



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Rescind Prior Action Approving a Special Development Permit to Allow a New Commercial Building (Grocery Store) at 777 Sunnyvale-Saratoga Road and Find that the Action to Rescind is Exempt from CEQA

DISCUSSION

On September 13, 2016, the City Council heard an appeal of a decision by the Planning Commission to approve a Special Development Permit (SDP) allowing construction of an approximately 11,600 sq. ft. grocery retail building adjacent to the Orchard Supply Hardware building at 777 Sunnyvale-Saratoga Road (RTC No. 16-0271). In the letter of appeal, the appellant Michael Howland raised concerns about the environmental review and requested further studies related to traffic impacts, air quality, greenhouse gas emissions, and hazardous materials. The City Council affirmed the decision of the Planning Commission, denied the appeal, made the findings required by CEQA, adopted the Mitigated Negative Declaration, and approved the SDP subject to modified Conditions of Approval. (Attachment 1, Minutes.) Subsequently, Mr. Howland filed a CEQA action challenging the City's approval of the Project. (*Howland v. City of Sunnyvale et al.*, Santa Clara County Superior Court Case No. 16-CV-301051).

The developer has reached an agreement with the plaintiff to settle the litigation and complete an EIR. The City Council approved the settlement agreement at a closed session on March 28, 2017. Pursuant to the agreement, the developer has requested that the City Council rescind its prior actions adopting the MND and approving the SDP (Attachment 2). If the City Council votes to rescind the approval, an Environmental Impact Report will be prepared, at the expense of the developer (applicant), and the Project will be brought back to the City Council at a later date. The settlement agreement does not require the City Council to rescind the prior approval; if the City Council does not do so, however, the litigation will not be settled and the case will proceed to trial in the Superior Court.

ENVIRONMENTAL REVIEW

The rescission of the approval of the City Council's prior action is exempt from review under CEQA because there is no possibility that it will have a significant impact on the environment. (CEQA Guidelines, Section 15061(b)(3).) This action will allow additional environmental review to be completed before the Project can be approved.

FISCAL IMPACT

The developer is required by the Project's Conditions of Approval to indemnify the City against legal fees and costs. Settlement of the litigation may result in some fiscal savings related to incidental staff time (primarily in the City Attorney's Office) to monitor and assist with the litigation. Expenses associated with submitting a new application and the preparation of the EIR will be paid by the

developer.

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.

RECOMMENDATION

Rescind prior action taken on September 13, 2016, adopting a Mitigated Negative Declaration and approving Special Development Permit No. 2015-7399 to allow a new commercial building (grocery store) at 777 Sunnyvale-Saratoga Road, and find that this action is exempt from CEQA.

Prepared by: Rebecca Moon, Senior Assistant City Attorney

Reviewed by: Trudi Ryan, Director of Community Development

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENT

1. Excerpt of Minutes of the September 13, 2016 City Council Meeting
2. Developer Request for Rescission of Approval