

EXHIBIT A – APPEAL OF THE ENVIRONMENTAL DETERMINATION

3/27/2022

To: Honorable Mayor and City Council Members

Subject: Appeal of an Environmental Appeal

Appeal of Planning Director Hearing: Wednesday, March 23, 2022

Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd, San Jose

Dear Honorable Mayor and City Council Members:

We are residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic goals and tax base objectives and very much support the City's efforts to attain some balance in the tax base/services delivery.

We also support hotel development, but this site stands out as inappropriate. This site has smaller, shallow parcels that will have a negative environmental impact on the neighborhood. Our concerns are listed below along with attached documents prepared by residents addressing these issues.

1. The Mitigation Monitoring and Reporting Program for the hotel project at 1212-1224 S Winchester attached to the January 11, 2022 City Council Agenda packet and fully incorporated into the City Council adopted Resolution is not the report for the subject property, but is a report for an entirely different project.

We believe that the City Council's January 11, 2022 actions on the mitigated negative declaration (MND) were not supported by fully accurate documentation and that this matter should go back to the City Council for a rehearing. **Since the zoning action was based on an inaccurate MND, it follows from our perspective that the rezoning action by the City Council should be redone as well.**

2. NEIGHBORHOOD/COMMUNITY COMMERCIAL, the land use designation assigned to the two block section of Winchester Blvd, which is the location of 1212-1224 S Winchester. The Winchester Urban Village Plan describes the "Neighborhood/Community Commercial" Land Use Designation and why it is applied to 1212-1224 S Winchester as follows: "This designation is applied to

smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses. Neighborhood/Community Commercial uses should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate form that supports walking, transit use and public interaction. Also, this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard.” (Winchester Blvd Urban Village Plan p.19) Based on the way Land Use was planned and designated in the Winchester Urban Village, we believe that the hotel project has a significant negative impact on the Land Use and Planning resource.

3. The Winchester Blvd Urban Village Plan describes the “Urban Village Commercial” Land Use Designation on the same page as Neighborhood Community Commercial: *“The Urban Village Commercial land use designation is applied to properties on Winchester and Moorpark adjacent to, and on the south side of Interstate 280. This area was identified as an opportunity for new commercial development that could build off the success and vibrancy of the commercial development in the adjacent Santana Row/Valley Fair Urban Village. This designation supports commercial activity that is more intensive than that of the Neighborhood Urban/Community Commercial land use designation. Appropriate uses in this designation include a variety of commercial uses, mid-rise office buildings and hotels...” (Winchester Blvd Urban Village Plan p.19) The Winchester Urban Village Plan clearly states what area and what land use is intended for facilities like hotels. We believe this has a significant negative impact on the Urban Village Land Use and Planning resource.*

4. SECURITY - The Hotel Operations Plan (Project Documents; dated 9/27/21 lists “Cameras plus security guard (s) as needed” . Not one security guard is listed on the Employee Staff list. (Project Documents, “Response to Comment”,

the last 2 pages, labeled Attachment B) We believe that a security staff is necessary for a 119 room hotel with bar in the close vicinity to Castlemont Elementary School, Bethel Church, a sub-acute center next door, and our residential neighborhood. We believe not having a security staff is a significant safety concern.

5. FIRE SAFETY – In 2002, ashes fell onto the neighborhood from the Santana Row fire, which resulted in over \$100 million in damages. According to OSHA, “The options available for attacking a fire increase when a building’s perimeter becomes more accessible to fire apparatus...ideally the full perimeter would be accessible; however, this is not always feasible.” These developments on appropriately sized lots along Winchester have clearly marked fire lanes: A Grace Subacute, 1250 S. Winchester; Lynhaven Apartments, 919 S. Winchester; Villa Cortina, 801 S. Winchester. The Winchester Hotel Plan on the shallow lots leave no room for fire lanes; instead of fire lanes, hose paths are proposed around the sides and back as part of an Aerial Fire Plan (OSHA manual p14; Mercury News article on Santana Row fire). In a Memorandum dated 10/11/19 to Planning Dept Project Manager Michelle Flores from Gordana Sabatelli, San Jose Fire Department, she wrote that “The applicant has the option to apply for a Fire Department Variance to mitigate deficiencies noted in this Section. The Variance must be approved prior to Planning Approval.” Why has the Variance been deferred when it was clearly stated by the SJ Fire Dept that it “must be approved prior to Planning Approval”. The use of hose paths instead of Fire Access Lanes is a change to what other developments along Winchester Blvd have complied with up to this point. We believe this is a safety concern.

