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Peter M. Spoerl
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January 25, 2021

Via E-Mail Only

Honorable Chair and Members of the Planning Commission
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

**Re: Request for Extension of Proposed T4-NO Zoning Boundary in Draft
San Rafael Downtown Precise Plan**

At its January 26th, 2021 meeting, the Planning Commission will hold the second of three scheduled public hearings to receive public comments on and discuss the recommendations of the Draft Downtown San Rafael Precise Plan (“the Draft Plan”). The discussion at the January 26th hearing will focus on the draft Form Based Code as set forth in Chapter 9 of the Draft Plan. We originally sent an earlier version of this letter to Former Planning Manager Raffi Boloyan in August of 2020. We are reforwarding to it to your attention as you discuss the Draft Plan. To the extent that the Draft Plan is a part of the “proposed project” analyzed in the San Rafael General Plan 2040 and Downtown Precise Plan Draft Environmental Impact Report (“the EIR”), the comments made in this letter should also be considered as written comments on the EIR and entered into the administrative record of the consideration of that document as well.

This office represents Chris Hart, who in August entered into escrow on the purchase of three contiguous parcels located at 4th and Grand in Downtown San Rafael. Under the Draft Plan, two of the parcels in question (450 Fourth Street and 420 Fourth Street) have been proposed for inclusion within the boundaries of the T4-NO zoning district. The third parcel (1010 Grand Avenue) would remain zoned under its current designation as R5. The purpose of this letter is to request, for the reasons set forth in greater detail below, that Planning staff and the City’s elected and appointed officials consider expanding the proposed T4-NO boundary within the proposed Draft Plan and relevant portions of the accompanying form-based code to encompass the 1010 Grand parcel as



well. This would facilitate a cohesive and unified planning approach that would enable a more holistic and harmonious redevelopment of the three parcels, while still providing for an effective transition and buffer between the proposed development and the adjacent residential Dominican neighborhood.

As reflected in the attached architectural and landscape renderings, our client's vision for the parcel comprises a four-story 28-32 unit rental apartment complex that steps down to effectively and sensitively transition to the adjacent residential neighborhoods to the north and northeast. This concept is fully consistent with the base purpose and objectives of the proposed T4-NO zoning district as well as broader objectives of the Draft Plan. The proposed development focuses development on one of the City's key arterials and nodes, and "promotes a diverse Downtown by increasing access to housing," directly furthering two of the eight overarching design principles identified in Section 3.3, while maintaining appropriate height and form transitions as identified as a desirable objective under Section 4.1. The development would be located one block from a high-frequency transportation corridor (as set forth under Section 6.2), and will represent a priority public realm project within the Draft Plan's proposed Montecito Promenade. Finally, the project will further the stated objectives of Section 8.2, in so far as it will support new infill and transit-oriented development.

Given that the site has now closed escrow and that all three parcels are be under common ownership, we submit that inclusion of the 1010 Grand Property within the proposed T4-NO boundary will help to further stated objectives of the both the broader Draft Plan and the T4-NO zoning district. Including the 1010 Grand parcel within the proposed District will permit our client to treat the three sites cohesively, and to utilize favorable development standards embodies in the proposed form-based code of Chapter 9, including floor area, parking and unit count, while still developing the site in a manner that utilizes the 1010 Grand parcel to buffer and transition to the adjacent residential neighborhood. Moreover, applying consistent zoning to the three parcels will recognize that they are practically connected for purposes of our client's pending development proposal, and would more closely reflect their common ownership. Indeed, our client fully anticipates that parcel and lot merger will be a part of the pending application for the land use entitlements, and making this minor refinement to proposed Draft Plan zoning boundaries will simply remove the likelihood of split zoning on a parcel that has been both marketed and planned as a single entity for planning purposes.

In conclusion, we believe that this modest reconfiguration of the proposed T4-NO boundary to include 1010 Grand Avenue would provide for a more cohesive and superior site and architectural design that will better promote the underlying policy and



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planning objectives set forth under the Draft Plan. We appreciate your attention to this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Peter M. Spoerl', written in a cursive style.

