C.C. Agenda: 05-15-12
Item: 4.3

STAFF REPORT
CITY COUNCIL

FILE NO.: C12-008

Submitted: April 3, 2012

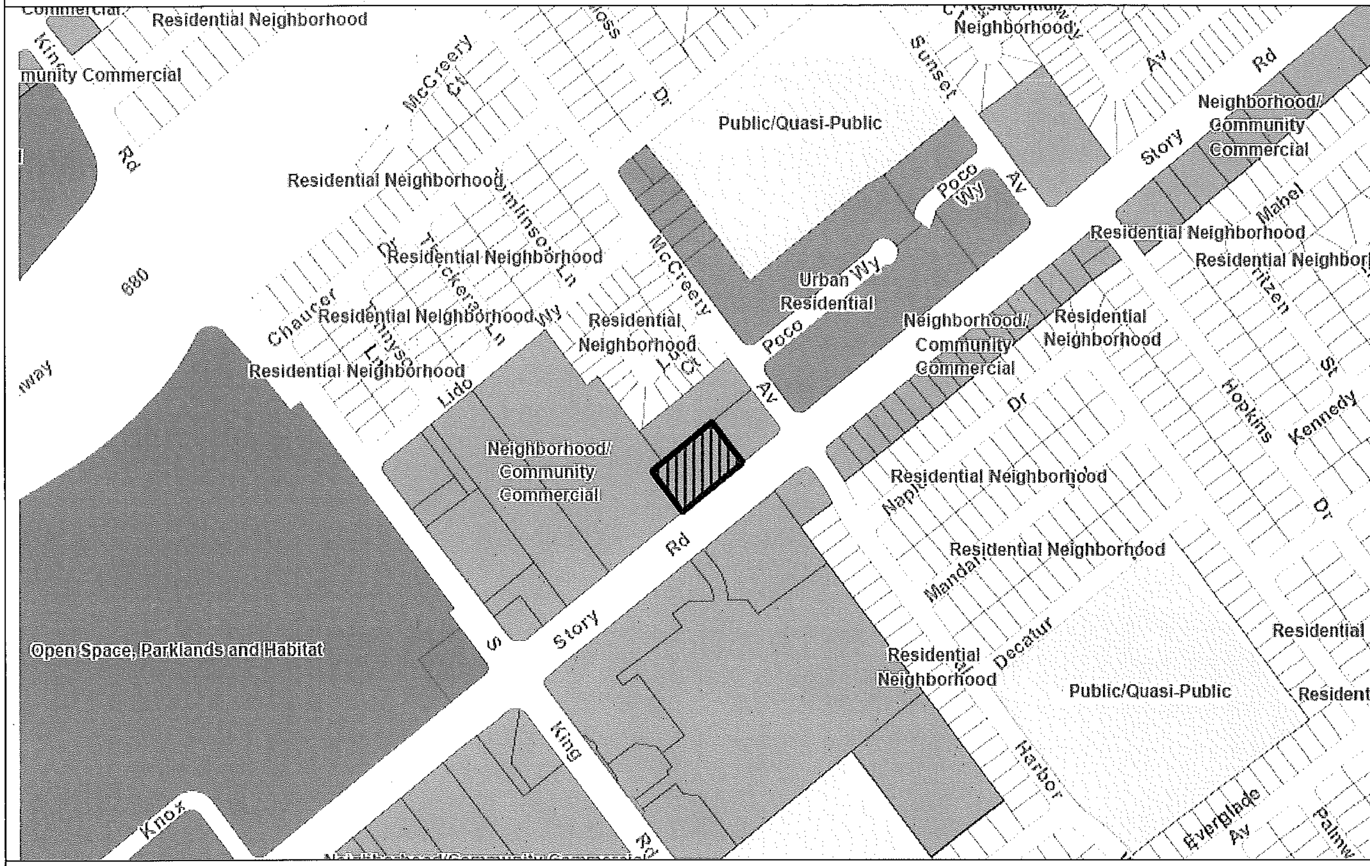
PROJECT DESCRIPTION:
Conforming Rezoning from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District to allow commercial uses and facilitate the reconstruction of a fast food restaurant and drive-through use on a 0.73 gross acre site.