6. PEDESTRIAN/BICYCLIST RISK FROM DRIVEWAYS CROSSING THE SIDEWALK FOR THE GARAGE AND LOADING ZONE

Urban Village Vision: “Parking structures should not be visible from Winchester Boulevard.” and “Reduce pedestrian and vehicle conflicts by minimizing

driveways along the Primary Pedestrian Routes.” (Winchester Blvd Urban Village, DG-56 & DG-62)

The Winchester Hotel Plan: Parking Garage faces Winchester and driveways for both the Garage and the “Delivery and Loading Zone” cross the sidewalk. (Winchester Hotel Plan, pA.08, Rev-1; 11/01/2019) *“There may be brief moments when vehicles exiting and entering the parking garage would block the sidewalk. However, it is anticipated that delays to pedestrians on the sidewalk would be relatively brief and it would not impact traffic operations on Winchester Boulevard...**Recommendation:** Appropriate visible and/or audible warning signals should be provided at the garage entrance to alert pedestrians and bicyclists of vehicles exiting the parking garage.”* (Project Documents, Appendix H, Transportation Analysis, p.46) **Hexagon Transportation Analysis was working off the Hotel Plan dated 11/01/2019, which did not take into account the adjacent driveway for the on-site Delivery and Loading Zone for small trucks. We believe this is a safety concern that was not analyzed by the Hexagon Transportation Analysis.**

7. Guest and Valet Drop/Pick-up Zone Operations

To mitigate traffic issues related to the use of twenty-four two car mechanical parking lifts, the recommendation made by Hexagon Transportation Consultants, Inc. (“Hexagon”) in their 1212 South Winchester Hotel Development Transportation Analysis (“Transportation Analysis”), that a minimum of two to three valet staff would be required on site during the peak morning and afternoon periods, was not followed by the developer.

This issue which was listed in Item 4.17 of the Mitigated Negative Declaration Report as having a Non-CEQA Effect is not correct. The Developer’s decision to include only one parking valet in their Operations Plan has a direct negative effect on the following TRANSPORTATION/TRAFFIC CEQA related areas;

Pedestrian Access, Emergency Access, Bicycle Lanes, Traffic Safety, and Delivery Access. **The impact of this deviation from Hexagon’s recommended mitigation measures has not been evaluated by Hexagon nor is included in the current Mitigated Negative Declaration Report.**

8. 27' WIDE DRIVEWAY AREA CROSSING THE SIDEWALK EXPANDED TO 43'

“Vehicular access to the subterranean garage would be provided from a right in/right out” driveway adjacent to a second driveway for small trucks adjacent to the loading and delivery zone to the south. (Memorandum, City Council Staff Report, p.3; driveways posted on Winchester Urban Village Plan A.08) **Hexagon Transportation Analysis did not take this into consideration. As shown on page 47, it was relying on the Winchester Hotel Plan dated 11/1/19, which did not have the second driveway.** (The Hexagon Transportation Analysis addressed the Drop-Off and Load Space areas that were being located on the street.) **We believe that the Hexagon Transportation Analysis should have been updated to assess the impact on pedestrian/bicycle safety with the additional vehicles crossing the sidewalk and the added congestion due to the Drop Off Center inside the garage as to how that will affect more vehicles backing up onto the sidewalk. We believe this is a safety concern that was not analyzed by the Hexagon Transportation Analysis.**

