

7/21/17
@ 4:01 pm



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July 21, 2017

Marico Sayoc, Mayor
And Members of the Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Eden Housing Inc., et al v. Town of Los Gatos (Santa Clara County Superior Court Case No. 16-CV-300733)
Town Council Meeting Date 7/24/17, Agenda Item 1

Dear Mayor Sayoc and Councilmembers:

On behalf of the Applicants and the Petitioners in the above-referenced lawsuit, Eden Housing, Inc., Grosvenor Americas USA Limited and SummerHill Homes LLC, we wish to bring certain matters to the Council's attention in advance of the scheduled hearing on this Project.

We generally concur with the Staff Report dated July 20, 2017, but offer a few comments and clarifications. Before addressing those issues, however, we feel it is important that the Town Council appreciate the implications and consequence of the fact that the Project has returned to the Town Council by court order.

As you know, the Santa Clara County Superior Court determined that the Town's denial of the Project was unlawful. The Court therefore issued a writ of mandate directing the Town to rescind its denial and take appropriate action to comply with the Housing Accountability Act (Government Code Section 65589.5 et seq., the "HAA"). This has two major consequences:

Marico Sayoc
Councilmembers
July 21, 2017

1. The Project before the Council

First, the Project in front of the Council is the existing application. Neither the Town nor the Applicants are starting afresh at this time. It is not the Applicants' intention to present new information concerning the Project, or to modify the prior application in any manner not previously agreed to.

The previous hearings on this matter established conclusively that the Project complies with all objective standards, policies, and criteria of the Town. See, for example, (a) repeated analyses summarized in staff reports to the Planning commission and Town Council, and (b) the summary of objective criteria presented to Council (see letter from Applicants August 5, 2016, containing an analysis of 30 Objective Standards from the North 40 Specific Plan, and approximately 82 other requirements of the Specific Plan, showing Project compliance). The Court in its Decision and Judgment agreed that the record contains substantial evidence that the Project is consistent with all objective standards. (Decision and Judgment, p. 4, fn. 3.) And the Town's current Staff Report again states: "Staff has consistently stated that the proposed project meets all the Town's objective standards." (p. 6)

The hearings established a complete record of documentation and oral and written evidence with regard to this Project, which was all included in the Administrative Record filed with the Court. As the Council was advised by the Town Attorney at the prior hearings, a Court can order approval of the Project exactly as submitted by the Applicants. The Project has been described in great detail in the prior hearings, and numerous questions asked by Staff and Councilmembers have been answered during the hearings and in writing. Findings of denial may not be based upon additional materials that may be offered at new hearings. Any such action by the Town would constitute a denial of the right to procedural and substantive due process. While we will attend the hearings, any written or oral participation on behalf of the Applicants shall not be deemed to be a waiver of our position that no further hearings are necessary or appropriate.

2. The Continued Jurisdiction of the Court

The second consequence of the Court's Decision and Judgment is that the Town is now under the jurisdiction of the Superior Court. The Court determined that the Town did not comply with the Housing Accountability Act, and the Town has elected not to appeal this ruling. If the Town again denies the Project in violation of the HAA, it will also be in violation of the Writ. The HAA itself describes a range of remedies that the court could impose upon the Town under this scenario:

First, if the Town does not carry out the Court's decision within 60 days, the Court can issue further orders to ensure the purposes and policies of the HAA are fulfilled. Subsection (k) of the HAA explicitly states that this includes ordering that the application for the project as constituted at the time the local agency took the initial action determined to be in violation of the HAA be deemed approved.

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July 21, 2017

Further, Subsection (I) of the HAA states that if the Court finds the Town acted in bad faith when it disapproved the Project and further failed to carry out the court's order or judgment within 60 days, the Court can impose fines on the Town that the Town must deposit into a housing trust fund. The fines cannot be paid from funds already dedicated for affordable housing. Given that the Staff Report clearly states once again that the Project meets all of the Town's objective standards, there is significant risk of incurring such fines if the Council denies the Project again. Such actions by the Court under the HAA are in addition to the normal remedies a court has to enforce a peremptory writ of mandate. These include penalties for contempt of court for failing to comply with the writ. (See Code Civ. Proc. Section 1097.)

Finally, the HAA has been held to establish a protected property right in housing project applicants. See N. Pacifica, L.L.C. v. City of Pacifica, 234 F.Supp.2d 1053 (N.D. Cal. 2002). Under the HAA, the Project must be approved unless it fails to comply with applicable *objective* standards, conditions, and policies in effect at the time the application was deemed complete. The Town has been repeatedly advised of this requirement by the Town Attorney, Town Staff, the Applicants' attorneys, and the State Department of Housing and Community Development. With this knowledge, a failure to comply with this requirement, as now expressed in a Court Writ, could constitute a violation of the applicants' Federal Civil Rights, leading to substantial liability for damages in both State and Federal Courts.

3. Comments and Additional Information re the Staff Report

We are generally in concurrence with the Staff Report, but want to note a few items.

First, there are several references to the Project's needing deviations from the Town's BMP program guidelines. That is actually based on outdated information. During the application process, it became clear that actually no such deviations were required. This was memorialized in a letter from Goldfarb and Lipman to the Town Manager dated March 10, 2016 (Exhibit 19 to 3/30/2016 Planning Commission Hearing, included in Attachment 1 to 8/9/2016 Town Council Special Meeting).

Second, to the Staff Report's discussion of the meaning of "objective" standards, we would add the following: The plain meaning of "objective standard" is: "A standard that is based on factual measurements . . ." (<http://thelawdictionary.org/objective-standard/>). In the land use context, California courts have described objective standards as fixed, measurable or quantifiable. (See, e.g., Sierra Club v. Napa County Bd. of Supr's. (2012) 205 Cal.App.4th 162, 180 [describing city ordinance conditions for a lot line adjustment that the parcel contain a minimum of 2,400 square feet, access rights to a public street and be a minimum of 25 feet wide and deep as "objective criteria"]; Friends of Westwood, Inc. v. City of Los Angeles (1987) 191 Cal.App.3d 259, 277 [describing city ordinance conditions for a building permit establishing a "comprehensive set of precise, quantified criteria – i.e., setbacks must be at least 15 feet, buildings may be no more than 3 stories, and no higher than 50 feet" as satisfying CEQA's ministerial definition of fixed standards and objective measurements].)

Marico Sayoc
Councilmembers
July 21, 2017

In the prior record is a related statement from HCD: “[B]y right decision making must follow development standards that are objective, fixed, predictable, clear, quantifiable, written, warrant little to no judgment and should be applied in a manner that affirmatively facilitates development.” (AR 11201.)

Finally, the Staff Report summarizes certain proposed conditions to be imposed on the affordable, senior component of the Project. Eden Housing agrees to these conditions and will meet all applicable legal and code requirements for the construction of the senior affordable housing.

4. Conclusion

The extensive administrative record demonstrates that in order to comply with the Writ, the Town’s North 40 Specific Plan and the Density Bonus Law, the Town Council must rescind the prior Project denials and approve the Project. State law requires that the HAA be interpreted to promote housing projects, not to deny them. Thus, Government Code section 65589.5(l) 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.”

As we are all aware, the housing crisis in the Bay Area and in the State generally is exacerbated by catering to local opposition to projects that fully comply with local planning and zoning. After many years and dozens of public meetings, the Town adopted a very detailed North 40 Specific Plan (based on a full EIR) to guide development of the North 40 area. In spite of the legal requirement that such development would be *by right*, the Town then proceeded to deny a very well-designed Project that complied fully with all Town requirements, for what the Court agreed were purely subjective reasons.

The Town Council acted unlawfully last year in denying the Project; we urge the Council to exercise responsible leadership now by approving the Project.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF
Cc: Town Clerk
Town Attorney
Clients



July 21, 2017

Mayor Sayoc, Vice Mayor Rennie, and Council Members
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95070

Dear Mayor Sayoc, Vice Mayor Rennie, and Council Members,

Attached are the public benefits slides from our PowerPoint presentation to Council on August 9th, 2016. Since our application was first submitted in November 2013, we have worked thoughtfully and diligently not only in meeting all the objective criteria in the Specific Plan, but also to provide additional public benefits that were not required by the Specific Plan, Specific Plan EIR, or Town of Los Gatos Housing Element. In summary, our application provides:

- 49 very low-income senior units and one moderate rate unit
- Over \$10 million of traffic related improvements (above & beyond EIR requirements)
 - Resulting in a 26% reduction in traffic delays at Lark/Los Gatos Boulevard
 - Bicycle Lanes from Project Frontage to Los Gatos Creek Trail
- Compliance with State Approved Housing Element
- Unprecedented Voluntary School Agreement
 - Worth over \$6.3 Million, in addition to paying required SB50 fees
- Over \$2.7 million gross revenues annually to Los Gatos, including:
 - \$1.9 Million annually to LGUSD and LG-SJUSD
 - \$800K annually to the Los Gatos General Fund, Plus \$462K annually to Santa Clara County Fire
- Satisfies unmet housing needs in the Town with affordable apartments, multifamily rental and for sale housing
 - Senior Housing
 - 84% of residences are 1 or 2-bedroom units, with an overall bedroom count of 1.77 bedrooms average
 - Residences range in size from approximately 550 sf to 1,950 sf
 - Average residence size 1,393 sf
- New Neighborhood Serving Retail & Restaurants to serve new and existing residents on North Side of Town
- 14.5 Tons of Diverse Fruits and Vegetables Produced honoring the “Valley of the Hearts Delight”
- Over 6x the required replacement trees
- High Quality execution of Town’s Specific Plan with more open space and trees, less height, and greater setbacks

In addition, the application far exceeds specific objective criteria as outlined in the Town's North 40 Specific Plan, for example:

<u>Requirement</u>	<u>Specific Plan</u>	<u>Project Application</u>
Open Space	30% min	39%
Open Space Publicly Accessible	20% min	85%
Replacement Trees	276 min	1500
2-Story Lark District	15% min	29%
Units (Baseline)	270	237
Units (w/Density Bonus)	365	320
New Commercial	435,000 max	66,000
25' Res Setback on Lark/LGB	50' min	65'
Height on Lark/LGB	25' max	11'-25'
Residential Parking	579 min	581
Mixed Use (TD) Parking	69 min	69
Commercial (TD) Parking	285 min	389

Grosvenor, Eden Housing, and SummerHill Homes remain committed to providing these supplemental benefits to the Town of Los Gatos upon project approval.

We have been asked whether the Applicants are still willing to make the minor landscaping and architectural modifications that had been suggested by Councilmembers at the August 16, 2016 Council meeting. We had followed up to the August 16, 2016 with a letter dated August 25, 2016, agreeing to certain specific modifications based upon these requests. Based on Council discussion at the September 1st hearing, we are still willing to make many of these minor modifications, and suggest that this should be accomplished by modifying proposed Condition of Approval Number One to read as follows (A copy of the relevant portion of that letter, including the referenced exhibits, is attached hereto for your convenience):

1. *APPROVAL: This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. The approved plans include the minor architectural and landscaping modifications proposed in the applicant's letter by reference to exhibits "B", "E", "F", and "G" of August 25, 2016, which are incorporated herein by this reference. The Town Council hereby approves these minor modifications as part of this approval, and the Applicants shall implement them without any further discretionary review or approval from the City staff, Council or any Commission or Committee. Any other changes or modifications to the approved plans and/or business operations shall be approved by the Community Development Director, DRC, or Planning Commission depending on the scope of the changes.*



Sincerely,



Don Capobres
Principal
Harmonie Park Development
Representing Grosvenor Americas



Linda Mandolini
President
Eden Housing



Wendi Baker
Principal
Harmonie Park Development
Representing SummerHill Homes

Cc: Shelly Neis, Clerk Administrator
Laurel Prevetti, Town Manager
Joel Paulson, Director of Community Development
Rob Shultz, Town Attorney



August 9, 2016
Town Council Meeting

North 40 Vesting Tentative Map and Architecture and Site Applications

Don Capobres, Representing Grosvenor Americas

Wendi Baker, SummerHill Homes

Andrea Osgood, Eden Housing

Bill Hirschman, Lxor Builders



Where We are Today

Unprecedented Project Benefits



Project Benefit – Senior Affordable Housing

49 very low income senior apartments
and one moderate rate apartment



PEDESTRIAN FRIENDLY SCALE

Attracts those of all ages who want to work, live, and socialize in a highly walkable neighborhood.



BAR architects

NORTH 40

LOS GATOS, CA

North 40

Project Benefits

Traffic Improvements

TAKING ON THE LION'S SHARE

Since 2012, developments in Los Gatos have increased traffic by 13%. North 40 improvements will zero-out that impact.

LOS GATOS APPROVED/PENDING DEVELOPMENTS SINCE 2012

Riviera Terrace Expansion	San Jose Medical Office
South Bay Honda	Sports Park
Swanson Ford	Highlands of Los Gatos
Mitchell Subdivision	Winchester Office
Winchester Medical Office	Netflix Office Development
Terraces of Los Gatos	Bentley Silicon Valley
Blossom Hill Road Development	Classic Community
15400 Los Gatos Blvd	Hillbrook School Expansion
55 Los Gatos Saratoga Rd	Twin Oaks
National Medical Office	146 Gemini Court
Placer Oaks	Moore Buick
Valley Christian School	CVS Pharmacy

TRAFFIC IMPACT
congestion added since 2012 **13%**

TRAFFIC UPGRADES
to reduce traffic congestion since 2012 **0%**

North **40**

TRAFFIC IMPACT **2%**
North 40 will add to congestion by

REDUCED DELAY **26%**
with North 40 traffic upgrades



Project Benefits

New Bicycle Lanes from the North 40 to the Los Gatos Creek Trail



Lark Av Current Looking East



Lark Av Current Looking West



VIEW 3 Lark Av Bike Lanes/ Multi-Use Path Looking East

07.08.2016 Los Gatos North 40, California digital imaging studio 



VIEW 4 Lark Av Bike Lanes/ Multi-Use Path Looking West

07.08.2016 Los Gatos North 40, California digital imaging studio 



Project Benefits

Satisfies Town of Los Gatos Housing Element

North 40 270 units

Southbay 148 units

Oka Road 99 units

In-law 55 units

Open 47 units



Meeting state requirements with **decades** of community input.