LOCATION:
North side of Story Road, approximately 150 feet westerly of McCreery Avenue (1841 Story Road)

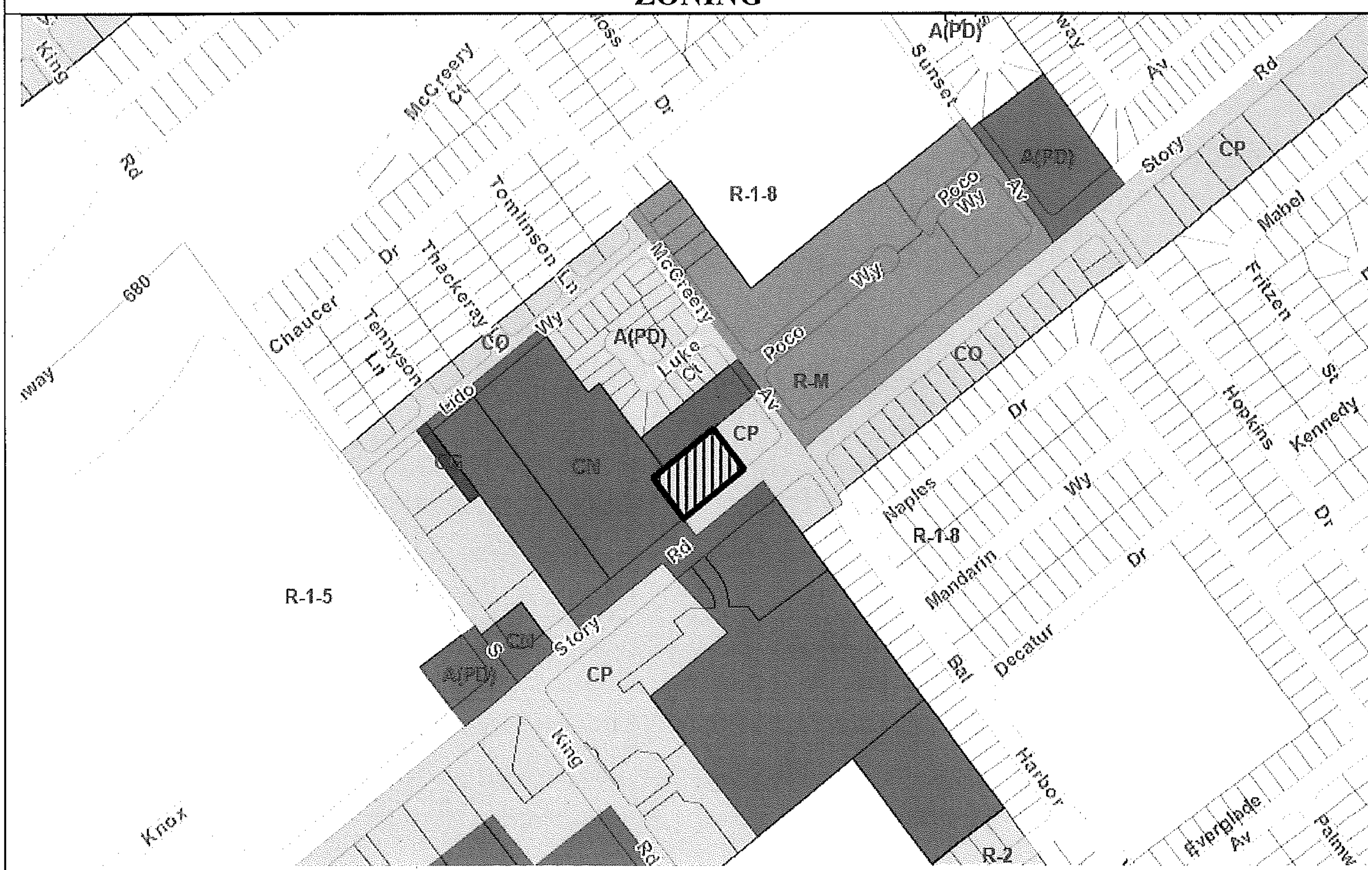
Zoning	CP Commercial Pedestrian
Proposed Zoning	CN Commercial Neighborhood
General Plan	Neighborhood/Community Commercial & Story Road NBD
Council District	5
Annexation Date	February 9, 1960 (Hillview No. 22)
SNI	East Valley/680 Communities
Historic Resource	N/A
Redevelopment Area	Story Road
Specific Plan	N/A

