



CITY COUNCIL STAFF REPORT

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| File No. | C20-004; Story No. 69 |
| Applicant | Khoa Le |
| Owner | Ken Rowell, Constructive Investments |
| Location | Approximately 50 feet south of the southeast corner of Fleming Avenue and Nob Hill Drive |
| Existing Zoning | Unincorporated |
| General Plan Land Use Designation | Residential Neighborhood |
| Council District | 5 |
| Historic Resource | N/A |
| Annexation Date | N/A |
| CEQA | Determination of Consistency with the Envision San José 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), the Envision San José 2040 General Plan Final Supplemental Environmental Impact Report (Resolution No. 77617), and addenda thereto. |

APPLICATION SUMMARY:

Conforming rezoning of Santa Clara County unincorporated territory totaling 0.99 gross acres to the City of San José R-1-8 Single-Family Residence Zoning District, and annexation of subject property to the City of San José.

RECOMMENDATION:

Staff recommends that the City Council:

1. Approve an ordinance rezoning an approximately 0.99-gross acre site in Santa Clara County unincorporated territory designated as Story No. 69 to the R-1-8 Single-Family Residence Zoning District.
2. Adopt a resolution initiating proceedings and setting February 9, 2021, for City Council consideration of the reorganization of territory designated as Story No. 69, which involves the annexation to the City of San José of approximately 0.99-gross acres of land from Santa Clara County unincorporated territory and the detachment of the same from the appropriate special districts.

PROJECT DATA

| GENERAL PLAN CONSISTENCY | | | |
|---------------------------------|---|---|---------------------------|
| General Plan Designation | | Residential Neighborhood <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent | |
| Consistent Policies | | Implementation Policies FS-3.9, IP-1.1, IP-1.7, and IP-8.2 | |
| SURROUNDING USES | | | |
| | General Plan Land Use | Zoning | Existing Use |
| North | Lower Hillside; Residential Neighborhood | (A)PD Planned Development; Unincorporated County of Santa Clara | Single family residential |
| South | Residential Neighborhood | R-1-8 Single-Family Residence | Single family residential |
| East | Lower Hillside | R-1-2 Single-Family Residence; R-1-5 Single Family Residence; A(PD) Planned Development | Single family residential |
| West | Residential Neighborhood | (A)PD Planned Development; R-1-8 Single-Family Residence; Unincorporated County of Santa Clara | Single family residential |

PROJECT DESCRIPTION

On February 7, 2020, the applicant, Khoa Le, on behalf of the owner, Constructive Investments, submitted a request to prezone an approximately 0.99-gross acre site in Santa Clara County unincorporated territory located approximately 50 feet south of the southeast corner of Fleming Avenue and Nob Hill Drive (APN: 601-29-008) to the R-1-8 Single-Family Residence Zoning District. The applicant concurrently submitted a request to annex the subject property to the City of San José, including detachment from the appropriate special districts including the Central Fire Protection District, County Sanitation District 2-3, and Santa Clara County Library Services.

Site Description and Surrounding Uses

The subject site is located approximately 50 feet south of the southeast corner of Fleming Avenue and Nob Hill Drive (APN: 601-29-008) (see Figure 1). The site is currently undeveloped and is surrounded by single-family residential uses.