Peter M. Spoerl

CC: Barry Miller, San Rafael General Plan 2040 Project Manager
Ali Giudice, Planning Manager



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January 26, 2021

Via E-Mail Only

Honorable Chair and Members of the Planning Commission
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: Comments on Draft Downtown Precise Plan and San Rafael General Plan 2040 and Downtown Precise Plan Draft Environmental Impact Report

Honorable Chair and Members of the Planning Commission:

At its January 26th, 2021 meeting, the Planning Commission will hold the second of three scheduled public hearings to receive public comments on and discuss the recommendations of the Draft Downtown San Rafael Precise Plan (“the Draft Plan”). The discussion at the January 26th hearing will focus on the draft Form Based Code as set forth in Chapter 9 of the Draft Plan. This office represents Monahan Pacific, which owns and intends to develop two parcels within the proposed plan area boundary of the Draft Plan (1230/48 5th Avenue, APN 011-300-26 and 1515 4th Street, APN 011-245-26). The purpose of this letter is to provide substantive comments on the Draft Plan and the Regulating Plan set forth under Chapter 9. To the extent that the Draft Plan is a part of the “proposed project” analyzed in the San Rafael General Plan 2040 and Downtown Precise Plan Draft Environmental Impact Report (“the EIR”), the comments made in this letter should also be considered as written comments on the EIR and entered into the administrative record of the consideration of that document as well.

In summary, we believe that the proposed configuration of form-based zones, and in particular, the building height limitations established under certain of the proposed zones, will frustrate several of the Draft Plan’s stated foundational objectives, in particular the development of housing in the Downtown that will meet a variety of needs and lifestyle choices. The City of San Rafael has spent considerable time and resources in recent years entitling housing projects that for various economic reasons do not



ultimately get built. The comments within this letter are intended to ensure that the City has the right tools to not only plan for housing, but to see the housing get produced.

Discussion

The Draft Plan identifies the creation of new housing inventory and increasing housing diversity as core emphases of the cohesive planning effort for Downtown. It seeks to increase housing in the Downtown in response to the larger Bay Area crisis in available housing, and prioritizes the creation of workforce and affordable housing, clarifying that the Downtown area is “a prime location to deliver much-needed housing at all income levels.” One of the “Key Themes” identified in the Draft Plan is to “[p]romote housing in Downtown to meet as variety of needs and lifestyle choices.”

Our client has developed conceptual plans for both parcels that feature multi-family housing and mixed use development, featuring unit counts between 120 and 140 units. Both projects as proposed would promote a number of objectives identified in the Draft Plan. Both would focus development on the City’s key arterials and nodes, which “promotes a diverse Downtown by increasing access to housing,” directly furthering two of the eight overarching design principles identified in Section 3.1 of the Precise Plan, while maintaining appropriate height and form transitions as identified as a desirable objective under Section 4.1. Both developments would be located in close proximity to a high-frequency transportation corridor (as set forth under Section 6.2), and would further the stated objectives of Section 8.2, in so far as they would support new infill and transit-oriented development.

Residential developers such as our client have an important role to play in furthering the important statewide and San Rafael-specific objective of producing more housing inventory, both affordable and market rate. Put simply, California in general, and San Rafael in particular, are not producing sufficient housing in the right places and at the right affordability levels to accommodate the demographic realities of a rapidly growing population. The actual production of housing inventory falls well short of demand, in many cases because residential developers are uncertain as to what is economically and politically feasible to build. But in order for residential development to partner with local government to provide these much needed units, cities such as San Rafael need to be more sensitive to and realistic about the market, policy and implementation factors that actually inform the dynamic of affordable housing production. Within the context of the Draft Plan, this will require that the City take a more nuanced and flexible approach to the vision of its desired urban form, and suggests that the City should permit higher buildings in appropriate sites directly adjacent to the Downtown core.



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Under the Draft Plan, the 5th Street parcel (APN 011-300-26) is proposed for inclusion within the boundaries of the new T4N 40/50 zone, and the 4th Street parcel (APN 011-245-26) would fall within the T4MS 50/70 zoning district. The former zone would allow for a building height between 40-50 feet, while the latter zone would permit building heights between 50 and 70 feet. In each category, the maximum height allowed by the zone is identified in the Regulating Plan as a suffix to the zone name, with the lower number representing the maximum allowable height without a bonus, and the higher number representing the maximum height with a bonus.

