

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 29, 2009

COUNCIL DISTRICT: 6
SNI AREA: Burbank/Del Monte

SUBJECT: GP08-06-01. General Plan amendment request to change the land use designation from Medium High Density Residential (12-25 dwelling units per acre) to General Commercial on a 2.37-acre site located on the north side of Parkmoor Avenue, 1070 feet west of Meridian Avenue, on the rear lot (1555 Parkmoor Avenue).

RECOMMENDATION

The Planning Commission voted 6-1-0 (Kamkar opposed) to recommend that the City Council approve the proposed General Plan amendment request as recommended by staff.

OUTCOME

If approved, the proposed General Plan amendment would allow General Commercial uses on the 2.37-acre site.

BACKGROUND

On June 6, 2008, the City of San José Housing Department submitted the subject General Plan amendment request to change the land use designation from Medium High Density Residential (12-25 dwelling units per acre) to General Commercial on a 2.37-acre site located at 1555 Parkmoor Avenue to offset the future residential rezoning and redevelopment of the Ford and Monterey site. The General Plan amendment proposed on the Parkmoor site can partially offset the conversion of employment lands to residential uses on the 3.05-acre Ford and Monterey site.

According to the public records available to staff, the owners listed for the property included Hope Services and Chiechi Park West III. A single address was listed in the public records for correspondence with the property owners. On September 16, 2008, staff sent a letter by mail to the owner and address of record, Hope Services, to notify the owner of the proposal and offer the opportunity to meet with staff to address any questions or concerns. Staff also corresponded with Hope Services by phone.

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After several weeks of correspondence with representatives of Hope Services, staff learned that Hope Services was the building owner and that Chiechi Park West III was the landowner. A representative of Hope Services indicated to staff that Mr. Marty Chiechi was the appropriate landowner contact.

Staff contacted the landowner, Mr. Marty Chiechi and met with him and the applicant's representative on November 5, 2008 and November 19, 2008 to discuss the proposal.

In the meeting on November 19, 2008, the landowner stated he would like additional time to explore other alternatives to the proposed General Commercial land use designation. Staff, the applicant, and Mr. Chiechi agreed to recommend to the Planning Commission that the proposal be deferred to the Spring 2009 General Plan Hearings to allow for additional time for staff and the property owner to explore and determine alternatives that might better meet the objectives of both the applicant and property owner.

On November 19, 2008, the Planning Commission held a public hearing to consider the proposed General Plan amendment. The Planning Commission voted 6-0-0 to recommend to the City Council deferral of the proposed General Plan amendment to the Spring 2009 General Plan hearings as recommended by staff.

On May 13, 2009 the item was heard by the Planning Commission.

ANALYSIS AND SPRING 2009 GENERAL PLAN HEARING

Staff summarized key points and provided an oral staff report with supplemental information as follows:

1. The item was deferred from the Fall 2008 General Plan Review at the request of Mr. Chiechi, the landowner, to allow Mr. Chiechi and staff more time to consider the land use issues and future options for this parcel.
2. One option that staff considered was the newly created land use designation of Transit Corridor Commercial that Council adopted in December 2008. This land use designation allows commercial uses and, on a discretionary basis, may allow vertical mixed residential-commercial uses within 2000 feet of the Light Rail Transit Station at Race Street.
3. After considering the existing and potential vehicular access of the subject parcel, the residential scale and width of Chiechi Avenue, and the "piecemeal" nature of an approach which would designate only the subject parcel as Transit Corridor Commercial while the surrounding larger shopping center remains General Commercial, staff concluded that the applicant's original request for General Commercial was most appropriate at this time (the applicant is the City of San José Housing and Community Development Department).
4. Looking forward, the Envision San Jose 2040 Taskforce is assessing areas around transit for possible intensification as a strategy to accommodate future jobs and housing growth. The

larger commercial site owned by the Chiechi family may be considered for potential intensification through this Update process.

5. On May 12, 2009, staff received a letter from Mr. Chiechi stating his opposition to the proposed General Plan amendment. This letter was distributed to the Commission on the evening of May 13, 2009 prior to the public hearing (see attached letter).

See original staff report (attached) for additional analysis of the proposed General Plan amendment.

Hearing of May 27, 2009

Public Testimony

Erik Schoennauer, representing the property owner, noted that the applicant is the Housing Department of the City of San José and the property owner is the Chiechi family. In addition, Mr. Schoennauer stated that Hope Rehabilitation Services occupies the site and has a long-term leasehold interest in the property.