Aerial Map N δ

GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends that the City Council find that the project is in conformance with the California Environmental Quality Act (CEQA) and approve the proposed Conforming Rezoning for the following reasons:

1. The proposed rezoning is in conformance with the Envision San Jose 2040 General Plan Land Use/Transportation Diagram's land use designation of Neighborhood/Community Commercial for the subject site.
2. The proposed rezoning is in conformance with the East Valley/680 Communities Strong Neighborhoods Initiative neighborhood improvement plan.
3. The proposed rezoning would allow for commercial uses on the site which is compatible in scale and character with the surrounding uses.

BACKGROUND & DESCRIPTION

On April 3, 2012, David Lundy of PM Design Group, on behalf of the applicant, Jack in the Box, requested a conforming rezoning of the subject property from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District to facilitate the reconstruction of a drive-through restaurant on the subject site.

A drive-through restaurant is a conditional use in the CN Commercial Neighborhood Zoning District. The existing drive-through restaurant is legal non-conforming and could not be demolished and reconstructed within the existing CP Commercial Pedestrian Zoning District unless the drive-through component was eliminated.

Site and Surrounding Uses

The subject site is a flat, developed land that is 0.73 gross acres in size. The site was developed in 1967 with a 1,400 square-foot drive-through restaurant (Jack in the Box) and associated site, circulation, and landscape improvements. A Conditional Use Permit (File No. CP04-002) was approved in 2004 to allow 24-hour operations at the drive-through restaurant. The site is surrounded by commercial uses on all sides.

Preliminary Review Proposal

On November 3, 2011, the applicant filed a Preliminary Review (File No. PRE11-092) to propose the demolition and reconstruction of the drive-through restaurant. The applicant proposed a new building located in the center of the subject site. Staff recommended that the building be located near the easterly property line so as to improve the project's conformance to City Council Policy 6-10: Drive-Through Uses in terms of on-site circulation and dedicated stacking lanes for drive-through vehicles. Redevelopment of the site would also provide an opportunity to integrate the site with the larger shopping center (Mi Pueblo) located immediately west and allow access from the shopping center driveway. Subsequent to receiving staff's Preliminary Review comments, the applicant proposed to continue operation of the existing restaurant until construction of the new drive-through restaurant was complete. Staff expressed serious concern with this scenario as it would lead to inadequate parking to sustain the existing restaurant operation and a less ideal site layout for the new building.

ANALYSIS

The proposed conforming rezoning was analyzed with respect to conformance with the Envision San Jose 2040 General Plan and East Valley/680 Communities Strong Neighborhoods Initiative neighborhood improvement plan.

Envision San Jose 2040 General Plan

The proposed rezoning of the subject site to the CN Commercial Neighborhood Zoning District conforms to the Envision San Jose 2040 General Plan Land Use/Transportation Diagram's land use designation of Neighborhood/Community Commercial and Story Road Neighborhood Business District (NBD). The Neighborhood/Community Commercial and NBD designations support a broad range of commercial uses that serve the community in neighboring areas, including neighborhood-serving retail, services, and amenities. The site is located on a major arterial street, Story Road, and is immediately adjacent to other automobile-friendly commercial uses at the intersection of King and Story roads. The proposed CN Commercial Neighborhood Zoning District is intended to provide for neighborhood-serving commercial uses without an emphasis on pedestrian orientation, except within the context of a single development. Therefore, the CN Commercial Neighborhood Zoning District is an appropriate district on the subject site as it is consistent with the General Plan Neighborhood/Community Commercial land use designation because the major arterial street is lined with commercial uses.

East Valley/680 Communities Strong Neighborhoods Initiative (SNI) Neighborhood Improvement Plan

The site is located in the Arbuckle neighborhood of the East Valley/680 Communities SNI area. The neighborhood improvement plan identifies the north side of Story Road located between King Road and McCreery Avenue, including the subject site, as an area in need of façade improvements. This rezoning will help facilitate the redevelopment of this property and provide the opportunity for site and landscape improvements.

