

**CITY OF UNION CITY  
DRAFT MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING  
ON THURSDAY, FEBRUARY 17, 2022, 7:00 P.M.  
HELD VIA TELECONFERENCE**

1. **ROLL CALL:** Chairperson (Vacant); Vice Chair Harpal Mann;  
Commissioner Lee Guio; Commissioner Jo Ann Lew;  
Commissioner Scott Sakakihara  
Commissioner Kevin Finnerty  
  
**STAFF:** Carmela Campbell (Economic & Community Development Director);  
Alex Mog (Attorney); Derek Farmer (Planning Manager); Denisse  
Anzoategui (Moderator); Brandon DeLucas (Planner); Tommy Cho  
(Principal Civil Engineer)
2. **ELECTION OF OFFICERS:**  
  
The Commission elected Harpal Mann to serve as Chairperson and Lee Guio as Vice  
Chair to the Planning Commission.
3. **APPROVAL OF MINUTES:**  
  
The regular Planning Commission Meeting minutes of February 17, 2022 were approved  
as submitted.
4. **ORAL COMMUNICATIONS:** None.
5. **WRITTEN COMMUNICATIONS:** None.
6. **PUBLIC HEARINGS:**
  - A. **CONTINUED HEARINGS:** None.
  - B. **NEW HEARINGS:**
    1. **VETERINARY MEDICAL CENTER, 33663 MISSION BOULEVARD (APN:  
486-6-33), SITE DEVELOPMENT REVIEW (SD-21-003), USE PERMIT (UP-  
21-005) AND VARIANCE (V-21-002)** The applicant, Dr. Surat Gil is seeking  
approvals for 1) Use Permit (UP-21-005) to modify UP-95-1 allowing a  
veterinary clinic, 2) Site Development Review (SD-21-003), for the  
construction of a proposed 946 square foot addition to the existing veterinary  
clinic; and 3) Variance request (V-21-002) to reduce the street side setback  
requirement for the addition from approximately ten (10) feet to two (2) feet.  
The proposed addition would result in a total building size of approximately  
2,472 square feet. The project is located at 33663 Mission Boulevard (APN  
486-6-33), within the CC (Community Commercial) Zoning District. CEQA  
Determination: Staff is recommending that this project be considered  
categorically exempt per Section 15301, Existing Facilities, of the California  
Environmental Quality Act (CEQA).

2. **WINDFLOWER PROPERTIES, 11<sup>TH</sup> STREET (APN: 087-340-002), DEVELOPMENT AGREEMENT (DA-22-001)** The applicant, Windflower Properties, LLC, is seeking approval of a Development Agreement for the Windflower – Block 2 project, for the purpose of extending project approvals that were approved by the City Council on November 14, 2017. The project includes the development of four hundred and forty-three (443) units located on 11<sup>th</sup> Street (APN: 087-340-002) in the CSMU (Station Mixed-Use Commercial) Zoning District. CEQA Determination: The project is within the scope of the Station District Mixed-Use Development Project EIR (certified in November 2010 by City Council Resolution No. 4072-10) and the 2040 Union City General Plan Update EIR (certified on December 10, 2019, by City Council Resolution No. 5548-19). Approval of the Development Agreement is within the scope of the previously certified CEQA documents.

Alex Mog, Deputy City Attorney and Carmela Campbell, Economic & Community Development Director presented the staff report.

Commissioner Lew asked if other options besides extending the Development Agreement had been considered.

Mr. Mog replied that they would no longer have the option to extend the permits any further as it is not in the code. Mr. Mog noted that another option was to amend the existing permits which by doing so would extend the entitlements of the Use Permit and the Site Development Review, but the project applicant did not have those plans finalized yet. Mr. Mog added that another option would be to let the permits expire and obtain new permits but that is a big expense and time consuming to go back through the whole process. Mr. Mog explained that the project is going to stay very similar.

Commissioner Lew stated that it sounds like the City is not looking at other developers to develop the site.

Mr. Mog replied no, and that under the DDA, the developer has the right to the property until December 31, 2024. Mr. Mog added that the City could not look for other developers or anything like that until that the agreement has expired.

Commissioner Lew asked what the likelihood would be that they break ground before December 31, 2024.

Mr. Mog referred the question to the applicant.

Commissioner Lew stated that it was only two or two and three-quarters years away. Commissioner Lew stated she was concerned as it was not a lot of time and considering the conditions of the construction industry, lack of labor, cost of materials, and having the Development Agreement, it sounds like costs are an obstacle to breaking ground.

Mr. Mog replied that they have faced difficulties and the applicant would be better suited to discuss some of the obstacles. Mr. Mog added that COVID certainly played a part.

