



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 8, 2017

COUNCIL DISTRICT: 3

SUBJECT: GP16-013. AMENDMENT TO THE ENVISION SAN JOSE 2040 GENERAL PLAN LAND USE/TRANSPORTATION DIAGRAM TO EXPAND THE DOWNTOWN GROWTH BOUNDARY AND CHANGE THE DESIGNATION FROM RESIDENTIAL NEIGHBORHOOD AND TRANSIT RESIDENTIAL TO DOWNTOWN ON AN APPROXIMATELY 0.91-ACRE SITE ON THE NORTHEAST CORNER OF NORTH 4TH STREET AND EAST SAINT JOHN STREET.

RECOMMENDATION

At the Planning Commission hearing held on December 6, 2017, the Planning Commission voted 6-0-0-1 (Commissioner Ballard abstained) to recommend to the City Council to adopt a resolution approving the Fourth and St. John General Plan Amendment & Rezoning Initial Study/Negative Declaration in accordance with the California Environmental Quality Act (CEQA), and to adopt a resolution approving the General Plan Land Use/Transportation Diagram Amendment as described in the attached Staff Report.

OUTCOME

Should the City Council approve the proposed General Plan Amendment, the General Plan Downtown Growth Area boundary would be expanded and the land use designation would be changed from Residential Neighborhood and Transit Residential to Downtown on the approximately 0.91-acre site located on the northeast corner of North 4th Street and East Saint John Street (120 N. 4th Street).

Should the City Council deny the General Plan Amendment, the Downtown Growth Area boundary would not be expanded and the site would retain the Land Use/Transportation Diagram designation of Residential Neighborhood on approximately 0.6 acres and Transit Residential on approximately 0.3 acres.

BACKGROUND

At the Planning Commission hearing held on November 15, 2017, the Planning Commission voted to recommend that the City Council drop the Rezoning application (File No. C17-032) associated with the proposed General Plan amendment because the proposed rezoning to the DC Downtown Primary Commercial Zoning District is not allowed under Title 20 of the San Jose Municipal Code (the Zoning Code) at the location of the subject site. The Planning Commission also voted to continue the proposed General Plan amendment to the next Planning Commission meeting on December 6, 2017, for further consideration. Subsequently, prior to the December 6th Planning Commission hearing date, the applicant notified the City that the rezoning application was withdrawn, so the only application before the Council for consideration was only for the proposed General Plan amendment.

Prior to the continued Planning Commission hearing held on December 6, 2017, staff distributed to the Planning Commission two supplemental memoranda that provided an overview of: 1) the timeline and process used to review the proposed project; and 2) the responses to comments received on the Initial Study/Negative Declaration, including those submitted shortly before the first hearing date.

At the conclusion of the continued hearing held on December 6, 2017, the Planning Commission recommended to the City Council to adopt resolutions approving the Negative Declaration for the General Plan amendment project and the General Plan amendment.

ANALYSIS

At the conclusion of the continued Planning Commission hearing held on December 6, 2017, staff presented only the proposed General Plan amendment for consideration because the applicant withdrew the Rezoning application between the first and continued Commission hearing dates. Staff explained that since all previous entitlement applications (including a rezoning, site development permit, and tentative map) have been withdrawn, the Planning Commission could make a recommendation to the City Council regarding the General Plan amendment.

Staff provided a Negative Declaration for environmental clearance of the General Plan amendment that complies with the program-level environmental review requirements under CEQA. Staff noted that any future discretionary applications for development on the subject site, including but not limited to rezoning, development permit, and subdivision map, would require development project-level analysis of any potential environmental impacts.

Staff also acknowledged receipt of a letter on December 6, 2017 from the law offices of Adams Broadwell Joseph and Cardozo and responded to those comments.

Public Testimony

Erik Schoennauer, a representative of the property owner and applicant, stated that the Planning Commission Staff Report supported approval of the General Plan amendment request, and that if their proposal is not heard by Council on December 12, 2017, the applicant would have to wait until Fall 2018 for their General Plan Amendment to be considered by Council. Without the General Plan amendment, it is difficult for the applicant to secure investment or development partners interested in pursuing a project on the site.