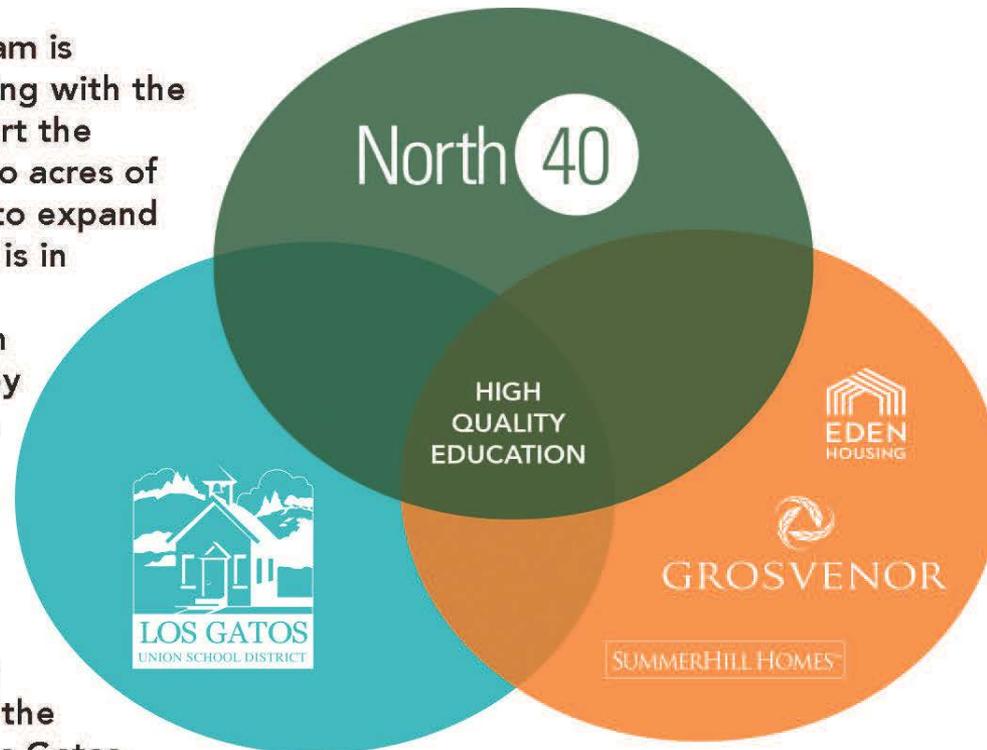
Project Benefits

Improve School Facilities through Voluntary Contribution

Beyond SB 50—Standing Up for Education

The North 40 team is voluntarily working with the District to support the acquisition of two acres of land for LGUSD to expand its facilities. This is in addition to the school mitigation fees mandated by California SB 50.

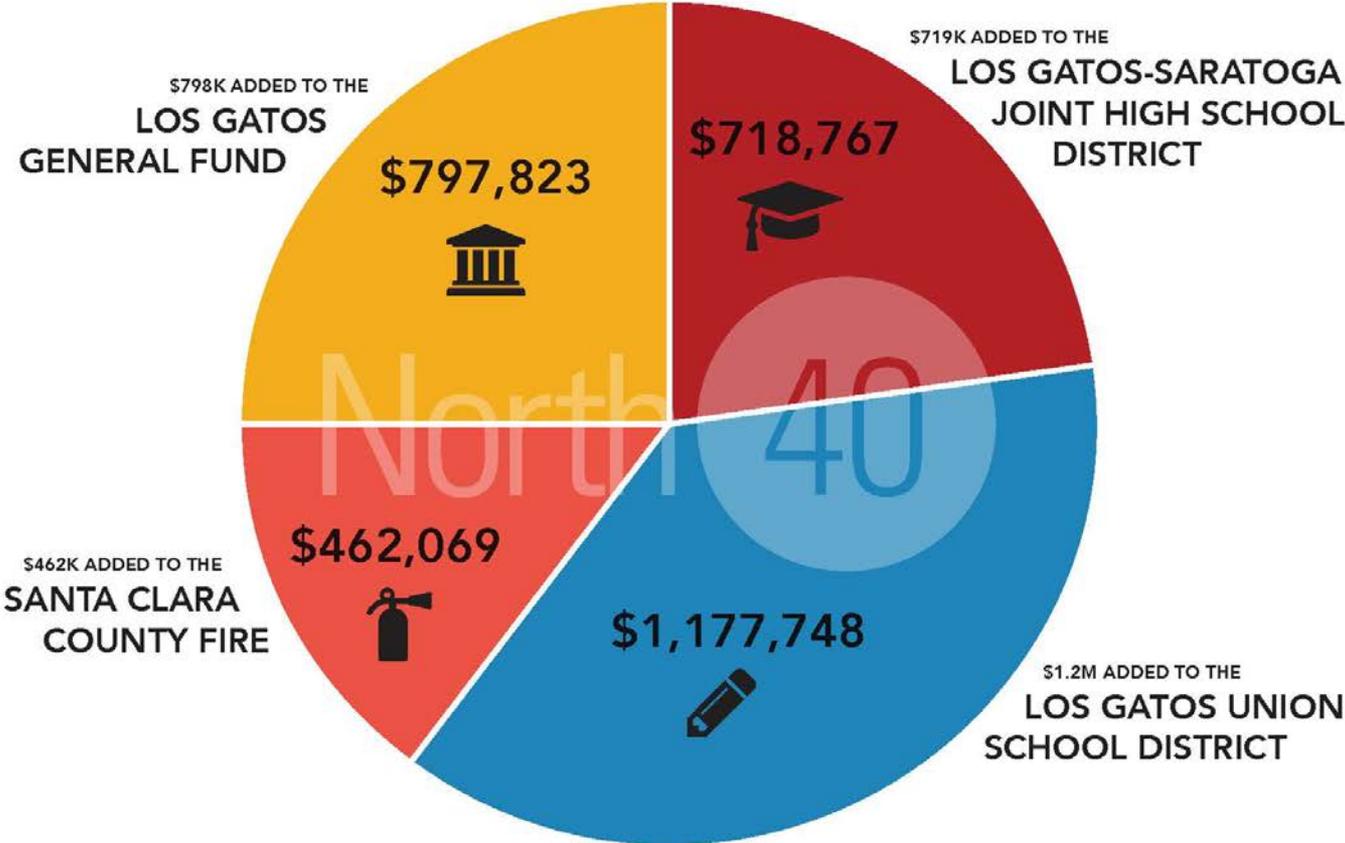
We are committed to the positive impact of The North 40 project on all aspects of the community of Los Gatos.



Project Benefits

ANNUAL FISCAL BENEFIT

Phase One North 40 will contribute more than \$3M in gross revenues annually to the Town of Los Gatos, in addition to the one-time fees.



Project Benefits

Smaller Units, Low Bedroom Count

North 40 Bedroom Count

<u>District</u>	<u>Product Type</u>	<u>Bedrooms</u>	<u>Number of Units</u>	<u>Total Bedrooms</u>	<u>Average Bedrooms</u>
Transition	Apartment/Live Work	1	8	8	
Transition	Apartment	2	2	4	
					1.20
Lark	Garden	1	41	41	
Lark	Garden	2	22	44	
Lark	Garden	3	20	60	
					1.75
Lark	Rowtown	2	73	146	
Lark	Rowtown	3	24	72	
					2.25
Lark	Condominium Cluster	1	30	30	
Lark	Condominium Cluster	2	40	80	
Lark	Condominium Cluster	3	10	30	
					1.75
Transition	Senior Affordable	1	49	49	
Transition	Senior Affordable	2	1	2	
					1.02
Totals:			320	566	1.77

Total Number of 1 Bedrooms:	128	39%
Total Number of 2 Bedrooms:	138	42%
Total Number of 3 Bedrooms:	54	16%

Residential Square Footage Averages:

<u>District</u>	<u>Product Type</u>	<u>Number of Units</u>	<u>Average Square Footage</u>
Transition	Move Down	10	905
Transition	Senior Affordable	50	557
Lark	Millennial	260	1572
		320	1393

Project Benefits

Over 14.5 Tons of Fruits and Vegetables



Fruiting orchards along
Lark Ave



Restaurant
demonstration garden
along South A Street

Project Benefits

Going Above and Beyond the Specific Plan



	<u>Specific Plan</u>	<u>Proposed</u>
Open Space	30% min	39%
Open Space Publicly Accessible	20% min	85%
Replacement Trees	276 min	1500
2-Story Lark District Units (Baseline)	15% min	29%
Units (w/Density Bonus)	270 max	237
New Commercial	365 max	320
25' Res Setback on Lark/LGB	435,000 max	66,000
Height on Lark/LGB	50' min	65'
Residential Parking	25' max	11'-25'
Mixed Use (TD) Parking	579 min	581
Commercial (TD) Parking	69 min	69
	285 min	389

July 12, 2016

Town of Los Gatos Planning Commission

Applicants:

Don Capobres – Representing Grosvenor
Wendi Baker – SummerHill Home
Andrea Osgood – Eden Housing
William Hirschman – Lexor Builders

Agrarian:

Zach Lewis – Garden 2 Table

Economic:

Timothy Kelly – Keyser Marston Associates

Legal:

Barbara Kautz – Goldfarb & Lipman
Andrew Faber – Berliner Cohen

Architects:

Paula Krugmeier – BAR Architects
Debra Lehtone – BAR Architects
John Thatch – Dahlin Group

Landscape:

Ashley Langworthy – SWA
Melissa Willmann – VDA

Civil:

Chris Ragan – MacKay and Soms
Jacqueline Bays – MacKay and Soms

Traffic:

Katy Cole – Fehr & Peers



Project Benefits

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 - Residences range in size from approximately 550 sf to 1,950 sf
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August 25, 2016

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main St.
Los Gatos, California 95031

Re: Response to Discussion Raised at August 16, 2016 Council Meeting – North Forty

This memorandum is in response to many of the comments we heard at the August 16, 2016 Council Meeting, during Council deliberations. In order to best respond to these precise comments, we had the meeting transcribed by a third-party. Attached is the certified transcription of the meeting as Exhibit A for reference.

One motion by Council Member Rennie proposed several modifications to the architecture as reflected in our application. Council Member Sayoc followed up with several concerns to this motion: *“So the difficulty I have in this particular motion is, when we have asked for these changes in the past as a planning commissioner, as a council member, I have always wanted to see what it is I'm approving. And with a project so large and so controversial and so visible as this, I have significant reluctance in just saying, Okay, and I'm going to hope for the best. I have utmost respect for our staff. I think they would do this, but I also don't think it's particularly fair to place the burden of all of these hearings onto their decision as this moves forward. That's my biggest impediment.”*

To address Council Member Sayoc's concern, we have included for the Council's consideration illustrations “Exhibit B” through “Exhibit G”, to be considered by Council on September 1st (and/or September 6th) with opportunity for comment and more specific direction which we then believe could be approved at an administrative level by Staff and/or the Consulting Architect without further Council review:

- “Exhibit B” – Architectural elevations along Los Gatos Boulevard with a more “commercial” appearance in nature. Footprints remain the same. Exhibit B:
 - Includes both previous and potential streetscape from Los Gatos Boulevard for comparison
 - Are a simple building form with low pitched hipped metal roofs, strong horizontal lines
 - High 10ft ceilings at first level and symmetrical arrangement of storefront windows for a more commercial feel to complement the existing commercial buildings along Los Gatos Boulevard
 - Three units tied together with framed accent walls and wood slat fencing to create a more commercial “single façade” while maintaining welcoming defined entries
 - High quality materials and finishes- metal roofing, smooth plaster walls, metal siding, wood slat fencing, aluminum storefront doors and windows

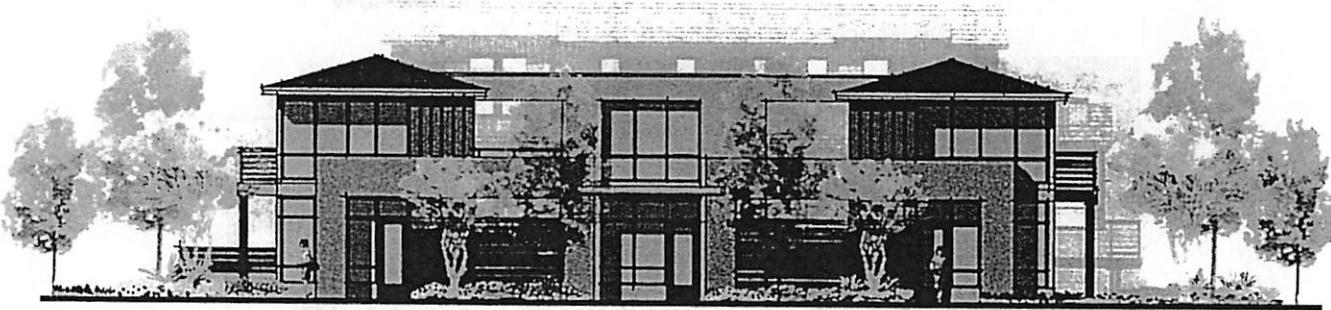
- ~~“Exhibit C” – Example of more traditional architectural elevations along Lark Blvd. Footprints to remain the same. Elevations could include:~~
 - ~~California Ranch: Providing softer scale with welcoming entry-trellis features that highlights the home’s entry and richness of the landscape. High quality materials and finishes include crisp horizontal wood siding, smooth plaster walls, wood paneling and trim accents.~~
 - ~~California Bungalow/Cottage: Soft low pitch roof forms, with well-articulated architecture with strong horizontal lines and connection to the ground. A generous entry, with quality materials and finishes including expansive windows that bring the outside in, horizontal and board and batten wood siding, and a 40 year composition roof.~~
 - ~~Mediterranean-influenced Bungalow: Provides a gentle, pedestrian scale with a welcoming, gracious entry. A second floor porch accents the entry and creates variety in the architecture. High quality materials and finishes include smooth plaster walls, and wood paneling and trim accents.~~
- ~~“Exhibit D” – Rowhome Elevation to replace or supplement existing Rowhome Elevation A. Heights remain below 35’ and footprint to remain the same. Features include:~~
 - ~~Low pitched hipped roofs~~
 - ~~Single story elements create a gentle/pedestrian scale~~
 - ~~Welcoming entries~~
 - ~~Second and third floor balconies that create variety in the architecture~~
 - ~~High quality materials and finishes – smooth plaster walls, wood paneling and trim accents~~
- ~~“Exhibit E” – An at-grade floorplan for Condominium cluster, resulting in 10 at-grade flats.~~
 - ~~Plan 4 can become an at-grade, one-bedroom flat at 1,014 SF (Previously 1,608 SF, three-story plan)~~
 - ~~Plans 5, 2, and 3 adjust accordingly to accommodate the Plan 4 at-grade flat~~
 - ~~Overall building footprints remain the same~~
- ~~“Exhibit F” – Market Hall architectural enhancements, including:~~
 - East Elevation:
 - ~~“Market” sign removed. Smaller signage substituted~~
 - ~~Clerestory glass softened with louvers~~
 - ~~Removed glazed corner at SE and replaced with a “punched” display window~~
 - ~~Ground story entry centralized with some sliding louvered barn doors on either side. Passage doors far right and left are kept. Central opening is >15’ wide.~~
 - ~~Sun shades tilted so they are visible.~~
 - ~~Spandrel panels between first and 2nd floors changed to wood.~~
 - ~~Added a south facing door for our possible florist spilling out near market main entry.~~
 - South Elevation:
 - ~~Removed corner glass and replaced with display window.~~
 - ~~Enlarged storefront glazing of first opening and softened with louvers.~~
 - ~~Added smaller signs on each storefront~~
- ~~“Exhibit G” – Modified trees at sound wall~~
 - ~~Potential to change evergreens to Brisbane Box~~
 - ~~Buckthorn trees at terminus of R2 – 1st St. and R2 – 3rd Street~~

