

SUPPLEMENTAL COUNCIL AGENDA: 10-26-10
ITEM: 11.3(a)



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 19, 2010

Approved

Date

10/20/10

COUNCIL DISTRICT: 9
SNI AREA: None

SUPPLEMENTAL

SUBJECT: C10-010. DIRECTOR INITIATED PREZONING FROM UNINCORPORATED COUNTY OF SANTA CLARA TO THE R-1-5 SINGLE-FAMILY RESIDENCE ZONING DISTRICT (APPROX. 94.5 ACRES) AND CN COMMERCIAL NEIGHBORHOOD ZONING DISTRICT (APPROX. 8.5 ACRES), FOR AN APPROXIMATELY 103 GROSS ACRE COUNTY POCKET.

REASON FOR SUPPLEMENT

Per the Municipal Code, valid Zoning Protests were filed on September 30, 2010 at least five days prior to the City Council's scheduled consideration of the subject Planning Director-Initiated Prezoning, File No. C10-010 (originally scheduled on October 5, 2010; renoticed for October 26, 2010). This report responds to the issues raised by the protestants and describes the implications of the protests on the procedure for the City Council's consideration of the proposed prezoning.

RECOMMENDATION

Consideration of and vote on a Majority Protest to Prezoning C10-010 filed pursuant to Part 5 of Chapter 20.120 of the City's Zoning Code to protest a Prezoning to the R-1-5 Single-Family Residence Zoning District as to approximately 94.5 acres and CN Commercial Neighborhood

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Zoning District as to approximately 8.5 acres for an approximately 103 gross acre County pocket.

BACKGROUND

This Planning Director-initiated Prezoning (File No. C10-010) is proposed in conjunction with the annexation of the Cambrian No. 36 County Island, generally bounded by Central Park Drive to the north, Camden Avenue to the south and Union Avenue and Salerno Drive to the east. Staff is recommending that a majority of the area (94.5 acres) within the unincorporated pocket be zoned with the R-1-5 Single Family Residence zoning district. The R-1-5 zoning includes an 8,000 square foot minimum lot size standard that is consistent with the existing character of the neighborhood that is developed with single-family residences on large lots that generally range in size from 8,000 to 16,000 square feet.

Staff is recommending the CN Commercial Neighborhood zoning district for the remaining 8.5 acres that includes the two commercial areas located on the northerly side of Camden Avenue and at the northwesterly side of Bascom and Union Avenues. The CN Commercial Neighborhood District is a district intended for neighborhood serving commercial uses. The type of development supported by this district includes neighborhood centers, multi-tenant commercial development along major arterials, and small corner commercial establishments, which is consistent with the existing commercial uses in the area.

On August 25, 2010, the Planning Commission voted 5-0-1-1, Co-Chair Cahan recused and Commissioner Kamkar absent, to recommend that the City Council adopt an ordinance prezoning the 103-acre County pocket as recommended by staff.

ANALYSIS

Zoning Protest Filed

On September 30, 2010, Zoning Protest applications were filed regarding the above-referenced prezoning originally scheduled before the City Council on October 5, 2010 (renoticed for October 26, 2010). Zoning Protests were received from the owners of 61% of the property within the area proposed to be prezoned (see attached map). All of the Zoning Protest Applications include the same reference to "Attachment A" in the section of the form used for identifying the reasons for the protest (see attached "Attachment A to Zoning Protest Application"). The Zoning Protest applications that include additional reasons to those in "Attachment A" are attached and the reasons for protest are discussed in this memorandum. All of the Zoning Protest applications are available for review on the City of San Jose website at <http://www.sanjoseca.gov/planning/annex/>

The Protest has been determined to be valid according to Sections 20.40.160 and 170 of the San Jose Municipal Code. A valid Majority Protest occurs when the Director of Planning determines

that written protests have been filed by the owners of sites bounded by either 1) 50 percent or more of the total length of the protest line, or 2) by the owners of not less than 50 percent or more of the area of the subject property. As shown on the map, protests were received from owners of 61% of the area proposed to be rezoned.

Therefore, the following provisions of the Zoning Ordinance apply to the subject rezoning:

20.120.420 Effect of Majority Protest

If the Director determines that a majority protest has been filed:

A. In order to consider a motion to adopt the proposed ordinance, the City Council must first override the majority protest by an affirmative vote of at least two-thirds (2/3) of its members. Such override must occur within sixty (60) days from the close of the Public Hearing on said ordinance;

B. The City Council may deny the proposed ordinance without first approving or overriding the majority protest; or

C. If the City Council fails to override the majority protest and also fails to deny the proposed ordinance within sixty (60) days from the close of the Public Hearing on the proposed ordinance, said ordinance shall be deemed denied by the City Council on the sixty-first (61st) day.

