



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: July 12, 2016**

**ITEM NO: 2**  
**ADDENDUM**

**PREPARED BY:** Sally Zarnowitz, Planning Manager  
szarnowitz@losgatosca.gov

**APPLICATION NO:** Architecture and Site Application S-13-090  
Vesting Tentative Map Application M-13-014

**LOCATION:** **North 40 Specific Plan Phase 1** (southerly portion of the North 40 Specific Plan area, Lark Avenue to south of Noddin Avenue)

**APPLICANT:** Grosvenor USA Limited

**CONTACT PERSONS:** Don Capobres (Harmonie Park Development Co.) and Wendi Baker (Summerhill Homes)

**PROPERTY OWNERS:** Yuki Farms, ETPH LP, Grosvenor USA Limited, Summerhill N40 LLC, Elizabeth K. Dodson, and William Hirschman

**APPLICATION SUMMARY:** Requesting approval for the construction of a new multi-use, multi-story development consisting of 320 residential units, which includes 50 affordable senior units; approximately 66,800 square feet of commercial floor area, which includes a market hall; on-site and off-site improvements; and a vesting tentative map. APNs: 424-07-024 through 027, 031 through 037, 070, 083 through 086, 090, and 100.

**RECOMMENDATION:** Forward a recommendation of approval to the Town Council, subject to recommended conditions.

**PROJECT DATA:**

General Plan Designation:	North 40 Specific Plan
Zoning Designation:	North 40 Specific Plan
Applicable Plans & Standards:	General Plan; North 40 Specific Plan
Project Area:	20.7 acres

Surrounding Area:

	<b>Existing Land Use</b>	<b>General Plan</b>	<b>Zoning</b>
<b>North</b>	Agriculture, Commercial, and Residential	North 40 Specific Plan (N40 SP)	N40 SP
<b>East</b>	Commercial and Residential	Mixed Use Commercial	CH, R-1:8
<b>South</b>	Commercial, Office and Residential	Mixed Use Commercial, Low and Medium Density Residential	CH, R-1:8, RD
<b>West</b>	Highway 17	N/A	N/A

CEQA:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. An Initial Study has been prepared and concludes that the proposed Phase 1 development applications do not require additional environmental clearance beyond the certified EIR.

FINDINGS:

- That an Initial Study has been prepared and concludes that the project does not require additional environmental clearance beyond the certified EIR.
- That the project is consistent with the General Plan.
- That the project is consistent with the North 40 Specific Plan.
- As required by Section 29.10.09030(e) of the Town Code for demolitions.
- As required by Table 2-6 of the North 40 Specific Plan for reduction of non-residential setbacks.
- As required by Section 29.10.420 (a) of the Town Code if the Planning Commission denies the Density Bonus request.
- As required by Government Code Section 65589.5 if the Planning Commission denies the Development Standard waivers.
- As required by Section 66474 of the Subdivision Map for the Vesting Tentative Map application.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application.

**ACTION:** Open the public hearing, take testimony, and forward a recommendation to the Town Council, subject to the recommended conditions.

**EXHIBITS:** Previously received under separate cover:

1. Proposed Development Plans, received March 18, 2016 (242 pages)

Previously received with the March 30, 2016 Staff Report:

2. Location Map (one page)
3. Initial Study (79 pages)
4. Findings and Considerations (three pages)
5. Conditions of Approval for Vesting Tentative Map (six pages)
6. Conditions of Approval for the Architecture and Site Application (27 pages)
7. Letter of Justification received March 23, 2016 (10 pages)
8. North 40 Narrative received February 8, 2016 (seven pages)
9. Economic study letter received November 6, 2015 (25 pages)
10. October 14 and November 11, 2015 CDAC Minutes (seven pages)
11. Response to CDAC comments received February 8, 2016 (13 pages)
12. January 27, 2016 Historic Preservation Committee Minutes (five pages)
13. Consulting Architect Report received December 18, 2015 (six pages)
14. Response to Consulting Architect Report received February 8, 2016 (three pages),
15. Consulting Architect Report received March 21, 2016 (six pages)
16. Consulting Arborist Report received October 14, 2013 (33 pages)
17. State Density Bonus Law - Government Code Section 65915-65918 (14 pages)
18. Density Bonus Ordinance and Program Guidelines - Ordinance 2209 (21 pages)
19. Letter from Barbara Kautz, received March 10, 2016 (16 pages)
20. Town's BMP Program and Guidelines - Ordinance 2181 (19 pages)
21. Public comment received through 11:00 a.m., Thursday, March 24, 2016

Previously received with March 30, 2016 Addendum Report:

22. Updated letter from Barbara Kautz received March 25, 2016 (five pages)
23. Comments received from 11:01 a.m. on March 24, 2016 to 11:00 a.m. on March 28, 2016

Previously received with March 30, 2016 Desk Item Report:

24. Residential Density Exhibit (one page), received March 30, 2016
25. Comments received from 11:01 a.m. on March 28, 2016 to 11:00 a.m. on March 30, 2016

Received with July 12, 2016 Staff Report:

26. Frequently Asked Questions (FAQ) prepared for North 40 Study Session (14 pages)
27. Verbatim minutes of the March 30, 2016 Planning Commission meeting (164 pages)
28. Verbatim minutes of the June 15, 2016 Study Session (143 pages)
29. Memo from Town Attorney regarding application deadlines (eight pages)
30. Items received at March 30, 2016 Planning Commission (four pages)
31. Comments received from 11:01 a.m. on March 30, 2016 to 11:00 a.m. on July 6, 2016

Received with this Addendum Report:

32. Comments received from 11:01 a.m. on July 6, 2016 to 11:00 a.m. on July 8, 2016
33. Additional information from the applicant and the applicant's attorneys

REMARKS:

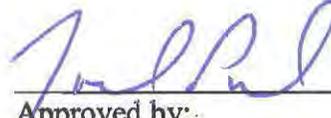
The attached public comments on the proposed application (Exhibit 32) were received after distribution of the staff report.

Additionally, the applicant and the applicant's attorneys submitted additional information (Exhibit 33).

Planning Commission Staff Report - Page 5  
North 40 Phase 1/S-13-090/M-13-014  
July 12, 2016



Prepared by:  
Sally Zarnowitz, AICP  
Planning Manager



Approved by:  
Joel Paulson, AICP  
Community Development Director

JP:SZ:cg

cc: Grosvenor Americas, Steve Buster, 1 California St., Ste. 2500, San Francisco, CA 94111  
Harmonie Park Development Co., Don Capobres, 221 Bachman Ave., Los Gatos, CA 95030  
Summerhill Homes, Wendi Baker, 3000 Executive Prkwy., Ste. 450, San Ramon, CA 94583

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**From:** Rita Matthews [mailto:fourwinn156@hotmail.com]

**Sent:** Thursday, June 30, 2016 12:16 AM

**To:** North40 Comment; Steven Leonardis; Rob Rennie; BSpector; Marcia Jensen; maricosayoc@yahoo.com

**Subject:** LG développement proposals

Dear Council and Planning Commission of Los Gatos;

I strongly urge you to vote AGAINST the North 40 development AND the proposed new construction on Bella Vista Avenue.

I speak as a homeowner in the Bella Vista neighborhood and a Los Gatos resident for 35 years. My arguments against these two construction proposals are basically the same:

**They violate the vision generally agreed upon for the town as stated in the 2020 General Plan:**

- **Foster a pedestrian-oriented community with a small-town character;**

North 40 development and new construction in LG neighborhoods such as Bella Vista Avenue bring increased congestion, traffic and population density that is counter to the "small town character" desired by LG residents and itemized in the General Plan. As an example of my concerns, my husband and I have spoken numerous times to LG police regarding neighborhood pedestrian and traffic safety. The increasing numbers and speed of automobiles racing down Caldwell Avenue from Los Gatos Blvd., as a shortcut to downtown, is a significant problem. Town streets are typically narrow streets with limited on-street parking. The proposed mega-house construction on Bella Vista exacerbates these traffic issues. A five bedroom home with no driveway forces multiple automobiles to the street. The North 40 proposal also severely distorts the "small town", "pedestrian-oriented" environment the majority of you supported in your election platforms. My stomach turns as I drive down highway 17 and view the looming, orange "story poles". There is nothing in that plan that promotes the "small-town" character we strive to achieve. Parking lots, crowds, hundreds of automobiles, traffic jams, and the loss of precious open space is the end result.

- **Support an active business community that provides a wide variety of goods and services and a broad range of employment opportunities, minimizing the need to travel to other communities;**

The Proposed North 40 development will draw customers away from downtown businesses. This Santana Row-type complex will compete with downtown business, compounding the current competition from Campbell and Santana Row/Valley Fair. I know how difficult it is for a business to survive in LG with the cost of rental space skyrocketing. As the treasurer of the EMQ Auxiliary that runs The Butter Paddle downtown, I see the disparity between revenue and expenses. As a non-profit staffed by volunteers, The Butter Paddle doesn't have the burden of personnel expenses as other stores/businesses do. No one wants LG to go the way of downtown Saratoga, a veritable "ghost town" of failed business opportunities.

- **Maintain a balanced, well-designed mix of residential, commercial, service and open space uses through integrated land use planning;**
- **Be a full-service community that is also environmentally sensitive;**

The argument for "open space" and environmental sensitivity cannot be overlooked. I am not naive enough to believe that commercial and residential development should cease in Los Gatos. However, as the Town Council and Planning Commission, you have the responsibility to maintain a careful balance that protects the natural and man-made environment and promotes the health and well being of the population. Commercial development like North 40 significantly impacts the quality of life in Los Gatos. I'm struck by the current environmental issues caused by limited highway access, traffic jams, pollution and population density in the area today. These issues are compounded by the dangerous proximity of the proposed development to Good Samaritan Hospital and

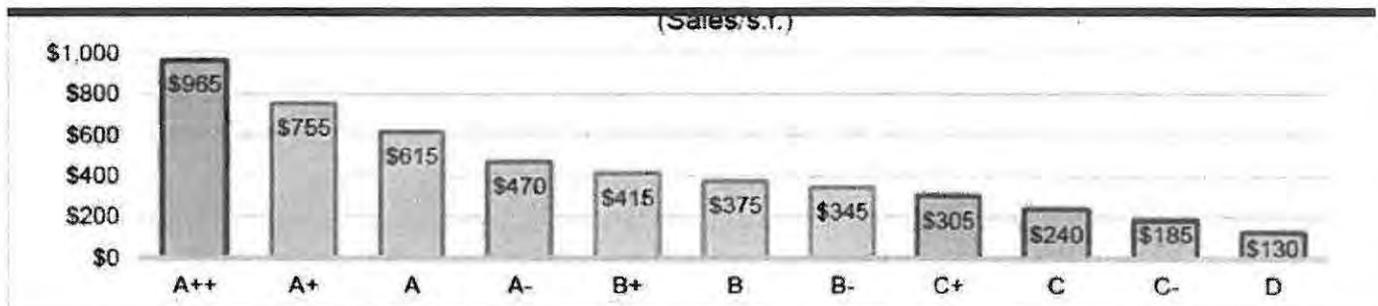
the numerous medical services located nearby. I know you see this, as I do, in your daily lives. Drive Highway 17 after 3 PM on a week day; try to get to a doctor appointment without delays on Los Gatos Blvd; traverse downtown LG to pick up your child at St. Mary's, LG High School, Van Meter or Blossom Hill Elementary. This is life in Los Gatos today; let's be smart about expansion; let's refocus on our vision for the town.

**I hope that you will consider my concerns as you deliberate the future of our town. Thank you for your time and attention to these matters.**

Rita Matthews  
208 Caldwell Ave  
Los Gatos, CA

**From:** Jeanette Blacy [mailto:jeanette@blacys.com]  
**Sent:** Saturday, July 02, 2016 1:20 PM  
**To:** North40 Comment  
**Cc:** Steven Leonardis; Rob Rennie; BSpector; Marcia Jensen; Marico Sayoc  
**Subject:** North 40 retail development Risk V.S. Opportunity

Dear Planning commission,  
I am writing you today to express my concerns over the retail plans for the north 40. The Single Family housing and entertainment is needed but the planned retail is not. Quality not quantity is a necessary mindset for this to be successful. This could be put to better use in another way. With our Cost of Living here in Los Gatos there is less discretionary spending. I am not sure that you have been following the concerns over shopping per sq ft in the us. Please see the attached Featured Insight by NREI. We currently sit at feet of retail real estate and 84 billion square feet of total commercial real estate in the US. 56 square feet of retail space per person and 26 Sq ft per person of retail shopping space which is double of the second highest in the world which is in Canada at 11 Sq ft PP. With internet shopping on the rise retail traditional brick and mortar retail is fragile. There will be an acceleration of mall closures in the next 10 years approximately 15% will close. The NOI / SPSF on most of shopping centers are really struggling in all B, C and D retail across the nation. We all want to see Los Gatos Flourish and be revitalized in the near future. This is a terrible plan with that in mind. Retail is soft in demand mergers and bankruptcies are on the increase. We don't need the Outlets, Walmart's, Lowes and big anchors here in Los Gatos. With this significant loss on the horizon how will this be financed ? This will be a toe stub for Los Gatos the developer and an obvious economic risk. I understand that the revenue possibility is very desirable and enticing but it is not economically feasible.



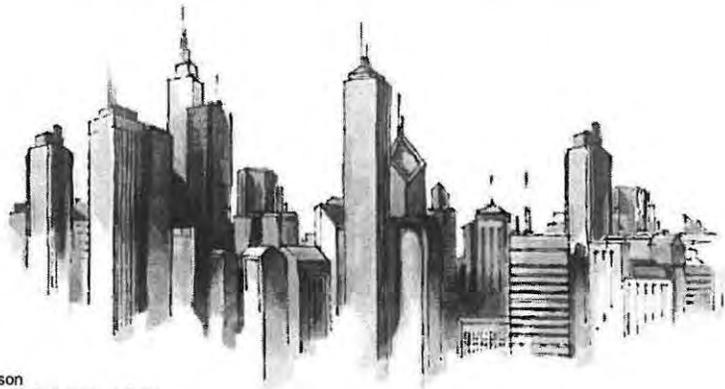
Thousands of Diamonds  
at Your Fingertips



BLACY'S  
FINE JEWELERS

Sincerely,  
Jeanette Blacy G.G.  
51 University Ave  
Los Gatos CA 95030  
408 354 9500 phone  
408 354 0011 fax  
408 221-1671 cell  
<http://www.blacys.com>

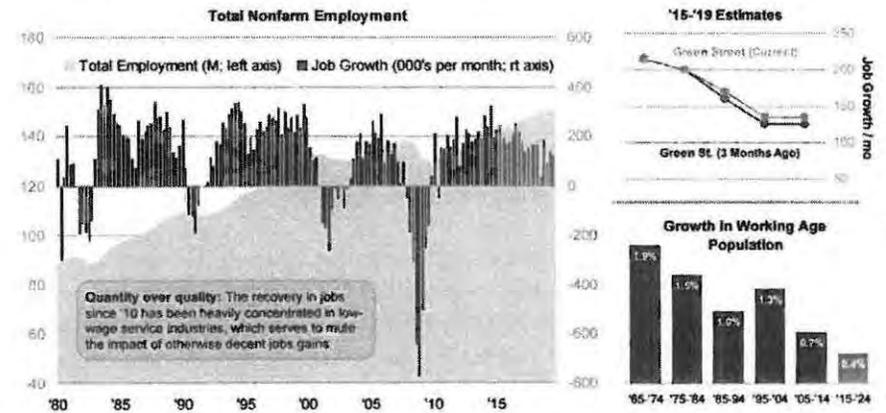
## Retail Real Estate Outlook



CONTACT  
Kevin Johnson  
Vice President, Subscription Sales  
kjohnson@greenstreetadvisors.com  
949-640-8780

## Retail Real Estate Demand Drivers : Employment

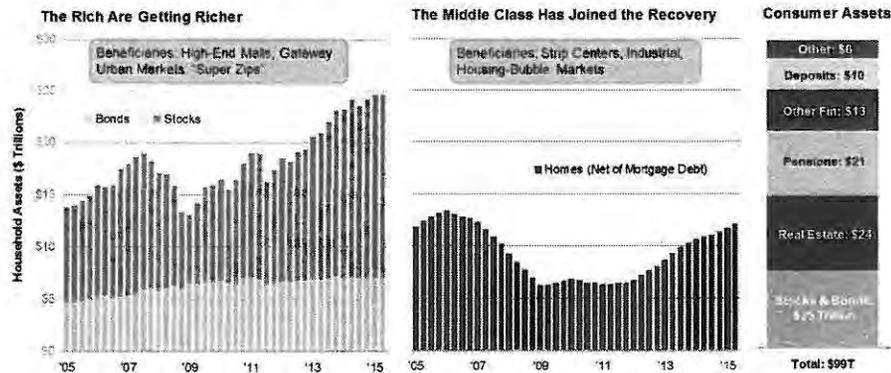
- Baseline assumption is that job growth continues at a steady pace, but slowing as we near full employment
- Wage growth has been weak, but should pick up



Sources: Bureau of Economic Analysis (historical data), Blue Chip Economic Indicators (consensus estimates). Forecasts are Green Street Advisors'.

