



**TOWN OF LOS GATOS  
COUNCIL MEETING AGENDA  
OCTOBER 20, 2020  
110 EAST MAIN STREET  
LOS GATOS, CA**

*Marcia Jensen, Mayor  
Barbara Spector, Vice Mayor  
Rob Rennie, Council Member  
Marico Sayoc, Council Member  
Vacant, Council Member*

**PARTICIPATION IN THE PUBLIC PROCESS**

**How to participate:** The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Council. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

**Effective Proceedings:** The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

**Deadlines for Public Comment and Presentations are as follows:**

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
  - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
  - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
  - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.  
Rebroadcast of Town Council Meetings on the 2<sup>nd</sup> and 4<sup>th</sup> Mondays at 7:00 p.m.  
Live & Archived Council Meetings can be viewed by going to:  
[www.losgatosca.gov/Councilvideos](http://www.losgatosca.gov/Councilvideos)***

***IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]***

**TOWN OF LOS GATOS  
COUNCIL MEETING AGENDA  
OCTOBER 20, 2020  
7:00 PM**

**IMPORTANT NOTICE REGARDING THE OCTOBER 6, 2020 COUNCIL MEETING**

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29- 20 dated March 17, 2020, regarding the COVID- 19 pandemic. The live stream of the meeting may be viewed on television and/or online at [www.losgatosca.gov/AgendasAndVideos](http://www.losgatosca.gov/AgendasAndVideos). **In accordance with Executive Order N-29- 20, the public may only view the meeting on television and/or online and not in the Council Chamber.**

**PARTICIPATION**

If you are not interested in providing oral comments real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at [www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube).

If you are interested in providing oral comments real-time during the meeting, you must join the Zoom webinar:

- Join from a PC, Mac, iPad, iPhone or Android device: click this link <https://zoom.us/j/96544203292>. **Password: 971782**. You can also type in 96544203292 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- Join by telephone: Dial: USA 636 651 0008 US Toll or USA 877 336 1839 US Toll-free. Conference code: 969184

During the meeting:

- When the Chair announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press \*9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- When called to speak, please limit your comments to three (3) minutes, or such other time as the Chair may decide, consistent with the time limit for speakers at a Council meeting.

If you are unable to participate in real-time, you may email to [PublicComment@losgatosca.gov](mailto:PublicComment@losgatosca.gov) with the subject line “Public Comment Item #\_\_” (insert the item number relevant to your comment) or “Verbal Communications – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 5:00 p.m. on the day of the meeting. All comments received will become part of the record. The Mayor has the option to modify this action on items based on comments received.

**TOWN OF LOS GATOS  
COUNCIL MEETING AGENDA  
OCTOBER 20, 2020  
7:00 P.M.**

**REMOTE LOCATION PARTICIPANTS**

*The following Council Members are listed to permit them to appear electronically at the Town Council meeting: MAYOR MARCIA JENSEN, VICE MAYOR BARBARA SPECTOR, COUNCIL MEMBER ROB RENNIE, COUNCIL MEMBER MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.*

**MEETING CALLED TO ORDER**

**ROLL CALL**

**CLOSED SESSION REPORT**

**COUNCIL / MANAGER MATTERS**

**CONSENT ITEMS** *(Items appearing on the Consent Items are considered routine and may be approved by one motion. Any member of the Council or public may request to have an item removed from the Consent Items for comment and action. A member of the public may request to pull an item from Consent by following the Participation Instructions contained on Page 2 of this agenda. If an item is pulled, the Mayor has the sole discretion to determine when the item will be heard. Unless there are separate discussions and/or actions requested by Council, staff, or a member of the public.)*

1. Approve the Draft Minutes of the October 6, 2020 Closed Session Meeting.
2. Approve Draft Minutes of the October 6, 2020 Town Council Meeting.
3. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Los Gatos Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping (PPW Job No. 18-831-4609) Completed by Silicon Valley Paving and Authorize the Town Clerk to File for Recordation.
4. Adopt an Ordinance to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding Outdoor Lighting. Town Code Amendment Application A-20-005. Applicant: Town of Los Gatos.
5. Adopt an Ordinance to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos.
6. Consider Approval of a Temporary Sign Permit Application on Property Zoned C-1:PD Located at 106 E. Main Street. APN 529-34-108. Temporary Sign Permit Application SN-20-042. Property Owner: Town of Los Gatos. Applicant: Kimberly Snyder, New Museum of Los Gatos (NUMU).

**VERBAL COMMUNICATIONS** (*Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda consistent with the Participation instructions contained on page 2 of this agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per comment. In the event additional comments were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.*)

**PUBLIC HEARINGS** (*Applicants/Appellants, their representatives, and members of the public may address the Council on any Public Hearing item consistent with the Participation instructions contained on page 2 of this agenda. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.*)

- [7.](#) Consider Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town-Wide. Applicant: Town of Los Gatos.
- [8.](#) Consider an Appeal of a Planning Commission Decision Denying a Request for a Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-07-114. Architecture and Site Application S-20-012. Property Owners/Applicant/Appellant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**ADJOURNMENT** (*Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time*)

***Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection on the official Town of Los Gatos website.***

***Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.***



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 1

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**DRAFT  
Minutes of the Town Council Special Meeting - Closed Session  
October 6, 2020**

The Town Council of the Town of Los Gatos conducted a Special Meeting via teleconference on Tuesday, October 6, 2020, to hold a Closed Session at 6:15 p.m.

**MEETING CALLED TO ORDER AT 6:15 P.M.**

**ROLL CALL**

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc. (All participating remotely.)

Absent: None

**VERBAL COMMUNICATIONS**

Sarah Chaffin

- Commented on her fundraising efforts and why she is requesting an additional loan from the Town to complete the proposed "teacher housing" project.

**ADJOURNMENT**

Closed Session adjourned at 6:45 p.m.

Attest:

Submitted by:

\_\_\_\_\_  
Jenna De Long, Deputy Clerk

\_\_\_\_\_  
Laurel Prevetti, Town Manager



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**DRAFT  
Minutes of the Town Council Meeting  
October 6, 2020**

The Town Council of the Town of Los Gatos conducted a regular meeting via teleconference via COVID-19 Shelter in Place Guidelines on October 6, 2020, at 7:00 p.m.

**MEETING CALLED TO ORDER AT 7:00 P.M.**

**ROLL CALL**

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc. (All participating remotely).

Absent: None

**COUNCIL/TOWN MANAGER REPORTS**

**Manager Matters**

- Announced ballot drop off boxes are available in front of the Library and in front of Town Hall.
- Announced adult Commissioner recruitment is open, and applications are due November 6, 2020 by 4:00 p.m. and interviews are scheduled November 17, 2020 at 5:00 p.m.
- Announced the Inclusive Los Gatos Workshop series continues on October 22, 2020 with a virtual Community Culture Workshop and invited the community to participate.

**Council Matters**

- Vice Mayor Spector stated she attended the West Valley Sanitation District (WVSD) Board of Directors meeting, two General Plan Advisory Committee (GPAC) meetings, the Town's Affordable Housing Community Workshop, and Santa Clara County Health Department COVID-19 phone conferences.
- Council Member Sayoc stated she and Council Member Rennie attended the League of California Cities Peninsula Division Prop 15 meeting.
- Council Member Rennie stated he chaired the Valley Transportation Authority (VTA) Congestion Management Program Committee meeting; attended the VTA Board workshop, Board meeting, and Governance and Audit Committee meeting; participated in Economics of Energy courses offered to the Silicon Valley Clean Energy Authority (SVCEA) Board and Legislative and Regulatory Committee meetings; and attended the Town's Affordable Housing Community Workshop, San Francisco Bay Area Planning and Urban Research Association (SPUR) Transit Agency Workshop and Virtual Conference, and Housing Trust Silicon Valley "On the House" Conference.

Council Matters - continued

- Mayor Jensen stated she attended the Town's Affordable Housing Community Workshop with the other Council Members, West Valley Mayors and Managers meetings, and the GPAC meetings.

**CLOSED SESSION REPORT**

- Robert Shultz, Town Attorney, stated Council met in closed session as duly noted on the agenda and that there is no reportable action.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

1. Approve Minutes of the September 15, 2020 Town Council Meeting.
2. Adopt Public Safety Power Shutoff (PSPS) Annex to the Town Emergency Operation Plan (EOP).
3. Approve the Mayor's Recommendation to Create and Appoint a Town Council Ad Hoc Committee to Study Wildfire Mitigation in the Wildland Urban Interface (WUI).
4. Authorize the Following Actions for the Local Roadway Safety Plan (PPW Project Number 812-0132):
  - a. Review and Approve the Scope of Services for a Request for Proposals (Attachment 1) to Prepare a Local Roadway Safety Plan.
  - b. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement for Preparing the Local Roadway Safety Plan with the Highest Scored Proposer in an Amount Not to Exceed \$80,000.
5. Accept the Completion of Work Performed by Syserco Energy Solutions, Inc. for PPW Job No. 411-821-2008 Energy Efficiency Upgrades.

**MOTION: Motion by Vice Mayor Spector to approve the Consent Items. Seconded by Council Member Sayoc.**

**VOTE: Motion passed unanimously.**

**VERBAL COMMUNICATIONS**

No one spoke.

**PUBLIC HEARINGS**

6. Consider Approval of Amendments and Introduce the Draft Ordinance by Title Only to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding Outdoor Lighting and Modifications to the Residential Design Guidelines, Town-Wide. Town Code Amendment Application A-20-005. Applicant: Town of Los Gatos. **RESOLUTION 2020-039**

Jennifer Armer, Senior Planner, presented the item.

Public Hearing Item #6 - continued

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item.

**MOTION:** Motion by Council Member Sayoc to make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 1); make the required finding that the amendments to Chapter 29 of the Town Code regarding outdoor lighting are consistent with the General Plan (Attachment 1); and make the required finding that the modifications to the Residential Design Guidelines are consistent with the General Plan (Attachment 1); adopt a Resolution to modify the Residential Design Guidelines (Attachment 2); and introduce the Ordinance of the Town of Los Gatos effecting the amendments of the Town Code regarding outdoor lighting A-20-005 (Attachment 3), by title only; and direct staff to explore the Planning Commission's recommendation on numerical standards for lighting intensity under a separate and subsequent Code amendment. **Seconded by Vice Mayor Spector.**

**VOTE:** Motion passed unanimously.

Shelley Neis, Town Clerk, read the title of the ordinance.

7. Consider Approval of Amendments and Introduce the Draft Ordinance by Title Only to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program and Adopt a Resolution to Modify the Below Market Price Housing Program Guidelines. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos.

**RESOLUTION 2020-040**

Jocelyn Shoopman, Associate Planner, presented the item.

Opened public comment.



Public Hearing Item #7 - continued

Amy Nishide

- Commented that she thought part of the intent of the program was to make the Town more inclusive and increase racial diversity; and inquired if the something could be added to the Purpose Part A about increasing socio-economic and racial diversity, if the purpose of the point system could encourage diversity to bring people into Town, and if the in lieu fees were changed and could be raised.

Matthew Hudes

- Commented that raising the amount by 120% may have a consequence of low and very low applicants competing with a larger pool of applicants and proposed giving low and very low applicants extra points.

