

Item # 12

AGENDA DATE: 02/01/17

SUPPLEMENTAL # 1

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Subject: Public Comment, Feb 1 City Council Agenda Item #12, Sunsweet Development

Mayor and Council Members,

Once again I find it necessary to ask, if the rules aren't the rules, why have them?

Morgan Hill has building guidelines - zoning designations, building codes, and in this instance a Downtown Specific Plan - that dictate how the city will be developed. Yet at times it seems too difficult for developers to present a project to the City Council and Planning Commission for approval that comes to them designed to the specifications that are codified and supposed to be enforced by the very same City Council and Planning Commission.

The Sunsweet project is seeking exemptions for design allowances, referred to as "areas of requested flexibility," through a zoning change called a "Planned Development Overlay" that allows whatever doesn't fit within the established building guidelines to fit. While I could understand allowances being needed to enhance structural integrity or address safety concerns, the allowance proposed for this project do none of that.

1) The building exceeds the maximum height limit designated in the Downtown Specific Plan. There is no language in the Plan allowing for buildings over four stories in our downtown. I asked City Planner Terry Linder about this prior to the Planning Commission meeting for the project on Jan 10. Her response was that while I was correct about the limits for height and number of stories for this project (55 ft/4 stories), she said the loft spaces are intermittent and not a full fifth floor. This is in direct contradiction to Ms. Linder's staff report which describes the development as "a five-story building." To be clear, any story above a fourth floor is a fifth floor, regardless of how many feet in height it is or how fully it covers the fourth floor.

2) The project does not provide adequate parking as required for the designated uses of the development. The project falls 12 spaces short of meeting parking needs. This will likely further impact the surrounding neighborhood already suffering from a lack of residential parking. While the City may allow the developer to buy an exemption through in-lieu fees to offset that requirement, that money will likely go to develop parking elsewhere and not be applied to the impacted neighborhood.

3) The proposed square footage of commercial space is only 42 percent of the minimum required. The design also doesn't meet the commercial depth requirement of 80 feet, requiring an allowance for a 30- to 40-foot depth reduction. In addition, over half (55%) of the commercial space is being designated for the project's leasing office, which is not a permitted use and is a substantial loss of potential retail space.

This project does not "comply with the Downtown Plan and all applicable rules and regulations in effect...including but not limited to applicable zoning and planning documents." As such, the project does not meet the requirements under Measure A to obtain exempt downtown building allotments. Since the project design must be found consistent with the design guidelines of the Downtown Specific Plan to obtain those exempt allotments - which I'm sure you are aware expire on March 1, 2017 - the only way the project will meet the guidelines and timelines is if the City Council approves the zoning change. In other words, the City Council must change the existing rules to fit the project rather than force the project to fit the existing rules.

Further, this project does not meet "the intent" of the Downtown Specific Plan as the intent of the Plan is spelled out through the standards set within the Plan. The Plan, by its own definition, "is a legal document that supplements the Morgan Hill General Plan and Zoning Ordinance for the Downtown area" to provide "development standards for new commercial spaces." Even with compromises made by the Planning Commission for this project, the development still falls short of meeting development standards that were in place when the project was being designed, and takes excessive advantage of the City's flexibility in making accommodations.

No one has asked the developer the big question, "Why wasn't the project designed to meet the existing standards defined in the zoning and building codes, and within the Downtown Specific Plan, from its inception?" It makes me curious as to why a developer, who is familiar with Morgan Hill's development guidelines and has a multi-million dollar investment at hand, would risk being out of compliance with numerous building codes. To me that's foolish, unless the developer had a reasonable expectation that those requirements would be overlooked, were negotiable, or would be otherwise accommodated.

The codes, rules, requirements, the General Plan and related Specific Plan should not be viewed by the City Council or Planning Commission as suggestions. They were established by the City Council as being in the best interest of Morgan Hill. These are the things the Council put in place to assure the community they represent that there is consistency between the actions of the Council and the expectations of the residents. As such, they are the means that provide residents with oversight on Council actions related to development. When the Council changes the standards and changes the expectations, it takes away the residents' ability to monitor the Council and the City's progress with any degree of certainty. When the perception of the residents is that the rules are insignificant, the residents' perception of themselves can be that they are insignificant, as well.

Mayor Tate said to me regarding Council decisions, "The key is always what's best for Morgan Hill." I do not see how circumventing guidelines to increase residential space with fifth-floor lofts while reducing residential parking, or to add office space at the expense of reduced retail space, are examples of what's best for Morgan Hill. The key should not be the product, it should be the process. The key to what's always best for Morgan Hill is how the residents' trust in the process translates into trust in the Council. For that to happen, we all need to follow the same rules.

Chris Monack