Further, Section 6.4.1 discusses Specific Plan Administration. It states: “Proposed developments within the Specific Plan Area will be reviewed pursuant to the established Architecture and Site Review and approval process as defined within Division 3 of the Zoning Ordinance. In addition, proposed developments will be required to adhere to existing Zoning Ordinance regulations and processes for other

Exhibit B



As Proposed



Potential Alternative

FRONT ELEVATION

NORTH FORTY

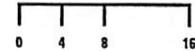
LOS GATOS, CA

Lark District
Los Gatos Boulevard - Front Elevation



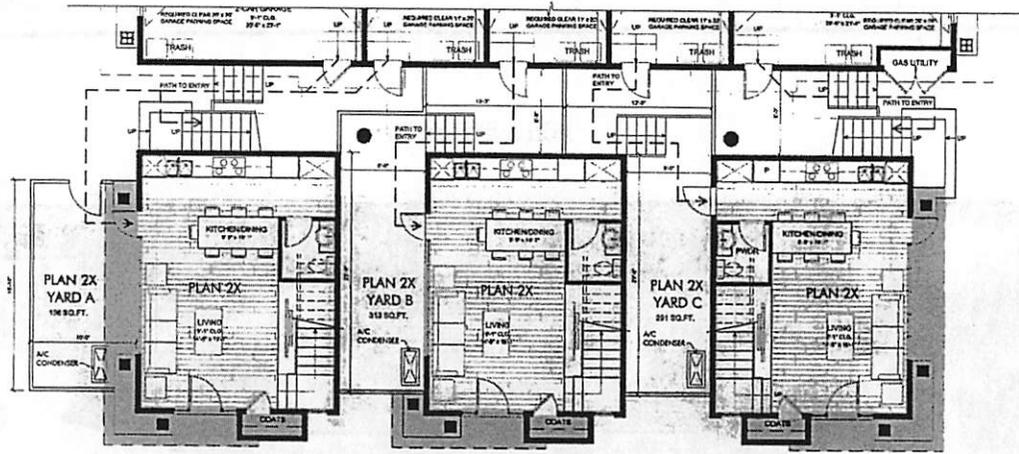
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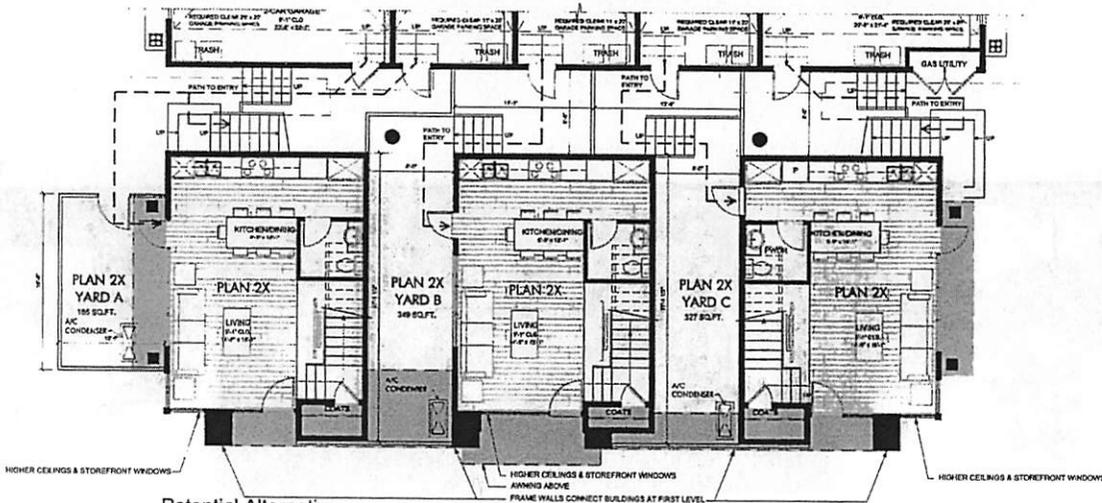


Scale: 3/16" = 1'-0"

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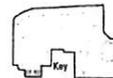
As Proposed



Potential Alternative

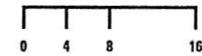
NORTH FORTY

Lark District
 Elevation Enhancement for
 Buildings 24 & 25 Along Los Gatos Blvd.

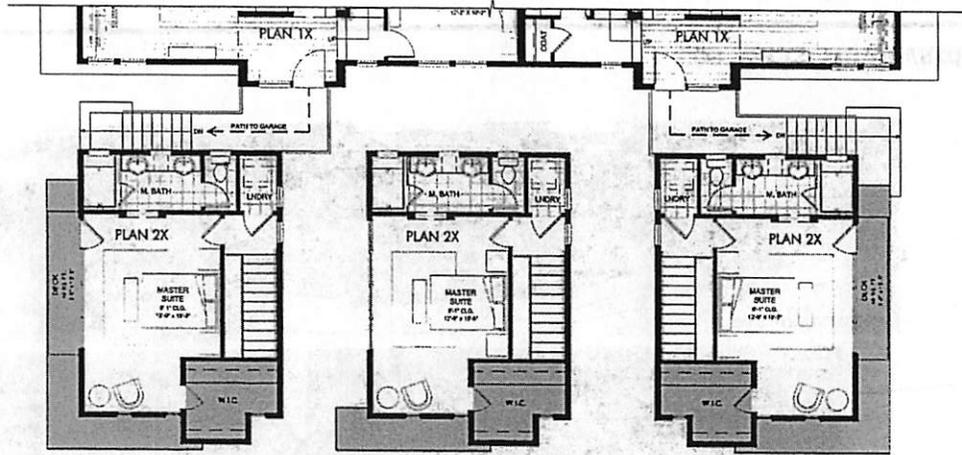


192-072

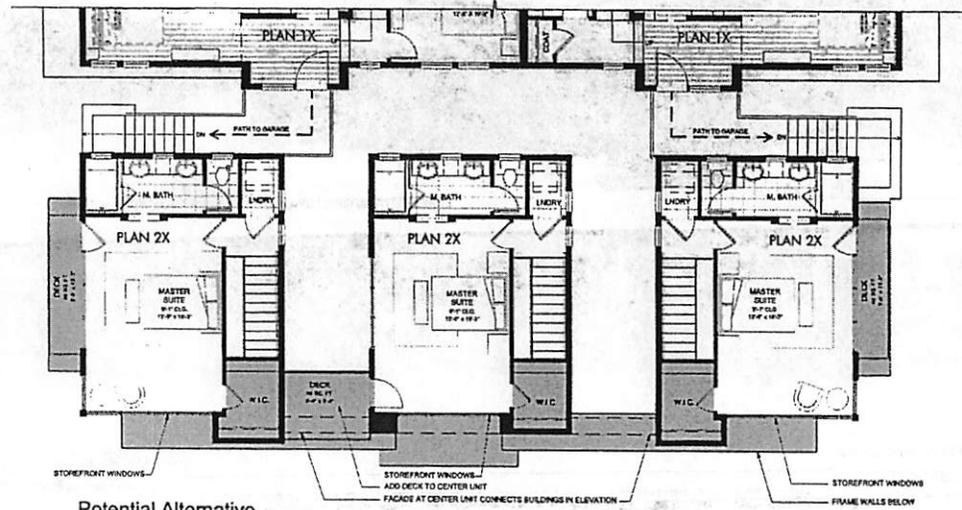
08.25.16



Scale: 3/16" = 1'-0"



As Proposed



Potential Alternative

011117

NORTH FORTY

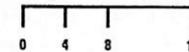
LOS GATOS, CA

Lark District
Elevation Enhancements for
Buildings 24 & 25 Along Los Gatos Blvd.



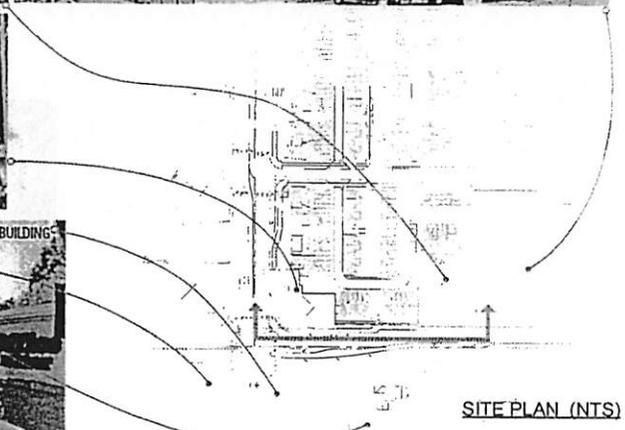
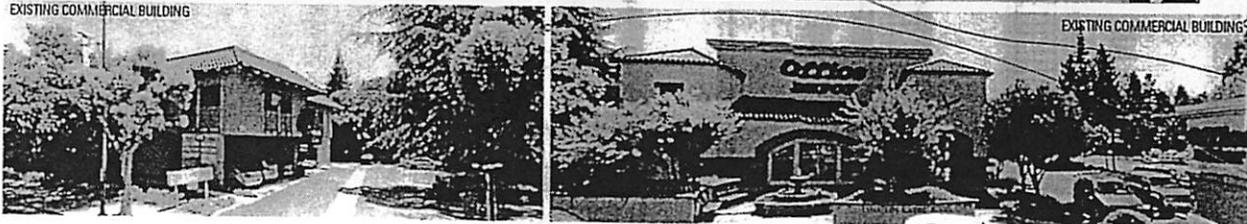
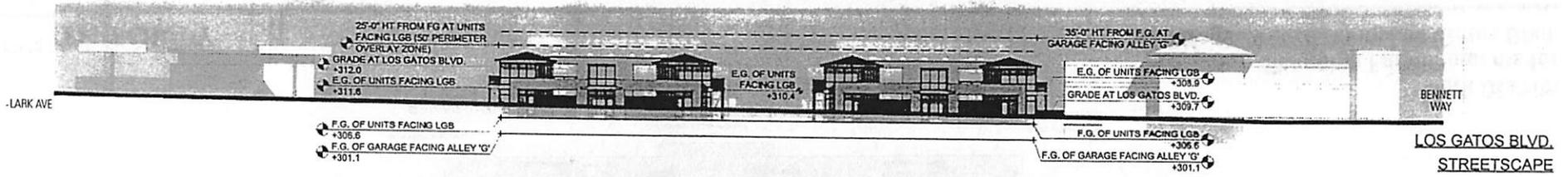
192-072

08.25.16



Scale: 3/16" = 1'-0"

01118



NORTH FORTY

LOS GATOS, CA

Los Gatos Boulevard - Streetscape & Context Information

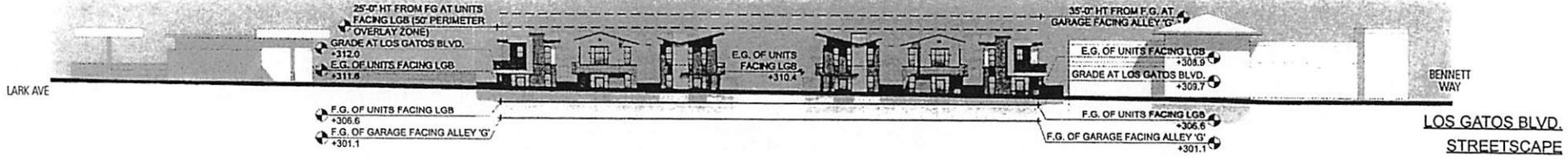


192-072

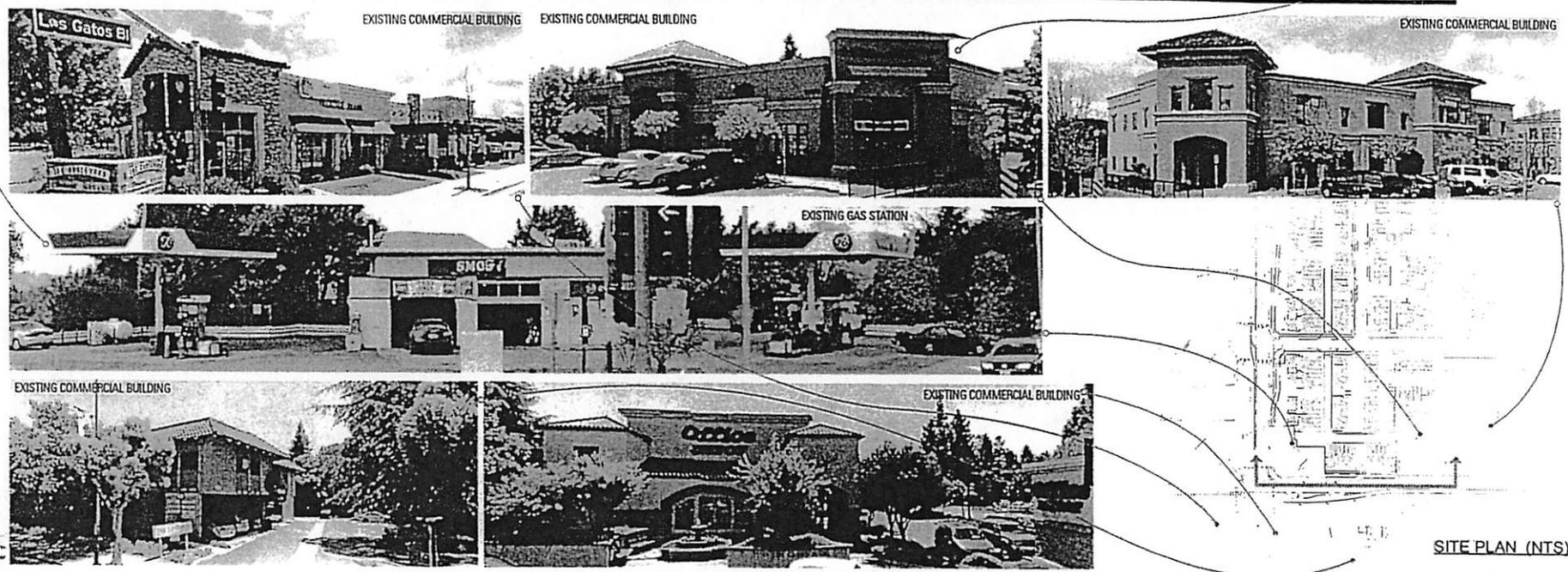
08.25.16

Scale: 1/16" = 1'-0"

