

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 9, 2006

SUPPLEMENTAL MEMO

**COUNCIL DISTRICT: 5
SNI: Gateway East**

**SUBJECT: ZONING PROTEST FOR PDC05-104. PLANNED DEVELOPMENT
REZONING FROM R-1-8 SINGLE-FAMILY RESIDENCE DISTRICT TO A(PD)
PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW 86 AFFORDABLE
MULTI-FAMILY ATTACHED RESIDENTIAL UNITS ON THE EAST SIDE OF
HIGHWAY 101 AT THE WESTERN TERMINUS OF SAN ANTONIO COURT**

PROTEST FILED (REASON FOR SUPPLEMENTAL)

On June 7, 2006, a zoning protest was filed against the above-referenced zoning application (See attached Zoning Protest Application). The protest identifies concern that the project will interfere with easements on the project site owned by the protestant and concern that the project is too dense. This protest has been determined to be invalid according to Section 20.120.410 of the San Jose Municipal Code.

EFFECT OF A MAJORITY PROTEST

In order to approve a rezoning for which a valid majority protest has been filed, the City Council must first override the majority protest by a two-thirds vote of its members. The Council need not override a majority protest to deny a rezoning.

INVALID PROTEST

A majority protest occurs when the Director of Planning determines that written protests have been filed by the owners of sites bounded by fifty (50) percent or more of the total length of the protest line (see attached diagram for location of protest line), or by the owners of not less than fifty (50) percent of the area of the subject property (project site). In this case, the protest has been filed on behalf of a property with a shared property line that constitutes 11.6 percent of the protest line (see attached diagram), substantially less than the 50 percent needed for a valid majority protest.

HONORABLE MAYOR AND CITY COUNCIL

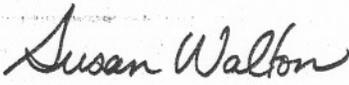
June 9, 2006

PDC05-104

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The protest application identifies that the protestant holds easements on the project site; Municipal Code Section 20.120.400(D)(1) specifically states that a protest cannot be based on merely an easement interest in the project site. In addition, this protest has been signed by an attorney representing the owner of the protest site (the James C. Hill and Dawn L. Hill Trust), but no evidence has been provided that the signature is that of "a duly authorized officer" of the Trust as is required by Section 20.120.400(D)(3).

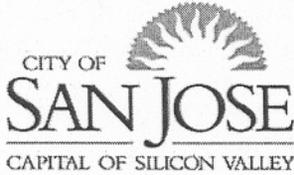
Based on this analysis, staff concludes that that the protest does not represent the required 50 percent of the protest line, that the protest has not been signed by owners of an undivided interest in at least 51 percent of the project site, and that no evidence has been provided to establish that the protestant has a qualified interest in the eligible protest site; consequently, the protest does not constitute a "majority protest".


 JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building, and Code Enforcement

For questions please contact Planning, Building and Code Enforcement at (408) 535-7800.

cc: Jeff Edgren, Affirmed Housing
200 East Washington
Escondido, CA 92025

Attachments: Zoning Protest Application
Zoning Protest Line diagram



RECEIVED
 JUN 07 2006
 CITY OF SAN JOSE
 PLANNING DEPARTMENT
 CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

ZONING PROTEST APPLICATION

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER			COUNCIL DISTRICT
QUAD #	ZONING	GENERAL PLAN	DATE _____
REZONING FILE NUMBER			BY _____

TO BE COMPLETED BY APPLICANT (PLEASE PRINT OR TYPE)	
ADDRESS OF PROPERTY BEING PROTESTED	East side of Hwy 101, at western terminus of San Antonio Court
ASSESSOR'S PARCEL NUMBER(S)	481-46-010
REASON OF PROTEST	I protest the proposed rezoning because <u>See Attached</u>
Use separate sheet if necessary	
The property in which I own an undivided interest of at least 51%, and on behalf of which this protest is being filed, is situated at: <i>(describe property by address and Assessor's Parcel Number)</i>	
<u>East side of Hwy 101, at western terminus of San Antonio Court, APN 481-46-013, immediately adjacent to 481-46-010; and two easements on 481-46-010</u>	
and is now zoned <u>R-1-8 Residence</u> District. (formerly light industrial)	
The undivided interest which I own in the property described in the statement above is a:	
<input checked="" type="checkbox"/>	Fee Interest (ownership) <u>481-46-013</u>
<input type="checkbox"/>	Leasehold interest which expires on _____
<input checked="" type="checkbox"/>	Other: <i>(explain)</i> <u>Easements - 481-46-010</u>