9. TRAFFIC ON WINCHESTER AND PAYNE

“Based on the ITE (Intersectional Operations Analysis) rates with trip reductions, the proposed hotel development would generate a total of 1,266 daily vehicle trips, with 64 trips (37 inbound and 27 outbound) occurring during the AM peak hour and 75 trips (37 inbound and 38 outbound) occurring during the PM peak hour. (Transportation Analysis, p. 26)

Vehicular access to the project site at its proposed driveway would be restricted to right-in/right-out turn movements only due to the existing median along Winchester Boulevard. Therefore, inbound project traffic from southbound Winchester Boulevard would be required to proceed past the project site and make a U-turn at the Payne Avenue intersection. Similarly, outbound project traffic that is bound for southbound Winchester Boulevard would be required to exit the project driveway and proceed north along Winchester Boulevard to make a U-turn at the Fireside Drive intersection. It is anticipated that this driveway would serve approximately 64 AM peak hour trips (37 inbound and 27 outbound) and 75 PM peak hour trips (37 inbound and 38 outbound) (Transportation Analysis, p 46) **How does the Planning Dept assess the impact**

of this on pedestrian and bicycle activity? How will this impact the “Potential Mid-Block Crossing” located at the southern edge of 1224 S Winchester? (Urban Village Plan, Figure 4-1, p35) This is an impediment to pedestrian enjoyment and safety.

10. COMPATIBILITY OF BUILDING HEIGHT, PLACEMENT AND SCALE One of the major elements of the Urban Design Framework Placement and Scale (Urban Village P.51).

a) Although a 6 story 65 ft structure requires a 40 ft setback next to residential properties, the Winchester Hotel Plan reduces the height by 5 inches to move 50% closer to the rear fence, now a 20-foot setback.

b) Rear/Side setbacks apply when located adjacent to Residential/Neighborhood or Urban Residential land use designations. Because the Urban Village Plan changed the Land Use Designation along this section of Winchester to Neighborhood/Community Commercial, the hotel plan is being allowed a 6 ft side setback next to the family next door. They have owned their home over 30 yrs. (Urban Village Plan, p.64) **Therefore, we believe that this project does have environmental effects, which will cause substantial adverse effects on human beings, directly or indirectly.**

11. DISINCENTIVE FOR NEW ROOFTOP SOLAR ON ADJACENT HOMES – See Season Shade Diagrams (Winchester Hotel Plan, p. A.28, A.29) “Response N2: The California Solar Rights Act (AB 3250, 1978) and the Solar Shade Act (AB 2321, 1978) only protect existing solar panels and solar easements from trees and shrubs planted after installation of the solar panels. There is no guaranteed solar access as it pertains to new building construction...” (Project Documents, Response to Comment, Response N2, p.38) **Therefore, with regard as to whether solar panels would be possible for adjacent neighbors, we believe this project has substantial adverse effects on human beings, either directly or indirectly.**

12. IMPACT OF 91% IMPERVIOUS COVERAGE ON GROUNDWATER RETENTION (Impervious Surface: A surface on a developed parcel that prevents the land’s

natural ability to absorb and infiltrate rainfall/stormwater. Definition San Jose Council Policy 6-29, Revised 10/4/11, p.6) See “Response to Santa Clara Valley Water District” questions, one of which referenced the Valley Water 2016 Groundwater Management Plan. (Public Comments, P. 8); See Table 2 of Environmental Checklist showing Impervious Site Coverage at 91% (Initial Study, p. 12); See Winchester Hotel Plan, p. C3.0 to C4.2, regarding Grading, and Utility Plan, Draining, Stormwater Control Plan, Media Filtration Details. Details include information on operation and maintenance of the Contech Catch Basin Storm Filter. **With significant yearly droughts becoming more frequent, we believe that 91% impervious coverage does have significant negative impact on lost ground water. Is there any information stating how much water the engineered storm drain system would drain from the site?**

We appreciate your consideration of this matter and look forward to a positive response to our objections to the negative environmental impact of the hotel plan on our neighborhood. We hope to participate in a process that results in an appropriate development that fulfills the vision of the Winchester Boulevard Urban Village, a project that meets the City’s economic and tax base growth objectives, an acceptable outcome for the Developer and the creation of appropriate smaller commercial businesses with a strong connection to, and provide services and amenities for, the community.