Commissioner Lew stated that she thought the Development Agreement was excellent and some of the best reading she's had in a long time since before the pandemic.

Commissioner Finnerty stated that he had no questions and thought it was a well-prepared document and added that the request was clear.

Commissioner Sakakihara stated that he did not have any questions.

Commissioner Guio asked if there was any financial involvement including the cost of construction that was the cause of extending the development agreement.

Mr. Mog replied that the City is not a partner in the construction of the project and has no obligations. Mr. Mog stated that all the agreement does is extend their existing approvals. Mr. Mog added that if the Commission decided not to act and the approvals expired then the developer would still have the right until 2024 to the property and could submit a brand-new application. Mr. Mog also added that if they were to start construction on a brand-new application, they would be able to purchase the property. Mr. Mog stated that there are no new obligations, or any financial terms included in the Development Agreement other than the standard language of the fees they will pay when pulling their building permits.

Commissioner Guio thanked Mr. Mog and noted that the applicant wants to proceed but there are changes in construction costs and could indicate to him that there could be potential changes to the design.

Chairperson Mann asked if the update would extend the permits until 2024.

Mr. Mog replied yes.

Chairperson Mann noted that the project was approved in 2017. Chairperson Mann also noted that the City has a housing shortage and there is no land available today for anyone to build, and that it is prime land in the middle of the City that someone else in that time could have constructed something. Chairperson Mann asked if there is good faith from the applicant that they are going to do it in the next two years even after they showed no updates during the past five.

Mr. Mog replied that the applicant could speak to the challenges they faced in the last few years but recalled delays due to COVID that caused a shutdown for a period of time and the high costs of construction. Mr. Mog recalled MidPen's affordable housing project which had design changes that were necessary for that project due to the substantial increase in costs that had to be considered by the City.

Chairperson Mann replied that he understands that the City has no recourse until 2024 but repeated that Union City does not have the land and taxpayers need housing today.

Chairperson Mann stated that it seemed like a bad deal. Chairperson Mann added that he was not against extending the approval but recommended there be some milestones and there must be a plan. Chairperson Mann stated that construction costs would continue to go up. Chairperson Mann noted that the applicant already has a block in the Station District and asked if they were trying to recover their costs from that project and whether they had the funding to

start the next project. Chairperson Mann asked if they had funding in the plan and if the City had done any due diligence.

Mr. Mog replied that this agreement is separate from the agreement as to the selling of the property. Mr. Mog added that those are issues that the City might consider when selling the property and was a decision that was made by the City Council previously and locked in until 2024. Mr. Mog added that the City was very firm in negotiating that the Development Agreement would not extend past the 2024 date. Mr. Mog asked Ms. Campbell if she wanted to add anything.

Ms. Campbell stated that Mr. Mog had summarized it well and repeated that the DDA did not contain language regarding an extension.

Mr. Mog added that if the permits are not extended it would still leave the property locked until 2024. Mr. Mog asked that if the project would become more or less likely if they had to start with the proposals and the permitting all over again.

Chairperson Mann noted that the Planning Commission is bound by the other agreement. Chairperson Mann stated that there are a lot of developers out there interested in this site but would not comment further on that. Chairperson Mann applauded Mr. Mog's drafting of the extension and stated that he had no further questions.

Commissioner Finnerty asked what date the extended Development Agreement would be extended to and asked if that meant five years from the date of the approval.

Mr. Mog replied that it is a great question and that the Development Agreement has a term of five years total, but the Development Agreement requires a building permit for the project and construction to begin by December 31, 2024. Mr. Mog added that some items like public art may not be finalized but the term extends a little after to allow those issues to be resolved and to make sure that all parties are bound by the agreement.

Commissioner Finnerty asked if it was decided to move forward with the recommendation and nothing is done by December 31, 2024, would the disposition of the property return to the City.

Mr. Mog replied that if the permits expired and if nothing happens by land then the City could terminate the DDA agreement that gives them the right to purchase the property. Mr. Mog added that the City would have to decide how to move forward with that property and follow laws for disposing of the property.

Commissioner Finnerty asked that if the DDA is then terminated December 31, 2024, it would seem reasonable that the recommendation would also terminate at that time.

Mr. Mog clarified that the agreement would be signed by the City Council and should not be considered a recommendation. Mr. Mog added that if the permits are not executed by January 1, 2025, then the Development Agreement will expire.

Commissioner Finnerty asked if the Development Agreement was in place for five years, and the disposition doesn't occur at that time then they may have the design in place to build but nothing to build on.