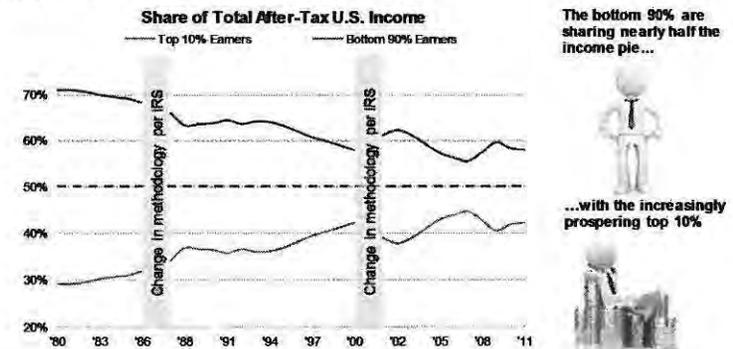
## Retail Real Estate Demand Drivers : Wealth Effects

- Wealth effects have become a key differentiator of incremental demand
- Wealthy households have been faring well for a long time, and recent investment gains have been enough to neutralize the negative impact from tax increases
- Higher home prices will ultimately fuel demand for lower-end centers - where customers more sensitive to housing wealth tend to shop



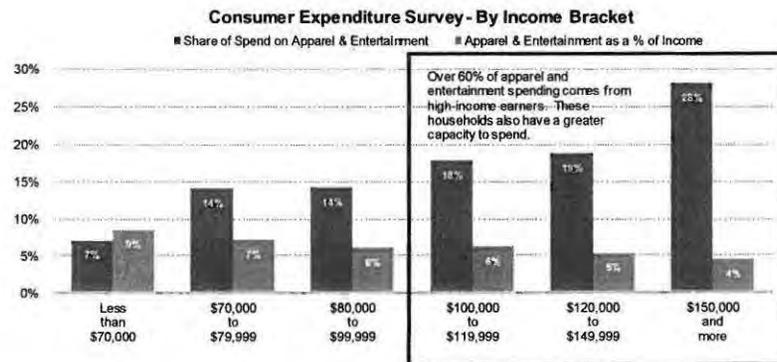
## Retail Real Estate Demand Drivers : Income Growth

- The secular trend of the wealthy capturing a disproportionate share of income will likely continue in an increasingly knowledge-based economy
- High-quality malls and strip centers in affluent markets are in a unique position to serve this group
- The struggling middle class likely spending more of its stretched income on necessities



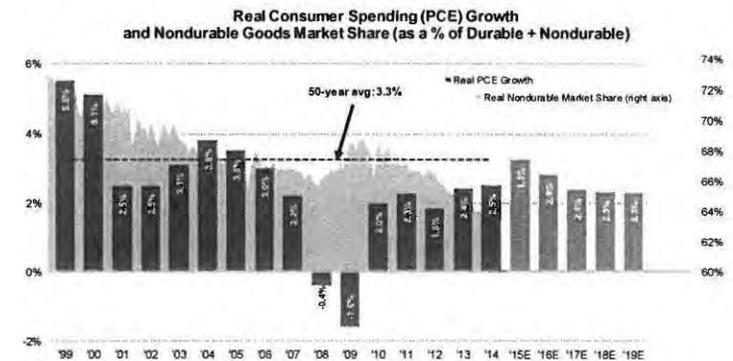
## Retail Real Estate Demand Drivers : Income Growth

- Higher-income earners drive the lion's share of apparel and entertainment spending
- These discretionary categories make up a smaller percentage of income for the wealthy relative to lower-income households.



## Retail Real Estate Demand Drivers : Consumer Spending

- A slow growing economy means a slow pace of growth in consumer spending
- However, spending is poised to accelerate in the next few years - likely due to the recent "tax break" at the gas pumps
- Consumers are rotating discretionary dollars into durable goods (e.g., long-lived products such as appliances and autos) from nondurable good consumption (e.g., products sold in the mall such as apparel)

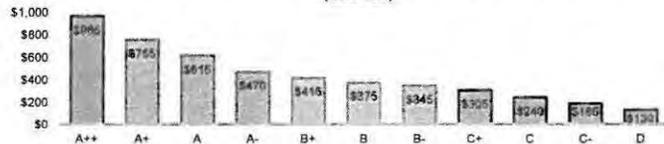


## Mall 101: Assessing Mall Quality

- Sales per square foot is one measure that efficiently wraps together all relevant factors and provides the most consistent indicator of mall operating performance



Green Street Est. Sales Productivity by Mall Quality Grade  
(Sales/s.f.)

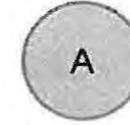


## Mall 101: Assessing Mall Quality

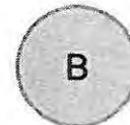
- Green Street grades malls on scale from 'A++' to 'D'
- 'A'-quality malls are the destination retail centers with good long-term prospects
- 'C'-quality malls, on the other hand, are typically at a competitive disadvantage and their long-term viability is often in question



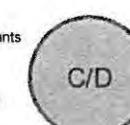
- Dominant mall in a top market
- Luxury inline and anchor tenants
- Strong demographics
- Best-in-class sales productivity
- Retailer "waiting list" for space
- Strong tourist draw



- Mix of high-end and national tenants
- High occupancy and sales productivity
- Strong tenant demand for space
- Good demographics



- Generally stable sales productivity
- Mix of national and regional inline tenants
- Best mall in small market...
- ...or third-best mall in a five-mall town
- Solid occupancy



- Low sales productivity
- Large mix of regional and local retailers
- Declining occupancy
- Some non-retail tenants
- One or more anchor vacancies

## Mall 101: Assessing Mall Quality

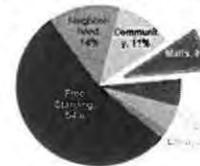
- There are over 200 malls in the U.S. that are considered 'C' or below in quality, which are the most at risk to close over the next several years
- However, these malls only account for roughly 5% of mall value in the U.S...most won't be missed



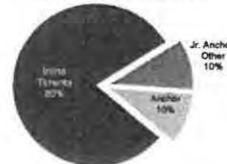
## Mall 101: Mall Net Operating Income

- Roughly 80% of mall NOI is generated from inline tenants
- Rents are usually based on a combination of retailer sales productivity, profitability and demand for space within the center
- As sales productivity grows, a landlord's ability to push rents generally increases

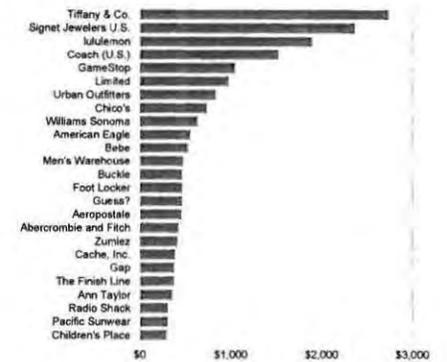
**U.S. Retail Space by Format**



**Typical NOI Distribution**



**Sales/s.f. of Prominent Mall Retailers**

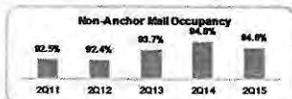


## Key Drivers of Mall Fundamentals

- Near-peak occupancy levels and minimal new supply are positive drivers
- Tenant sales have been impressive recently, but some of the growth has been driven by the closing of unproductive retailers - market rents are likely to keep pace

### Positive Drivers of Mall Fundamentals

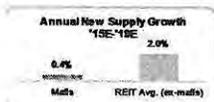
Malls are near peak occupancy...



A rebound in sales...



Is no new supply... and expanding retailers...

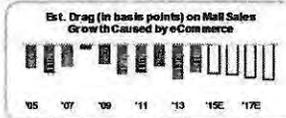


### Negative Drivers of Mall Fundamentals

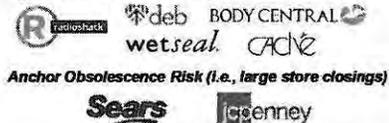
...but occupancy recently slipped



...but eCommerce is likely getting more than its share



...enough to offset retailer bankruptcies?

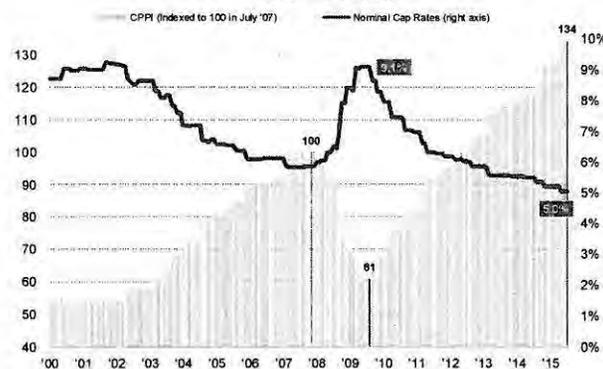


Anchor Obsolescence Risk (i.e., large store closings)

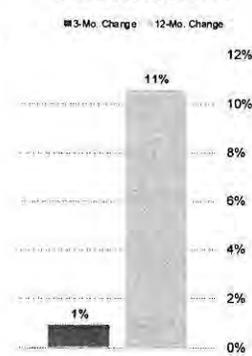
## Mall Asset Valuation: Climbing Higher

- Mall asset values are up over 30% versus the prior peak
- High-end malls have been the driver and cap rates for the best malls are under 4%
- The average mall REIT portfolio cap rate is 5%

### Mall Asset Pricing



### % Change in Mall CPPI



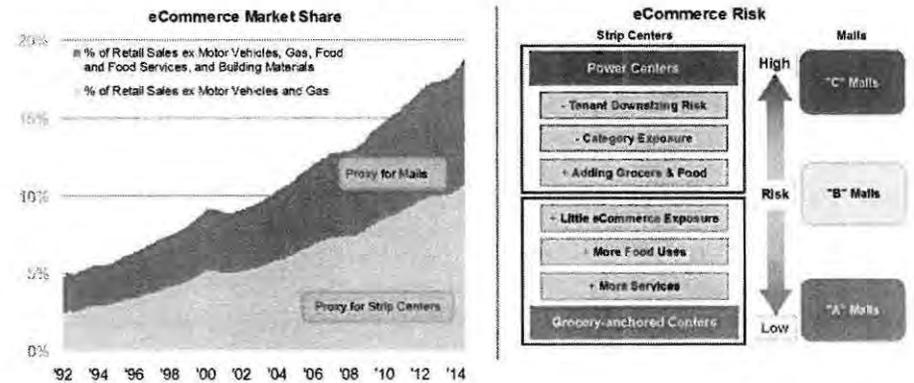
## What's On Our Minds: Tourism

- Spending by international tourists is an important driver of mall sales in the U.S.
- With fewer dollars to spend due to current exchange rates, foreign tourists will undoubtedly travel less frequently and spend less enthusiastically
- As a result, market rent growth forecasts could be impacted at gateway market retail venues that rely on foreign tourists for a disproportionate amount of their sales



## What's On Our Minds: eCommerce

- Online shopping will continue to take up a larger share of retail sales creating a drag on the sales growth at physical stores
- Better quality malls and shopping centers are adapting and will be fine, but lower quality centers will face increasing headwinds



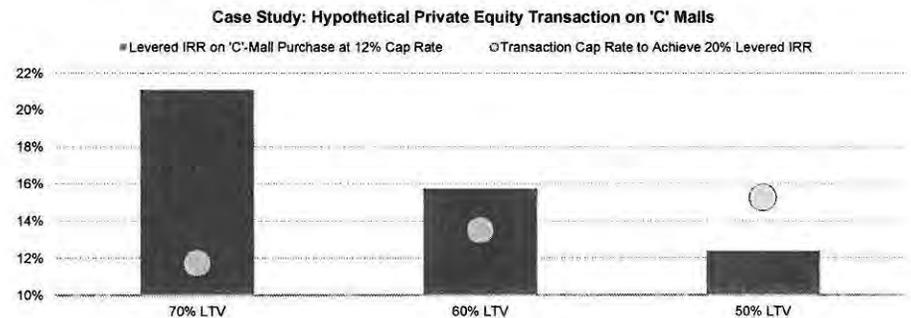
## What's On Our Minds: Non-Traditional Tenants

- Non-traditional tenants are opening across the quality spectrum to much fanfare and are an important source of demand
- In addition, several "online-only" retailers have begun to open physical locations as they are realizing the importance of having a physical presence
- These unlikely sources of tenant demand should help offset store count rationalization among mature retailers



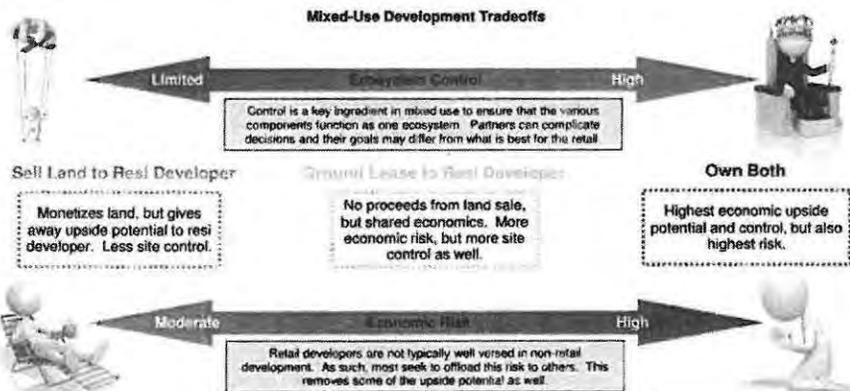
## What's On Our Minds: 'C'-Mall Financing Environment

- Financing standards for low-productivity malls appear to be tightening and moving up the quality scale – the new line in the sand to get non-recourse secured financing appears to be around \$350 sales/s.f. (akin to 'B-minus' quality and below)
- Borrowers are faced with higher rates, lower loan-to-value (LTV) ratios, or both
- The inability to secure acceptable financing is likely the primary reason that there is little-to-no demand to buy low-quality malls



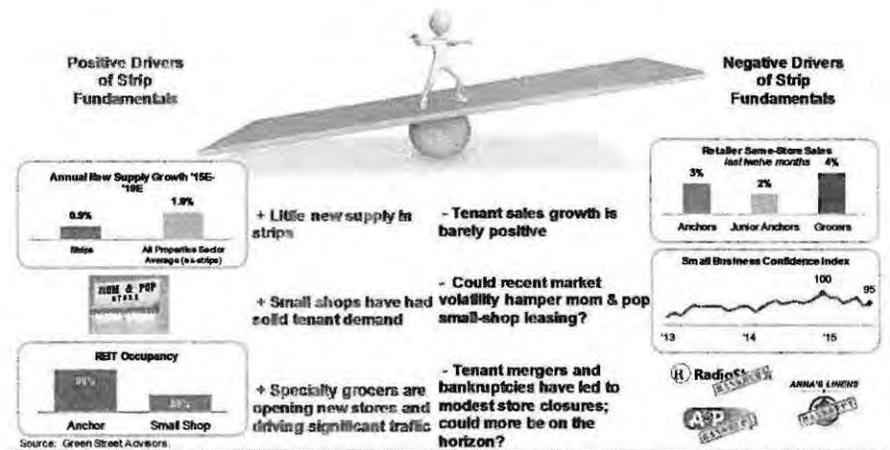
## Strip Centers: A Different Style of Development

- Urbanization is a big theme this cycle; living in city centers is popular
- Strip center developers are more focused on established submarkets
- Land costs are high – single-floor retail generally does not pencil
- Partnering with residential or office developers on mixed-use projects is a way to gain access to infill sites, but it is no free lunch



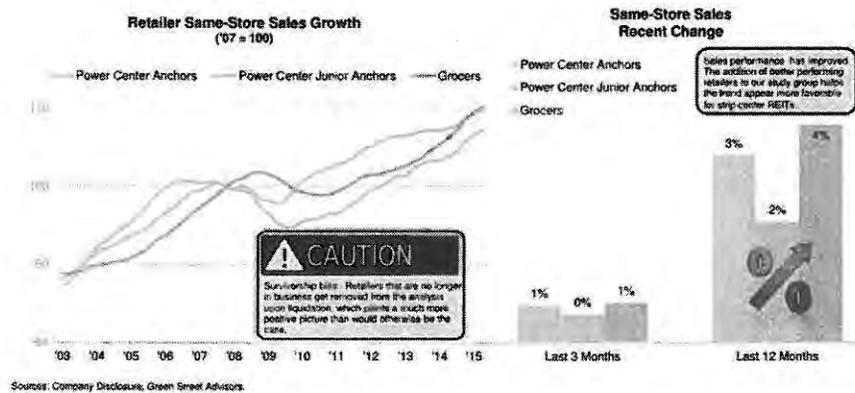
## Strip Centers: Demand Tug O' War

- Strip center occupancy is high for the best properties – anchor space is full
- Small shops still have space to fill
- Mergers and bankruptcies are a drag on net new store openings



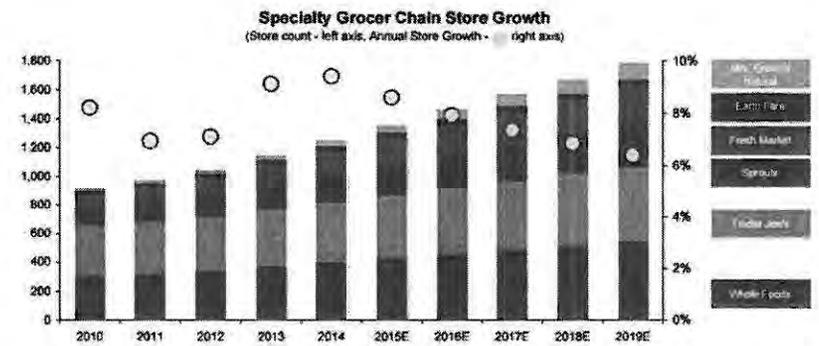
## Strip Centers: Tenant Sales Increasing (a little)

- Increasing tenant sales is a precursor to rent growth
- While tenant sales are growing, the pace remains modest
- High occupancy and little new supply has helped support decent rent growth



## Strip Centers: Enter the Specialty Grocer

- Grocers provide significant traffic flow to shopping centers
- Traditional grocers have been rationalizing store counts
- Specialty grocers have been opening many new stores
- While store sizes are smaller than traditional grocers, consumer traffic is high



## Strip Centers: Asset Values

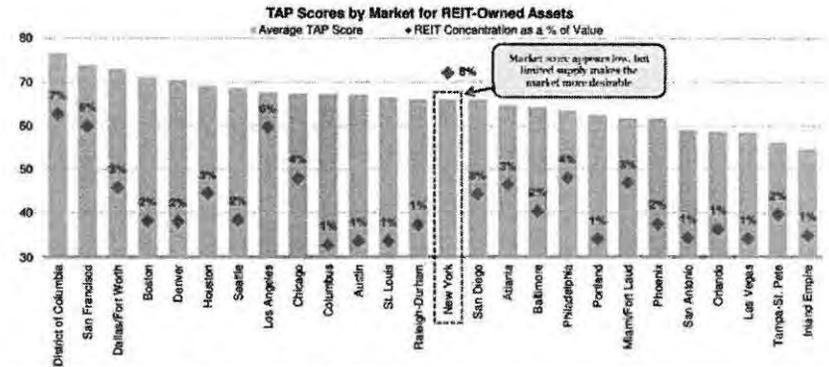
- Strip center asset values are up ~15% versus the prior peak
- This analysis focuses on REIT properties, which are of above-average quality
- Cap rates for the best strip center assets can be as low as 4%
- The average strip center REIT portfolio cap rate is 5.5%



Source: Green Street Advisors

## Strip Centers: Trade Area Power (TAP) Scores

- TAP Scores are a proprietary Green Street tool used to evaluate trade areas
- Incomes, density, cost of living, and education are taken into account
- The tool analyzes trade-area demand only – supply is ignored
- Scores range from 1 to 100 (higher scores are better)



## Green Street's Disclosure Information

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- Green Street employees are prohibited from owning the shares of any company in our coverage universe
  - Green Street employees do not serve as officers or directors of any of our subject companies
  - Neither Green Street nor its employees/analysts receives any compensation from subject companies for inclusion in our research.
  - On occasion, Green Street analysts may be contacted by companies within the firm's coverage universe regarding potential employment opportunities. Ancillary disclosure will be made when appropriate.
- Please also have regard to the Affiliates Disclosures listed above when considering the extent to which you place reliance on this research presentation and any research recommendations made herein.