Jeffrey Suzuki

- Commented that we should strongly de-emphasize home ownership in the future and emphasize rental housing; inquired why the word "shall" was changed to "should" in Section C.1 and why are we raising the income level; and stated there should be some mechanism in place to raise money to purchase market rate housing and convert it to BMP housing, and to disapprove developments that are not meeting their BMP obligations.

Maria Ristow

- Commented in support of an emphasis on rental units to increase the Town's socio-economic and racial diversity.

Lee Quintana

- Commented in support of an emphasis on rental units, that the BMP program doesn't meet the housing needs in Town, that requiring BMPs to be the same size as market rate units is a hindrance to developers, and that she is concerned with raising the rate to 120%.

Mayor Jensen closed public comment.

Council discussed the item.

Public Hearing Item #7 – continued

**MOTION:** **Motion by Mayor Jensen** to 1) make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 1); 2) make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Attachment 1); and 3) make the required finding that the modifications to the BMP Housing Program Guidelines are consistent with the General Plan (Attachment 1); and 4) introduce the Ordinance of the Town of Los Gatos effecting the amendments of the Town Code regarding BMP regulations A-20-004 (Attachment 2), by title only; and 5) adopt a Resolution approving modifications to the BMP Housing Program Guidelines (Attachment 3). **AMENDMENT by Council Member Sayoc:** Amend the Guidelines to include additional points for low income applicants for-for-sale units. **Seconded by Council Member Sayoc.**

**VOTE:** **Motion passed unanimously.**

Shelley Neis, Town Clerk, read the title of the ordinance.

#### **OTHER BUSINESS**

8. Provide Specific Direction to Modify the Town’s Pilot Parklet Program and Economic Recovery Initiatives:
  - a. Discuss Town’s Pilot Parklet Program (established pre-COVID), and Consider Extending the Parklet Duration for a Minimum of Five to Seven Years; and
  - b. Determine the Duration of the Temporary Economic Recovery (Krail) Parklets Located on Public Property in Downtown and Consider Phasing Options to Facilitate Outdoor Seating and Business Activities; and
  - c. Discuss Options for Businesses to Implement Platforms, Ramps, Overhead Coverage, and Other Modifications Within the Economic Recovery Parklets to Continue to Support Outdoor Business Services Through the Winter; and
  - d. Discuss Other Elements of the Economic Recovery Initiatives and Provide Further Direction as Appropriate.

Monica Renn, Economic Development Manager, presented the item.

Mayor Jensen opened public comment.

Other Business Item #8 – continued

Sue Farwell

- Commented in support of long-term parklets and continuation of krail parklets until the pandemic is over, encouraged Council to make the parklets permanent, and suggested if a grant program is instituted that it be retroactive to those who put in parklets before the pandemic.

Matthew Hudes

- Suggested reallocating 1.9 million dollars from beautification budget to put toward recovery for small businesses to be used for projects across Town, exploring funding options, creating a standing economic recovery board, accelerating parking improvements identified in the Dixon report, developing new configuration from N. Santa Cruz, and making Los Gatos easy to do business with.

Randi Chen, Los Gatos Chamber of Commerce

- Commented in support of continuation of krail parklets through at least March 31, 2021 and not make any permanent decisions regarding the krail parklets now; agreed that all krail parklets should have floors to make them even with the sidewalks and that the Town needs to address what type of roof construction is allowed; supported extending the semi-permanent parklets for 5 to 7 years and a grant program; suggested forgiving business license fees for businesses that meet certain parameters; and thanked the Town for funding the Los Gatos Lights.

Donna Novi, Pastaria

- Commented in support of continuation of krail parklets through the fall of 2021 and long-term parklets.

David MacGregor-Scholes, Redemption and Chamber Board

- Commented in support long-term parklets.

Catherine Somers, Los Gatos Chamber of Commerce Executive Director

- Commented in support of krail parklets through the pandemic, suggested exploring flooring ideas for parklets, and hiring a professional consultant to present a future plan for downtown streets.

Mayor Jensen closed public comment.

Council discussed the item.

Other Business Item #8 – continued

**MOTION:** Motion by **Mayor Jensen** to continue parklets through at least March 2021 where existing krail may stay in place, remove unused krail, and use the space for bicycle parking, curbside pickup, and ride share drop-off/pick-up; all parklets should be ADA compliant and fire safe compliant; continue streamlining permits and processing fees; not allow pop-ups in existing krail parklets on public property. **Seconded by Council Member Rennie.**

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by **Council Member Sayoc** to move forward with a matching grant program to incentivize ADA and drainage compliance for the krail parklets and return in January to the Town Council with a grant program to incentivize the creation of more permanent parklets. **Seconded by Council Member Rennie.**

**VOTE:** Motion passed unanimously.

#### **ADJOURNMENT**

The meeting adjourned at 10:07 p.m.

Submitted by:

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Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 3

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DATE: October 15, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Los Gatos Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping (PPW Job No. 18-831-4609) Completed by Silicon Valley Paving and Authorize the Town Clerk to File for Recordation

**RECOMMENDATION:**

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the Los Gatos Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping (PPW Job No. 18-831-4609) completed by Silicon Valley Paving and authorize the Town Clerk to file for Recordation.

**BACKGROUND:**

The Town's adopted FY 2019/20-2023/24 Capital Improvement Program (CIP) Budget appropriated funding for the asphalt pavement seal coat maintenance of the Los Gatos Creek Trail, park pathways, and associated parking lots. At the March 17 ,2020 meeting, Town Council approved the plans and specifications for this project. The Council also authorized the Town Manager to advertise the project for bid and to award the project for a total amount not to exceed the construction budget of \$212,000, including contingencies and any change orders, to the lowest responsible bidder.

The project was advertised on March 20, 2020, and the Town received five bids for the project on April 23, 2020 as outlined in the following table.

**PREPARED BY:** WooJae Kim  
Town Engineer

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director and Director of Parks and Public Works

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SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Silicon Valley Paving and Authorize Recording by the Town Clerk for PPW Job No. 18-831-4609 Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping Project

DATE: October 9, 2020

BACKGROUND (continued):

Silicon Valley Paving	\$123,800.00
Bond Pavement Solutions	\$130,537.00
Dryco Construction	\$153,510.00
Forticon	\$171,130.00
Tri Valley Excavating	\$286,300.00

Silicon Valley Paving was the lowest responsive bidder with a bid of \$123,800. The contractor's bid was significantly lower than the original engineer's estimate. To maximize on the low competitive pricing received, more seal coat repair areas were added to the scope bring the project total to \$173,800. On June 2, staff obtain Council approval on the increased project scope still under the original budget. Subsequently, the Town entered into an agreement with Silicon Valley Paving for the project in the amount of \$173,800.

DISCUSSION:

Silicon Valley Paving has satisfactorily completed all the work for the project for a final contract amount of \$173,800, and staff recommends acceptance of the project.

Five percent of the faithful performance bond will remain in effect for a period of two years as a guarantee for any needed repair or replacement caused by defective materials and/or workmanship for the project. The execution and recordation of the Certificate of Acceptance is now required to finalize the Town's acceptance of the project.

CONCLUSION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the Los Gatos Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping (PPW Job No. 18-831-4609) completed by Silicon Valley Paving and authorize the recording by the Town Clerk.

FISCAL IMPACT:

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of the project, recovery of costs for grant funded projects, and identification of future staffing needs. The project utilized both full-time budgeted and temporary staff. The costs for full-time staff are accounted for in the Department's Operating Budget. Only temporary staff costs incurred in FY2020/21, totaling \$4,767 will be charged to the project.

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Work of Silicon Valley Paving and Authorize Recording by the Town Clerk for PPW Job No. 18-831-4609 Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping Project

DATE: October 9, 2020

FISCAL IMPACT (continued):

<b>Creek Trail &amp; Park Pathway &amp; Parking Lot Seal Coat &amp; Striping Project 831-4609</b>		
	<b>Budget</b>	<b>Costs</b>
GFAR	\$ 225,000	
<b>Total Project Budget</b>	<b>\$ 225,000</b>	
Silicon Valley Paving		\$ 179,189
Blueprint/Copy/Postage		\$ 649
Temporary Staff Costs		\$ 4,767
<b>Total Project Costs</b>		<b>\$ 184,606</b>
<b>Remaining Balance</b>		<b>\$ 40,394</b>
<b>Staff Costs</b>		
Operating Budget		\$ 43,489
<b>Total</b>		<b>\$ 43,489</b>

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorical Exempt (Section 15301c). A Notice of Exemption was previously filed.

Attachment:

1. Certificate of Acceptance and Notice of Completion

**Recording Requested by:**

TOWN OF LOS GATOS

**WHEN RECORDED MAIL TO:**

TOWN CLERK  
TOWN OF LOS GATOS  
110 E MAIN ST  
LOS GATOS, CA 95030

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(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

**TYPE OF RECORDING**

**CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION**

**PPW JOB NO. 18-831-4609 Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping**

TO WHOM IT MAY CONCERN:

I do hereby certify that **Silicon Valley Paving** completed the work called for in the agreement with the Town of Los Gatos dated June 2, 2020. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the PPW Job No. 18-831-4609 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **October 20, 2020**.

Bond No.: 38K008266

Date: June 11, 2020

TOWN OF LOS GATOS

By: \_\_\_\_\_  
Laurel Prevetti, Town Manager

*Acknowledgement Required*

ATTACHMENT 1



**AFFIDAVIT**

**To Accompany Certificate of Acceptance and Notice of Completion  
PPW JOB NO. 18-831-4609 Creek Trail, Park Pathway, and Parking Lot Seal Coat and Striping**

I, **LAUREL PREVETTI**, the Town Manager of the Town of Los Gatos, have read the foregoing CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein alleged on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on \_\_\_\_\_, 2020 at Los Gatos, California.

\_\_\_\_\_  
LAUREL PREVETTI, TOWN MANAGER  
Town of Los Gatos

**RECOMMENDED BY:**

\_\_\_\_\_  
Matt Morley  
Director of Parks and Public Works

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert Schultz, Town Attorney

Date: \_\_\_\_\_

*Notary Jurat Required*



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 4

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DATE: October 13, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Adopt an Ordinance to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding Outdoor Lighting. Town Code Amendment Application A-20-005. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Adopt amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding outdoor lighting (Attachment 1).

**DISCUSSION:**

On October 6, 2020, the Council considered and voted to adopt a resolution to modify the Residential Design Guidelines and introduce an Ordinance amending Chapter 29 of the Town Code regarding outdoor lighting. Adoption of the attached Ordinance (Attachment 1) would finalize that decision.

