



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: September 23, 2004

COUNCIL DISTRICT: 10

SUBJECT: PDC04-060. PLANNED DEVELOPMENT REZONING ON A 1.6 GROSS ACRE SITE LOCATED ON THE SOUTH SIDE OF HILLSDALE AVENUE, APPROXIMATELY 420 FEET EAST OF HIGHWAY 87, TO REZONE THE PROPERTY FROM R-1-8 SINGLE-FAMILY RESIDENCE TO A(PD) PLANNED DEVELOPMENT

RECOMMENDATION

The Planning Commission voted 7-0-0 to recommend that the City Council approve the proposed Planned Development Rezoning with an increase to the setback from the top of bank of Canoas Creek from the proposed 30 feet to an average setback of 50 feet.

BACKGROUND

On September 22, 2004, the Planning Commission held a public hearing to consider a Planned Development rezoning from R-1-8 Single-Family Residence to A(PD) Planned Development to allow the development of up to twenty-six single-family attached residential units.

The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning as set forth in the attached staff report.

ANALYSIS

The Planning Commission pulled this item off of the consent calendar for discussion. Commissioner James asked staff whether it was known if the units would be prefabricated or built on site. Staff responded that the project would be built on the site, which was also confirmed by the applicant. The applicant, Steve Sarayd, then gave a brief presentation stating that he had been working with planning staff for some months to develop the proposed site design. He also said that a biotics report, prepared for the site, indicated that there is no functional riparian habitat present on the bank of the creek adjacent to the subject site. The report concluded that given the limited wildlife value to the area, a 30-foot setback from the top of bank of the Canoas Creek, landscaped with native species was recommended. No one appeared in support of, or in opposition to, the proposed planned development rezoning and the public testimony was closed.

The Commission then went on to discuss the proposed "riparian" setback for the project. The Commission was concerned that the proposed 30-foot setback was not adequate and even though Canoas Creek was a man made channel along the project site, the riparian corridor could be reestablished. Staff explained that the Canoas Creek at the project site is a man made channel with a 6-foot access road for the Santa Clara Valley Water District adjacent to the top of bank. Staff indicated that the proposed 30-foot setback is consistent with the biotics report and consistent with applicable guidelines and exceptions in the Riparian Corridor Policy.

The Commission then discussed the merits of the Two Acre Rule Discretionary Alternate Use Policy. Staff indicated that the proposed rezoning is an infill housing opportunity and that the proposed design, including site layout and unit layout reflect an exceptional design given the constraints of the site in that it exceeds the setbacks established under the Residential Design Guidelines and the Zoning Ordinance.

Commissioner Platten made a motion to recommend approval of the proposed rezoning as recommended by staff. Commissioner Campos stated that he would support the motion hesitantly because he did not see anything unique about the project that would warrant the use of the Two Acre Rule. Commissioner Zito requested an amendment to the motion to include an average setback of 50 feet from the top of bank of the Canoas Creek. An average setback allowed for flexibility on the site where strict adherence to the 50 setback would preclude development. He indicated that an example of how this could be accomplished would be to remove the end unit from each building adjacent to the creek. Platten agreed and the motion was amended.

The Planning Commission then reviewed and considered the Mitigated Negative Declaration and found it in conformance with CEQA, and voted 7-0-0 to recommend the City Council approve the proposed rezoning with an change to the setback from top of bank from the proposed 30 feet to an average setback of 50 feet.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. In addition, the Planning Division's website contains information regarding the zoning process, the Zoning Ordinance, and the *San José 2020 General Plan*. Information on this proposed rezoning application, including staff reports and public hearing schedule, is also available.

CEQA

Mitigated Negative Declaration, File No. PDC04-060



STEPHEN M. HAASE
Secretary, Planning Commission

PLANNED DEVELOPMENT REZONING FILE NO. PDC04-060

ORDINANCE NO. _____

EXHIBIT C: LAND USE PLAN AND DEVELOPMENT STANDARDS

Permitted Uses

Up to 26 single-family residential units (15.3 DU/AC) and open space on 1.7 gross acres.

Setbacks

Front	20 feet
Side	5 feet
Rear	20 feet
From Canoas Creek	30 feet
Height	35 feet and 3 stories

Parking

A total of 68 parking spaces, 2.61 per unit, shall be provided.

Common Open Space

The project shall include a minimum of 150 square feet per unit of common open space.

Private Open Space

The project shall provide a minimum of 200 square feet of private open space per unit.

Environmental Mitigation

AIR QUALITY

The following construction practices shall be implemented during all phases of construction for the proposed project.

- Water all active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.
- Sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust.
- Limit traffic speeds on unpaved roads to 15 mph.

Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

Replant vegetation in disturbed areas as quickly as possible.

BIOLOGICAL RESOURCES

Burrowing Owls. The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the satisfaction of the Environmental Principal Planner indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

Trees. All non-orchard trees that are to be removed shall be replaced at the following ratios:

- Each tree less than 12" in diameter to be removed = one 15 gallon tree
- Each tree 12" to 18" diameter to be removed = two 24" box trees
- Trees greater than 18" diameter shall not be removed unless a Permit has been approved by the Director of Planning, Building, and Code Enforcement for the removal of such trees. Each tree greater than 18" diameter to be removed = four 24" box trees

The species and exact number of trees to be planted on the site will be determined in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement. In the event the developed portion of the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented at the permit stage:

- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.
- A donation of \$300 per mitigation tree to San Jose Beautiful or Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Environmental Principal Planner prior to issuance of a development permit.

CULTURAL RESOURCES

Archaeology. There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric resources.

If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.

If evidence of any archaeological, cultural, and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.)

In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:

- a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- b) A final report shall be submitted to the City's Environmental Principal Planner prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.

GEOLOGY AND SOILS

The site shall be underlain by a minimum of 12 inches of non-expansive fill layer or lime-treated native soil material with 4% quick lime and compacted to at least 90% relative maximum density.

Building pads should be elevated above the adjacent ground surface to promote proper drainage and diversion of water away from building foundations.

For trenches excavated greater than 5 feet in depth, shoring will be required.

HYDROLOGY AND WATER QUALITY

Storm Water Management. The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of storm water pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 277-5161.

Storm Water Management. This project results in a land disturbance of more than one acre. Prior to the commencement of any clearing, grading, or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

The applicant shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.

The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB.)

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control may include BMP's as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San Jose, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

The applicant shall maintain a copy of the most current SWPPP on site, and shall provide a copy to any City representative or inspector on demand.

The project will comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance

requirements for keeping adjacent streets free of dirt and mud during construction. The following specific Best Management Practices will be implemented to prevent storm water pollution and minimize potential sedimentation during construction.

- restricting grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;
- using Best Management Practices, including the use of fiber rolls along the edge of the riparian corridor or project boundary nearest the corridor, to retain sediment on the project site;
- use of stabilized construction entrances and/or wash racks;
- damp street sweeping;
- providing temporary cover of disturbed surfaces to help control erosion during construction;
- provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

NOISE

Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.

The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.

Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as residential uses.

All units shall have forced air ventilation systems to allow the windows to remain closed.

Prior to issuance of occupancy permits, building plans for all units will be checked by a qualified acoustical consultant to ensure that noise levels are attenuated sufficiently.

Water Pollution Control Plant Notice

Pursuant to part 2.75 of chapter 15.12 of the San Jose Municipal Code, no vested right to a building permit shall accrue as the result of the granting of any land development approvals and applications when and if the city manager makes a determination that the cumulative sewage treatment demand on the San Jose – Santa Clara water plant will cause the total sewage treatment demand to meet or exceed the capacity of the San Jose – Santa Clara water pollution control plant to treat such sewage adequately and within the discharge standards imposed on the city by the state of California regional water control board for the San Francisco Bay region.

Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approving authority.