

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com
Delivery via electronic mail

April 5, 2016

Hon. Barry Chang, Mayor, and
Cupertino City Council
Cupertino City Hall
10300 Torre Ave.
Cupertino, CA 95014

Re: Ballot question for CCSG Initiative.

Dear Mayor Chang and Council Members,

I am writing to you on behalf of my clients, the Cupertino Residents for Sensible Zoning Action Committee and the proponents of the Cupertino Citizens' Sensible Growth Initiative, in regard to tonight's special city council meeting and its sole agenda item, a proposal to modify the ballot question for the Cupertino Citizens Sensible Growth Initiative (CCSGI). The meeting has apparently been set to respond to a letter the City received from an attorney representing the backers of a counter-initiative (primarily Vallco Property Owner, LLC [AKA San Hill Property Company]) asserting that the City's previously-approved ballot language is inaccurate and must be corrected. My clients agree with the developer's attorney that the previously approved language is inaccurate, but not about the nature of the inaccuracy.

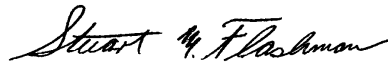
The developer's attorney relies on the report prepared for the City under Elections Code §9212 as showing that the height limit in the City's Neighborhoods would be increased by the CCSGI. However, that report itself was inaccurate because it ignored the fact that in October of 2015 the City Council revised and amended the general plan. In particular, the October 2015 General Plan Amendment revised Figure LU-1, the Community Form Diagram, and that revised diagram is specifically and explicitly included in the CCSGI at page 6. A copy of that revised figure is attached to this letter as Exhibit A. The revised diagram, like that included in the December 2014 general plan revisions, identifies the various "Special Areas" within the City and identifies key land use standards for those areas. At the lower right corner of the diagram, the diagram legend, like that in the December 2014 General Plan, lists the various Special Areas and shows how they are designated in the diagram. However, the October 2015 General Plan Amendment added, at the bottom of that list (which has the heading "Special Areas"), "Neighborhoods" with a block next to it showing that this Special Area is indicated on the diagram in white. The October 2015 General Plan Amendment also added a box at the bottom of Figure LU-1 that identifies a maximum density (15 units per acre) and a maximum height (30 feet) for the Neighborhoods Special Area.

The developer's attorney's letter, and the §9212 report on which it is based, assume that the Neighborhoods are not a Special Area, and are therefore covered by the CCSGI's policy that, "Outside of the Special Areas shown in Figure LU-1, building heights may not exceed 45 feet." However, as noted, the Neighborhoods are explicitly shown in Figure LU-1 as a Special Area. Therefore, the quoted policy does **not** apply to the Neighborhoods. In fact, the CCSGI explicitly says, in **Policy LU-3.0: Community Form** that, "The maximum heights and densities for the Special Areas shown in the Community Form Diagram (Figure LU-1) shall not be exceeded."

Hon. Mayor Chang and City Council - Ballot Question for CCSG Initiative
April 5, 2016
Page 2

Since Figure LU-1 shows the maximum height in the Neighborhoods as 30 feet and the maximum density as fifteen units per acre, those limits are re-enacted by the CCSGI. The City's proposed ballot question must therefore be modified accordingly. My clients also believe that the Elections Code §9212 Report prepared for the City should also be revised to properly reflect the changes that the City Council made to the General Plan in October 2015. A suggested revised ballot question (in both clean and redline form) is attached to this letter as Exhibit B.

Most sincerely



Stuart M. Flashman

Attachments:

October 2015 version of General Plan Figure LU-1 – Community Form Diagram
Proposed Revised Ballot Question

cc: City Manager
City Attorney

Exhibit A

Figure LU-1
COMMUNITY FORM DIAGRAM

Homestead Special Area
Maximum Residential Density
Up to 35 units per acre per General Plan Land Use Map
15 units per acre (southeast corner of Homestead Road and Blaney Avenue)
Maximum Height
30 feet, or 45 feet (south side between De Anza and Stelling)

North Vallco Park Special Area
Maximum Residential Density
25 units per acre
Maximum Height
60 feet

Heart of the City Special Area
Maximum Residential Density
25 or 35 (South Vallco) units per acre
Maximum Height
45 feet, or 30 feet where designated by hatched line

North De Anza Special Area
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

South De Anza Special Area
Maximum Residential Density
25 (north of Bellinger) or 5-15 (south of 89) units per acre
Maximum Height
30 feet

Monta Vista Village Special Area
Maximum Residential Density
Up to 15 units per acre per General Plan Land Use Map
Maximum Height
Up to 30 feet

Bubb Road Special Area
Maximum Residential Density
20 units per acre
Maximum Height
45 feet

Vallco Shopping District Special Area
West of Wolfe Rd
Maximum Residential Density
35 units per acre
Maximum Height
Per Specific Plan
East of Wolfe Rd
Maximum Residential Density
35 units per acre
Maximum Height
Per Specific Plan

Stelling Gateway
West of Stelling Rd
Maximum Residential Density
15 units per acre (southwest corner of Homestead and Stelling Roads)
35 units per acre (northwest corner of I-280 and Stelling Road)
Maximum Height
30 feet
East of Stelling Rd
Maximum Residential Density
35 units per acre
Maximum Height
45 feet

North De Anza Gateway
Maximum Residential Density
35 units per acre
Maximum Height
45 feet