**Attachments:**

1. Draft Ordinance (redline)
2. Final Ordinance

**PREPARED BY:** JENNIFER ARMER, AICP  
Senior Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING  
OUTDOOR LIGHTING**

**WHEREAS**, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates outdoor lighting and prohibits “shoestring lighting”; and

**WHEREAS**, on October 22, 2019, the Town Council Policy Committee held a public hearing to consider possible changes to the current regulations on outdoor lighting and prohibition of “shoestring lights.” The Policy Committee continued the matter to November 28, 2019, and directed staff to bring back possible modifications to Town Code and the Residential Design Guidelines for further discussion; and

**WHEREAS**, staff prepared draft modifications for the Policy Committee’s consideration; and

**WHEREAS**, on November 28, 2019, January 28, 2020, and July 28, 2020, the Policy Committee held public hearings to consider modifications to Sections 29.40.09015 and 29.40.025 of the Town Code; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 26, 2020; and

**WHEREAS**, on August 26, 2020, the Planning Commission held a public hearing to consider modifications to Sections 29.40.09015 and 29.40.025 of the Town Code. The Planning Commission recommended that the Town Council approve the modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

**WHEREAS**, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 1

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

**ARTICLE I. – IN GENERAL**

.....

**Sec. 29.10.09015. - ~~Control of Residential~~ outdoor lighting.**

~~Outdoor lights must be shielded and directed to shine on improvements including plants on the zoning plot where the lights are located and not directly on other property or any public right-of-way. Shoestring lighting is not permitted.~~

All permanent exterior light fixtures should utilize shields so that no bulb is visible and to ensure that light is directed to the ground surface and does not spill light onto neighboring parcels or produce glare when seen from nearby homes. Decorative lighting fixtures are preferred for security lighting fixtures.

.....

**ARTICLE IV. – RESIDENTIAL ZONES**

.....

**Sec. 29.40.025. - Court game areas.**

Tennis, volleyball, basketball, badminton and similar court game areas may be located anywhere on the lot except in the required front yard or side yard abutting the street. Fences over six (6) feet high are allowed to enclose court game areas, when approved through the Administrative Procedure for Minor Residential Projects. Lighting for court game areas is prohibited unless approved through the Administrative Procedure for Minor Residential Projects and unless it is in compliance with the following standards to the satisfaction of the Planning Director:

- (1) Game court lighting shall incorporate cut-off fixtures and lighting shall be shielded and directed onto the court.
- (2) Lighting for game court areas shall not be used after 10:00 p.m.
- ~~(3) High-intensity lights are not permitted.~~
- ~~(3)(4)~~ Lighting in the hillside areas is prohibited. Hillside areas are defined by the hillside area map in the Hillside Development Standards and Guidelines.

.....

## **SECTION II**

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION V**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6<sup>th</sup> day of October 2020 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 20<sup>th</sup> day of October 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING  
OUTDOOR LIGHTING**

**WHEREAS**, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates outdoor lighting and prohibits “shoestring lighting”; and

**WHEREAS**, on October 22, 2019, the Town Council Policy Committee held a public hearing to consider possible changes to the current regulations on outdoor lighting and prohibition of “shoestring lights.” The Policy Committee continued the matter to November 28, 2019, and directed staff to bring back possible modifications to Town Code and the Residential Design Guidelines for further discussion; and

**WHEREAS**, staff prepared draft modifications for the Policy Committee’s consideration; and

**WHEREAS**, on November 28, 2019, January 28, 2020, and July 28, 2020, the Policy Committee held public hearings to consider modifications to Sections 29.40.09015 and 29.40.025 of the Town Code; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 26, 2020; and

**WHEREAS**, on August 26, 2020, the Planning Commission held a public hearing to consider modifications to Sections 29.40.09015 and 29.40.025 of the Town Code. The Planning Commission recommended that the Town Council approve the modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

**WHEREAS**, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 2

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

**ARTICLE I. – IN GENERAL**

.....

**Sec. 29.10.09015. - Residential outdoor lighting.**

All permanent exterior light fixtures should utilize shields so that no bulb is visible and to ensure that light is directed to the ground surface and does not spill light onto neighboring parcels or produce glare when seen from nearby homes. Decorative lighting fixtures are preferred for security lighting fixtures.

.....

**ARTICLE IV. – RESIDENTIAL ZONES**

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**Sec. 29.40.025. - Court game areas.**

Tennis, volleyball, basketball, badminton and similar court game areas may be located anywhere on the lot except in the required front yard or side yard abutting the street. Fences over six (6) feet high are allowed to enclose court game areas, when approved through the Administrative Procedure for Minor Residential Projects. Lighting for court game areas is prohibited unless approved through the Administrative Procedure for Minor Residential Projects and unless it is in compliance with the following standards to the satisfaction of the Planning Director:

- (1) Game court lighting shall incorporate cut-off fixtures and lighting shall be shielded and directed onto the court.
- (2) Lighting for game court areas shall not be used after 10:00 p.m.
- (3) High-intensity lights are not permitted.
- (4) Lighting in the hillside areas is prohibited. Hillside areas are defined by the hillside area map in the Hillside Development Standards and Guidelines.

.....



## **SECTION II**

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION V**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6<sup>th</sup> day of October 2020 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 20<sup>th</sup> day of October 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 5

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DATE: October 13, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Adopt an Ordinance to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Adopt amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding the Below Market Price Program (Attachment 1).

**DISCUSSION:**

On October 6, 2020, the Council considered and voted to adopt a resolution to modify the Below Market Price Housing Program and Guidelines and introduce an Ordinance amending Chapter 29 of the Town Code regarding the Below Market Price Program. Adoption of the attached Final Ordinance (Attachment 2) would finalize that decision.

**Attachments:**

1. Draft Ordinance (redline)
2. Final Ordinance

**PREPARED BY:** Jocelyn Shoopman  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING  
THE BELOW MARKET PRICE PROGRAM**

**WHEREAS**, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates the Below Market Price Program; and

**WHEREAS**, on April 9, 2019, the Town Council Policy Committee held a public hearing to consider possible amendments to the current regulations regarding the Below Market Price Program. The Policy Committee continued the matter to August 27, 2019, and directed staff to bring back possible amendments to the Town Code and potential modifications to the Below Market Price Housing Program Guidelines for further discussion; and

**WHEREAS**, staff prepared draft amendments for the Policy Committee's consideration; and

**WHEREAS**, on August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee held public hearings to consider amendments to Division 6 of the Town Code; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 12, 2020; and

**WHEREAS**, on August 12, 2020, the Planning Commission held a public hearing to consider amendments to Division 6 of the Town Code. The Planning Commission recommended that the Town Council approve the amendments with modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

**WHEREAS**, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 1

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

**DIVISION 6. - HOUSING ASSISTANCE PROGRAM**

Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3005. - Below market price program—~~E~~ established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3010. - ~~Same Program~~ —~~I~~ intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate and low income.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and ~~to all~~ residential planned development projects (~~d~~ Division 2 of ~~a~~ Article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. ~~Projects in the R-I and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.~~

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

*BMP dwelling* means any residential dwelling unit designated for very low, low, and moderate income persons and families under the rules of this section.

*Person of moderate income* means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3025. - Scope.

The Below Market Price Program requirements shall apply to all residential ~~development projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects~~ that include five (5) or more residential units or parcels which involve:

1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects~~;~~
2. Subdivision of property for single family or duplex housing development~~;~~
3. Conversion of rental apartments to condominiums or other common interest ownership~~;~~ and
4. Conversion of non-residential use to residential use.

~~Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.~~

The residential ~~projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects~~ developments consisting of five that include (5) or more residential units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units~~;~~
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:  
Number of BMP units = .225 (total # of market rate units) - 2.5~~;~~
3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units~~;~~
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number~~;~~ and
5. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit for a project with an underlying zone of HR. ~~in the case of Planned Unit development with an underlying zone of HR.~~ The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is

built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. - Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council;
2. The initial price does not include the cost of land, profit, or marketing costs;
3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing;
4. Each buyer of a BMP unit must agree to sell the unit to a moderate or low income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit;
5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council;
6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5); and
7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. - Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)



Sec. 29.10.3040. - Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

## **SECTION II**

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION V**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6<sup>th</sup> day of October 2020 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of November 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING  
THE BELOW MARKET PRICE PROGRAM**

**WHEREAS**, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates the Below Market Price Program; and

**WHEREAS**, on April 9, 2019, the Town Council Policy Committee held a public hearing to consider possible amendments to the current regulations regarding the Below Market Price Program. The Policy Committee continued the matter to August 27, 2019, and directed staff to bring back possible amendments to the Town Code and potential modifications to the Below Market Price Housing Program Guidelines for further discussion; and

**WHEREAS**, staff prepared draft amendments for the Policy Committee's consideration; and

**WHEREAS**, on August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee held public hearings to consider amendments to Division 6 of the Town Code; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 12, 2020; and

**WHEREAS**, on August 12, 2020, the Planning Commission held a public hearing to consider amendments to Division 6 of the Town Code. The Planning Commission recommended that the Town Council approve the amendments with modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

**WHEREAS**, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 2

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

**DIVISION 6. - HOUSING ASSISTANCE PROGRAM**

Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3005. - Below market price program established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3010. - Program intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate and low income.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects (Division 2 of Article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

*BMP dwelling* means any residential dwelling unit designated for very low, low, and moderate income persons and families under the rules of this section.

*Person of moderate income* means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3025. - Scope.

The Below Market Price Program requirements shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects that include five (5) or more residential units or parcels which involve:

1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects;
2. Subdivision of property for single family or duplex housing development;
3. Conversion of rental apartments to condominiums or other common interest ownership; and
4. Conversion of non-residential use to residential use.

The residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects that include five (5) or more residential units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units;
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:  
$$\text{Number of BMP units} = .225 (\text{total \# of market rate units}) - 2.5;$$
3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units;
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number; and
5. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit for a project with an underlying zone of HR. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. - Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council;
2. The initial price does not include the cost of land, profit, or marketing costs;
3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing;
4. Each buyer of a BMP unit must agree to sell the unit to a moderate or low income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit;
5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council;
6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5); and
7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. - Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3040. - Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

## **SECTION II**

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION V**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6<sup>th</sup> day of October 2020, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of November 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_





**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 6

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DATE: October 13, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider Approval of a Temporary Sign Permit Application on Property Zoned C-1:PD Located at 106 E. Main Street. APN 529-34-108. Temporary Sign Permit Application SN-20-042. Property Owner: Town of Los Gatos. Applicant: Kimberly Snyder, New Museum of Los Gatos (NUMU).

**RECOMMENDATION:**

Consider approval of a Temporary Sign Permit application on property zoned C-1:PD located at 106 E. Main Street.

**DISCUSSION:**

The New Museum of Los Gatos (NUMU) has submitted an application for a temporary sign permit to erect a sign advertising that the museum is open, and admission is free to residents of the Town (Attachment 1). The temporary vinyl sign measures approximately 12 feet tall and 10 feet wide. The sign would be secured to the exterior wall of the Civic Center, above the NUMU staff office windows (Attachment 3). The application does not indicate a date for when the sign would be installed or removed.

Section 29.10.120 of the Town Code regulates temporary signs in the Town. This section provides rules for five types of temporary signs: grand opening, subdivision, lease and rental, event, and construction signs. The proposed sign would not fit directly under any of these categories; however, given the current global COVID-19 pandemic, the proposed sign could be found to fit under the event or grand opening categories. The maximum duration for a temporary sign allowed by the Town Code is 45 days for a grand opening sign. Installation beyond 45 days would require a permanent sign permit. The information provided on the application does not clarify whether the sign would meet or exceed the 45-day limitation for

**PREPARED BY:** Sean Mullin, AICP  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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DISCUSSION (continued):

temporary signs. Staff has included a condition of approval that the sign be installed for no more than 45 days (Attachment 2).

