



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 3rd, 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,

A. Don Capobres
Senior Vice President
Grosvenor

Linda Mandolini
President
Eden Housing

Wendi Baker
Vice President of Development
SummerHill Homes

Attachment: Fair Housing Issues Memo

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February 12, 2015

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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."

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"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.¹ 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 (9th Cir. 2014; writ of certiorari denied, 135 S. Ct. 436 (2014)) (holding that facially neutral ordinance invalid where adopted with discriminatory intent).

¹ 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.

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Conclusion

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

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TOWN OF LOS GATOS
PLANNING DEPARTMENT

March 25, 2015

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

Re: Density Bonus Program Application – North Forty

Dear Town Manager Prevetti:

This letter is written on behalf of the application of Grosvenor Americas for a density bonus and other waivers of development standards as required by California Government Code Section 65915; Sections 29.10.405 – 440 of the Town Code; and the Town of Los Gatos Density Bonus Program Guidelines. It responds to additional questions raised by the Town and incorporates by reference our letter of March 10, 2016.

As background, the modifications being requested for the North Forty are as follows:

1. A density bonus of 35 percent, increasing the permitted density from 237 units to 320 units.
2. Waivers of the development standards listed below that would physically preclude construction of the development with the density bonus:
 - a. Measurement of building height from finished grade rather than existing grade; and
 - b. Increase in permitted height of the affordable units from 45 feet to 48'8" at the top of the roof ridge and to 53 feet at the elevator enclosure over the stair to the roof.

The questions that have been raised relate to: 1) the calculation of the permitted density bonus; and 2) the need to measure building height from finished grade rather than existing grade.

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EXHIBIT 2 2

I. Proposed Density Bonus.

A housing development application is entitled to a density bonus over the otherwise "maximum allowable residential density." (Gov't Code Section 65915(f).¹) The "maximum allowable residential density" is the density allowed under the land use element of the general plan and the zoning ordinance. (On the North Forty, the North 40 Specific Plan serves as the zoning ordinance for the site.) If a range of density is permitted, the "maximum allowable residential density" means the "**maximum** allowable density" applicable to the project under the zoning ordinance and land use element. (Gov't Code Section 65915(o)(2).²) The density bonus is calculated "as of the date of application by the applicant to the [Town]." (Section 65915(f).)

Currently, the Land Use Element of the Town's General Plan and the North 40 Specific Plan provide that the maximum residential development permitted on the North Forty is 270 units. The Housing Element states that 13.5 acres of the site is intended to accommodate 270 residences at a minimum density of 20 units per acre. It is clear from the Specific Plan that the 270 units of housing are intended to be located primarily in the Lark District and secondarily in the Transition District; 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. The current application includes most of the Lark and Transition Districts.

The only limitation on density in the North Forty provided in the Town's Land Use Element and the Specific Plan is the 270-unit total. Therefore, the "maximum allowable residential density" (without a density bonus) permitted for this application is 270 units, the maximum shown in the Land Use Element and Specific Plan, less the nineteen existing units located elsewhere in the North Forty.

The current application must be reviewed on its own terms, based on the **maximum** density allowed by the Land Use Element and Specific Plan. The "maximum allowable residential density" cannot be reduced by modifying the Land Use Element and Specific Plan after the application was submitted to reallocate some units to other sites within the North Forty not currently planned for significant amounts of housing or to add a phasing requirement that does not currently exist in the plan. Additionally, this change would conflict with numerous other Specific Plan policies, which anticipate that most of the residences will be located in the Lark and Transition Districts and that the Northern District would have limited residential uses. Any reduction in density would also not enable the development to meet the 20 units per acre requirement established in the Housing Element.

Although the project could request that its density bonus be calculated over the maximum amount (270 units less the nineteen existing units), the current application calculates the density bonus over a base density of 237 units, given **net** residential acreage of less than 13.5 acres, to be

¹ All further references are to the Government Code.

²

consistent with the Housing Element. With a 35 percent bonus, the project is entitled to 320 units, as shown in our March 10 letter.

II. Proposed Waivers of Development Standards.

The North Forty application includes requests for two waivers of development standards under the provisions of Section 65915(e). This section provides that a city may not apply a development standard "that will have the effect of physically precluding the construction of a development [with affordable housing] at the densities...permitted by this section."