5.LG.7



LOS GATOS BLVD.
STREETSCAPE



011119

NORTH FORTY

CONVERSION

Los Gatos Boulevard - Streetscape & Context Information

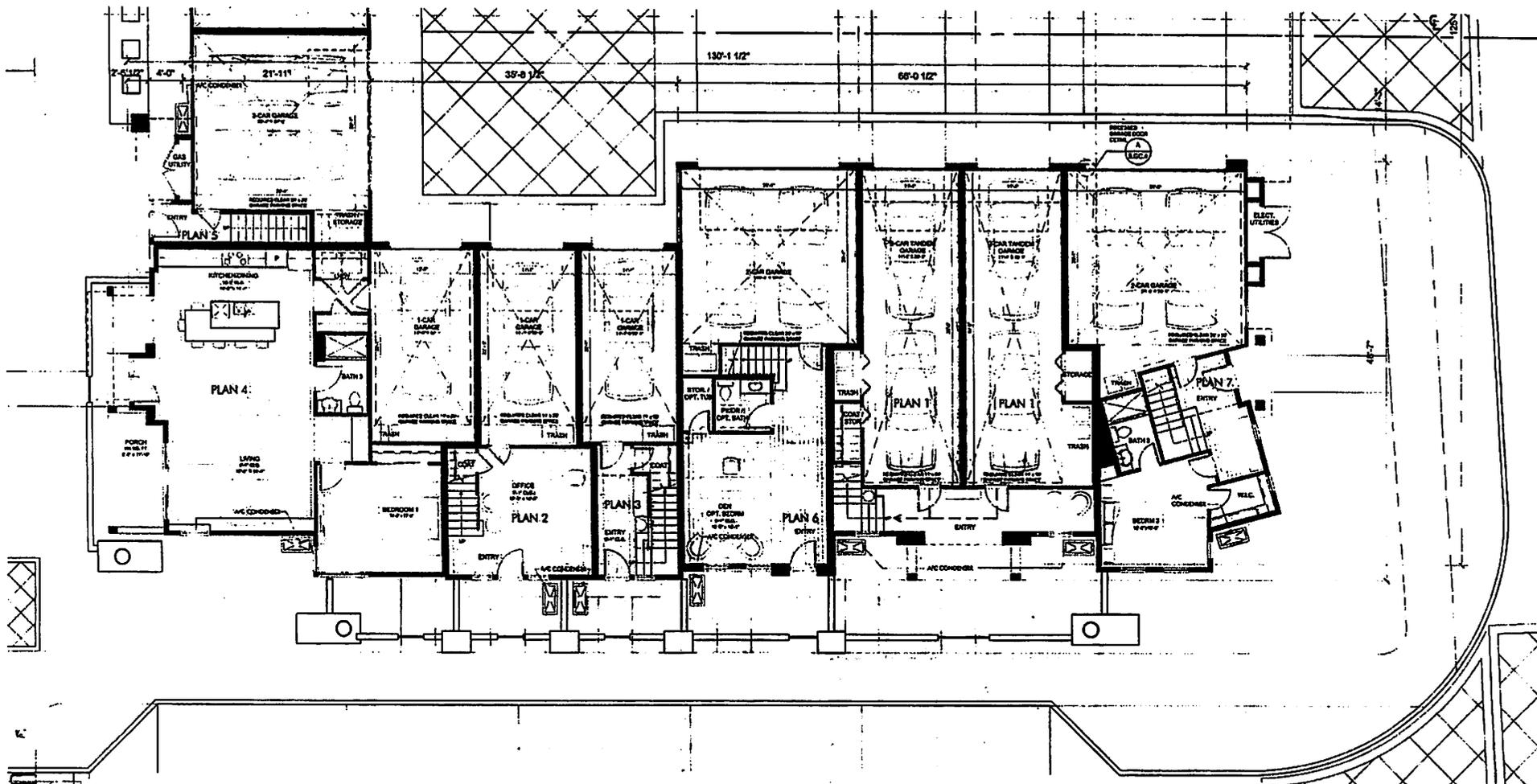


192-072 08.25.16

Scale: 1/16" = 1'-0"
5.LG.6

Exhibit E

011124



11125

PLAN 5

1ST FLOOR:	84 sq.ft.
2ND FLOOR:	973 sq.ft.
3RD FLOOR:	942 sq.ft.
TOTAL:	1,999 sq.ft.
GARAGE:	454 sq.ft.

PLAN 4

1ST FLOOR:	1,014 sq.ft.
TOTAL:	1,014 sq.ft.
GARAGE:	783 sq.ft.

PLAN 2

1ST FLOOR:	268 sq.ft.
2ND FLOOR:	1,237 sq.ft.
TOTAL:	1,505 sq.ft.
GARAGE:	269 sq.ft.

PLAN 3

1ST FLOOR:	160 sq.ft.
2ND FLOOR:	210 sq.ft.
3RD FLOOR:	1,381 sq.ft.
TOTAL:	1,751 sq.ft.
GARAGE:	269 sq.ft.

PLAN 6

1ST FLOOR:	443 sq.ft.
2ND FLOOR:	752 sq.ft.
3RD FLOOR:	747 sq.ft.
TOTAL:	1,942 sq.ft.
GARAGE:	456 sq.ft.

PLAN 7

1ST FLOOR:	0 sq.ft.
2ND FLOOR:	996 sq.ft.
3RD FLOOR:	996 sq.ft.
TOTAL:	996 sq.ft.
GARAGE:	497 sq.ft.

PLAN 1

1ST FLOOR:	0 sq.ft.
2ND FLOOR:	996 sq.ft.
TOTAL:	996 sq.ft.
GARAGE:	497 sq.ft.

PLAN 7

1ST FLOOR:	398 sq.ft.
2ND FLOOR:	1,010 sq.ft.
3RD FLOOR:	591 sq.ft.
TOTAL:	1,999 sq.ft.
GARAGE:	489 sq.ft.

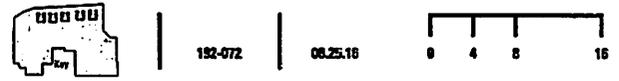
SITE TOTAL UNIT COUNT

PLAN 1:	20 UNITS
PLAN 2:	10 UNITS
PLAN 3:	10 UNITS
PLAN 4:	10 UNITS
PLAN 5:	10 UNITS
PLAN 6:	10 UNITS
PLAN 7:	10 UNITS

** AVERAGE BEDROOM COUNT FOR CONDOMINIUM CLUSTER = 1.75
 ** AVERAGE BEDROOM COUNT FOR LARK DISTRICT & TRANSITION DISTRICT AREA D = 1.93
 ** REFER TO SETBACK DIAGRAMS ON SHEET 5.ST.12 & 5.ST.13

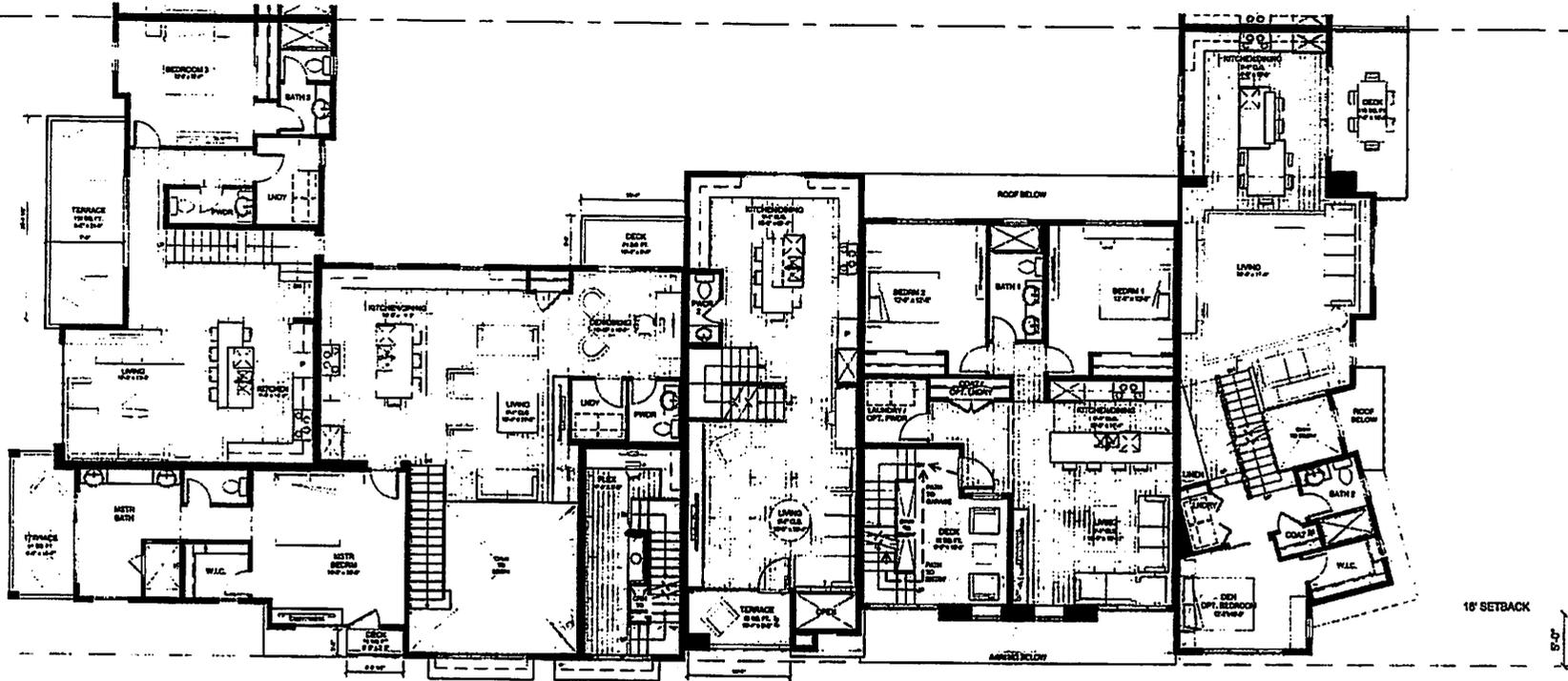
NORTH FORTY

Lark District & Transition District Area D
Alt. Floor Plans Condominium Cluster - 1st Floor
 see Landscape Plans for more information



Scale: 3/16" = 1'-0"
5.CC.2

011126



PLAN 5

PLAN 2

PLAN 3

PLAN 6

PLAN 1

PLAN 7

NORTH FORTY

100 S. FORT ST.

Lark District & Transition District Area D

Alt. Floor Plans Condominium Cluster - 2nd Floor



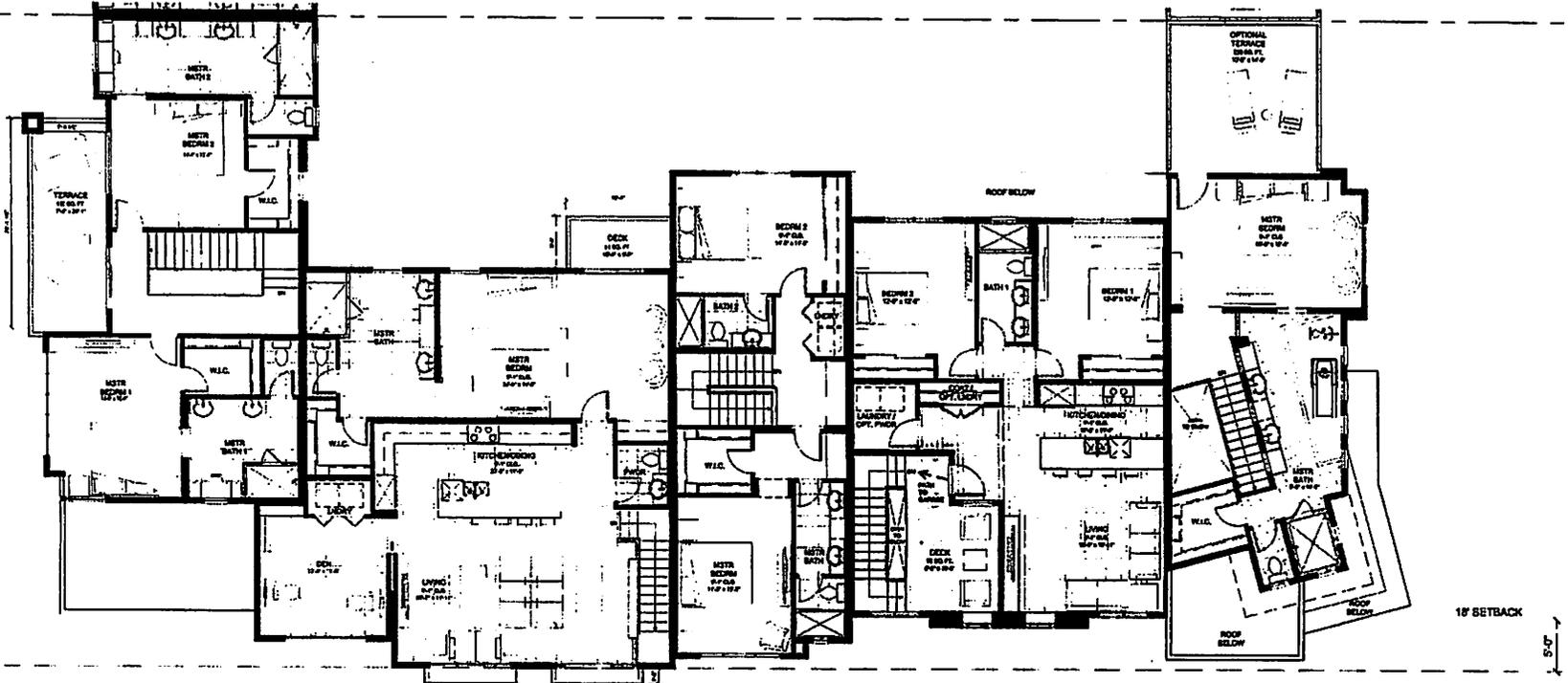
192-072

06.25.15



Scale: 3/16" = 1'-0"

