



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** November 20, 2009

**COUNCIL DISTRICT:** 9  
**SNI AREA:** N/A

## SUBJECT

**GP09-T-04. GENERAL PLAN TEXT AMENDMENT TO CHANGE APPENDIX F, MIXED USE INVENTORY #13 FROM MIXED USE WITH NO UNDERLYING LAND USE DESIGNATION ALLOWING RESIDENTIAL USES AT A DENSITY OF 12-25 DU/AC ON 2.45 ACRES TO MIXED USE WITH NO UNDERLYING LAND USE DESIGNATION ALLOWING RESIDENTIAL USES AT A DENSITY OF 25-50 DU/AC ON 2.32 ACRES, LOCATED ON THE NORTHEAST CORNER OF HILLSDALE AVENUE AND YUCCA AVENUE.**

## RECOMMENDATION

The Planning Commission voted 6-1-0, with Commissioner Cahan opposed, to recommend that the City Council approve the proposed General Plan Text amendment request to change the San Jose 2020 General Plan Mixed Use Inventory #13, as listed in Appendix F, from Mixed Use with No Underlying Land Use Designation allowing residential uses at a density of 12-25 DU/AC on 2.45 acres to Mixed Use with No Underlying Land Use Designation allowing residential uses at a density of 25-50 DU/AC located on the northeast corner of Hillsdale Avenue and Yucca Avenue.

## OUTCOME

Should the City Council approve the General Plan Text Amendment, the applicant would be able to file for a Planned Development Zoning that could allow up to 116 residential units on the site. If the City Council were to deny the General Plan Text Amendment, the applicant would be able to file for a Planned Development Permit to construct up to 96 residential units with ingress/egress off of Yucca Avenue pursuant to the previously approved Planned Development Zoning (File PDC02-053).

## BACKGROUND

### **Public Hearing**

On November 19, 2009, the Planning Commission held a public hearing to consider the proposed General Plan Text Amendment. Staff gave a brief report outlining the history of the site and

recommended approval of the proposal for the reason stated in the staff report. Michele Fisk of Charles Davidson Company spoke on behalf of the applicant. She explained that the change in economic conditions since the project's conception in 2001 had made it infeasible to build the currently approved residential project and complete the construction of the related shopping center. Commissioner Cahan asked where the residential project would take access and the applicant responded that this would occur off of a driveway on Hillsdale Avenue that is shared with the shopping center.

Three local residents spoke in opposition to the proposed General Plan Text Amendment. Diane Glue stated that traffic is a significant problem in the general area and there is already an existing problem with traffic backing up on Hillsdale Avenue. She stated that the increase in density will add additional traffic problems. She also mentioned that she didn't want to lose the opportunity for a grocery store.

Steve Gomez stated that high density residential use is not appropriate in the middle of a low density residential neighborhood. He noted that the neighborhood needs a viable shopping center and the decrease in amount of commercial space will make the shopping center less viable. He stated that the developer had been dragging his feet on redeveloping the site and was concerned that the General Plan Text Amendment promoted profits for the developer over the good of the neighborhood.

Bob Hansen noted that back in 2001 the same proposal went forward and was reduced by recommendation of Planning staff and the Planning Commission. He questioned what was any different at this time versus in 2001. The location is not near downtown, not near transit and not a major commercial center with easy freeway access, and so was not an appropriate area for high density residential uses.

Mark Tersini of KT Properties spoke as the applicant. He noted that litigation from one of the existing tenants had significantly slowed down the redevelopment of the shopping center. He also noted that he was actively looking for an anchor tenant to replace the Albertson's that had left several years ago, noting that a deal with Orchard Supply Hardware had recently failed despite having received approval through the Planned Development Permit process.

Commissioner Zito asked why the units that were initially thought to be located north of Foxworthy were assumed to be allowed to go to the site south of Foxworthy. Mark Tersini responded that the Toll Brothers, who purchased the site north of Foxworthy, elected to build larger units. Under the currently approved Planned Development Zoning there is flexibility about the placement of units on the north or south side of Foxworthy Avenue so long as no more than a total of 229 units are built.

Commissioner Kamkar questioned whether there was any way to avoid losing the commercial space on Hillsdale Avenue. The applicant responded that the configuration of the new drive-thru Rite Aid building made it difficult to incorporate the Hillsdale frontage into the overall shopping center. Commissioner Cahan stated that a variety of commercial uses should be encouraged at the shopping center and that she would not support losing any commercial space. The public hearing was then closed.