Mr. Schoennauer then summarized the following eight points for Planning Commission consideration:

1. The only application on file with the City is the request to change the General Plan land use designation to Downtown and expand the boundary a half block to include the applicant's parcel;
2. The staff report in November determined that the Initial Study/Negative Declaration (IS/ND) was adequate and complete to consider the General Plan amendment on November 15, 2017;
3. Since that time, staff has fully reviewed the letters that were submitted and has responded to all of the comments in the letter;
4. Staff reaffirms that the IS/ND prepared by the City is adequate and complete to consider the General Plan amendment tonight;
5. As stated in the staff report, because this is only a General Plan amendment, any future development proposal in the form of a Planned Development Zoning and Development Permit, will require development project-level CEQA analysis and approval at that time;
6. Staff supports the General Plan amendment;
7. If the City Council next week does not consider and approve the General Plan amendment, the applicant would have to wait an entire year until the Fall of 2018 for a General Plan amendment to be considered; and
8. Without a General Plan amendment, it's very difficult for the applicant and property owner to get investment or development partners interested in pursuing a development project on this site and putting money at risk to actually design a project and submit a project to the City because two-thirds of the property-owner's site is designated Residential Neighborhood, intended for single-family residential development. Nobody interested in doing development in a downtown setting is going to risk hundreds of thousands of dollars to develop plans, and submit applications to the City, if the City doesn't confirm its intention or its interest in having urban development on this site. Since Fourth Street is downtown, some level of urban development should be allowed on the site.

Tanya Gulesserian, representing Adams Broadwell Joseph & Cardozo, stated that she was speaking on behalf of San José Residents for Responsible Development, an interest group that includes local city residents, labor union members, and their families committed to San José's sustainable community growth and ensuring that new projects comply with Federal, state, and local laws. She further stated that she was there to address the City's responses to public comments and the outstanding environmental issues on this proposal.

Continuing her comments, Ms. Gulesserian highlighted three reasons why the Planning Commission should not recommend approval of the Negative Declaration and General Plan amendment at this hearing. First, she asserted that the City violated CEQA by failing to adequately evaluate future development potential that would be allowed under the General Plan amendment. She acknowledged staff's clarification that the Initial Study is a program-level environmental review, and not project-level, but she insisted that this distinction was not mentioned in either the Initial Study or the Negative Declaration, which is a legal document. She also suggested that staff's description of the Initial Study as program-level environmental review was inconsistent with the conclusions found in each section of the Initial Study, which specifically state that future development shall not result in significant impacts. She added that, even if the document is corrected, the courts have expressly rejected deferral of analysis of future development that is anticipated in a General Plan amendment.

Second, Ms. Gulesserian suggested that the City violated CEQA by analyzing project impacts in comparison with a hypothetical situation of what could be built on the site rather than existing conditions, and she added that the City is free to consider another situation but that it needs to look at the impacts compared to the existing conditions. She claimed that the record shows substantial evidence of significant impacts which require an EIR, no matter what is put into the record at this hearing, and she said that the Negative Declaration is reviewed under a fair argument standard that does not eliminate the requirement to prepare an EIR.

Erik Schoennauer, representing the applicant and property owner, said that the City has a jobs and housing crisis because people choose to use legal arguments to delay and disrupt the process, make it more expensive, and make it more difficult to develop and invest in our city. He noted that the staff report for the General Plan Amendment provided detailed point-by-point responses to all issues raised in the comment letters from Adams Broadwell and others and that staff had concluded that the comments raised no new issues or identified any new or more severe impacts than had already been addressed in the Initial Study. He also noted that, based on the entire record, staff concluded that the Negative Declaration for the proposed General Plan amendment and the project consisting of the General Plan amendment only will not have a significant effect on the environment. Thus, Mr. Schoennauer said that he agreed with staff's recommendation that the Planning Commission find the Initial Study/Negative Declaration adequate and recommend to the Council the adoption of a resolution approving the Initial Study and Negative Declaration.

Continuing his comments, Mr. Schoennaer stated that the applicant was simply requesting that the project site be designated Downtown and that the official boundary of Downtown be moved from the center line of Fourth Street to the mid-block. He noted that this change would be entirely consistent with the City's Downtown Strategy Update and the associated EIR, which are

currently being prepared by the Planning Department. He further noted that the Downtown Strategy and its associated EIR have been delayed for the past three years, and the applicant cannot afford to wait for that proposal to come forward because the economy is strong now and the City needs jobs and housing now.

Finally, using aerial photos of the area surrounding the project site, Mr. Schoennaer suggested that the context of the project site is very urban with a mid-rise office building and senior housing complex on the block where the site is located. He also noted the six-story Donner Loft project to the south, and the Miro Towers project, now under construction, and City Hall, located one block further south from the project site on Santa Clara Street.

Planning Commission Discussion

Commissioner Yesney asked staff to confirm that the conclusion of the Negative Declaration was that no new significant impacts would result if the General Plan land use designation is changed on this property. She also asked staff to confirm that development which is consistent with General Plan policies designed to mitigate impacts on specific sites would also ensure consistency with the General Plan EIR in terms of cumulative impacts and regional impacts. She asked staff to confirm that there is nothing in the proposed General Plan designation that would preclude any future development from being consistent with the General Plan policies that would provide mitigation measures associated with that development.