As an initial matter, we note that the Draft Plan is unclear on how an applicant may qualify for the height bonus. In previous workshops and during the Planning Commission's previous discussions of the Draft Plan, it has been suggested that "Affordable Housing Projects" would qualify for the height bonus, and Planning staff have confirmed this intent in response to our inquiries. However, "Affordable Housing Project" isn't a defined term in either the Draft Plan or under the existing San Rafael Municipal Code ("SRMC"). Under the SMRC, "affordable housing units" mean dwelling units required to be rented at affordable rates to very-low, low or moderate-income households, or purchased at a sales price affordable to low and moderate-income households. Under the City's Inclusionary Housing Ordinance (codified at SRMC Section 14.16.030), qualifying residential development projects are required to provide between 10-20% affordable housing units at specified affordability levels according to the overall number of housing units provided. However, the City Council has directed its staff to lower the overall requirement for larger scale projects from 20% to 10%, and without a specific incorporation by reference, it's unclear what affordability levels and percentages a project would need to provide under the Draft Plan in order to qualify for a height bonus.

Further confusing matters, footnotes in relevant sections of the Draft Plan direct applicants to SRMC Section 14.19.190 (Height Bonus) to determine requirements for height bonus. That section contains a set of bonuses ranging between six and 24 additional feet for certain identified qualifying projects within Downtown zoning districts. These include "affordable housing," in certain districts, but it's unclear on the face of the text if the bonuses provided for under the SMRC are additive or alternative to the bonuses identified in the Draft Plan's zones. Moreover, the districts identified in that SRMC section do not align with the four subdistricts identified in Figure 2.2.040(A) of the Regulating Plan in the Draft Plan. In short, without a more precise definition of "Affordable Housing Project," and clearer cross references and or amendment of existing height provisions in the SMRC, it's not clear what is required to qualify for a height bonus under the Draft Plan.



We suggest that in more clearly defining what qualifies as affordable housing for purposes of awarding a height bonus, in addition to clarifying the required qualifying percentages of restricted units in each category, the City may also wish to consider crediting the provision of moderate-income rental housing. Under the State density bonus law, a project that provides at least 10% of the housing units in a for-sale common interest development restricted to moderate income residents is entitled to a density bonus and other incentives and concessions. However, the City here has an opportunity to promote the development of moderate-income rental inventory as well, by qualifying moderate income rental proposals for height bonuses. In a recent published report, the California Department of Housing and Community Development has documented a growing housing cost burden (paying more than 30 percent of income toward housing) among moderate-income households.¹ This highlights the facts that California in general, and San Rafael in particular, need to create housing inventory at all categories, and that the need for “affordable housing” is spreading rapidly to moderate income households. The adoption of this Draft Plan presents an opportunity for the City to expand the recognition and incentivization of production of housing inventory for numerous income levels.

It is also important that the City, in refining the Draft Plan, give more consideration to how it intends to award residential density bonuses for qualifying projects under California Government Code 65915 *et seq.* The Draft Plan essentially regulates building density by providing for a maximum volume controlled by height, bulk and setback controls. But because there are no numerical controls on maximum floor area ratios, and there is no express limitation on or regulation of base density expressed as a maximum residential gross floor area, there is effectively no base density, and it’s unclear how the City intends to calculate and award mandatory density bonuses to projects meeting affordability thresholds (which, under the City’s existing inclusionary ordinance, would effectively include any residential development project of two or more units). Chapter 7 of the Draft Plan suggests that Projects seeking to apply a bonus under state density bonus law can simply “utilize the resultant FAR of the base zoning envelope... to calculate the additional floor area to be accommodated in the bonus envelope prescribed by the Downtown Code,” which seems to confuse the calculation of a mandatory density bonus under state law with the bonus structure set forth under the Draft Plan. It is critical that the City be more flexible and differentiate between actual site conditions in setting height limitations under the Draft Plan, since an award of additional density will

¹ “California’s Housing Future: Challenges and Opportunities,” California Department of Housing and Community Development, February 2018, pp. 28-29: see https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf



effectively require the City to consider permitting taller buildings in order to physically accommodate higher residential densities.