The temporary sign has an area of 120 square feet. Town Code Section 29.10.135 allows one square foot of sign area for every one lineal foot of primary and secondary frontage. The size of the proposed sign is consistent with the Town Code.

CONCLUSION:

Staff recommends approval of the proposed temporary sign, subject to the conditions of approval (Attachment 2).

ALTERNATIVES:

Alternatively, the Town Council can:

1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

FISCAL IMPACT:

There is no fiscal impact from approving the application.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is exempt under Section 15061 (b)(3) as there is no possibility that the project would have a significant impact on the environment. A Notice of Exemption will not be filed.

Attachments:

1. Application for Temporary Sign Permit
2. Draft Conditions of Approval
3. Letter of Justification
4. Draft Sign

# APPLICATION FOR TEMPORARY SIGN PERMIT

TOWN OF LOS GATOS - COMMUNITY DEVELOPMENT DEPT.

Civic Center: 110 E. Main Street, Los Gatos, CA 95030

Phone: (408) 354-6874 FAX: (408) 354-7593

Banner Permit: \$ 112.86

### Please Type or Print Clearly

Applicants are advised to review Chapter 29.10.120 of the Zoning Ordinance prior to filing an application for sign permit.

106 E. Main Street, Los Gatos, CA 95030

Building Address: \_\_\_\_\_ Zone \_\_\_\_\_

Present Use of Building: New Museum Los Gatos / Friends of the Library Book Store

E Main Street between Villa Avenue & Pageant Way

Street Name(s): \_\_\_\_\_

Business Frontage(length): \_\_\_\_\_

Text of Temporary Sign: " New Museum Los Gatos, We're Open"

Temporary Sign Size: (length) 10 ft (width) 12 ft (Total sq. ft.) 120 sq ft

vinyl

Sign Materials: \_\_\_\_\_

Date temporary sign will be put up? \_\_\_\_\_ Date temporary sign will be removed? \_\_\_\_\_

On reverse side (or on separate 8½ X 11 sheet) prepare a sketch of the temporary sign(s) showing dimensions, copy, and colors.

New Museum Los Gatos ( Kimberly Snyder) 106 E Main Street (408) 354-2646

Name of Applicant Address, City, State, Zip Phone Number

Town Of Los Gatos 110 E Main Street (408) 354-6834

Name of Property Owner Address, City, State, Zip Phone Number

DocuSigned by: Kimberly Snyder 9/28/2020  
Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### (FOR DEPARTMENT AUTHORIZATION)

Temporary Sign(s) permitted by Section 29.10.120(4) of the Zoning Ordinance.

Approval granted: Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_  
Planning Division Authorization Date Receipt No. Sign Permit No.

### DO NOT WRITE BELOW THIS LINE

	<u>PLPERMIT</u>	<u>PLTRACK</u>	<u>PLANAP</u>	<u>TOTAL</u>
Temporary Nonresidential	\$ 99.00	\$ 3.96	\$ 9.90	\$ 112.86

Please note: The information contained in this application is considered part of the public record. Therefore, it will appear in both the public record file for the site address, which is available upon request, and on the permitting system on the official Town of Los Gatos website at [www.losgatosca.gov](http://www.losgatosca.gov).

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**TOWN COUNCIL –October 20, 2020**  
**CONDITIONS OF APPROVAL**

**110 E Main Street**

**Temporary Sign Permit Application SN-20-042**

**Consider Approval of a Temporary Sign Permit Application on Property Zoned C-1:PD Located at 106 E. Main Street. APN 529-34-108.**

**PROPERTY OWNER: Town of Los Gatos**

**APPLICANT: Kimberly Snyder, New Museum of Los Gatos.**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Town Council depending on the scope of the changes.
2. EXPIRATION: The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. DURATION: The duration of the temporary sign shall not exceed 45 days from the date of installation.
4. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval, and may be secured to the satisfaction of the Town Attorney.

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October 2, 2020

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

Regarding: Request for 45-day “We’re Open” Banner on Civic Center Building

On behalf of the NUMU Board and Staff I would like to thank you for your support during these unprecedented times. As you may be aware, the impact of the shelter in place initiative has had a significant impact on the Museum’s operations. For the past 7 months, the museum has been temporarily closed and suspended all onsite programs and events. Despite these obstacles, we’ve been working steadily to find NU ways to keep the community inspired and connected. We’ve managed to do this by offering new virtual content including exhibition tours, virtual artist talks, curator-led tours and e-newsletters updates. We have been following all County of Santa Clara guidelines and as of this week, we have re-opened our doors (25% capacity) and are safely welcoming visitors back into our upper level galleries.

**This letter serves to request Town approval for NUMU to hang a “We’re Open” vinyl banner (design attached) on the exterior wall, above NUMU staff offices windows - same location that Music in the Park banner is installed.**

Kimberly Snyder

Deputy Director



NEW MUSEUM LOS GATOS

ART ■ INNOVATION ■ HISTORY ■ BAY AREA

408.354.2646 | 106 E. Main Street, Los Gatos CA 95030 | numulosgatos.org

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**NEW MUSEUM**  
**LOS GATOS**

**WE'RE**  
**OPEN!**

**FREE Admission\***

**\*for Los Gatos residents**

**NUMU**

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**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 7

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DATE: October 13, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town-Wide. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Consider modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines (HDS&G) regarding the visibility analysis.

**BACKGROUND:**

On February 2, 2016, the Town Council adopted modifications to Chapter V. of the HDS&G regarding light reflectivity value (LRV) and directed modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis to the Policy Committee.

In response to the Council's direction, the Policy Committee held five meetings on April 20, 2017, May 18, 2017, June 26, 2017, July 20, 2017, and December 14, 2017 to discuss modifications to the visibility analysis.

On December 19, 2017, the Town Council approved the modifications to Chapter II. (Constraints Analysis), Section B. of the HDS&G regarding the visibility analysis.

On March 3, 2020, the Town Council considered an appeal of an Architecture and Site application for the construction of a hillside home that was 24 percent visible. The appeal was based in part on the appellant's concern about the inclusion of retaining walls and exterior features of the home in the elevation drawing for the purposes of the visibility analysis. At this

**PREPARED BY:** Jocelyn Shoopman  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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BACKGROUND (continued):

meeting, the Town Council voted to refer an evaluation of Chapter II. (Constraints Analysis), Section B. of the HDS&G, regarding the visibility analysis to the Policy Committee.

Based on the Council direction, staff proposed modifications regarding the visibility analysis to the Policy Committee on July 28, 2020. The Policy Committee continued discussion of the modifications to provide for additional public comment (Attachment 4, Exhibit 2).

On August 11, 2020, the Policy Committee reviewed five items regarding the visibility analysis. After discussion, the Committee recommended approval of modifications to Chapter II. (Constraints Analysis), Section B. and Chapter III. (Site Planning), Section D. of the HDS&G. The Committee had a split vote on the remaining items regarding modifications to Chapter II. (Constraints Analysis), Section B. related to recent amendments to Town Code Chapter 9 (Fire Prevention and Protection) and Chapter 29, Division 2 (Zoning Regulations), and modifications to Chapter IX. (Project Review and Approval Process) regarding the approval process (Attachment 4, Exhibit 4).

DISCUSSION:

A. Planning Commission

On September 23, 2020, the Planning Commission considered the modifications and continued the matter to a special meeting on September 28, 2020 due to technical errors with the teleconference meeting. On September 28, 2020, the Commission reviewed and recommended approval of the proposed modifications to the HDS&G from the Policy Committee (Attachment 4, Exhibits 2 through 5) that would:

- Provide written guidelines as to what elements of an exterior can be included in an elevation for purposes of the visibility analysis. An elevation would be defined as only pertaining to the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures; and
- Modify the image on Page 29, Section D. to be in compliance with the amended defensible space zones based on the amendments made to Chapter 9 (Fire Prevention and Protection) and Chapter 29, Division 2 (Tree Protection) of the Town Code.

The Planning Commission recommended modifications to the following three items of discussion that had a split vote by the Policy Committee and are included in the draft resolution (Attachment 8, Exhibits A through C):

- Chapter 9 of the Town Code requires that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law (Attachment 4, Exhibit 9). In conformance with Santa Clara County Fire Department Guidelines, the 100 feet of defensible space is

DISCUSSION (continued):

segregated into Zones 1, 2, and 3 (Attachment 4, Exhibit 11). The Planning Commission recommended that existing trees or branches subject to clearing in Zones 2 and 3 shall not be included in a visibility analysis;

- Town Code Section 29.10.0970 states that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is an exception and may be removed or severely pruned without Town approval or issuance of a tree removal permit (Attachment 4, Exhibit 10). The Planning Commission recommended that all (native and non-native) existing trees that meet the exceptions listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application shall not be included in a visibility analysis and all trees which have a diameter of less than eight inches shall not be included in a visibility analysis; and
- Maintain the existing language in Chapter IX. (Project Review and Approval Process), which requires that the Planning Commission is the deciding body for a single-family home that meets the allowable floor area ratio and the maximum allowable height of 18 for a visible home (Attachment 8, Exhibit C).

The potential modifications shown in ~~strike through~~ and underline font as recommended by the Planning Commission are contained in Attachment 8, Exhibits A through C.

Attachments 3 and 6 contain the verbatim minutes.

B. Public Outreach

Public input has been requested through the following media and social media resources:

- An eighth-page public notice in the newspaper;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's Nextdoor page.

In addition, interested architects and members of the following organizations have been contacted regarding the amendments:

- American Institute of Architects (AIA) Silicon Valley;
- Santa Clara County Association of Realtors (SCCAR); and
- Silicon Valley Association of Realtors (SILVAR).

CONCLUSION:

Staff recommends that the Town Council:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 7);
2. Make the required finding that the modifications to the HDS&G are consistent with the General Plan (Attachment 7); and
3. Adopt a resolution to modify Chapters II, III, and IX of the HDS&G (Attachment 8), with any specific changes identified and agreed upon by the majority of the Town Council.

ALTERNATIVES:

Alternatively, the Town Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer the item back to the Planning Commission with specific direction; or
3. Take no action, leaving the HDS&G unchanged.

COORDINATION:

The evaluation of the proposed modifications was coordinated with the Town Attorney.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendments to the Town Code will have a significant effect on the environment.

PUBLIC COMMENTS:

Public comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m., October 15, 2020 are included in Attachment 9.

Attachments:

1. September 23, 2020 Planning Commission Staff Report with Exhibits 1 - 12
2. September 23, 2020 Planning Commission Addendum Report with Exhibit 13
3. September 23, 2020 Planning Commission Verbatim Minutes
4. September 28, 2020 Planning Commission Staff Report with Exhibits 1 - 12
5. September 28, 2020 Planning Commission Addendum Report with Exhibit 13
6. September 28, 2020 Planning Commission Verbatim Minutes

PAGE 5 OF 5

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: October 13, 2020

Attachments (continued):

7. Required Findings
8. Draft Resolution with Exhibits A through C
9. Public Comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m. October 15, 2020



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 3

**DATE:** September 18, 2020

**TO:** Planning Commission

**FROM:** Joel Paulson, Community Development Director

**SUBJECT:** Forward a Recommendation to the Town Council for Approval of Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town Wide. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Forward a recommendation to the Town Council for approval of modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines (HDS&G) regarding the visibility analysis.

