COUNCIL AGENDA: 05-06-08
ITEM: 10.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: April 14, 2008

COUNCIL DISTRICT: 6
SNI AREA: N/A

SUBJECT: FILE NO. GP07-06-01/GPT07-06-01 – GENERAL PLAN LAND USE AND TEXT AMENDMENT REQUEST TO: 1) AMEND THE GENERAL PLAN LAND USE/TRANSPORTATION DIAGRAM DESIGNATION FROM OFFICE TO MEDIUM HIGH DENSITY RESIDENTIAL (12-25 DU/AC) ON 5.15 ACRES OF A 7.4-ACRE SITE; AND 2) INCREASE THE MAXIMUM BUILDING HEIGHT LIMIT FROM 50 FEET TO 90 FEET BETWEEN DUDLEY AVENUE AND SOUTH BAYWOOD AVENUE. THE SITE IS LOCATED NORTH OF I-280 AND TISCH WAY, WEST OF SOUTH MONROE STREET AND SOUTH BAYWOOD AVENUE, AND EAST OF DUDLEY AVENUE (485 SOUTH MONROE STREET).

RECOMMENDATION

The Planning Commission voted 4-3-0 (Commissioners Kalra, Jensen, and Zito opposed) to recommend that the City Council **deny** the General Plan amendment request to: 1) amend the General Plan Land Use/Transportation Diagram designation from Office to Medium High Density Residential (12-25 DU/AC) on 5.15 acres of a 7.4-acre site; and 2) increase the maximum building height limit from 50 feet to 90 feet between Dudley Avenue and South Baywood Avenue, on site located north of I-280 and Tisch Way, west of South Monroe Street and South Baywood Avenue, and east of Dudley Avenue (485 South Monroe Street).

OUTCOME

Denial of the proposed General Plan amendment would result in no change to the existing General Plan Land Use/Transportation Diagram designation of Office and no change to the existing maximum allowable building height of 50 feet. The Office land use designation allows business and professional offices, and it is intended for low intensity development that is compatible with residential neighborhoods. The existing Office designation on the subject site supports this intent.

EXECUTIVE SUMMARY

The applicant, Silverstone Communities, requests a General Plan amendment to convert approximately five acres of Office-designated land to residential use (File No. GP07-06-01) on a site located at 485 South Monroe Street. The proposal is subject to the Framework for

Preservation of Employment Lands (Framework) to preserve remaining industrial and commercial lands in the City of San José, and this proposal in order to be consistent with the Framework must maintain no net loss of job capacity as well as provide Extraordinary Benefit through a Development Agreement or like mechanism. The applicant's original proposal for Extraordinary Benefit consisted of items of ordinary occurrence as part of a development project, reflecting standard conditions of approval agreed upon for their proposed development project (such as replacing the existing Baywood Avenue with Hatton Street to maintain a westerly street frontage on Santana Park), which conditions would typically have been included and would not have been considered extraordinary prior to the Council's adoption of the Framework. In response to this initial proposal, staff requested that the applicant propose additional benefits that would provide the basis for a Development Agreement. Through multiple communications, the applicant expressed that they were not interested in further negotiations.

On April 9, 2008, the Planning Commission held a public hearing on the subject General Plan amendment request. During the hearing, the applicant presented for the first time new items to constitute an Extraordinary Benefit of their proposal for purposes of meeting the Framework, including:

1. Provide Guarantee of Constructing New Office Building - $1 million;
2. LEED Silver certification for townhome development; and
3. Narrowing Monroe Street to Calm Traffic.

The proposed LEED Silver rating is not extraordinary given the City's goal of requiring large private development to achieve LEED Silver rating as a baseline and the application of this requirement to other residential projects that were not subject to the "Extraordinary Benefit" requirement. Similarly, guaranteeing construction of the office building is not an Extraordinary Benefit because it is necessary in order for the project to meet the no net job loss requirement of the Framework. The narrowing of Monroe Street is a standard street frontage improvement required by the applicant's proposed townhouse development, and in this case the City is vacating land for the benefit of this private project. In summary, the new items for Extraordinary Benefit proposed by the applicant represent marginal additions to the original proposal. Because the elements being offered to the City, in order to lessen the adverse impacts related to converting employment lands, are items that projects typically offer to the City even when no employment lands are being converted, it is staff's conclusion that these items are insufficient to meet the Framework and Development Agreement Ordinance Extraordinary Benefit criteria.

In conclusion, staff is recommending denial of the proposed amendment because it is not consistent with the Framework requirement for Extraordinary Benefit to the City as part of a proposed conversion of employment lands.