Sincerely,

Gaz Salihue & Shehana Marikar, [REDACTED]

Tom & Gail Morman, [REDACTED]

Hal Stone, [REDACTED]

Jeffrey and Jacqueline Williams, [REDACTED]

Brian & Helen Matsumoto, [REDACTED]

Mike & Galina Drabkin, [REDACTED]

Mabel Cheng, [REDACTED]

ATTACHMENTS

1. Gaz Salihue & Shehana Marikar
2. Jeff Williams
3. Mabel Cheng
4. Brian & Helen Matsumoto

On-Line Sources

1. Winchester Boulevard Urban Village Plang [government/departments/planning-building-code-enforcement/planning-division/citywide-planning/urban-villages/approved-urban-village-plans](http://www.sanjoseca.gov/your-government/departments-planning-building-code-enforcement/planning-division/citywide-planning/urban-villages/approved-urban-village-plans)
2. Initial Study labeled "1212 S Winchester Blvd Hotel Project IS MND" in Project Documents
3. Project Documents:
<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/1212-1224-south-winchester-boulevard-hotel-project>
4. Mercury News article "Santana Row fire facts" :
<https://www.mercurynews.com/2012/08/18/santana-row-fire-facts>
5. OSHA, Fire Service of Buildings and Fire Protection Systems, p14 <https://www.osha.gov/sites/default/files/publications/OSHA3256.pdf>

Date 3/25/2022

To: Honorable Mayor and City Council Members

Subject: Appeal of an Environmental Determination

Ref. Planning Director Hearing on Wednesday March 23, 2022, Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd., San Jose

Dear Honorable mayor and City Council Members:

We are the residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic goals and tax base objectives, and very much support the City's efforts to attain some balance in the tax base/services delivery.

However, we object to several aspects of the hotel proposal for this site, and appeal to the Council to review recent determinations. Specifically, today let me draw your attention to two topics: Shadow on neighboring homes and lighting for hotel. These issues were raised during the meeting referenced above and in written comments, but were not directly or adequately addressed.

The Winchester Urban Village Plan states

The Winchester Urban Village Plan creates specific policies concerning the interface between new high density development and the lower density residential neighborhoods. The Envision San Jose 2040 PEIR acknowledges the importance of a sensitive transition at these interfaces "to protect the quality and integrity of the neighborhoods....".

The proposed project by its very nature and size completely ignores the Envision San Jose 2040 plan EIR and the Winchester Urban Village Plan. **There is no acknowledgment of a sensitive transition or protecting the quality and integrity of neighborhoods.** When 2 single story residences are to be replaced by a 6 story hotel, that is not a sensitive transition. This proposed development will create a multitude of negative environmental impacts that are being ignored by claiming the height conforms and the land use designation conforms to the Winchester Urban Village plan.

Winchester Urban Village plan 3.3

Land Use Plan Overview

The southern node around the corner of Payne Avenue and Winchester Boulevard encourages higher intensity mixed-use, walkable development, with ground floor commercial and residential uses above. New development should integrate a variety of outdoor plazas, public art, and parks where the community can meet, linger, and socialize.

This project is located in the southern node of the Winchester Urban Village plan and provides none of the requirements of a new development, like outdoor plazas, public art, green spaces etc.

3.3-1 LAND USE DESIGNATIONS

Neighborhood/Community Commercial

FAR up to 3.5

The Neighborhood/Community Commercial land use designation supports a broad range of commercial uses such as neighborhood-serving retail stores and services, commercial and professional offices and private community gathering facilities. New residential uses are not supported by this land use designation.

This designation is applied to smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses.

Neighborhood/Community Commercial uses should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction. Also, this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard.

Once again the proposed project on shallow lots fronting Winchester Blvd and abutting multiple single family residences does not fit in with the Winchester Urban Village plan. These lots were meant to have businesses that support and service the neighborhood and community.