We also urge the City to consider relaxing its parking requirements, at least for residential developments with an affordability component within the Downtown parking District. Although a majority of the 1230/48 5th Street site falls within the Downtown parking District (as regulated under SMRC Section 14.18.060), and the off-street parking requirement would thus theoretically be waived for up to 1.0 FAR of the total square footage, a project of the height and size proposed by our client would still be required to devote a substantial amount of its square footage to satisfying off-street parking requirements. Parking, especially sub-grade parking, is extremely expensive and can often be cost prohibitive for otherwise viable high density residential development. We note that under State law (pursuant to the Sustainable Communities Strategy, as codified under Public Resources Code Section 21155 *et seq*), eligible projects are entitled to greatly reduced parking ratios for both affordable and market rate units. Although our client is not proposing a project that would satisfy all of the state law requirements to enjoy these ratios as of right, the site (as with the majority of the Downtown parking area) is in fact located within a transit priority area and within ½ mile of a major transit stop (the San Rafael Transit Center). San Rafael here has the opportunity to promote the production of transit-oriented higher density affordable housing by increasing the waiver of parking requirements to a higher FAR, which would lower construction costs while recognizing the proximity of these projects to public transportation and the walkable Downtown core. At a minimum, the City should consider exempting required parking areas from height and bulk calculations within the Form Based typology.

The City Should Permit Taller Construction in Appropriate Sites within Moderate Intensity T4 Neighborhoods

The Draft Plan is organized around the general organizing principle of the Natural to Urban Transect, establishing a hierarchy of places moving from the most natural to the most urban. As applied to San Rafael, this conceptual framework creates transect zones according to walkable context types, essentially creating a tiered spectrum of building intensity bands from urban to less urban, as one moves north and south from the primary density and height axis of Fourth Street. This framework assumes a flat map and does not adequately consider the topography or the existing urban and physical setting, and results in missed opportunities for appropriately sited higher and denser construction immediately to the north of the Downtown core. The Draft Plan would benefit from a more nuanced view of appropriate height and massing as the grade slopes to the north along Fifth Street by creating an exemption for the calculation of building height for cross slopes that exceed a 15 foot rise to run.



The City currently has a shortage of larger sites appropriate to higher density multi-unit development. Our client's parcel at 1230/48 represents one of the few remaining sites of at least 25,000 square feet. 1248 Fifth Avenue is a "street to street" lot and with a rise-to-run cross slope along C Street of approximately 15 feet. As noted, these larger sites are few and far between and offer an opportunity to build housing projects of a significant size (over 100 units), which, under the requirements of the City's inclusionary ordinance, are at the same time an opportunity to actually provide income restricted affordable inventory at scale and satisfy the City's Regional Housing Needs Allocation as determined by ABAG.

The development of these larger "block to block" sites is different than smaller "infill sites," as the larger sites generally require underground (or partially underground) parking which, as noted above, is very expensive to build. Depending on the site, structured parking can run \$75 to \$100K thousand dollars per car, adding significant cost to a project.

On steeper hillsides such as our client's 1230 Fifth Street parcel, height limitations such as the 40/50 split proposed ignore the challenges of sloped construction, and of reconciling the form based limitations with the actual topographical realities of such sites. The Draft Plan should account for sloped conditions, and grant additional height waivers exceptions for "block to block" projects and sites that have significant cross slopes of more than 10 feet when measuring height. The current code (as set forth under the zoning definitions for "height, hillside" and "height, non-hillside" under SMRC Section 14.03.030) does not adequately account for these conditions, and the Draft Plan essentially penalizes these sites and further reduces an already unrealistically low height limitation. By way of illustration, a building under the proposed T4N 40/50 zone in the Draft Plan fronting on Fifth allowed to be 40 feet in base height would in fact be only 20 feet tall on Mission Street due to the 20 feet of cross slope on C St, but the code would make no allowances for the actual stepping back and reduced visual impact of the relative heights of the roof elements.