Mr. Mog replied yes.

Commissioner Finnerty asked if there would be any obligation for the City to renegotiate with them for a new agreement if it expired.

Mr. Mog replied no, there wouldn't be. Mr. Mog added that there is explicit language in the DA that is being considered that evening that does not create any obligation for the City to renegotiate or change any deadlines in the DDA.

Commissioner Finnerty reaffirmed that they will have the right to build upon that property until December 31, 2024, but that there are conditions they have to meet. Commissioner Finnerty added that they choose not to extend the Development Agreement, it will not change their ability to build it all, it would only require them to do is go back and reapply.

Mr. Mog replied yes.

Commissioner Finnerty asked if it would just delay them to coming into the property to start development along with other external conditions.

Mr. Mog replied that having to reapply for permits would cause delay for them and for staff to have to review the proposed modifications. Ms. Campbell followed up on feedback provided by Mr. Mog and added that the City sees the Development Agreement as an opportunity for the applicant to be able to pull the permits. Ms. Campbell added that there's been a lot of work done on both sides to get to this point and staff is hopeful that the project will be constructed as there is a need for the units at the Station District area.

Chairperson Mann replied that he believes that the City is doing everything possible and bending backwards. Chairperson Mann asked if they could have the DA also expire on the same date. Chairperson Mann asked if there is any liability to the City in which the applicant could block the City from selling the property to any other interested parties.

Mr. Mog replied that the agreement is clear and there is no expectation that the DDA will be extended and that the parties acknowledge that date and that this isn't intended that the Development Agreement is not intended to change that deadline for the disposition of the property.

Chairperson Mann opened the public comment.

Fei Tsen, Windflower Properties, 666 Post Street, San Francisco, CA 94109, introduced herself to the Commission and stated that she looked forward to the time when we can meet in person with the Commissioners that she has not met yet. Ms. Tsen stated that she has worked with Union City and staff for almost a decade now through many ups and downs, overcoming difficulties including the aftermath of the financial crisis in 2008, the abolition of the Redevelopment Agency, and now the pandemic and through it all, they have persevered. Ms. Tsen stated that Union Flats has been a great success and during the pandemic even though the rents dropped, they were able to keep a remarkable 95% occupancy in that development showing how desirable it is. Ms. Tsen stated that it is a project that they are extremely proud of, and it has won awards and has received recognition for its density next to transit, specifically for

its sustainability. Ms. Tsen added that Windflower went beyond the call of doing the gold project, which the City wanted, and we received the platinum recognition and did it with innovative technology. Ms. Tsen stated that they were the largest modular builder and Windflower 1 was the largest modular project in the Bay Area. Ms. Tsen added that they have certainly proved that they can build a project and have raised the standard of design for the Station District. Ms. Tsen reminded the Commissioner that during the first project they experienced a time of high economic crisis and there were no developers when the City made a call for developers. Ms. Tsen noted that they were the only ones who were brave enough to come in and invest in that project and invest in the Station District. Ms. Tsen added that they helped the City obtain the State funding that was necessary to assist building the parking garage. Ms. Tsen also added that they assisted the City in securing funds for the pedestrian crossing and the BART improvements which will link the Station District to the Bart station. Ms. Tsen stated that this has been an unprecedented time, and it is an extraordinarily difficult time to build multifamily rental housing. Ms. Tsen noted that the San Francisco Bay Area had the highest construction cost and when the pandemic hit, they hoped that there would be a drop in Bay Area construction costs. Ms. Tsen noted that what stopped during the pandemic was debt financing and equity investment for multifamily housing. Ms. Tsen noted that while there still a material supply disruption and lack of skilled labor and no fall in the prices. Ms. Tsen stated that they believe and are optimistic that they can make the project work. Ms. Tsen stated that they have already invested a tremendous amount of capital and time in architects, engineering, design studies soil studies, all that is necessarily done during the predevelopment phase of a project. Ms. Tsen added that what they're doing now is looking for ways in which they can make their design more efficient. Ms. Tsen added that they would be returning to the Planning Commission and the City Council when they are ready with the design changes. Ms. Tsen added that during the first project in Union City on Block 3 they had the benefit of almost 20 million in State grants, which helped secure the funding for the garage and the pedestrian crossing, but Block 2 had no public subsidies and no financial assistance. Ms. Tsen stated that there are no programs that can help with the project income with no subsidy as opposed to low income, which can get a subsidy. Ms. Tsen added that it is not luxury income at the very top of the market which you can get in places like San Francisco but building middle-income housing that is for the workforce and it is attractive, dense housing as it should be next to the next to the Bart station. Ms. s. Tse stated that the Development Agreement would help them continue to work in designing and financing the project as it is a very complex project that has required tremendous investment of capital and time to carry the project during the pre-development phase. Ms. Tsen stated that she believed this will be the largest single development in Union City, if not in the East Bay and they are committed to finishing what they have started in the Station District. Ms. Tsen agreed with Chairperson Mann that the Bay Area has a housing shortage. Ms. Tsen explained the reason for the housing shortage even though there may be land available are the difficulties of high construction costs and putting together the financing for these types of projects makes it very difficult without some assistance. Ms. sen stated that she enjoyed working with the City and City staff and believe in the same value by hoping to create a community, which is pedestrian-oriented, vibrant along the street, which has great amenities, and great housing units. Ms. Tsen added they think that they have demonstrated with their first project that they can do it in a way that meets the City's expectations and standards. Ms. Tsen stated that she could answer any questions the Commission may have.