Comments submitted by concerned residents -June 2021

Comment D1: *For 6 Months of the year, the 6-story building will block Sunlight to the surrounding Neighborhood, especially 1204 S. Winchester blvd, and other single-family homes on Redoaks Drive.*

Response D1: *A Shade Study included in Appendix A (Project Plans), Sheets A.28 and A.29, was prepared for the proposed project. The Shade Study analyzed shadows cast by existing buildings as well as shadows anticipated to be cast by the project.*

Based on the Shade Study depicted on Appendix A, Sheets A.28 and A.29, the longest shadows cast from the proposed project are to the adjacent residence immediately north (1204 South Winchester Boulevard) of the project site especially during the winter afternoon hours. Minimal amounts of shadows, as shown on the Shade Study, would also be cast onto the same residence during the autumn season.

Based on the Shade Study, the proposed project would not cast significant shadows on any surrounding residences during the spring and summer seasons. Additionally, the Shade Study indicates the project would not cast significant shadows on the residences on Redoaks Drive, located east of the project site, during the day; shading is shown to occur during the autumn, winter, spring and summer late afternoon hours. A building stepback at 35 feet in height is a design measure incorporated into the project to reduce shadows cast onto the single-family homes located east of the project site. Therefore, as summarized above, the shade cast on the surrounding residential

land uses would not impair the use of the properties. This comment does not address the adequacy of the Draft IS/MND. No further CEQA analysis is required.

New developments at a lower height would create less of a shadow on the properties to the north and east of the proposed project. The above concern was raised about the shadow this 6 story structure would create on the adjacent properties. As you can see there are no mitigation measures in place and the concerns of the resident were completely ignored. Also why is the shade study done only till the afternoon and not until sundown? Is it because that would show that there would a shadow cast on the properties on Redoaks Drive too?

Initial Study Page 44 states

d)

Would the project create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?

(Less Than Significant)

The project site is currently developed with two buildings. Therefore, the project site, in its current condition, produces sources of light and possibly glare. In addition, existing sources of light in the vicinity of the project site are primarily from adjacent residences and commercial sites, streetlights, and headlights of vehicular traffic on South Winchester Boulevard.

The proposed project would introduce new sources of light and glare to the project site as the proposed project includes security lights and other nighttime lights. The proposed project would also be required to comply with the City's adopted Lighting Policy 4-2 and Private Outdoor Lighting Policy 4-3 to control the amount and color of light shining on streets and sidewalks reducing impacts to a less-than-significant level. All outdoor lighting would be shielded to direct light downwards to ensure that lighting does not spill over onto nearby residential properties, consistent with the City's regulations.

The proposed project would comply with applicable policies set forth to reduce impacts related to light and glare generated by new development. Therefore, the proposed project's impacts on day and nighttime views would be less than significant and no mitigation is required.

With a setback of 5 feet to the north of the proposed project, where exactly would these lights be placed? Residents have previously brought up concerns about the environmental impacts of excessive lighting on the quality of life only to be ignored by the planning department. New sources of lighting for this project would need to operate on a 24/7 basis due to the nature of the project itself. The project images in the project plans show stairways on the north side on the building facing the single family residence and lighting would need to be available at all levels, causing light to affect not only the neighboring properties on S. Winchester Blvd but also onto properties on Redoaks Drive and beyond. The MND does no analysis of how far the required lighting for this project would shine at all hours of the night and its environmental impact on the residences.

As stated in the Winchester Urban Village Plan, it is important to consider the environmental impacts on surrounding neighborhoods. We believe that an EIR is required to evaluate whether

the proposed Winchester Hotel Project height, density, setbacks, traffic, fire safety and operating policies are sensitive to the need to protect the quality and integrity of our neighborhood. A project of this magnitude requires a thorough environmental review under CEQA guidelines to understand the true impact on the surrounding neighborhood.

We urge you to consider this appeal of the Environmental Determination.

Sincerely

Gaz Salihue & Shehana Marikar

A black rectangular redaction box covering the signature of Gaz Salihue & Shehana Marikar.

