conversion of industrial land to residential. Item number 7 allows specific industrial properties located in the City of Milpitas to be exempted from General Plan Policy 2a-I-2, which prohibits land use conversion to residential until there is 80 percent buildout of the Midtown and Transit Area Specific Plan areas.

Repealing Paragraph Number 7 will affect the following properties located west of McCarthy Boulevard and north of Highway 237:

- APNs 022-56-005; -006; -007; -008; -009
- APN 022-29-036
- APNs 022-30-035; -037; -038; -039
- APNs 022-29-036; 022-30-035; -037; -038; -039

It will also affect the following properties located to the east of California Circle and west of Penitencia Creek:

- APNs 022-37-011; -012
- APN 22-37-019
- APN 22-37-017

As discussed previously, the Waterstone (APN 022-37-011; -012) and iStar (APN 022-37-019) projects have already converted the industrial properties east of California Circle and west of Penitencia Creek to residential purposes. Repealing Paragraph 7 would not affect these projects because they are already converted to residential purposes.

## **PROJECT ANALYSIS**

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Repealing Paragraph Number 7 from Resolution 8220 would achieve a higher level of consistency with General Plan Policy 2.a-I-2. The original intent of the policy was to maximize the economic development potential of land in the City by allocating adequate areas to income/job generating land uses. Repealing Paragraph Number 7 would preserve over 134 acres of industrial, job generating, and income producing lands located to the west of McCarthy Ranch Road. Further, it would minimize the impacts of development on public services. Public services would not have to be extended a large distance to service these areas.

The proposed amendment to Resolution 8220 would promote and focus residential development in the Midtown and Transit Area Specific Plan areas. The Midtown and Transit Area Specific Plan areas are both carefully thought out to accommodate future development, as demonstrated by the certified environmental impact reports. Further, focusing residential development in these areas would assist the City in achieving its vision for these places to function as the dense urban and mixed use town core.

As previously discussed, and as illustrated in Map 2 above, two projects have converted industrial land east of California Circle to residential developments. Repealing Paragraph 7 from Resolution 8220 will not apply to these projects. The approved entitlements will continue for these parcels. However, the result of these approvals is that it has essentially sandwiched one remaining 10-acre piece of industrially designated land between residential projects. This land use pattern presents potential inconsistencies. Accordingly, staff recommends that the Commission consider continuing to exempt parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

## **FINDINGS FOR APPROVAL (OR DENIAL)**

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A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

There are no specific findings required for the Planning Commission to support the repealing of Paragraph Number 7 in City Council Resolution No. 8220 since there are no General Plan Amendments, Zoning Amendments, or approval of any other permits or amendments required to repeal Paragraph Number 7 in City Council Resolution No. 8220.

Although no specific findings are required, the Planning Commission does find repealing Paragraph Number 7 in City Council Resolution Number 8220 is consistent with the City's General Plan. Specifically, the amendment will focus residential development on the Midtown and Transit Area Specific Plans, consistent with Policy 2.a-I-2 by removing other areas of the City from residential development until 80% of the Midtown and Transit Areas are built out. Additionally, amending the resolution will also preserve properties from converting to residential uses that instead are intended for employment and income producing purposes.

Further, the Planning Commission finds amendment to Resolution No. 8220 will not adversely affect the public health, safety and welfare. The amendment will focus residential development in areas that anticipate and have planned for significant future residential development. Further, amending the resolution will help the City achieve long term fiscal sustainability by focusing residential development in areas with the infrastructure to accommodate the development. For these reasons, the proposed amendment to Resolution No. 8220 will not affect the public health, safety and welfare.

## **ENVIRONMENTAL REVIEW**

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The proposed resolution amendment is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The purpose of amending Resolution No. 8220 is to achieve greater consistency with the Milpitas General Plan. The amendment will not expand the range or intensity of uses permitted on the subject properties. Instead, it will facilitate the utilization of these properties as the General Plan intends. The amendment does not authorize any construction and will not result in any physical change in the

environment. Therefore, the proposed amendment is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment.