BACKGROUND

In January 2007, the applicant, Silverstone Communities, requested a General Plan amendment to convert an existing office use located at 485 South Monroe Street to residential use. On October 23, 2007, the City Council adopted the Framework for Preservation of Employment Lands (Framework) to preserve remaining industrial and commercial lands in the City of San José. This policy provides criteria to maintain no net loss of employment capacity on lands designated in the San José 2020 General Plan for commercial or industrial uses. File No. GP07-06-01, the 485 South Monroe Street

General Plan amendment, is subject to the Framework because it proposes conversion of (Commercial Office) employment land to residential use. In January 2008, the applicant filed the a separate General Plan amendment request, File No. GP08-09-01, as a partial offset to the loss of job capacity from the conversion at 485 South Monroe Street from Office to Medium High Density Residential (12-25 dwelling units per acre). The property owners of the Blossom Hill Road site have consented to this General Plan amendment request.

On April 9, 2008, the Planning Commission held a public hearing on the subject General Plan amendment request. The Director of Planning, Building and Code Enforcement recommended **denial** of the General Plan amendment.

Public Testimony

Erik Schoennauer, representing the applicant, stated that staff expressed support of the proposed residential use when the application was filed in January 2007. He added that the site fits into the context of the existing neighborhood and that the project will provide a pedestrian connection to Santana Row. Mr. Schoennauer noted that both the neighborhood and the Parks Commission expressed strong support for the proposal. He also stated that the proposal meets the Framework criterion for no net loss of job capacity. In order to provide Extraordinary Benefit, Mr. Schoennauer explained that the applicant will provide park maintenance fees of $30,000 per year for 30 years and sell a portion of the site at appraised market value to the City to expand Santana Park. He also noted that the applicant will demolish South Baywood Avenue and construct Hatton Street as part of the park expansion.

Mike Flaugher, speaking on behalf of the Parks Commission, noted that the area is isolated and sees the park expansion as a benefit for the neighborhood. He indicated that the Parks Commission supports the dedication of parklands as an Extraordinary Benefit.

In response to a request for clarification from the Planning Commission, staff explained that there are Park Trust Fund fees received from Santana Row that have not been appropriated to a specific site, and that while they may be sufficient to expand the park, further analysis is necessary, but it is likely that they are insufficient to purchase and build the expansion of Santana Park as envisioned during the development of Santana Row.

Steve Hall, a neighborhood resident, stated that the park would benefit the neighborhood and that he expected residential development to be a much better neighbor than the previous building occupant, PacBell, which had allowed the building to become an eyesore. He stated that the project would provide a pedestrian connection to Santana Row.

Keith Vandertuig, a neighborhood resident, stated that he opposes the proposed height change to 90 feet, noting that it would impact the nearby residences and shade the proposed park. He also expressed concern about building Hatton Street behind the apartment buildings on Dudley Avenue.

Bassel Anber, a neighborhood resident, said that he is disappointed that the City has not expanded the park or mitigated traffic impacts in the area using money collected from Santana Row. He supported the townhouse proposal, but expressed concern over the proposed height increase to 90 feet. He concluded that the project provides the best chance to expand the park.

Erik Schoennauer discussed the applicant's Extraordinary Benefit proposal, which includes new items introduced for the first time at the Planning Commission hearing, including a $1 million guarantee that the proposed office building will be completed within five years. Mr. Schoennauer explained that the project also proposes LEED Silver certification for the proposed townhomes. Mr. Schoennauer stated that he believes that there is no guidance on the issue of Extraordinary Benefit and cited the Development Agreement Ordinance as the only discussion on what constitutes Extraordinary Benefit.

Commissioner Zito commented on the applicant's proposal for Extraordinary Benefit and asked the applicant to clarify if the proposed $30,000 per year for park maintenance would be provided in an annuity. The applicant stated that this could be determined through the terms of a Development Agreement and that it might be established as a gift trust with a cost of living adjustment. In response to questions from the Planning Commission, the applicant also stated that each residential unit would be constructed with a conduit to allow future residents to connect photovoltaic panels as a measure to achieve a LEED Silver rating for the project.

Erik Schoennauer noted that staff had requested the applicant to provide Extraordinary Benefit equal to $10 - $12 million. Joseph Horwedel, Director of Planning, clarified that staff merely provided the applicant with ideas of what could be considered items of Extraordinary Benefit, which included the dedication of turnkey parkland and traffic improvements, when the applicant had not yet put forward a proposal adequately addressing an Extraordinary Benefit component. Mr. Horwedel further clarified that those ideas were not set forth as requirements but as suggestions for the applicant to consider in developing an offer for a revised Extraordinary Benefit proposal.