To: [Honorable](#) Mayor and City Council Members

Subject: Appeal of an Environmental Appeal

Appeal of Planning Director Hearing: Wednesday, March 23, 2022

Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd, San Jose

MITIGATED NEGATIVE DECLARATION REPORT DEFICIENCY AFFECTING TRANSPORTATION/TRAFFIC

Dear Honorable Mayor and City Council Members:

The item listed below in item **4.17 TRANSPORTATION/TRAFFIC** and labeled as having a Non-CEQA Effect is not accurate as the Developer **did not follow the recommendation made by Hexagon Transportation Consultants, Inc.** ("Hexagon") in the 1212 South Winchester Hotel Development Transportation Analysis ("Transportation Analysis") when preparing the project's Operations Plan. The result of that decision has eliminated that mitigating measure and no longer has a Non-CEQA Effect. This item has a direct negative effect on the CEQA topics listed below. That negative impact has not been addressed in the report that was prepared by the Planning Department and submitted to the City Council.

Guest and Valet Drop-off/Pick-up Zone Operations (Page 168)

Based on the estimated trip generation, a maximum of 37 inbound trips would need to be served at the proposed guest and valet drop-off/pick-up zone along Winchester Boulevard during the PM peak-hour, or approximately one vehicle every 1.5 minutes. **The number of vehicles that can be served at the valet drop-off/pick-up zone will depend on the proposed valet parking operations. However, it is recommended that a minimum of two to three valet staff be present during the peak arrival/departure periods for the hotel.** In addition, vehicles should not be retrieved in advance of guests being present at the valet area. Given the limited storage space for valet operations along Winchester Boulevard, the valet area should not be used for transportation network companies (TMCs) such as Uber, Lyft, etc. while waiting for customers. The site plan does not indicate on-site designated parking spaces for guest check-in or valet drop-off/ pick-up areas.

The Developer **did not follow the recommendation of two to three valet staff be present during the peak arrival/departure periods for the hotel as made in the Transportation Analysis** prepared for this project. Instead, the Developer has chosen to only provide for **one valet** in their Operating Plan in order to keep the number workers on site to a maximum of 10. (See the Developer's Operations Plan included in the project document package). Based upon the number of inbound trips and the vehicle arrival time discussed in the Transportation Analysis, the lack of parking valets to handle the demand will result in a backup of cars across the sidewalk at the entrance to the parking garage, as well as, blocking the bicycle and traffic lanes on South Winchester Boulevard. That decision by the Developer **has a direct negative effect on the following TRANSPORTATION/TRAFFIC CEQA related areas** and the impact of that decision was not addressed when the Mitigation Measures were analyzed:

1. **Pedestrian Access** – cars blocking the sidewalk while waiting for valet service will prevent pedestrian from using the sidewalks as well as creating a safety hazard.

2. **Emergency Access** – cars backing up into the traffic on South Winchester Boulevard while waiting for valet service will restrict emergency vehicle access to the property. This issue is especially concerning for the Acute Care Facility that is immediately to the south of this proposed hotel. That Acute Care Facility currently has frequent visits by fire and ambulance services. Any blockage of their driveway or area in the front of that facility will restrict emergency vehicle access to that property as well.
3. **Bicycle Lanes** – the back-up of cars waiting for valet service will also block the bicycle lanes. Not only will this inhibit bicycle traffic, but it also potentially poses a safety risk to bicyclists in a high traffic area.
4. **Traffic Safety** - cars backing up into the traffic on South Winchester Boulevard while waiting for valet service will not only block traffic during high traffic periods, but it also poses a safety risk as oncoming vehicles having to change lanes to avoid the backup and proceed on their journey.
5. **Delivery Access** - cars backing up into the traffic on South Winchester Boulevard while waiting for valet service will block access to the projects off street delivery area causing delivery vehicles to park in the street during high traffic periods, thereby blocking traffic and increasing traffic safety hazards.

Respectfully,

Jeffrey Williams

[REDACTED]
[REDACTED]

27 March 2022

To: Honorable Mayor and City Council Members

Subject: Appeal of an Environmental Determination

Ref. Planning Director Hearing on Wednesday March 23, 2022, Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd., San Jose

Dear Honorable mayor and City Council Members:

We are the residents of the Hamann Park neighborhood that would be impacted by this project. Many of us worked with the City in developing the Winchester Boulevard Urban Village Plan and were supportive of this engagement. We are aware of the City's economic goals and tax base objectives, and very much support the City's efforts to attain some balance in the tax base/services delivery.