## **PUBLIC COMMENT/OUTREACH**

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Staff publicly noticed the application in accordance with City and State law. Staff did not receive public comments as of the date of writing this Report.

## **CITY COUNCIL REVIEW**

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This project requires review by the City Council and is tentatively scheduled on the February 3, 2015 City Council agenda.

## **CONCLUSION**

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In summary, it is recommended that the Planning Commission recommend the City Council adopt a resolution to repeal Paragraph Number 7 in City Council Resolution No. 8220. Amending the resolution will promote a more orderly and financially sustainable development pattern for the City of Milpitas. The City adopted the Transit Area Specific Plan and the Midtown Specific Plan. These plans anticipate residential development, and accordingly have the infrastructure and capacity to accommodate the planned development. Converting industrial properties to residential developments will deprive the city of income and job generating lands, thereby negatively impacting its fiscal sustainability. Therefore, rescinding item 7 from Resolution No. 8220 will promote fiscal sustainability and a more orderly approach to development in the City of Milpitas.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct Public Hearing; and
2. Adopt Resolution No. 15-002 recommending the City Council find the project exempt from the California Environmental Quality Act and adopt a resolution to repeal Paragraph Number 7 in City Council Resolution No. 8220 relating to land use conversion, while considering to continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

## **ATTACHMENTS**

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- A. Resolution 15-002
- B. Resolution No. 8220

MEETING MINUTES

**MILPITAS PLANNING COMMISSION**  
**Milpitas City Hall, Council Chambers**  
**455 E. Calaveras Blvd., Milpitas, CA**

**Wednesday, January 14, 2015**

- I. PLEDGE OF ALLEGIANCE**      **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. OATH OF OFFICE TO NEWLY APPOINTED MEMBERS**      City Clerk Mary Lavelle swore in new members Zeya Mohsin and Ray Maglalang.
- III. ROLL CALL/ SEATING OF ALTERNATE**      **Commissioners**  
**Present:**      Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Demetress Morris, Hon Lien, Ray Maglalang, Alternate Member Zeya Mohsin  
**Absent:**  
**Staff:**      Steven McHarris, Johnny Phan, Adam Petersen
- IV. PUBLIC FORUM**      **Chair Mandal** invited members of the audience to address the Commission and there was one speaker.  
  
Rob Means, a Milpitas resident who lives on Yellowstone, said he is circulating a petition rejecting US Supreme Court rulings regarding money interests and invited commissioners to join him for a protest march in San Francisco at 3:30 on January 21<sup>st</sup>.
- V. APPROVAL OF MEETING MINUTES**      **Chair Mandal** called for approval of the December 10, 2014 meeting minutes of the Planning Commission.  
  
**Motion** to approve Planning Commission meeting minutes as submitted.  
Motion/Second:      Commissioner Madnawat/Commissioner Morris  
AYES:      4  
NOES:      0  
ABSTAIN:      3      Ciardella, Sandhu, Maglalang
- VI. ANNOUNCEMENTS**      Planning Director Steven McHarris announced that the Holiday Inn Suites and Springhill Suites items were deferred to February 11.  
  
Romero Rodriguez, a resident on Fairview Way, was present to speak about these projects. He said the land has been vacant for several years and as a home owner he believes the hotels will be a big boost to their property values and that they will create more pedestrian activity for the businesses located there.

Anna Capelias said her concern has to do with use and zoning of the development and what changes might occur if a hotel is allowed, and she wants to hear all of the information when the presentation is made.

Mr. McHarris said the zoning is not changing and that hotel use can occur with approval of the planning commission. The projects will be heard at the February 11 Planning Commission meeting.

**VII. CONFLICT OF INTEREST**

**Assistant City Attorney Johnny Phan** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

**VIII. APPROVAL OF AGENDA**

**Chair Mandal** asked if staff or Commissioners had changes to the agenda and there were none.

**Motion** to approve the January 14, 2015 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

**IX. CONSENT CALENDAR**

**NO ITEMS**

**X. PUBLIC HEARING**

**X-1 TOWN CENTER AMENDMENT – ALL TOWN CENTER DESIGNATED PARCELS – ZA14-0011:** Zoning Text Amendment to the Town Center zoning district that would add a description and prohibit ground level residential uses.

Project Planner Adam Petersen reviewed a PowerPoint presentation discussing the zoning amendment.

Commissioner Madnawat asked if a garage is considered residential, because if so there could be an easy way to get around the amendment by building garages on the ground floor. Mr. McHarris said that residential serving garages would be classified as residential and would not be permitted on the ground floor, and that there has to be commercial on the ground floor. Commissioner Madnawat said this would mean there would be no condominium development and Mr. McHarris said that was correct. Commissioner Madnawat said the language in the ordinance should be clearer about permitted uses and should state that the ground floor needs to be 100% commercial.

Assistant City Attorney Johnny Phan said the drafted language can be updated to clarify the types of uses allowed.

Chair Mandal asked about the process of attracting high quality businesses to Milpitas and the vision for the city to produce more walkable and lively areas and Mr. Petersen said the intent of this amendment is to encourage future uses that accommodate that type of use.

Chair Mandal opened the public hearing and Mr. Means spoke in favor of this amendment.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked that the language in the ordinance be clarified to include permitted uses around the word commercial and that staff look into potential conflicts with the ordinance that allow live-work units.

**Motion** to adopt Resolution No. 15-001 recommending the City Council adopt Zoning Amendment No. ZA14-0011 to add the words “mixed use” residential to the purpose and intent section of the Town Center Zoning description and to prohibit ground floor residential in the Town Center zone.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-2

**GENERAL PLAN CONVERSION - CLARIFICATION – CITY WIDE – GP14-0005:** Clarification to the adopted General Plan Land Use Conversion policy (City Council Resolution No. 8220), removal of the exemption for parcels on the west side of McCarthy Boulevard north of Highway 237 and properties on the east side of California Circle to Penitencia Creek.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Commissioner Sandhu asked how large the parcel is and Mr. Petersen said it is approximately 10 acres.

Commissioner Madnawat asked if there are pending applications and Mr. McHarris said there are not.

Chair Mandal opened the public hearing and Mr. Means said that this generally sounds like a good idea and was curious about the remnant parcel and who the owner is.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked if there is any interest on the parcel and Mr. McHarris said there are no pending applications. Mr. Petersen added that the owner is listed as BAPS San Jose LLC.

**Motion** to adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to conversion of employment/sales tax generation properties to residential, while considering to

continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

**X-3**

**CITATION PROJECTS DEVELOPMENT AGREEMENT – TASP PIPER/MONTAGUE DRIVE SUBAREA – DA14-0001:** Development Agreement proposal for reduced TASP Fees for all Citation Developments.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Three commissioners disclosed that they had met with the developer: Vice Chair Ciardella, Chair Mandal, and Commissioner Morris.

Commissioner Madnawat asked how the TASP fees are calculated and Mr. Petersen said that \$32,781 is the cost per unit to install infrastructure including roads, sewer and water within the TASP area. Commissioner Madnawat asked if this is a reasonable amount the City will need to spend to provide infrastructure for these homes and Mr. McHarris said it is.

Commissioner Madnawat referenced a bullet point in the presentation stating the builder has provided \$8 million worth of benefits and asked for two examples of those benefits provided that have nothing to do with their development. Mr. McHarris said the developer fronted that amount of money to enable development of the TASP area, not just for their development but to enable the development of the TASP area. He said infrastructure needed to go in and Citation stepped up to do that and also processed three projects consistent with the transit area.

Commissioner Madnawat asked what amount of the \$8 million is the amount not adding value to their project and Mr. McHarris said it does add some value to their project but also adds value to all of the projects within this sub-area of the TASP.