Mr. Schoennauer stated that both the Chiechi family and Hope Rehabilitation Services have always opposed the proposed General Plan amendment. Mr. Schoennauer asked whether it was appropriate for the City to change a private property's residential land use designation to a commercial designation to benefit a City-owned property and another developer for a project to convert City-owned employment land to a residential use on another site. Mr. Schoennauer stated that the City initiated the subject General Plan amendment without the consent of the property owners, and that the property owner's concern is really about the fairness of the process, rather than the merits of the pending land use decision. He further commented that there appeared to be a double standard in the process, because when private applicants propose to convert employment land, they are required to get the consent of the property owner of the "offsetting" site. Mr. Schoennauer also said that he and Mr. Chiechi had been informed that the City had approached the Sobrato companies about using property they own at Bird and Willow as the offset property for the Ford and Monterey residential site, that Sobrato was opposed to this change, and that therefore, the city moved forward with converting the Chiechi property instead.

Mr. Schoennauer stated that a residential designation usually has a significantly higher land value, and than that the proposed commercial designation would limit the flexibility and the feasibility of future redevelopment of this site either alone or in conjunction with the neighboring properties because of the need to conform to the employment land preservation policy requiring no net loss of jobs for a residential mixed-use proposal. Mr. Schoennauer commented that this policy set an extremely high requirement of .40 floor-area-ratio (FAR) of employment space for any future project on the site, which would likely render any residential-commercial mixed-use project financially infeasible. He noted that .40 FAR for employment space within such a mixed-use project has rarely been achieved in the City of San José. He further added that Hope Services is interested in preserving flexibility because 45 years remain on their lease and want to use this property to best serve their developmentally disabled clients. Mr. Schoennauer said he recognized that the City

Council has the authority to change any land use designation, but that the only fair decision would be to deny the General Plan amendment.

Commissioner Jensen asked Mr. Schoennauer how the land is currently being used, and Mr. Schoennauer responded that the land is currently being used as office space for Hope Rehabilitation Services.

Commissioner Kamkar asked if there would be compensation for the property owner if the City changes the General Plan. Mr. Schoennauer responded that the City had not made any offer of compensation for the property owner's consent to change the designation on the property; however, he indicated that he believed that City staff had previously mandated that a private residential project applicant get the consent of the "offset" property owner, before pursuing a reverse conversion.

Commissioner Cahan noted that the staff report explained that the property owners' long term plans for the site would be in compliance with the proposed General Plan land use change to General Commercial.

Mr. Schoennauer responded that the property owner was interested in a long-term use of this property for a vertical mixed-use development, but that if a property has a commercial designation, the employment lands preservation policy requires a minimum of .40 FAR employment space within the mixed-use development, which is difficult to achieve on site. Mr. Schoennauer commented that he could not recall a previous time when the City changed a private property General Plan land use designation for an employment land conversion to accommodate a housing project.

Commissioner Zito noted that through the Envision San José 2040 General Plan Update, the City could review and propose to change various General Plan land use designations on multiple properties.

Mr. Schoennauer responded that in this case, one individual property has been identified for a commercial land use designation, specifically to benefit a City property. He noted it would be more appropriate for the City to systematically look citywide for opportunities to meet housing and job needs, and treat them in a similar manner.

The Planning Commission then closed the public hearing.

Planning Commission Discussion

The main issues of concern to the Planning Commission were: 1) property owner concerns about selection of his property; 2) avoidance of piecemeal redevelopment of the larger 19-acre commercial property; and 3) preservation of employment lands and affordable housing opportunities. The Commission concurred with staff that the proximity of the Race Street Light Rail Transit Station to the larger 19-acre property presented opportunities for future mixed uses and intensification in transit-oriented development.

Property Owner Concerns

Commissioner Zito asked staff to respond to Mr. Schoennauer's points. Staff explained that the City does not target individual properties, but rather, looks for properties that are already either zoned or used for employment purposes, or revenue-generating commercial purposes, that appear to be viable, and then considers aligning land use designations to be consistent with viable uses. Staff commented that in this particular case, changing the land use designation to General Commercial on the Chiechi property would partially offset the affordable housing project that the City is proposing on the Ford and Monterey site. As the staff report acknowledges, the Director initiated a General Plan amendment for a site on Stevens Creek, that converted residential to commercial uses, and that would complete the remaining acreage for the total required offset.

Staff elaborated that the subject parcel has been zoned and used for commercial purposes for well over a decade, according to City records, and that it is part of the larger 19-acre shopping center that Mr. Chiechi has indicated he envisions for possible redevelopment with a Santana-Row type of mixed-use development. Staff noted that given that the larger property is only slightly more than a thousand feet from the Race Street Light Rail Transit Station, it is in a candidate area for intensification in the long term.