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

ZONING PROTEST APPLICATION

SIGNATURE(S) OF PROTESTANT(S)			
<p>This form must be signed by ONE or more owners of an undivided interest of at least 51% in the lot or parcel for which such protest is filed, such interest being not merely an easement. A tenant under a lease which has a remaining term of ten years or longer shall be deemed an "owner" for purposes of this protest. When the owner of an eligible protest site is a legal entity other than a person or persons, the protest petition shall be signed by the duly authorized officer(s) of such legal entity. When such legal entity is a homeowner's association, the protest petition shall be signed by the duly authorized officer(s) of such association, or, in lieu thereof, by 51% of the members of the association.</p>			
PRINT NAME Pritchard and Kay, Attorneys for the James C. Hill and Dawn L. Hill Trust, Owners of 481-46-013 160 W. Santa Clara St., Ste. 1075	DAYTIME TELEPHONE #	408-920-0500	
ADDRESS	CITY	STATE	ZIP CODE
160 W. Santa Clara St., Ste. 1075	San Jose	CA	95113
SIGNATURE (Notarized) Pritchard and Kay, M. Gregg McKerroll		DATE	06/07/06
PRINT NAME		DAYTIME TELEPHONE #	
ADDRESS		CITY STATE ZIP CODE	
SIGNATURE (Notarized)		DATE	
PRINT NAME		DAYTIME TELEPHONE #	
ADDRESS		CITY STATE ZIP CODE	
SIGNATURE (Notarized)		DATE	
PRINT NAME		DAYTIME TELEPHONE #	
ADDRESS		CITY STATE ZIP CODE	
SIGNATURE (Notarized)		DATE	
PRINT NAME		DAYTIME TELEPHONE #	
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SIGNATURE (Notarized)		DATE	
PRINT NAME		DAYTIME TELEPHONE #	
ADDRESS		CITY STATE ZIP CODE	
SIGNATURE (Notarized)		DATE	
Use separate sheet if necessary			

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

Attachment to ZONING PROTEST APPLICATION Re: PDC05-104; Protestant:
James C. Hill and Dawn L. Hill Trust

REASON FOR PROTEST

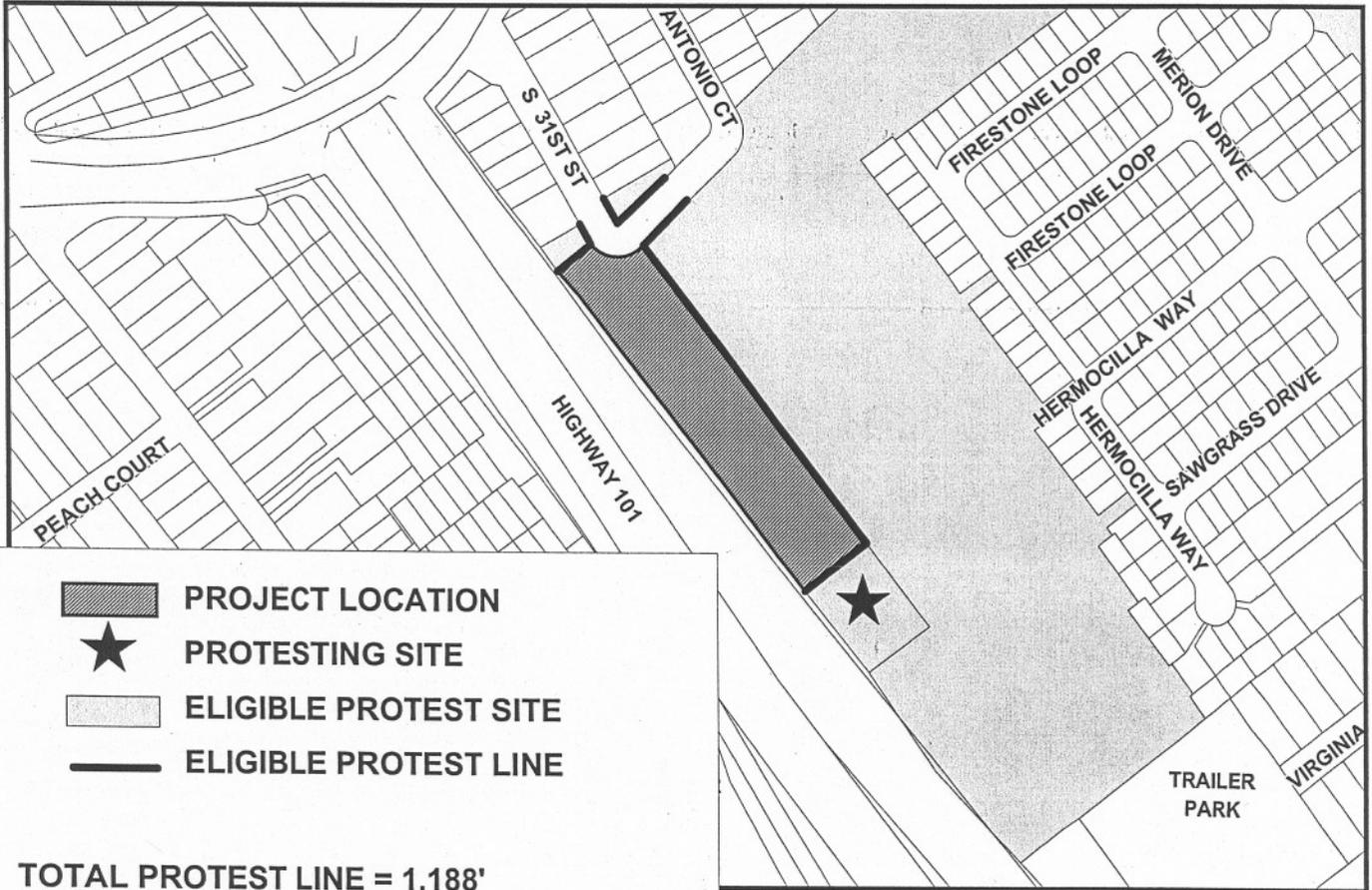
"I protest the proposed rezoning because..." The proposed "A (PD)" zoning to allow an eighty-six (86) unit development to be built, which is designed to include five 3-story buildings that reach a height of forty-one feet, will result in interfering with easements owned by the James C. Hill and Dawn L. Hill Trust. These easements, recorded on 12/27/00, include a non-exclusive easement appurtenant to APN 481-46-010 (the subject parcel for the proposed development) for ingress and egress and for installation of electrical power; a non-exclusive easement appurtenant to APN 481-46-010 for installation and maintenance of a billboard; and a separate easement agreement, also recorded on 12/27/00, that specifically states: "No structures, vegetation, or other objects will be allowed to interfere with or encroach on the easements..."

If the City Council approves the rezoning of APN 481-46-010 to "A (PD)" to allow for the erection of a residential development large enough to accommodate 86 separate apartment units on this 2.19 acre parcel, it tacitly also approves the resultant, and unavoidable, interference with the easements on APN 481-46-010, in complete disregard of the property rights attendant thereto.

In the event this zoning amendment is ultimately approved to allow the development project to go forward as proposed, we will take whatever legal action is necessary to preserve our property rights, and will seek compensation for all resulting damages.

In addition, this property owner joins the current neighbors, residing on 31st Street and on San Antonio Court, in their concerns relative to the over congestion that necessarily will result should this rezoning be approved to allow the proposed development project to go forward. Traffic and parking on these narrow, short residential streets already overburdens the neighborhood, and emergency vehicles and large service vehicles (i.e. garbage trucks) either cannot traverse the streets, or they create a blockade to any other traffic passing while they are on the streets because there is insufficient room for other vehicles to pass. The residential project as proposed for parcel 481-46-010 will bring in, at a minimum, an additional 161 people, and, according to the project plans, at least 147 vehicles. Of particular concern when addressing these numbers is the fact that there is only one way in and one way out of the proposed project, and that way is a bottleneck. Surely exposing this number of residents to an environment with the obvious and apparent safety considerations and serious potential for dire consequences must be of concern to the City.

This property owner is not in opposition to the idea of affordable housing for low-income families; however, such housing should not be developed at the expense of common sense in its planning and execution. APN 481-46-010, a mere 2.19 acres, is in no manner a sensible plot of land on which to house at least 161 people, and the City's current zoning parameters with respect to density support this position.



	PROJECT LOCATION
	PROTESTING SITE
	ELIGIBLE PROTEST SITE
	ELIGIBLE PROTEST LINE

TOTAL PROTEST LINE = 1,188'
PROTEST FILED = 138'
PERCENTAGE OF PROTEST LINE = 11.64 %

N

 Scale: 1" = 250'