Planning Commission Discussion

Commissioner Platten asked the Director of Planning to comment on the applicant's proposal for Extraordinary Benefit and the possibility of a deferral of the project to allow more time for the applicant and staff to negotiate a Development Agreement. The Director of Planning noted the Extraordinary Benefit proposal included new information not previously reviewed by staff. He stated that the proposal was insufficient for Extraordinary Benefit, and he does not believe that a deferral would result in a significantly better offer from the applicant. Staff commented that it was too late to make changes to the project in time to hear a new proposal as part of the Spring 2008 General Plan hearings, so that it would be necessary to continue the item to the Fall General Plan Review. Both staff and the applicant requested that the proposal not be deferred. Mr. Schoennauer added that the proposal for Extraordinary Benefit presented before the Commission is all that the project can afford.

Commissioner Platten motioned to recommend denial of the proposed General Plan amendment, stating that the proposed Extraordinary Benefit was insufficient for the reasons articulated by staff.

The Commission debated the value of the proposed Extraordinary Benefit items and if they represented an adequate level of benefit to the City. Commissioner Jensen stated that she did not support the motion to deny the proposal and noted that the applicant had been working on the project since last fall, appears to have been diligent, and that she felt that the parties were close to agreement. Commissioner Zito indicated that he would have liked to have seen a higher level of

benefit, but that the project provided an opportunity to expand the park and provide pedestrian connections. He added that he was concerned that $30,000 per year over 30 years did not seem adequate for long term park maintenance. Commissioner Kamkar stated that the proposed benefit was good, but not quite enough to justify the conversion of employment lands. He noted that he would like to see the applicant provide additional Extraordinary Benefit. Commissioner Kalra noted that while the City Council is the final decision maker, it is appropriate for the Planning Commission to make a recommendation and indicated support for the project because of the park expansion and connectivity to Santana Row.

The Director of Planning advised the Commission to consider whether the project provides long-term benefits to the City and not only focus on short term benefits of the project. He noted that facilitating the park expansion is important, but that having land uses to provide revenue which can support long term maintenance of the park is also critical. Commissioner Platten stated that the City needs to set the bar high for the benefit received from employment land conversions.

ANALYSIS

During the public hearing, the applicant presented a proposal for Extraordinary Benefit that included new items not previously proposed to or considered by staff. The applicant's previous proposal included:

1. Demolition of existing Baywood Avenue to facilitate expansion of Santana Park;
2. Dedication of 21,575 square feet of land needed for construction of Hatton Street;
3. Construction of the Hatton Street extension;
4. Sale of 35,000 square feet of land to the City at developer's cost for the expansion of Santana Park (later revised to reflect the City's appraised value); and
5. Funding for Park Maintenance ($30,000 per year over 30 years)

New items presented to the Planning Commission and staff at the Planning Commission hearing include:

1. Provide Guarantee of Constructing New Office Building - $1 million
2. LEED Silver certification for townhome development
3. Narrowing Monroe Street to Calm Traffic

The new items in the applicant's latest proposal for Extraordinary Benefit remain insufficient to the City to justify the conversion of employment land, as follows:

Provide Guarantee of Constructing New Office Building - $1 million
Providing a guarantee for the office construction is a standard requirement under the applicant's proposed scenario to achieve no net loss of job capacity under the Framework. The office building is required to partially offset the loss of jobs, and a guarantee to complete the office building is required to achieve compliance with the Framework. Therefore, the guarantee is not Extraordinary Benefit.

LEED Silver certification
LEED Silver certification may be considered Extraordinary Benefit, except that the City is developing a private development Green Building policy with the goal of requiring all large private development to achieve LEED Silver certification as a baseline. Additionally, the City has recently imposed a requirement for LEED Silver or equivalent on several residential projects that were not subject to the Framework and for which no Extraordinary Benefit was required. Therefore, over the longer term after reviewing the current trends as well as similar LEED Silver standards being voluntarily offered by several other projects in the City that do not involve employment land conversions, staff did not consider this element sufficiently atypical to qualify for Extraordinary Benefit, (possibly a proposal to exceed LEED Silver certification (i.e. LEED Gold or Platinum) could be considered extraordinary).

Narrowing Monroe Street to Calm Traffic
The narrowing of Monroe Street was planned as part of future development on the site that is unrelated to the Framework and the requirement for Extraordinary Benefit. The City is vacating a 14- foot City-owned public right-of-way on the Monroe Street frontage to the applicant at no cost to the applicant. The applicant's proposed project benefits from this 14-foot right-of-way by taking advantage of this vacated right-of-way in order to meet building setback requirements. The applicant's proposal also counts the street parking along this street frontage toward the project's required parking spaces. Therefore, because this element was already planned and really benefits the project, these planned improvements on Monroe Street would not qualify as Extraordinary Benefit.

In conclusion, the new items for Extraordinary Benefit proposed by the applicant represent marginal additions to the applicant's original proposal, which staff has determined to be insufficient to meet the Framework and Development Agreement Ordinance criteria for Extraordinary Benefit for the reasons identified above. The Director of Planning and the Planning Commission concur that the proposal of the applicant does not provide sufficient Extraordinary Benefit to justify the conversion of employment lands.