Put simply, the proposed 40/50 foot height limitations for the T4N zone along Fifth Street under the Draft Plan are inconsistent with the economic realities of what is required to produce the very housing that is being prioritized as a goal of the Draft Plan. Unfortunately, the proposed building heights for the T4N 40/50 make larger scale housing projects economically unviable. We have attached a printout of an Excel spreadsheet that provides a rough analysis and illustration of how the various fixed costs of development interact with allowable building heights, clearly demonstrating the correlation between higher densities and lower per unit costs. In order to be



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economically viable, developers typically amortize the high costs of land, parking, permit/fees, construction and financing over a larger number of units thereby reducing the average cost per unit (and accounting for the reduced profitability that is a consequence of compliance with the City's inclusionary ordinance). In order to increase density, a developer must also increase height. Accordingly, in order to actually produce these types of higher density higher unit count projects, developers need more room to build up.

To be clear, however, the additional height that is required need not result in skyscrapers in San Rafael. We suggest that, at least at the 1230/48 5th Street address, the City should increase the maximum bonus height to be consistent with the directly adjacent T4MS 60/80 zone (or even the T5N 50/70), which would allow for high density residential development at a scale fully appropriate to the neighborhood and topographical context. Existing buildings fronting on Fifth Ave from Court Street to C Street (and buildings that are currently under construction) are already scaled to support new construction of up to at least 70 feet. The site is ideally situated to provide needed housing at numerous income levels to support adjacent civic uses (the City's new Public Safety building, for example, would be directly across the street, making this site ideal housing for City employees). We further note that allowing this height along 5th Avenue, at least between B and E Streets, does not threaten any sort of abrupt transition to adjacent residential uses, as adjacent properties and existing uses along Mission Avenue are limited to the Elks Lodge (which is already well screened and set back from potential development) and recreational uses at Boyd Memorial Park.

Conclusion

In summary, we ask that the Planning Commission consider the points raised in this letter, and forward appropriate recommendations for clarification and amendment to the City Council. In summary, we recommend that the City:

- Clarify more precisely what is required to obtain a height bonus within all of the Draft Plan's zones, and consider qualifying the inclusion of projects including some level of moderate income rental housing
- Clarify how density bonus eligible projects will be processed
- Relax parking requirements for affordable housing projects within the Plan Area, at a minimum exempting required parking areas from height and bulk calculations; and
- Allow for higher maximum building heights along 5th Street between B and E Streets, reclassifying the zones as either T5N 40/60 or T4MS 50/70.



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We appreciate your attention to this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Peter M. Spoerl'. The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Peter M. Spoerl

CC: Barry Miller, San Rafael General Plan 2040 Project Manager
Ali Giudice, Planning Manager

Attachment follows



JANUARY 2021

SAN RAFAEL HOUSING DEVELOPMENT COST ANALYSIS

	COST	80 UNITS	100 UNITS	120 UNITS
LAND	\$8,000,000	\$100K/UNIT	\$80K/UNIT	\$66K/UNIT
PARKING GARAGE	\$8,000,000	\$100K/UNIT	\$80K/UNIT	\$66K/UNIT
SOFT COSTS	\$10,000,000	\$125K/UNIT	\$100K/UNIT	\$84K/UNIT
CONSTRUCTION	\$40,000,000	\$500K/UNIT	\$400K/UNIT	\$333K/UNIT
OVERHEAD/PROFIT	\$14,000,000	\$175K/UNIT	140K/UNIT	\$116K/UNIT
TOTAL COST	\$80,000,000	\$1,000,000/UNIT	\$800,000/UNIT	\$666,000/UNIT

1. DEVELOPMENT COST DIVIDED BY NUMBER OF UNITS
2. HIGHER DENSITY RESULTS IN LOWER COST PER UNIT
3. LOWER COST PER UNIT IS FINANCEABLE
4. HIGHER COST PER UNIT EXCEED MARKET VALUES AND NOT FINANCEABLE
5. HIGHER DENSITIES REQUIRE ADDITIONAL HEIGHT LIMITS