We understand that the Town is primarily concerned about the request to measure building heights from finished grade rather than from existing grade. Finished grade may be 0.1 to 5 feet (in limited areas) above existing grade. As described in our March 10 letter, this limited fill is required because of the need to provide ADA accessibility, meet requirements for stormwater quality, provide adequate flood control, balance cuts and fills to the extent feasible, and conform to existing boundary conditions.

As a consequence, three-story units cannot be constructed in these areas of fill and meet the 35-foot height limit if height is measured from existing grade (effectively reducing the permitted height by 0.1 to 5 feet). A third story, even if measured from existing grade, can barely be accommodated within the 35-foot height limit and is not possible if the height is measured from existing grade. Because 75 percent of the units have three stories, we estimate that 97 units will be lost if the heights are reduced to two stories, "physically precluding" a project with the 320 units that the project is entitled to.

Conformance with the Specific Plan. Limiting most building heights to two stories would be inconsistent with the Specific Plan's design guidelines and require further requests for waivers from those provisions. The Specific Plan contemplates a mix of two and three story residences in the North Forty. Specifically:

- Policy LU10 calls for a mix of residential product types.
- Section 2.5.2(a)(ii) requires a *minimum* of 15 percent of the units to have two stories, with most located in the Perimeter Overlay zone, but this clearly contemplates that most residences will have three stories.
- Section 2.7.3 specifies that the residential units *shall* range in size and states that it should accommodate a mix of residential product types to create the character of an authentic neighborhood. The illustrative example of unit size mix included in the glossary shows units sizes ranging from 1,000 to 2,350 sq. ft. for the market-rate units.
- Sections 3.3.6(b), (c) and (d) require a variety of building forms and variations in height and roof shape. Section (h) discusses adding variety to second and third floors.

- Many of the graphic examples provided of the desired building forms show buildings of three stories or more with a height of at least 35 feet measured from finish grade.

The project that has been submitted to the Town conforms with all of the detailed design guidelines included in the Specific Plan but cannot provide the variety and types of housing contemplated if the site cannot contain three-story buildings.

In *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the City of Berkeley granted waivers of development standards as part of a density bonus application. In particular, Berkeley approved additional building height and reduced setbacks to accommodate certain project amenities, including an interior courtyard, a community plaza, 15-foot ceilings in the commercial space, and nine-foot ceilings in the residences. Wollmer contended that Berkeley's usual development standards did not "physically preclude" construction of the project with the density bonus because no waiver would be required if the developer removed all of the project amenities.

The Court rejected this argument, stating:

[N]othing in the statute requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. The statute does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed. Had the City failed to grant the waiver and variances, such action would have had "the effect of physically precluding the construction of a development" meeting the criteria of density bonus law. *Id* at 1346-47.

The development proposed on the North Forty is requesting a waiver not to provide additional amenities but merely to provide the design variety and types of housing required by the Specific Plan. Failure to grant this waiver would have the effect of "physically precluding" the development *required* by the Town's own Specific Plan.

Grounds for Denial. A request for a waiver cannot be denied because of aesthetic impacts. It may be denied only if it would be contrary to state or federal law, have an adverse impact on property listed in the California Register of Historic Resources, or have a "specific, adverse impact, as defined in [Government Code Section 65589.5(d)(2)], upon health, safety or the physical environment." (G.C. Section 65915(e)(1).) Section 65589.5(d)(2) defines a "specific, adverse impact" as "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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety." An aesthetic impact is not based on "public health or safety" standards.

March 25, 2016

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The proposed Phase I development on the North Forty would provide the Town with much needed affordable housing. The development provides more than enough affordable housing to qualify for the density bonus and waivers requested and will provide a substantial portion of the Town's regional share of housing. Therefore, on behalf of Grosvenor Americas, we respectfully request that the Town approve the above requests.

If you have any questions regarding these requests or if you would like any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. E. Kautz', written in a cursive style.

Barbara E. Kautz

Partner

bkautz@goldfarbblipman.com

cc: Rob Schultz, Town Attorney
Marni Moseley, Senior Planner

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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 I8 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

Andy Faber /jt

ANDREW L. FABER

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GOLDFARB & LIPMAN LLP

Barbara Kautz /jt

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Goldfarb & Lipman LLP

July 7, 2016

BY E-MAIL

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.