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**From:** susie ferrell [mailto:susie\_ferrell@yahoo.com]  
**Sent:** Tuesday, July 05, 2016 4:08 PM  
**To:** North40 Comment  
**Subject:** Please stop the madness....

To Whom it May Concern-

I am writing in opposition to the proposed North 40 Development. Many things define our community, but probably the most important is our charming downtown. The Downtown cannot be replicated by any development, but it can be harmed by one. The North 40 development before you will do serious damage to the economic vitality of the downtown. The Los Gatos downtown is a fragile entity and it requires a critical mass of people to be vibrant: people walking the streets and the shopping. The North 40 Specific Plan allows for 400,000 new square feet of retail (60,000 sf in the first proposal). That is not much below the 525,000 sf of retail at Santana Row. Our downtown has not more than 230,000 sf of ground floor retail. Combine the North 40 project with the damage already done to the downtown from competition by the revitalized downtown Campbell and we have the potential for a serious drop in people visiting our downtown. What happens if 10 to 20% less people visit the Downtown? The North 40 will have beautiful walking streets, plenty of new restaurants with outdoor seating, national retail stores, and abundant parking conveniently off the Lark Ave exit of Highway 17. As one of the current council members wrote during the North 40 study session: "It is difficult to see what specific restaurant and retail providers would not impact our downtown"

The North 40 proposal stands in direct contradiction to the Town's North 40 Vision Statement. How is 400,000 sf of retail "seamlessly woven into the fabric of our community...complementing...other Los Gatos residential and business neighborhoods." And supposedly the North 40 will "...address the Town's...commercial unmet needs." Does Los Gatos have 400,000 sf of "commercial unmet needs?" Does anyone really believe that? Do we want the downtown to become like Saratoga's? The North 40 will do to our downtown what Valley Fair and Santana Row has done to Downtown San Jose: destroy it. Our Downtown is under attack from traffic congestion, lack of parking, and competition. The planning Commission and Council should be working to promote our Downtown, not voting for a second one.

I strongly urge you to vote against this North 40 Development Proposal.

*Regards-*

*Susan Ferrell*

*Bay Area Interior Plants*

*244 Cerro Chico*

*Los Gatos*

*(408)656-0281*

**From:** Pamela Parisi [<mailto:parisipamela@yahoo.com>]  
**Sent:** Tuesday, July 05, 2016 7:26 PM  
**To:** North40 Comment  
**Subject:** opposed to North40

Dear Los Gatos Planning Commission,

I am writing in opposition to the proposed North 40 Development. Many things define our community, but probably the most important is our charming downtown. The Downtown cannot be replicated by any development, but it can be harmed by one. The North 40 development before you will do serious damage to the economic vitality of the downtown. The Los Gatos downtown is a fragile entity and it requires a critical mass of people to be vibrant: people walking the streets and the shopping. The North 40 Specific Plan allows for 400,000 new square feet of retail (60,000 sf in the first proposal). That is not much below the 525,000 sf of retail at Santana Row. Our downtown has not more than 230,000 sf of ground floor retail. Combine the North 40 project with the damage already done to the downtown from competition by the revitalized downtown Campbell and we have the potential for a serious drop in people visiting our downtown. What happens if 10 to 20% less people visit the Downtown? The North 40 will have beautiful walking streets, plenty of new restaurants with outdoor seating, national retail stores, and abundant parking conveniently off the Lark Ave exit of Highway 17. As one of the current council members wrote during the North 40 study session: "It is difficult to see what specific restaurant and retail providers would not impact our downtown"

The North 40 proposal stands in direct contradiction to the Town's North 40 Vision Statement. How is 400,000 sf of retail "seamlessly woven into the fabric of our community...complementing...other Los Gatos residential and business neighborhoods." And supposedly the North 40 will "...address the Town's...commercial unmet needs." Does Los Gatos have 400,000 sf of "commercial unmet needs?" Does anyone really believe that? Do we want the downtown to become like Saratoga's? The North 40 will do to our downtown what Valley Fair and Santana Row has done to Downtown San Jose: destroy it. Our Downtown is under attack from traffic congestion, lack of parking, and competition. The planning Commission and Council should be working to promote our Downtown, not voting for a second one.

I strongly urge you to vote against this North 40 Development Proposal.

*PAM PARISI*

PS SQUARED STUDIOS, LLC.

<http://www.PSquaredStudios.com>

<https://www.facebook.com/pages/P-Squared-Studios-LLC/241518835888575>

July 6, 2016

Members of the Planning Commission  
100 E. Main Street  
Los Gatos, CA 95030

**SUBJECT: REASONS TO DENY THE PROPOSAL FOR THE PHASE 1 DEVELOPMENT OF THE NORTH FORTY**

Dear Members of the Planning Commission:

Please deny the Phase 1 application for the reasons given below.

1. **The proposed development does not fulfill the requirement in the Specific Plan that “The North 40 will look and feel like Los Gatos.” (p. 1.1)** A look at the elevation drawings in the Phase 1 proposal easily demonstrates that the proposed project has neither the look nor the feel of Los Gatos. Drawings on pp. 72-74, 90-120, 133-165, 170-184, and elsewhere clearly show boxy, massive, heavy-looking buildings that have nothing in common with the look and feel of Los Gatos. These are suitable for an urban, not small-town, setting.

The developer claims that almost anything can look and feel like Los Gatos because there is a wide range of “looks” in our town. I disagree with this. I believe that when we think of how Los Gatos looks and feels, we think of our beautiful downtown and the Almond Grove area with its lovely landscaping and varied, interesting homes.

Just as an aside, tandem garages as shown, for example, for Plan 2, Plan 2X, Plan 3, Plan 2, and Plan 6 don’t match the look and feel of Los Gatos.

2. **The proposed development does not fulfill the requirement in the Specific Plan that “The North 40 will embrace hillside views, trees, and open space.” (p. 1.1)** Based on Wendi Baker’s comments at the March 30, 2016 Planning Commission meeting, the design addresses this principle by allowing for views from the periphery of the property through setbacks along the periphery. It also provides views through “view corridors,” which are essentially streets.

Clearly, the density and height of the buildings within the development block hillside views. Reducing this density and providing more open space would remedy this problem.

3. **The proposed development does not fulfill the requirement in the Specific Plan that “The North 40 will address the Town’s unmet needs.” (p. 1.1)** The Town anticipates that the development will address the Town’s unmet need for affordable housing, but this will not happen. The proposal includes only 49 units of affordable housing, the senior apartments. Further, during discussions about the North Forty, unmet needs included sports fields, stepdown housing for seniors, community buildings, and schools. None of these are included in the proposal.

4. **The proposed development does not fulfill the requirement in the Specific Plan that “The North 40 will minimize or mitigate impacts on town infrastructure, schools, and other community services.” (p. 1.1)** The proposal fails to mitigate impacts on Los Gatos schools by locating all residential within the Los Gatos School District. Clearly, the option was there to not use the entire inventory of housing within the Lark and Transition Districts and to allow some or even all to be located within other school districts.
5. **The proposed development does not fulfill the requirement in the Specific Plan that the North 40 will “incorporate the site’s unique agricultural characteristics.” (p. 1.1)** According to Don Capobres (remarks, Planning Commission meeting, March 30, 2016), a large marketplace will be the centerpiece of the development’s “celebration of the site’s agricultural heritage.” While the marketplace would be a fine addition to the community, a store in no way replaces a true celebration of an agricultural heritage, which would involve ample open space integrated throughout the community and used to give the area a feeling of lower intensity. There should be a more suitable “centerpiece.”
6. **The development would move forward in a piecemeal fashion.** In the Specific Plan, we see this statement: “The intent of this Specific Plan is to provide a comprehensive framework in which development can occur in a planned, logical fashion rather than a piecemeal approach.” (p. 1-1) The public has no way of knowing what is intended for the remaining 24 acres of the property. Development should not go forward until more information is provided.
7. **The Specific Plan calls for lower density in the Lark Area. The developer has given us very high density instead.** When Mr. O’Donnell asked at the March 30 Planning Commission meeting why all the residential was in Phase 1, Mr. Capobres wrongly claimed the Specific Plan called for this. This isn’t true. The Specific Plan actually says that in the Lark District “Lower intensity residential and limited retail/office uses are envisioned ...” (p. 2-3). The density of the proposed Phase 1 development would need to be reduced to meet the requirements of the Specific Plan.
8. **The Specific Plan calls for residential to be located throughout the 44 acres. However, the developer has included all residential units in Phase 1.** It would be reasonable for fewer than 6 of the 13.5 acres set aside for residential to be in Phase 1. Please deny the proposal so a more fitting proposal can be brought forward that spreads out residential.
9. **Claims that residential units are aimed at millennials and seniors seem false. The proposed housing will have far great traffic and school impacts than true senior or millennial housing would have.** At the March 30 meeting and other meetings, Ms Baker claims residences were designed with seniors and millennials in mind. If this is true, why are there so many 3-story, 3-bedroom units that are almost 2,000 sq. ft.?

Let’s look at rowhomes. There are 97 of these ranging in size up to almost 2,000 sq. ft. Most are 3 bedrooms or 2 bedrooms plus a den. A family with 2 school-age children would be very happy in these. But how about our seniors and millennials? Why not take these 97 3-story rowhomes and turn them into twice as many units of smaller size? We could have 194

1,000 sq. ft. flats in comfortable 2-story structures. We would thereby fulfill our housing requirements while reducing density. Los Gatos doesn't want the tall, massive, high density units the developer proposes, and they are inappropriate for this site with its traffic and school issues. Deny this proposal and seek a proposal with smaller units that really serve the needs of seniors and millennials.

I was dismayed when I first learned about the Housing Element requirement of 13.5 acres at 20 units per acre being used in the North Forty. This seemed in clear opposition to the notion that the development would retain an agricultural feeling.

With further thought, however, I realized that the Specific Plan does not specify how big the 20 units on each acre need to be; no square footage is stated. We can still satisfy RHNA requirements with 20 1-bedroom flats or 2-bedroom flats that are 1,000 sq. ft. or smaller. Clearly, 1- and 2-bedroom units (and studio apartments for that matter) are a less intense use of the land, will be more affordable, and can be designed to be more in keeping with Town guidelines and principles.

**We just need to meet the 320 unit housing requirement. Here's an example of how to exceed that requirement with smaller, more appropriate units.**

**Instead of:**

- **97 massive 3-story townhomes 1,500+-1,900+ sq ft**
- **the 50 3-story massive garden cluster homes 1,400+-1,870 sq ft**

**Have:**

- 194 flats c. 1,000 sq ft in 2-story buildings**
- 100 flats c. 1,000 sq ft in 2-story buildings**

**Totals when 50 senior affordable units are added:  
197 units vs. 344 units**

The developer's proposed 3-story rowhomes, garden cluster homes, and condos completely fail to meet Specific Plan requirements on many counts: (1) They do not look and feel like traditional housing in Los Gatos. (2) They block views of the hills. (3) They are likely to negatively impact our schools and infrastructure since many have 3 or 2+ bedrooms and are likely to appeal to families with children and more than 2 cars.

10. **The Town will not get the RHNA credit it is expecting.** The developer is using the 20 units per acre dictate, which I believe is intended to accommodate the Town's unmet need

for affordable housing. One Town official told me the Town thinks it will get credit for 310 affordable units. However, when asked about this, Staff did not provide a response.

PLEASE NOTE: I SUBMITTED THE QUESTION BELOW TO STAFF BUT HAVE, TO DATE, NOT RECEIVED A RESPONSE. THE NUMBERS IN THE TABLE BELOW ARE MY BEST GUESSES SINCE STAFF HAS FAILED TO GIVE ME AN ANSWER. I HOPE A PLANNING COMMISSIONER WILL ASK THE QUESTION BELOW

*The RHNA requirements listed in the current Los Gatos Housing Element from 2015 in Table H-1 show the following number of housing units needed between 2015-2023: 201 very low; 112 low; 132 moderate; 174 above moderate. How many units in each category are proposed for Phase 1 of the North Forty by the current applicant?*

The Phase 1 proposal itself shows only 49 affordable units, the senior housing. The developer does not appear to intend to sell or rent the remaining units as affordable housing. The units will apparently be sold as market-rate housing instead.

	WHAT WE NEED	WHAT THE TOWN THINKS IT WILL GET CREDIT FOR	WHAT THE DEVELOPER IS PROPOSING
VERY LOW	201	49	49
LOW	112	0	0
MODERATE	132	1	0
ABOVE MODERATE	174	260	0
TOTALS	619	310	49

According to the Town official, the townhomes proposed for Phase 1 are in the over 120% AMI category. This means someone with an income of \$128,520 should be able to afford them. Using the Zillow affordability calculator, with 20% down, someone with that income could afford a home costing \$661,283. However, Grosvenor/Eden are talking about these homes costing at least \$1 million, thereby removing them from any affordable housing category.

According to the RHNA website, "Densities of housing developments do not describe affordability for the purposes of crediting units against the jurisdiction's RHNA."

**11. The Specific Plan does not call for 13.5 acres of housing at a density of 20 units per acre. This comes from the Housing Element and I believe the intent was that this density would be used to create housing that could classified as "affordable housing." Since only 49 of the 320 units would be affordable housing, the use of high density development doesn't seem appropriate.**

Since only 49 affordable units will be built, does this mean the Town will need to find 11 acres elsewhere for the high density affordable housing units it expected to get credit for on the North Forty?

12. **Senior housing is poorly planned.** Jamming this housing above the marketplace and the garage is poor design since it creates a situation where we have a building that is more than 50 feet tall. This will be unattractive, does not create an agrarian feeling in any way, and will obstruct views. The location of the housing also puts seniors in the middle of the hubbub of major activity, which might be desirable for millennials but is not likely to be welcomed by seniors. There are good places for grouping senior housing on the site that don't create these problems.

On p. 7 of his proposal, the developer states under "realizing the Vision" that "Smaller senior affordable apartments will be located alongside retail and homes for young professionals, creating a diverse and sustainable neighborhood." In fact, all the senior affordable housing is on the third and fourth floors of the marketplace building. The units are not, in fact, located in a way that makes them part of "a diverse neighborhood." Senior affordable housing should be located where it really IS in fact integrated to be more part of the diverse community.

13. **Some parking is problematical.** Many of the residential units have tandem parking. I think this is evidence of poor design. The developers are simply cramming in as much as they can without focusing on good design. At the very least, we should request a modification in this design. Cars backing out to let out second cars parked in the interior will create traffic problems and dangers.

In addition, senior housing is given just .5 spaces per unit. It is very unlikely that every last senior will not have a car. This needs to be corrected to allot at least 1 space per senior unit.