**CEQA:**

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment.

**FINDINGS:**

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Exempt, Section 15061(b)(3); and
- The modifications to the HDS&G are consistent with the General Plan.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

Reviewed by: Planning Manager and Community Development Director



BACKGROUND:

On February 2, 2016, the Town Council adopted modifications to Chapter V. of the HDS&G regarding light reflectivity value (LRV) and returned modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis to staff with direction.

In response to the Council's direction, the Policy Committee held five meetings on April 20, 2017, May 18, 2017, June 26, 2017, July 20, 2017, and December 14, 2017 to discuss modifications to the visibility analysis.

On December 19, 2017, the Town Council approved the modifications to Chapter II. (Constraints Analysis), Section B. of the HDS&G regarding the visibility analysis.

On March 3, 2020, the Town Council considered an appeal of an Architecture and Site application for the construction of a hillside home that was 24 percent visible. The appeal was based in part on the appellant's concern about the inclusion of retaining walls and exterior features of the home in the elevation drawing for the purposes of the visibility analysis. At this meeting, the Town Council voted to refer an evaluation of Chapter II. (Constraints Analysis), Section B. of the HDS&G, regarding the visibility analysis to the Policy Committee.

Modifications to the HDS&G regarding the visibility analysis were forwarded to the Policy Committee on July 28, 2020. The Policy Committee continued discussion of the modifications to allow for additional public comment to be provided (Exhibit 2). On August 11, 2020, the Policy Committee reviewed five items, detailed in the Discussion section of this report regarding the visibility analysis. After discussion, the Committee recommended approval of modifications to Chapter II. (Constraints Analysis), Section B. and Chapter III. (Site Planning), Section D. of the HDS&G. The Committee had a split vote on the remaining items regarding modifications to, Chapter II. (Constraints Analysis), Section B. related to recent amendments to Chapter 9 (Fire Prevention and Protection) of the Town Code and Chapter 29, Division 2 (Zoning Regulations) of the Town Code, and modifications to Chapter IX. (Project Review and Approval Process) regarding the approval process (Exhibit 4).

DISCUSSION:

Chapter II. (Constraints Analysis), Section B. contains the required steps for completing a visibility analysis. The Chapter defines a visible home as a single-family residence where 24.5 percent or more of an elevation can be seen from any of the Town's established viewing areas (Exhibit 6).

Ordinance 2301 (Exhibit 9) was adopted by the Town Council on January 21, 2020, to amend Chapter 9 (Fire Prevention and Protection) to require that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law. Ordinance 2303 (Exhibit 10) was adopted

DISCUSSION (continued):

by the Town Council on January 21, 2020 to amend Chapter 29, Division 2 (Zoning Regulations) of the Town Code, to state that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is exempt and may be removed or severely pruned without Town approval or issuance of a tree removal permit.

Chapter III. (Site Planning), Section D. contains standards and guidelines for incorporating defensible space into site planning and landscape design. The chapter provides figures to illustrate the required zones of defensible space that should be maintained around a single-family residence (Exhibit 7).

Chapter IX. (Project Review and Approval Process), Section B. stipulates the deciding body for a project depending on a project's compliance with the HDS&G, the Town Code, and potential impacts on surrounding properties and the overall community (Exhibit 8).

A. Modifications to Chapter II. (Constraints Analysis) Regarding Elevations

Based on the direction provided by the Policy Committee, staff has prepared a modification to Chapter II., Section B. of the HDS&G for the Planning Commission's consideration. The potential amendment, shown in underline font in Exhibit 6, would make the following change:

- Provide written guidelines as to what elements of an exterior can be included in an elevation for purposes of the visibility analysis. An elevation would be defined as only pertaining to the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures.

B. Modifications to Chapter II. (Constraints Analysis) Regarding Trees Subject to Clearing

Chapter 9 of the Town Code requires that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law (Exhibit 9). In conformance with Santa Clara County Fire Department Guidelines, the 100 feet of defensible space is segregated into the following zones (Exhibit 11):

- Zone 1: New construction must create a noncombustible area a minimum of five feet from structures.
- Zone 2: Maintain an effective defensible space by removing and clearing away flammable vegetation and combustible growth from areas within 30 feet of such buildings or structures. This includes removing all dead vegetation and dead or dry leaves, trimming

DISCUSSION (continued):

trees regularly to keep branches a minimum of six feet from the grade, tree branches a minimum of ten feet from other trees, and ten feet away from a chimney.

- Zone 3: Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. A distance beyond 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, a distance of 70 feet is insufficient. This includes creating horizontal and vertical spacing between shrubs and trees, removing dead plants, tree material, and vegetation adjacent to accessory structures within the area, and maintaining distances between canopy tops.

Staff requested input from the Policy Committee regarding whether existing trees or branches subject to clearing in Zone 2 and Zone 3 should be included in a visibility analysis. The Policy Committee had a split vote regarding this item and requested that the item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

C. Modifications to Chapter II. (Constraints Analysis) Regarding Exceptions for Tree Removal

Chapter 29, Division 2 of the Town Code states that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is an exception and may be removed or severely pruned without Town approval or issuance of a tree removal permit (Exhibit 10):

29.10.0970. Exceptions.

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*) - Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

DISCUSSION (continued):

Staff requested input from the Policy Committee regarding whether existing trees meeting the exceptions listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application should be included in a visibility analysis. The Policy Committee had a split vote regarding this item and requested that the item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

D. Modifications to Chapter III. (Site Planning) Regarding Image Update

Based on the direction provided by the Policy Committee, staff has prepared a modification to Chapter III. of the HDS&G for the Planning Commission's consideration. The potential amendment, shown in underline font in Exhibit 7, would make the following change:

- Update the image on Page 29, Section D. to be in compliance with the amended defensible space zones based on the amendments made to Chapter 9 (Fire Prevention and Protection) and Chapter 29, Division 2 (Tree Protection) of the Town Code.

E. Modifications to Chapter IX. (Project Review and Approval Process) Regarding Approvals

A single-family home that meets the allowable floor area ratio and is not visible from any established viewing area may be approved by the Development Review Committee (DRC). Through completion of a visibility analysis, if a home is determined to be visible, the maximum allowable height is 18 feet. Currently, review by the Planning Commission is required for a visible single-family home regardless of the height (Exhibit 8).

The Policy Committee had a split vote regarding whether a visible home that meets the allowable floor area ratio and the maximum allowable height of 18 feet should be allowed to be approved by the DRC, as opposed to the current requirement for Planning Commission approval. The Committee requested that this item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

PUBLIC COMMENTS:

Public comments received by 11:00 a.m., Friday, September 18, 2020 are included as Exhibit 12.

CONCLUSION:

A. Recommendation

Based on the direction of the Town Council Policy Committee, staff recommends that the Planning Commission review the information included in the staff report and forward a

CONCLUSION (continued):

recommendation to the Town Council for approval of the modifications to Chapter II. (Constraints Analysis) and Chapter III. (Site Planning) of the HDS&G, with any additional modifications to Chapter IX. (Project Review and Approval Process) of the HDS&G. The Commission should also include any comments or recommended changes in taking the following actions:

1. Make the required finding that the modifications to the Hillside Development Standards and Guidelines are consistent with the General Plan (Exhibit 1); and
2. Forward a recommendation to the Town Council for approval of the proposed modifications to Chapters II, III, and IX of the HDS&G (Exhibits 6 through 8).

B. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Forward a recommendation to the Town Council for denial of the proposed modifications to Chapters II, III, and IX of the Hillside Development Standards and Guidelines.

EXHIBITS:

1. Required Findings
2. Town Council Policy Committee July 28, 2020 Minutes
3. Town Council Policy Committee July 28, 2020 Planning Staff Report (with Attachments 1 through 6)
4. Town Council Policy Committee August 11, 2020 Minutes
5. Town Council Policy Committee August 11, 2020 Planning Staff Report (with Attachment 7)
6. Draft Modifications to Chapter II (Constraints Analysis) of the HDS&G
7. Draft Modifications to Chapter III (Site Planning) of the HDS&G
8. Chapter IX (Project Review and Approval Process) of the HDS&G
9. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code
10. Ordinance 2303 Chapter 29, Division 2 (Tree Protection) of the Town Code
11. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>>
12. Public comments received by 11:00 a.m., Friday, September 18, 2020

**PLANNING COMMISSION – September 23, 2020**  
**REQUIRED FINDINGS FOR:**

Consider Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines.

**FINDINGS**

**Required Findings for CEQA:**

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

**Required Findings for General Plan:**

- The proposed modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines are consistent with the General Plan.

EXHIBIT 1

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**DRAFT  
Minutes of the Town Council Policy Committee Regular Meeting  
July 28, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, July 28, 2020, at 5:00 p.m. via teleconference.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Jennifer Armer, Senior Planner; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

**1. Approve the Draft Minutes of January 28, 2020.**

Approved.

**VERBAL COMMUNICATIONS**

David Weissman

- Commented that Item #2 was placed on the Policy Committee agenda as a result of comments he had made at a prior Town Council meeting. He requested that when items are placed on an agenda that have been prompted by a comment from a speaker at a public meeting that the speaker be given advance notice of the item's placement on the agenda.

**OTHER BUSINESS**

**2. Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.**

In light of Mr. Weissman's comment, the Committee requested that this item be continued to the August Policy Committee meeting to allow sufficient time for review. The Committee also requested that Mr. Weissman be notified of the date and time of the August meeting once determined.

EXHIBIT 2

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PAGE 2 OF 2

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of July 28,  
2020

DATE: August 11, 2020

**3. Discuss and Provide Direction to Staff on Potential Outdoor Lighting Regulation Modifications.**

Jennifer Armer, Senior Planner, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Planning Commission to approve the proposed modifications.

**ADJOURNMENT**

The meeting adjourned at 5:18 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the July 28, 2020 meeting as approved by the Town Council Policy Committee.

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Holly Zappala, Management Analyst



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 7/28/2020

ITEM NO:

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DATE: July 24, 2020  
TO: Council Policy Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.

**RECOMMENDATION:**

Discuss and provide direction on potential modifications to the Hillside Development Standards and Guidelines (HDS&G) regarding visibility.

**BACKGROUND:**

On February 2, 2016, the Town Council adopted modifications to Chapter V. of the HDS&G regarding light reflectivity value (LRV) and returned modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis to staff with direction.

In response to the Council's direction from February 2, 2016, the Policy Committee held five meetings on April 20, 2017, May 18, 2017, June 26, 2017, July 20, 2017, and December 14, 2017 to discuss modifications to the visibility analysis.

On December 19, 2017, the Town Council unanimously approved the modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis.