C20-004a.pdf

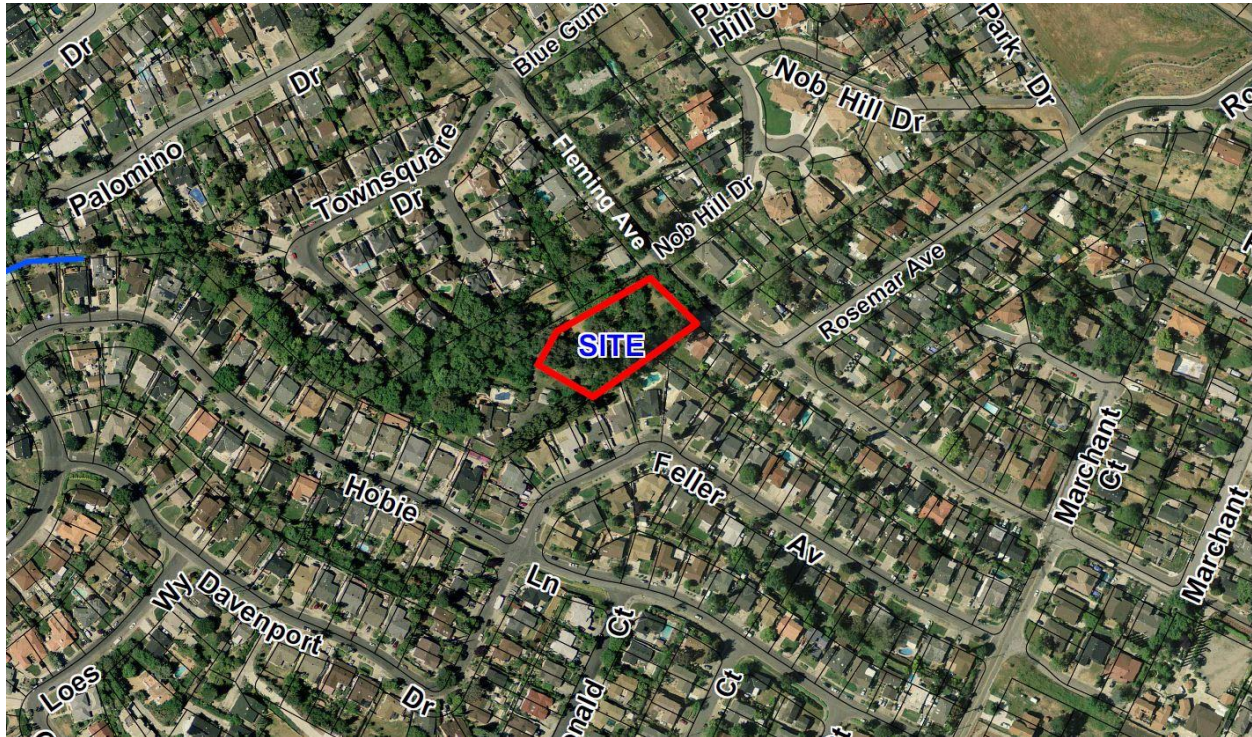


Figure 1: Aerial image of the subject site

Background

The subject site is currently undeveloped with trees along the site border and on the site. The site has direct access from Fleming Avenue. The applicant has requested a conforming rezoning to the R-1-8 Single-Family Residence Zoning District, which is a conforming district with the Residential Neighborhood General Plan Land Use Designation. No development applications are on file for this site.

ANALYSIS

The proposed project was analyzed for conformance with the following: 1) the *Envision San José 2040 General Plan*, 2) the Zoning Ordinance, and 3) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The subject site has an *Envision San José 2040 General Plan* Land Use/Transportation Diagram land use designation of Residential Neighborhood (see Figure 2).



Figure 2: General Plan Land Use/Transportation Diagram

The Residential Neighborhood designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

The proposed rezoning is consistent with the following General Plan policies:

1. Fiscally Sustainable Land Use Framework Policy FS-3.9: Per City, County and LAFCO policy, locate existing and future urban development within city boundaries. Implement this policy through San José's existing agreement with Santa Clara County which requires that unincorporated properties within the Urban Service Area either annex to the City, if possible, or execute a deferred annexation agreement prior to approval of development.
2. Implementation Policy IP-1.1 Land Use/Transportation Diagram: Use the *Envision General Plan Land Use/Transportation Diagram* designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to

designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.

3. Implementation Policy IP-1.7 Land Use/Transportation Diagram: Ensure that proposals to rezone and prezone properties conform to the Land Use / Transportation Diagram, and advance *Envision General Plan* Vision, goals and policies.
4. Implementation Policy IP-8.2- Zoning: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan* Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail as to the appropriate land uses and form of development.