I sympathize with the developers, who have expended so much of time, money, and energy in championing their proposals. However, this is no reason to approve the proposal. The current proposal is deeply flawed and needs to be denied. I do think the developers have been involved in a certain amount of bait and switch. I attended several of the developers' meetings during which pictures of charming Los Gatos-style buildings were shown surrounded by ample green space and wandering pathways. I listened as the developers talked about stand-alone charming cottage cluster units. We see none of this in the developers' actual proposal. Please deny the application and demand a development that is in keeping with the vision of our specific plan and the wishes of most of the residents of Los Gatos.

Sincerely,

Barbara Dodson

239 Marchmont Drive, Los Gatos

**From:** Ferida Nydam [mailto:ferida@me.com]  
**Sent:** Wednesday, July 06, 2016 1:22 PM  
**To:** Joel Paulson; Planning; Sally Zarnowitz  
**Subject:** North 40 project - upcoming meeting

Dear planning commission,

I'm a Los Gatos resident and am quite concerned about the impact of the North 40 project on our community and the future of our town. Los Gatos is a gem in the bay area, the town has done such a great job building a sense of community in our schools and in our neighborhoods. The current proposal for this development does not align with who we are as a community and who we want to be. Please do not approve this developer's plans, as they need to be modified to complement who we are. I have two children who are in schools here. Our schools are already beyond capacity and the excessive car traffic on the streets already make walking to Fisher and Blossom Hill a huge challenge from a safety perspective. I have seen nothing in the plan that speaks to the addition of middle school and high school. Our streets are already jammed in the mornings and traffic is making even a simple grocery store run or a doctor's office visit impossibly painful.

**I ask that you reject the current proposal and work with the developer on an alternative that aligns with our town's look and feel.**

Please note the following:

- The phase I proposal shows industrial 3-5 story buildings that do not align with our look and feel.
- The Specific Plan says "Lower intensity residential and limited retail/office uses are envisioned..." for the Lark District (Lark/Los Gatos Blvd.) (pp.2-3) The developer has instead proposed highly intense development—including massive 6-, 7-, and 8-unit 3-story rowhome complexes and commercial/residential space up to 51 ft. high. (This is taller than the Albright buildings.)
- The intensity and height of buildings limit open space and block hillside views
- The Specific Plan states the development should "address the Town's unmet needs." P 1.1
- Move-down housing for the Town's seniors and millennial housing is not provided.
- Only 49 very low income senior apartments are provided. No other affordable housing will be built.
- The retail as proposed duplicates that provided elsewhere and competes with rather than complements the downtown commercial space. P2.2
- The proposed development doesn't "minimize or mitigate impacts on town infrastructure, schools, and other community services." P 1.1
- Schools, street, and other services will be adversely affected
- Mitigation measures are based on dated studies and do not sufficiently address adjacent pending and incomplete developments.

- The Specific Plan states the intent is “to provide a comprehensive framework in which development can occur in a planned, logical fashion rather than a piecemeal approach.” P 1-1
- Phase I includes only a portion of the 44 acres. The current application is just part of a piecemeal approach since no information is provided about Phase II.

Regards,  
Ferida Nydam  
16162 Lilac Lane  
Los Gatos

**From:** BSpector  
**Sent:** Wednesday, July 06, 2016 3:02 PM  
**To:** Laurel Prevetti  
**Subject:** FW: North 40 Development

For Planning Commission and public

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**From:** C. Lee McKenzie [clee38@gmail.com] on behalf of Cheryl McKenzie [clee38@icloud.com]  
**Sent:** Tuesday, July 05, 2016 8:42 PM  
**To:** BSpector  
**Subject:** North 40 Development

Dear Ms. Spector,

I'm a long-time resident who is writing in opposition to the proposed North 40 Development.

As I see it, we are already on our way to becoming an open mall. There only a few shops that still keep the flavor of what we once had: Los Gatos Roasting, Village House of Books (thanks for a small bookstore again), Bunches, Voluptuary and some independent restaurants come to mind. And thanks for the Los Gatos Theater. But as more of the chains are allowed in, the uniqueness of our town disappears bit by bit. I might as well shop at Santana row or the Mayfair Mall. Black and White are there. Gap is there. Talbots is there.

I chose to live here because it was unique. Tourists come because this is a place that has a different look, a different flavor than other places in California. Allow the North 40 development and you're going to lose the last of that unique quality. Allow the North 40 development and you'll kill downtown Los Gatos in the same way Valley Fair killed downtown San Jose.

How disgraceful to repeat such a mistake.

Our downtown is already under attack from traffic congestion, lack of parking, and competition. The planning Commission and the Town Council should be working to promote our Downtown, not voting for a second one.

I strongly urge you to speak against this North 40 Development Proposal.

Cheryl McKenzie

For public record

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From: Scott Miller [[hedrinkbeer@gmail.com](mailto:hedrinkbeer@gmail.com)]

Sent: Wednesday, July 06, 2016 3:07 PM

To: BSpector

Subject: North 40

Please dont vote for this development plan! It is ill conceived and will be harmful to the town of Los Gatos and its citizens.

Scott Miller  
Los Gatos, CA

**From:** BSpector  
**Sent:** Wednesday, July 06, 2016 5:44 PM  
**To:** Laurel Prevetti  
**Subject:** FW: opposed to the North 40 Development

For public record

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**From:** oakmeadowdental@aol.com [oakmeadowdental@aol.com]  
**Sent:** Wednesday, July 06, 2016 8:35 AM  
**To:** BSpector  
**Subject:** opposed to the North 40 Development

Dear Mayor Barbara Spector,

We are the owners of Oak Meadow Dental Center and have been in this area for 16 years. We are writing in opposition to the proposed North 40 Development. Many things define our community, but probably the most important is our charming downtown. The Downtown cannot be replicated by any development, but it can be harmed by one. The North 40 development before you will do serious damage to the economic vitality of the downtown. The Los Gatos downtown is a fragile entity and it requires a critical mass of people to be vibrant: people walking the streets and the shopping. The North 40 Specific Plan allows for 400,000 new square feet of retail (60,000 sf in the first proposal). That is not much below the 525,000 sf of retail at Santana Row. Our downtown has not more than 230,000 sf of ground floor retail. Combine the North 40 project with the damage already done to the downtown from competition by the revitalized downtown Campbell and we have the potential for a serious drop in people visiting our downtown. What happens if 10 to 20% less people visit the Downtown? The North 40 will have beautiful walking streets, plenty of new restaurants with outdoor seating, national retail stores, and abundant parking conveniently off the Lark Ave exit of Highway 17. As one of the current council members wrote during the North 40 study session: "It is difficult to see what specific restaurant and retail providers would not impact our downtown". We have heard from several downtown businesses in recent weeks that have been affected by the traffic to the beach, where the parking lots are empty downtown but the traffic to get there is a deterrent. We know that the Happy Dragon Thrift Shop had to close its doors on Saturdays since its volunteers cannot get to work! Several patients and friends are looking for other places to go to dinner to avoid the traffic in downtown, this is already an issue.

But more importantly for us, is that our children attend public schools in the Los Gatos and with the increase in children proposed with the new housing at North 40, these already packed schools will gravely affect the quality of education that Los Gatos has been priding itself on. The developers know that people will buy in Los Gatos to have the property values associated with great schools, but as those schools become too full, the children's education will suffer, and our the property values will drop dramatically. We are concerned this will impact so much more in our city in the near future and Los Gatos will no longer be able to toot it's horn about great schools when there will be 40+ kids in each elementary class. The teachers will not be able to give the individual attention and the schools will become like those in San Jose and surrounding

areas. We have teachers as patients and friends in these other schools and many are moving out of the area or looking for work in private schools.

The North 40 proposal stands in direct contradiction to the Town's North 40 Vision Statement. How is 400,000 sf of retail "seamlessly woven into the fabric of our community...complementing...other Los Gatos residential and business neighborhoods." And supposedly the North 40 will "...address the Town's...commercial unmet needs." Does Los Gatos have 400,000 sf of "commercial unmet needs?" Does anyone really believe that? Do we want the downtown to become like Saratoga's? The North 40 will do to our downtown what Valley Fair and Santana Row has done to Downtown San Jose: destroy it. Our Downtown is under attack from traffic congestion, lack of parking, and competition. The planning Commission and Council should be working to promote our Downtown, not voting for a second one.

I strongly urge you to vote against this North 40 Development Proposal.

Drs. Fantino & Dyer

Sent from Windows Mail

-----Original Message-----

From: Harris Family [mailto:moejam13@icloud.com]

Sent: Wednesday, July 06, 2016 8:56 PM

To: North40 Comment

Subject: North 40? No thanks!

Dear Los Gatos Planning Commission,

We are writing to strongly oppose the proposed North 40 Development. We moved to Los Gatos over 8 years ago to join a wonderful community that takes pride in its dog-friendly, quaint town and enjoy the perks of this daily, e.g., having actual friendships with neighbors, being able to walk/bike to our nearby grocery stores like Whole Foods and Lunardi's, church, dine in unique and delicious restaurants that are not part of a chain, like Steamer's, Nick's and Hult's. Then there's Manresa Bread and Icing on the Cake - one could not ask for better bakeries anywhere!

We also revel in the fantastic concerts (Music in the Park and Jazz in the Plazz), love being steps away from Testarossa Winery and tasting rooms such as Left Bend and Enoteca La Storia. The library, NUMU Art Museum, Vasona Lake, Oak Meadow Park and Village House of Books are wonderful places to spend time at, let alone the unique stores we shop at downtown on Santa Cruz and University Avenues.

Each winter we enjoy the horse-drawn carriage rides and in Summer the Fourth of July festivities are not to be missed. There is a real sense of community and like-mindedness year-round here and it's centered around family and friends.

We lack nothing in Los Gatos so the notion of the proposed North 40 is preposterous! Why would we set ourselves up for traffic congestion because of a development that certainly does not fit into our town? If retail and living space is desired, Santana Row already exists and it is less than 7 miles away. Please, let's allow Los Gatos to remain the gem in this valley.

Sincerely,

Monique & James Harris

16945 Roberts Road

Los Gatos, CA. 95032

Sent from our iPad

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**From:** Kristen Willerer [kwillerer@gmail.com]

**Sent:** Wednesday, July 06, 2016 9:26 PM

**To:** BSpector; Marico Sayoc; Rob Rennie; Steven Leonardis; Marcia Jensen

**Subject:** Please Deny the 40N Development!

Here are some reasons why I would like to deny the 40N Development:

The proposed development is required to "look and feel like Los Gatos." P 1.1

The drawings for the Phase 1 proposal show boxy, massive, industrial style 3 -5 story buildings that have nothing in common with the look and feel of Los Gatos

The Specific Plan says "Lower intensity residential and limited retail/office uses are envisioned..." for the Lark District (Lark/Los Gatos Blvd.) (pp.2-3) The developer has instead proposed highly intense development—including massive 6-, 7-, and 8-unit 3-story rowhome complexes and commercial/residential space up to 51 ft. high. (This is taller than the Albright buildings.)

The proposed development must "embrace hillside views, trees, and open space." P. 1.1

The intensity and height and layout of the buildings block hillside views and provides minimal open space.

Relocating some of the residential in the Lark District to the North would alleviate some of the loss of views as would reducing the height and create more open space.

The proposed development must "incorporate the site's unique agricultural characteristics." P. 1.1

All the walnut trees will be removed. The site will be planted with other trees, mostly deciduous, that will take years to grow.

Thank you for reading this.

I live at 104 Cherry Blossom Lane and this would greatly affect my children's schooling as well as the neighborhood.

--

Kristen Willerer, DPT

408.458.0006

For Planning Commission/public record

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From: Stephens, Caissie [[cstephens@sjusd.org](mailto:cstephens@sjusd.org)]

Sent: Wednesday, July 06, 2016 10:17 PM

To: BSpector

Subject: LG RESIDENT FOR 45 YEARS

Dear Barbara Spector,

I am sending this email to voice mine and my families concern about the N 40 Plan. Please do not move forward this plan. My husband was born in this town, and my children, have either graduated from LGHS, or are presently still at the HS. I understand change happens, but sadly so much change has happened in this town, as it has lost so much of its's town character. Presently, it can take at 3:00 25 minutes to travel down LG Blvd to pick up my child at the HS. Then another 25 minutes to get back home. We live off of Chirco by Nob Hill grocery store. I can not even imagine what the traffic will be like. With all of the weekend traffic and beach traffic now, we will decide to sadly leave LG, our home, as living here would become a traffic nightmare. Please do not sell our town.

Thank you for listening, Caissie, Rich, Sammy and Sydney Stephens.

## Planning

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**From:** Dan Cunningham <[dan.cunningham@vancebrown.com](mailto:dan.cunningham@vancebrown.com)>  
**Sent:** Thursday, July 07, 2016 6:13 AM  
**To:** Marni Moseley  
**Subject:** North 40 Question

Marni -

Most of the available information only addresses Phase I. Please provide, based on specific plan zoning allowances, the total counts (entire North 40 area) including any bonuses as follows:

1. Total number of allowed residential units.
2. Total square feet of allowed commercial space. Is any office space a part of the commercial space allowance?
3. Total anticipated vehicle trip counts.
4. Total anticipated additional student count.
5. What schools will be impacted?

The public needs to know what is contemplated for the entire built out site not just Phase I.

Regards,

Dan Cunningham  
3197 Park Boulevard  
Palo Alto, CA 94306

Office 650-849-9900  
Fax 650-849-9908  
Cell 415-559-0449  
Email [dan.cunningham@vancebrown.com](mailto:dan.cunningham@vancebrown.com)

From: Mariquita West [[mqqwest@earthlink.net](mailto:mqqwest@earthlink.net)]  
Sent: Thursday, July 07, 2016 9:38 AM  
To: BSpector  
Subject: Too much retail in North 40 Plan

Dear Mayor Spector,

I was enthusiastic re the North 40 plan because of all the housing it provided, but I did not realize how much retail space there would be: 400,000 square feet? That would almost surely negatively impact retail in downtown Los Gatos.

I believe Santana Row effectively sucked the money and energy out of revitalizing downtown San Jose. I prefer real, historic cities like our current Los Gatos to planned developments, even attractive ones like Santana Row. I live in the hills near Los Gatos and thus am not an official resident, but I grew up here and have shopped and dined in the town for over 70 years. I have seen the town weather many changes and retain its vitality. Having a huge new retail center just beyond the current retail district worries me greatly, and I oppose the plan unless it can be modified to reduce this feature.

Sincerely yours,  
Mariquita West  
P O Box 634  
Los Gatos, CA 95033

**From:** [steamersoffice@aol.com](mailto:steamersoffice@aol.com) [mailto:[steamersoffice@aol.com](mailto:steamersoffice@aol.com)]

**Sent:** Thursday, July 07, 2016 2:38 PM

**To:** North40 Comment; Steven Leonardis; Rob Rennie; BSpector; Marcia Jensen;  
[maricosayoc@yahoo.com](mailto:maricosayoc@yahoo.com)

**Subject:** No on North 40

Sent: Thu, Jul 7, 2016 2:34 pm

Subject: No on North 40

To the members of our Council and Planning Commission,

As a business owner, as well as a resident of the Town of Los Gatos, I am writing in opposition to the proposed North 40 development. One of the things that keep visitors shopping in our downtown is the sense of the unique and small town appeal of the businesses. The character of the downtown can't be replicated and will be detrimental to any development trying to do so. The North 40 development before you, will do serious damage to the economic vitality of the downtown. The vitality of the Los Gatos downtown is fragile and it requires a critical mass of people to be the vibrant downtown we have all worked so hard in maintaining and continue to attract people to be walking our streets and shopping at our local merchants and businesses.

The North 40 Specific Plan allows for 400,000 new square feet of retail, far more than the 60,000 sf in this first proposal. That is not much below the 525,000 sf of retail at Santana Row, which prompted a decline in people visiting town to shop. Consider the fact our downtown has not more than 230,000 sf of ground floor retail, which currently has empty storefronts as I write this letter. Add the North 40 project with the damage already done to our Downtown from competition from the revitalized downtown Campbell and we will experience a serious decline in people visiting our downtown and patronizing our local merchants. Campbell found a way to maintain their individuality and a community and keep local businesses thriving without having to add to the businesses they currently had. I believe we can do the same. We should be promoting what we have, not what a developer says we need.

What happens if 10 to 20 less people visit the Downtown? Less business for the existing businesses, resulting in unemployment for current employees no longer needed, loss of taxes for the Town of Los Gatos and it will be highly likely to see the closure on many independent businesses, the one thing that makes the Town of Los Gatos as unique as it is. I think we need to remember back to the 89 earthquake that devastated the downtown and remember how long it took for the Town to revitalize. How many businesses chose not re-open, shuttering their doors and disappearing from our community due to financial concerns. The North 40 Development will have the same effect, only this time I don't believe we will be able to survive as we did before.

According to the plans, the North 40 will have beautiful walking streets, plenty of new restaurants with outdoor seating, national retail stores, and abundant parking conveniently (?) off the Lark Ave exit of Highway 17. Try living in that area and tell me how "convenient" it is to try to get around at certain times of the day. As one of the current council members wrote during the North 40 study session: "It is difficult to see what specific restaurant and retail providers would not impact our downtown." This North 40 proposal stands in direct contradiction to the Town's North 40 Vision Statement. How is 400,000 sf of retail "seamlessly woven into the fabric of our

community ... complementing ... other Los Gatos residential and business neighbor hoods." And supposedly the North 40 will " ... address the Town's ... commercial unmet needs." Does Los Gatos have 400,000 sf of "commercial unmet needs"? Does anyone really believe that? What happened to the concept that the Town Council did not want " Cookie Cutter " retailers in our community? That is exactly what North 40 is purposing to do with "national retail stores". Running a business in this day and age is not easy, adding more businesses to a community that already has it's needs met with the current businesses we have will only lead to the economic disaster of our Downtown. If these national retail stores are so interested in coming to our Town, why hasn't our council proposed that idea directly to them, filling the empty storefronts of our downtown.