**DISCUSSION:**

On March 3, 2020, the Town Council considered an appeal of an Architecture and Site application for the construction of a hillside home that was 24 percent visible. The appeal was based in part on the appellant's concern about the inclusion of retaining walls in the elevation drawing for the purposes of the visibility analysis. At this meeting, the Town Council unanimously voted to refer an evaluation of Section B. of Chapter II. of the HDS&G, regarding the visibility

**PREPARED BY:** Joel Paulson  
Community Development Director

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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DISCUSSION (continued):

analysis to the Policy Committee. Based on the discussion of the Town Council at the meeting, staff has presented the following topics for the Committee's discussion.

A. Chapter II. (Constraints Analysis) of the HDS&G

The HDS&G define a visible home as a single-family residence where 24.5 percent or more of an elevation can be seen from any of the Town's established viewing areas (Attachment 1). The HDS&G do not include written guidelines regarding what can be included in an elevation.

An architectural elevation is an orthographic drawing of the exterior of a residence from a horizontal point of view, wherein an exterior side is projected perpendicularly onto a drawing plane. Vertical planar surfaces of the exterior that are parallel to the drawing plane retain their true scale. Vertical planar surfaces of the exterior that are not parallel to the drawing surface are foreshortened. Depending on the dimensions of the drawing plane, vertical planar surfaces below the finished floor of the residence but above the grade as it steps down a slope, such as retaining walls, may be included in the drawing.

Staff is requesting input from the Committee on the following topic related to the visibility analysis:

1. Should an elevation be defined in the HDS&G, providing written guidelines as to what elements of an exterior can be included in an elevation for the purposes of the visibility analysis?

**Chapter 9 (Fire Prevention and Protection) of the Town Code**

On January 21, 2020, the Town Council adopted amendments to Chapter 9 (Fire Prevention and Protection) of the Town Code. The amendments require that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law (Attachment 2). In conformance with Santa Clara County Fire Department Guidelines, the 100 feet of defensible space is segregated into the following zones (Attachment 3):

- Zone 1: New construction must create a noncombustible area a minimum of five feet from structures.
- Zone 2: Maintain an effective defensible space by removing and clearing away flammable vegetation and combustible growth from areas within 30 feet of such buildings or structures. This includes removing all dead vegetation and dead or dry leaves, trimming trees regularly to keep branches a minimum of six feet from the grade, tree branches a minimum of ten feet from other trees, and ten feet away from a chimney.

DISCUSSION (continued):

- Zone 3: Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. A distance beyond 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, a distance of 70 feet is insufficient. This includes creating horizontal and vertical spacing between shrubs and trees, removing dead plants, tree material, and vegetation adjacent to accessory structures within the area, and maintaining distances between canopy tops.

Staff is requesting input from the Committee on the following topics related to the visibility analysis:

1. Should existing trees or branches subject to clearing located within 30 feet (Zone 2) of a single-family residence not be included in a visibility analysis?
2. Should existing trees or branches subject to clearing located within an additional reduced fuel zone of 70 feet (Zone 3) of a single-family residence not be included in a visibility analysis?

**Chapter 29 (Tree Protection) of the Town Code**

On January 21, 2020, the Town Council adopted amendments to Chapter 29 (Tree Protection) of the Town Code, which added that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is exempt and may be removed or severely pruned without Town approval or issuance of a tree removal permit (Attachment 4):

29.10.0970. Exceptions.

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*) - Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)

DISCUSSION (continued):

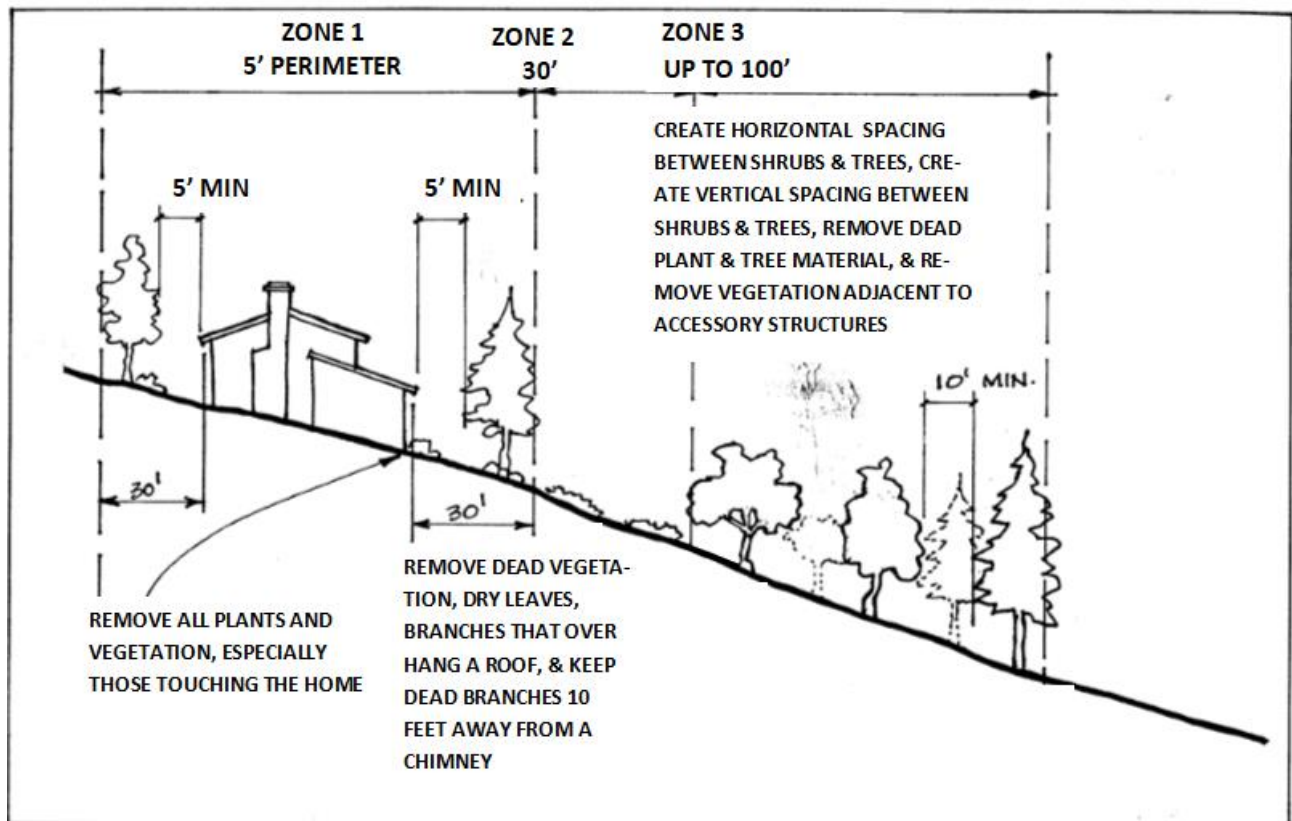
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

Staff is requesting input from the Committee on the following topic related to the visibility analysis:

1. Should all existing trees listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application not be included in a visibility analysis?

B. Chapter III. (Site Planning) of the HDS&G

Based on the amendments made to Chapter 9 (Fire Prevention and Protection) and Chapter 29 (Tree Protection) of the Town Code, the following image on page 29, Section D. (Safety) of the HDS&G has been modified to be in compliance with the required defensible space zones and would replace the existing image (Attachment 5).



DISCUSSION (continued):

C. Chapter IX. (Project Review and Approval Process) of the HDS&G

A single-family home that meets the allowable floor area ratio and is not visible from any established viewing area may be approved by the Development Review Committee (DRC). Through completion of a visibility analysis, if a home is determined to be visible, the maximum allowable height is 18 feet. Currently, review by the Planning Commission is required for a visible single-family home (Attachment 6).

Staff is requesting input from the Committee on the following topic:

1. Should a visible home that meets the allowable floor area ratio with a maximum height of 18 feet be allowed to be approved by the DRC?

Staff will be available at the meeting to answer questions and looks forward to receiving direction on potential modifications to the HDS&G.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office.

Attachments:

1. Chapter II. (Constraints Analysis) of the HDS&G (eight pages)
2. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code (five pages)
3. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>> (eight pages)
4. Ordinance 2303, Chapter 29 (Tree Protection) of the Town Code (five pages)
5. Chapter III. (Site Planning) of the HDS&G (ten pages)
6. Chapter IX. (Project Review and Approval Process) of the HDS&G (five pages)

PAGE 6 OF 6

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: July 24, 2020



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**DRAFT  
Minutes of the Town Council Policy Committee Special Meeting  
August 11, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Tuesday, August 11, 2020, at 5:00 p.m. via teleconference.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

**1. Approve the Draft Minutes of July 28, 2020.**

Approved.

**VERBAL COMMUNICATIONS**

Lee Fagot

- Commented that the Town should review its Police services and that it would be beneficial for the Police Department to contract with professional social service workers and mental health specialists to work with law enforcement officers in responding to calls regarding mental health crises. He also supported additional Police training regarding racial and social issues.

**OTHER BUSINESS**

**2. Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.**

Jocelyn Shoopman, Associate Planner, was available to respond to questions.

EXHIBIT 4



David Weissman

-Commented that when calculating the visibility of a proposed hillside home, exterior structures such as decks and stairs, should not be included because they would not be visible from valley floor viewing areas. He said that exterior features should only be included if they are necessary for the visibility analysis under discussion. Additionally, he added that trees that can be removed should also not be included in the visibility analysis.

Lee Quintana

-Agreed with David Weissman's comments and added that the definition of elevation should use simple language and be easy to understand.

After discussion, the Committee agreed to forward the following items to the Planning Commission for further discussion and recommendation to Town Council:

1. **Elevation.** The Committee approved a motion to forward a recommendation for elevation to be defined as only pertaining to the visible building elevations of the house, not including any exterior walls or decks and other ancillary structures, for the purposes of visibility analysis.
2. **Trees.** The Committee was split and approved a motion to forward the item without a recommendation, noting the positions of each of the Committee members.
  - Vice Mayor Spector recommended that existing trees and branches, subject to clearing in Zones 2 and 3 and all trees listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application but that can be removed without a permit and not require a replacement, not be included in visibility analysis, noting she did not want to expand the opportunity for visibility with discretionary homeowner actions.
  - Mayor Jensen recommended that existing trees and branches that must be removed due to new mandatory fire prevention standards should not be included for the purpose of visibility analysis. Any trees that are subject to removal, but not required for removal, should not fall into that same category, noting that almost any trees could be removed, in which case no trees would count as a screen.
3. **Deciding Body: Development Review Committee versus Planning Commission.** The Committee was split and approved a motion to forward the item without a recommendation, noting the positions of each of the Committee members.
  - Vice Mayor Spector recommended that visible homes that meet the allowable floor area ratio with a maximum height of 18 feet go before the Planning Commission as the deciding body, noting that there may be other issues that may need consideration by the Planning Commission in addition to those referenced in the staff report.
  - Mayor Jensen recommended that visible homes that meet the allowable floor area ratio with a maximum height of 18 feet go before the Design

PAGE 3 OF 4

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of August 11, 2020

DATE: September 22, 2020

Review Committee as the deciding body, noting that it is a public hearing and subject to appeal to the Planning Commission, and would reduce the cost to the applicant.

**ADJOURNMENT**

The meeting adjourned at 5:28 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 11, 2020 meeting as approved by the Town Council Policy Committee.

