



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Approve a Process for the Butcher Property Annexation and Discuss Status of Development Applications, with No Action on a Proposed Project

REPORT IN BRIEF

Over the past months, there appears to be some confusion on staff's actions to implement the City Council's direction relative to annexation at Butcher's Corner. In an effort to ensure that we are implementing the process that the Council directed, the purpose of this agenda item is for the City Council is to confirm its former direction or to provide alternative direction to staff on the process and to establish timing for annexation of the Butcher property. This agenda item pertains to the annexation process for the Butcher property, a 5.1-acre county "island" located at the intersection of East El Camino Real, South Wolfe Road and East Fremont Avenue. Approximately two years ago, Council initiated annexation of this property but chose to postpone the final action. Staff believes it is beneficial to revisit this item at this time, before completion of the draft environmental impact report (DEIR) for the proposed rezoning and development applications. If the City Council decides to discontinue the city-initiated annexation, this would inform the property owner that he needs to initiate the annexation through the Local Agency Formation Commission (LAFCO).

No actions on the rezoning or development applications are being considered by the City Council tonight. This agenda item is for Council to confirm or provide alternative direction on the annexation process for the Butcher property. However, the status of the project proposal is provided for context in discussing the overall process for the annexation, rezoning and development applications.

Staff recommends that the City Council adopt Alternatives 1 and 3: direct staff to continue the City-initiated annexation process independent of and prior to action on the rezoning and development applications, and direct staff to schedule for Council action the resolution for annexation; and defer consideration of the two-year changed circumstance finding until action on the rezoning and development applications.

BACKGROUND

On August 27, 2013, the City Council initiated a request to the Local Agency Formation Commission (LAFCO) to annex the Butcher property (RTC-13-201), with LAFCO offering to assume the cost for processing the annexation. At the same time, the property owner, De Anza Properties, submitted a concept plan (Preliminary Review) for a 211-unit residential project on the Butcher property with heights between three stories and ten stories.

LAFCO accepted the City's initiation of annexation, and on October 8, 2013, the City Council considered a draft resolution to annex the Butcher property. However, the City Council decided to postpone the annexation at the request of the property owner and residents to allow the property

owner to further develop its plans and share them with the community for further input. The City Council also directed staff to not require 25 percent of the property as commercial use, which is typically required for properties located within a Node (areas identified for a higher concentration of mixed uses) per the Precise Plan for El Camino Real. The staff report and minutes of that Council meeting are contained in Attachment 1 and 2, respectively.

Since then, the property owner has revised the proposed project and submitted a formal application for a reduced project consisting of 153 dwelling units. An Environmental Impact Report (EIR) is being prepared to address the redevelopment of the site. Attachment 3 includes an update on the development applications, including staff's comments on the latest project plans. Staff also presented an update on the proposed project to the Planning Commission at a study session on July 13, 2015. A summary of staff's presentation, Planning Commission comments, and comments from the public are included in Attachment 4. No Council action on the proposed project is being considered or proposed at this time.

ENVIRONMENTAL REVIEW

An EIR is being prepared for the development applications. Environmental impacts being studied as part of the EIR include aesthetics, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hydrology and water quality, land use and planning, noise, public services (fire, police, schools), transportation and traffic, and utilities and service systems. Several technical studies to evaluate the above impacts are underway, including a traffic study that will identify potential project impacts and mitigation measures to reduce impacts, such as road improvements. The Draft EIR is expected to be available for public review in October 2015. Public hearings to consider certification of the Final EIR are expected in March 2016.

The EIR could incorporate the required annexation into the project description if annexation will be considered at essentially the same time as the rezoning and development applications. Alternatively, the City can choose to annex the property independent of the rezoning and development applications. If annexation occurs separately prior to action on the proposed project, this sole action could be considered exempt from CEQA since it does not constitute any form of pre-development approval and, thus, would not result in any environmental impacts (CEQA Guideline 15319(a)).

DISCUSSION

The purpose of this agenda item is for the City Council is to confirm its former direction or to provide alternative direction to staff on the process and to establish timing for annexation of the Butcher property. It is not to make a final decision on annexation.

The key issues pertaining to annexation are as follows:

- City or property owner-initiated annexation; and
- Finding to allow rezoning of the property within two years of annexation.