We already have issues with the congestion created by traffic off of 17. As someone who has to come to the downtown via Los Gatos Boulevard and Blossom Hill, I have personally experienced the traffic problems the center located on the corner of those streets has generated. I have also seen signs indicating storefronts are empty there. Kings Court shopping center currently has empty store fronts there as well. Adding more traffic to that area off of Lark Ave will cause even more problems than the ones that currently exist. Have any of you experienced the morning or evening commute of getting on or off Highway 17 North or South, or traveling across the overpass to get to Winchester Boulevard on a regular basis? The traffic currently backs up for 1-2 blocks in either direction getting onto Lark Ave as well as trying to get on to Los Gatos Boulevard. Do we need to add to this congestion by bringing in a development that will destroy the downtown we as a Town have worked long and hard to preserve?

There are multiple centers with business located along Los Gatos Boulevard between Blossom Hill and Lark Ave that fulfill the needs of our community. I would like to know what businesses the developers of the North 40 think we need. I doubt any of the developers live or work in our Town limits. How are they qualified to determine what we need in our community, if they are not a part of our community, living and working here? Their interest is in turning the property into a shopping center and leaving us to carry the burden of it. Again, something the Town of Los Gatos cannot afford to do, physically or financially. What will happen to our schools and classrooms that are currently already pushed to the max? Who is going to maintain the streets when the addition traffic requires them to be replaced? And what about the ecological concerns of a development this large may bring. More development means more stress on the community as a whole. Once again, I doubt the developers could care less about the impact that development may have on our community and the quality of life we have worked so hard to maintain.

Do we want our downtown to become like Saratoga with no foot traffic? The North 40 will do to our downtown what Westfield Valley Fair and Santana Row has done to downtown San Jose, devastate and destroy the vitality it once had. The developers do not live and work here. Their interest is purely in the financial prosperity of their company, not our Town.

We have all seen firsthand that our Downtown and its economy is suffering from traffic congestion, lack of parking, and competition from outside forces who have no interest in us as a community. The summer weekends of congestion have had a negative effect on businesses, as well as the overall view of the town residents in regards to their quality of life. The Planning Commission and Council should be working to promote our Downtown, not voting for a development that will eliminate and destroy it. Surrounding neighbor hoods and centers along Los Gatos Boulevard should be included and promoted as well, encouraging residents to buy and keep our tax dollars local. By focusing the town's resources and energy on eliminating the current situations that could be improved, we as a Town can thrive and continue to attract

visitors as well as encourage locals to continue to patronize our local merchants. We can continue to be seen as a unique and inviting Town, who already has all the needs of our community meet with the current businesses that are already here, contributing and continuing to enhance our community and Town

I am against the North 40 development and strongly urge you to vote against this North 40 development proposal.

Linda Matulich  
Local Resident & Owner of  
Steamer's The Grillhouse

**From:** Jega A [<mailto:ajegam@gmail.com>]  
**Sent:** Friday, July 08, 2016 9:25 AM  
**To:** Planning  
**Cc:** Joel Paulson; Sally Zarnowitz  
**Subject:** North 40 - Project

To: Members of the Los Gatos Planning Commission:

I have lived in Los Gatos over the last 9 years. One of my kid goes to Fisher and the other to Los Gatos High. All of us are very involved in our community activities. We do several volunteer work in the school and with Los Gatos Rec.

We really like Los Gatos and are very glad we found a great town for our kids. It looks like all of this will change with North 40. Although I have been following North 40 for a while now -- I really did not understand the full magnitude of the constructions. I attended the last city meeting on North 40 and then understood the scope of the construction.

We live on Oka Lane and we have seen significant traffic in the last couple of years. Not just from JCC but also from Netflix employees on Lark trying to get on to the highways. Getting even to Creekside fields now take more than 15 minutes with the new signal.

There are several large projects just around this area - new Netflix building, construction near the Hospital in Pollard road, proposed construction on Dell Avenue and now North 40. With all this new constructions how is someone expecting the traffic to still be at acceptable levels (level D?) . This just is not possible. Please try and get from Oka to Los Gatos Blvd. during the peak hours and why all the new constructions are happening in one corner of the town?

There may be several reasons that North 40 might get approved but, I cannot see a reason there that would be in the best interest of the town and its residents. I understand that the city need money for different purposed but, this is not the way to get it. Other cities have made similar mistakes(Cupertino?). Let's not do the same.

Thanks

--

Jega

goldfarb  
lipman  
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Goldfarb & Lipman LLP

July 7, 2016

Laurel Prevetti, Town Manager  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

**Re: Town Review of North Forty Planning Application**

Dear Town Manager Prevetti:

This letter is from Barbara Kautz as well as from attorney Andrew Faber of Berliner Cohen LLP.

We represent the interests of Grosvenor USA Limited and Summerhill Homes (collectively, the "Applicants") in relation to Architecture and Site Application S-13-090 and Vesting Tentative Map M-13-014 (collectively the "Planning Applications") for 320 residences and 66,000 sq. ft. of neighborhood commercial space located in the North Forty Specific Plan area. This letter describes the limits placed on the Town of Los Gatos' review of the Planning Applications, expands on the comments we made at the Planning Commission's March 30, 2016 public hearing, and responds to issues raised since that meeting.

In brief, under the Housing Accountability Act and Housing Element law, the Planning Applications may only be reviewed for conformance with *objective* Town standards and policies that existed on the date that the Planning Applications were found to be complete. The Town must apply those policies to facilitate the proposed density, not to seek excuses for denying the Planning Applications. Under State Density Bonus Law, the project is entitled to 320 units. The Town cannot apply any development standard that would preclude the project from being built at that density.

The Applicants appreciate the staff report's recommendation for approval of the Planning Applications and the report's acknowledgement that the Planning Applications are consistent with the "technical" (i.e., objective) requirements of the Specific Plan, the General's Plan's goals and policies, and the Housing Element. However, the staff report appears to imply that the Planning Commission, and ultimately the Town Council, may reduce the density, modify the distribution of the housing units on the site, or otherwise modify the application to better achieve "the look and feel of Los Gatos." Reduction of the density or redistribution of the housing units on the site would be inconsistent with Density Bonus Law, the Housing Accountability Act, and Housing Element Law.

BY E-MAIL

Similarly, the Town may not require modifications based on subjective standards such as "the look and feel of Los Gatos." Instead, the Town's role is limited to a careful review of the Planning Applications to ensure that they comply with the numerous objective standards contained in the Specific Plan.

A detailed discussion is below.

**A. Limits on Scope of Town's Review.**

The statutes described below prescribe the limits of the Town's review authority regarding the Planning Applications.

1. **Subdivision Map Act.** The Subdivision Map Act provides that, in reviewing the application for a Vesting Tentative Map, the Town must apply only the "ordinances, policies, and standards" in effect when the Town determined the application to be complete. (Gov't Code § 66474.2; *see Kaufman & Broad Central Valley, Inc. v. City of Modesto* (1994) 25 Cal.App.4<sup>th</sup> 1577, 1585-86.)

2. **Housing Accountability Act.** The Housing Accountability Act (Gov't Code § 65589.5(j)) provides that when a proposed housing development complies with "applicable, *objective* general plan and zoning standards and criteria, including design standards," in effect at the time the application is determined to be complete, the Town may deny the project or reduce the density only if it makes "written findings supported by substantial evidence" that both of the following conditions exist:

"(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

"(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (*See Honchariw v. County of Stanislaus* (2011) 200 Cal. App. 4<sup>th</sup> 1066, 1070 (subsection (j) applies to both market-rate and affordable housing developments, and nothing in the record supported a finding that the project did not comply with County codes).)

Subsection (f) of the Housing Accountability Act further requires that the "development standards, conditions, and policies shall be applied to facilitate and accommodate

development *at the density permitted on the site and proposed by the development.*" (emphasis added).

These provisions of the Housing Accountability Act limit the Town's review of the Planning Applications to the *objective* standards contained in the General Plan, Specific Plan, and zoning code. The Town has no written health or safety standards violated by the project. Once the Planning Applications comply with all objective standards – as acknowledged in the staff report – no reduction in density may be required, nor may the Town require changes in the Planning Applications that are not required by the adopted objective standards.

3. **Housing Element Law.** Housing Element Action Item HOU-1.7 committed the Town to rezoning 13.5 acres on the North Forty to a *minimum* density of 20 units per acre to allow 270 units. Because the zoning had not been completed before the Housing Element was adopted, the zoning was required to provide for "use by right" as defined in Gov't Code §§ 65583.2(h) and (i). "Use by right" means that the Town cannot require a use permit or other discretionary approval that would constitute a "project" for purposes of the California Environmental Quality Act (CEQA). Although the Town may require design review approval, that review is also not subject to CEQA.

The Town's Housing Element provides that review of residential development applications on the North Forty will occur "by right" based on the Town's design guidelines, as required by State law. The Element further states that residential development on the North Forty will be approved "by right" if it meets "objective" criteria in the Specific Plan's design guidelines. In particular:

- Page 16 states that the North Forty Specific Plan will rezone the North Forty with a "minimum" density of 20 units per acre and will "provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through 'by right development' in the consideration of Architecture and Site applications."
- Action item HOU-1.7 states that, after 13.5 acres within the North Forty are zoned to permit a "minimum" density of 20 units per acre, housing development will be "by-right as defined by not requiring a conditional use permit or other discretionary approval; however, design review according to the *objective* standards contained in the Specific Plan can occur." (emphasis added).

Like the Housing Accountability Act, these Housing Element and State law provisions limit the Town's review of the Planning Applications to the *objective* standards contained in the various plans and do not allow the Planning Applications to be evaluated under subjective standards. The Housing Element also requires that at least 270 units be permitted at a density of *at least* 20 units per acre.

4. **Density Bonus Law.** The Planning Applications are eligible for a 35% density bonus, increasing the density from 237 units to 320 units, because the project contains over 20% very low income housing (Gov't Code § 65915(f)(2)). Density Bonus Law (Gov't Code § 65915) contains no grounds on which a request for a density bonus may be denied. (*See* Gov't Code § 65915(b); *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4<sup>th</sup> 807, 825 ("If a developer agrees to dedicate a certain percentage of the overall units in a development to affordable or senior housing, the Density Bonus Law *requires* the municipality to grant the developer a density bonus." (emphasis added))).

The density bonus must be granted by the Town. Any provisions of the Los Gatos Town Code allowing denial of the bonus are inconsistent with State law and cannot be used to deny the bonus.

Nor may the Town seek to reduce the density by applying other development standards. "In no case may a city...apply any development standard that will have the effect of physically precluding the construction of a development...at the densities...permitted by this section." (Gov't Code § 65915(e)(1).) If development standards must be waived to allow construction of 320 units, the Town is required to do so. (See letter of March 25, 2016 from Barbara Kautz.) If a court finds that a refusal to grant a density bonus, incentive, concession, or waiver violated Density Bonus Law, it *shall* award the plaintiff reasonable attorneys' fees. (Gov't Code §§ 65915(d)(3) and (e)(1).)

5. **SB 50 and Fair Housing Law.** The majority of the correspondence to the Town has cited school impacts and a desire to relocate children to the Cambrian School District as a primary reason to relocate housing to the Northern District. SB 50 does not allow the Town to establish conditions of approval based on school impacts, nor do federal and state fair housing laws allow the Town to take actions to prevent children from residing in Phase One by relocating homes to the Northern District.

**SB 50.** If a developer agrees to pay the fees established by the Leroy F. Greene School Facilities Act of 1998 (SB 50), the impacts on school facilities may not be analyzed under the California Environmental Quality Act, no mitigation for impacts on school facilities may be required, and the project may not be denied or conditioned due to impacts on schools or due to the inadequacy of school facilities. (Gov't Code § 65995(i).) Payment of school fees is the exclusive method to mitigate impacts on schools and is deemed to provide full and complete mitigation of impacts. (Gov't Code §§ 65996(a) and (b).) The Applicants have agreed to pay school fees and have voluntarily entered into an agreement to pay additional amounts to the Los Gatos Union School District. The Town may not impose any additional conditions -- including relocation of units to the Northern District -- to reduce school impacts.

**Fair Housing Issues.** As documented in Barbara Kautz' memo of February 12, 2015, our May 27, 2015 joint letter, and additional evidence attached to this e-mail, throughout the hearings on the North Forty Specific Plan there have been extensive public comments and statements by decision-makers indicating that the Town wishes to discourage families with children from residing in the North Forty, especially within the boundaries of the Los Gatos elementary and high school districts.

Federal and state law forbid local governments from enacting or enforcing land-use laws that discriminate based on familial status (42 USC § 3604(b)), interfere with an owner's efforts to make housing available to families (42 USC § 3617), or impose different requirements on residential developments because of familial status. (Gov't Code § 65008(d)(2); *see also* Gov't Code § 12955(1).) Outwardly neutral actions by a city that are motivated by an intent to discriminate violate fair housing laws. (*See Avenue 6E Investments LLC v. City of Yuma*, 2016 U.S. App. Lexis 5601 (9<sup>th</sup> Cir. 2016); *Pacific Shores Properties LLC v. City of Newport Beach*, 746 F.3d 936 (9<sup>th</sup> Cir. 2014).) A court does not need to find this was the sole reason that the Town adopted a policy, only that this was the more likely motivation. (*Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9<sup>th</sup> Cir. 1999); *see also* Gov't Code § 12955.8(a).)

This history of animus toward children and especially to children who would attend schools in the two Los Gatos districts is likely a substantial motivation for any attempt to relocate the housing to the Northern District, in violation of fair housing laws.

**B. Implications for Review of Planning Applications.**

The statutes discussed above confine the Town's review of the Planning Applications to the objective standards contained in the General Plan, Specific Plan, and zoning ordinance. As a consequence, Phase One is entitled to the 320 units requested; conditions cannot be imposed on the project unless they are required by objective standards and policies, and the Town cannot use subjective criteria and findings to condition or deny the Planning Applications. In particular:

**1. The Town Cannot Reduce the Density of Phase One.**

Density Bonus Law requires the Town to grant the density bonus and approve the 320 units the project is entitled to. Density Bonus Law contains no grounds on which a density bonus may be denied.

**2. The Town Cannot Require Units to be Redistributed or Relocated to the Northern District.**

The staff report suggests that the Planning Commission has discretion to modify the distribution of units within North Forty Specific Plan area, either by moving some units

to the Northern District or otherwise redistributing them throughout the North Forty. Neither of these requirements can be imposed on the Planning Applications because: (a) they were not in effect when the Planning Applications were deemed complete; (b) they would be inconsistent with both the adopted Specific Plan and the Housing Element; and (c) requiring these changes would violate Density Bonus Law, the Housing Accountability Act, and Housing Element law.

a. The Town Cannot Require the Units to be Relocated Because No Town Policy Requires Relocation. The Housing Element states that the Planning Applications will be reviewed based on objective policies in the Specific Plan. The Housing Accountability Act requires that the Planning Applications be reviewed based on objective General Plan, zoning, and design review standards. Not one of these Town documents limits the size of Phase One on the North Forty or requires that the housing be distributed evenly across the site. In consequence, the Town cannot reduce the density of Phase One based on a desire to distribute the housing evenly on the site or to move more housing to the Northern District. In any case, Density Bonus Law requires the Town to allow 320 units in Phase One; the density cannot be reduced so units can be moved to the Northern District, which is not part of the Planning Applications.

b. Relocation of Units Would be Inconsistent with the Housing Element. The density of 20 units per acre promised in the Housing Element cannot be obtained in the Northern District. With residential uses required to be located over commercial and a 35-foot height limit (reduced further to 25 feet within 50 feet of Los Gatos Blvd.), only one-story residences are possible on top of the required commercial uses. The letter from the Applicants submitted concurrently with this letter demonstrates that the required density of 20 units per acre is not reached even with small units.

c. Relocation of Units Would be Inconsistent with the Specific Plan. It is clear from the Specific Plan that the 270 units of housing at 20 units per acre promised in the Housing Element were intended to be located primarily in the Lark District and secondarily in the Transition District. The Lark District is intended for residential and "limited" retail/office uses. The Transition District is intended as a transition and buffer between the "primarily residential" Lark District and the "active retail and entertainment emphasis" of the Northern District. By contrast, the Northern District is described as a "day-to-evening entertainment area that offers shopping and restaurants for nearby residents as well as employment centers" and allows only limited residential over commercial.

Plainly the most housing was intended to be built in the Lark District and the least amount of housing was anticipated to be built in the Northern District. A policy to distribute housing evenly across the site is not consistent with the adopted Specific Plan.

3. **Subjective Standards Cannot Be Used to Evaluate the Planning Applications.**

The staff report states that the Planning Commission has the discretion to consider the "overall Vision and Guiding Principles" contained in the Specific Plan in making a decision on the Planning Applications.

The Vision and Guiding Principles are not *objective* standards by which the Planning Applications may be evaluated. Rather, in developing the plan, the Town translated the Vision and Guiding Principles into the objective standards required to meet the Town's commitments in its Housing Element. The *objective* criteria contained in the Specific Plan (number of units, building height, setbacks, etc.) reflect the Town's judgment regarding what development on the North Forty is consistent with the Vision and Guiding Principles. As an example, the Guiding Principle regarding the "look and feel of Los Gatos" was translated into detailed policies for perimeter setbacks and landscaping contained in Table 2-5 and into detailed specifications for cottage and garden clusters contained in Table 2-7; for townhomes and rowhouses in Table 2-8; and for affordable homes in Table 2-9. The Town's consulting architect concluded that, by conforming to these standards, the overall development obtained "the look and feel of Los Gatos."

