

RESOLUTION NO. 2020-093

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA DENYING APPEAL APPLICATION NO. 2020-02 AND UPHOLDING THE DETERMINATION OF THE PLANNING COMMISSION TO APPROVE AN ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT FOR THE TRANSIT ZONING CODE PROJECT (SCH NO. 2006071100) AND ADOPTION OF A MITIGATION MONITORING AND REPORTING PROGRAM FOR SITE PLAN REVIEW NO. 2020-03 AND VARIANCE NO. 2020-06 FOR A NEW MIXED-USE RESIDENTIAL AND COMMERCIAL DEVELOPMENT FOR THE PROPERTIES LOCATED AT 409 EAST FOURTH STREET (SITE A) AND 509 EAST FOURTH STREET (SITE B)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. On October 12, 2020, the Planning Commission of the City of Santa Ana held a duly noticed public hearing to consider various entitlements including Site Plan Review No. 2020-03, Variance No. 2020-06, and Amendment Application 2020-04 to allow the construction of a new mixed-use residential and commercial development consisting of 169 residential rental units and 11,361 square feet of commercial space at 409 and 509 East Fourth Street. After receiving public testimony on the item, the Planning Commission voted unanimously (7:0) to adopt a resolution approving an Addendum to the Environmental Impact Report (EIR) for the Transit Zoning Code Project, mitigation monitoring and reporting program, Site Plan Review No. 2020-03 as conditioned, and Variance No. 2020-06 as conditioned. In addition, the Planning Commission recommended that the City Council adopt a resolution approving an Addendum to the Environmental Impact Report for the Transit Zoning Code Project, mitigation monitoring and reporting program, and an ordinance approving Amendment Application No. 2020-04 for Specific Development No. 84 (SD84).
- B. On October 22, 2020, Michael Lozeau with Lozeau Drury, LLP, on behalf of the Supporters Alliance for Environmental Responsibility (SAFER) hereinafter referred to as "Appellant", submitted an appeal application pursuant to Section 41-645 of the Santa Ana Municipal Code (SAMC) requesting that the City Council reconsider the Planning Commission's decision based on the following reasons:

- I. California Environmental Quality Act (CEQA) compliance. Specifically, the Appellant states that the "City failed to comply with the CEQA by failing to prepare a project-specific EIR for the project";
 - II. The Appellant states that, "The City failed to comply with the Housing Opportunity Ordinance (HOO) by failing to require the developer to include affordable housing units in the project"; and
 - III. The Appellant states that, "The Planning Commission abused its discretion by failing to read or consider comments submitted by SAFER."
- C. Pursuant to SAMC Section 41-645 (a), appeals can only be made on a decision or requirement made by the Planning Commission. Of the above-mentioned appeal reasons, the only action taken by the Planning Commission was the action to adopt a resolution approving the addendum to the EIR for the TZC. The subsequent appeal items do not satisfy the requirements of SAMC Section 41-645 (a) and should not be considered as part of the appeal:
- I. No decision or action was taken by the Planning Commission regarding the HOO requirements because the HOO did not apply to the project; and
 - II. Consideration of a public comment letter received does not constitute "a decision or requirement made by the Planning Commission".

Nonetheless, a comprehensive response and findings are provided below on all appeal items received.

- D. On December 1, 2020, the City Council conducted a duly noticed public hearing on Appeal Application No. 2020-02 and found that:
- I. The City complied with the California Environmental Quality Act (CEQA) requirements by preparing an addendum to the previously certified 2010 Transit Zoning Code Environmental Impact report (EIR). CEQA does permit the use of an addendum when the original EIR being relied upon was a Program EIR. Public Resources Code Section 21166 and State CEQA Guidelines Section 15162 clearly establish when an agency must prepare a Supplemental or Subsequent EIR, and when an agency is permitted instead to prepare an Addendum. If an agency determines that one of the conditions described in Public Resources Code section 21166 or State CEQA Guidelines section 15162 is present, the agency must prepare either a Subsequent EIR or a Supplemental EIR. When none of those conditions are present, but it is necessary to make changes to a previous EIR, the agency may prepare an addendum. This process applies regardless of whether the original EIR is a Program or

Project EIR. Nothing in State CEQA Guidelines section 15152 (describing the process for utilizing a Supplemental or Subsequent EIR or negative declaration) prohibits use of an addendum where none of the conditions of Public Resources Code section 21166 or State CEQA Guidelines section 15162 are present. Nothing in State CEQA Guidelines sections 15162 or 15164 prohibit use of an addendum where the original EIR is a Program, and not a Project, EIR.

As established in these sections of the Public Resources Code and the State CEQA Guidelines, one of the circumstances described in Public Resources Code section 21166 or State CEQA Guidelines section 15162 must be present before either a Subsequent or Supplemental EIR is required. Here, none of those conditions are present. These conditions are:

- i. Substantial changes are proposed which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- ii. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified significant effects; or
- iii. New information has come to light showing new impacts, substantially more severe impacts, that mitigation measures or alternatives previously found to be infeasible would actually be feasible, or that mitigation measures or alternatives previously not identified would reduce impacts.

This is also consistent with CEQA Guidelines section 15152(f), which the Appellant incorrectly claims prohibits use of addenda when the original EIR is a Program EIR. Section 15152(f) states, "A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR." For the subject project, the "other analysis" (including technical studies and the text of the Addendum) found that no additional significant effects would occur beyond those already addressed in the 2010 EIR. An addendum is therefore the appropriate CEQA document.

- II. That the City has complied with the Housing Opportunity Ordinance (HOO) requirements. The HOO does not apply to the project because the project does not exceed the residential density permitted in the General Plan. As recently amended, the HOO only applies when a project requires a General Plan Amendment.

The Appellant's comment letter cites to an outdated and superseded version of Section 41-1902(b)(1). The HOO was amended on September 1, 2020, and the comment letter does not reflect the amended language. While previously, Section 41-1902(b)(1) applied the HOO to any project that exceeded the maximum density permitted by zoning, the recent amendments remove this reference. As amended, the HOO now only applies when a residential project proposes a residential density above the General Plan permitted density. The 4th and Mortimer Mixed-Use Development project is consistent with the General Plan. No General Plan Amendment is required for the Project. The Project seeks only a zone change, on only a portion of the project site. No density allowance above that currently permitted by the site's General Plan designation is proposed. Therefore, the HOO does not apply.

- III. The Planning Commission did not abuse its discretion and did consider comments submitted by Lozeau Drury, LLP, on behalf of SAFER. The Planning Commission considered Mr. Drury's public comment and received input from the City Attorney and the City's environmental consultant regarding the whether the addendum prepared for the project was the appropriate document. Both the City Attorney and the consultant were confident that no subsequent CEQA analysis was required for the project other than the addendum which was prepared. Again, this was based on the fact that the technical studies evidenced that an EIR Addendum to the previously-certified 2010 EIR was the appropriate CEQA document to evaluate and disclose the project's impacts. Therefore, the Planning Commission did consider Mr. Drury's comments and concerns but agreed with staff's recommendation that the addendum was the appropriate environmental document.

Section 2. The City Council, after hearing, considering and weighing all evidence in the record presented on behalf of all parties and being fully informed of the application, the Planning Commission's decision, and the appeal, hereby finds and determines that the Planning Commission's decision was not made in error, that the Planning Commission's decision was not an abuse of discretion by the Planning Commission and that the Planning Commission's decision was supported by substantial evidence in the record.

Section 3. In accordance with the California Environmental Quality Act (CEQA), the Planning Commission of the City of Santa Ana hereby finds, determines, and declares as follows:

Based on the substantial evidence set forth in the record, including but not limited to the Environmental Impact Report (EIR) for the Transit Zoning Code Project (SCH NO. 2006071100) and the 2020 4th and Mortimer Mixed-Use Development EIR Addendum, the City Council finds that an addendum is the appropriate document for

disclosing the changes to the subject properties, and that none of the conditions identified in Public Resources Code section 21166 and State CEQA Guidelines section 15162 requiring subsequent environmental review have occurred, because:

- A. The project does not constitute a substantial change that would require major revisions of the 2010 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- B. There is not a substantial change with respect to the circumstances under which the project will be developed that would require major revisions of the 2010 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects.
- C. New information of substantial importance has not been presented that was not known and could not have been known with the exercise of reasonable diligence at the time the 2010 EIR was certified or adopted, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the Applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the Applicant declined to adopt.

Further, the City Council finds that, pursuant to State CEQA Guidelines Section 15164, only minor changes or additions to the 2010 EIR are necessary to address the proposed project. In making this finding, the City Council has considered both the Addendum and the certified, final 2010 EIR.

Section 4. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown

Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 5. The City Council of the City of Santa Ana hereby denies Appeal Application No. 2020-02, thereby upholding the Planning Commission's approval of an Addendum to the Environmental Impact Report (EIR) for the Transit Zoning Code Project (SCH NO. 2006071100), mitigation monitoring and reporting program, Site Plan Review No. 2020-03 as conditioned, and Variance No. 2020-06 as conditioned. This decision is based upon the evidence submitted at the abovesaid hearing, which includes, but is not limited to: the Request for City Council Action dated December 1, 2020, and exhibits attached thereto, and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 1st day of December, 2020.



Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: 

Lisa Storck
Assistant City Attorney

AYES: Councilmembers Bacerra, Mendoza, Penaloza, Solorio,
Villegas (5)

NOES: Councilmembers None (0)

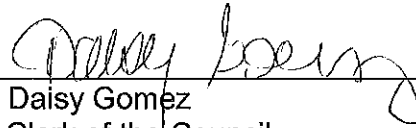
ABSTAIN: Councilmembers Pulido, Sarmiento (2)

NOT PRESENT: Councilmembers None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2020-093 to be the original resolution adopted by the City Council of the City of Santa Ana on December 1, 2020.

Date: 12-3-2020



Daisy Gomez
Clerk of the Council
City of Santa Ana