Commissioner Guio stated that his concern really boiled down to what he read in the newspaper that property values are going to go up another 20% this year along with the costs of everything

in general going up. Commissioner Guio asked how could they meet the end goal and have it developed in the time allotted.

Ms. Tsen replied that she would prefer more time but was willing to live within the constraints of the DDA and the Development Agreement. Ms. Tsen added that they have already invested millions in the design and engineering and studies of doing the pre-development phase and are currently looking for financing as the pandemic made it impossible to get debt or equity financing. Ms. Tsen added that they hope now that it is over that there is an opening in the investment community for similar projects. Ms. Tsen stated that she was optimistic because she is a public developer but doesn't know if they'll be able to get the pricing for the project into a range that's feasible. Ms. Tsen added that the projects are expensive to build but that rents have not necessarily increased in a way which can amortize those costs and they must make a balance. Ms. Tsen added that she was interested in making the units as affordable as they could and because they are not subsidized then they could not be very low. Ms. Tsen added that they have not asked the City for any subsidies and noted that there isn't any multifamily rental housing that falls in the category being constructed currently, all the housing being built is affordable housing or luxury and they received their contracts pre-pandemic.

Commissioner Lew stated that she liked Ms. Tsen's determination but was not confident that they will be breaking ground by December 31, 2024, due to the proposed changes and because of the lack of funding. Commissioner Lew asked where they go to get funding, and if there are known sources they usually go to that they can count on.

Ms. Tsen replied that they must go to a construction lender to get the financing and have various construction vendors that have worked with them before. Ms. Tsen added that the financing that they got for the first project was from Bank of America but also have to get equity investors into the project and that has been the difficult during the pandemic as they saw decreases in rents and there was a lot of uncertainty as to what would actually happen. Ms. Tsen added that only this year, they started to see some interest by equity investors in multifamily housing projects. Ms. Tsen added that this project would cost about 200 million dollars for the construction of 443 units. Ms. Tsen stated that the way they finance projects is very complicated, the construction loan and debt financing is never the problem but the equity financing is. Ms. Tsen stated that they are hoping to interest someone in Union City especially because of their track record.

Commissioner Lew asked if they were looking at a whole city block and if they would phase the project and have people move in when they finished the first portion.

Ms. Tsen replied no and that they will build all at once. Ms. Tsen stated that the plan is to have them built modularly like the last project. Ms. Tsen stated that it reduced some of the labor costs because it was produced in the factory and could be produced in the factory during times when it was wet or couldn't be on the site. Ms. Tsen also mentioned that they would still look at the pricing to build it traditionally. Ms. Tsen noted the spike in lumber prices last year where the prices went up to almost 1,600 per square foot, and they have since dropped, while not back to where it was pre COVID but certainly less than what it was a year ago. Ms. Tsen stated that they we're hoping that some of the supply markets will stabilize and together with some of the design changes will be able to make the project more feasible.

Commissioner Lew stated that she was glad Ms. Tsen mentioned modular building because she did not recall that they were going to use modular building for Windflower 2.

Ms. Tsen replied that they are designing it to be built modularly but did not have to be done that way. Ms. Tsen added that it will be determined by the costs that they get from the contractors and subcontractors. Ms. Tsen added that the modular system has provided them with some savings both in time and cost but was unsure of the costs in today's market.

Commissioner Lew thanked Ms. Tsen for answering her questions and wished her much luck in the future. Commissioner Lew noted that it would be really tough and while they would most likely recommend approval to the City Council they know they could potentially not even break ground. Commissioner Lew asked Ms. Tsen what the chances were that they would break ground before December 31, 2024.