Analysis:

The subject property is within the City's Urban Growth Boundary and Urban Service Area and is connected to a street and parcels that are within the boundary of the City of San José. In accordance with the General Plan land use designation, any subdivision would be required to conform to the prevailing neighborhood character, as defined by density, average lot size, and neighborhood form and pattern. Given the approximately one-acre size of the site and the surrounding prevailing density of the block, a maximum of 8 single-family homes could potentially be developed on the site. This number may be less depending on the allowed configuration of any future subdivision of the site.

Pursuant to Table 20-270 of the Zoning Ordinance, the R-1-8 Single-Family Residence Zoning District is listed as a conforming district for the General Plan Land Use Designation of Residential Neighborhood. The proposed rezoning allows for single-family residences with an allowed density range from one to eight dwelling units per acre, consistent with the underlying General Plan land use designation.

Zoning Ordinance Conformance

The proposed rezoning would prezone Santa Clara County unincorporated territory to the R-1-8 Single-Family Residence Zoning District (See Figure 3). This proposed rezoning conforms with Table 20-270 of the Zoning Ordinance, which identifies the R-1-8 Single-Family Residence Zoning District as a conforming district to the Residential Neighborhood General Plan Land Use/Transportation Diagram land use designation.

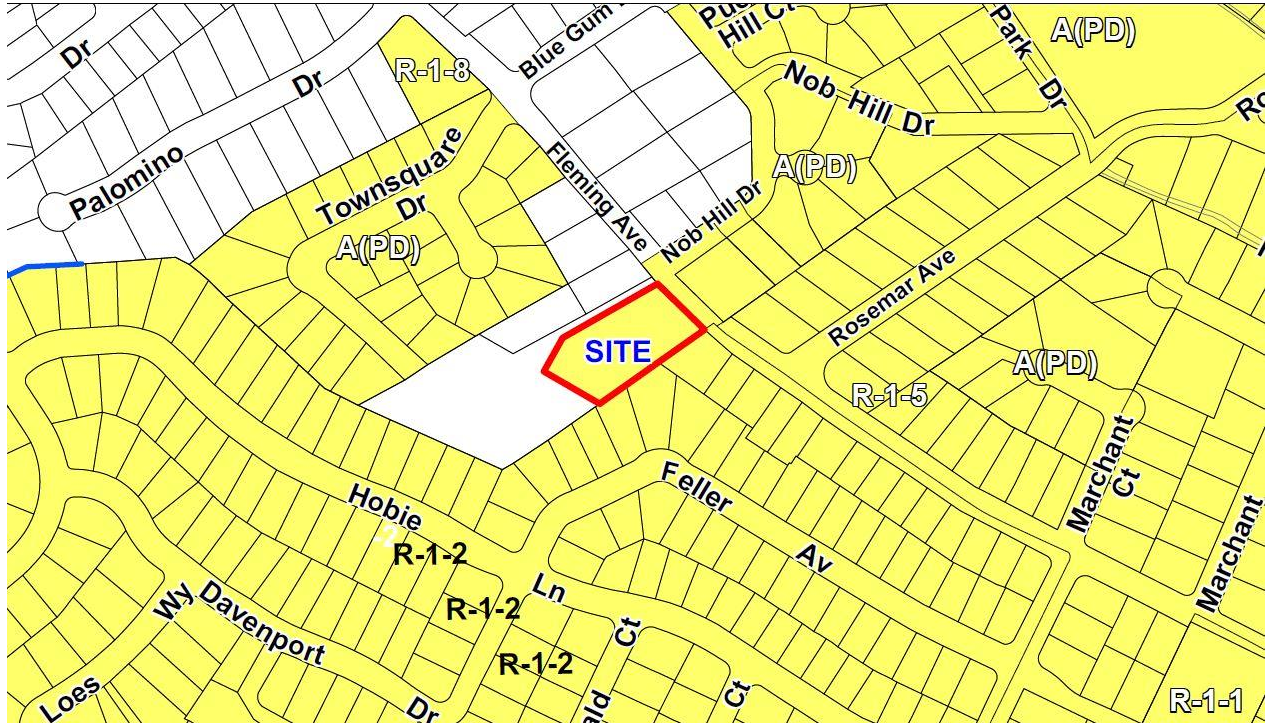


Figure 3: Zoning Map

The R-1-8 Single-Family Residence Zoning District would allow the property to be used and developed in accordance with the allowable uses in Table 20-50, including single-family residential residences with an allowed density range from one to eight dwelling units per acre. The property is currently undeveloped, and no development applications are currently on file for this site.