Staff commented that the City does not ask applicants to get signatures from property owners for General Plan amendments on their property, although signatures are required for Planned Development Zoning and permit applications. Additionally, staff stated, the City does not request applicants to negotiate compensation with property owners of sites that are candidates for General Plan amendments, and that how property owners and developers negotiate support for an application on a site is not under the control of the City.

Commissioner Zito asked staff to clarify that anyone can initiate a General Plan change on any site, and staff confirmed that anyone may propose a General Plan amendment. As part of the review process, City staff would notify the property owner that their property was being considered for such an amendment.

Commissioner Jensen asked staff to explain how the employment lands conversion policy would be triggered. Staff stated that under the existing Framework adopted by Council to maintain no net loss of employment lands within the City of San José, a property owner interested in commercial development on a residentially-designated site would need to intensify the site in such a manner that, if the site is within 2,000 feet of light rail, .40 FAR for job-related square footage would be retained. Staff continued that in other parts of the City that are not near transit, the required FAR would be .35. Staff explained that the policy was created to respond to the incremental but cumulatively substantial loss of employment lands throughout the City in recent years, and also in consideration of the fact that the City is under-retailed and lacks sufficient commercial uses.

Commissioner Zito asked staff whether the current use could be kept on the site if the General Plan land use designation were changed to General Commercial. Staff responded that the current use is consistent with the existing zoning district for the site, but not the existing residential General Plan designation, so that if the tenant space underwent minor modifications or expansions, the

commercial office use could continue. However, staff continued, if the building owner wanted to demolish the building and redevelop it commercially, the owner would need a General Plan land use change from the existing residential designation to a commercial designation.

Commissioner Kamkar stated that he felt the City's proposal would take away a future benefit from a private property owner (residential development), and transfer it to the City. Senior Deputy City Attorney Gurza stated that a taking would not result in this situation, because the City would not be depriving this particular property owner of all economically viable use of the property, and that in fact, the proposed General Plan land use designation would allow the existing use to continue as well as other new general commercial uses.

Commissioner Zito asked staff to explain why this parcel was selected for the offset instead of another property. Staff stated that this property provided the acreage needed to make up the total of over three acres for the offset for residential uses on the commercially-designated Ford and Monterey site. A Director-initiated General Plan amendment for a site on Stevens Creek that was previously approved was also used to provide a partial offset for the residential project.

Commissioner Cahan asked whether it was appropriate for the commissioners to take property value into consideration, and Commissioner Zito responded that typically valuation should not be considered, which was confirmed by Senior Deputy City Attorney Gurza.

Piecemeal Redevelopment Concern

Staff clarified that the General Commercial land use designation could potentially allow a Santana Row type of vertical mixed-use development and noted the Santana Row site is commercially designated. Staff indicated that, for any future development, staff will consider how the access from the parcel relates to the larger 19-acre existing shopping center (see attached map showing entire 19-acre property).

Commissioner Zito asked staff how difficult it would be to meet the .40 FAR for commercial uses in a mixed-use project on the subject site, and staff responded that while it could be somewhat challenging on the individual parcel, on the larger 19-acre property, there were opportunities for mixed uses on the site, and that staff would look at development proposals in the context of the larger area around the transit station.

Commissioner Do made a motion to recommend approval of the General Plan amendment as recommended by staff. He stated that he did not view this proposal as necessarily taking anything away from the property owner's development rights, and that any future development would receive a full review through the City's development processes.

Commissioner Jensen stated that she understood the property owner's concerns but that she was very familiar with this shopping center. She noted that the access to the Hope Services office building comes right off Parkmoor and is adjacent to the facility, and that it is hard to see the residential neighborhood behind the property, because the office building appears to be aesthetically isolated from the housing. She stated that she could not see the subject parcel being separated from the larger 19-acre property for development as housing. She also expressed concern about the feasibility of

achieving the .40 commercial FAR for a mixed-use project on the site, and she asked if in the future staff could demonstrate that this had already been achieved in San José. Note that subsequent to this Planning Commission hearing, staff reviewed the approved Planned Development Zoning documents for the Santana Row mixed-use development and concluded that the project achieved .40 F.A.R. for its commercial component.]

Preservation of Employment Lands and Affordable Housing Opportunities

Commissioner Cahan stated that she thought the proposal met the goals of the General Plan, that it could potentially provide mixed use close to transit, that it increased employment opportunities, and that the site is currently being used for employment uses, so the proposal to change the land use designation would not affect any current residential situation.