If the subject rezoning is approved, a Conditional Use Permit could be filed for a drive-through use and considered by the Planning Commission. The subsequent development proposal would be evaluated with respect to the requirements of the CN Commercial Neighborhood Zoning District and City Council Policy 6-10: Drive-Through Uses.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to Section 15168 of the CEQA Guidelines, the City of San Jose has determined that the proposed rezoning is pursuant to or in furtherance of the Final Environmental Impact Report (EIR) for the Envision San Jose 2040 General Plan, which findings were adopted by City Council Resolution No. 76041 on November 1, 2011. The Program EIR was prepared for the comprehensive update and revision of all elements of the City of San Jose General Plan, including an extension of the planning timeframe to the year 2040, and does not involve new significant effects beyond those analyzed in this Final EIR.

The proposed conforming rezoning, is not in an environmentally sensitive area, is less than 10,000 square feet, and is in conformance with its San Jose 2040 General Plan Land Use/Transportation Diagram land use designation. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

PUBLIC OUTREACH/INTEREST

Property owners and occupants within a 500 foot radius were sent public hearing notices for the City Council hearing. This staff report has been posted on the City's web site. Signage has been posted at the site to inform the public about the proposed change. Staff has been available to discuss the proposal with interested members of the public.

Project Manager: Sylvia Do **Approved by:** /s/ **Date:** 04-20-12

Owner/Applicant:	Attachments:
Owners: Richard R. and Deborah M. Anderson, trustees 107 Rockridge Court Santa Cruz, CA 95060 Jeffrey M. Filice, trustee 358 North Island Drive, #105 Memphis, TN 38103 Applicant: David Lundy PM Design Group 4470 Yankee Hill Road, #100 Rocklin, CA 95677	Exhibit "B"

FitchRatings

FITCH TAKES VARIOUS RATING ACTIONS ON SAN JOSE REDEVELOPMENT AGENCY TABS; REMOVES NEGATIVE WATCH

Fitch Ratings-San Francisco-20 April 2012: Fitch Ratings has taken the following rating action on San Jose Redevelopment Agency (the agency) tax allocation bonds (TABs):

--$127.5 million merged area redevelopment projects TABs, series 2003, affirmed at 'BBB-';
--$27.7 million merged area redevelopment projects TABs, series 2008A affirmed at 'BBB-'
--$80.1 million merged area redevelopment projects TABs, series 2008B affirmed at 'BBB- ';
--$1.6 billion merged area redevelopment projects TABs, series 1993, 1997, 2004, 2006C, 1998, 1999, 2005B, 2006D, 2002, 2004A, 2005A, 2006-A, 2006B, 2007A-T, 2007B, downgraded to 'BB+' from 'BBB-';
--$247.5 million housing set-aside TABs affirmed at 'A'.

All of the TABs are removed from Rating Watch Negative.

The Rating Outlook for the merged area redevelopment project area TABs is Negative.

The Rating Outlook for the housing set aside TABs is Stable.

SECURITY
--The merged area TABs are secured by gross tax increment revenue from the project area net of certain senior
pass-throughs and the 20% set-aside for housing. The housing TABs are secured by the 20% housing set aside.
--All TABs are also secured by debt service reserve funds; however, only the merged area redevelopment project TABs, series 2003 and 2008A and 2008B benefit from a cash-funded reserve.

KEY RATING DRIVERS

AGENCY DISSOLVED; ADEQUATE PROCEDURES IN PLACE: The removal from Rating Watch Negative reflects progress made in implementing the legislation to dissolve the agency pursuant to state law (Assembly Bill 1x26). While noting that expected state procedural guidelines have not been released, Fitch believes the Successor Agency to the City of San Jose Redevelopment Agency (SJ SARA) and the county of Santa Clara (the county) have adequate procedures in place to address the mechanical issues of dissolution including commingling funds, priority of payments, and timing of cash flows.