Analysis of the original items #1-5 is provided in the staff report for this project. In summary, the applicant's initial proposal was constituted entirely of items that are standard requirements for a development project and had been agreed upon prior to the City's adoption of the Framework. The applicant declined to further discuss potential benefits with staff in the time available to form the basis of a Development Agreement proposal.

EVALUATION AND FOLLOW-UP

Not Applicable

POLICY ALTERNATIVE

Alternative 1. Recommend continuance of the proposed General Plan amendment to the next appropriate General Plan hearing cycle.

Pros: Recommending continuance provides additional time for the applicant to submit a revised proposal for Extraordinary Benefit. Upon receiving a revised proposal that conforms to the Framework, additional time would be available for staff and the applicant to negotiate an appropriate agreement memorializing this benefit for consideration along with the General Plan amendment.

Cons: Recommending continuance would further delay a decision on this proposal and incur additional costs to both staff and the applicant.

Reason for not recommending: The applicants may decide not to revise their proposal for Extraordinary Benefit that is consistent with the Framework and the continuance would only delay the decision on the General Plan amendment. Based upon the recent performance of the applicant, it seems unlikely that additional time will result in a project that staff can recommend to Council under the Framework.

Alternative 2. Recommend continuance of the current General Plan amendment proposal to the next appropriate General Plan hearing cycle with direction from the City Council to staff regarding a range or level of benefit that the Council believes could constitute sufficient Extraordinary Benefit under the Framework. This would allow City staff and the applicant to continue to negotiate an agreement to memorialize a level of Extraordinary Benefit that falls within that range, without predisposing City Council to any particular decision on the General Plan amendment.

Pros: Recommending continuance under this alternative provides staff and the applicant with a general idea of what the City Council considers an appropriate range of Extraordinary Benefit could be for this proposal, which may facilitate the negotiation and drafting of an appropriate agreement without pre-committing the Council to any particular decision when this application comes forward again to Council.

Cons: Recommending continuance would delay a decision on this proposal and incur additional costs to both staff and the applicant.

Reason for not recommending: As noted above, the applicant has been reluctant to revise their Extraordinary Benefit proposal. The process may be further delayed without having a revised proposal for the next General Plan hearing.

Alternative 3. Recommend approval of the General Plan amendment as currently proposed by the applicant.

Pros: Recommending approval allows the applicant's proposal for residential development to proceed without further delay and would facilitate the production of more residential units within the City.

Cons: This alternative would not comply with the Framework. The City will lose opportunities to preserve the City's inventory of commercial lands for unmet job needs and additional sales tax revenue in a manner that also provides an appropriate level of some offsetting benefits to the City as envisioned by the Framework.

Reason for not recommending: Recommending approval of the General Plan amendment without Extraordinary Benefit and an appropriate agreement to memorialize that benefit would be inconsistent with the City Council's adopted Framework for the Preservation of Employment Lands.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notice of the Spring 2008 hearings on the General Plan was published in the San José Post-Record. In addition, notices of the public hearing for the subject General Plan amendments were distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Descriptions of the proposed General Plan amendments were posted on the Planning Division web page. The proposals were also presented at the Neighborhood Roundtable on February 12, 2008 and at the Developers Roundtable on February 15, 2008 for review and comment. No comments were received at the Neighborhood and Developers roundtables on the proposed amendments. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Three community meetings were held for the 485 South Monroe Street proposal on February 26, 2007, October 18, 2007, and February 27, 2008. Community feedback from the neighborhood is generally supportive of the proposed General Plan amendment. There was interest from the neighborhood on the expansion of Santana Park, reducing cut-through traffic on Monroe Street, and maintaining adequate building setbacks along the northern edge of Parcel 1. Residents in the neighborhood expressed concern with the proposed 90-foot building height limit.

On March 19, 2008, the Parks and Recreation Commission considered the subject General Plan amendment applications and expressed support of the Monroe Street General Plan amendment as proposed by the applicant in that it contributes to the expansion of Santana Park.

COORDINATION

This project was coordinated with the Department of Parks, Recreation and Neighborhood Services, the Department of Transportation, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is inconsistent with the Framework for Preservation of Employment Lands as discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

A Mitigated Negative Declaration adopted on April 9, 2008 provides environmental clearance for the subject General Plan amendment request under CEQA.

Andrew Crabtree
For JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Andrew Crabtree at 408-535-7893.

Attachments:

1. Project Timeline
2. List of Private Projects in San Jose targeting LEED certification
3. Applicant proposal for Extraordinary Benefit presented on April 9, 2008
4. Planning Commission staff report and attachments