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Holly Zappala, Management Analyst

PAGE 4 OF 4

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of August  
11, 2020

DATE: September 22, 2020



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 8/11/2020

ITEM NO: 2

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DATE: August 6, 2020  
TO: Council Policy Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.

REMARKS:

On July 28, 2020, the Council Policy Committee continued this item to allow for public comments to be provided. Attachment 7 contains public comments received by 11:00 a.m., Friday, August 7, 2020.

Attachments:

Previously received with July 28, 2020 Staff Report:

1. Chapter II. (Constraints Analysis) of the HDS&G (eight pages)
2. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code (five pages)
3. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>> (eight pages)
4. Ordinance 2303, Chapter 29 (Tree Protection) of the Town Code (five pages)
5. Chapter III. (Site Planning) of the HDS&G (ten pages)
6. Chapter IX. (Project Review and Approval Process) of the HDS&G (five pages)

Received with this Staff Report:

7. Public comments received by 11:00 a.m., Friday, August 7, 2020

PREPARED BY: Joel Paulson  
Community Development Director

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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PAGE 2 OF 2

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: July 24, 2020



## II. CONSTRAINTS ANALYSIS AND SITE SELECTION

### A. Prior to Selecting a Building Site.

#### 1. Constraints analysis.

Each development application subject to the Hillside Development Standards and Guidelines shall be accompanied by a constraints analysis when it is deemed necessary by the Town to identify the most appropriate area or areas on the lot for locating buildings given the existing constraints of the lot. This is a critical step in the overall planning and design of projects in the hillsides. When all constrained areas have been identified and mapped, the remaining area(s) will be designated as the "LEAST RESTRICTIVE DEVELOPMENT AREA" (LRDA). These are the areas most appropriate for development.

To ensure that new development is sensitive to the goal and objectives of the Hillside Development Standards and Guidelines and respects the existing site constraints, the following elements shall be mapped by appropriate professionals and taken into consideration when determining a site's LRDA:

- Topography, with emphasis on slopes over 30%
- Vegetation such as individual trees, groupings of trees and shrubs, habitat types
- Drainage courses and riparian corridors
- Septic systems
- Geologic constraints including landslides and active fault traces
- Wildlife habitats and movement corridors
- Visibility from off site
- Areas of severe fire danger
- Solar orientation and prevailing wind patterns
- Significant Ridgelines



Many of the above topics are covered in more detail in Chapter II.B. and Chapter III. The accurate determination of the LRDA early in the planning process could avoid delays once an application has been submitted. Site specific studies such as geotechnical or other environmental evaluations, tree survey and/or topographic survey may be necessary to accurately determine the LRDA.



## **2. Consultation with Neighbors.**

Before siting and designing the house and landscaping, the property owner, architect or builder should meet with neighbors to discuss any special concerns they might have. Resolution of issues early in the design process can save time and cost as well as reducing the processing time for applications. If a conflict occurs between a property owner's desire to develop their property and legitimate issues raised by a neighbor, a design solution will be sought that attempts to balance all issues or concerns that are raised by both parties.

## **3. Pre-application meeting/staff consultation/site visit.**

Before designing a project, the property owner/architect/builder is strongly encouraged to meet with Town staff to consider a building location that best preserves the natural terrain and landscape of the lot and positively addresses the objectives of the Hillside Development Standards and Guidelines. On heavily wooded lots, or on lots where trees may be impacted by proposed development, an arborist's report shall be prepared which evaluates potential tree impacts. The report shall be prepared at the applicant's expense.

## **B. Visibility Analysis.**

### **1. Viewing areas.**

Each development project with the potential for being visible (see glossary for definition) from any established viewing area shall be subject to a visibility analysis. ("Potential" is defined as capable of being seen from a viewing area if trees or large shrubs are removed, significantly pruned, or impacted by construction.) The visibility analysis shall be conducted in compliance with established Town procedures using story poles that identify the building envelope. After installing the story poles, the applicant shall take photographs of the project from appropriate established viewing areas that clearly show the story poles and/or house and subject property. Visual aids such as photo simulations or three dimensional illustrations and/or a scale model may be required when it is deemed necessary to fully understand the impacts of a proposed project.

The following steps shall be taken in completing a visibility analysis:

- a. Install story poles per adopted policy.
- b. After the installation of story poles, photographs of the project shall be taken from the applicable viewing areas using 50 MM and 300 MM lenses. Other location(s) as deemed appropriate by the Community Development Director may be chosen in addition to the existing viewing areas.



- c. A photograph with a 50 MM lens will represent the visibility of the proposed residence from the naked eye.
- d. A photograph with a 300 MM lens will represent an up-close perspective and help identify any visible story poles, netting, trees, and/or shrubbery.
- e. Existing vegetation and/or landscaping proposed to be removed entirely or partially shall not be included in the visibility analysis.
- f. If determined necessary by the Community Development Director, three dimensional illustrations or photo simulations of the structure may be required.
- g. A visible home is defined as a single-family residence where 24.5% or more of an elevation can be seen from any of the Town's established viewing areas, and/or determined by the Community Development Director. Percentages shall be rounded to the nearest whole number.
- h. An elevation is defined as the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures.
- i. A Deed Restriction shall be required that identifies the on-site trees that were used to provide screening in the visibility analysis and requires replacement screening pursuant to the Hillside Development Standards and Guidelines and/or the Tree Protection Ordinance, if these trees die or are removed.
- j. Trees with a poor health rating (less than 50 percent overall condition rating) shall not be included in the visibility analysis.
- k. The Community Development Director shall determine if the use of a third party consultant is required to peer review an applicant's visibility analysis.
- l. A five-year Maintenance Agreement shall be required for on-site trees that were used to provide screening in the visibility analysis and requires their preservation.

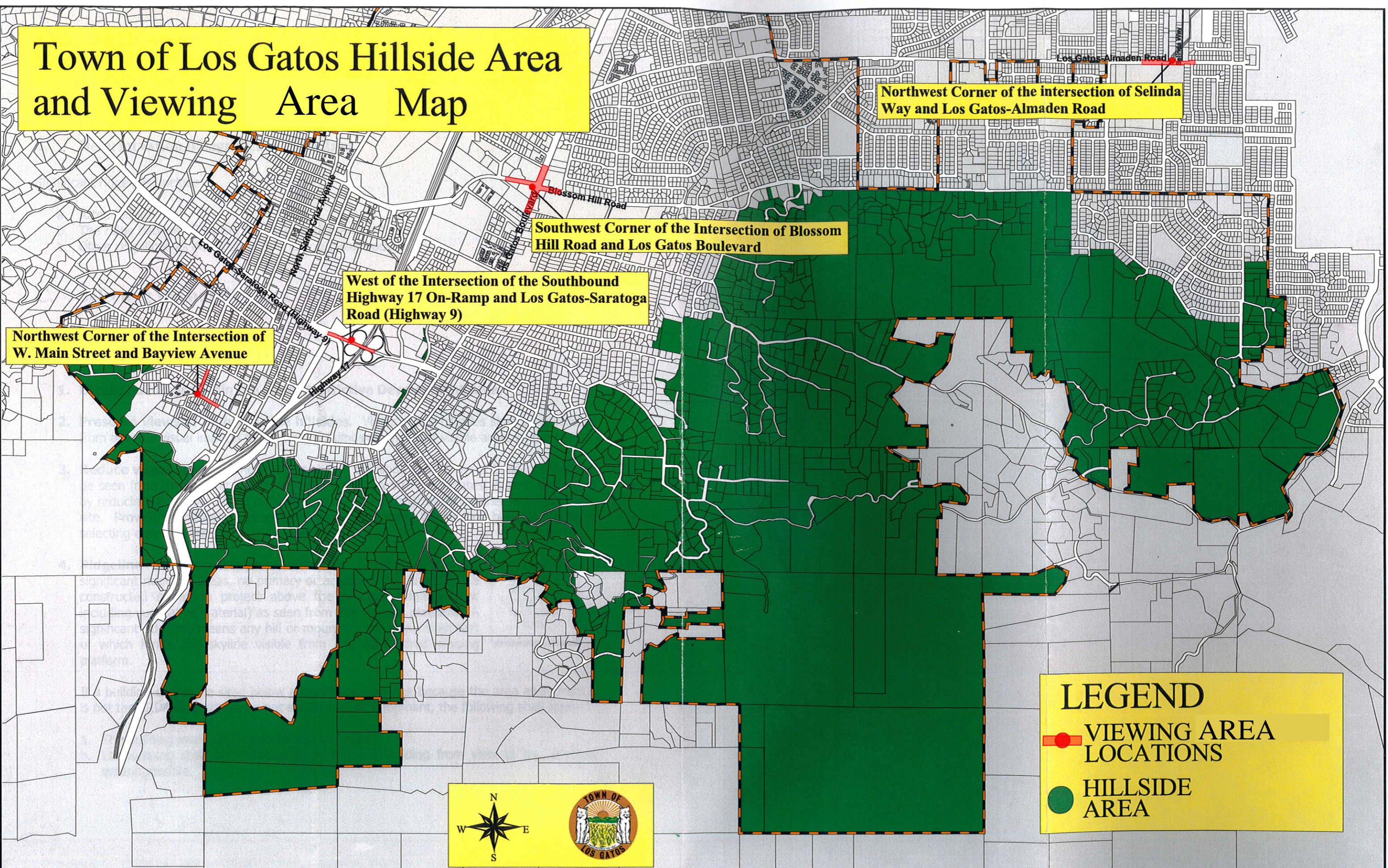
The locations of the viewing areas are shown on the map on the next page, and are as follows:

1. Blossom Hill Road/Los Gatos Boulevard
2. Los Gatos - Almaden Road/Selinda Way (across from Leigh High School)
3. Hwy 17 overcrossing/Los Gatos - Saratoga Road (Highway 9)
4. Main Street/Bayview Avenue
5. Other location(s) as deemed appropriate by the Community Development Director

Viewing area locations are intended to provide a general vicinity for the visibility analysis and photo locations. Where there are obstructions (buildings, signs, or foreground vegetation) that block a clear and unobstructed view of the site, the origination point shall be adjusted in consultation with staff to the nearest point that provides a clear and unobstructed view by moving away from the viewing area location along a public road up to 500 feet in any direction.