However, we object to several aspects of the hotel proposal for this site, and appeal to the Council to review recent determinations. Specifically, today let me draw your attention to three topics: scenic vistas, construction-related vibration, and building setbacks. These issues were raised during the meeting referenced above, but were not directly or adequately addressed.

Scenic vistas

Section 4.1.1 of the Initial Study Mitigated Negative Declaration (IS/MND) asks "Would the project have a substantial adverse effect on a scenic vista?". The impact discussion attempting to support the "less than significant" determination states that:

the project site is not located within designated viewsheds or view corridors identified in either the General Plan or the City's Scenic Corridors Diagram nor are there any scenic vistas observable from the project vicinity due to existing obstructing topography and buildings. Therefore, the proposed project would not have a substantial adverse effect on a scenic vista.

Our residence is located immediately east of the project site, and we can say with certainty that there is a scenic vista to the west, and it is magnificent. We enjoy watching the sun set over the West Santa Clara hills and open spaces. A 6 story hotel located between us and our sunset will definitely have an adverse effect on our scenic vista. While the response in the IS/MND may address aspects directly associated with the City's Scenic Corridors Diagram, the response is a gross mischaracterization of the negative impact this project will have on one of the most treasured features of our home.

Prior response from the City on this issue (15 Oct 2021, ref. R1, D3, E3) has failed to address the negative impact of this proposed project on nearby property values. This monstrous hotel will diminish adjacent property values. A home buyer deciding between two equivalent homes will pay substantially less for the one that is literally within the shadow of a 6 story eyesore. The 6 story hotel will have upper level balconies overlooking private residential pools, yards, and bedrooms. These homeowners will no longer enjoy the privacy they purchased and reasonably expect. The adjacent homes were built and occupied with the expectation of 1-2 story residential neighbors. The negative impact of this project on the fair market value of adjacent homes should be determined by a neutral assessor who is neither employed by the hotel nor the pro-business City planners, and injured parties should be justly compensated. As part of assessing the fair market value impact on adjacent homes, planners should

render realistic views of the hotel from the backyards, pools, patios, dining rooms and upstairs bedrooms of these adjacent property owners.

Vibration

Section 4.13.6b of the IS/MND asks "Would the project result in generation of excessive ground-borne vibration or ground borne noise levels?". Substantiation for the "less than significant" determination includes:

The nearest residential structures on the adjacent sites to the north and east, respectively, would be within 15 and 70 feet. At these distances, vibration levels would be up to 1.23 inches per second PPV, which would exceed the City's 0.2 inch per second PPV limit.

As the owner of one of these adjacent sites, we certainly feel that this is a "significant" impact. We fail to understand how the City can assess it as "less than significant" when projected vibration exceeds the allowable threshold by a factor of 6. We expect the City to ensure that competent professionals will be tasked to thoroughly document the state of relevant adjacent structures prior to demolition and construction. The developer should then be prepared to compensate affected parties for associated damages incurred by those structures as a direct result of demolition and construction activities.

Side setback

Municipal code 20.40.200 - Development standards

Table 20-100

Zoning district CP (Commercial Pedestrian)

Minimum setback, side, interior:

none; or as established in approved Urban Village Plan

Municipal code 20.40.270 - Side setback - Exceptions, interior lot.

Notwithstanding the provisions of Section 20.40.200, in the CP commercial district, a building side setback shall be required for interior lots on that side of each such lot which abuts on the side of a lot situated in a residence district, in which case the side setback requirements shall be a minimum of ten feet.

The project site and the residential property to the north are both interior lots, which means one side faces the street, and the other 3 sides are shared with neighboring properties. Municipal code 20.40.270 clearly requires a side setback of at least 10 ft between a commercial building and a neighboring residential property line. However, the project plans currently indicate a side setback of only 5 ft 6 in. This inconsistency needs to be addressed immediately. This correction will also improve the fire department access to the side and rear of the building.

We appreciate your attention to these concerns.

Mabel Cheng

[REDACTED]
[REDACTED]

March 27, 2022

To: Honorable Mayor and City Council Members

Subject: Appeal of an Environmental Appeal

Appeal of Planning Director Hearing: Wednesday, March 23, 2022

Agenda Item #4 (SP20-016) 1212-1224 S. Winchester Blvd, San Jose

Addressing MND, Section 4.15

Section 4.17 Transportation/Traffic 4.17.4 (Impact Discussion, Item D on page 166-167)

I would like to call attention to Fire Safety and related concerns.

Fire safety and mitigation is of utmost importance to the community with regards to any proposed project at the 1212-1224 S Winchester Blvd address.

According to OSHA, “The options available for attacking a fire increase when a building’s perimeter becomes more accessible to fire apparatus...ideally the full perimeter would be accessible; however, this is not always feasible.” Developments on appropriately sized lots along Winchester have clearly marked fire lanes for fire truck access: A Grace Subacute, 1250 S. Winchester; Lynhaven Apartments, 919 S. Winchester; Villa Cortina, 801 S. Winchester.

As noted, the North and South access of this project is 5’6” and 6’ 0” respectively. Fire-fighting with the aid of a truck is limited to frontal aerial coverage. A fire at the mid to lower levels in the rear of the building will not be accessible with only frontal aerial coverage. Are the side setbacks of 5’ or less sufficient for fire fighters to navigate with ladders and devices from the front access to the back of the structure? Also the access would need to be maintained to always be clear.

We believe fire safety should and needs to be incorporated into the initial design of the project and not later in the project.

In the document dated October 2021, “Responses to Public Comments and Text Changes, on page 28, Response 17 there is the following statement. “During the Planning Review, the Fire Department noted that a Fire Variance will be required for the project. The Fire Variance application will be deferred to the Building Permit stage. Approval of the Fire Variance is required prior to issuance of the Building Permit.”

In the Planning Director Public Hearing meeting on March 23, 2022 for SP20-016, it was clearly stated that a Fire Variance is necessary for this project.

Why is the fire safety plan / Fire Variance only considered at during building permit approval phase?

As fire safety is a concern not only for the occupants but also for the general public, any Fire Variance should be addressed and made public as part of the initial design. This would allow for corrections to address any building design deficiencies related to the project.

In addition, the document “1) Initial Study_1212-1224 S Winchester Blvd Hotel PROJECT ” dated May 2021, on page 148, section 4.15.4, discusses the Impact for the need of new or physically altered fire protection facilities.

It is stated, paragraph 1, “The proposed project would replace two commercially-used buildings with a 119-guestroom hotel. Development of the site would incrementally increase the need for fire protection services but would not significantly impact the response time or require construction of new facilities.”

Paragraph 2, “Construction of the proposed project would be required to comply with applicable **Fire Code standards**”. However, the Fire Variance has not been submitted to be approved yet. The community has raised concerns in regards to the fire-fighting capabilities especially in the rear of the bldg.

Paragraph 3, “The General Plan EIR evaluated the need for **new fire stations** with buildout of the General Plan and concluded that implementation of the general plan would result in an increase in calls for fire protection services but would not result in the need for construction of fire stations in excess of those **currently planned**.”

This clearly outlines that additional fire stations are **currently planned** to support this project and others in the Urban Village Plan. As this is a necessary step for a comprehensive fire safety and protection, the additional fire stations will need to be in service and functional prior to any high rise construction project. Commencement and completion of a high rise project without the necessary number of fire fighting facilities/stations, would place not only the project but also the surrounding neighborhoods at risk. This will result in a gross negligence for fire safety.

We believe that Fire Safety is an integral part of the General Plan EIR and thus should be addressed at this phase of the project and NOT at the building permit process.

Respectfully,

Brian & Helen Matsumoto

A solid black rectangular box used to redact the signature of Brian & Helen Matsumoto.