Ms. Tsen replied that they are working as intensely as they can and have already invested quite a bit of capital into the project to get to this stage. Ms. Tsen added that if they are not successful and they lose their investment, and it would mean a lot of money and time and they would not like to do that. Ms. Tsen emphasized that this is a partnership with Union City and they have not asked for any subsidies from the City and were actually looking at the possibilities at the State level and working with the Governor's office right now on policies that could help. Ms. Tsen added that there are a lot of cities in the whole Bay Area that cannot go forward and are middle income and that is why there is a shortage of housing the Bay Area. Ms. Tsen stated that the pandemic has been an unprecedented time and they basically lost two years, but they are getting started again and are working with investors again on due diligence and facing the new cost estimates from the contractors.

Commissioner Lew thanked Ms. Tsen for filling the Commission in with all that information as it helped to better understand the situation.

Chairperson Mann thanked Ms. Tsen for Windflower 1 and her commitment to Union City. Chairperson Mann stated that it was an excellent project and hoped that they were able to recover their ROI on that project. Chairperson Mann noted COVID setbacks, lack of grants from the City, a difficult investment environment, and the decision to either go modular or traditional and asked what her confidence level was that they would start construction before December 2024.

Ms. Tsen replied that they are working very diligently towards that goal and that she would be one to suffer the most if they were unable to do it. Ms. Tsen stated that a lot of obtaining that goal will depend on economic conditions and whether investors feel enough confidence in the future and will depend on if rents rise enough. Ms. Tsen further explained that they had almost 15% of rents drop in Union City that was better than many in San Francisco and Oakland that even saw 40% at one point. Ms. Tsen added that once it approaches pre-COVID levels we're going to be able to make more financial sense of the project as a whole. Ms. Tsen added that they will continue to work diligently to get cost estimates and potential investors who may be interested in the project that will need to do their due diligence. Ms. Tsen stated that all developers in the Bay Area are in a similar situation.

Chairperson Mann stated that the Planning Commission is here to work with Ms. Tsen to get the project started and is cognizant of the fact that it is a difficult investment period, and the costs



have gone up and will continue to go up. Chairperson Mann stated that he was supportive of extending the DA but is bound and reminded by the population of what is going on in the Bay Area as far as affordable housing. Chairperson Mann added that any project that come in there is always the discussion of whether Union City can meet its quota for affordable units and this is not just to put this on yourself it's a practicality here in the Bay Area and the Planning Commission is at the forefront of that discussion debate.

Ms. Tsen replied that it is very hard to build housing in the Bay Area and it is why they have such a lack of housing and lack of affordable housing but has been a proponent of ways to build housing. Ms. Tsen added that she is interested in these housing developments also for the policies that can be made as models for other cities and developers and that's why they strive to build affordable, sustainable, and densely populated housing next to transit.

Chairperson Mann thanked Ms. Tsen for being there and answering the Commission's questions.

Ms. Tsen thanked Chairperson Mann for his support and City staff as they have always been very professional in the way that they have worked with them. Ms. Tsen stated that they have a real commitment to Union City and are already proud of the work they have done and the impact they have had on the Station District. Ms. Tsen stated that they hope to finish the next project as it will be their legacy and want to work with the Planning Commission and the City Council to make this feasible and to make it work.

Chairperson Mann closed the Public Hearing.

Commissioner Lew stated that she felt reluctant to make a recommendation but didn't believe they have a choice. Commissioner Lew stated that she believes the applicant will try her best to get the project moving along and she would wait for the groundbreaking.

Commissioner Lew moved that the Planning Commission recommend to the City Council adoption of an ordinance approving Development Agreement (DA-22-001) making the required findings in the staff report and adopting a resolution confirming this action.

Commissioner Guio seconded.

The motion was carried by the following roll call vote:

AYES: (MANN, GUIO, LEW, SAKAKIHARA, FINNERTY)

NOES: NONE

ABSTAIN: NONE

ABSENT:

The motion passes 5-0.

## **7. SUPPLEMENTAL STAFF REPORTS:**

- A. **CONTINUED REPORTS:** None.
- B. **NEW REPORTS:** None.
- 8. **ECONOMIC DEVELOPMENT REPORTS:** None.
- 9. **COMMISSION MATTERS:**
  - A. Follow-up on Planning Commission referrals to the City Council:
  - B. Upcoming applications for the Regular Planning Commission meeting for March 3, 2022.
- 10. **GOOD OF THE ORDER:**
- 11. **ADJOURNMENT:** 9:26 PM

APPROVED:

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HARPAL MANN, CHAIRPERSON

ATTEST:

\_\_\_\_\_  
CARMELA CAMPBELL, SECRETARY