STATE LEG NOT TRIGGER FOR RATING ACTION: The state's dissolution of redevelopment agencies as of Feb. 1, 2012 explicitly states its intention not to alter the bond security. In addition to closing the liens, certain instructions from the state's Department of Finance, if relied upon, could result in improved bond security over the long term.

LARGE INCREASE IN APPEALS: The Negative Outlook on the non-housing merged area TABs reflects the very narrow debt service coverage coupled with increasing appeals. While early estimates for the secured roll for fiscal 2013 support improved debt service coverage to about 1.10 times (x), depending on the timing and amount of resolved appeals, coverage could dip lower.

HIGHLY CONCENTRATED, VOLATILE TAX BASE: Taxpayer and industry concentration remains a concern. Fiscal year 2012 top 10 taxpayers represent 32% of assessed value (AV) with the largest taxpayer at 15%. Furthermore, the concentration in the volatile technology sector poses additional risk.

BIFURCATION OF RATINGS DUE TO RESERVES: The lower rating on the merged project area TABs with cash-funded debt service reserve funds reflects the minimal value Fitch places on debt service reserve fund surety policies.

HOUSING TABS STILL SOUND: The affirmation of the 'A' rating and Stable Outlook on the housing TABs reflects their satisfactory debt service coverage. Housing bonds' debt service coverage is an estimated 1.76x in fiscal 2012.

WHAT COULD TRIGGER RATING ACTION

EROSION IN DEBT SERVICE COVERAGE: For the non-housing merged redevelopment area TABs, a decline in AV due to appeals or economic weakness causing pledged revenue for fiscal 2013 or later to drop much below the forecast 1.10x.

CREDIT PROFILE

LARGE PROJECT AREA; HIGHLY CONCENTRATED
The merged project area is sizeable, covering 28 non-contiguous square miles and spanning 20 miles north to south. It encompasses 21 component areas including industrial, downtown, and neighborhood business districts. The commercial/industrial component is the largest and includes companies such as Cisco Systems Inc., eBay, Hitachi and Adobe and others which are a vital part of the regional, state and national economy.

Despite its large size, the project area tax base is highly concentrated in its top taxpayers and in the high technology sector. This sector has experienced significant volatility in recent years. The tax base also includes high levels of personal property & equipment (PP&E) whose AV tends to be more volatile: increasing steeply with an up-cycle as investments in business equipment are made and then declining in a down-cycle as the equipment is depreciated and not replaced or becomes obsolete.

The vast majority of total project area AV is for industrial - primarily research and development - and commercial uses, with a moderate residential component. In addition, unsecured property, mostly personal property, accounts for a large amount of project area AV.

Taxpayer concentration remains above average with fiscal 2012 top 10 taxpayers representing 32% of AV and 34% of incremental AV (IV). The largest taxpayer, Cisco, constitutes 15.1% of the project area's IV. Total personal property and equipment (PP&E) represents a high 23% of fiscal 2012 total AV, but this is down substantially from a high of 30.1% in fiscal 2002.

VOLATILE AV; NARROW COVERAGE; MINIMAL ADDITIONAL RESOURCES
Along with AV and IV, pledged revenue trends have been volatile in recent years, ranging from a gain of 32.6% in fiscal 2002 to 14% and 12% losses in fiscal years 2004 and 2005, respectively. The bulk of the AV losses stemmed from reductions in AV for PP&E, which can fall steeply during economic downturns. After increasing in fiscal years 2007 through 2010, AV declined in fiscal 2011 and 2012 by 7.5% and 1.8%, respectively.

Additional revenue pressure occurred in fiscal 2012 when the assessor retained about $5.9 million due to appeals granted and/or supplemental changes, resulting in a total decline in revenue by 5% for fiscal 2012. Pledged revenues of about $137.8 million covered $133 million in debt service by a low 1.04x. The assessor reports that secured AV for fiscal 2013 was up by about 1.98% through April 2, 2012. This estimate includes appeals granted to that date.