5.CC.3



PLAN 5

PLAN 3

PLAN 6

PLAN 1

PLAN 7

Lark District & Transition District Area D

Alt. Floor Plans Condominium Cluster - 3rd Floor

NORTH FORTY

01A-127



192-072

08.25.16



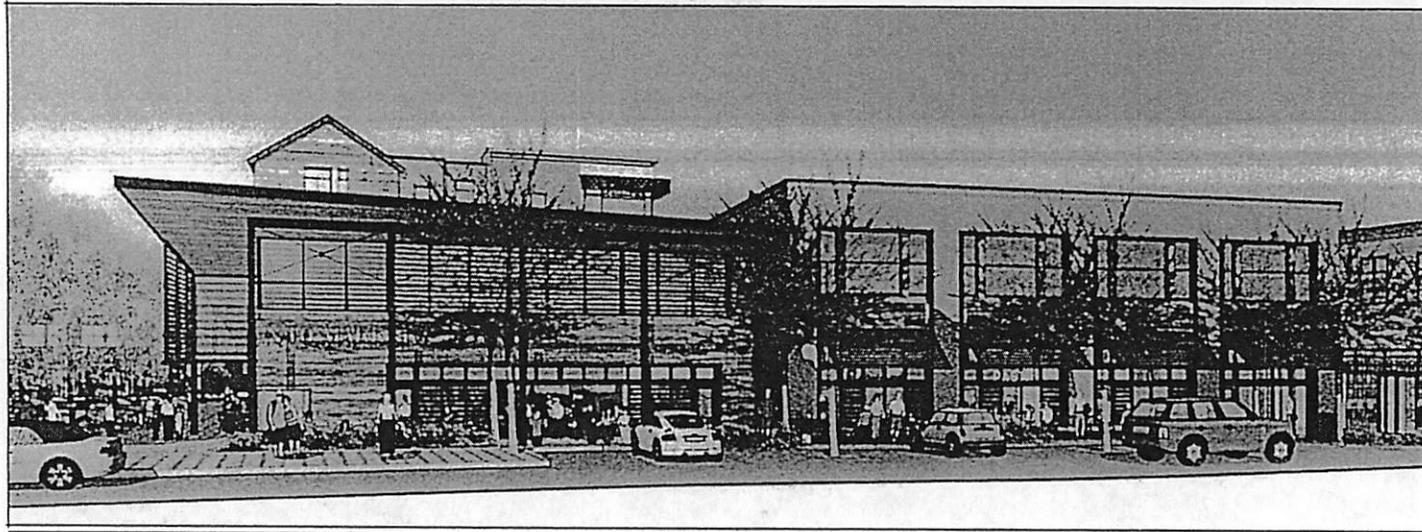
Scale: 3/16" = 1'-0"

5.CC.4

Exhibit F

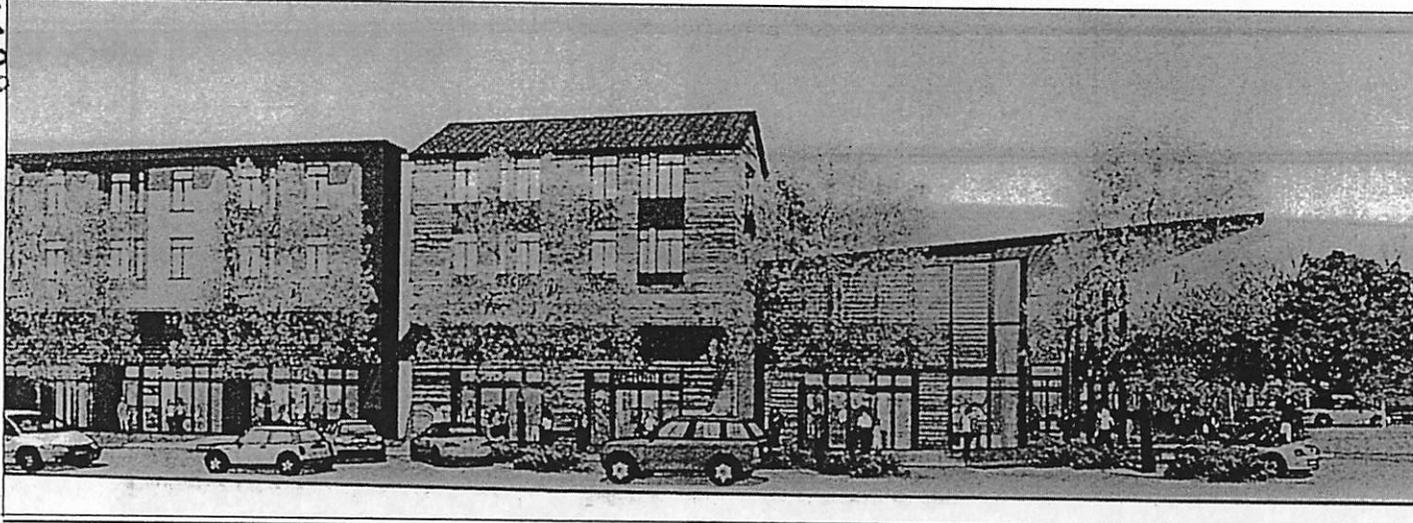


DESIGN AS SUBMITTED

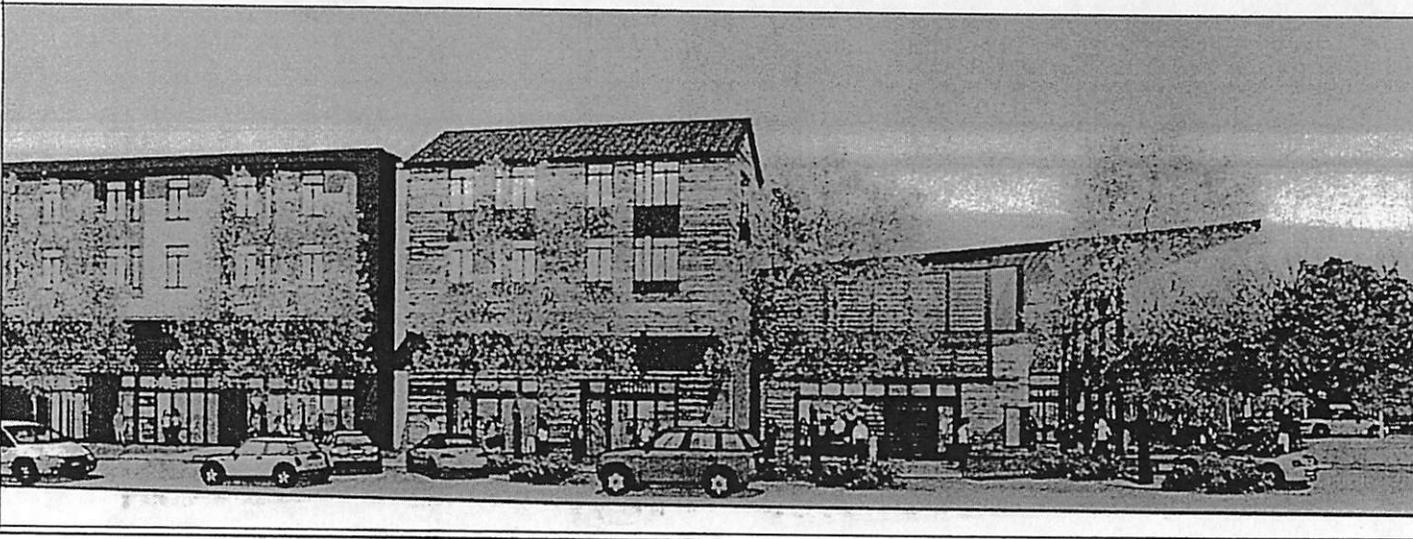


POTENTIAL REVISIONS

011130



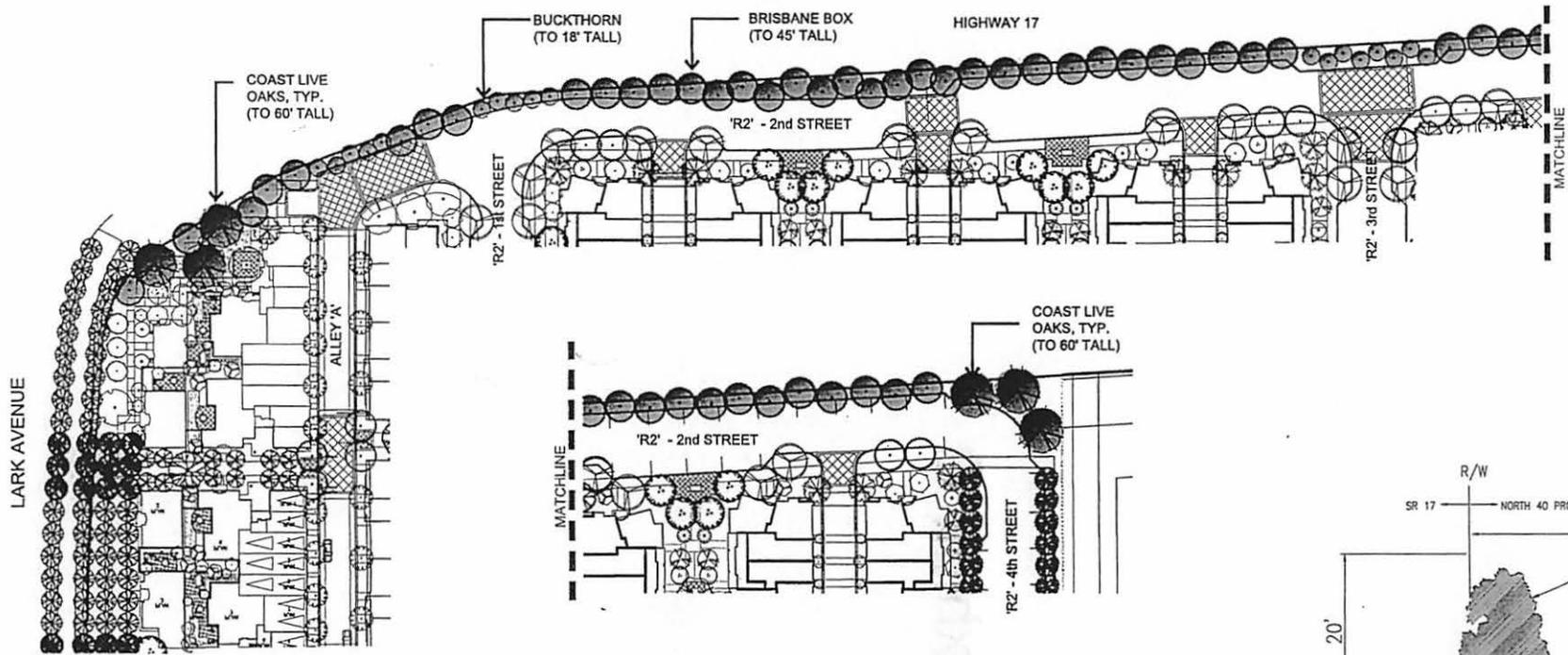
DESIGN AS SUBMITTED



POTENTIAL REVISIONS

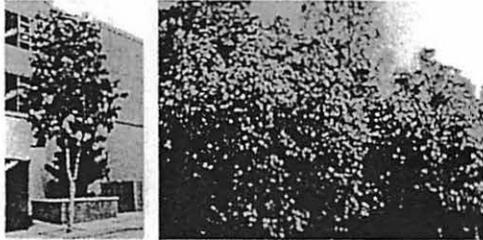
Exhibit G

011132

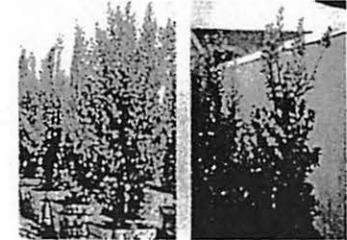


PLAN VIEW

 BRISBANE BOX (LOPHOSTEMON CONFERTUS)
EVERGREEN TREE, 40' TO 45' TALL x 22' WIDE



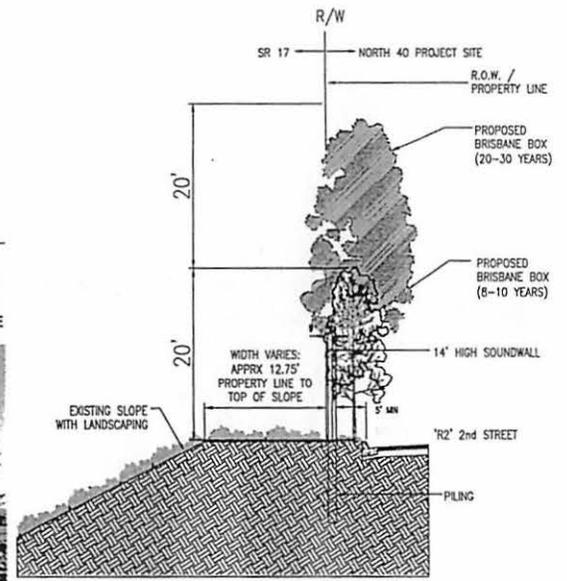
 BUCKTHORN (RHAMNUS ALATERNUS)
EVERGREEN TREE, 15'-18" TALL x 10" WIDE



 COAST LIVE OAK (QUERCUS AGRIFOLIA)
EVERGREEN TREE, 20'- 60' TALL x 20' - 45' WIDE



EVERGREEN TREES AT SOUNDWALL/HIGHWAY



SECTION AT SOUNDWALL

NORTH FORTY

LOS GATOS, CA

Lark District
Evergreen Trees at Soundwall

From: Council
Sent: Sunday, July 23, 2017 8:55 PM
To: Janette Judd
Subject: Fw: No. 40 Density Bonus

From: John Shepardson <shepardsonlaw@me.com>
Sent: Sunday, July 23, 2017 2:19 PM
To: BSpector; Marico Sayoc; Steven Leonardis; Robert Schultz; Council
Subject: Re: No. 40 Density Bonus

On Aug 29, 2016, at 4:47 AM, John Shepardson <shepardsonlaw@me.com> wrote:

Cut and paste from <http://landuselaw.jmbm.com/2015/01/residential-development-in-california-new-density-bonus-law-makes-new-affordable-housing-difficult-t.html>

Residential Development in California: New Density Bonus Law Makes New Affordable Housing Difficult to Build

JANUARY 7, 2015

By Matthew Hinks

Governor Brown signed into law on September 27, 2014, AB2222, which amends the State's Density Bonus Law ("DBL"), Gov't Code §§ 65915, et seq. to establish significant constraints upon the use of the incentives provided by DBL in connection with certain real estate developments. The main purpose of AB2222 is to eliminate density bonuses and other incentives previously available unless the developer agrees to replace pre-existing affordable units on a one-for-one basis. The impact of the bill will be significant because it will remove the economic incentive to undertake density bonus projects where existing units are subject to rent control ordinances or similar restrictions.

JS--The new law is a remedial statute that must be liberally construed to effectuate its purpose.

Cut & paste from <http://www.berliner.com/attorney/andrew-l.-faber>

- "Inclusionary Housing Requirements: Still Possible?," League of California Cities Meeting, City Attorneys Department, Los Angeles, 2014

- "Reducing the Traffic that Causes the Potholes: California's New 'Regional' Congestion Management Scheme," American Bar Association Annual Convention, Toronto

Quoting from <http://www.paloaltoonline.com/news/2014/01/28/new-density-bonus-law-put-to-immediate-test>

State law entitles developers of affordable housing to seek exemptions from the city and gives local jurisdictions little leeway to deny these requests. City Planning Director Hillary Gitelman noted at the Jan. 13 meeting that without a local ordinance, "The field is wide open for people to request whatever concessions they think of" and the city has a limited ability to say no.

