

STAFF REPORT

DATE: November 4, 2020

TO: Planning Commission

FROM: Sherri Metzker, Principal Planner

SUBJECT: **Bretton Woods Subdivision
Request for Language Clarification
For Condition of Approval #51 For
39660 West Covell Boulevard -- Bretton Woods Formerly Known as West
Davis Active Adult Community (WDAAC)** – Planning Applications (PA) #19-
12 & #20-09 for Small Lots Tentative Subdivision Map (TM) #4-19 for Phases 1,
2 and 3A, Final Planned Development (FPD) #01-20 for Phases 1, 2, and 3A,
Design Review (DR) #03-20 for Phases 1, 2, & 3A, and Addendum to the Final
Environmental Impact Report (EIR)

Recommendation

The record of the Planning Commission meeting of September 23, 2020, includes the language of Condition #51, which reads as follows:

51. Prior to issuance of the building permit for any portion of the activity and wellness center, the developer shall post a financial security, in a form acceptable to the City Attorney and the Community Development and Sustainability Director, which will guarantee the construction and completion of the activity and wellness center (with the exception of the coffee house and restaurant) within 2 years of the issuance of the permit.

The applicant has requested that the Planning Commission reconsider the language of this condition to clarify certain provisions contained therein. Staff recommends that the Planning Commission consider the applicant's explanation and decide whether to augment the language of condition number 51 or not.

Executive Summary

On September 23, 2020, the Planning Commission completed its public hearing process for the project known as Bretton Woods. Following the meeting, the applicant contacted staff with several questions regarding condition #51. While the applicant is in general agreement with the provision of the condition, there are remaining detailed concerns relative to the actual implementation of the condition. Staff believes that it would be in the best interest of the city if those details are worked out with the Planning Commission.

Analysis

The applicant is concerned that the condition, as it was recorded, does not accurately reflect the discussion of the Commission and that it may impose a requirement for financial assurances that cannot be achieved, thereby unintentionally frustrating the underlying objective of the Commission. As such, the Applicant would like the Commission to consider revising the Condition to better achieve the goals and objectives identified during the hearing process.

In 2018 the Activity & Wellness Center was envisioned as one large building with multiple uses located therein. The concept at that time was for one building that was primarily the Community Clubhouse and Pool serving as amenities for the HOA, but also included anticipated uses such as office, medical office, meeting space, coffee shop, and a private health club. This vision for a mixed-use activity and wellness center is reflected in the Project's Development Agreement, which states as follows:

Development Agreement Exhibit G – Health & Wellness Commitments

Activity and Wellness Center. Developer shall construct an activity and wellness center for the use and enjoyment of the residents of the Project, much of which will also be made available to the community at large. Construction of the activity and wellness center, as the anchor of a mixed-use center that will also include limited retail uses, shall commence prior to the City's issuance of the three-hundred and first building permit for a Project residential unit. The activity and wellness center shall include: limited office and retail space, including a privately owned and operated health club with shared access to the community owned swimming pool. Additionally, the center will contain community meeting space for various activities including classes and seminars. The facility will further include a clubhouse for the use and enjoyment of the neighborhood association.

The primary issue today is there is no definition of what the Activity and Wellness Center will be. The 2018 conceptual Project Site Plan a single, large building concept for the Activity and Wellness Center, placing all uses in one structure. Today, the applicant has proposed four individual buildings that will make up the activity and wellness center and its various components.

During the public hearing, the Planning Commission raised the concern that although the Activity and Wellness Center has a required construction starting time within the Development Agreement, it does not have a completion date. Furthermore, future residents of the homes within the subdivision may not see the facility completed in a timely manner because the subdivision itself included fewer lots than the 301 lot trigger included in the Development Agreement. This could also mean that residents could have to drive out of the subdivision to go to gym facilities. Staff proposed the language in condition 51 to address those concerns.

The applicant has two primary concerns with the condition language, the timing of the construction and the inability to post a bond on a private project. The applicant's reasoning and explanation for reconsideration are in the attached letter.

Attachment

1. Applicant Letter Outlining Revision to Condition of Approval No. 51

P:\Planning\Current Planning Applications\Covell Boulevard\39660 W. Covell Blvd\PA #20-09 Small Lots_ Subdivision Tent Map_ Phase I, 2, 3A\Bretton Woods Phases 1, 2, 3A Submittal-6-3-2020\PC Staff report\PC_SR Nov 4 2020 Clarify condition 51.docx



October 27, 2020

Ms. Sherri Metzker
Community Development and Sustainability
City of Davis
23 Russell Blvd
Davis, CA 95616

Subject: Bretton Woods – Request for Reconsideration and Clarification of
Condition of Approval No. 51 for Tentative Subdivision Maps #4-19 for
Phases 1, 2 and 3A

Dear Ms. Metzker:

We are requesting reconsideration and clarification of Condition of Approval No.51 on the Bretton Woods tentative map (Project) which was approved by the Planning Commission on September 23, 2020. The Condition, as it was reflected in the approved Map conditions, reads as follows:

Condition of Approval 51, as approved on September 23, 2020.