### Commission Discussion

Staff then highlighted the four main points that would be considered for a future Planned Development Zoning (see Public Outreach/Interest section below).

Commissioner Zito asked whether the driveway from the residential project to provide access to Meridian Avenue was specifically part of this project. Staff stated that both the residential and commercial property owners were the same and that could be dealt with at the PD Zoning stage. Commissioner Zito then asked staff why they were supporting high density residential currently when staff did not recommend it back in 2001. Staff responded that the commercial center is still struggling due to the lack of a specific anchor tenant and other financial setbacks since the original approval. In addition, the intent for the new development on the site was, and continues to be, to revitalize the commercial center. The additional residential units could provide the financial stimulus to the developer to facilitate the completion of the commercial center.

Commissioner Zito expressed concern over the loss of 40,000 square feet of commercial space. Staff noted that the majority of that commercial space was actually considered for the area north of Foxworthy, where Toll Brothers elected not to construct any commercial space.

While expressing concerns about making long term decisions regarding what may be short term problems, Commissioner Zito made a motion to approve the General Plan Text Amendment with the condition that the commercial and residential be developed concurrently. This motion was seconded by Commissioner Kamkar who added the provision that the commercial could be developed first *or* concurrently, which Commissioner Zito accepted.

The City Attorney then advised the Planning Commission that General Plan Amendments can not be specifically conditioned and upon further discussion, Commissioner Zito amended his motion to recommend approval per staff's recommendation, however asked staff to express his concern in the transmittal memorandum to the City Council.

Commissioner Platten stated that he supported the amendment and commented that as economic conditions change, recommendations should change as well. He stated that the higher density residential development will make the commercial center more viable.

Commissioner Cahan stated that she would not support the motion, as there is already significant traffic issues in the area and that people exiting the residential site were unlikely to turn left onto Hillsdale Avenue, instead cutting through residential streets and adding additional traffic onto Foxworthy Avenue. Staff then noted that the new proposal could improve traffic conditions by providing access directly to Meridian Avenue. Commissioner Cahan then asked whether the developer can be forced to provide access to Meridian Avenue. At this point the Director of Planning stated that the focus needed to be on the policy issue. Commissioner Cahan stated that if no assurance could specifically be provided with this Amendment to divert traffic from Foxworthy Avenue, she could not support the motion.

Commissioner Do stated that he supported the staff recommendation, but did not support requiring the concurrent development of the commercial and residential use. Commissioner Kamkar noted that the residential portion of the development could be sold off to fund development of the commercial area. Commissioner Zito again stated that the concurrent

development requirement was only a recommendation to be included in the transmittal memo and not a condition.

The Planning Commission voted 6-1-0, with Commissioner Cahan opposed, to recommend approval of the General Plan Text Amendment.

### ANALYSIS

A complete analysis of the issues regarding this project, including General Plan conformance, is contained in the attached staff report.

### EVALUATION AND FOLLOW-UP

A Planned Development Zoning (and subsequent Planned Development Permit) will be required to be filed in order to provide for the additional residential units that could potentially be permitted by this General Plan Text Amendment. Currently it is anticipated that the Planned Development Zoning will be filed in early 2010. Approval of that project will require subsequent public hearings before the Planning Commission and City Council, as well as additional community meetings.

### POLICY ALTERNATIVES

Not Applicable

### PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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)**

Notice of the Fall 2009 hearings on the General Plan was published in the San José Post-Record. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and 1000' of the northern Hacienda Gardens site and posted on the City website.

The proposal was discussed at two community meetings at the Cambrian Branch Library on September 1, 2009 and October 8, 2009. Each of these meetings had well over 50 attendees. In addition to the discussion on the General Plan Text Amendment, the developer provided conceptual plans for a new 116 unit residential project, although no formal development

application has been submitted to the City. Community members expressed significant concern over the project. See original staff report for more detailed information about initial neighborhood concerns.