A Fitch base case assumes total fiscal 2013 AV increases 1.5% (based on the estimated 2% increase in secured AV and somewhat offset by additional appeals), but in fiscal 2014, 1% projected underlying AV growth is more than offset by appeals granted on all outstanding appeals at the historical appeals success rate ($1.325 billion). This would result in a 6.2% decline in AV bringing debt service coverage to a very narrow 1.02x (without consideration of tax credits from prior years). An AV decline of 8% would lower coverage to just 1.0x.

Fitch had expected the TABs could benefit from proceeds from disposition of assets. However, after netting assets pledged to various other obligations, the estimated value of those remaining are only about $19 million, providing limited benefit and not offsetting the lack of a cash-funded debt service reserve fund.

IMPROVING ECONOMY; LAGGING AV

The economy has improved markedly over the last year. Job growth is among the fastest in the country and was an impressive 5.4% from January 2011 to January 2012. Employment in the city now exceeds the previous peak of 2009. The city benefits from above-average economic indicators, including median household income and per capita income at 150% and 123% of the national averages, respectively, and a poverty rate about 74% of the national average.

Despite improvements in the economy, the number and value of unresolved appeals in the project area increased steeply in fiscal 2012. There are over 1,200 pending appeals for the 2011 and 2012 tax years with a combined disputed value of $5.6 billion. Total disputed value for all outstanding appeals for fiscal years 2007-2012 totals $9.4 billion, up from $7.7 billion as of January 2011 (for fiscal years 2007-2010). Fitch believes long-term prospects for economic growth in the city and project area are favorable, but the appeals may result in a somewhat uneven AV recovery in the tax base.

For the housing bonds, projected fiscal 2012 revenue of $36.7 million covers senior maximum annual debt service (MADS) ($19.8 million) about 1.76x. The Fitch base case assumes fiscal 2013 AV increases 1.5% as expected but in fiscal 2014, a 1% underlying growth in AV is more than offset by the appeals granted, resulting in a 6.2% decline in AV. This would lower debt service coverage to a still solid 1.76x.

ADEQUATE PROCEDURES TO DEAL WITH DISSOULTION

The agency was dissolved on Feb 1, 2012 and replaced by the SJ SARA which, along with its oversight board, is charged with winding down the affairs of the agency. SJ SARA has been working closely with the county auditor-controller's office in complying with the requirements of AB 1x26. The county established the Redevelopment Property Tax Trust Fund and is tracking tax increment revenues by non-housing and housing components.

SJ SARA has established the Redevelopment Obligation Retirement Fund as well as subaccounts for housing and non-housing revenue. The SJ SARA oversight board adopted its first semi-annual Recognized Obligation Payment Schedule (ROPS) which has been certified by the county and is currently waiting approval by the state, which is expected before it is to take effect on May 1, 2012. The ROPs includes the full year of TAB debt service, addressing Fitch's concern regarding transferring funds to taxing entities before providing for debt service. As a result of these and other measures taken, Fitch believes adequate procedures are in place to maintain the legal security of the TABs and to address potential mechanical issues presented by the dissolution.

Contact:

Primary Analyst
Karen Ribble
Senior Director
+1-415-732-5611
Fitch, Inc.
650 California Street, 4th Floor

Secondary Analyst
Scott Monroe
Director
+1-415-732-5622

Committee Chairperson

Amy Laskey
Managing Director
+1-212-908-0568

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com.

Additional information is available at 'www.fitchratings.com'. The ratings above were solicited by, or on behalf of, the issuer, and therefore, Fitch has been compensated for the provision of the ratings.

In addition to the sources of information identified in Fitch's Tax-Supported Rating Criteria, this action was additionally informed by information from Creditscope, University Financial Associates, S&P/Case-Shiller Home Price Index, IHS Global Insight, National Association of Realtors.

Applicable Criteria and Related Research:
--'Tax-Supported Rating Criteria' (Aug. 15, 2011);
--'U.S. Local Government Tax-Supported Rating Criteria' (Aug. 15, 2011).