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7/6/2016

EXHIBIT 33

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.4th 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. 4th 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. 4th 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(l).) 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 (9th Cir. 2016); *Pacific Shores Properties LLC v. City of Newport Beach*, 746 F.3d 936 (9th 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 (9th 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.

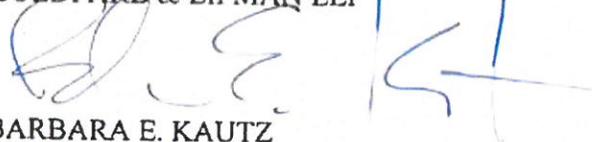
The Applicants have worked cooperatively with the Town since 2010, for the over five years that the North Forty Specific Plan was under consideration. On May 5, 2015 the Town adopted a Housing Element designating the North Forty for 270 units at 20 units per acre, and in June 2015 the Town adopted a 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.

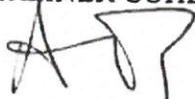
Sincerely,

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.



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 30th 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 3rd 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".

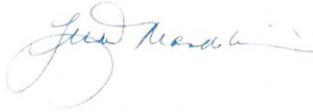
In conclusion, we have considered carefully these specific suggestions for amendments to our project design and have concluded that they are not feasible. They cannot be imposed on the project because none of these changes are required by the Specific Plan. As described in the

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



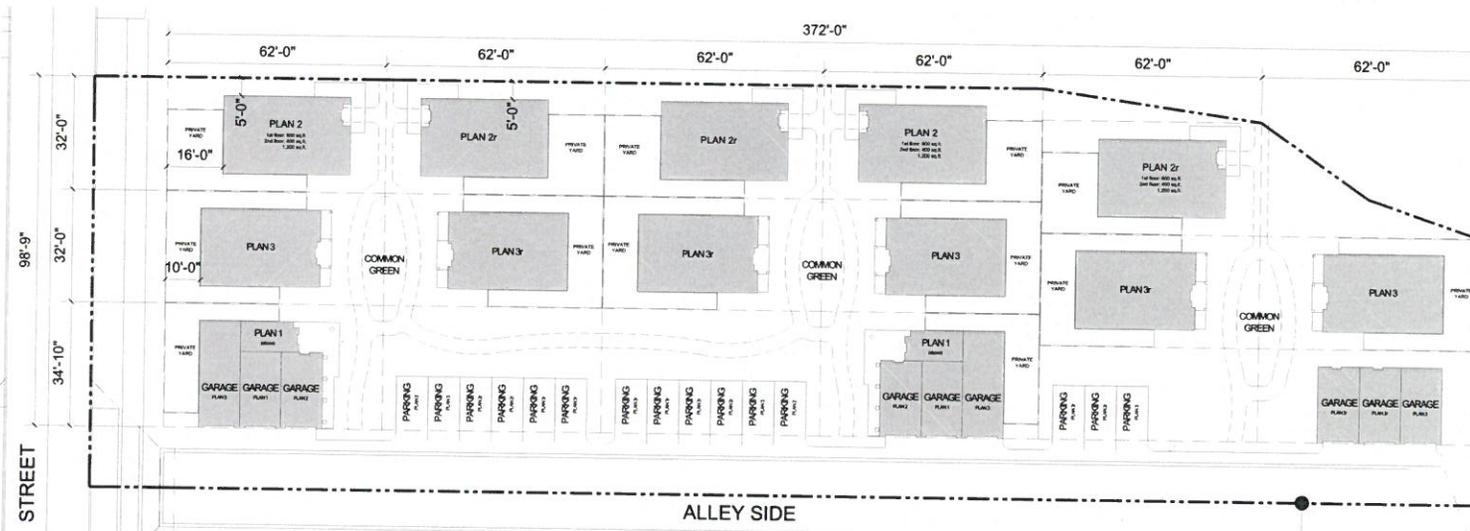
Wendi Baker
Vice President of Development
SummerHill Homes