Commissioner Madnawat said he feels this is for the developers own benefit and that it is a \$3.8 million dollar gift to the builder. He said if \$32,781 is the fair amount that the City will have to spend then that means the taxpayers will have to pay \$3.8 million to provide those services and he has a problem with this.

Commissioner Lien asked if there was a recent fee increase and Mr. McHarris said there have been two fee adjustments in addition to the annual adjustment and that the fee is calculated at the time the project is developed not entitled.

Commissioner Maglalang said he was trying to understand the \$8.3 million infrastructure improvement cost and if this is supposed to be a City expense or an obligation by the developer. Mr. Phan said there are three developers building in the Piper/Montague sub-district of the TASP, Citation being the largest developer in that area and building over 1,000 units. Potentially Barry Swenson will build 300-400 units and also Milpitas Station.

With these three developers over 1,500 units will be built and there is significant public improvement required, none of which are City obligations. These public improvements total about \$10 million and have to be built by the developer. A few years ago the City Council approved a four-party cost sharing agreement between the City, Citation, Barry

Swenson and Milpitas Station. Citation is the first developer to come in and is going to front and build most of the improvements, going above and beyond their obligation. They will receive credit and when the other developers come in to build they will pay the City back.

Commissioner Morris asked if development fees can be grandfathered in and Mr. Phan said the city does not grandfather anyone's fees. Fees are based on inflation and updated studies and may be adjusted during the planning process and the fee was \$29,000 when Citation submitted their application and \$32,721 when the building permit was issued.

Commissioner Madnawat referenced the four-party contract and wondered why Citation doesn't request the money from the other developers, and what guarantee is there that they will reimburse the city. Mr. Phan said there is a mechanism for the City to collect from the developer, that a CFD can be created if they do not build within seven years and pay their fees.

Chair Mandal asked if there will be a park and Mr. Petersen said there will be one constructed by the Citation project and showed the location of the park. He asked about the five year freeze on the fees and Mr. Phan explained that the development agreement is drafted so that within the first five years the TASP fee stays at \$29,012 per unit if they build and pay their full TASP fees but if they build after five years then the fee is adjusted for inflation and increased parkland value.

Commissioner Madnawat asked if fees are frozen when a permit is pulled and Mr. Phan said that the City's position is that fees are not vested and not frozen when a permit is pulled but this has been an ongoing dispute with developers. Commissioner Madnawat said the TASP fee is needed to provide infrastructure and should be non-negotiable. He said someone has to pay this and it should not be the taxpayers of Milpitas, and he sees this a \$3.8 outright gift to the developer. He wants to see the cost sharing agreement and feels that some commissioners may not understand this topic.

Commissioner Maglalang is afraid that giving a fee reduction will create a bad precedence for other developers to ask for the same fees given to Citation.

Applicant Mark Tiernan, who is also a resident of Milpitas, wanted to clarify a few points about the rationale behind the development agreement: 1) they are building at the highest level of density allowed, 2) although the City asked them to provide 5,000 square feet of retail space they are providing 8,100 square feet of retail space, and 3) when Citation 1 was approved the fees were \$23,700 which was the dollar amount the City and consultant said was needed to provide the infrastructure to support these projects. By the time they got plans approved and went through the process the fees were raised to now almost \$32,800 and they have asked for a compromise in return for building what the City has described as a signature project which is the Edge.

Mr. Tiernan said the first project they are building is 381 units and will take two years to build and another 1-2 years to fully lease out. Normally a developer would wait to have a building fully leased before building another project because you don't want to compete with yourself, and their plan was to move from Amalfi 1 to Amalfi II to the Edge. When they came for approval of the Edge, the City Council felt this was an important project and that it was important to coincide with the BART station, and they entered into discussions with the City to move forward before Amalfi I is fully leased out, increasing their risk, and they asked for a compromise in the fees in return for building what the City would describe as a signature project.

He said that other developers could ask for the same deal and the City could ask them if

they are building at the highest density, providing more commercial space than required and are they willing to invest 250 million in the City to get their projects built. He said if the answer was yes to those questions, then the City would probably move forward with a development agreement because of the role the developer is playing.

Mr. Tiernan said the TASP is one of the most important transit housing opportunities in the Bay Area and Citation Homes has made this one of their signature projects. The City would like them to build this project to coincide with the BART station and with the increases in construction and material costs they would like to get some cost certainty in their fees to reduce some of their risk and start construction on a building before their other project is fully leased out.

Commissioner Madnawat said Mr. Tiernan's argument regarding requests from other developers does not hold water but that his argument for the fee increases does and said he was surprised by the huge increase in the fees and asked the reasons for such an increase. Mr. Phan said there is a formula and consultants conduct a Nexus study and look at a number of different factors to determine the fair share amount for each unit. He said the initial fee study done in 2008 was based on the plan that was adopted but has been updated based on new trends and information.

Commissioner Madnawat said that if the \$32,781 reflects what the City is going to spend it is \$3.8 million coming from the City which can be spent on hiring police officers, fire fighters, and others.

Chair Mandal opened the public hearing and there were two speakers. Rob Means said this is a great project and reviewed a list of benefits to the City that he believes offsets the \$3.8 million, including a high density housing project, extra retail, and a pedestrian over crossing getting built early.

Jim Sullivan, a consultant for the developer, said he was the project proponent for the Edge. He said developers were building on the low density side but they transferred another developers units onto the Edge and built 94 more units than necessary. He said they are also working with staff to build a great public park in the area at a substantial discount than what it would cost the city to build.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked who is building the pedestrian bridge and Mr. McHarris said it is a City project and there is currently grant funding for the design work and VTA is preparing design work for the City.

**Motion** to adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

Motion/Second: Commissioner Morris/Commissioner Lien

AYES: 4

NOES: 3 Sandhu, Madnawat, Maglalang

**XI. NEW BUSINESS**

**NO ITEMS**

**XII. ADJOURNMENT** The meeting was adjourned at 9:10 PM to the next meeting scheduled on Wednesday, January 28, 2015.

**Motion** to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 7

NOES: 0

ABSENT: 0

*Meeting Minutes submitted by  
Planning Secretary Elia Escobar*

**RESOLUTION NO. 15-002****A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
RECOMMENDING THE CITY COUNCIL ADOPT A RESOLUTION REPEALING  
PARAGRAPH UMBER 7 FROM CITY COUNCIL RESOLUTION NUMBER 8220  
RELATING TO LAND USE CONVERSION**

**WHEREAS**, on January 15, 2013, the Milpitas City Council adopted Resolution No. 8220 approving amendments to the Land Use and Circulation Elements of the Milpitas General Plan; and

**WHEREAS**, amendments to the Land Use Element of the Milpitas General Plan included adding General Plan Land Use Policy 2.a-I-2, which prohibits the conversion of employment/sales tax generation properties to residential uses until there is an eighty percent (80%) build out of the Midtown and Transit Area Specific Plan areas; and

**WHEREAS**, City Council Resolution No. 8220 included Paragraph Number 7, which exempted properties west of McCarthy Ranch Road and north of Highway 237 and properties east of California Circle and West of Penitencia Creek from complying with General Plan Policy 2.a-I-2; 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 recommend the City Council determines this project categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption, since the project has no potential to cause a significant effect on the environment because the project will not allow any industrial land conversion to residential; and

**WHEREAS**, on January 14, 2015 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The proposed project is categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption because the project has no potential to cause a significant effect on the environment, since the project will not allow any land use conversion from industrial land to residential uses.

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**Section 3:** There are no specific findings required for the Planning Commission to support the repealing of Paragraph Number 7 in City Council Resolution No. 8220 since there are no General Plan Amendments, Zoning Amendments, or approval of any other permits or amendments required to repeal Paragraph Number 7 in City Council Resolution No. 8220.

Although no specific findings are required, the Planning Commission does find repealing Paragraph Number 7 in City Council Resolution Number 8220 is consistent with the City’s General Plan. Specifically, the amendment will focus residential development on the Midtown and Transit Area Specific Plans, consistent with Policy 2.a-I-2 by removing other areas of the City from residential development until 80% of the Midtown and Transit Areas are built out. Additionally, amending the resolution will also preserve properties from converting to residential uses that instead are intended for employment and income producing purposes.

Further, the Planning Commission finds amendment to Resolution No. 8220 will not adversely affect the public health, safety and welfare. The amendment will focus residential development in areas that anticipate and have planned for significant future residential development. Further, amending the resolution will help the City achieve long term fiscal sustainability by focusing residential development in areas with the infrastructure to accommodate the development. For these reasons, the proposed amendment to Resolution No. 8220 will not affect the public health, safety and welfare.

**Section 4.** Based on the findings set forth herein, the Planning Commission of the City of Milpitas adopts this Resolution recommending the City Council adopt a resolution repealing Paragraph 7 in City Council Resolution No. 8220 relating to land use conversion.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Milpitas on January 14, 2015.

  
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 January 14, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal	✓			
Larry Ciardella	✓			
Gurdev Sandhu	✓			
Rajeev Madnawat	✓			

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Demetress Morris	✓			
Hon Lien	✓			
Ray Maglalang	✓			
Zeya Mohsin (alternate)				

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING GENERAL PLAN AMENDMENT NO. GP12-0005, AMENDMENTS TO THE LAND USE AND CIRCULATION ELEMENTS**

**WHEREAS**, on August 21, 2012, the City Council initiated a General Plan Amendment to update the policies of the Land Use and Circulation Elements; 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 this project exempt; and

**WHEREAS**, on November 14, 2012, the Planning Commission held a duly noticed public outreach hearing on the subject application, and considered evidence presented by City staff, and other interested parties; and

**WHEREAS**, on December 12, 2012, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, and other interested parties and recommended approval of General Plan Amendment No. GP12-0005 by no less than a majority of its total membership; and

**WHEREAS**, on January 15, 2013, the City Council held a duly noticed public hearing on the project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is exempt pursuant to Section 15061(b)(3).
3. The proposed amendments are internally consistent with those portions of the General Plan which are not being amended and do not constitute substantial amendments.
4. The proposed amendments will not adversely affect the public health, safety, and welfare in that the amendments enhance public health, safety and welfare.
5. Therefore, based upon the findings contained herein, General Plan Amendment No. GP12-0005, Land Use and Circulation Element Amendments, as set forth in Exhibits 1 and 2, is approved.
6. Effective Date: This Resolution shall not apply to projects where complete submittals have been filed in conjunction with the project application prior to the effective date. The effective date of this amendment shall be 30 days after its date of adoption of January 15, 2013.
7. Implementing Policy 2.1-I-2 shall not apply to General Plan Amendment applications for properties west of McCarthy Boulevard north of Highway 237 and for properties east side of California Circle to Penitencia Creek.

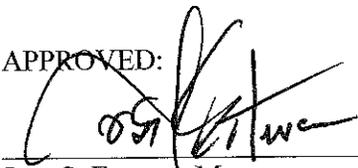
PASSED AND ADOPTED this 15th day of January 2013, by the following vote:

AYES:	(4)	Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano
NOES:	(1)	Mayor Esteves
ABSENT:	(0)	None
ABSTAIN:	(0)	None

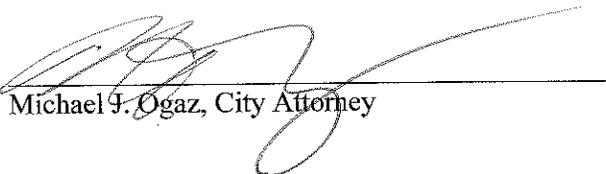
ATTEST:

  
 for Mary Layelle, City Clerk

APPROVED:

  
 Jose S. Esteves, Mayor

APPROVED AS TO FORM:

  
 Michael J. Ogaz, City Attorney