Staff concurred that the General Plan land use amendment would be consistent with the current General Plan goals and policies that minimize impacts from future development and the current underlying context of the General Plan EIR. Staff explained that the Negative Declaration addresses the proposed land use change from the existing General Plan land use designation and that the General Plan goals and policies are carried forward with that General Plan amendment. The General plan amendment is consistent with the goals and policies that are measures that minimize impacts from the General Plan that apply to the site. The General Plan, including the goals and policies that minimize impacts from land uses and future development that apply to the project site, are addressed under the General Plan EIR. The Negative Declaration analyzes any new impacts from the proposed change to the land use designation.

Commissioner Yesney stated that this is a General Plan amendment. If the General Plan amendment is approved, then some development proposal could come in the next day. She said a General Plan amendment is very different from a development proposal.

Staff confirmed support for the General Plan amendment, and that it is contemplated by the City in the Downtown Strategy update that the City is moving forward with in the coming year.

Commissioner Vora asked staff to explain an e-mail exchange that mentioned that this can be precedent-setting, because there are no transition zone guidelines, and how this will impact the plan.

Staff explained that the comment was made when there was a different project being considered, which included a development proposal. The General Plan currently has goals and policies to address the transition between lower and higher intensity areas and more specifically, the City has design guidelines for different types of land uses and specifically for Downtown. This site, however, is not currently part of Downtown, and the Downtown design guidelines, when they were written, didn't necessarily address the location of the proposed General Plan amendment as part of Downtown.

The Senior Deputy City Attorney stated that she wanted to add into the record that the comment letters from Adams Broadwell assume consistently that 728 dwelling units can be developed on the applicant's site. However, she said that when she reviewed the supplemental staff reports, the timelines and the e-mails and the history of this project moving forward, as of mid-February of this year, the then pending Site Development Permit application that was part of the project was seven stories and 186 units, then it changed at the end of March 2017 to 20 stories of student housing, and at one point there was also a student housing and retail mixed use proposed. There was also a change in developers during this time. The Senior Deputy City Attorney explained that the environmental review performed by the City assumes a General Plan mid-range density of approximately 300-plus units on the subject site. She stated that the effort to define an actual development project that could be built on the project site has varied significantly.

The Senior Deputy City Attorney said that the General Plan amendment may be very appropriate at this point because it is a higher-level document, and at this time we don't actually know what the development project may be. She noted that the specifics of a development proposal for this site have changed dramatically throughout a relatively short process. She further noted that the applicant has withdrawn his previous development proposal for the subject site, and it is premature to assume that we need to do more than a Negative Declaration at this point because the project will likely be redesigned. Thus, the evaluation of the density change in the staff report is very appropriate.

The Planning Commission voted 6-0-0-1 (Commissioner Ballard abstain) to recommend to the City Council to adopt a resolution approving the Fourth and St. John General Plan Amendment & Rezoning Initial Study/Negative Declaration in accordance with CEQA for the General Plan amendment, and approve the General Plan Land Use/Transportation Diagram Amendment resolution.

A complete analysis regarding the proposed General Plan Amendment is contained in the attached Planning Commission Staff Report and Supplemental Memos to the Planning Commission.

EVALUATION AND FOLLOW UP

If the Amendment is approved, the Downtown Growth Area boundary would be expanded to include the approximately 0.91-acre site, and the General Plan Land Use/Transportation Diagram designation would be changed from Residential Neighborhood and Transit

Residential to Downtown. This would allow uses on the site consistent with the Downtown General Plan land use designation.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy. The property owners and occupants within a 1,000 feet radius were sent public hearing notices for the Planning Commission and City Council hearing, as well as all members of the public who requested to be placed on the application's contact list. A notice of the public hearing was also published in the San José Post Record and on the City's website. The Planning Commission agenda was posted on the City of San José website, which included a copy of the staff report, and staff has been available to discuss the project with members of the public. On September 7, 2017, the applicant and Planning staff hosted a Community Meeting to discuss the proposed General Plan amendment and the IS/ND, and approximately 40 members of the public attended the meeting.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

An Initial Study/Negative Declaration (IS/ND) entitled "Fourth and St. John General Plan Amendment & Rezoning" was prepared by the Director of Planning, Building, and Code Enforcement to address the environmental impacts of the subject General Plan Amendment and Conventional Rezoning. The IS/ND was completed in compliance with the California Environmental Quality Act (CEQA). The document was circulated for public review from October 24, 2017 to November 13, 2017. The Negative Declaration states that the proposed General Plan Amendment will not have a significant effect on the environment. No significant impacts were identified; therefore, no mitigation is required. The Initial Study and Negative Declaration are available for review on the Planning website at:

<http://www.sanjoseca.gov/index.aspx?nid=5720>

/s/

ROSALYN HUGHEY, SECRETARY
Planning Commission

For questions please contact Michael Brilliot, Division Manager, at 408-535-7831.

Attachments: Planning Commission Staff Report and attachments