Applicable Criteria and Related Research:
Tax-Supported Rating Criteria
http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=648898
U.S. Local Government Tax-Supported Rating Criteria
http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=648842

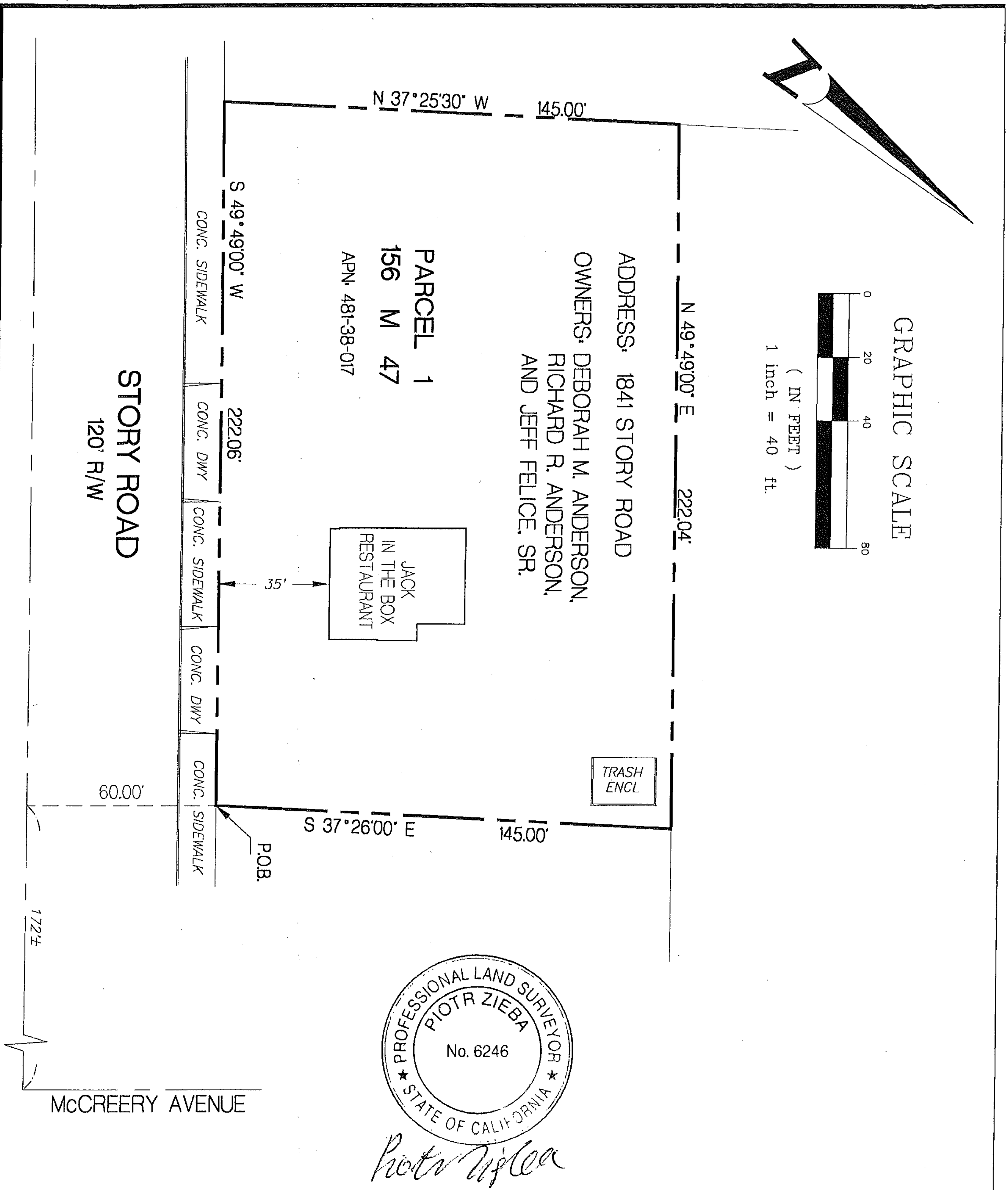


EXHIBIT B

ZIEBATECH LAND SURVEYING 9925 WINDSOR WAY, SAN RAMON, CA PHONE: 925-551-0108 E-MAIL: EZIEBA@AOL.COM PIOTR ZIEBA ***** L.S. 6246	PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR REZONING SAN JOSE SANTA CLARA COUNTY CALIFORNIA	DATE: 02/11/12 SCALE: 1"=40' SHEET: 1 OF 1