MAIN STREET SIDE

5 UNITS CLUSTER

5 UNITS CLUSTER

3 UNITS CLUSTER



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

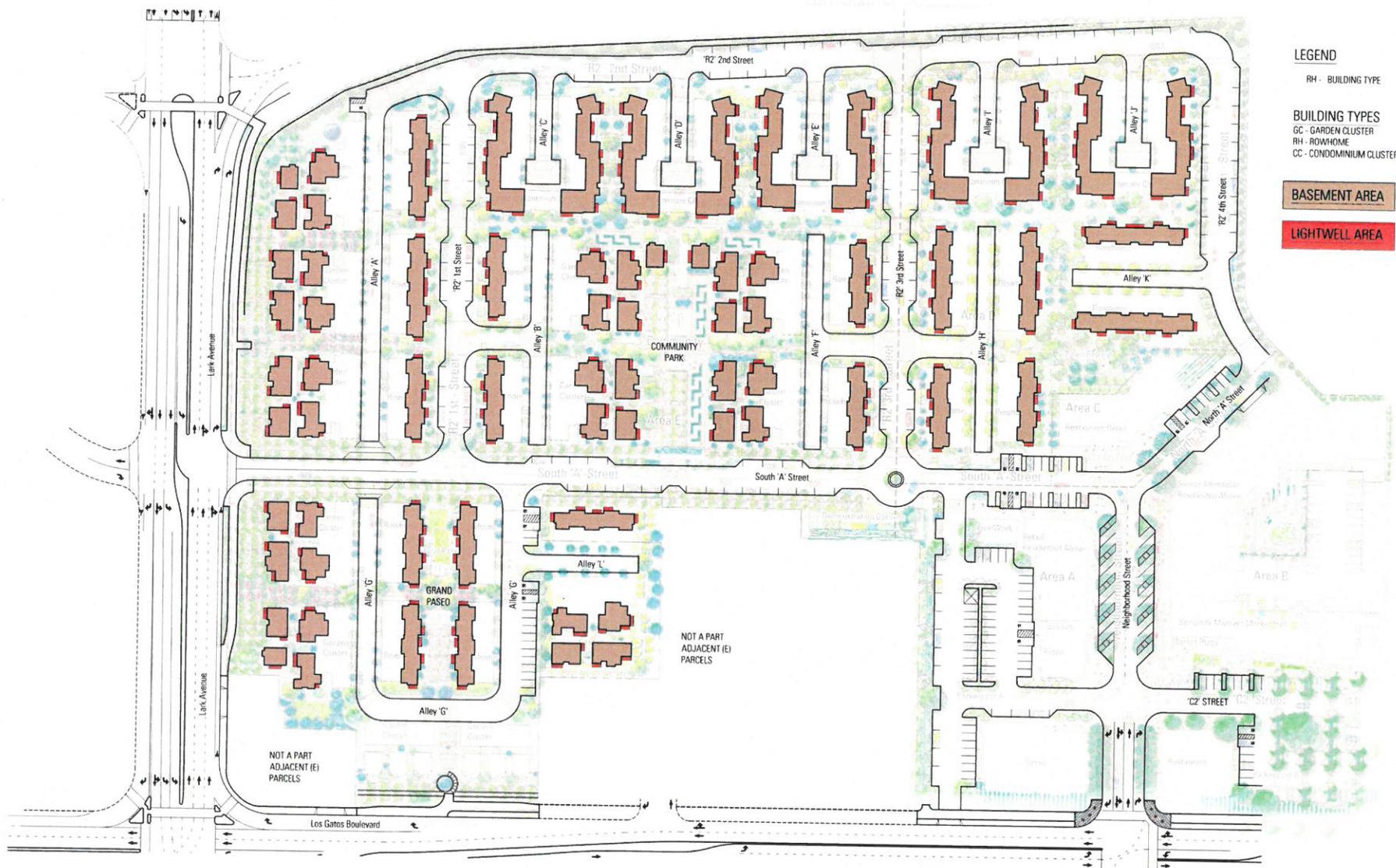
NORTH FORTY

LOS GATOS, CA

Lark District
Cottage Cluster Study



Scale: 1/16" = 1'-0"
EXH. B - 1 ACRE



LEGEND

RH - BUILDING TYPE

BUILDING TYPES

GC - GARDEN CLUSTER
 RH - ROWHOME
 CC - CONDOMINIUM CLUSTER

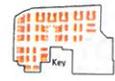
BASEMENT AREA

LIGHTWELL AREA

NORTH FORTY

LOS GATOS, CA

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



192-072 | 07.05.16

Scale: NTS
Exhibit E

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
Total Cubic Yard							13,922

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

GARDEN CLUSTER

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

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	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
Total Cubic Yard							12,630