51. Prior to issuance of the building permit for any portion of the activity and wellness center, the developer shall post a financial security, in a form acceptable to the City Attorney and the Community Development and Sustainability Director, which will guarantee the construction and completion of the activity and wellness center (with the exception of the coffee house and restaurant) within 2 years of the issuance of the permit.

We are concerned that the condition, as it was recorded, does not accurately reflect the discussion of the Commission and that it may impose a requirement for financial assurances that cannot be achieved, thereby unintentionally frustrating the underlying objective of the Commission. As such, the Applicant would like the Commission to consider revising the Condition to better achieve the goals and objectives identified during the hearing process.

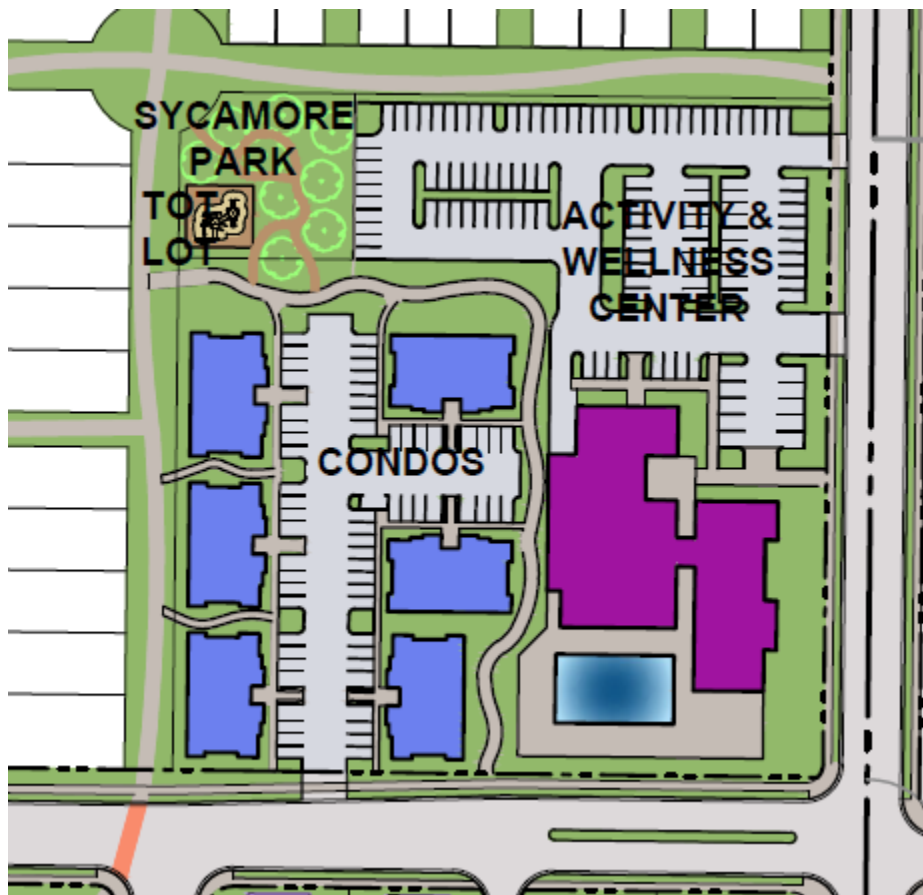
Background

In 2018 the Activity & Wellness Center was envisioned as one large building with multiple uses located therein. The concept at that time was for one building that was primarily the Community Clubhouse and Pool serving as amenities for the HOA, but also included anticipated uses such as office, medical office, meeting space, coffee shop, and a private health club. This vision for a mixed-use activity and wellness center was reflected in the Project's Development Agreement which states as follows:

Exhibit G – Health & Wellness Commitments

Activity and Wellness Center. Developer shall construct an activity and wellness center for the use and enjoyment of the residents of the Project, much of which will also be made available to the community at large. Construction of the activity and wellness center, as the anchor of a mixed-use center that will also include limited retail uses, shall commence prior to the City’s issuance of the three-hundred and first building permit for a Project residential unit. The activity and wellness center shall include: limited office and retail space, including a privately owned and operated health club with shared access to the community owned swimming pool. Additionally, the center will contain community meeting space for various activities including classes and seminars. The facility will further include a clubhouse for the use and enjoyment of the neighborhood association.

The 2018 conceptual Project Site Plan reflected the one, large building concept for the Activity and Wellness Center, placing all uses in one structure (see below in purple).



As the Project and its design have progressed, there are now four separate and distinct buildings anticipated to make up the Activity & Wellness Center. These structures include:

- 1) the community clubhouse, swimming pool and adjacent transit hub,
- 2) the private fitness/wellness center with attached retail space (coffee shop),
- 3) the office building, and
- 4) the restaurant.