It should be noted that in response to the comments that were raised at the two community meetings, staff has subsequently engaged in discussions with the applicant about their preliminary design plans to address the following key issues:

1. Provide parking garage access to the new residential project via a planned shared driveway with the shopping center off of Hillsdale Avenue. This would enable residents of the new development the option of accessing northbound Meridian Avenue via the new signalized intersection at Lama Way, thus avoiding Foxworthy Avenue.
2. Provisions will be made, as already provided in the original Planned Development Zoning, to allow the alternate use of the commercial parking lot for overflow parking for the proposed residential project.
3. The building mass on Yucca Avenue should be a combination of predominantly two-story building elements, with limited three story sections, consistent with the prior approvals.
4. The shopping center should have an integrated parking lot with share access and reciprocal parking with the proposed new retail building on the former Chevron site (southeast corner of Meridian & Foxworthy) to reduce traffic congestion on Foxworthy and Meridian Avenues.

The applicant has indicated his willingness to explore or comply with all of these suggestions at the Planned Development Rezoning stage.

The General Plan Text Amendment was also presented to the Neighborhood Roundtable on August 18th, the Developers Roundtable on August 28th and the Parks Commission Meeting on November 4th, 2009. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public. Correspondence from the general public that has been received on this proposed General Plan Text Amendment since the most recent community meeting is attached. This correspondence echoes the same concerns that were raised at the community meetings.

### **COORDINATION**

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

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

**COST SUMMARY/IMPLICATIONS**

Not applicable.

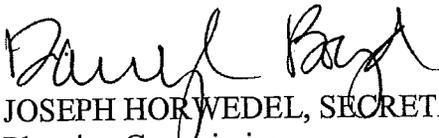
**BUDGET REFERENCE**

Not applicable.

**CEQA**

A Negative Declaration (ND) was approved for a previous General Plan Amendment and subsequent development project on July 25, 2001. That ND addressed the potentially significant environmental impacts of a project with a greater number of units than was ultimately approved the Planned Development process. Therefore, the ND adequately covers the increase in density proposed by this General Plan Amendment because the number of potential residential units will be less than the number analyzed for the ND.

The ND states that the proposed project will not have a significant impact on the environment. The Initial Study evaluated environmental impact issues such as the availability of city services, public utilities and traffic, among other checklist items in accordance with the California Environmental Quality Act. Traffic was the most important issue that was studied. The environmental background conditions since 2001 have had almost no change in this project area as a result of almost no new residential or commercial development except for the Hacienda Gardens project itself. Therefore, the findings from the previous traffic report, Initial Study and ND are still valid and adequate to provide clearance for the proposed General Plan Text Amendment..

  
for JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Mike Enderby, Project Manager at 408-535-7843.

Attachments:

Public Correspondence

Item  
6b

November 13<sup>th</sup>, 2009

To Whom It May Concern:

As a member of the Ninth District Neighborhood Action Committee and a resident who lives in the vicinity of Hacienda Gardens, I am writing to express my concern over the request by the developer (Mark Tersini of KT Properties) to amend the General Plan in order to increase the density from 12-25 units/acre to 25-50 units/acre at the Hacienda Gardens Shopping Center Project.

In 2001, when the project first started, the developer requested that the existing designation of "Neighborhood Community Commercial" be amended to "Mixed Use with No Underlying Land Use" so that a high density residential development of 3 and 4 stories could be constructed on the site with a reduced portion of commercial square footage.

At that time, after numerous neighborhood meetings with the Planning Department and a very long Planning Commission Meeting that had over capacity neighborhood attendance, the Planning Commission recommended that the city council "think out of the box" and suggested a substantially lower density because the request for high density was not consistent with the existing neighborhood of one and two story single family residences.

Per the Residential Design Guidelines of the City of San Jose "the density and buildings need to relate to the surrounding neighborhood" and the developer's proposal did not. The Residential Guidelines also indicate that "transitions between existing and new projects of different densities should be gradual." It goes on to say "the height and mass of the new project should not create abrupt changes from those of existing buildings" - which the high density project proposed by the developer did in a single family neighborhood with a density of 8 units or less/acre.

***If a high density proposal at Hacienda Gardens was not acceptable to the Planning Department in 2001 due to its inconsistencies with the neighborhood, what has changed that would make it acceptable in 2009?*** - other than the fact that the developer needs the additional units to as he says "make the project pencil out". The economic needs of the developer should not come at the expense of the neighborhood!

