



STAFF REPORT

DATE: March 28, 2017

TO: PLANNING COMMISSION

FROM: Patrick O’Keeffe, Special Advisor, Planning Services

RE: Review of Policy Paper Prepared by General Plan Consultant Regarding 635 Vine Hill Way (Freitas)

BACKGROUND

In April of 2016, the City Council approved a contract with Christine O’Rourke, General Plan Consultant, to prepare four “white papers” or policy papers addressing specific issues raised by comments received by the City on the Draft General Plan Update (DGPU). The DGPU was circulated, along with the Draft Environmental Impact Report (DEIR), for review and comment in late 2015. The circulation of these documents represented the culmination of a seven-year process that started with a work session with the Planning Commission in February 2008. The process involved hundreds of community members using a series of surveys and other outreach vehicles intended to solicit input on this long-range planning document. A 19-member Task Force was appointed to oversee this public input process and to: (1) help formulate and participate in the outreach effort, (2) assist in formulating a vision for the General Plan, (3) identify issues of concern, (4) hear from experts on various topics, (5) review background materials and policy choices and (6) provide an opportunity for key property owners to submit their ideas. Once the Task Force completed its work, the DGPU was circulated for public comment.

At the conclusion of the review of the policy papers, a determination will be made on whether modifications will be made to the DGPU based on policy direction of the City Council. If modifications are desired, it will then be determined whether such modifications will require changes to the DEIR and if so, whether those changes will require the revised DEIR to be re-circulated for additional public comment. If this step is not necessary, then the DGPU and DEIR will be presented to the Planning Commission and City Council for final hearings and adoption. The General Plan Consultant estimates that, if recirculation is not necessary, then this process could be concluded sometime in mid-2017.

The first policy paper, Trail Segments, has been completed and was reviewed by both the Planning Commission and City Council. Two additional policy papers will be presented to the Planning Commission on March 28th addressing: (1) The “unique agricultural land” designation for Viano winery, and (2) The general plan land use designation for 635 Vine Hill Way/Freitas property. A third policy paper regarding the land use designations in downtown will be presented in the near future. The purpose of this report is to discuss the staff recommendation for the 635 Vine Hill Way policy paper (see attached).

DISCUSSION

The existing land use designation for this parcel on 635 Vine Hill Way is split: the majority (90%) of the parcel is designated Open Space and a small portion (10%) of the parcel is designated Residential Very Low/ R-20 (minimum 20,000 square foot lot size – see Figure 1 in the policy report). The property owner, Gary Freitas, desires to change the land use designation to allow additional residential development in the area currently designated for open space. Three applications have been made by the owner over the last 29 years to change the land use designation. The history of these applications is set forth in the attached white paper (See Appendix A) and the attached information from the property owner (see documents that start with an aerial photo of the parcel with a hand drawn subdivision showing two additional residential lots).

When the General Plan update commenced, the city agreed to analyze an option to modify the land use designation to allow additional residential and reduced open space as an option. This was expressed in the draft general plan as an approximate 54% open space/46% residential split as depicted in the proposed Land Use Map in Figure 9 of the policy report. Undertaking the analysis was consistent with the discussion at the General Plan Task Force deliberations. The following is a summary of the Task Force consensus:

“The easterly half of the site could contain limited additional residential development of not more than two units; and this ONLY upon documentation, through the environmental review process, that such development would not reduce the mitigation affect [sic] of the site’s current status as visual open space (preserving the rural visual corridor of the Vine Hill Way corridor). Maximum building heights of one story/25’ roof ridge elevation are recommended.”

The draft environmental impact report (DEIR) for the draft general plan update (DGPU) analyzed the impact of this proposed change. The general plan update and DEIR were circulated for comment. The City received approximately 125 letters from individuals with comments on the DGPU. Fifteen of these letters concerned preserving the 635 Vine Hill Way/Freitas parcel as open space (See Appendix D of the policy paper).

As originally set forth in the approvals for the Pine Meadows subdivision, there were three constraints to the inclusion of additional development as contemplated by the property owner’s desired change in land use:

1. Scenic Easement – which was a condition of the original Pine Meadows subdivision;
2. CC&R Restrictions – set forth in the homeowners association regulations; and
3. Environmental Mitigation Measure – of the Pine Meadows EIR

As set forth in detail in the policy report and the owner documentation, the scenic easement was never recorded against the property. While the comment letter from Keep Our Open Space (See Appendix C) makes the argument that recordation was not needed to implement the easement, this analysis assumes that the failure to record the easement leaves the parcel free of the contemplated contractual limitations. The CC&R’s, as originally recorded at the time of the approval of the Pine Meadows subdivision, did include a prohibition of further subdivision, however, the CC&Rs were

subsequently amended by the homeowners association and the court. As amended, the CC&Rs would no longer prohibit subdivision of and conversion of the subject property from open space to residential. Based upon the above, staff concludes these two constraints have been removed. The remaining constraint is the designation of 90% of the parcel as open space as a mitigation for the development of the Vine Hill knoll area as part of the original Pine Meadows subdivision.

The analysis section of the white paper policy report discusses the conclusion of the general plan update DEIR that the conversion of the open space to residential would result in a significant and unavoidable environmental impact. Approval of the DEIR with the reduction of open space would require adoption of a statement of overriding consideration. The report also discusses deleting the mitigation measure from the original subdivision as legally possible per case law, but only if the city can state the reasons for the deletion backed by substantial evidence. The only reason the mitigation might be deleted is for the creation of additional housing to meet housing element policies, which would offset the unavoidable impact and support the overriding consideration.

The white paper policy report sets forth three policy options for the Planning Commission to consider. These are summarized as follows:

1. Retain the 54/46 split proposed in the general plan update to allow additional residential development and reduction of open space
2. Revise the general plan update to retain the existing land use split of 90% open space and 10% residential
3. Revise the general plan update to create a different split to allow additional residential and reduced open space

The pros and cons of each policy alternative are summarized in the white paper.

RECOMMENDATION

This policy discussion will also occur with the City Council to provide direction to staff for the modification of the draft general plan update for the final hearings. It is appropriate for the Planning Commission to make a recommendation at the March 28, 2017, meeting for the City Council to consider in April.

Staff recommends the Planning Commission recommend to the City Council that Option 2 be pursued for the final general plan, which would retain the existing land use split (90% open space/ 10% residential), retain the existing Pine Meadows mitigation measure, and would require a minor modification of the draft general plan land use map.

The staff recommendation is based on the fact that the creation of this open space was a trade off the city made when the Pine Meadows subdivision was approved. The trade off, in the form of the mitigation measure and revised subdivision plan, allowed greater development in other parts of the Vine Hill Way area in exchange for the permanent open space. The residents of the area, and the city as a whole, rely on the open space designation as part of the visual amenities of the area. To now reduce this mitigation is inconsistent with the original compromise when Pine Meadows was approved, and reduces the visual amenities the public now enjoys. Further, the environmental analysis in the DEIR for the general plan update recommends mitigation measures if the land use split is revised, but states that even with these new mitigation measures “the potential for new development to substantially degrade the visual character or quality of the Planning Area remains.”

This conclusion does not appear to be consistent with the Task Force recommendation that the land use be revised only if “such development would not reduce the mitigation affect [sic] of the site’s current status as visual open space (preserving the rural visual corridor of the Vine Hill Way corridor).”

Attachments

Policy Paper

Appendices A - E

Background Information from Property Owner Gary Freitas