Quoting from <http://www.kpbs.org/news/2016/jun/21/san-diego-boosts-affordable-housing-incentives/>

We need more (housing) units built," said Sean Karafin, director of policy and economic research for the San Diego Regional Chamber of Commerce. "We need our workforce to find affordable homes here in San Diego, so they're not looking to Seattle or to Portland or to Austin to find a more affordable climate."

Quoting from <http://hoodline.com/2015/11/city-planners-push-plan-for-more-density-affordability-across-sf-neighborhoods>

In 2013, a state court ruled that Napa County couldn't place potentially prohibitive affordability requirements on a new development for low-income farm workers.

Quoting from

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB744

e) The average construction cost per space, excluding land cost, in a parking structure in the United States is about \$24,000 for aboveground parking and \$34,000 for underground parking. In an affordable housing project with a fixed budget, every \$24,000 spent on a required parking space is \$24,000 less to spend on housing.

(f) The biggest single determinant of vehicle miles traveled and therefore greenhouse gas emissions is ownership of a private vehicle.

(g) A review of developments funded through the Department of Housing and Community Development's Transit-Oriented Development Implementation Program (TOD program) shows that lower income households drive 25 to 30 percent fewer miles when living within one-half mile of transit than those living in non-TOD program areas. When living within one-quarter mile of frequent transit, they drove nearly 50 percent less.

(j) Consistent with Chapter 488 of the Statutes of 2006 (AB 32) and Chapter 728 of the Statutes of 2008 (SB 375), it is state policy to promote transit-oriented infill development to reduce greenhouse gas emissions.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units,

these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Paragraph (3) of subdivision (c) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

JS

Sent from my iPhone

John Shepardson, Esq.
shepardsonlaw@me.com

59 N. Santa Cruz Avenue, Suite Q
Los Gatos, CA 95030
T: (408) 395-3701
F: (408) 395-0112

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IRS CIRCULAR 230 DISCLOSURE To ensure compliance with new requirements of the Internal Revenue Service, we inform you that, to the extent any advice relating to a Federal tax issue is contained in this communication, including in any attachments, it was not written or intended to be used, and cannot be used, for the purpose of (a) avoiding any tax related penalties that may be imposed on you or any other person under the Internal Revenue Code, or (b) promoting, marketing or recommending to another person any transaction or matter addressed in this communication.

From: Council
Sent: Sunday, July 23, 2017 8:54 PM
To: Janette Judd
Subject: Fw: N. 40 (Density Bonus)

From: John Shepardson <shepardsonlaw@me.com>
Sent: Sunday, July 23, 2017 2:19 PM
To: BSpensor; Marico Sayoc; Steven Leonardis; Council; Robert Schultz
Subject: Re: N. 40 (Density Bonus)

On Aug 30, 2016, at 12:04 AM, John Shepardson <shepardsonlaw@me.com> wrote:

Quoting from [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/23986/Attachment_34 - Letter from Remy Moose Manley received August 26 2016.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/23986/Attachment_34_-_Letter_from_Remy_Moose_Manley_received_August_26_2016.pdf)

Section 65915, subdivision (c)(3)(C), provides that the replacement housing requirement “does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.” (Italics added.) This provision does not say that the “application” must have been expressly for the bonus, rather than for the housing development as a whole. As development applications routinely do evolve over time, often over months or years, before being finally approved, it is reasonable to interpret this provision as referring to the submittal or processing of the housing development application.

JS Comments: The statute was amended in way that restricted developers from obtaining density bonuses. An additional hurdle was created. This remedial legislation must thus be LIBERALLY CONSTRUED to effectuate its purpose. The liberal construction does not cut in favor of the above legal analysis and in fact, the author makes no mention of the statutory construction rule that remedial statutes must be liberally construed to effectuate the purpose stated. I submit a more reasonable interpretation is that there must be express application for a density bonus. Since one did not occur, until after 1/1/2015, the developer is subject to the requirements of the remedial legislation.

Moreover, the project submitted in 2013 is admittedly different than the one now proposed.

The City of Los Angeles appears to interpret the statute different from Mr. Manley and more in light with the position I'm asserting here.

Granted, I'm no expert in land use law, so bear that in mind, in considering the above points.

John Shepardson, Esq.
(408) 966-9709

John Shepardson, Esq.
shepardsonlaw@me.com

59 N. Santa Cruz Avenue, Suite Q
Los Gatos, CA 95030
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F: (408) 395-0112

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From: John Shepardson [<mailto:shepardsonlaw@me.com>]

Sent: Sunday, July 23, 2017 2:20 PM

To: BSpector; Marico Sayoc; Steven Leonardis; Rob Rennie; Marcia Jensen; Council; Laurel Prevetti

Subject: Fwd: N. 40 (Good Sam Expansion)

Begin forwarded message:

From: John Shepardson <shepardsonlaw@me.com>

Subject: N. 40 (Good Sam Expansion)

Date: August 31, 2016 at 10:39:58 PM PDT

To: BSpector@losgatosca.gov, msayoc@losgatosca.gov, SLeonardis@losgatosca.gov, rrennie@losgatosca.gov, MJensen@losgatosca.gov, Council@losgatosca.gov, LPrevetti@losgatosca.gov

713,700 feet of commercial and parking space on 9.3 acres.



CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

N
Th
ha



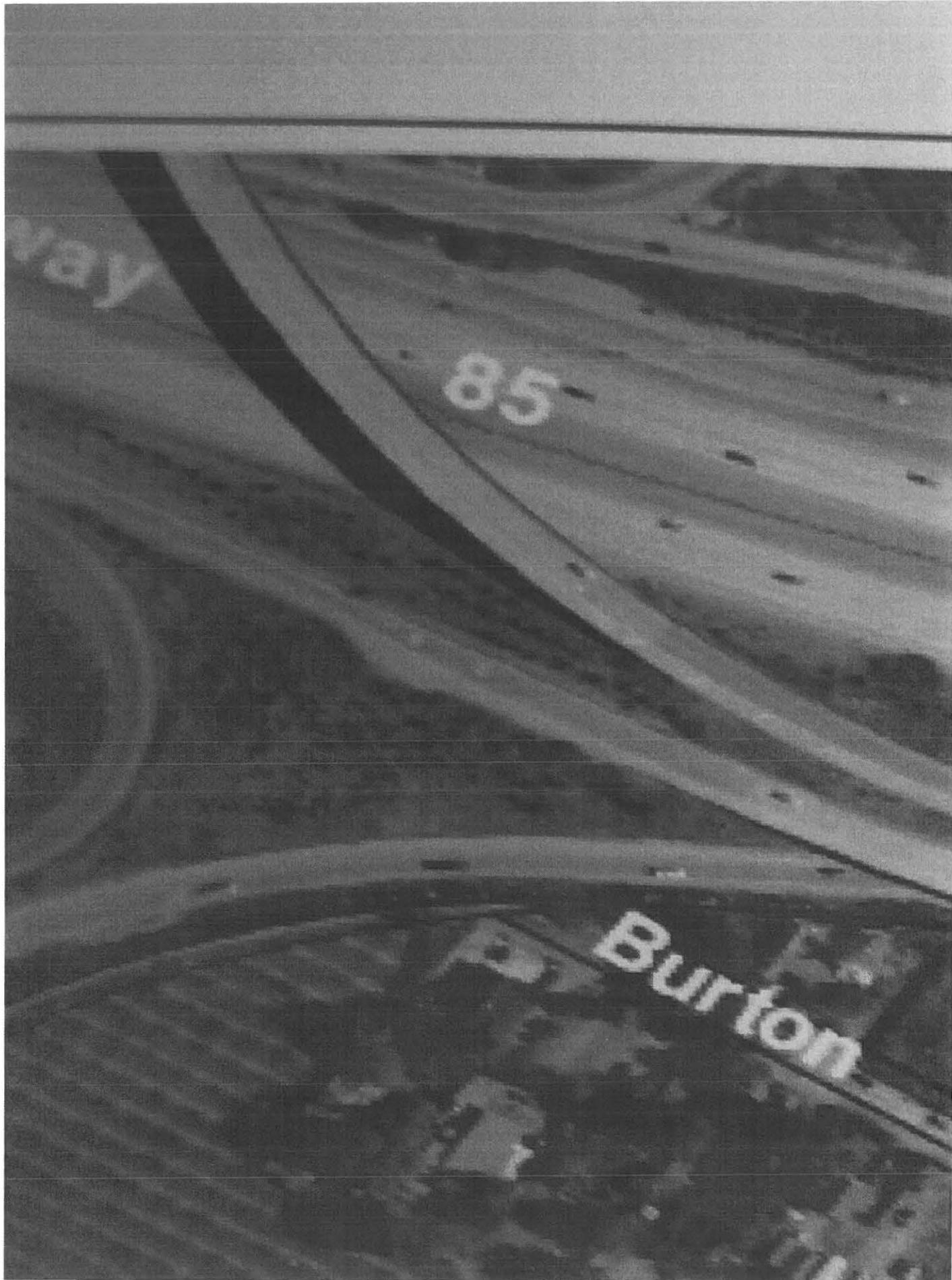
PROPOSAL

Department

by

General Plan Amendment to

Transportation Diagram designation



John Shepardson, Esq.

Sent from my iPhone

John Shepardson, Esq.
shepardsonlaw@me.com

59 N. Santa Cruz Avenue, Suite Q
Los Gatos, CA 95030
T: (408) 395-3701
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From: Council
Sent: Sunday, July 23, 2017 8:53 PM
To: Janette Judd
Subject: Fw: N. 40 (Suggested Findings--LOAD UP)

From: John Shepardson <shepardsonlaw@me.com>
Sent: Sunday, July 23, 2017 2:22 PM
To: Marico Sayoc; Rob Rennie; Steven Leonardis; Marcia Jensen; BSpector; Council; Robert Schultz; Laurel Prevetti
Subject: Re: N. 40 (Suggested Findings--LOAD UP)

On Sep 3, 2016, at 10:34 AM, John Shepardson <shepardsonlaw@me.com> wrote:

Marico:

Speaking as a lawyer here:

Since the developer may seek attack the decision, you might want LOAD UP THE FINDINGS with every reasonable basis you can for a judge to hang her hat on. This can also discourage the developer from filing suit and provide negotiation power.

Possibilities:

1. BMP.
2. Replacement housing—perhaps incorporate my stuff and Angelia's.
3. Lots of objective criteria not complied with.
4. Hillside views.
5. Inconsistencies with the specific plan.
6. Grading issues?
7. Wasn't Lark supposed to be low density?
8. Econ analysis.
9. Entire record.
10. Overwhelming public comments against. Evidence objectively not the look and feel of LG?

Perhaps create a script of all the findings to read into the record. Detailed. So the judge knows the precise grounds.

John Shepardson, Esq.

John Shepardson, Esq.
shepardsonlaw@me.com

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IRS CIRCULAR 230 DISCLOSURE To ensure compliance with new requirements of the Internal Revenue Service, we inform you that, to the extent any advice relating to a Federal tax issue is contained in this communication, including in any attachments, it was not written or intended to be used, and cannot be used, for the purpose of (a) avoiding any tax related penalties that may be imposed on you or any other person under the Internal Revenue Code, or (b) promoting, marketing or recommending to another person any transaction or matter addressed in this communication.

From: Council
Sent: Sunday, July 23, 2017 8:52 PM
To: Janette Judd
Subject: Fw: N. 40 (Where did all the specific findings go, long time ago...)??????????????

From: John Shepardson <shepardsonlaw@me.com>
Sent: Sunday, July 23, 2017 2:23 PM
To: BSpector; Marico Sayoc; Steven Leonardis; Robert Schultz; Council; Marcia Jensen; Rob Rennie
Subject: Re: N. 40 (Where did all the specific findings go, long time ago...)??????????????

On Sep 6, 2016, at 10:42 PM, John Shepardson <shepardsonlaw@me.com> wrote:

Cut & paste from <http://plannersweb.com/wp-content/uploads/2012/08/598.pdf>

<page1image256.png>

Quoting from <http://blog.aklandlaw.com/2016/07/articles/planning-zoning-development/fifth-appellate-district-defers-to-municipality-when-reviewing-findings-of-general-plan-consistency/>

The land use claim tested the consistency of the shopping center with the NPP, given that it was significantly larger than the acreage range contained within the NPP. The court cited the established rule that the consistency does not require exact conformity, but general compatibility. *Sequoia Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704 and *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807. The court also noted that a city or county was entitled to deference when making those findings.

<http://www.tandfonline.com/doi/abs/10.1080/00947598.1974.10394591>

Miller and Starr California Real Estate 4th
June 2016 Update
By Members of the Firm of Miller Starr Regalia
Chapter 21. Land Use, Planning, and Zoning Regulations
F. Judicial Review of Planning and Land Use Decisions

§ 21:35. Local agency's findings (emphases added)

Local agency must make findings. When considering a proposed development approval, the local legislative body must hold a hearing in which evidence is presented, and must render findings that are supported by the evidence. **These findings must be sufficient to apprise the parties of whether and on what basis they should seek judicial review, and they must be sufficient to apprise a reviewing court of the rationale and basis for the decision of the legislative body.**¹ Implicit in the concept of judicial review of adjudicatory administrative decisions is the requirement of findings sufficient to “bridge the analytic gap between the raw evidence and ultimate decision or order.”²

Findings when a density reduction is required for a housing development. Certain findings must be made upon denial of affordable housing projects or housing developments that comply with all applicable objective general plan and zoning standards and criteria.³

A local agency may not reject a proposed housing development affordable to very low-,

low-, or moderate-income households without **specific findings**

as specified by the Code which are supported by substantial evidence.⁴ Nor may a local agency reject, or require a reduction of density for, any housing development project that complies with applicable objective general plan and zoning standards and criteria in effect when the application was complete, unless it makes specific findings as required by the Code.⁵ The agency must adopt specific written findings supported by substantial evidence that the proposed project would otherwise have a *specific, adverse impact* on the public health or safety *and* that there is no feasible method for mitigating or avoiding the adverse impact except by a rejection of the project or a reduction in density.⁶ The project applicant or any person who would be eligible to apply for residency in the development is authorized to bring an action to enforce the provisions of the statute.⁷ The authorized action is one for a writ of administrative mandamus, and expedited preparation and filing of the administrative record by the agency is required.⁸ When an action is brought to enforce the statute's requirements and the court determines that the agency has disapproved a project or made it infeasible without making the required findings supported by substantial evidence, the court shall order compliance by the local entity within 60 days, including an order that the local agency take action on the project.⁹

If the court determines that its order or judgment has not been carried out within 60 days, it may issue further enforcement orders, including but not limited to an order vacating the local agency's disapproval of the project, in which case the application along with any standard conditions determined by the court to be generally imposed by the agency on similar projects shall be deemed approved.¹⁰ If the court finds the local agency acted in bad faith in disapproving or conditioning the project or failing to comply with court's order or judgment within the 60-day period, it may impose fines as specified.¹¹

The public agency has the burden of proof in any action challenging the agency's findings.¹² To show a "specific, adverse impact" justifying disapproval or density reduction of an objectively complying project, it is the public entity's burden to show the project would have a significant, quantifiable, direct and unavoidable impact based on objective, identified written public health or safety standards, policies or conditions in effect when the application was complete.¹³

Comment:

These requirements can render reduced density projects *legally infeasible* alternatives for purposes of consideration in project EIRs under CEQA.¹⁴

Effective: January 1, 2016

West's Ann.Cal.Gov.Code § 65589.5

§ 65589.5. Legislative findings and declarations; housing development projects affordable to very low, low-, or moderate-income households; emergency shelters; written findings required prior to disapproval or conditional approval; compliance with other laws; definitions; enforcement; short title

Currentness

(a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. 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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public

Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f)(1) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, 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.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower

income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record 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.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If, in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days

as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

Credits

(Added by Stats.1982, c. 1438, § 2. Amended by Stats.1990, c. 1439 (S.B.2011), § 1; Stats.1991, c. 100 (S.B.162), § 1, eff. July 1, 1991; Stats.1992, c. 1356 (S.B.1711), § 1; Stats.1994, c. 896 (A.B.3735), § 2; Stats.1999, c. 968 (S.B.948), § 6; Stats.2001, c. 237 (A.B.369), § 1; Stats.2002, c. 147 (S.B.1721), § 1; Stats.2003, c. 793 (S.B.619), § 3; Stats.2004, c. 724 (A.B.2348), § 4; Stats.2005, c. 601 (S.B.575), § 1; Stats.2006, c. 888 (A.B.2511), § 5; Stats.2007, c. 633 (S.B.2), § 4; Stats.2010, c. 610 (A.B.2762), § 2; Stats.2015, c. 349 (A.B.1516), § 2, eff. Jan. 1, 2016.)