Commissioner Zito commented that although he was a little bit concerned about some of the points raised about fairness, he appreciated staff clarification that there might have been a misunderstanding about City consideration of additional properties.

Commissioner Campos noted that the proposal would reduce the possibility of piecemeal redevelopment of the parcel in the context of the larger property and could preserve the entire property for general commercial uses to achieve larger goals for the City.

Commissioner Zito stated he agreed with the comments of Commissioners Cahan and Campos and with staff's recommendation. He asked that as the Planning Commission's recommendation is transmitted to the City Council consideration should be taken regarding the City's affordable housing needs and the current charter of Hope Services.

Commissioner Do added a request that the Council consider future flexibility in the employment lands preservation policy in terms of the FAR requirement for employment square footage.

EVALUATION AND FOLLOW-UP

Approval of the proposed General Plan amendment would facilitate the implementation of the General Plan's Economic Development and Growth Management Major Strategies.

POLICY ALTERNATIVES

Alternative 1: Denial of the proposed General Plan amendment. (No change in the General Plan.)

Pros: Denial retains the existing land use designation of Medium High Density Residential (12-25 DU/AC) on the 2.37-acre property and could allow a future all-residential project.

Cons: Denial does not facilitate the opportunity for future economic development of commercial uses that could contribute to the economic base, provide jobs, and serve the surrounding community, does not align the existing CG-Commercial General Zoning District with the proposed underlying land use designation, and does not facilitate an opportunity for the land use

change of the subject property to partially offset the employment land lost to residential uses by the rezoning of the Ford and Monterey site for affordable housing.

Reason for not recommending: This alternative is not recommended because it does not facilitate the implementation of the General Plan's Economic Development and Growth Management Major Strategies.

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 as described in the attached staff report. Additionally, on May 6, 2009 this item was presented to the Parks and Recreation Commission, and on May 14, 2009 it was presented to the Housing and Community Development Commission. The Housing Commission and members of the public in attendance at that hearing expressed an interest in preserving no net loss of housing opportunities in the City, while supporting the affordable housing proposal on Ford and Monterey. Staff responded that these two goals could be achieved if the subject site were redeveloped in the future with mixed uses with the larger portion of the 19-acre property.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Department of Transportation, and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with General Plan goals and policies as discussed in the attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL
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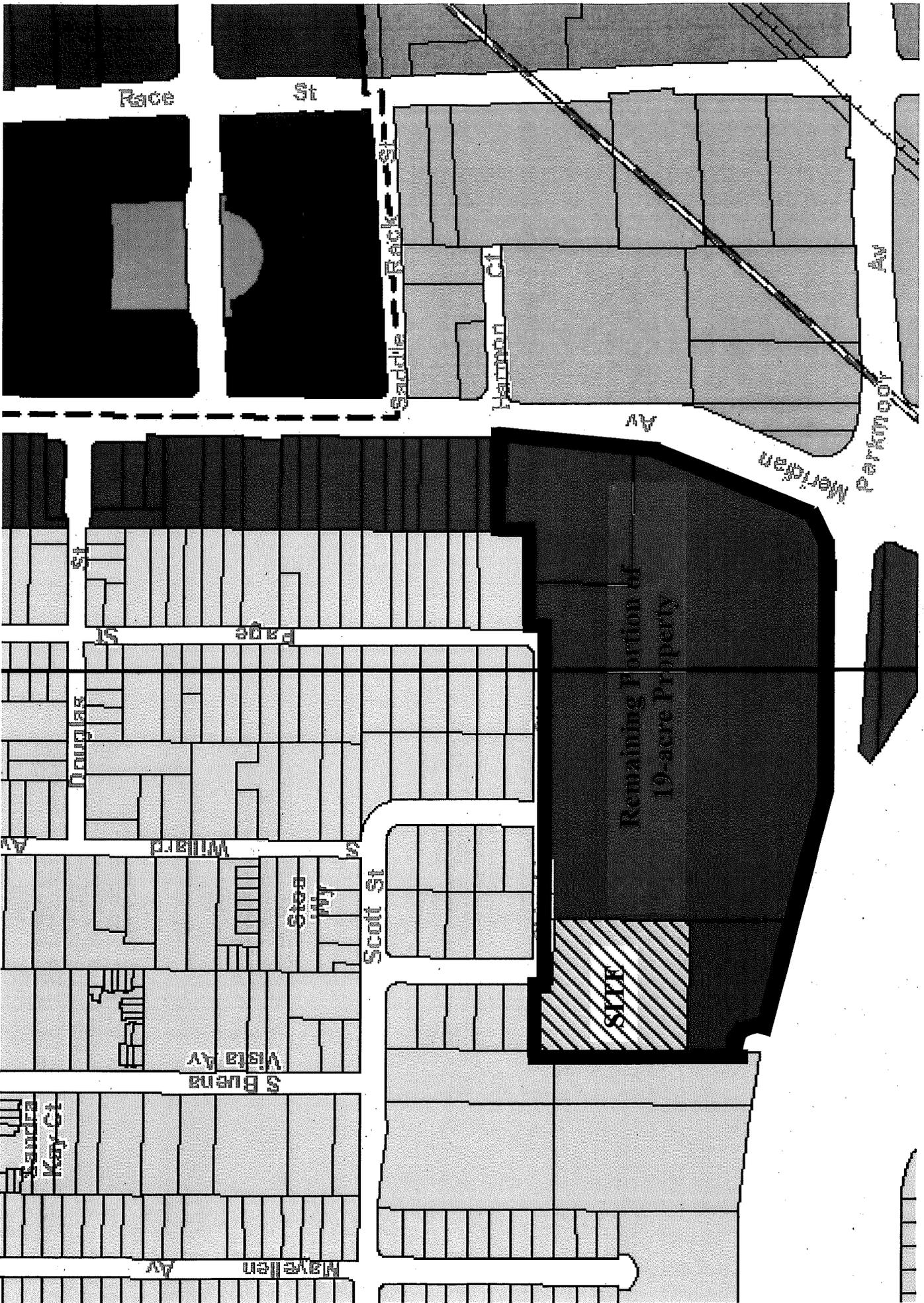
CEQA