Responses to the Protest

As indicated on the attached "Attachment A to Zoning Protest Application" and on the attached Zoning Protest applications, nine reasons were given for the protest of the rezoning. A response to each reason is provided below:

1) Rezoning Paves the Way for Streamlined Annexation Without Protest.

In accordance with State law, the assignment of zoning districts is separate from the decision regarding whether or not the City should annex the subject County Island. A decision to uphold the Zoning Protest or to deny the subject rezoning would not preclude the City of San Jose from deciding to annex the County Island. In accordance with Section 20.10.080 of the Municipal Code, any property that has not been specifically designated with a particular zoning district is deemed to be zoned A-Agriculture. Conversely, the approval of the proposed rezoning does not obligate the City to approve the corresponding annexation of the Cambrian No. 36 County Island.

2) Rezoning Directly Contradicts City of Campbell and Cambrian No. 36 Property Owner Requests.

3) Prezoning Will Result in Annexation that Will Not Benefit My Property.

These two comments assume that “the prezoning is the first step of a unilateral effort by the City of San Jose to annex Cambrian 36.” As mentioned above, the prezoning decision is a separate decision for the City Council to make and does not predetermine a particular vote for or against annexation. Arguments in opposition to the annexation are not relevant to the City’s decision regarding the appropriate zoning districts for the proposed prezoning.

At community meetings and in response to communications from individual property owners, staff proposed zoning districts that reflected the existing uses within the area. In most cases, the proposed prezoning does respond to the property owner requests. One property owner requested a CG Commercial General district instead of CN Commercial Neighborhood district; however, the proposed CG provides more appropriate development standards (such as setbacks) that would not constrain future investment of the property. The property owner was specifically concerned that the CG would necessitate a Conditional Use Permit for certain investments to his site; however, the County currently requires a Conditional Use Permit for those same activities.

4) Staff Analysis of Prezoning is Insufficient

Typical of other prezoning analysis for unincorporated islands proposed for annexation, the recommendation for the proposed zoning districts is based upon consideration of the existing City of San José General Plan designations; the existing Santa Clara County zoning districts; and the existing uses on the sites and in the surrounding area. The staff report to the Planning Commission (and provided to the City Council) includes a comprehensive analysis explaining the reasons for the specific proposed zoning districts for the prezoning. The analysis evaluated the City’s choices for residential and commercial zoning districts in light of existing uses and the current Santa Clara County zoning districts. This same report also discussed the City of San Jose’s procedures for those uses and structures determined to be Legal Non-Conforming.

5) Environmental Review of Prezoning Violates CEQA

The County Island Annexation Program entails the annexation of unincorporated pockets that are within the Sphere of Influence and Urban Service Area of the City of San Jose as identified and described in the San Jose 2020 General Plan. As there is no new development proposed in conjunction with the proposed annexation of the Cambrian No. 36 Pocket and the proposed zoning districts implement the San Jose 2020 General Plan designations and policies, the proposed prezoning and annexation are considered to be pursuant to or in furtherance of the Final Environmental Impact Report (EIR) for the San Jose 2020 General Plan and do not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San Jose may take action on the project as being within the scope of the Final EIR for the City’s existing General Plan.

6) Public Hearing Violated City and State Noticing Requirements

The Public Hearing Notice for the August 25, 2010, Planning Commission hearing on the subject rezoning was mailed on August 5, 2010 to owners and occupants of property inside and within 500 feet of the property proposed to be rezoned. The 20-day advance notification and 500 feet noticing radius exceeds the requirement in San Jose Municipal Code Section 20.100.190 and State Law (§65091) that a notice of the hearing be provided at least ten (10) calendar days before the date set for the hearing to any occupant of property within 300 foot radius of the property that is the subject of the application.

Additionally, Zoning Protest applications were submitted that included the following reasons for protesting the rezoning:

- 7) **"I have lived at my present address for over fifty years. I fear deterioration of Fire, Police, Medical Response Times and Services by annexation to San Jose."**
- 8) **"Campbell has been my home since 1958."**
- 9) **"I have lived in every (sic) house, since 1972 and worked (at) 1510-1524 Camden since 1960. I am retired and don't need to change insurance, lic (sic) cars all the paper work for all the years I been here."**

These statements express opposition to the proposed annexation of the Cambrian No. 36 County Island and do not address the proposed rezoning with regard to the recommended R-1-5 Single Family Residence Zoning District or CN Commercial Neighborhood zoning districts.

PUBLIC OUTREACH

As further discussed in the report to the Planning Commission regarding the proposed Rezoning C10-010, staff held community meetings on May 19, 2010, and August 18, 2010, with residents, property owners, and business owners of this County pocket to discuss the annexation and rezoning process. There was no specific opposition expressed regarding the proposed zoning as concerns were primarily in opposition to the annexation.

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COORDINATION

This Zoning Protest memorandum has been coordinated with the City Attorney's Office.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti at 408-535-7901.

Attachments:

- Zoning Protest Map
- Unique Zoning Protests



Zoning Protest

File Number: C10-010
 District: 9

Protests from owners of 61.0 % of Area
 Proposed for Prezoning

ATTACHMENT A

TO ZONING PROTEST APPLICATION

I protest -- and respectfully urge the City Council to deny -- the proposed Director Initiated Rezoning (File No. C10-010) ("Rezoning") that would result in the rezoning of my property to R-1-5 Single-Family Residence Zoning District upon annexation to the City of San Jose for the following reasons and with reference to the following facts:

1. Rezoning Paves the Way for Streamlined Annexation Without Protest. The Rezoning is proposed in conjunction with -- and is a necessary prerequisite to -- the City of San Jose's intended streamlined "urban pocket" annexation (pursuant to Government Code § 56375.3) of approximately 103 gross acres, consisting of 330 parcels in unincorporated Santa Clara County, which is commonly known as Cambrian 36. Cambrian 36 encompasses my property and borders both the City of Campbell and the City of San Jose.
2. Rezoning Directly Contradicts City of Campbell and Cambrian 36 Property Owners Requests. The Rezoning is the first step of a unilateral effort initiated by the City of San Jose to annex Cambrian 36 -- an effort which directly contradicts the stated desire of both the City of Campbell and Cambrian 36 property owners to annex Cambrian 36 into the City of Campbell. In October of 2006, a petition signed by 204 Cambrian 36 property owners was presented to the City of Campbell asking that it be annexed to the City of Campbell. In response, the City of Campbell directed its staff to pursue two different possibilities for annexation of Cambrian 36, one which received preliminary support from City of San Jose staff. Councilmember Judy Chirco, citing an inapplicable 1984 city policy (concerning *de-annexation*), quashed this effort. Despite this disappointing response, both Campbell's and Cambrian 36 property owners' interest in annexing Cambrian 36 remains unequivocal. As recently expressed in the Mayor of Campbell's letter to the Mayor of San Jose dated September 2, 2010, "Campbell welcomes the annexation of the Cambrian #36 pocket into our city. The residents have Campbell mailing addresses, identify with Campbell, and stated a clear preference to be part of Campbell."
3. Rezoning Will Result in Annexation that Will Not Benefit My Property. My property will not benefit from the City of San Jose's intended annexation that will result from the proposed Rezoning. On the contrary, it will result in a downgrade of my current services received from the County of Santa Clara at an increased cost. The City of San Jose does not currently provide Cambrian 36 residents any services and it has not provided any indication that it is capable of meeting the standard of services that we currently receive. Furthermore, it has not resolved the pressing issue of the City's ability to provide fire

service. As such, the City's intended annexation would not qualify for a streamlined urban island annexation pursuant to Government Code § 56375.3 because it does not meet the criteria set forth in Government Code § 56375.3(b)(6).

4. Staff Analysis of Rezoning is Insufficient. Staff has not provided a sufficient analysis of how the proposed Rezoning compares with my property's existing County zoning. For example, it has not explained or analyzed how the permitted and conditional uses in the proposed zone will compare with what uses are currently allowed under my property's existing zoning. Nor has it provided a comparison of floor area ratios and densities etc. Further, it has not provided sufficient analysis of what existing legal uses would become legal non-conforming. As such, it is impossible for me to understand and evaluate the affect of the Rezoning on my property.

5. Environmental Review of Rezoning Violates CEQA. Environmental review of the Rezoning has not been conducted in compliance with the California Environmental Quality Act ("CEQA"). the City of San Jose's attempted reliance on the San José 2020 General Plan Environmental Impact Report ("EIR") is legally inadequate. The EIR was certified as complete on August 16, 1994 -- more than 16 years ago -- and is not current nor accurate. Since its certification, new information of substantial importance to the Rezoning that was not known and could not have been known at the time the EIR was certified as complete is now available (such as changes in urban service area, changes in population, changes in provision of services, public infrastructure etc.). As such, a supplemental or subsequent EIR would need to be prepared in order to include new information since the certification date. At the very minimum, an addendum to the EIR is required to make minor corrections or changes. See Public Resources Code § 21166 and 14 Cal. Code Regs § 15162.

6. Public Hearing Notice Violated City and State Notice Requirements. Notice for the San Jose Planning Commission August 25th public hearing on the Rezoning failed to comply with the City's own notice policies and State Planning & Zoning notice requirements. Despite repeated requests for deferral from Cambrian 36 property owners based on this insufficient notice as well as lack of staff analysis and inadequate CEQA review, the Planning Commission refused to grant the deferral request and instead recommended the Rezoning for the City Council's approval. As such, the Planning Commission's recommendation is null and void and the City Council's consideration of the Rezoning is premature and does not comply with Municipal Code § 20.120.030(B).



CITY OF SAN JOSE

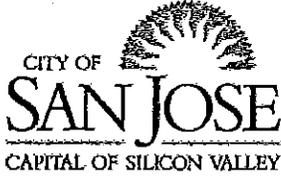
Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

ZONING PROTEST APPLICATION

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

TO BE COMPLETED BY APPLICANT (PLEASE PRINT OR TYPE)
ADDRESS OF PROPERTY BEING PROTESTED <u>556 CAMBRIAN DR., CAMPBELL, CA 95008</u>
ASSESSOR'S PARCEL NUMBER(S) <u>378-21-073-00</u>
REASON OF PROTEST <p>I protest the proposed rezoning because <u>See Attachment A I HAVE LIVED AT MY PRESENT ADDRESS FOR OVER FIFTY YEARS. I FEAR DETERIORATION OF FIRE, POLICE AND MEDICAL RESPONSE TIMES AND SERVICES BY ANNEXATION TO SAN JOSE.</u> Use separate sheet if necessary</p>
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>556 CAMBRIAN DR., CAMPBELL, CA. 95008</u> <u>PARCEL NUMBER - 378-21-073-00</u>
and is now zoned <u>R1-8</u> District. <i>(in Santa Clara County)</i>
The undivided interest which I own in the property described in the statement above is a: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Fee Interest (ownership) <input type="checkbox"/> Leasehold interest which expires on _____ <input type="checkbox"/> Other: <i>(explain)</i> _____

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.



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 1420 LOUIS WAY

ASSESSOR'S PARCEL NUMBER(S)
414-04-026-00

REASON OF PROTEST
 I protest the proposed rezoning because See Attachment A
Compell has been my home since 1958

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: *(describe property by address and Assessor's Parcel Number)*

1420 LOUIS WAY
parcel # 414-04-026-00

and is now zoned R1-8 District. *(in Santa Clara County)*

* The undivided interest which I own in the property described in the statement above is a:

Fee Interest (ownership)

Leasehold interest which expires on _____

Other: *(explain)* _____

ZONING PROTEST APPLICATION

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	<u>010-010</u>	COUNCIL DISTRICT	DATE _____ BY _____
QUAD #	ZONING	GENERAL PLAN	
REZONING FILE NUMBER			

**TO BE COMPLETED BY APPLICANT
(PLEASE PRINT OR TYPE)**

ADDRESS OF PROPERTY BEING PROTESTED 1339, 1351, 1361, 1373, 1524, 1510 Olympia Ave

ASSESSOR'S PARCEL NUMBER(S) 414-04-019, 020, 021, 022, 003, 004 Olympia Camden Camden

REASON OF PROTEST
 I protest the proposed rezoning because See Attachment A I HAVE LIVED IN EVERY HOUSE SINCE 1972 & WORKED 1510-1524 CAMDEN SINCE 1960 I AM RETIRED & DON'T NEED TO CHANGE INSURANCE LIC CARDS ALL THE PAPER WORK Use separate sheet if necessary for all yrs I BEEN HERE

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: (describe property by address and Assessor's Parcel Number)
 1339 OLYMPIA AVE Lot 15 (414-04-019) 1373 414-04-022
1351 OLYMPIA AVE Lot 14 (414-04-020) 1524 414-04-003
1361 OLYMPIA AVE Lot 13 (414-04-021) + HOME 1510
 and is now zoned R1-8 District. (in Santa Clara County) 414-04-004

The undivided interest which I own in the property described in the statement above is a:

Fee Interest (ownership)

Leasehold interest which expires on _____

Other: (explain) _____

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

10/5/10