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JED YORK
San Francisco 49ers

Established in 1978 by
David Packard

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JUL 24 2017
8:24 AM
TOWN OF LOS GATOS
PLANNING DIVISION

July 24th, 2017

Los Gatos Town Council
110 East Main Street
Los Gatos, CA 95030

RE: Support for Grosvenor's North 40 Phase 1 Application

Dear Mayor Sayoc and Councilmembers,

On behalf of the Silicon Valley Leadership Group, I am writing to offer our comments and express support for Grosvenor USA's application for a mixed used community within the North 40 Specific Plan.

The Silicon Valley Leadership Group, founded in 1978 by David Packard of Hewlett-Packard, represents nearly 375 of Silicon Valley's most respected employers in issues, programs and campaigns that affect the economic quality of life in Silicon Valley, including energy, transportation, education, housing, health care, tax, and the environment. Collectively, Leadership Group members provide nearly one out of every three private sector jobs in Silicon Valley.

With the current shortage of housing within our region, the mixed used community as proposed by Grosvenor USA would provide 320 homes for our region. We are especially pleased to see that 50 of those units will be affordable and dedicated for seniors. The Leadership Group encourages Council to move forward with the applicant as the development would help alleviate the housing crisis by adding much needed housing stock to our region.

The Leadership Group believes that the North 40 site presents a tremendous opportunity to build a vibrant community. It is rare as parcels of this size are not readily available in this day and age. The North 40's site offers the ability to plan something holistically that can address a variety of the Town and region's need. By incorporating amenities such as open spaces, gardens, and mixed used development; all residents alike will benefit from these additions.

We hope to see the North 40 Phase 1 move forward. Thank you for the consideration of our comments.

Sincerely,

Carl Guardino
President & CEO
Silicon Valley Leadership Group

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Monday July 24th 2017

Desk Item for the North 40 Hearing

JUL 24 2017
9:13 AM
TOWN OF LOS GATOS
PLANNING DIVISION

Mayor Marico Sayoc & Council,

As are many other members of the community I am unfortunately out of Town due to previously planned commitments that couldn't be changed. Also unplanned was a severe case of the flu last week that prevented my writing or even attempting to; my apologies.

Please continue the public hearing to August 1st; that would be the request of myself and other residents.

Please continue to work together, regardless of prior positions or staffs' recommendations- together as a Town and you as Council; anything can be accomplished- no matter how wealthy or entrenched the applicant.

Overwhelming support mandates we continue the path to deny this application and revise the Specific Plan to meet the objective requirements of the Town and to make some attempt to keep our Town from the absolute madness that has become life in Los Gatos; *traffic gridlock, unhealthy living standards, loss of our most precious resources, overcrowded schools...*

I write on behalf of numerous residents and concerned members of our community to support your original decision to deny the current application by Grosvenor & Summerhill and to support the Council making the findings to deny the application under the Housing Accountability Act (HAA) as the Judge requested in June of this year.

Excusing my & most residents' lack of familiarity with the HAA, there are several objective and quantifiable findings that could be made. If the Council doesn't feel they are sufficient then we implore you to make your own findings in order to support your constituents, attempt to address the current issues that will only be compounded and the *adverse impact* upon public health and safety including:

1. Lack of sufficient transportation for the proposed Senior Housing (how will these extremely low income seniors most likely without transportation get to basic services.)
 - a. The location of this senior project must be considered as well (limited access for emergency services, above a market hall with elevators and no ground floor)
2. Known harmful effects of residential construction next to freeways (see other communications & basis for denial.)
3. Impact on local schools and the lack of safe bike routes to any of the Los Gatos Schools, including Lexington which is where new incoming students are being enrolled for this fall.
 - a. Investigation into agreement made between the controversial current Superintendent and Grosvenor & Summerhill should be forthcoming.

4. **Traffic impacts and mitigation do not begin to address the increase and absolute gridlock in our Town** nor were they sufficiently addressed at the time the application was deemed complete. Mitigation measures proposed while large in dollars at the time are completely irrelevant as in the past 3 years our traffic has grown from horrible to unacceptable; so much so that residents (except the few downtown assisted by the Wood Rd closure) are unable to leave their homes.
 - a. Senior, students, medical & others are unable to travel to or from Good Samaritan Hospital or other services due to current traffic (not including beach or other Highway 17 closures) (please note Good Sam proposed projects adding hundreds of thousands of sq. ft. of medical space were not included in the EIR.)
 - b. We as a Town can't tolerate any increase in traffic; not one car....as a Council you must find language and a means to address and mitigate; even if it means additional conditions for developers.
 - c. **TRAFFIC IS A HEALTH & SAFETY ISSUE**; it is dangerous to drive in our town, let alone walk or ride a bike.

In closing; the Town and Council have findings to deny the application as stated above and in multiple correspondence from other legal sources, residents and case studies that you choose. You have the internal resources with two fabulous attorneys on the Council, you have the language from the staff report that "there is no feasible method to satisfactorily mitigate or avoid that specifically identified adverse impact other than the disapproval of Applicants' application" **and most importantly you have the support of over 95% of the Town residents to deny the application under objective health and safety criteria.**

As you can see by the number of letters you have received by residents that still are requesting the space remain open or with completely different use that there is a huge disconnect between the developer driven specific plan and not only what our Town and community want, but can at this point in terms of traffic tolerate.....and *life is to be lived; not tolerated.*

It can't be said enough; the adverse impact of the current application is beyond the scope of anything this Town has ever considered and is so negative that if approved it will change the face of our Town and this Valley forever.

Please continue supporting your constituents, uphold the General & Specific Plan and use all your amazing knowledge, experience and deny this application under the HAA as requested by the court.

Thank you so much

Shannon Holmes Susick
16407 Shady View Lane
Los Gatos CA 95032

RECEIVED

JUL 24 2017

TOWN OF LOS GATOS
PLANNING DIVISION

Dear Mayor Sayoc and Council Members,

After some thought, I decided to forward a few notes concerning Council's consideration of the North 40 Application. These are personal thoughts and do not reflect the work of the Committees or Commissions on which I serve. I prepared these notes without consultation and in compliance with the Brown Act and Planning Commission Policy on ex parte communications.

I reviewed the public record concerning grounds for denying the application, and compiled a list of several applicable, objective criteria with which, I believe, the Project fails to comply. This is not a comprehensive list, but captures a few of the issues that are apparent to me.

As a minor aside, I thought about staff's guidance in the report of July 20, 2017 about the "objective standard" to be used, and wish to point out that some language, is inconsistent with the definitions, and with common sense. From the report:

"The HAA does not define the term "objective standard." The following are definitions of that term found within these two dictionaries: 1. Law Dictionary: A standard that is based on factual measurements, in the absence of a biased judgement or analysis. 2. Business Dictionary: Benchmark, criteria, or model based on verifiable measurements or bias free (neutral) analysis and judgment.

In other words, objective standards are *typically quantifiable or numerical standards* [italics mine] and anyone evaluating a project against the standards would arrive at the same conclusion. Examples within the North 40 Specific Plan include building heights, setbacks, open space requirements, etc"

While the definitions make sense, the "in other words" does not necessarily follow. It is clear that something can be objectively factual without being quantifiable. The common expression of "objective" is "black and white," which is not numerical, at all.

So please take my comments as a suggestions, respectful of the the difficult decisions you will need to make.

Regards,
Matthew Hudes

Topic	Reference	Applicable Objective Standard or Criteria	Why this is an Objective Standard rather than a Subjective Factor	How Application Fails to Meet Objective Standard	Evidence Source
Architecture and Site (270 resident comment objections to Application)	North 40 Specific Plan	3.4 . . .the Specific Plan Area should be treated with unique image, or "brand," appropriate to its history and relationship to the Los Gatos community.	Design characteristics are specified as objective standards in HAA 65589.5 (j), which states that "design review standards" are to be included as objective standards and criteria	Application contains no tangible indications of image or brand in relationship to the Los Gatos community. This is a generic proposal that could exist anywhere.	Planning Commission Testimony
Architecture and Site	North 40 Specific Plan	<p>3.3.6 (b) Eliminate box-like forms with large, unvaried roofs by using a variety of building forms and roof shapes with clusters of units, and variations in height, setback and roof shape</p> <p>(c) Make the building visually and architecturally pleasing by varying the height, color, setback, materials, texture, landscaping, trim, roof shapes, and ridge orientation for all elevations.</p> <p>(d) Structures should be varied in height, size, proportions, orientation and roof lines.</p>	Design characteristics are specified as objective standards in HAA 65589.5 (j), which states that "design review standards" are to be included as objective standards and criteria	There is excessive repetition of building form, within the 5 Condominium Clusters, within the 18 Rowhome structures, and within the 12 Garden Clusters, essentially cookie-cutter stamped across the site. (82% of the architectural characteristics are the same within each of the 3 types.)	Planning Commission Testimony

		<p>(f) Emphasize the individuality of each unit with well-defined limits and individual entries and details.</p> <p>(g) Elevations should be mixed within a development to avoid repetition of identical facades and roof lines.</p> <p>(h) Add variety to second and third floors with varied eave heights, windows and ridge line variations.</p>			
Architecture and Site	North 40 Specific Plan	3.2.1 (a) [Commercial] Buildings should be placed close to, and oriented toward, the street.	The orientation of a building is objectively observable.	A number of commercial buildings are not oriented toward the street, including the Specialty Market/Market Hall, which is oriented toward a plaza, the Area C Restaurant/Retail which is oriented toward a Parking Lot and "GardenRetreat"	Phase I Residential & Mixed-Use Neighborhood Development Architecture and Site Planning, with Tentative Map, Application, March 18, 2016
Architecture and Site	North 40 Specific Plan Los Gatos Boulevard Plan	Policy DG6: Architecture. Produce high quality, authentic design, and 360 degree architecture consistent with the architectural design guidelines contained within this Specific Plan	Design characteristics are specified as objective standards in HAA 65589.5 (j), which states that "design review standards" are to be included as objective standards and criteria	Buildings 24 and 25 are Garden Cluster homes located on Los Gatos Boulevard wedged between a gas station and an office building. This is an area that was never intended as a residential location, rather it is appropriate for retail or office, and is completely inconsistent with land use on Los Gatos Boulevard. The placement of these homes in this location is inconsistent with "high quality. . .architecture" and	Planning Commission Testimony

				guidelines within the Specific Plan and inconsistent with specifics contained in the Los Gatos Boulevard Plan.	
Density/Affordable Housing (159 resident comment objections to Application)	North 40 Specific Plan	2.7.3 (b) There shall be a maximum of 270 residential units. This is a maximum, not a goal, and includes the affordable housing units required and the existing units.	Quantity of units proposed is objectively factual.	Application proposes 320 units, which exceeds the maximum of 270. Additionally, existing units were not counted, and it is questionable that existing affordable housing could be removed and replaced with above market housing.	Planning Commission Testimony
Building Height (92 resident comment objections to Application)	North 40 Specific Plan	2.5.2 (i) Maximum building height shall be determined by the plumb vertical distance from the natural or finished grade, whichever is lower. . .	Height is objectively measurable, as is natural grade (although Application did not contain accurate information regarding natural grade).	Application measures height from finished grade in all cases, in contradiction of whichever is lower. Applicant acknowledges this and requests a waiver in order to achieve 20 DU/acre, however provides no evidence to support that assertion. Evidence in Planning Commission testimony contradicts that assertion.	Planning Commission Testimony
Open Space (117 resident comment objections to Application)	North 40 Specific Plan	2.5.5 . . .plazas, paseos, and pathways will be incorporated to accommodate different types of activities.	The existence of plazas, paseos, and pathways is objectively verifiable.	The Application includes no plazas, only one miniscule paseo, and makes limited use of "multi-modal paths." The Application goes to great detail about "streets" and "alleys", emphasizing the urban nature of the Application, but fails to incorporate the types of Open Space specified in the Specific Plan. Paseos are required in the Specific Plan, as distinct from pathways, to encourage leisurely walking or strolling, as compared with multi-modal pathways, that include bicycle use, making them inhospitable to leisurely pedestrian use.	Planning Commission Testimony

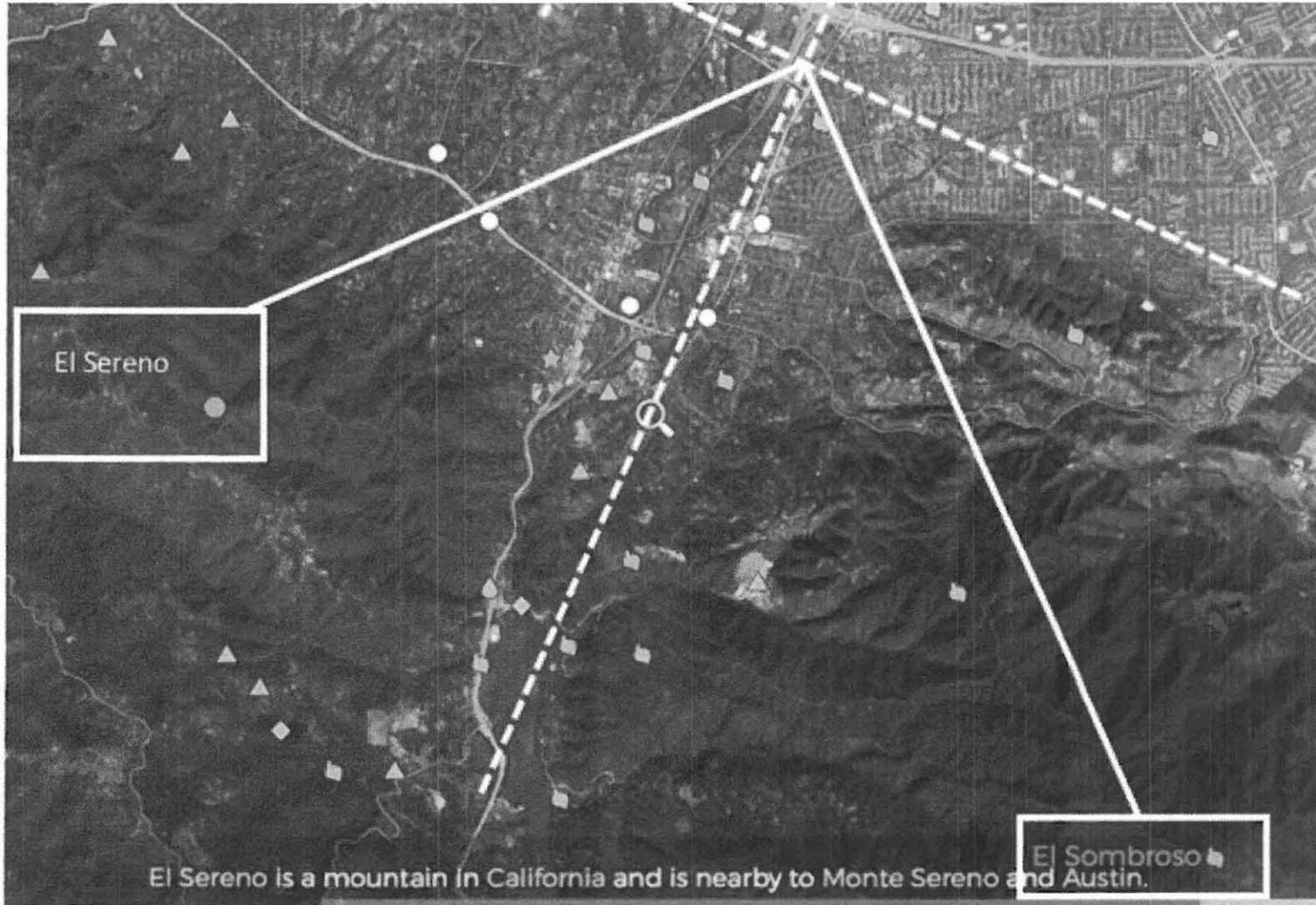
				Although marketing material on Page 3-15 of the Application hypes a "Grand Paseo," (comprising 7897 sq. ft.--less than 2.2% of Phase 1 Open Space), it is insignificant and is not designated on the site plans submitted.	
Schools (233 resident comment objections to Application)	North 40 Specific Plan	LU10: Residential. Provide and integrate a mix of residential product types designed to minimize impact on schools. . .	Standard is objectively measurable in numbers of students projected to be enrolled.	By concentrating all housing in the Los Gatos Union/LG Saratoga District, maximum impact will be placed on that district, while minimum (or no) impact will be placed on Cambrian/Campbell Union District. A single school district absorbing all additional students will more likely require additional fixed capacity, including building construction and educational resources as compared to distributing school impact across all districts which would in fact minimize overall impact, as required by LU10.	Planning Commission Testimony
Traffic (370 resident comment objections to Application)	2020 General Plan	Traffic Element TRA1-42 Existing Level of Service Summary – Table TRA-2 Various intersections on Arterials: Los Gatos Boulevard and Lark Avenue	Level of Service is objectively measurable	Traffic will be considerably worse than projected in the Initial Study North 40 Phase I Development Project, due to the structural impact of map-guidance directed traffic through the relevant area. By anecdote of hundreds of Town residents, the Level of Service on these arterials would drop to the "E" or "F" level. The Level of Service in the EIR has become highly inaccurate due to structural flow changes that have not been mitigated, including some caused by inaction by the State. (Remember, the Town's temporary measure of a "traffic study" cannot be relied on for continued	Town Council Testimony

				<p>impact.) This type of unanticipated traffic has occurred subsequent to the studies and is analogous to a structural calamity, such as the failure of a bridge.</p>	
<p>Views (60 resident comment objections to Application)</p>	<p>North 40 Specific Plan</p>	<p>2.1 Council Vision: The North 40 will embrace hillside views, trees, and open space</p> <p>Open Space Policy 01 View Preservation: Promote and protect views of hillsides and scenic resources.</p> <p>3.2.1 (d) Natural sunlight and views should be considered when siting buildings and landscaped open spaces.</p> <p>3.2.6 (e)(i) Special care shall be taken to avoid obstructing views to the surrounding hills.</p>	<p>Hillside views are an objective standard because they can be directly observed through unaided vision. To put it more plainly: they are visible to the naked eye. Currently, views of the Los Gatos hillsides are directly observable from the majority of locations on the property. The major hillside areas and peaks are objectively either visible, or not. Upon location of structures proposed in the application, the design of the project will either allow, or obstruct, views from numerous pedestrian-accessible locations on the property.</p>	<p>By locating the structures, walkways, and streets on a perpendicular NE-SW grid, the majority of hillside views will be eliminated from points that currently afford views. While it is understandable that any construction would afford obstacles, the issue is with the specific layout proposed, which the Applicant was unwilling to change.</p> <p>This particular layout eliminates the vast majority of views (calculated at 82%) due to the fact that the major hillsides (El Sombroso to the east and El Sereno to the west) are situated at approximately a 45 degree angle from points on the grid layout of the site; however, the buildings and streets are located at 90 degree angles, thus eliminating virtually all interior views of the hillsides. If the buildings or streets were instead located on a grid that is 45 degrees from what is proposed, or if the streets were curved, as they are in several adjacent neighborhoods, then significantly (calculated at 47%) more views would be obtained, without reducing the density of 20 DU/acre.</p>	<p>Planning Commission Testimony</p>

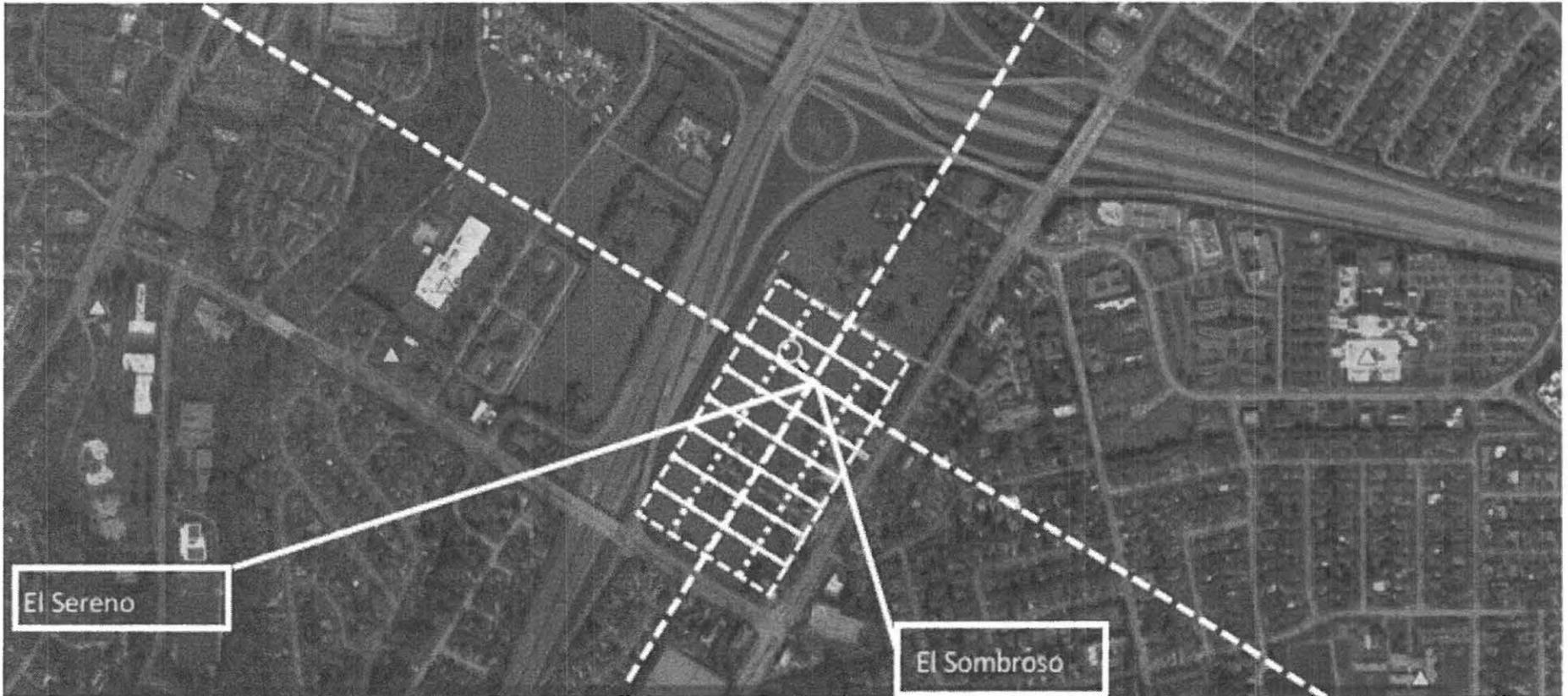
				<p>In fact, there is no layout possible of similarly-sized buildings that would obscure more hillside views than the one that has been proposed. And there is no comparable location of this size in Los Gatos in which the hillside views are more obscured than what is proposed. (Note: illustrations provided in Exhibit A)</p>	
Economic Impact	North 40 Specific Plan	2.4.2 The application submittal must include an Economic Impact Study to assess economic competitiveness	The inclusion of a study is required	<p>While a study was submitted, it is so deeply flawed as to make it completely inadequate. The study, which was meant to assess the competitive impact of the North 40 on other areas in Los Gatos, including, among others, the Downtown, fails to include two of the most relevant factors that impact the ability of areas to compete with the North 40. Per testimony from the applicant, the study did not assess parking requirements and constraints, and did not recognize that a conditional use permit is required in several other areas in Town. It is impossible to assess economic competitiveness without the knowledge of these factors.</p>	Planning Commission Testimony

Exhibit A – Hillside Views

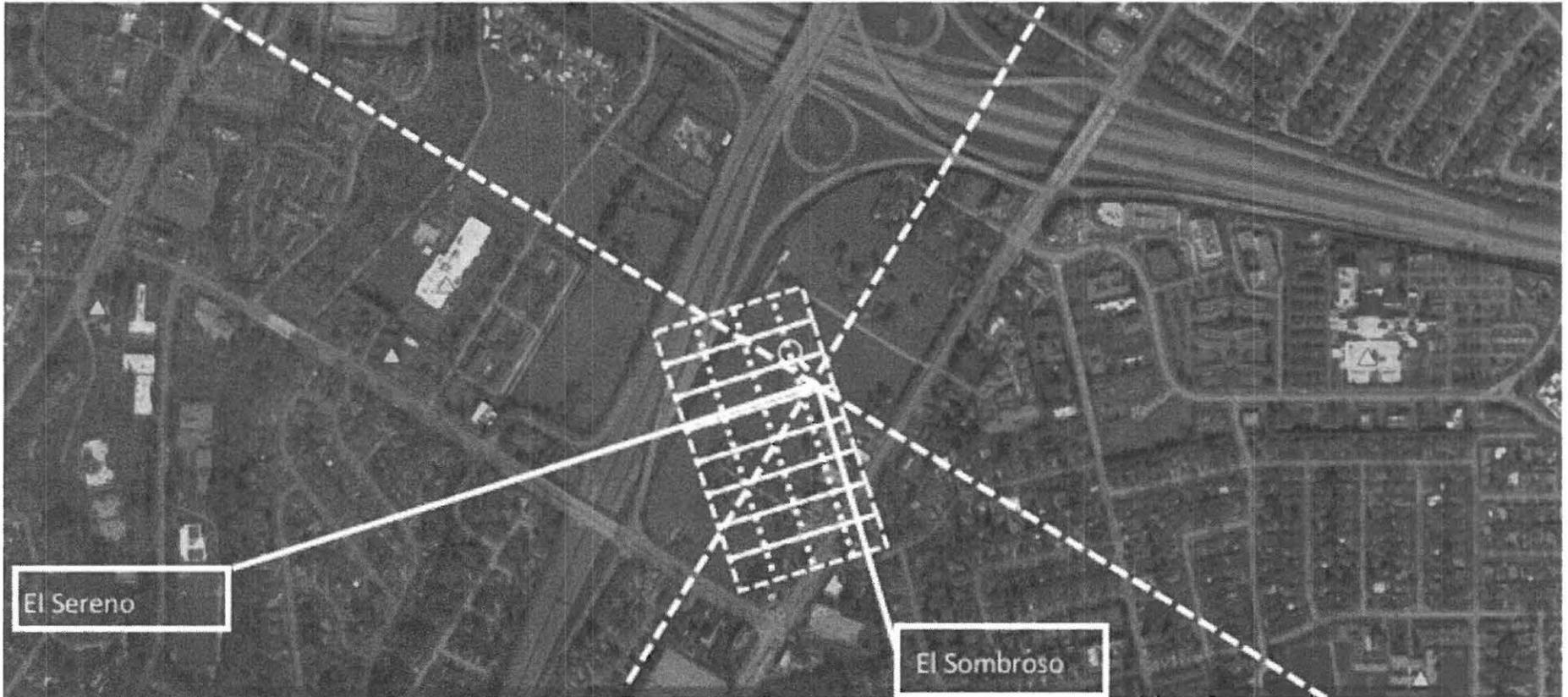
1. Location of North 40 relative to predominant hillsides: El Sereno and El Sombroso.



2. Approximate orientation of street and building grid of North 40 Application relative to predominant hillsides: El Sereno and El Sombrero. Note that virtually all views of the predominant hillsides are obscured from interior pedestrian positions due to the angle of layout.



3. If the street and building grid were rotated by 45 degrees, or if curved streets were used, then views of the predominant hillsides would open up from many more interior locations.



Note that in applicant's defense of the proposed orientation in their Letter dated August 5, 2016, Exhibit E, the applicant states that "Observations in multiple neighborhoods within the town show that views of the hills are most commonly embraced via linear street axes and are framed by mature street trees and/or buildings." They go on to say that "But orienting one's view down a street in directions toward the crescent of hills, one sees the slopes and ridgeline framed by the streetscape. . ." The problem is that in the application, those streets are oriented not toward the hillsides, but away from them.