



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Stephen M. Haase

**SUBJECT:** SEE BELOW

**DATE:** May 10, 2004

**COUNCIL DISTRICT:** 2  
**SNI AREA:** N/A

**SUBJECT:** **GP03-02-04: General Plan amendment request to amend the *San Jose 2020 General Plan Land Use/Transportation Diagram* designation from Industrial Park to Industrial Park with Mixed Industrial Overlay on a 9-acre site located on the southerly side of Piercy Road (474 Piercy Road), approximately 300 feet easterly of Hellyer Avenue.**

## **RECOMMENDATION**

The Planning Commission voted 2-3-0-2 (Commissioner Campos, James and Dhillon opposed, Commissioners Zamora and Platten absent) on the General Plan amendment request to change the *San Jose 2020 General Plan Land Use/Transportation Diagram* designation from Industrial Park to Industrial Park with Mixed Industrial Overlay for the property located on the southerly side of Piercy Road (474 Piercy Road), approximately 300 feet easterly of Hellyer Avenue. Because a quorum was not reached, this vote is deemed a negative recommendation from the Planning Commission on this proposed General Plan amendment.

## **BACKGROUND**

On April 26, 2004, the Planning Commission held a public hearing to consider a privately initiated General Plan amendment request to change the Land Use/Transportation Diagram designation on the subject site from Industrial Park to Industrial Park with Mixed Industrial Overlay on 9 acres. The Director of Planning, Building and Code Enforcement recommended no change to the General Plan Land Use/Transportation Diagram designation on the subject site. As explained in the attached staff report, the proposed amendment is inconsistent with the goals and policies of the General Plan and the vision of the Edenvale Redevelopment Plan to preserve the Edenvale Redevelopment Area for exclusively Industrial Park uses in order to continue to achieve the City's goals for employment and economic development. After analyzing the proposed amendment with the "Framework, as a Guideline, for Evaluating Proposed Conversions of Employment Lands to Other Uses" (Framework), the site is also not recommended for the addition of the Mixed Industrial Overlay. The Edenvale 2 employment subarea is identified in the Framework as an area for preservation for future development of Driving Industries.

## **ANALYSIS**

The applicant, Bill Buchholz, pastor for the Family Community Church (FCC), spoke in support of the addition of the Mixed Industrial Overlay on the 9-acre site (see attached copy of a handout summarizing the speaking points that was provided to the Commission by the applicant). In his presentation, Mr. Buchholz reviewed the past permit history of FCC at each of its three previous locations and noted his involvement in the Mayor's Task Force in 1994 for reviewing the City Council Church Location Policy. He also referenced letters that were submitted to the Planning Commission attesting that FCC has been a good neighbor at its existing and previous sites. He stated that the City could benefit economically if the General Plan amendment and a subsequent development proposal on the adjacent site were approved.

Ten members of the public, including parishioners of the church, spoke in favor of this item, and one member of the public, who is an adjacent property owner, spoke in opposition. Kirsten Powell from Logan & Powell Attorneys at Law, representing the applicant, was one of the members of the public who spoke in support of the amendment. She summarized two letters that were submitted: one letter introducing the FCC and one refuting staff's position as outlined in the staff report (see attached letters).

The comments from the public can be summarized as follows:

1. The amendment would not be a permanent conversion of industrial land. The prior industrial sites FCC occupied have returned to industrial uses after FCC relocated.
2. The proposed associated office condominium project would create more jobs and is dependent upon the approval of the assembly use on the subject site.
3. Two speakers that have worked next to FCC stated that the church is a good neighbor and provides good services as well.
4. A real estate consultant representing the applicant stated that the subject site was the only available site in Edenvale, the applicant's target area, that was suitable and financially competitive for the applicant's proposed use.
5. A hazardous materials consultant representing the applicant noted that the substances used by adjacent industrial users are heavily regulated; therefore, the likelihood of a catastrophe resulting from proximity to hazardous materials storage and use was minimal.
6. A neighbor, who owns approximately two acres of property near the subject site, spoke in opposition. He expressed concern about the "snowballing" effect of future non-industrial uses coming to the area if this proposal is approved. The neighbor stated that for economic purposes he would want his own site to be included in the boundaries of the Mixed Industrial Overlay if the General Plan amendment were approved.

The applicant then spoke again and stated that an office condominium project that is proposed adjacent to FCC would be dependent upon approval of the proposed General Plan amendment as well as a future Conditional Use Permit for the church, because a shared parking arrangement is proposed with the church. According to the applicant, the parking demands of the church, the need to be in Edenvale, and the desire for a financially competitive site limited the applicant's choices for a suitable site. The applicant asserted that the property met the new criteria of the Framework for consideration of industrial land conversions. Planning staff stated that other suitable sites for large assembly uses were identified in San Jose in the Alviso and Evergreen areas.

After public comment, the Planning Commission closed the public hearing and began a discussion on the proposed General Plan amendment. Commissioner Zito asked Planning staff if a Mixed Industrial Overlay could be phased out. The City Attorney responded that a General Plan amendment to add a Mixed Industrial Overlay could not be phased out, although a Conditional Use Permit could be time-conditioned. Commissioner Levy noted that approval of the proposed amendment could become an impetus for other conversions, and that this could create land use impacts from existing industrial operations on new populations of sensitive receptors. Planning staff noted that the area surrounding the subject site still substantially consists of industrial uses but that there are already preliminary inquiries for conversion of neighboring parcels, in addition to the property identified by one of the speakers. Planning staff also noted that a Mixed Industrial Overlay runs with the land, and that if the property were not to be used for a church, then other uses allowed by the Mixed Industrial Overlay could operate on the subject site with the appropriate planning permits.

Commissioner Zito stated that with the proposal there are risks and gains. The risks being that a domino effect was possible, and that the City would be giving up a prime piece of industrial land. The gains would be that the site is a miniscule portion of the larger industrial area, the project is well thought out, and the use could act as a buffer to the nearby residential sensitive receptors. It would also provide a quality of life for which San Jose is known. Commissioner Zito also stated that he would not want to see other conversions in the future. Commissioner Zito then made a motion to approve the applicant's request for the Mixed Industrial Overlay.

Commissioner Dhillon asked Planning staff whether the City Council Church Location Policy criteria were met by the proposed project. The City Attorney stated that the Policy is outmoded in some of its provisions, which have been superseded by City Council adoption of Zoning Code amendments. Other newer policies and ordinances are more relevant to the project. Planning staff added that the current Zoning Ordinance and City policies allow assembly uses in other non-industrial land use designations.

Commissioner Campos stated that this was a situation where it was both important and easy to preserve the 2,000 plus acres of industrial land, because the integrity of the industrial area had not yet been compromised. He stated that churches provide a valuable resource to the community. However, the decision before them is a land use decision and not the merits of the church. Commissioner James then added that even if the church only operated on Sundays, that there were many industrial uses that needed to operate 24 hours a day, seven days a week. Therefore, there could still be land use incompatibilities in the future.

The Planning Commission reviewed and considered the Mitigated Negative Declaration and found it in conformance with CEQA.

The Commission voted 2-3-0-2 (Commissioner Campos, James and Dhillon opposed, Commissioners Zamora and Platten absent) on a recommendation to the City Council for the General Plan amendment request. Because a quorum was not reached, the vote is deemed a negative recommendation from the Planning Commission on this proposed General Plan amendment, pursuant to Section 18.08.100.D of the City of San Jose Municipal Code.

### **PUBLIC OUTREACH**

The property owners and occupants within a 1,000-foot radius were sent a newsletter regarding the community meetings that were held on March 25 and 29, 2004. They also received a notice of the public hearings to be held on the subject amendment before the Planning Commission in April and City Council in June. In addition, the Department's web site contains information regarding the General Plan process, amendments, staff reports, and hearing schedule. This web site is available to any member of the public and contains the most current information regarding the status of the amendments.

### **COORDINATION**

The review of this General Plan amendment was coordinated with the Department of Public Works, Fire Department, Police Department, City Attorney, and the Airport Department. The preparation of this memorandum was coordinated with the City Attorney's office.

### **CEQA**

A Mitigated Negative Declaration was adopted on April 26, 2004.

STEPHEN M. HAASE  
Secretary, Planning Commission