In 2001, the neighborhood around Hacienda Gardens did not meet the guidelines for high density housing in the General Plan and in 2009 it still does not meet the high density housing guidelines according to the San Jose Housing Element Update 2007-2014 revised draft of 6/5/09 which states "...25-50 units/acre is typified by 3-4 story apartments over parking. This density is primarily near:

1. the Downtown Core Area - ***WHICH WE ARE NOT,***

2. near commercial centers with ready access to freeways and/or expressways - ***WHICH WE ARE NOT,***
3. and in the vicinity of the rail stations within the Transit Oriented Development Corridors Special Strategy Area – ***WHICH WE ARE NOT.***

The original approval at this site south of Foxworthy was for 55 residential units. Since Toll Brothers, which purchased the parcel from the developer on the north side of Foxworthy did not utilize all of the units they were allocated, the developer has obtained an additional 27 units for a total of 82 units. We respectfully believe that this is more than enough and that the developer should not be granted any additional units which would alter the already approved density of 12-25 units/acre..

We have all (the Planning Department, the City Council, the neighborhood and the developer) put a lot of time and effort into the approval, design and development of this project. It is hard to believe that eight years later this project is still not complete, that none of the residential units have been constructed and that the commercial elements are predominantly vacant and unfinished (especially since the Toll Brothers development is almost complete and 50% sold in less than half the time). It is time to complete the project as approved, with no increase in density.

Sincerely,

Rhonda Hansen  
Ninth District Neighborhood Action Committee

**Schreiner, Edward**

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**From:** mik9and1@netzero.net on behalf of mik9and1@netzero.com  
**Sent:** Friday, November 13, 2009 11:24 AM  
**To:** Schreiner, Edward  
**Subject:** General Plan Amendment for Hacienda Gardens

Edward-

I moved to the Hacienda Gardens neighborhood 16 years ago. I did not want to live in a congested, high traffic area. The convenience of established retail and community services that were within walking distance of my house were major factors in my decision to purchase a home on Hogar Drive. The people in my neighborhood are friendly and we check on the welfare of adults and children on our street.

I am extremely concerned about the proposal to change the General Plan for the shopping center. In 2001, the Ninth District Neighborhood Action Committee and residents from both sides of Meridian, Foxworthy and Hillsdale avenues attended community and Planning Commission meetings. It was my understanding that the details of the development, north and south of Foxworthy were defined at that time.

The developer is not requesting a modest amendment to the plan, what was presented is a drastic increase in the number of units. When Mark Tersini was asked whether the units would be owner occupied or rental property, he seemed to evade answering the question. The development he is proposing seems to present more problems rather than find a solution to complete the redevelopment. I thought any development was to be in keeping with the code that permitted a defined number of units/acre. The intent is to maintain the aesthetic and environmental appeal of the area, is it not?

Building 3-4 story complexes across the street from modest single family homes creates an extreme disparity in the appeal of the neighborhood as well as safety issues for the surrounding neighborhoods. A concern to me is the plan to only allow one point of access for the residents of the new development. In the event of an emergency, would fire department and paramedic vehicles be able to enter and exit to provide assistance? On numerous occasions I have observed the fire department and paramedics responding to calls on streets that are easily accessible.

Historically, this has been a low crime area, but I have observed and heard about the police chasing suspects in the area. I have observed them in pursuit of a driver or responding to calls on Julio, Irlanda, Kirk and on Hogar. Several instances were in response to disturbances by individuals in houses they rented. I observed police cars block access to Irlanda from Hogar to Hillsdale. A police officer got out of his car, and pulled a shotgun from his trunk, and had it aimed down the street. The police have even chased suspects who ran from Foxworthy through the backyards of property south of Foxworthy toward Hillsdale.

I noticed an increase in traffic before the development but since this work began, it is much worse. The Toll Brothers development reduced the parking available for drivers making deliveries to the PW Supermarket. They often park on the street and those that have long trailers block both lanes of traffic when entering and exiting the driveway behind the store. This causes a backup on both sides of Foxworthy and impatient drivers will drive down side streets(i.e. Yucca, Grizilo, and Kirk).

11/18/2009

After the light was installed on Kirk and Hillsdale, I noticed an increase in the number of cars that drive from Julio or Irlanda down Hogar to Kirk in an effort to access Foxworthy. This occurs throughout the day and on weekends. When I go to work (7:30 am) I encounter traffic on Kirk and have had to wait for cars to enter Foxworthy before I could access Kirk. Then, when I want to turn left onto Meridian, I often have to wait for the light to cycle through two changes before I can turn.