With the separation of the uses, the Project more effectively engages and activates Risling Court. The redesign also results in a less pronounced parking area and more effectively accommodates transit and pedestrian circulation (see revised design below).¹



Planning Commission Discussion

At the public hearing, Commissioner Robertson expressed concern that the DA requires construction of the Activity and Wellness Center to “commence” prior to the 301st residential unit, but it does not ensure its completion. He correctly noted that all homes in

¹ Sycamore Grove and the Tot Lot, though adjacent, are not components of the Activity and Wellness Center. The Baseline Project Features commit to the installation of the tot lot and sycamore grove in the first phase; the Activity and Wellness Center must be constructed as part of the second phase.

Bretton Woods could be fully constructed and occupied without residents having the benefit of the promised community facilities. Chair Essex also expressed concern that, if the Activity and Wellness Center were not completed in a timely manner, residents would be required to drive across town for a gym facility. In response to these comments, at the continuation of the hearing, City staff suggested a condition of approval requiring the Developer to not only commence construction but to “completion of the project within 2 years of the issuance of the permit.” The condition also requires the Developer to “post a financial security” for the Activity and Wellness Center which could be used toward construction of the structures if the condition were not met.

After reviewing the proposed condition, the Applicant submitted a letter requesting that only the clubhouse and pool components of the activity and wellness center be subject to this condition. The Applicant pointed to the current economic environment and the considerable uncertainty surrounding when and if the restaurant and fitness industries will recover from the COVID-fueled recession and be ready to expand, noting that this may impact its ability to attract tenants within the near term. Our letter led to a discussion at the continuation of our hearing in which the proposed coffee shop and restaurant were excluded from the two-year obligations of the condition, but the club house, pool, office and the private fitness facility are subject to the requirement to provide “financial security” and be completed “within 2 years of the issuance of the permit.”

Justification for the Revision to Condition 51

While we greatly appreciate the Commission’s recognition of the real challenges that may be faced in attracting a new restaurant or coffee shop to the Bretton Woods in the next few years as Davis recovers from the economic turmoil of COVID-19, we are requesting clarification and reconsideration of Condition of Approval 51 to revisit two components of the condition:

1. the intended triggering event for completing construction of various components of the center, i.e. timing, and
2. the inability to obtain surety on private commercial buildings.

First, regarding timing, during the course of the Commission discussion there were several references to the DA provision which states that construction at the Activity and Wellness Center shall commence prior to issuance of the 301st residential building permit (included above). It was our impression that some members of the Commission felt that not being required to start construction until 301st home was generous, and that it wanted assurances that the amenities would not just be commenced half way through the project, but finished in a timely manner. It seemed that support for requiring the Center to be fully constructed within two years of its commencement, assumed that construction of the Center would not commence until after 300 residential units had been built. Thus, by mandating completion within two years of commencement, the Activity and Wellness Center would be completed more-or-less concurrent with the residential units rather than having been “commenced” but sitting unfinished for several years thereafter.

However, the way the condition is written, it says that construction of the entire Activity and Wellness Center (excluding the coffee shop and restaurant) must be completed within

2 years of issuance of the first building permit within the Activity and Wellness Center, not within two years of the issuance of the 301st residential building permit. This is potentially problematic if the master home builder decides that they would like to use the clubhouse and pool (the anchor components of the Activity and Wellness Center) to market the community. It is likely that the home builder could elect to build those community amenities on day one, prior to constructing any homes.

In such a scenario, under the language of Condition 51, the Developer would need to complete the private fitness facility, ancillary retail and the office building two years after the clubhouse is commenced, potentially well in advance of the 300th home. This could result in an undue financial burden by requiring the construction of commercial buildings before there is adequate population to attract commercial tenants. No one benefits from constructed but vacant commercial buildings. We do not believe that this was the intent of the Commission nor is it consistent with the timing contemplated during Commission deliberations. As such, we are asking for clarification that the objective is to have the majority of the Activity and Wellness Center fully constructed concurrent with the homes.

Second, it is highly unusual to require financial security on structures that are not public or quasi-public in nature. Typically, financial security is required for public improvements such as roads, parks, trails and infrastructure improvements like sewer and storm drainage; items which, if not built by the developer, would become the financial burden of the municipality to complete. It will be challenging if not impossible to find a financial institution willing to provide financial security for the Activity and Wellness Center uses other than the community clubhouse and pool. We are concerned that financial security for a private fitness center, offices, restaurant / commercial uses will be difficult, if not impossible, to obtain and could delay or prevent the commencement of any construction of the Activity and Wellness Center. To elaborate, should security not be available to guarantee the construction of the other private buildings, pursuant to the condition as currently written, the community clubhouse construction would be forced to be postponed. We are asking the Commission to reconsider the obligation for financial assurance to complete private buildings.

We appreciate the opportunity to revisit this very narrow issue and look forward to a condition of approval that may achieve the desired outcome of the Commission.

Sincerely,

//s//

J. David Taormino