

RESOLUTION NO. 73262

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE FINDING A MITGATED NEGATIVE DECLARATION ADOPTED FOR A PROJECT DESCRIBED IN APPLICATION FILE NOS. GP04-T-02 AND PDC05-101 HAS BEEN COMPLETED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, pursuant to the provisions and requirements of Title 21 of the San José Municipal Code, Barry Swenson Builder (hereinafter referred to as "Applicant"), on October 15, 2004 and October 14, 2005 respectively, filed applications with the City of San José for which a Mitigated Negative Declaration (hereinafter called "MND") was circulated for public review on March 24, 2006 for a proposed General Plan Text Amendment to allow an increase in maximum building height from 150 to 200 feet, and a Planned Development Rezoning from A(PD) Planned Development to A(PD) Planned Development to allow an increase of up to 100 residential units for a total of 500 units, and 50 feet in building height for a total height of 200 feet on approximately 2.8 gross acres located at a site bounded by Asbury to the north, North First Street to the east, Miller Street to the west, and East Taylor Street to the south, File Nos. **GP04-T-02 and PDC05-101** (the "Project"), concerning that certain real property (hereinafter referred to as the "subject property"), which real property is more particularly described in the Initial Study/MND, and which Initial Study/MND is made a part hereof by this reference as though fully set forth herein; and

WHEREAS, in accordance with the provisions and requirements of said Title 21, the Director of Planning Building and Code Enforcement has considered the MND, together with any and all comments received on the MND during its circulation period, and on May 9, 2006 approved the MND after making a determination that there is no substantial evidence that the Project will have a significant effect on the environment; and

WHEREAS, on April 18, 2006 a valid, timely protest of the MND was filed by the Marc Boyd and Nina Boyd; and

WHEREAS, the Director of Planning, Building and Code Enforcement pursuant to and in accordance with the provisions and requirements of said Title 21 has approved the MND, set a noticed public hearing on the protest before the Planning Commission of the City of San José, and filed with the Planning Commission all of the following documents in connection with said MND protest: the Initial Study, the MND, the staff report related to the MND and protest filed, and all other relevant information and materials received concerning whether the Project File Nos. GP04-T-02 and PDC05-101, relating to said subject property, may have a significant effect on the environment; and

WHEREAS, pursuant to and in accordance with said Title 21, the Director sent a copy of the Draft MND to each public agency having jurisdiction by law over said proposed Project, advising such agencies to review and submit written comments, if any, to the Director in the time and manner specified in said Title 21; and

WHEREAS, pursuant to and in accordance with said Title 21, the Planning Commission conducted a public hearing on the protest of the MND, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said MND; and

WHEREAS, the Planning Commission, on May 24, 2006, voted 4-0-2 (Commissioners Pham and Platten absent) to uphold the MND as complete and prepared in compliance with CEQA; and

WHEREAS, on May 30, 2006 a valid, timely appeal of the Planning Commission's decision to uphold the MND was filed by Marc Boyd and Nina Boyd; and

WHEREAS, the Director of Planning, Building and Code Enforcement pursuant to and in accordance with the provisions and requirements of said Title 21 has approved the MND, set a noticed public hearing on the protest before the City Council of the City of San Jose, and filed with the City Council all of the following documents in connection with said appeal of the Planning Commission's decision to uphold the MND: the Initial Study, the MND, the staff report related to the MND and the protest and subsequent appeal filed and all other relevant information and materials received concerning whether the Project File Nos. GP04-T-02 and

PDC05-101, relating to said subject property, may have a significant effect on the environment;
and

WHEREAS, pursuant to and in accordance with said Title 21, the City Council conducted a public hearing on the protest of the MND, notice of which was duly given; and

WHEREAS, at said hearing, the City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said MND.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. This City Council hereby finds, determines and declares on the basis of the Initial Study and any and all comments, testimony and other documents and materials received as a part of the public hearing conducted on this matter, that there is no substantial evidence constituting a ‘fair argument’ that the Project will have a significant effect on the environment and that the MND for said Project has been completed in compliance with the California Environmental Quality Act of 1970 and Title 21 of the San José Municipal Code, all as amended to date, and represents the independent judgment and analysis of the City of San José.

SECTION 2. This City Council hereby adopts said MND and specifies that the Director of the Planning Division of the Department of Planning Building and Code Enforcement, located at 200 East Santa Clara Street, San José, California shall be the location and custodian of the documents and materials that constitute the record of these proceedings.

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SECTION 3. The Director of Planning, Building and Code Enforcement shall transmit copies of the MND to the Applicant and to the decision-making body for any element of the Project.

ADOPTED this 20th day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, LeZOTTE, NGUYEN,
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CHIRCO

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk