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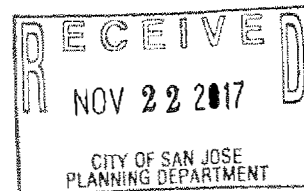
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November 22, 2017



VIA HAND DELIVERY

Planning, Building, and Code Enforcement

City of San Jose

City Hall, Development Services Center, First Floor

200 East Santa Clara Street

San Jose, CA 95113-1905

WITH COPY HAND DELIVERED AND BY EMAIL TO

Toni Taber, City Clerk

Office of the San Jose City Clerk

200 East Santa Clara Street

San Jose, CA 95113

Email: [cityclerk@sanjoseca.gov](mailto:cityclerk@sanjoseca.gov)

Re: Appeal of the Vesting Tentative Map (T17-026, also referred to as T16-026) for the Bassett Street Residential Project (Aviato)

Dear Ms. Taber:

On behalf of **San Jose Residents for Responsible Development** ("San Jose Residents"), we are submitting this appeal of the Planning Director's approval of the Vesting Tentative Map (T17-026)<sup>1</sup> for the Bassett Street Residential Project (Aviato) ("Project"), proposed by KT Urban ("Applicant"). The Director of Planning, Building, and Code Enforcement ("Planning Director") approved the Project on November 15, 2017.

We have attached a Notice of Permit Appeal Form, parcel map outlining the subject site and a payment of \$500 to cover the fee of the appeal. We have also attached San Jose Residents' comments and consultant comments submitted to the Planning Director on November 14, 2017. Those comments are incorporated herein.

<sup>1</sup> Note, the Vesting Tentative Map number on the agenda is (T17-026), whereas the number on the Vesting Tentative Map is T16-026. <http://www.sanjoseca.gov/DocumentCenter/View/73309>

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Pursuant to the City of San Jose, Municipal Code, section 19.12.230 and Government Code, section 66452.5, San Jose Residents appeals this approval to the City Council. On November 15, 2017, the Planning Director made the following findings:

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 Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting 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.

*Based on review of the proposed subdivision, the Director of Planning of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies and*

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*land use designation. The project complies with the General Plan goals and policies related to Downtown design, retail/commercial uses in the downtown, growth areas among others. General Plan land use designation of Downtown allows for high-density residential projects with ground floor commercial uses. The project site is physically suitable for the project and proposed density in that it the development intensity is encouraged and expected within the Downtown. Furthermore, the project site does not contain any historic resources or sensitive habitats or wildlife. The project is required to improve the public sidewalks on East Santa Clara, North 4th Street and North 5th Street.*

Subdivision Ordinance Findings. In accordance with San Jose Municipal Code (SJMC) section 19.12.130, the Director may approve the Tentative Map if the Director cannot make any of the findings for denial in Government Code section 66474 and the Director has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the Director may approve the project if the Director does not make any of the findings for denial in San Jose Municipal Code Section 19.12.220.

Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code specified in Findings Section 1 herein.

*Based on review of the proposed subdivision, the Director of Planning of the City of San José does not make any such findings to deny the subject subdivision. Additionally, the Addendum prepared for the project does not identify any significant environmental impacts.<sup>2</sup>*

This appeal is based on the Vesting Tentative Map's inconsistency with the required findings under the Subdivision Map Act and the City's Subdivision Ordinance Findings, listed above. In our November 14, 2017 comment letter, we explained that the Project would result in significant environmental damage and cause serious public health problems. We identified that the "Project's excess

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<sup>2</sup> City of San Jose, Vesting Tentative Map, T16-026, File No. T17-026, Date of Map: May 17, 2017, Approved November 15, 2017.

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cancer risk for infantile, child, adult, and lifetime cancer risk all exceed the threshold of significance.”<sup>3</sup> We also explained that Project construction may encounter contaminated groundwater, resulting in substantial environmental damage and public health impacts.<sup>4</sup> Therefore, the Planning Director should have denied the Project approval because the Project is likely to cause substantial environmental damage and serious public health problems.<sup>5</sup>

We provided in our comments that pursuant to the General Plan, the City of San Jose requires the completion of air quality modeling for sensitive land uses, such as new residential developments that are located near sources of pollution such as freeways and industrial uses.<sup>6</sup> This policy applies to the proposed project due to its proximity to the Union Pacific Railroad tracks and Highway 87. We provided comments that the air quality analysis is not adequate because the air quality impacts were not adequately evaluated.<sup>7</sup> Therefore, the Planning Director should have denied the approval because “the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.”<sup>8</sup>

The Planning Director should have denied the Vesting Tentative Map (application based on the City’s inability to make the necessary findings. Thank you for your attention to this important matter.

Sincerely,

  
Linda Sobczynski

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<sup>3</sup> Comments on Aviato Project, p. 13, Exhibit A.

<sup>4</sup> Comments on Aviato Project, p. 9.

<sup>5</sup> Planning Director’s Subdivision Map Act Finding, subparts (e) & (f).

<sup>6</sup> Comments on Aviato Project, p. 10.

<sup>7</sup> See Comments on Aviato Project, section II.B.

<sup>8</sup> Planning Director’s Subdivision Map Act Finding, subpart (a).

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