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December 15, 2020

Honorable Sam Liccardo, Mayor
and Members of the City Council
City of San José

via email city.clerk@sanjose.ca.gov

Subject: File 20-1649 Appeal Hearing for the Planning Director's
Approval of the Historic Preservation (HP) Permit
(File No. HP19-008) for the St. James Park Capital Vision and
Performing Arts [aka Levitt] Pavilion Project

Dear Mayor Liccardo and Members of the City Council:

On behalf of appellant Sainte Claire Club and the Sainte Claire Historic Preservation Foundation, I request that the City Council grant the appeal of the HP Permit issued for the St. James Park Capital Vision and Performing Arts [aka Levitt] Pavilion Project. Respectfully, the project can and must be revised to comply with mandates of the city's own codified environmental protections.

This Council's resolution approving the project in October and its subsequent Notice of Determination (Staff Memorandum, Attachments 5 and 7) include findings that the Park project *would impact* the historic integrity and historic significance of both St. James Park and the resources within the St. James Park Historic District, due to the construction and implementation of the oversized Performing Arts Pavilion. Those well-supported findings preclude granting an HP Permit, because mandatory language in the Municipal Code disallows approval of a project that is in any way detrimental to an historic district or to resources of architectural, cultural, historical, or aesthetic value.

The fundamental basis for this appeal is contained in letters from this office on behalf of the Foundation (Staff Memorandum, Attachment 1) and in testimony at hearings before the Director. Much of the evidence supporting this appeal was presented at the Council's October hearing, prior hearings, and in substantial files created during the administrative process, all here incorporated by reference. While the Council will consider this appeal *de novo*, both the appellant Club and the Foundation appreciate the Council's familiarity with issues relevant to issuance of the HP Permit.

Mandatory language in Municipal Code Chapter 13.48.240 controls this appeal and allows the Council to issue an HP Permit only if *not detrimental* to an historic district or to *a structure or feature* of significant architectural, cultural, historical, or aesthetic interest or value. The project must *also* be consistent with the spirit and purposes of the Code Chapter.

When approving the Park project in October, this Council adopted findings that unless revised the project would not fully comply with the *Secretary of the Interior's Standards for Rehabilitation*. In relevant part:

Cultural Resources Impact CUL-1. "Implementation of the Project would impact the historic integrity of St. James Park and the St. James Park Historic District ... the Project would affect the historic significance of the site, change eligibility [to the National Register of Historic Places], remove character-defining features, and/or compromise integrity of the Project site and *the Project would have a significant impact on the historic integrity of the park and the district.*" (Italics added.)

Aesthetic Impact AES-1: "Implementation of the Project would impact the visual character of the site the Project would change the visual character of the site and the buildings and, as designed, would be constructed in a manner that would *impact the historic significance of the park and the St. James Park Historic District* and ... impact the visual character of the site ... absent a redesign of the Project that would be fully consistent with the *Secretary of the Interior's Standards for Rehabilitation*, the proposed mitigation measures would ... still result in a significant unavoidable impact."

Recreation Impact REC-1: "The proposed changes to St. James Park would impact the visual character and historic integrity of the park and would result in an operational noise impact... the overall physical changes to the park is [*sic*] connected with the significance in change in visual character of the Park. As the project was found to have significant unavoidable impacts to Cultural Resources, Aesthetics, and Noise ... the proposed recreational facility would also result in an adverse physical effect to the environment overall."

The Council adopted approval findings in full knowledge of the Club's objections founded in the mandatory HP Permit standards contained in the Municipal Code. The findings are consistent with analysis in the EIR that the Park project would impact St. James Park and the St. James Park Historic District *and* features of significant architectural, cultural, historical, and aesthetic interest and value. The city's reports also concede that the project is *not* in substantial conformance with the general character and surface treatment (including fenestration, materials, detailing, and color) of the *St. James Square Historic District Guidelines*. The city reports and the HP permit itself concede that the project does not fully conform with the *Secretary's Standards* that the city applies to properties affecting valued historic resources. The non-conformance extends to proposed new structures and even the "overall design."

City staff's December 11 Memorandum addressing this appeal lauds the Park project's many public benefits that this Council found would override its admitted impacts, and also emphasizes that the loss of District eligibility to the National Register of Historic Places is not of great importance since that is a *federal* listing. The reasoning fails to address the *reasons* why the Park project would lose eligibility. Those reasons fall squarely within the Municipal Code's protections: Project changes underlie this Council's findings of "*significant impact on the historic integrity of the park and the district.*" Significant adverse impact is *per se* detrimental as to an affected resource. As the Club and the Foundation have explained, conceded significant impacts are *not* cured by a finding of the Project consistency with the HP ordinance's "spirit and purposes" — such consistency is required by the ordinance *separate from* lack of detriment.

In addition, in brief response to the December 11 Memorandum:

- Regardless of the Park project benefits, the Memorandum's conclusion at page 9 that the project changes affecting the historic integrity of St. James Park are reversible and that the Park would not be substantially degraded due to implementation of the Performing Arts Pavilion is *directly contrary* to this Council's findings made to approve the Park project. (Memorandum, page 5.) The excuse that those findings only address CEQA compliance and that a significant adverse environmental impact is somehow not a detriment to the Park or District is sophistry.
- Staff conducted its own analysis of the Park project's impacts on historic resources. Again, its Conclusions are *not* consistent with the Council's approval findings. The Memorandum's page 11 leads with the statement that "the proposed design will not further diminish the integrity of the site because significant changes to St. James Park have already occurred over time," and proceeds to discount design impacts. Denial of this appeal cannot lawfully be based on a self-serving finding in direct contradiction to the Council's October finding that *this project* — *not* prior changes — significantly impacts integrity of St. James Park and the Historic District.
- The documents before you show that the Historic Landmarks Commission and members of the public urged a condition requiring a *non-phased project*. A strong concern reflected throughout the record and in press is that implementation of the Performing Arts Pavilion should not precede non-funded park improvements. The entire project should be funded and constructed without phasing, contrary to the clear expectation of phasing referenced in the record and press over many years.

(See, e.g.,

<https://www.spur.org/news/2018-05-16/san-jose-updates-its-ambitious-plans-st-james-park> ["In an attempt to defer ... cost further into the future, the project team is currently exploring options for phasing in portions of the park over time. At the forum, they presented four sets of options for executing the project's first phase."] The project should be funded and constructed without phasing. Yet the conditions require "one, consecutive, phase." (HP Permit, Attachment 6, page 6.) *Consecutive* means that construction of one project element may precede another. The EIR failed to analyze the impacts of phasing.

- The Historic Landmarks Commission also urged project compliance with the *Secretary's Standards*. The HP Permit concedes that the project does *not* fully comply with the *Secretary's Standards* or with the city's *St. James Square Historic District Guidelines*. Failure to comply with a city ordinance adopted for environmental protection is subject to CEQA review. The EIR did not adequately analyze the HP Permit impacts or lack of compliance.

Thank you for your consideration for approval of this appeal. The Park project can and surely should be altered to comply with local and state laws that protect these unique and significant historic city resources in the long term.

Sincerely,


Susan Brandt-Hawley