Negative Declaration GP08-06-01.


for JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Jenny Nusbaum at 408-535-7872

Attachments



Race St

St

Pack St

Hamilton Ct

Av

Meridian

Parkwood Av

St

Page St

Douglas St

Willard St

Scott St

St

S Burns St

Vista Av

SITE

Remaining Portion of
19-acre Property

Sander Key Ct

Hayellen Av

May 11, 2009

Jenny Nusbaum
Planning, Building, and Code Enforcement
City of San Jose
200 East Santa Clara Street, 3rd Floor Tower
San Jose, Ca. 95113

Re: File No. GP08-060-01. General Plan Amendment request to change the Land Use/Transportation Diagram Designation from Medium High Density Residential (12-25) dwelling units per acre) to General Commercial on 2.37 gross-acre site located at 1555 Parkmoor Avenue, San Jose. APN 277-22-020

Dear Ms. Nusbaum,

It has come to my attention that while I have voiced my opposition to the above amendment in meetings and phone calls, I have never written to the Planning Department.

As you may remember, since the City of San Jose thought that Hope Services was the owner of the land, I was not notified by your department until approximately one week and a half prior to the November 12, 2008 Planning Commission. At 5:30 on that day, I met with you, Rachael Roberts of your office and Ron Eddow of the Housing Department and voiced my opposition. I was especially concerned that I had been given such short notice. There was agreement to delay the motion until a later date and rethink the alternatives.

On January 23, 2009 I received a phone call and email from Rachel Roberts indicating that the staff had reviewed the situation and concluded they were still going to move ahead with the motion. I returned her call and mentioned my opposition.

During to the week of January 26th I called Ron Eddow to see if there was a way for him to help mitigate the situation. Once again I voiced my opposition to the proposed change.

I appreciate this opportunity to clarify the timeline and my continued opposition to this proposal to change the land use designation of our family's property. I would appreciate you forwarding this letter to the Planning Commission.

Sincerely,


Martin L. Chiechi
Chiechi Parkwest Associates III

Department of Planning

Nusbaum, Jenny

P.C. 5/13/09
Item No. 7.a.

From: Chiechi, Martin [Martin.Chiechi@Grubb-Ellis.com]
Sent: Tuesday, May 12, 2009 2:42 PM
To: Nusbaum, Jenny
Cc: es@stanfordalumni.org
Subject: Letter Re: GP08-060-01, 1555 Parkmoor Ave,

Attachments: DOC051209.pdf



DOC051209.pdf
(54 KB)

Dear Ms. Nusbaum,

I realized that I had never put my opposition to the GP change on my family's parcel in writing. Please find the attached letter. I would appreciate it if you could forward it to the Planning Commission.

Sincerely, Marty Chiechi

Martin Chiechi, Senior Vice President
Grubb and Ellis Company
1732 North First St., Suite 100
San Jose, Ca. 95112
Direct: 408-453-2352
Fax: 408-437-0499
Cell: 408-221-8876