However, the Vision and Guiding Principles in and of themselves are not objective, and by themselves, divorced from the objective standards, they may not be used to evaluate the Planning Applications. All are subjective criteria that cannot be the basis for a decision on the project. Because the Planning Applications comply with the *objective* standards contained in the Specific Plan, they are by necessity consistent with the Vision and Guiding Principles.

\*\*\*\*\*

**Summary.** The State law provisions discussed above require that the Planning Applications may only be reviewed for conformance with existing *objective* Town policies, which must be applied to *facilitate* development of 320 units. The Town may not reduce density, require project phasing, relocate units to other sites on the North Forty, place units in other school districts, reduce heights, or impose any other requirement not already contained in the adopted development standards. Nor can the Planning Applications be denied based on subjective standards, such as those contained in the Vision and Guiding Principles.

Laurel Prevetti, Town Manager  
Town of Los Gatos  
July 7, 2016  
Page 8

Instead, the Town's role is to review the conformance of the Planning Applications with the numerous objective design guidelines, landscape requirements, circulation and infrastructure standards, and other objective requirements contained in the Specific Plan. All of the review completed to date, including review by the Town's consulting architect, has concluded that the Planning Applications are consistent with the "applicable, objective general plan and zoning standards and criteria, including design standards" in effect when the Planning Applications were found to be complete.

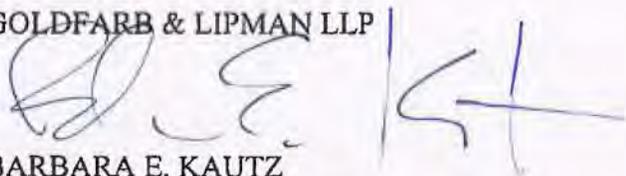
The Applicants have worked cooperatively with the Town since 2010, for the over five years that the North Forty Specific Plan was under consideration. On May 5, 2015 the Town adopted a Housing Element designating the North Forty for 270 units at 20 units per acre, and in June 2015 the Town adopted a Specific Plan containing detailed design guidelines, development regulations, and mitigation requirements. The North Forty was adopted as a Housing Element site specifically because the Specific Plan placed so many requirements on a residential project to ensure high quality and because the Applicants had agreed to extensive voluntary mitigation measures, such as additional funds for the Los Gatos Union School District. The Applicants now simply seek to develop the project envisioned by the Specific Plan, which will be an asset to the Town.

However, in the event that the Town denies the Planning Applications or approves them with conditions that violate the legal framework described above, the Applicants intend to fully enforce their legal rights and remedies.

If you have any questions, please feel free to contact us.

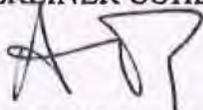
Sincerely,

GOLDFARB & LIPMAN LLP



BARBARA E. KAUTZ  
bkautz@goldfarblipman.com

BERLINER COHEN, LLP



ANDREW L. FABER  
andrew.faber@berliner.com

Laurel Prevetti, Town Manager  
Town of Los Gatos  
July 7, 2016  
Page 9

cc: Don Capobres, Grosvenor USA Limited  
Wendi Baker, Summerhill Homes  
Andy Faber, Berliner Cohen LLP  
Rob Schultz, Town Attorney  
Joel Paulson, Community Development Director

## **ADDITIONAL STATEMENTS AND POLICIES REGARDING DESIRE TO EXCLUDE FAMILIES WITH CHILDREN**

A. Until final revisions were made to the Specific Plan on June 17, 2015, it contained explicit statements showing animus against families with children (see attached final revisions dated June 17, 2015). Among these were:

1. Section 2.7.1: “Residential product types (market rate and affordable) shall be limited to product types that respond to emerging demands of the seniors, empty nesters, and young adult demographics” – all demographics unlikely to have children.
2. Policy I8 stated explicitly that the purpose of these limitations was to discourage school-aged children from residing in the North Forty: “Minimize impacts to schools by designing housing products that cater to senior, empty nester, and young adult demographics.”
3. Appendix C was entitled “Young Adult, Senior, and Empty Nester Design Summary.” It asked, “How does design attract Gen Y and Baby Boomers instead of families?” and suggested nightlife instead of schools and parks, stacked flats (“not good for families because of noise issues”), and elevators rather than direct access to yards.

Removing these provisions from the Specific Plan at the last minute does not correct the animus against school children that has tainted the project review throughout.

B. The Specific Plan continues to have a “Young Adult, Senior, and Empty Nester” summary indicating a desire not to attract persons between 32 and 48 years of age – a demographic most likely to have school-age children. Policy LU10 continues to provide for a mix of residential types “designed to minimize impacts on schools.” At the March 30 hearing regarding the Planning Applications and in extensive correspondence submitted to the Town, most members of the public suggest that housing should be relocated to the Northern District so that fewer children will attend schools in the Los Gatos Union School District and the Los Gatos-Saratoga Joint High School District. At the joint Commission-Council study session held on June 15, 2016, Town staff stated that the Town already has “a lot of family housing” and that designing for senior and youth housing is “an indirect way to get to the school issue” – again demonstrating the Town’s intent to keep school-aged children out of the North Forty, especially Phase One.



February 13, 2015

Town of Los Gatos  
Honorable Mayor Jensen and Council Members  
Housing Element Advisory Board  
c/o Laurel Prevetti, Assistant Town Manager and Community Development Director  
110 E. Main St.  
Los Gatos, California 95031

Honorable Mayor Jensen, Council Members, and Housing Element Advisory Board Members:

At the February 3<sup>rd</sup>, 2015 Town Council Meeting, Council sought direction from Staff and the Town Attorney to determine what the legal limitations may be for requiring developers on the North 40 to provide for either an age 55-plus or 62-plus affordable or market rate component through the North 40 Specific Plan.

This question has arisen on numerous occasions during the Specific Plan process. For our own clarity, we requested a legal analysis from Goldfarb & Lipman. We have attached their conclusions for your reference. In brief, while senior housing can be incentivized by a Specific Plan, requiring such housing types would violate state and federal fair housing laws. .

Although the Town's Specific Plan is still in process, after years of observation and discussion with the Town, we respect that the Specific Plan emphasizes residential design towards the Town's unmet housing needs, including places for senior to live. We embrace the Town's vision in the Specific Plan which allows for the provision of a multi-generational and mixed income neighborhood. We are anxious to continue working with the Town to implement this vision.

We appreciate your consideration of the attached letter, and are available for any questions regarding this matter.

Sincerely,

Handwritten signature of A. Don Capobres in black ink.

A. Don Capobres  
Senior Vice President  
Grosvenor

Handwritten signature of Linda Mandolini in black ink.

Linda Mandolini  
President  
Eden Housing

Handwritten signature of Wendi Baker in black ink.

Wendi Baker  
Vice President of Development  
SummerHill Homes

Attachment: Fair Housing Issues Memo

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Celia W. Lee

Vincent L. Brown

Hana A. Hardy

Caroline Nasella

Eric S. Phillips

Elizabeth Klueck

February 12, 2015

To

Don Capobres, Grosvenor Americas  
Wendi Baker, SummerHill Homes

From

Barbara E. Kautz

**Fair Housing Issues Regarding Planning and Families with Children**

**Summary**

During hearings on the North Forty Specific Plan, public comments have been made opposing the Town of Los Gatos' (the "Town") approval of housing that may attract families with school-age children because of school overcrowding. In particular, proposals have been made that development on the site be limited to senior housing or to other housing that will not accommodate families with school-age children.

Both federal and state law prohibit the Town from using its planning and zoning powers to deny residency to, or make housing unavailable to, or discriminate against, families with children. Planning or zoning restrictions that are adopted to discourage families with children from living in the Town, or that prevent families with children from living in the Town, such as zoning sites to permit only senior housing or limiting the number of bedrooms in residences, would deny residency to, make housing unavailable to, and discriminate against families with children.

Further, a property owner or manager may not select individual tenants or buyers on the basis of age unless the housing is designed as senior housing and the property is operated consistent with federal and state requirements for senior housing.

**Analysis**

**A. Zoning for Senior Housing**

Federal and state statutes forbid the Town from enacting or enforcing land-use laws that operate to make housing "unavailable" based on "familial status."

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

"Familial status" is generally defined as a household containing a person under 18 years of age residing with a parent or guardian. (Gov't Code § 12955.2.)

In particular:

- The federal Fair Housing Act ("FHA") (42 U.S.C. § 3604(a)) forbids actions by cities that operate to make housing "unavailable" based on familial status [and other listed factors].
- The California Fair Employment and Housing Act ("FEHA") (Gov't Code § 12955(l)) prohibits discrimination through land use practices that make housing opportunities "unavailable" because of familial status.
- Planning and Zoning Law (Gov't Code § 65008(a)(1)) invalidates any planning action if it denies the enjoyment of residence to any persons because of familial status, age, [or other factors]. Section 65008(b)(1) forbids cities from prohibiting or discriminating against any residential development because of familial status or age.

Town zoning and planning actions taken for the *purpose* of discouraging the construction of housing for families with children would violate these federal and state fair housing laws. Similarly, planning and zoning actions that on their face prevent occupancy of housing by families with children – even if done without the intent to exclude families with children – would violate federal and state fair housing laws. Examples could include allowing only senior housing to be built on designated sites or limiting the number of bedrooms in homes.

### **The Senior Housing Exception.**

All of the fair housing statutes contain exceptions for senior housing constructed and designed in conformance with Civ. Code §§ 51.2 – 51.4 and similar provisions of federal law. These sections allow discrimination based on age and familial status by a “business establishment” *if* the housing is built and designed to serve seniors. The California Legislature made some of the requirements for senior housing in California more stringent than those imposed by the Fair Housing Act “in recognition of the acute shortage of housing for families with children in California.” (Civ. Code § 51.4(a).) A developer may propose, and the Town may approve, a development proposed by a developer for senior housing but the Town cannot **require** senior housing to be constructed or designate a site for senior housing when there is no proposal or intent by a “business establishment” to construct such housing. There is no exception to this rule for affordable senior housing.

As discussed further in the next section, senior housing in compliance with these provisions must either require *all* residents to be 62 years of age or older; or comply with more stringent design standards and require at least one member of each household to be 55 years of age or older. Housing otherwise cannot have age limits or be limited to 'adults only,' and managers and brokers cannot consider age or familial status in selecting tenants and buyers.

Zoning for Senior Housing. Local agency efforts to *require* housing to be built or even maintained for seniors have usually been overturned by the courts. For example:

- Despite an exemption in State law to allow Riverside County to maintain long-standing senior housing zones, these were found to violate the Fair Housing Act because the County did not ensure that the housing within these zones actually complied with the statutory requirements. (*Gibson v. County of Riverside*, 181 F. Supp. 2d 1057 (C.D. Cal. 2002).) Note also that the specific exemption in State law for Riverside County's zoning suggests that similar zoning by other cities and counties would violate state fair housing laws.
- An ordinance adopted by American Canyon to require a mobilehome park approved as a senior park to maintain its senior status, rather than convert to an all-age park, was found to violate the Fair Housing Act because the park had never, in fact, actually been operated as a senior park in compliance with state and federal law. (*Waterhouse v. Town of American Canyon*, 2011 U.S. Dist. Lexis 60065 (N.D. Cal. 2011).)
- A mobilehome park owner who alleged that the City of Fillmore adopted invalid subdivision conditions for the purpose of preventing the park from converting from a senior park to an all-age park was found to have standing to sue the City under the Fair Housing Act. (*El Dorado Estates v. City of Fillmore*, 765 F.3d 1118 (9th Cir. 2014).

One ordinance was upheld. The Town of Yucaipa was found to be in compliance with the Fair Housing Act when it adopted zoning prohibiting *existing* senior mobilehome parks, which in fact were being operated as senior parks, from converting to all-age parks. (*Putnam Family Partnership v. Town of Yucaipa*, 673 F.3d 920 (9th Cir. 2012).)

The decision was confined to the situation where the parks were already operating as senior housing. The Court specifically declined to determine if its decision would be the same if the housing was not already serving seniors. (*Id.* at 927 n.3) The decision was also based on federal law alone and did not consider possible violations of State Planning and Zoning law or FEHA. State law does

not have the same language which was relied upon by the Court to uphold Yucaipa's ordinance.

The Court also noted that the federal statute included a policy of "preserving" senior housing and that Yucaipa's intent appeared to be to preserve existing senior housing "rather than animus against families with children." (*Id.* at 931.) By contrast, in Los Gatos, there has been extensive public comment, testimony from the School District, and statements by decision-makers indicating that the Town wishes to discourage families with children from residing in the North Forty because of school overcrowding. An early draft of the North Forty Specific Plan stated specifically that, "Residential product types (market rate and affordable) shall be limited to product types that respond to emerging demands of the seniors, empty nesters, and young adult demographics" – all groups unlikely to have children.<sup>1</sup> If the Town of Los Gatos were to require senior housing on the North Forty or to adopt other Specific Plan provisions to prevent or discourage households with children from moving to the North Forty, the record contains substantial evidence of "animus" against households with children.

Incentives for Senior Housing. State and federal laws recognize that there is a need for senior housing and provide funding and incentives to encourage senior housing. For instance, State density bonus law permits all senior housing to receive a 20 percent density bonus whether or not it is affordable. (Gov't Code § 65915(b)(1)(C), (f)(3).) There does not appear to be a violation of fair housing laws if zoning incentives are provided for senior housing, in recognition of its unique characteristics: lower automobile use, less traffic, smaller household size (rarely more than two persons/household). Other incentives typically provided may be lower parking requirements and reduced traffic impact fees. A recent case recognized that there is a statewide priority to develop senior housing, and, when a developer proposed a senior project, the city's zoning of the site for higher density was not illegal spot zoning. (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal. App. 4th 1302.)

However, if there is evidence that these incentives were adopted with the *intent* of excluding housing for families with children, the zoning may be found to be invalid. (*C.f. Pacific Shores Properties LLC v. City of Newport Beach*, 746 F.3d 936 (9<sup>th</sup> Cir. 2014; writ of certiorari denied, 135 S. Ct. 436 (2014)) (holding that facially neutral ordinance invalid where adopted with discriminatory intent).

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<sup>1</sup> HUD's Fair Housing newsletter featured a case filed against the Village of Bronxville, N.Y. challenging a Village ordinance that requires developers to demonstrate that the design of residences is intended to appeal primarily to singles and to couples without children – a provision similar to the original provisions proposed in the Specific Plan.. (*Westchester Residential Opportunities Inc. v. Village of Bronxville* (S.D.N.Y. Case No. 15 CV 00280) (filed January 15, 2015).

## **Conclusion.**

Los Gatos cannot adopt Specific Plan provisions for the North Forty that exclude or discourage families with children, such as by requiring the development of senior housing or by zoning a portion of the site for senior housing only. While the Town can provide incentives for senior housing in view of its unique development characteristics, the incentives could be found to be invalid if they are adopted with the intent to exclude families with children.

### **B. Selection of Buyers and Renters Based on Age**

The Town has asked if the Specific Plan could require developers to reserve some portion of the residences on the North Forty for seniors. Only housing that qualifies as a senior development under both state and federal law may discriminate based on age and familial status (42 USC § 3607(b)(1)-(3); Civ. Code § 51.2(a)). Developers cannot choose to reserve a portion of the units in a non-senior project for seniors, nor can local government require them to do so

Both the federal Fair Housing Act and California's Unruh Act contain standards specifying whether a development qualifies as "housing for older persons" and may discriminate based on age and familial status. Reading the two Acts together, they allow the following types of senior housing:

- Housing provided under a state or federal program that HUD recognizes as intended for elderly persons (42 USC § 3607(b)(2)(A)); Civ. Code § 51.2(e));
- Housing with fewer than 35 units occupied *solely* by persons 62 years of age or older (42 USC § 3607(b)(2)(B); Civ. Code § 51.2); and
- Housing with 35 units or more either occupied *solely* by persons 62 years of age or more; or occupied by households where at least one occupant is 55 years or older (42 USC § 3607(b)(2)(C); Civ. Code § 51.2 – 51.3).

All new senior housing must include certain design features and have rules and covenants clearly restricting occupancy consistent with the federal and state occupancy requirements. Further, the policies, procedures, and marketing must demonstrate that the project *as a whole* is intended for seniors. (54 Fed. Reg. 3255 (Jan. 23, 1989).) Mixed-income developments are only possible if separate buildings are constructed for each income group.

If a development is not designed as senior housing, the owner or manager cannot use age or familial status as a criterion in deciding whether to sell or rent a home.

February 12, 2015  
Page 6

### **Conclusion**

Requiring developers of non-senior housing to reserve a percentage of the units for seniors would violate state and federal housing laws.

**BERLINER COHEN**  
ATTORNEYS AT LAW

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LESLIE KALIM McHUGH

May 27, 2015

Mayor Marcia Jensen  
and Members of the Town Council  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty Specific Plan  
Agenda: June 2, 2015

Dear Mayor Jensen and Councilmembers:

On behalf of our clients, Grosvenor Americas and SummerHill Homes, we write to express concerns about several aspects of the discussion the Council has had so far regarding the North Forty Specific Plan and provisions of the Revised Specific Plan. In particular, we have serious questions as to (a) provisions regarding schools; (b) the public open space requirements for the project; and (c) the limitation on the size of private open space.