The project proposes annexation of the approximately 0.99 gross acres of unincorporated Santa Clara County to the City of San José, including detachment from the Central Fire Protection District, County Sanitation District 2-3, and Santa Clara County Library Services. Upon completion of the annexation proceedings, the subject site would be eligible to connect to City infrastructure and services, and the aforementioned R-1-8 zoning would be effective.

The annexation proceedings are being conducted pursuant to California Government Code Section 56757, which designates the City Council of the City of San José as the conducting authority. A full report regarding the proposed annexation will be provided to the City Council for the February 9, 2021 hearing.

Setbacks and Heights

The current setback and height requirements for the R-1-8 Single-Family Residence Zoning District are presented below.

**Setbacks and Height Requirements
Single-Family Residence Zoning District**

| Structure | Setbacks |
|------------------------|-----------------|
| Front | 20 feet |
| Side | 5 feet |
| Rear | 20 feet |
| Maximum Allowed Height | 35 feet |

Source: Section 20.30.200, Table 20-60

The property is currently undeveloped, and no development applications are currently on file for this site. Future development would be evaluated for conformance with these development standards and all other municipal code regulations, City policies, and guidelines.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that the proposed rezoning is pursuant to, in furtherance of and within the scope of the Envision San José 2040 General Plan program the impacts of which were analyzed and disclosed in the Final Environmental Impact Report for the Envision San José 2040 General Plan, for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011 and Supplemental EIR adopted by City Council Resolution No. 77617 on December 15, 2015. The FPEIR and SEIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2040.

No new or more significant environmental impacts beyond those identified in the Envision San José 2040 General Plan Final Program Environmental Impact Report (FPEIR) and Supplemental EIR (SEIR) have been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the FPEIR and SEIR been identified.

PUBLIC HEARING NOTIFICATION

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

/s/

ROSALYNN HUGHEY, Director
Planning, Building and Code Enforcement

For questions, please contact Robert Manford, Deputy Director, Planning Division at robert.manford@sanjoseca.gov.

Attachments:

- Exhibit A: Geographic Description
- Exhibit B: Plat Map
- Exhibit C: Draft Rezoning Ordinance
- Exhibit D: Draft Annexation Initiating Resolution

EXHIBIT "A"
STORY NO. 69
ANNEXATION TO CITY OF SAN JOSE
GEOGRAPHIC DESCRIPTION

All that certain real property, situated in Santa Clara County, State of California, described as follows:

BEGINNING at the point of intersection of the southwesterly line of Fleming Avenue (40 feet wide) and the San Jose City Limits Line, as established by Story No. 1-B and Story No. 48 Annexation;

Thence leaving said point of beginning, (1) South 54°15'00" West, 244.56 feet along said City Limits, as established by Story No. 1-B Annexation;

Thence leaving said City Limits, (2) North 66°29'41" West, 151.81 feet;

Thence (3) North 34°18'45" East, 75.38 feet;

Thence (4) North 59°02'45" East, 226.83 feet to the southwesterly line of Fleming Avenue (40 feet wide) and City Limits as established by Story No. 48 Annexation;

Thence along said southwesterly line and City Limits, (5) South 46°11'15" East, 139.53 feet to the POINT OF BEGINNING.

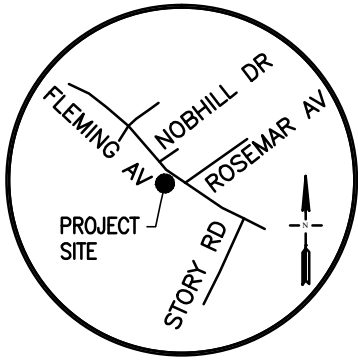
The above described parcel of land contains 0.92 acre, more or less.