CONDO 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 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
Total Cubic Yard							12,953

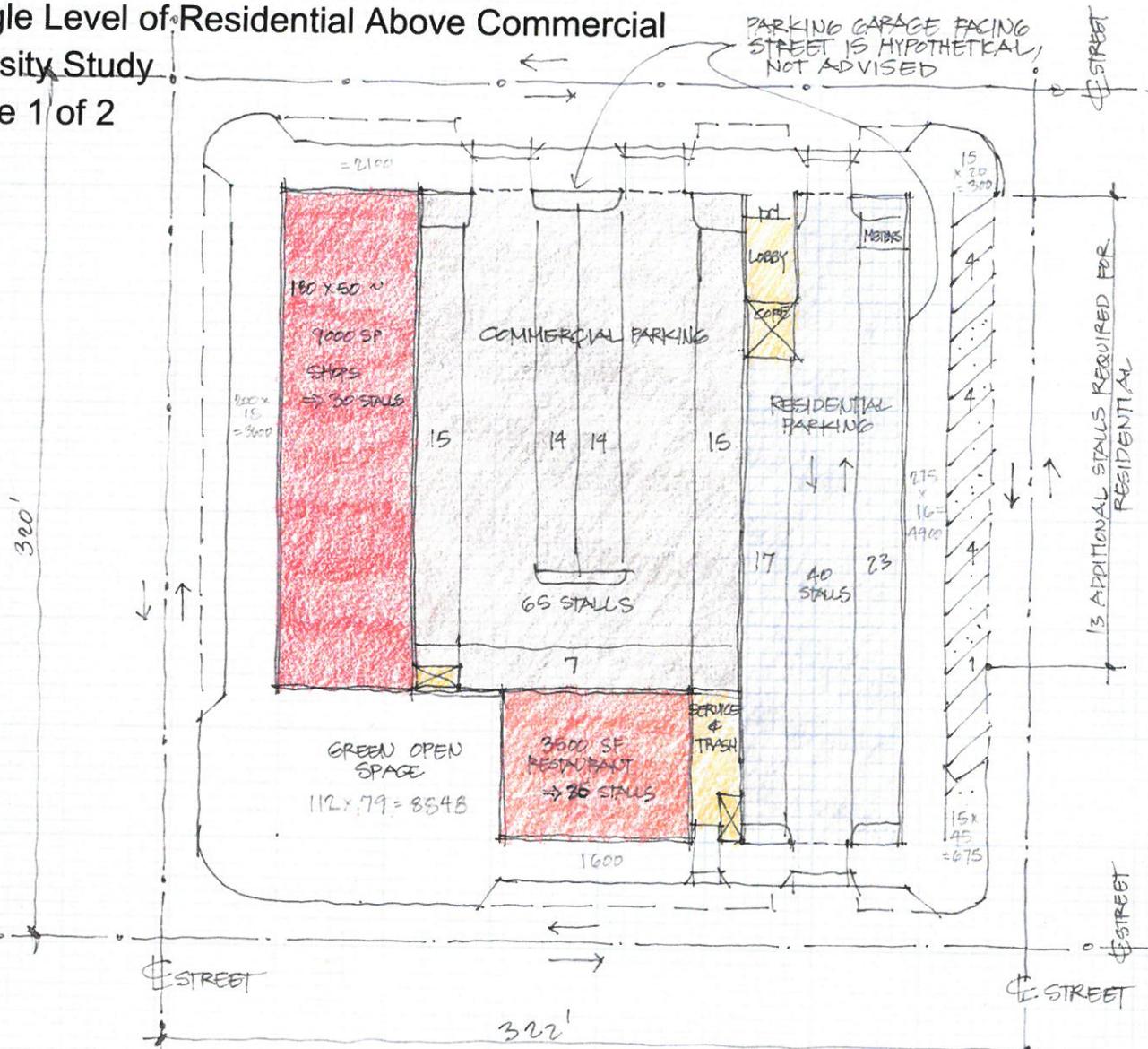
ROWHOME

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)

Single Level of Residential Above Commercial
 Density Study
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SITE AREA
 $323 \times 320 = 103,360 = 2.37$ ACRES

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

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

GROUND FLOOR	8548
	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.

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

Single Level of Residential Above Commercial

Density Study

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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

© BAR ARCHITECTS

6 JULY 2016
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