This letter is from Andrew Faber as well as from attorney Barbara Kautz of Goldfarb & Lipman LLP.

For the legally challenging reasons explained below, we ask that in adopting the North Forty Specific Plan, the Council: (1) eliminate new policies I9 and I10 related to schools; (2) not require that all open space in the Plan Area be open to the public, (3) not place any size limitation on private open space.

### Provisions Regarding Schools

The Revised Draft Specific Plan has added two policies related to schools. Policy I9 provides that "Developers are encouraged to collaborate with School Districts to address school needs." Policy I10 states that:

"Developers *shall* work closely with School Districts to project enrollment growth and address overcrowding by assisting with identifying strategies for providing needed school facilities and associated sources of funding." (emphasis added)

The Leroy F. Green School Facilities Act of 1998 ("SB 50") strictly limits the requirements that local agencies may place on developers in relation to school overcrowding. In particular, SB 50 provides:

"A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable." (Gov't Code § 65995(i).)

In addition, payment of fees "shall be the exclusive method[] of considering and mitigating impacts on school facilities," and "are . . . deemed to provide full and complete school facilities mitigation." (Gov't Code §§ 65996 (a) and (b).) In other words, school impact fees constitute adequate mitigation of school impacts, and a local agency cannot deny a project because the developer has not taken actions to address overcrowding in addition to payment of school fees.

Policies I9 and I10 are inconsistent with SB 50. Both require developers to take actions to address overcrowding in addition to payment of school impact fees. This is especially ironic given the various provisions intended to reduce student generation to one-third of that expected from single-family homes, and the Specific Plan's statement that the number of students anticipated is "minimal." (p. 5-15, Revised Draft.) We request that these policies be removed from the Plan.

### Public Open Space Requirements

With regard to requiring all open space to be accessible to the public, there was discussion at the April 14, 2015 Council meeting of possibly not counting certain hardscapes, podium green space, or areas not open to the public as open space. If these restrictions are adopted, then in our clients' opinion, it will not be feasible to develop a project consistent with the Specific Plan and with a density and an affordable component that satisfies the Town's Housing Element.

In addition, any requirement that all open space areas must be accessible to the public would amount to an unconstitutional taking of private property, in violation of the Just Compensation

Clause of the United States and California Constitutions, as well as well-established federal and state Supreme Court decisions. *See Dolan v. City of Tigard* (1994) 512 U.S. 374; *Nollan v. California Coastal Commission* (1987) 483 U.S. 825; *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854.

A requirement for provision of public open space cannot be justified unless it is needed to mitigate the impacts of private development. The standard of the *Nollan*, *Dolan*, and *Ehrlich* cases requires that there be an essential nexus to the impacts of the project, and that the requirement be roughly proportional to those impacts.

However, this nexus requirement is not satisfied in the North 40 Specific Plan. There is no impact on public open space due to the passage of the North 40 Specific Plan or the planned development on the Plan Area. The EIR identifies no such impact, and the Town has no ordinance requiring public open space in new developments, since there is already abundant public open space in the Town, including near to the Plan Area. Furthermore, in fact there will be extensive open space available to the public under the proposed plan and development, including landscaped setbacks, the orchard land required to be preserved, plazas, paseos, and trails and walkways. Requiring that all designed open space areas be open to the public would thus be unlawful.

#### Private Open Space Size Limitations

The May 2014 hearing draft and the Revised Draft of the North 40 Specific Plan propose in Section 2.7.2 to limit the amount of private open space per unit to 200 square feet – the approximate size of a one-car parking space – a space too small for usual outdoor activities such as hosting friends or family for a barbecue and outdoor dining.

The stated purpose of this limitation is to “encourage the residential product types targeted in the plan area,” which “shall be limited” to housing that serves “seniors, empty nesters, and young adult demographics.” (Section 2.7.1.) Policy 18 of the North 40 Specific Plan makes clear that this requirement is intended to discourage families with school-age children from living in the North 40. (p. 5-1.) The January 2013 Administrative Draft included even more explicit language, specifying that open space was to be provided to support “adult” lifestyles while discouraging families with children from living in the North Forty. (pp. 2-10, 2-12, 3-19, 3-20.)

Federal and state law forbid local governments from enacting or enforcing land-use laws that discriminate based on familial status (42 USC § 3604(b)), interfere with an owner’s efforts to make housing available to families (42 USC § 3617), or impose different requirements on residential developments because of familial status (Gov’t Code § 65008(d)(2); *see also* Gov’t Code § 12955(l).) While a limitation on private open space may seem neutral on its face, outwardly neutral actions by a city that are motivated by an intent to discriminate violate fair housing laws. (*See Budnick v. Town of Carefree*, 518 F.3d 1109 (9th Cir. 2008).) A court does not need to find this was the sole reason that the Town adopted a limitation on private open space, only that this was the more likely motivation. (*Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999); *see also* Gov’t Code § 12955.8(a).)

Los Gatos Town Council  
May 27, 2015

Because the limitation on private open space is specifically intended to discourage families with children from living in the North 40, we request that this limitation be removed from the North 40 Specific Plan.

\* \* \* \*

We recognize that what is in front of the Town is the North Forty Specific Plan and not our clients' development project. However, the fact that the Town is considering a Specific Plan, and not giving entitlements to an actual project, does not change in any way the applicable standards for approval. Since a project will have to comply with the Specific Plan, if the Town puts invalid and unconstitutional requirements into the Plan, then in effect, the Town is saying that it will impose such improper requirements on the ensuing project as well.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: [andrew.faber@berliner.com](mailto:andrew.faber@berliner.com)

GOLDFARB & LIPMAN LLP

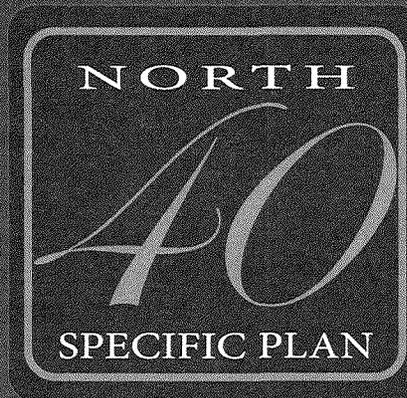


BARBARA KAUTZ

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ALF:cem

cc: Rob Schultz, Esq.  
Laurel Prevetti  
Wendi Baker, SummerHill  
Don Capobres, Grosvenor



## 2. LAND USE AND DEVELOPMENT STANDARDS

- Public art
- Special paving: decorative pavers, decomposed granite, cobblestone
- Focal points such as architectural structures, sculptures, and fountains
- Multi-modal linkages

In the Lark District the pathways will provide connections between common areas and pocket parks and links to the streets and the neighborhood commercial areas in the Transition District. These pathways should provide safe and convenient access as well as an amenity to the neighborhood.

Pathways might include:

- Paved or permeable surfaces
- Landscaping
- Orchard planting
- Sitting areas
- Pedestrian oriented lighting
- Public art
- Focal points such as gardens, trellises, or art

b. Perimeter Buffer/Perimeter Overlay Zone (refer to Section 2.5.6)

- The perimeter of the site is intended to emphasize the character and heritage of Los Gatos. Large trees and shrubs will surround the Specific Plan Area on the north and west sides (refer to Landscape Palette in Chapter 3), creating a

natural buffer between future development and Highways 17 and 85. The buffer should also provide an opportunity to incorporate walking paths and sitting areas for passive recreation.

- Along Los Gatos Boulevard and Lark Avenue, orchard planting will be used in the buffer to reflect the agricultural heritage of the site.

c. Common Recreational Amenities

A variety of recreational amenities ~~catering to an active adult lifestyle~~ shall be incorporated as residential common areas. ~~Amenities can include horseshoe pits, bocce ball courts, pocket parks, trails and paths, as well as sitting/dining areas.~~ These areas may be either common areas for the residents of a particular building **and/or** open to the public. They are intended to provide a variety of opportunities ~~for residents to gather with friends and family, provide a variety of sitting areas for single and multiple users, integrate barbecue areas for entertaining, and create passive areas for a pick-up game of football or an intimate picnic.~~ Amenities for pocket parks may include:

- Water features
- Picnic areas
- Sitting areas
- Lawn/grassy areas for passive recreation
- Landscaping
- Safe and convenient connections to adjacent uses
- Bocce ball courts and horseshoe pits

### 2.6.8 FENCING

Fencing is not permitted in required front setbacks or required setbacks abutting a street in any non-residential use, except walls or fences not over three feet high may be erected to screen on-site parking spaces from the street or to separate outdoor dining areas from the sidewalk.

### 2.6.9 OUTDOOR STORAGE

When a Conditional Use Permit is granted for outdoor storage, the area for storage must be suitably screened from adjoining property by a wall, dense evergreen hedge of trees or other screening planting, or by a solid fence not less than six feet high. Materials shall not be stored in such a manner as to project above the wall, planting or fence.

### 2.6.10 RECYCLING COLLECTION FACILITIES AND VENDING MACHINES.

Small recycling collection facilities and vending machines may be permitted outdoors subject to the approval of the Director of Community Development and shall be subject to the following conditions:

- a. The facilities cannot be located in any manner so as to decrease the number of required on-site parking spaces.
- b. Vending machines and reverse vending machines are to be located indoors whenever possible and not more than two of these machines are permitted outdoors unless grouped together within a common enclosure.

- c. A trash receptacle is to be located within five feet of any recycling facility.
- d. The machines and facilities must be maintained on a scheduled basis so as to ensure their general upkeep and cleanliness.
- e. If a facility is proposed for a vacant lot, the lot must provide proper traffic circulation consisting of an all-weather surface, including one on-site employee parking space and an adequate drop-off area.
- f. The facility must provide for pedestrian circulation.

## 2.7 RESIDENTIAL DEVELOPMENT STANDARDS

### 2.7.1 INTENT

The following development standards supplement the previous Area-wide Standards and apply to any development that is a 100% residential use. ~~Residential product types (market rate and affordable) shall be limited to product types that respond to emerging demands of the seniors, empty nesters, and young adult demographics — including condominium, cottage cluster, garden cluster housing, live-work flats, multi-family flats, multiplexes, rowhouses and townhomes. Single family detached housing is not allowed except for the Cottage Cluster product types.~~

### 2.7.2 RESIDENTIAL OPEN SPACE

~~Private Open Space — To encourage small yards/patios/terraces and the residential product types targeted in the Plan Area, there is a maximum of 200 square feet/unit of ground floor private open space allowed.~~



## 5. INFRASTRUCTURE AND PUBLIC FACILITIES

## 5. INFRASTRUCTURE AND PUBLIC FACILITIES

### 5.1 INTRODUCTION

The construction of on-site and off-site infrastructure improvements will be required to serve proposed development within the Specific Plan Area. The Specific Plan is intended to plan for infrastructure and services that meet Town and other utility agency standards, without diminishing services to existing residents or businesses.

This chapter provides an overview of the major utility infrastructure improvements and the public facilities needed to serve full build-out of the Specific Plan Area. Utilities addressed include stormwater, potable water, wastewater, electricity, natural gas and telecommunications. Services include law enforcement, fire protection, waste management, parks and open space, and public schools. Transportation infrastructure requirements are addressed in Chapter 4, Circulation and Streetscape. Phasing and financing are addressed in Chapter 6.

### 5.2 INFRASTRUCTURE AND PUBLIC FACILITIES GOALS AND POLICIES

**Goal:** *To meet the infrastructure and public facilities needs of the Specific Plan Area without impacting existing developed areas.*

#### Policy I1: Sustainable Solutions

Minimizing impacts to the environment and maximizing sustainability.

#### Policy I2: Phasing

Developing cost effective solutions that can be constructed in phases.

#### Policy I3: Flexible Design Solutions

Providing flexible options that can adapt to market conditions.

#### Policy I4: Water

Provide water-saving solutions in new developments and utilize water-efficient irrigation management systems and devices, such as evapotranspiration or soil moisture-based irrigation controls.

#### Policy I5: Stormwater

Limit the development of impervious surfaces, to the extent practical in order to reduce post-project runoff rates and promote harvesting rainwater and infiltration, to the greatest extent practical, for irrigation and/or other non-potable purposes.

#### Policy I6: Construction

Construction and grading activities shall comply with Best Management Practices and Stormwater Pollution Prevention Plan policies per Regional Water Quality Control Board requirements. Development projects shall obtain a Construction General Permit that is in compliance with the National Pollutant Discharge Elimination System (NPDES) requirements as well as the requirements for Storm Water Discharges Associated with Construction and Land Disturbances Activities.

#### Policy I7: Wastewater

Minimize wastewater flows through indoor water use efficiency efforts.

#### Policy I8: Minimize School Impacts

~~Minimize impacts to schools by designing housing products that cater to senior, empty nester, and young adult demographics, while complying with Senate Bill 50, Schools Facilities Act.~~

#### Policy I9: Address School Needs

Developers are encouraged to collaborate with School Districts to address school needs.

# APPENDIX C - YOUNG ADULT, SENIOR, AND EMPTY NESTER DESIGN SUMMARY

## DESIGNING FOR GEN Y AND BABY BOOMERS

### *How does design attract Gen Y and Baby Boomers instead of families?*

There is an art to designing residential products to target certain generations. The desirable design characteristics are ever-evolving.

Some current trends include:

- Design of units (e.g., families want attached vs. detached units, yard vs. patio/terrace, direct access to yards vs. elevators—ease of access for riding a bike, playing outside, etc.)
- Size of units—typically for both the Gen Y and Baby Boomers, the units are smaller than those required for families, however, there are some hip Gen Y loft products and higher-end Baby Boomer products designed with larger footprints.
- Garage access—families prefer garages connected directly to homes (for storage, child safety, infant carrier, ease of access, unloading groceries, etc.)
- Density—higher density products (stacked flats) are not good for families due to noise issues (children running and playing in flats)
- Common amenities within complex (tot lots vs. wine bar)
- Amenities in the locale (nightlife, personal service and recreation vs. schools, parks and grocery stores)



July 8, 2016

Joel Paulson  
Town of Los Gatos Planning Department  
110 E. Main St.  
Los Gatos, California 95031

**Re: Response to Questions Raised at March 30, 2016 Planning Commission Study Session and June 15, 2016 Joint Study Session - North Forty**

Dear Joel:

In preparing our application for Phase One of the North Forty, we have designed a project that conforms with all objective standards established in the North Forty Specific Plan. The Town's Housing Element (Actions HOU-1.7, HOU-2.2 and HOU-2.4) states that it will review a project on the North Forty based only on these objective criteria, and State law (Government Code Section 65589.5(j)) requires the same. If the project conforms to the objective standards in the Plan, it must be approved by the Town.

At the March 30<sup>th</sup> 2016 Planning Commission Study Session, several questions were raised regarding the design and site planning of our proposed North Forty application. Because our application conforms to the Plan, these changes cannot be required by the Town. (Please see letter submitted and dated July 8, 2016 from Barbara Kautz – Goldfarb Lipman and Andrew Faber – Berliner Cohen.) Nonetheless, we have seriously considered the suggested changes and have responded to the questions raised, as discussed below.

**Question 1:** Why can't the units specified in the Town's North 40 Specific Plan as "Cottage Cluster" or single family detached be utilized in the project application?

**Discussion:** The Specific Plan is "focused on multi-family housing types." (Section 2.4, Page 2-6.) Single family detached homes are expressly prohibited in the Specific Plan except for "cottage cluster" residential units, in the Lark District only, and only with the approval of a Conditional Use Permit. Given the standards contained in the Specific Plan (Section 2.7.3.e, Page 2-26; page 6-10; and required setbacks), which require that cottage housing be designed as a collection of small houses arranged around a common green space with consolidated parking, the maximum density that can be achieved is approximately 12-13 units per acre. (See attached 1-Acre "Cottage Cluster Study"). The North 40 is included in the Town's Housing Element, which

requires by-right development at a minimum density of 20 units/acre. This required density cannot be achieved on the site if cottage clusters are included.

Question 2: Why can't the application propose basements, rather than 3<sup>rd</sup> stories, to achieve the density required by the Housing Element?

Discussion: No policies in the Specific Plan require basements or suggest that basement units would be desirable. Units with substantial living space contained in basements are much less livable, with a large amount of the space effectively underground and with little access to light. Basements are typically utilized for supplemental space rather than primary living space. Additionally:

- Light wells with associated railings would penetrate into the pedestrian paseos and sides of buildings, with approximately 35 square feet of open space per unit lost, for a total of 10,480 square feet of open space in the paseos for light wells. (See attached "Lark District and Transition District Area D Basement Study".)
- Dirt off haul would extensively increase. The addition of basements results in approximately 40,000 cubic yards of basement off haul, creating 3,350 truckloads of dirt that would need to be removed from the property. Because basement living space was not considered when the Specific Plan was adopted, any potential additional impacts of basement construction were not evaluated in the EIR.

For all of these reasons, replacing a third story with basements is not a feasible alternative. Please see attached "Lark District and Transition District Area D Site Plan Basement and Lightwell Areas" and "Basement Study – Total Dirt Off Haul for Basements".

Question 3: Why can't the units be spread out into the Northern District?