For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.



Robert Y. Wang
L.S. 8931

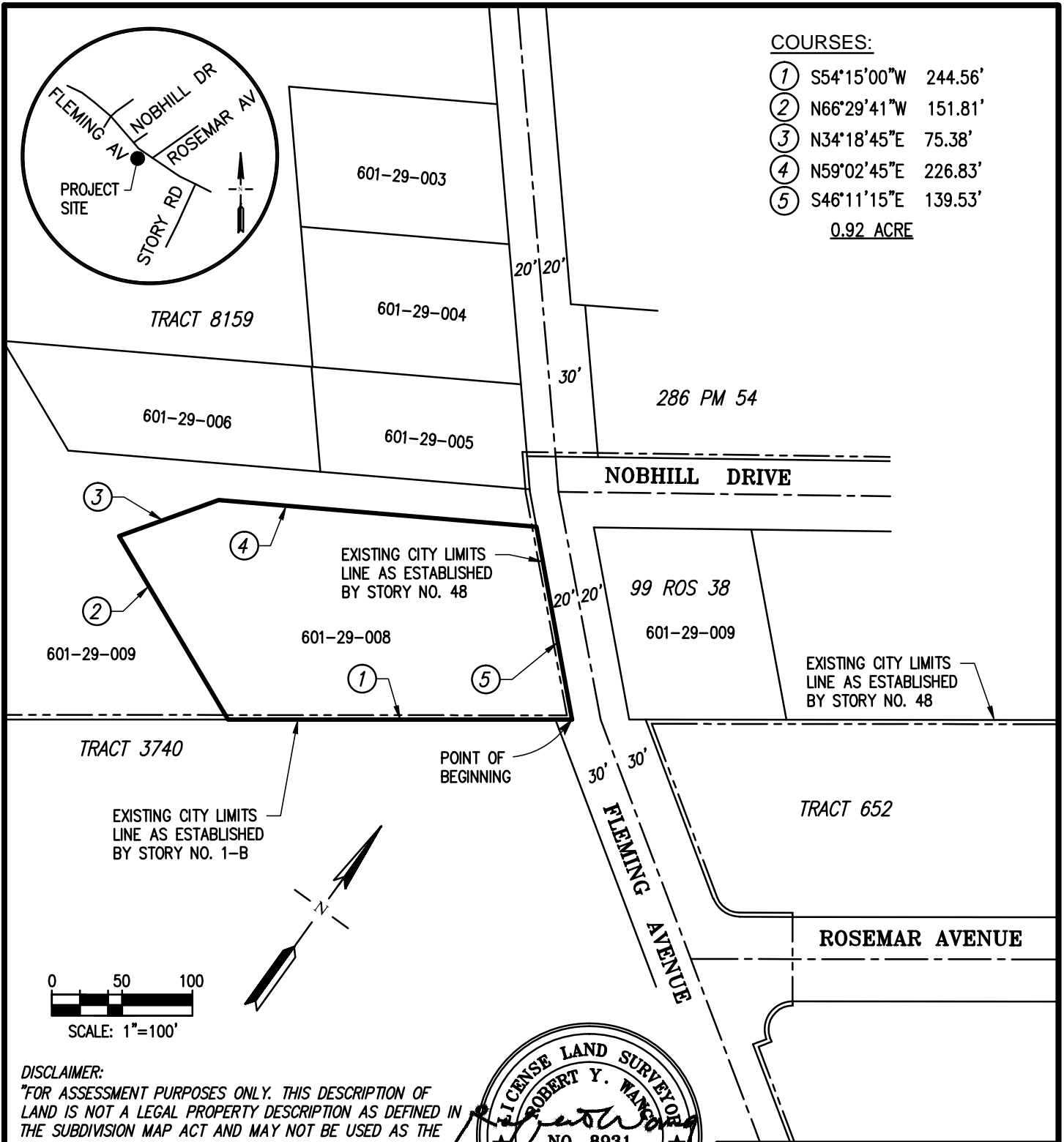
3/23/20
Date



COURSES:

- ① S54°15'00"W 244.56'
- ② N66°29'41"W 151.81'
- ③ N34°18'45"E 75.38'
- ④ N59°02'45"E 226.83'
- ⑤ S46°11'15"E 139.53'

0.92 ACRE



TRACT 8159

601-29-006

601-29-003

601-29-004

601-29-005

286 PM 54

NOBHILL DRIVE

99 ROS 38

601-29-009

EXISTING CITY LIMITS
LINE AS ESTABLISHED
BY STORY NO. 48

TRACT 3740

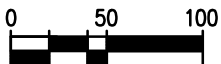
EXISTING CITY LIMITS
LINE AS ESTABLISHED
BY STORY NO. 1-B

POINT OF
BEGINNING

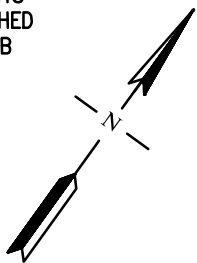
30' 30'
FLEMING AVENUE

TRACT 652

ROSEMAR AVENUE



SCALE: 1"=100'



DISCLAIMER:

"FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED."

LEGEND

- PREZONE TO R-1-8 SINGLE-FAMILY RESIDENCE
- EXISTING CITY LIMITS LINE
- CENTERLINE

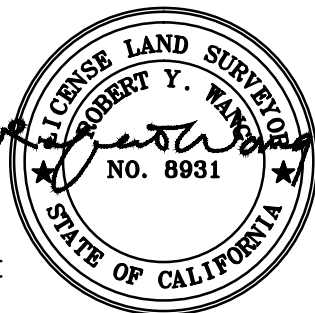


EXHIBIT "B"
PROPOSED PREZONING TO
R-1-8
SINGLE-FAMILY RESIDENCE

DATE:
12/9/2020
SCALE: 1"=100'
BY: RW
PAGE 2 OF 2

RW RW ENGINEERING, INC.
CIVIL ENGINEERS LAND SURVEYORS
505 ALTAMONT DRIVE, MILPITAS, CA 95035
(P) (408) 262-1899 (FAX) (408) 824-5556
rwengineering@gmail.com

ASSESSOR'S PARCEL NUMBER: 601-29-008
ACREAGE:
0.92
BEING A PORTION OF PUEBLO TRACT NO. 1 OF
THE PUEBLO LANDS OF THE CITY OF SAN JOSE

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE PREZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 0.99 GROSS ACRES, SITUATED APPROXIMATELY 50 FEET SOUTH OF THE SOUTHEAST CORNER OF FLEMING AVENUE AND NOB HILL DRIVE (APN: 601-29-008) FROM UNINCORPORATED TERRITORY WITHIN THE COUNTY OF SANTA CLARA COUNTY TO THE R-1-8 SINGLE-FAMILY RESIDENCE ZONING DISTRICT

WHEREAS, all prezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the proposed prezoning is pursuant to, in furtherance of and within the scope of the previously approved program evaluated in the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the “FEIR”), for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011, and the Supplemental Environmental Impact Report (the “SEIR”), through Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto, and does not involve new significant effects beyond those analyzed in the FEIR and SEIR; and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject prezoning to the R-1-8 Single-Family Residence Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves the information contained in the FEIR and related City Council Resolution No. 76041 and the

SEIR and related City Council Resolution No. 77617, and Addenda thereto, and the determination of consistency therewith prior to acting upon or approving the subject rezoning; and

WHEREAS, the proposed rezoning is consistent with the designation of the site in the applicable General Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned R-1-8 Single-Family Residence Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. Any land development approval that is the subject of City File No. C20-004 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING REORGANIZATION PROCEEDINGS FOR THE ANNEXATION AND DETACHMENT OF CERTAIN UNINHABITED TERRITORY DESIGNATED AS STORY NO. 69, DESCRIBED MORE PARTICULARLY HEREIN, AND SETTING THE DATE, TIME AND PLACE FOR CONSIDERATION OF SUCH REORGANIZATION

