

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A TENTATIVE MAP TO SUBDIVIDE ONE LOT INTO SIX LOTS ON AN APPROXIMATELY 1.3-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF ALMADEN ROAD, APPROXIMATELY 150 FEET NORTHERLY OF CORVALLIS DRIVE (6805 ALMADEN ROAD)**

**FILE NO. T19-033**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on September 10, 2019 an application (File No. T19-033) was filed by John Moniz, on behalf of R & J Properties with the City of San José for a Tentative Map to subdivide one lot into six lots on an approximately 1.3-gross acre site, on that certain real property situated in the R-1-5 Single-Family Residence Zoning District and located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement (“Director”) conducted a hearing on said application on September 16, 2020, notice of which was duly given; and

**WHEREAS**, at said hearing, the Director gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, the Director approved the requested Tentative Map, for

which decision an appeal to the City Council was timely filed by neighbors of the subject property; and

**WHEREAS**, on September 23, 2020, a timely appeal of the Director's approval of the Tentative Map was filed by Lance and Karen Danbe, owners of a residence adjacent to the project site, citing 1) non-conformance with the Residential Neighborhood section of the 2040 General Plan; 2) inconsistency with the neighborhood pattern; 3) lack of improvements or enhancements to existing neighborhood conditions; and 4) the need for a 20-foot setback for Lot 6 of the project; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a *de novo* hearing on said application and the appeals of the Director's decision, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, this City Council received and considered the reports and recommendations of the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "T19-033 Site/Lotting Plan Petroni Way" dated September 11, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

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

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located on the westside of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road). The 1.3-gross acre site is currently developed with an approximately 2,14 square foot single-family residence, detached secondary unit, multiple sheds, and a swimming pool, and the site is adjacent to single-family residential on the north, south, and west. Almaden Road and Almaden Expressway is located east of the site.
2. **Project Description.** This is a Tentative Map to subdivide one parcel into six parcels on an approximately 1.3-gross acre site. The size of the six parcels range from approximately 8,020 square feet up to 10,200 square feet. The subdivision facilitates the development of six single-family residences (File No. H19-039).
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Residential Neighborhood. This 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 which comprise the majority of its developed land. 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.

Additionally, the project would conform to the following General Plan goal and policy:

Land Use Policy LU-11.6: For new infill development, 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. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

*Analysis: The project is consistent with the Residential Neighborhood land use designation and policies described above by providing an infill development and subdivision within an existing neighborhood for similar single-family residences. As defined by density, lot size and shape compared to other development that fronts onto the same public street, the nearby development maintains consistency with the area. The nearby development has an average lot frontage of approximately 78 feet. The average lot size is approximately 9,032 square feet.*

*Combined with the project, the average width of lots for the neighborhood would be approximately 76 feet with an average lot size of 9,230 square feet. Additionally, the average density of the existing neighborhood is 4.87 dwelling units per acre (DU/AC) and combined with the project, the average density is approximately 4.7 du/ac.*

*As shown on the development plan set, all units from the project share architectural characteristics and similar materials to the existing development and the project provides similar second-story stepbacks as exhibited with nearby existing development as well. Additionally, all units are below 45 percent floor area ratio (FAR) which is also consistent with the surrounding development. Therefore, the project is consistent with the General Plan designation of Residential Neighborhood*

4. **Zoning Conformance.** The subject site is located in the R-1-5 Single-Family Residence Zoning District. The single-family residence district is primarily reserved land for the construction, use and occupancy of single-family subdivisions. The project is subject to the following regulations of the Zoning Ordinance:

**A. Minimum lot area (square feet or acreage): 8,000 square feet.**

- a. The size of the six parcels range from approximately 8,020 square feet up to 10,200 square feet. Therefore, the project includes six parcels that are greater than 8,000 square feet.

**B. Heights and Setbacks:**

Minimum Front Setback	Minimum Side Interior Setback	Minimum Side Corner Setback	Minimum Rear Setback	Maximum Height
20 feet	5 feet	12.5 feet	20 feet	35 feet

- i. Heights: The maximum allowed height is 35 feet. The project includes varying heights with the maximum heights of all homes at approximately 28 feet.
- ii. Setbacks: The project includes the following setbacks for each lot.

Lot Number	Front Setback	Side Setback	Rear Setback
1	Approx. 24 feet	At least 6.5 feet	Approx. 26.5 feet
2	Approx. 24.5 feet	At least 5.5 feet	Approx. 43 feet
3	Approx. 25 feet	At least 5.5 feet	Approx. 62.5 feet
4	Approx. 22.5 feet	Interior Setback (Approx. 5 feet), Corner Setback (Approx. 29 feet)	20 feet

5	Approx. 23.5 feet	Approx. 5 feet	Approx. 48 feet
6	Approx. 20 feet	Approx. 5 feet	Approx. 85.5 feet

**C. Vehicle Parking:** One family dwelling units are required to provide two covered off-street vehicle parking space per unit. The project provides a two-vehicle garage for each unit.

5. **Environmental Review.** Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15332 Infill Development Projects (Class 32) consists of projects characterized as in-fill development meeting the conditions described as follows: (a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value as habitat for endangered, rare, or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public service.

Analysis: As described above, the project is consistent with the general plan and zoning designations and regulations. The project is within an urbanized area, on a site that is less than five acres, and in an established residential area with adequate sewer, water, and electricity service. The project is for the construction of six single-family detached residential units which fits within the BAAQMD screening criteria of the policy of small projects. As a single-family residence development within an existing residential development, the anticipated trips and operation of this project would not result in a permanent increase in exterior noise that would conflict with the General Plan policies. A Phase I and Phase II Environmental Site Assessment (ESA) was prepared by Almar Environmental on July 17, 2020, due to previous agricultural and other uses related to hazardous materials. Based on the analysis, a gas pump was removed from the property prior to this project and a closure permit with the County of Santa Clara was completed in 2016. Based on the findings in the Phase I and II ESA, in March 2016, soil samples were taken from a sub-surface work area that was four feet wide, ten feet long, and four feet deep. Results from soil testing showed elevated concentrations of total petroleum hydrocarbons as motor oil and diesel, hexavalent chromium, and lead. Over-excavation of the work area was conducted in May 2016. An underground storage tank system closure permit application was filed in 2016 with the County of Santa Clara Department of Environmental Health (SCCDEH) and was approved. Prior to the issuance of any demolition, grading or building permits, the project applicant shall be required to seek oversight and confirmation from the SCCDEH and to complete a Site

Management Plan (SMP). The project would implement all construction standard permit conditions during all ground-disturbance phases to minimize construction effects in noise, dust and run-offs. For these reasons, the project is categorically exempt pursuant to CEQA Guidelines Section 15332.

6. **Subdivision Map Act Findings.** In accordance with Section 66474 of the Government Code of the State of California, the Director of Planning of the City of San José, in consideration of the proposed subdivision shown on the Tentative Map with the imposed conditions, shall deny approval of a tentative map, if it makes any of the following findings:
- a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
  - b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - c. That the site is not physically suitable for the type of development.
  - d. That the site is not physically suitable for the proposed density of development.
  - e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
  - f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
  - g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*Analysis: Based on review of the subdivision, the City Council does not make any such findings to deny the approval for the subject subdivision. The pattern of development is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood. The site is already developed with a residential type use and does not have habitat sufficient for fish or wildlife use and the subdivision of lots for residential uses will not cause serious health problems. The subdivision is physically suitable to enable the project to conform with all of the required setbacks, building height regulations, site and building design guidelines, and parking requirements.*

In accordance with the facts and findings set forth above, the permit appeal is denied and a Tentative Map for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the

subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
  - a. Acceptance of the Tentative Map by the Subdivider; and
  - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Tentative Map.
2. **Conformance to Plans.** Development of the site shall conform to the approved Tentative Map File No. T19-033 plans entitled "T19-033 Site/Lotting Plan Petroni Way" dated September 11, 2020, on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
3. **Expiration of the Tentative Map.** This Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the City Council of the City of San José. The date of issuance is the date this Tentative Map is approved by the City Council.
4. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the requirements for final maps in Chapter 19.16 of the San José Municipal Code and shall show and contain all of the data required by San José Municipal Code Section 19.16.110
5. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
6. **Improvement Contract.** In the event subdivider has not completed the improvements required for his proposed subdivision at the time the final map is presented for approval, subdivider shall enter into an improvement contract pursuant to Agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the bonds and insurance mentioned therein.

7. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems and slope easements in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
8. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager 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 on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
9. **Distribution Facilities.** Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
10. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
11. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions. The Subdivider is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:  
<http://www.sanjoseca.gov/index.aspx?nid=2246>.
  - a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public



Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b. Transportation:

i. In alignment with Senate Bill 743 (SB743), the City's Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 establishes Vehicle Miles Traveled (VMT) as the transportation metric for evaluating CEQA transportation impacts.

1) In conformance with the newly adopted Council Policy 5-1, this project meets the requirement for the small project as this project involves less than 15 residential units and therefore is exempt from CEQA transportation analysis. Furthermore, no additional transportation analysis is required.

c. **Grading/Geology:**

i. A grading permit is required prior to the issuance of a Public Works Clearance.

ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.

iv. Because this project involves a land disturbance of one or more acres, the Subdivider is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

v. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.

- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and additional information is required per the Actions/Revisions section.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. A deed restriction will be required on each property to protect treatment control measures (TCMs) for the life of the project.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area. However, it will not create and/or replace one acre or more of impervious surface. Therefore, the project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood: Zone D** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions).
- i. **Undergrounding:** The project is exempt from paying the in-lieu undergrounding fee because the site is zoned residential.
- j. **Street Improvements:**
  - i. Subdivider shall be responsible to remove and replace curb and gutter damaged during construction of the proposed project.

- ii. Construct 12-foot wide detached sidewalk with parkstrip along Almaden Road project frontage. Require an approximately 2-foot wide dedication.
  - iii. Construct 12-foot wide detached sidewalk with parkstrip along Petroni Way project frontage.
  - iv. Project driveways width to be 16 feet wide pursuant to City standard.
  - v. Install ADA complaint handicap ramp at the southwest corner of Almaden Road and Petroni Way per City standard Standard R-8.
  - vi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
  - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- l. **Street Trees:**
- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.
12. **Conformance with Other Permits.** The subject Tentative Map conforms to and complies in all respects with the Site Development Permit H19-039, as amended. Approval of said Tentative Map shall automatically expire with respect to any portion of the lands covered by such Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Site Development Permit for such lands automatically expires or for any reason ceases to be operative.
13. **Final Map.** No Final Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. T19-033 has expired and all appeals have been exhausted.

**14. Multiple Final Maps.** Multiple Final Maps may be filed for this subdivision if each and all of the following conditions are met with each Final Map:

- a. All fees associated with development and a part of this approval shall be apportioned and paid for each portion of this subdivision for which a Final Map is being filed, including but not limited to Parkland Dedication, undergrounding of utilities, drainage, area, and sewer treatment plan.
- b. All public streets on which each Final Map has frontage are improved or bonded to be improved to the satisfaction of the Director of Public Works.
- c. All grading, drainage and easements for drainage, adequate to protect each lot for which a Final Map is requested, and surrounding parcels, which could be impacted by such design or lack of design, shall be guaranteed to the satisfaction of the Director of Public Works.
- d. Any and all off-site improvements necessary for mitigation of impacts brought about by this project shall be apportioned to the degree possible to guarantee adequate mitigation.

**15. Revocation, Suspension, Modification.** This Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

In accordance with the findings set forth above, a Tentative Map Permit to use the subject property for said purpose specified above, subject to conditions, is hereby **approved**.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*