Discussion: The applicants do not own area within the Northern District, and therefore the application is for the property within their control. However, the Northern District is described as a "day-to-evening entertainment area that offers shopping and restaurants for nearby residents as well as employment centers" and allows only limited residential over commercial. (Specific Plan 2.3.3, page 2-4.) Building heights cannot exceed 35 feet. (Specific Plan 2.5.2(a), page 2-11). A study is attached that represents a "perfect" 2.37 acre parcel that accounts for the Specific Plan requirements, including retail and residential parking, 30% open space, 50% maximum building coverage per application, and a 35' height limit. As this exhibit shows, even with 1-bedroom apartments at 750 square feet, a density of approximately 14 units per acre can be achieved, below the required minimum density of 20 units per acre. Please see attached exhibit, "Single Level of Housing above Commercial Density Study".

In conclusion, we have considered carefully these specific suggestions for amendments to our project design and have concluded that they are not feasible. They cannot be imposed on the project because none of these changes are required by the Specific Plan. As described in the

attached Project Summary, the proposed community is a celebration of the Los Gatos quality of life that will be an asset to the community.

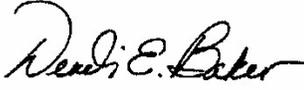
Sincerely,



A. Don Capobres  
Principal  
Harmonie Park Development

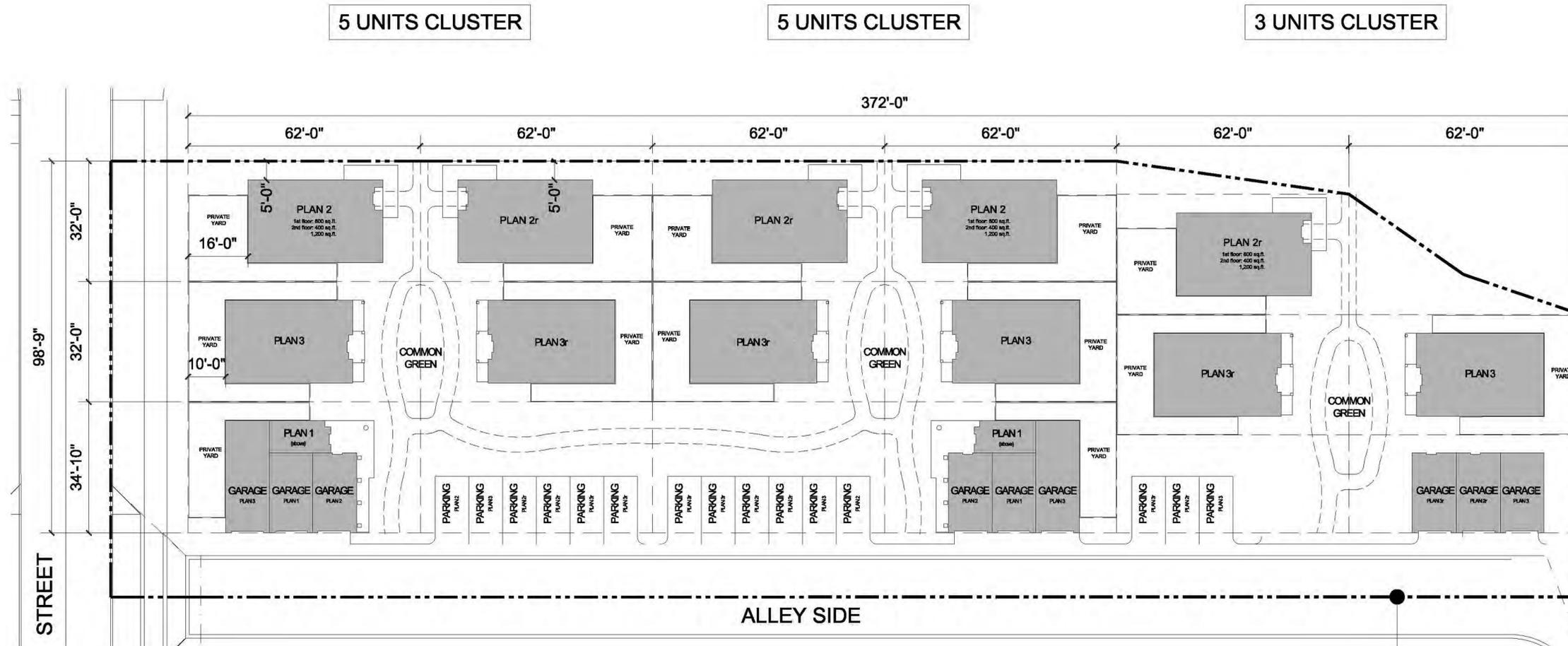


Linda Mandolini  
President  
Eden Housing



Wendi Baker  
Vice President of Development  
SummerHill Homes

MAIN STREET SIDE



HYPOTHETICAL PLOT OF A 1 ACRE LOT WOULD YIELD 13 COTTAGE CLUSTER UNITS.  
**MAXIMUM DENSITY APPROXIMATELY : 13 UNITS/ACRE**



**LEGEND**

- RH - BUILDING TYPE

**BUILDING TYPES**

- GC - GARDEN CLUSTER
- RH - ROWHOME
- CC - CONDOMINIUM CLUSTER

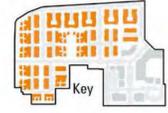
**BASEMENT AREA**

**LIGHTWELL AREA**

**Lark District & Transition District Area D  
Site Plan  
Basement & Lightwell Areas**

**NORTH FORTY**

**LOS GATOS, CA**



192-072 | 07.05.16

Scale: NTS  
**Exhibit E**

**GARDEN CLUSTER**

Dirt Off Haul	Light Well (Sq Ft)	Basement (Sq Ft)	Total Area (Sq Ft)	Total Cubic Ft x10' deep	Cubic Yard	Plan occurrence	Cubic Yard
Plan 2 + Plan 2x	80	713	793	7,930	294	14	4,112
Plan 3	80	886	966	9,660	358	8	2,862
Plan 6	80	813	893	8,930	331	10	3,307
Plan 7	120	863	983	9,830	364	10	3,641
<b>Total Cubic Yard</b>							<b>13,922</b>

note: plan 2 occur 10 times, Plan 2x occurs 4 times @ GC 7/8 plex

Note: All GC-5plex plan 1x & 2x are not included in this calculation.

**CONDO CLUSTER**

Dirt Off Haul	Light Well (Sq Ft)	Basemen t (Sq Ft)	Total Area (Sq Ft)	Total Cubic Ft x10' deep	Cubic Yard	Plan occurrence	Cubic Yard
Plan 1	28	253	281	2,806	104	20	2,079
Plan 3	28	186	214	2,144	79	10	794
Plan 4	120	1594	1714	17,135	635	10	6,346
Plan 6	32	443	475	4,750	176	10	1,759
Plan 7	48	398	446	4,460	165	10	1,652
<b>Total Cubic Yard</b>							<b>12,630</b>

**ROWHOME**

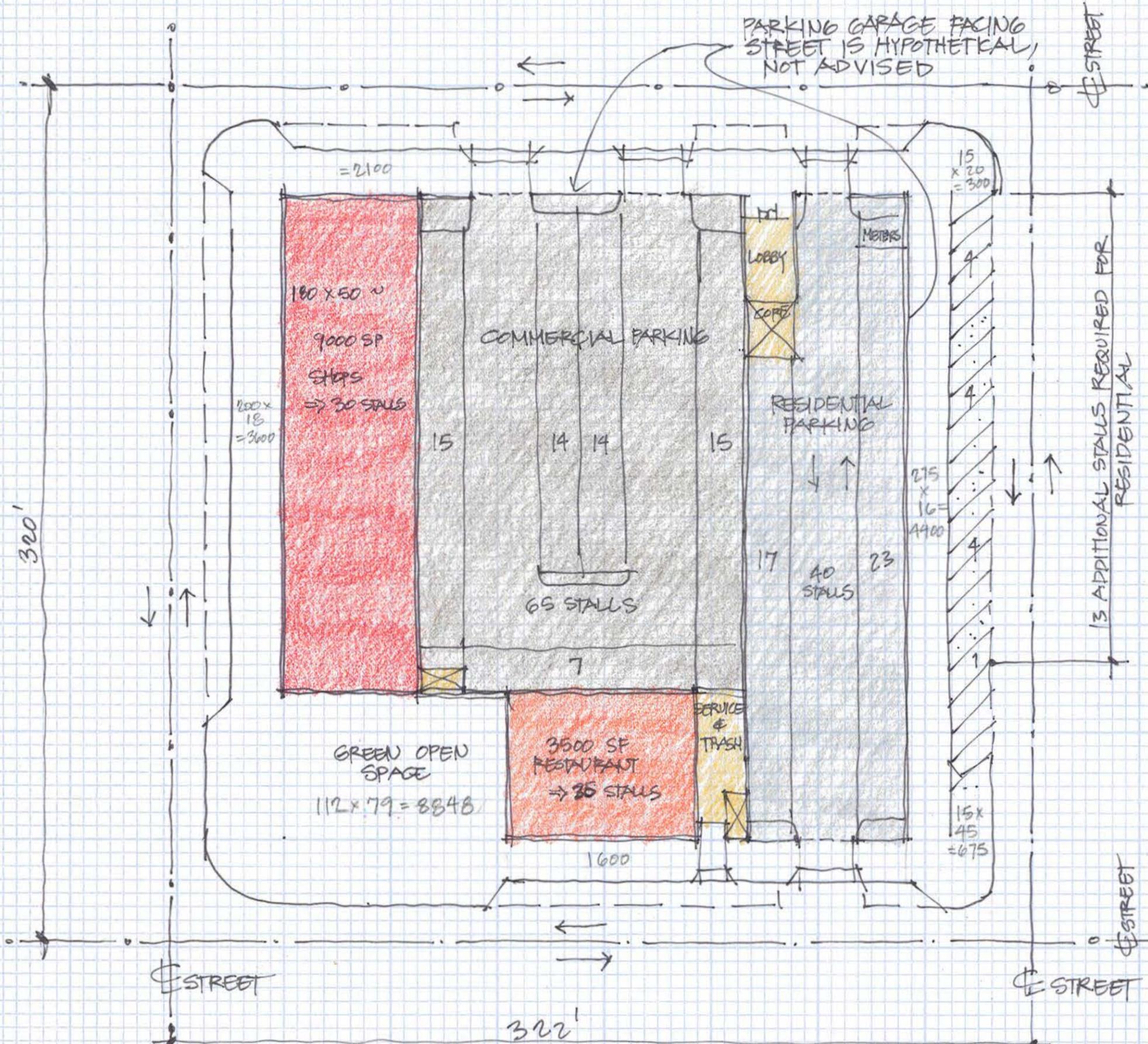
Dirt Off Haul	Light Well (Sq Ft)	Basement (Sq Ft)	Total Area (Sq Ft)	Total Cubic Ft x10' deep	Cubic Yard	Plan occurrence	Cubic Yard
Plan 1	40	295	335	3,350	124	36	4,467
Plan 2	40	312	352	3,520	130	37	4,824
Plan 3	40	372	412	4,120	153	24	3,662
<b>Total Cubic Yard</b>							<b>12,953</b>

Note: Table above shows only a rough estimate for dirt Off haul calc.

**TOTAL ADDITIONAL DIRT OFF HAUL FOR BASEMENTS = 39,505 CUBIC YARD**

**TOTAL LIGHTWELLS AREA = 10,480 SQUARE FEET (OPEN SPACE LOST)**

**Lark District & Transition District Area D  
Basement Study  
Total Dirt Off Haul for Basements**



SITE AREA  
 $323 \times 320 = 103,360 = 2.37$  ACRES

LOT COVERAGE MAX = 50%  
 $103,360 \times 50\% = 51,680$   
 $235 \times 240 = 56,400$   
 $-(85 \times 50) < 4,760$  OK  
 $= 51,640$

OPEN SPACE MIN 30%  
 $103,360 \times 30\% = 31,008$

GROUND FLOOR	8848
	3600
	2100
	300
	4400
PODIUM	675
	1600
	10450
<u>31,973</u> OK	

COMMERCIAL PARKING

SHOPS: 9000 SF, RATIO 1 STALL PER 300 SF = 30 STALLS

RESTAURANT 3500 SF RATIO 1 STALL PER 100 SF = 35 STALLS

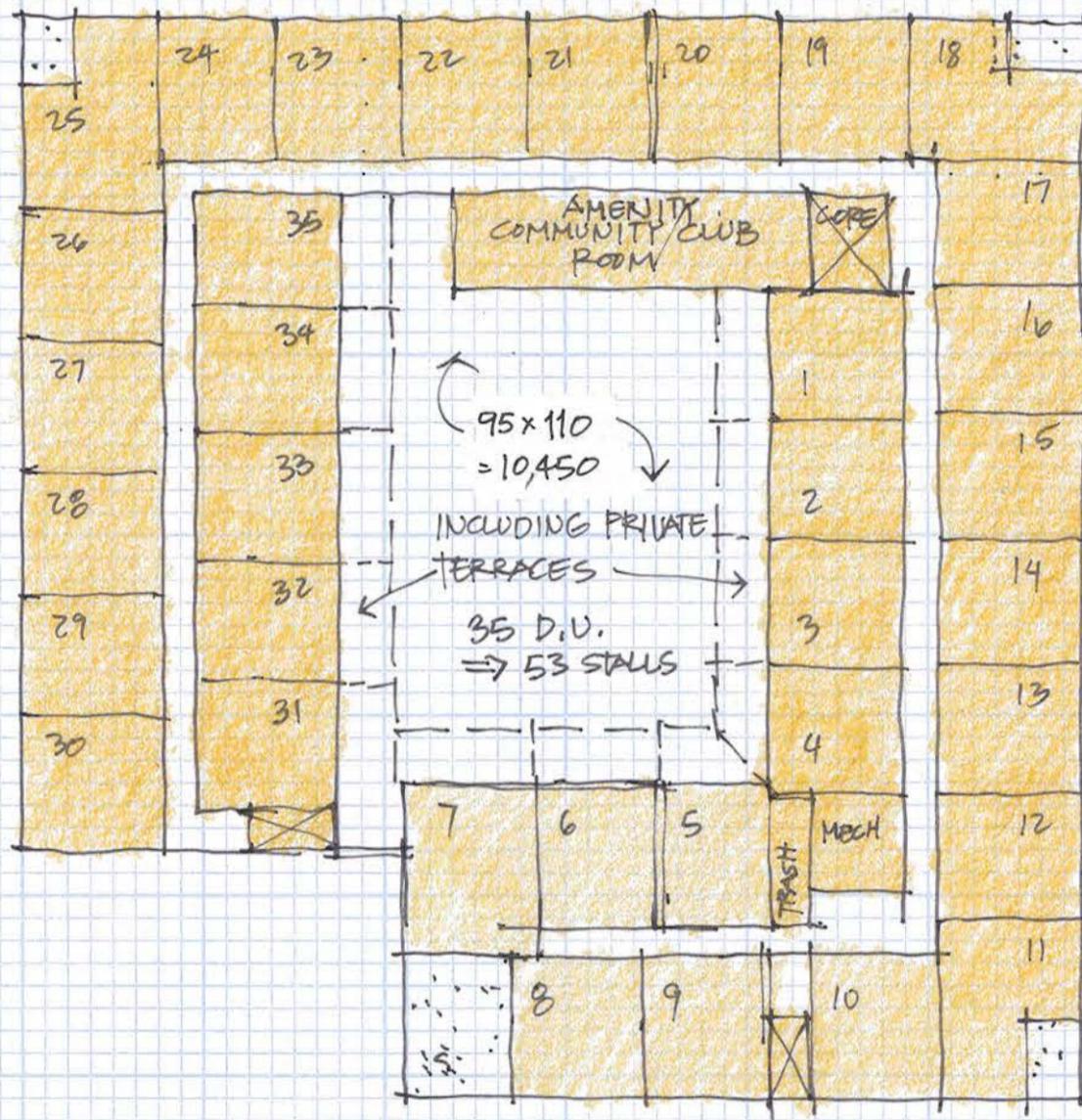
65 REQUIRED

65 COMMERCIAL STALLS PROVIDED ← OK

NORTH 40  
 PLANNING STUDY  
 HYPOTHETICAL BLOCK

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 10 140 180 1120 1 OF 2

THE IDEALLY-SIZED BLOCK TO ACCOMODATE REGULAR PARKING BAYS & SIMPLE RESIDENTIAL, EFFICIENT PLAN.



PODIUM PLAN

EFFICIENT RESIDENTIAL PLAN  
W/ DOUBLE-LOADED CORRIDOR

RESIDENTIAL PARKING

1 STALL / DU ASSIGNED  
0.5 STALL / D.U. GUEST  
1.5 STALLS / DU RATIO REQ'D

DWELLING UNIT COUNT

35 DU.  
35 x 1.5 STALLS/DU =  
=> 53 STALLS REQUIRED ←

RES. PARKING PROVIDED

40 STALLS UNDER PODIUM  
13 STALLS ON GRADE  
53 STALLS PROVIDED ←

OK

SITE AREA : 2.37 ACRES

DU/ACRE = 14.77  
ON A SITE WITH IDEAL  
PROPORTIONS & DIMENSIONS

SMALL OR IRREGULAR BLOCKS  
WOULD HAVE LOWER DENSITY

D.U. SIZE ASSUMPTIONS

SMALL UNIT → 750 NET RENTABLE/  
SELLABLE

⇒ 810 GROSS INCL.  
EXT WALLS

+ WIGGLE ROOM FOR  
INS & OUTS IN ARCHITECTURE  
& SOME W/ DECKS @ 60 SF

∴ DESIGN MODULE =  
~900 GROSS SF

NORTH 40  
PLANNING STUDY  
HYPOTHETICAL BLOCK

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6 JULY 2016  
2 OF 2