North Vallco Gateway
West of Wolfe Rd
Maximum Residential Density
25 units per acre
Maximum Height
60 feet
East of Wolfe Rd
Maximum Residential Density
25 units per acre
Maximum Height
75 feet (buildings located within 50 feet of the property lines abutting Wolfe Road, Pruneyridge Ave. and Apple Campus 2 site shall not exceed 60 feet)

Oaks Gateway
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

South Vallco Park
Maximum Residential Density
35 units per acre
Maximum Height
45 feet, or 60 feet with retail

North Crossroads Node
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

City Center Node
Maximum Residential Density
25 units per acre
Maximum Height
45 feet or as existing, for existing buildings

Neighborhoods
Maximum Residential Density
As indicated in the General Plan Land Use Map;
15 units per acre for Neighborhood Commercial Sites
Maximum Height
30 feet

Legend

Special Areas	Hillside Transition
Homestead	Urban Service Area
North Vallco Park	Sphere of Influence
Heart of the City	Urban Transition
North De Anza	City Boundary
South De Anza	Boulevards (Arterials)
Monta Vista Village	Avenues (Major Collectors)
Bubb Road	Avenues (Minor Collectors)
Vallco Shopping District	Key Intersections
Neighborhoods	Neighborhood Centers

Building Planes:

- Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area.
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For projects adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review.
- For the North and South Vallco Park areas (except for the Vallco Shopping District Special Area): Maintain the primary building bulk below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.

Rooftop Mechanical Equipment: Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are enclosed, centrally located on the roof and not visible from adjacent streets.

Priority Housing Sites: Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element shall be as reflected in the Housing Element.

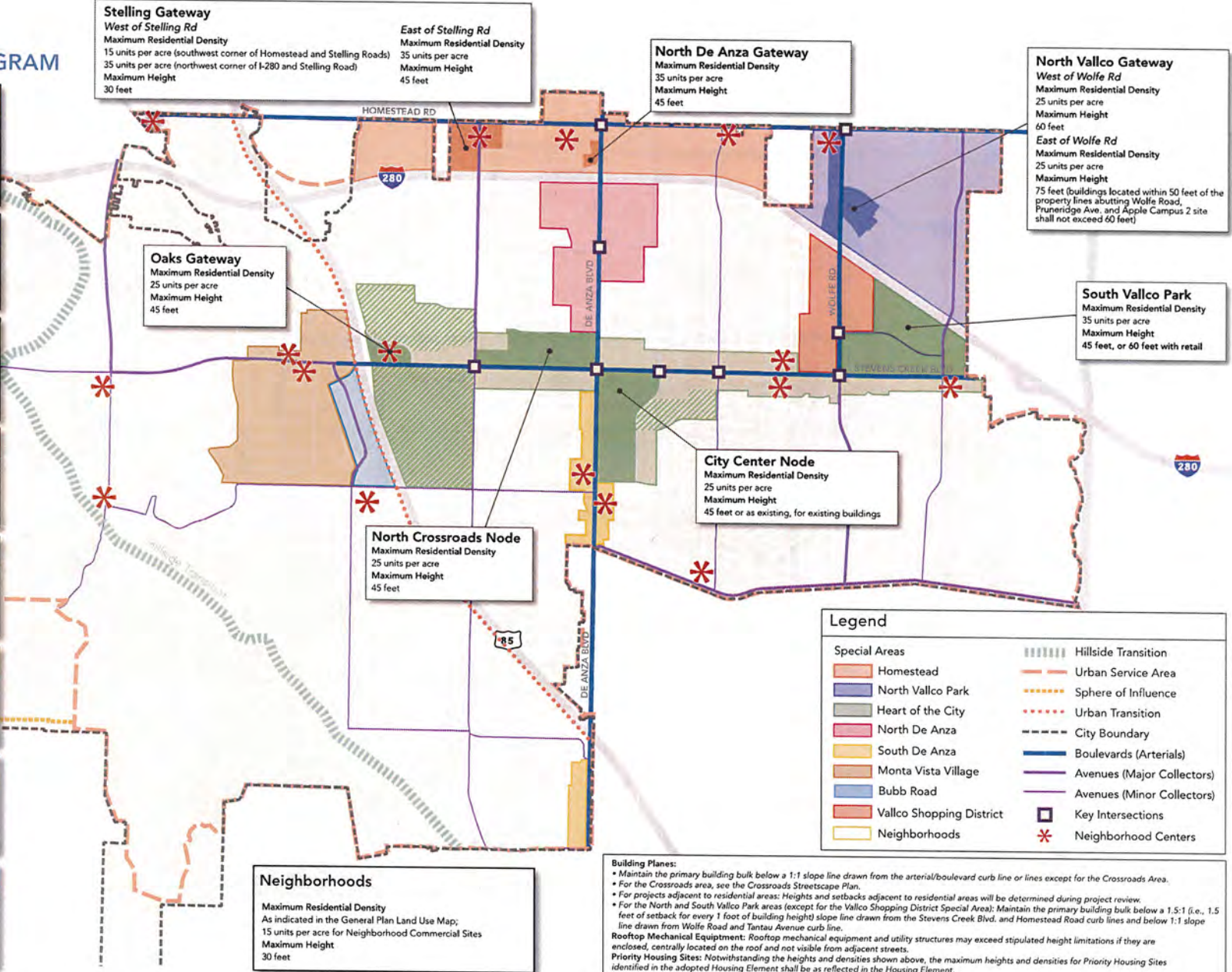


Exhibit B

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, ~~establish a 45-foot maximum building height in the Neighborhoods~~ maintain existing maximum heights and densities in all special areas, including the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, maintain existing maximum heights and densities in all special areas, including the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?