Current General Plan and Zoning Designations

State law requires cities to plan for all properties within their city limits, including "island" areas (property with a county's jurisdiction which is surrounded on all sides by a city's jurisdiction). The Butcher property currently has a General Plan designation of Residential High Density. The Residential High Density designation allows for consideration of residential development with the

density range of 27 to 45 dwelling units per acre.

The corresponding zoning designation that would be most consistent with the current General Plan designation is High Density Residential (R-4), which allows up to 36 dwelling units per acre. However, the Butcher property is currently pre-zoned Medium Density Residential/Precise Plan for El Camino Real (R-3/ECR), which allows up to 24 dwelling units per acre.

City or Property Owner-Initiated Annexation

The Local Agency Formation Commission (LAFCO) of Santa Clara County is empowered by the State to review proposed boundary changes to cities. In this case the Butcher property is an unincorporated part of Santa Clara County. With potential boundary changes such as this, LAFCO ensures that municipal services such as utilities, fire, police and recreation can be served adequately by the municipality that will annex the land. LAFCO encourages cities to annex island areas that are currently unincorporated but within the Urban Service Areas (USA), such as the Butcher property. The Butcher property is completely surrounded by land within the City of Sunnyvale's jurisdiction. Annexations are generally initiated either by a city or by a property owner, but island annexations are generally initiated by cities at county request. The general procedure and timeline are similar for either a city or property owner initiated annexation, but there is a streamlined process for island annexations.

In 2011 LAFCO submitted a request asking the City of Sunnyvale to annex existing island parcels, including the Butcher property, and to encourage the process, offered to absorb the fees. The City Council conducted a series of public hearings in 2013 and initiated the process for annexation. The next action would have been for the City Council to adopt a resolution asking LAFCO to approve the annexation. On October 8, 2013, the Council approved annexation of several other residual parcels, but decided to postpone annexation of the Butcher property at the request of the property owner and residents.

In this case, if the property owner directly petitioned LAFCO to approve the annexation, LAFCO has indicated they would refer the matter back to the City. If the City declined to initiate or approve the annexation, LAFCO would have to conduct the public hearings and make a decision on the annexation. According to LAFCO, however, this is not encouraged or consistent with their practices, and they are not aware of it ever having occurred in Santa Clara County. In this instance, LAFCO staff has indicated that they would likely approve the annexation with or without the City's concurrence, given that the property is an island located within the City's USA and is completely surrounded by the City. LAFCO staff prefers that the City complete the annexation process that was previously initiated by the Council rather than shift to a property owner-initiated process.

Implications on Land Use Authority: Annexation does not pre-approve a project. In this case, the Butcher's property if annexed to Sunnyvale would continue to be zoned R-3/ECR. Separate actions and public hearings are required for the annexation and development applications. The primary benefit of annexing the Butcher property is that it would secure and clarify that the City of Sunnyvale has land use authority over the future development of the property.

If annexation is not approved and the property remains unincorporated, land use authority over the property would remain with Santa Clara County. Staff has consulted with LAFCO and the County of Santa Clara Planning Department. If the City of Sunnyvale does not annex the property, the property owner could submit rezoning and development applications to the County. While County Planning

staff would strongly prefer that the City annex the property and decide the rezoning and development application, the County could potentially process the applications and approve the project if it is consistent with the Sunnyvale General Plan.

As previously discussed, the General Plan designation for the Butcher property is Residential High Density, which allows for consideration of residential development with the density range of 27 to 45 dwelling units per acre. The current proposed density of the Butcher property project is 30 dwelling units per acre, which is consistent with Sunnyvale's General Plan. While the County could theoretically approve a project based on local General Plan conformance, the property is also pre-zoned R-3/ECR, which restricts development to a lower density of up to 24 dwelling units per acre. This inconsistency between the City's General Plan and the pre-zoning would need to be considered by the County if it were to act on a development application. An additional benefit of annexation, other than clarifying land use authority, is it that the City would take the lead to resolve this land use inconsistency rather than having the County possibly assume this role.

Timing for Annexation

Residents may perceive that annexation of the property indicates receptiveness to the project as currently proposed, or that with the City initiating annexation it will facilitate development of the property. In response to these community concerns and continuing requests to postpone annexation, the City Council may consider continuing to defer the annexation and consider it concurrently with the project proposal. However, as discussed above, annexing the property does not pre-approve any project; rather, it secures the City's land use authority and control over the property, and requires the property to submit applications to the City, rather than potentially obtaining County approval.