WHEREAS, the City of San José desires to initiate proceedings, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3, commencing with Section 56000 of the California Government Code, as the same may be amended from time to time, of the annexation of territory designated as Story No. 69 to the City of San José, and the detachment of certain territory from the Central Fire Protection District, County Sanitation District 2-3, and Santa Clara County Library Services; and

WHEREAS, this proposal includes an annexation to the City of San José of certain unincorporated territory located within the County of Santa Clara and within the Urban Service Area of said City which is not subject to review by the Santa Clara County Local Agency Formation Commission as provided under Section 56757 of the California Government Code; and

WHEREAS, such territory is known by the short form designation of “**Story No. 69**,” and a description of the boundaries of this territory is set forth in Exhibit “A,” entitled “Geographic Description,” attached hereto and incorporated herein by this reference, which description is subject to correction or revision as required; and

WHEREAS, a map showing the location of such territory is attached hereto as Exhibit “B” entitled “Proposed Annexation to City of San José Entitled Story No. 69,” and incorporated herein by this reference; and

WHEREAS, the subject real property, comprising approximately 0.99 acres located on the south side of Fleming Avenue, approximately 50 feet southeast of Nob Hill Drive (APN 601-29-008), is contiguous to the City of San José and is within the City’s Urban Service Area; and

WHEREAS, the subject property currently is receiving or will receive the following benefits from the City, to wit: all municipal services, not limited to street maintenance, street light, law enforcement, sanitary sewer, code enforcement, street sweeping, garbage collection, and fire protection; and

WHEREAS, on _____, 20___, the City Council adopted Ordinance No. _____ approving the pre-zoning of the territory to the R-1-8 Single-Family Residence Zoning District (under File No. C20-004) and will be so zoned upon its annexation to the City of San José in accordance with Section 20.120.300 of the Zoning Ordinance (Title 20 of the San José Municipal Code); and

WHEREAS, the City of San José is the Lead Agency for environmental review for the reorganization known as “**Story No. 69**” under the California Environmental Quality Act of 1970, as amended (“CEQA”); and

WHEREAS, the environmental impacts of this project were addressed by a Final Program Environmental Impact Report entitled, “Envision San José 2040 General Plan,” under Planning File No. PP09-011 and findings were adopted by City Council Resolution No. 76041 on November 1, 2011, and the Supplemental Environmental Impact Report for the Envision San José, 2040 General Plan, Greenhouse Gas Reduction Strategy, under Planning File No. PP15-060 and findings were adopted by City Council Resolution No. 77617 on December 15, 2015, and Addenda thereto; and

WHEREAS, the County Surveyor of Santa Clara County has found the real property description of the subject property and the map of the subject property (Exhibits “A” and “B.” respectively) to be in accordance with California Government Code Section 56757, the boundaries to be definite and certain, and the proposal to be in compliance with the Santa Clara County’s Local Agency Formation Commission’s annexation policies; and

WHEREAS, as provided in Government Code Section 56757, the City Council of the City of San José shall be the conducting authority for a reorganization initiated by resolution of the City Council, and the City Council by this resolution is proposing the reorganization described in this Resolution; and

WHEREAS, as the territory is uninhabited and all owners of land included in this proposal have consented to this annexation; and

WHEREAS, Government Code Section 56662 provides that if a proposal for an annexation is accompanied by proof that all owners of land within the affected territory have given their written consent the City Council may approve or disapprove the annexation without public hearing; and

WHEREAS, this proposal is consistent with the sphere of influence of the City of San José; and

WHEREAS, the reason for the proposed reorganization is as follows: to annex the subject territory and detach the same from special districts to eliminate a duplication of services.

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

That the City Council of the City of San José hereby initiates proceedings for the proposed reorganization of the designated territory described herein and sets January 12th, 2021 at 1:30 p.m., via a virtual City Council meeting, as the date, time and place for consideration of such reorganization. This Council is hereby designated as the conducting authority of said proceedings.

ADOPTED this ____ day of _____, 20__, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk