



Memorandum

TO: CITY COUNCIL

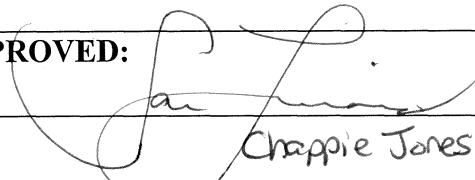
FROM: Mayor Sam Liccardo
Vice Mayor Rose Herrera
Councilmember Chappie Jones

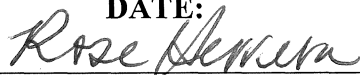
SUBJECT: SEE BELOW

DATE: May 01, 2015

APPROVED:

DATE:


Chappie Jones (J.F.)


(S.O.)

SUBJECT: GENERAL PLAN TEXT AMENDMENT AND COMMUNICATIONS HILL SPECIFIC PLAN AMENDMENT RELATED TO THE REAL PROPERTY AT 2829 MONTEREY ROAD

RECOMMENDATION

Recommend that the City Council deny the proposed General Plan Amendment (GPA) at 2829 Monterey Road and the text amendment to the Communications Hill Specific Plan, at the May 5, 2015 Council meeting, and support staff recommendation for denial through the Early Consideration process provided for in the Envision San Jose 2040 General Plan, Chapter 7, Implementation Policy, Goal IP-3.3.

BACKGROUND

We recommend denial of the proposed GPA on Monterey Road under the Early Consideration process for reasons documented in the staff report, reinforced by the Planning Commission at the February 25, 2015 public hearing, and described in Mayor Liccardo's memorandum dated April 21, 2015.

What developers and others who invest in San Jose deserve is predictability and certainty. The Council sets the rules, and investors who take risks should feel confident that the Council will not simply change the rules mid-stream with changes to the political climate. The predictability of City processes enables the business community to confidently focus their energies and investment, and ensures the community that the private sectors' endeavors will support the community's long-term goals, such as job creation and expansion of the tax base.

The rules appear consistent and unequivocal: no conversion of industrial land. The Applicant does not assert that any of the very limited exceptions to this policy apply to the facts of this application.

It is worth evaluating two arguments that we've heard recently.

First, in recent weeks, some applicants have pressed the notion that the Council can only serve “due process” rights by allowing early decisions like this one to have the benefit of full review by the Council during the General Plan hearing this fall. To the contrary, as the staff report to the Planning Commission explains on page 2, California Environmental Quality Act (CEQA) clearly contemplates an “early decision” process in Section 15270, by exempting such early denials from environmental review or study.

Should the Council agree to allow this or other proposed GP amendments to proceed to a hearing in the fall, the applicant will be required to commence the extensive—and expensive—process of environmental review. At this stage, the applicant will then assert that “now that we’ve come this far, and we’ve spent \$x millions of dollars, the Council can’t possibly say ‘no’ now—we will have wasted all of that money.”

There is also no good reason to defer this item from the May 5, 2015 Council Agenda, just as there was no substantive reason to defer it previously. Additional deferrals merely aid those who make the arguments that anyone investing so much money in a project’s outcome shouldn’t be denied.

Second, it seems worthwhile to identify the significant economic benefit to the applicant. The Council’s decision to allow the conversion of employment lands to housing provides a huge financial windfall for the developer, at the long-term cost to the taxpaying public. The applicant, we understand, acquired the property at 2829 Monterey Road in 2014 for \$5.1 million or \$14/sf, as one would expect for similarly situated industrial parcels. A re-designation of the land use to residential could substantially increase the value of the property, some sources say upwards of \$50/sf. However, if the property is retained in its current heavy industrial land use designation, the property could accommodate more than 300 manufacturing jobs or over 20 warehouse distribution jobs, which would support the City’s long-term economic development and fiscal sustainability goals.

The staff report (on page 3) explains why the assertion of the applicant about promises of future affordable housing ring hollow. No deed restriction accompanies this GPA application and the developer is unwilling to pay the City’s Housing Impact Fee. The applicant has requested the Council to “craft a condition to deed restrict or otherwise limit property rents.” According to the City Attorney, since the Palmer case, Cities may not require rental affordability restrictions as a condition of approval, although governmental agencies may record affordability restrictions if they have subsidized the project, have issued tax-exempt bonds, or are administering a density bonus. Voluntary restrictions are not supported by consideration, so it is doubtful that they would be enforceable by the City.

This is a pivotal moment for San Jose. The loss of prime heavy industrial lands has a profoundly negative impact on the City’s long-term fiscal health, magnifying our uniquely poor jobs-housing imbalance. We will not correct the course of history with a single decision, but we can set a clear precedent that this Council will not bend to whims of the politically powerful at the expense of our future. Our residents expect a courageous decision, and our children deserve it.