Staff recommends that Council continue the City-initiated annexation process independent of and prior to action on the rezoning and development applications. If this is the Council direction, staff would return to the Council with a resolution for annexation (Alternative 1).

The Council could also discontinue the City-initiated annexation process (Alternative 2). The property owner would then have the option to initiate the annexation through LAFCO.

Two Year Rezoning Finding

The Cortese-Knox-Hertberg Act governing annexation provides that a change in General Plan or zoning designations of annexed property may not occur for a period of two years after the annexation unless the legislative body makes a finding that there has been a "substantial change" in circumstances that "necessitate a departure from the pre-zoning." While "substantial change" is not defined in the state law, it appears the provision was intended to prevent sudden or dramatic changes in land use policies on newly annexed properties. What constitutes a change of circumstances would likely require comparison of conditions at the time of pre-zoning compared to current conditions. For example, factors such as the critical shortage of available housing for workers in Sunnyvale and the desire to locate housing along transit corridors in order to reduce greenhouse gas emissions might be changed circumstances that would support the need for higher-density housing on ECR consistent with the General Plan/Precise Plan policies.

If the City Council makes such a finding, the property owner's proposal to rezone the property from R-3/ECR to R-4/ECR could be considered without having to wait two years. If the finding is not made, the property owner would have several options:

- Withdraw or postpone the rezoning and development applications until the time Council could consider them (two years after the annexation);
- Amend the development application by re-designing the project to comply with the current pre-zoning density allowed under R-3/ECR; or
- Maintain the current proposed density and exceed the R-3/ECR density by using the Sunnyvale green building incentive and the State's affordable housing density bonus program.

Although not required for the annexation process, if the Council does not wish to consider rezoning the property from R3/ECR, a determination to not make the two-year rezoning finding could be considered along with the action to annex the property. No formal action is actually needed, but early policy direction could be provided to the property owner (Alternative 4).

Alternatively, if the Council believes that making the finding is inconclusive at this time, the Council may defer consideration of the two-year changed circumstance finding until action on the rezoning and development applications (Alternative 3).

FISCAL IMPACT

No fiscal impacts are anticipated as part of the action at this time. Fiscal impacts associated with the development applications will be analyzed during the entitlement process.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website. In addition, notices were sent to residents and property owners within 2,000 feet of the project site, neighborhood associations within the vicinity (SunnyArts, Braly Corners, Ponderosa, Stratford Gardens, Gavello Glen, Wisteria Terrace, Raynor Park, Birdland, Panama Park, and Ortega Park), and to the interested parties list. Information was also provided on the project webpage at ButchersCorner.InSunnyvale.com.

ALTERNATIVES

1. Direct staff to continue the City-initiated annexation process independent of and prior to action on the rezoning and development applications, and direct staff to schedule for Council action the resolution for annexation.
2. Direct staff to discontinue the City-initiated annexation process.
3. Defer consideration of the two-year changed circumstance finding until action on the rezoning and development applications.
4. Consider whether there are changed circumstances at the same time as when the annexation is considered.

STAFF RECOMMENDATION

Alternatives 1 and 3: 1) Direct staff to continue the City-initiated annexation process independent of and prior to action on the rezoning and development applications, and direct staff to schedule for Council action the resolution for annexation; and 3) Defer consideration of the two-year changed circumstance finding until action on the rezoning and development applications.

Staff recommends that the Butcher property annexation proceed as a city-initiated annexation to

ensure the City's land use authority and control over the property. Annexation does not indicate tacit or pre-approval of any rezoning or development application. Separate City Council and Planning Commission public hearings and actions are required to consider any land use/zoning change or proposed project. Finally, staff recommends deferring the two-year changed circumstance finding until it reviews the rezoning and development applications. The merits and basis for this finding would more appropriately be considered at that time.

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Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Report to Council, Dated October 8, 2013
2. City Council Public Hearing Minutes, Dated October 8, 2013
3. Update on Development Applications
4. Planning Commission Study Session Summary, Dated July, 13, 2015
5. Project Plans, Dated June 15, 2015