Many people agree the property is an eyesore and would like it finished but not at the expense of the community. I hope that the Planning Commission will honor the original agreement with the Ninth Ward Action Committee and maintain the property at 12-25 units/acre.

Concerned Citizen,  
Martha Inouye

**Schreiner, Edward**

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**From:** jlbotha@comcast.net  
**Sent:** Monday, November 16, 2009 1:32 PM  
**To:** Enderby, Mike  
**Cc:** Schreiner, Edward  
**Subject:** Hacienda Gardens

Dear Mr. Enderby,

I live in the area of the Hacienda Gardens where you are considering a General Plan Amendment that would increase the residential density (City File Number GP 09-T-04) on the site.

I would like to express my dismay about this proposal, because such high density is not compatible with the current density of the neighborhood and will detract from the quality of the neighborhood. I would like to request that you propose to the Planning Commission and the City Council to keep the number of residential units at the number that was approved prior to the current proposal.

I am also concerned about the way in which this project is proceeding. The lack of progress has resulted in the development being a blight upon the neighborhood now for a number of years, since the approval of the current plan. The direction in which the development of this property appears to be headed is that the residential units are being increased and that there does not appear to be space for adequate parking remaining to attract quality stores. Moreover, the residents are supposed to be able to park in the commercial parking, thereby making it even less attractive to quality stores that are able to pay the required rent. What I am afraid of is that if quality stores do not materialize, there could be a possibility that the developer would request yet another land-use change to build more housing. I think that it would be much better for the neighborhood if the current development plan were left as is, without creating more traffic and parking problems and leaving the possibility of having more commercial space to serve the community.

If you were to allow this proposal to be approved, I would expect there to be significant traffic circulation and parking problems. I wish to bring to your attention that the original traffic impact study indicated that there would be fewer trips entering and exiting from the sites (northern and southern), based on the existing development plan, than the actual counts at the underutilized site showed. I realize that the study was based on numbers that were based upon ITE numbers, but, as you know, these numbers are very approximate. For instance, the trip generation rate for condominiums does not depend upon the size of an individual unit. I find it hard to believe that there will really be fewer trips entering and exiting from the fully-developed center than the old underutilized development.

I also wish to point out to you that the traffic impact study focused mostly on the impacts on the major intersections. However, that is not the only impact that the development could have on the traffic conditions. I have observed a vehicle queue on the eastbound approach of the Foxworthy/Meridian intersection extending up to the 711 store at the corner of Kirk and Foxworthy. This causes entrances and exits to be blocked and changes circulation patterns. Whereas the impact of adding additional housing units may not change the LOS at the

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Foxworthy/Meridian intersection significantly, you should keep in mind that the LOS analysis is based upon 15-minute time periods (that are in essence arbitrarily chosen by a TRB committee), but that the queue lengths vary from (signal) cycle to cycle and can cause circulation, access and safety problems. The addition of only a small number of vehicles during a cycle could extend the queue beyond Yucca, causing further circulation problems. One of the very dangerous consequences of having these long queues is that drivers, who want to access the left-turn lane, become impatient and enter the opposing lane to get into the lane. This is a potentially very unsafe situation. Adding just a few residential units may add just a few vehicles parking outside the development, which would cause problems. For example, just five personal vehicles would take approximately 100 feet of curb space.

I therefore think that you should analyze the traffic situation, particularly the impact upon Foxworthy, again before you recommend that this proposal be accepted. I think that you should also ensure that the residents that will occupy the housing on the southern section be allowed to access the intersection at Lama and Meridian. This will reduce the impact on Foxworthy as well as the proposed entrance on Hillsdale. Turn prohibitions, such as proposed on Hillsdale, very often don't work well and can lead to very unexpected and unsafe traffic conditions. Allowing access through Lama will mitigate this problem. I have also heard that another redevelopment is being considered at the corner of Foxworthy and Almaden. This will increase the pressure on Foxworthy.

In closing, I hope that you will look at the problems that I mentioned before you recommend the proposed General Plan Amendment. I will also appreciate it if you would make this e-mail part of the project/application record.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Jan Botha