# Town of Los Gatos Hillside Area and Viewing Area Map





Northwest Corner of the intersection of Selinda Way and Los Gatos-Almaden Road

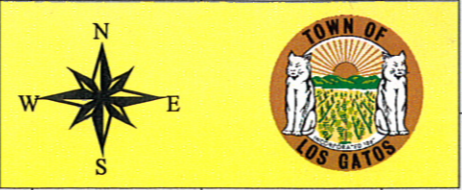
Southwest Corner of the Intersection of Blossom Hill Road and Los Gatos Boulevard

West of the Intersection of the Southbound Highway 17 On-Ramp and Los Gatos-Saratoga Road (Highway 9)

Northwest Corner of the Intersection of W. Main Street and Bayview Avenue

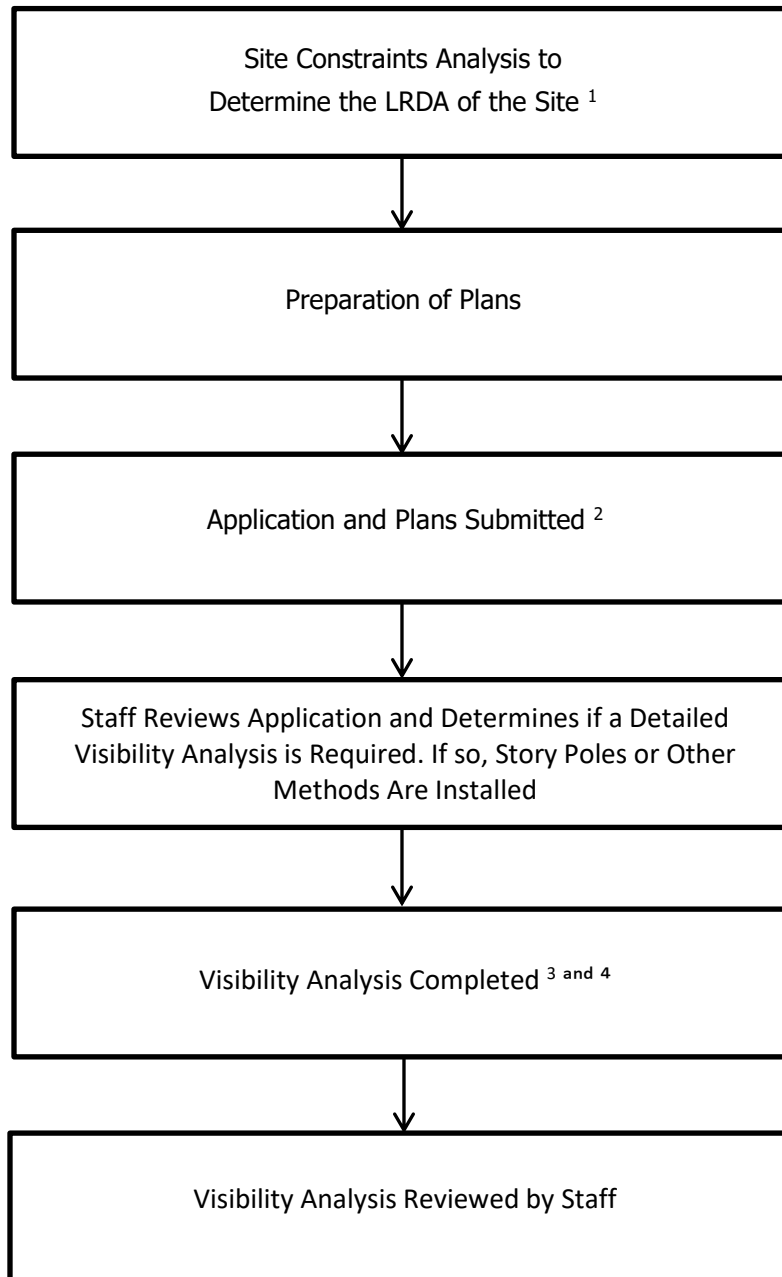
**LEGEND**

-  VIEWING AREA LOCATIONS
-  HILLSIDE AREA





## 2. Visibility Analysis Processing Flow Chart



<sup>1</sup> Page 12 and page 56 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168> and <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>2</sup> Page 63 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>3</sup> Page 13 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168>

<sup>4</sup> Division 2 – Tree Protection Ordinance [https://library.municode.com/ca/los\\_gatos/codes/code\\_of\\_ordinances?nodeId=CO\\_CH29ZORE\\_ARTIINGE\\_DIV2TRPR](https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodeId=CO_CH29ZORE_ARTIINGE_DIV2TRPR)



## 2. Determination of significant ridgelines.

Significant ridgelines include:

- a. Aztec Ridge;
- b. The ridge between Blossom Hill Road and Shannon Road;
- c. Other ridgelines as determined by the approving body

## C. Selecting the building site.

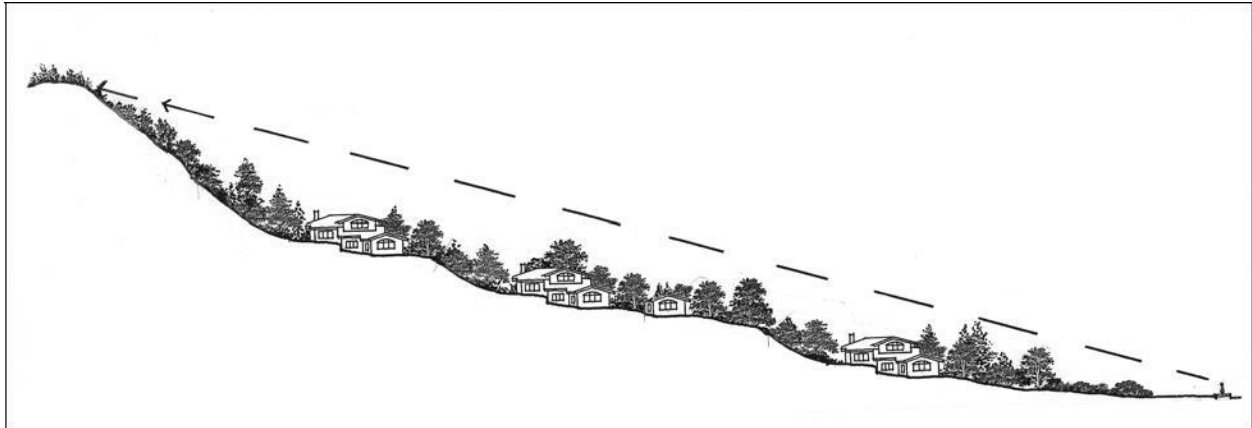
### Standards:

1. **Locate buildings within the Least Restrictive Development Area.**
2. **Preserve views of highly visible hillsides.** Views of the hillsides shall be protected from adverse visual impacts by locating buildings on the least visible areas of the LRDA.
3. **Reduce visual impact.** The visual impact of buildings or portions of buildings that can be seen from the viewing areas shall be mitigated to the greatest extent reasonable by reducing the height of the building or moving the structure to another location on the site. Providing landscape screening is not an alternative to reducing building height or selecting a less visible site.
4. **Ridgeline view protection.** Whenever possible within the significant ridgeline areas, no primary or accessory building shall be constructed so as to project above the physical ridgeline (not including vegetative material) as seen from any viewing areas.

Refer to the  
Blossom Hill  
Comprehensive  
Open Space  
Study

If a building cannot be sited below a significant ridgeline because the area away from it is not the LRDA or is otherwise not suitable for development, the following shall apply:

- a. The building shall not exceed 18 feet in height.
- b. Landscaping shall be provided to screen the building from view to the greatest extent possible.



**Houses do not project above significant ridgeline**

- 5. Preserve natural features.** Existing natural features shall be retained to the greatest extent feasible and integrated into the development project. Site conditions such as existing topography, drainage courses, rock outcroppings, trees, significant vegetation, wildlife corridors, and important views will be considered as part of the site analysis and will be used to evaluate the proposed site design.
- 6. Avoid hazardous building sites.** Building in areas with more than 30 percent slope or areas containing liquefiable soil with poor bearing capacity, slide potential, fault rupture zones and other geotechnical or fire hazards shall be avoided unless no alternative building site is available.
- 7. Protect riparian corridors.** Building sites shall be set back an appropriate distance from riparian corridors to be determined on a site by site basis. Natural drainage courses should be preserved in as close to their natural location and appearance as possible.
- 8. Protect wildlife.** Existing wildlife usage of the site and in particular any existing wildlife corridors shall be identified and avoided to the maximum extent possible.

## Guidelines:

- 1. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.
- 2. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.



- 3. Impact on adjacent properties.** Building sites should be located where they will have the least impact on adjacent properties and respect the privacy, natural ventilation and light, and views of neighboring homes.
- 4. Minimize grading.** The building site should be located to minimize grading.



### III. SITE PLANNING

The intent of this section is to ensure that new development fits into the topography with minimum impacts to the site physically and visually.

Refer to the  
Town's  
Grading  
Ordinance

#### A. Grading.

A grading permit shall be obtained as required by the Town's Grading Ordinance. Vegetation removal may qualify as grading.

#### Standards:

1. The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours.

Cuts and fills in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. Grade to the minimum amount necessary to accommodate buildings and to site structures consistent with slope contours. These are maximum numbers and may be reduced by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the Hillside Development Standards and Guidelines.

**Table 1**  
**Maximum Graded Cuts and Fills**

Site Element	Cut*	Fill*
House and attached garage	8'**	3'
Accessory Building*	4'	3'
Tennis Court*	4'	3'
Pool*	4'***	3'
Driveways*	4'	3'
Other (decks, yards) *	4'	3'

\* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

\*\* Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code.

\*\*\* Excludes excavation for pool.

2. Earthwork quantities (grading) shall be categorized as follows:
  - a. access: driveway, parking and fire turnaround, if applicable
  - b. house footprint
  - c. below grade square footage pursuant to Section 29.40.072 of the Town Code

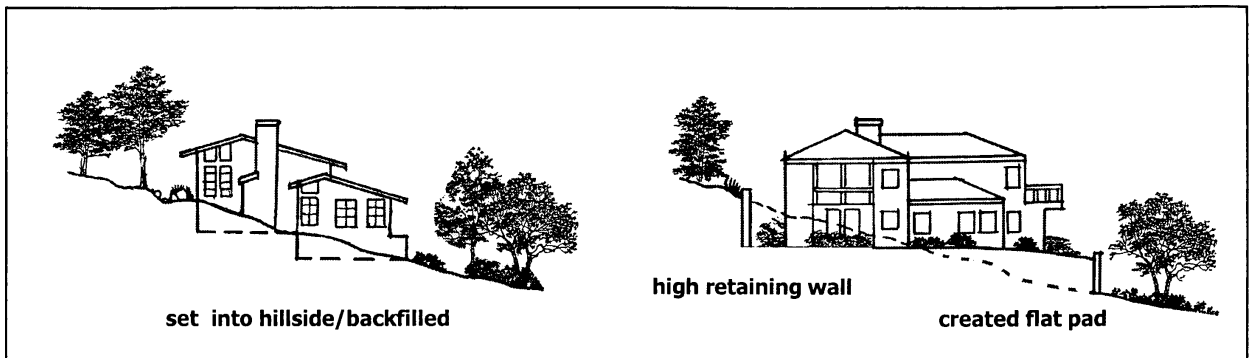
**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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- d. other areas including landscaping, hardscape and outdoor spaces
  - e. total
3. Buildings shall be located in a manner that minimizes the need for grading and preserves natural features such as prominent knolls, ridgelines, ravines, natural drainage courses, vegetation, and wildlife habitats and corridors to the maximum extent possible.
  4. Unless specifically approved by the Town, strip grading for the purpose of clearing land of native vegetation is prohibited except for small areas adjacent to buildings, access drives, and parking areas.
  5. Graded areas shall not be larger than the area of the footprint of the house, plus that area necessary to accommodate access, guest parking, and turnaround areas.
  6. After placing development the site shall be restored as closely as possible to its original topography.

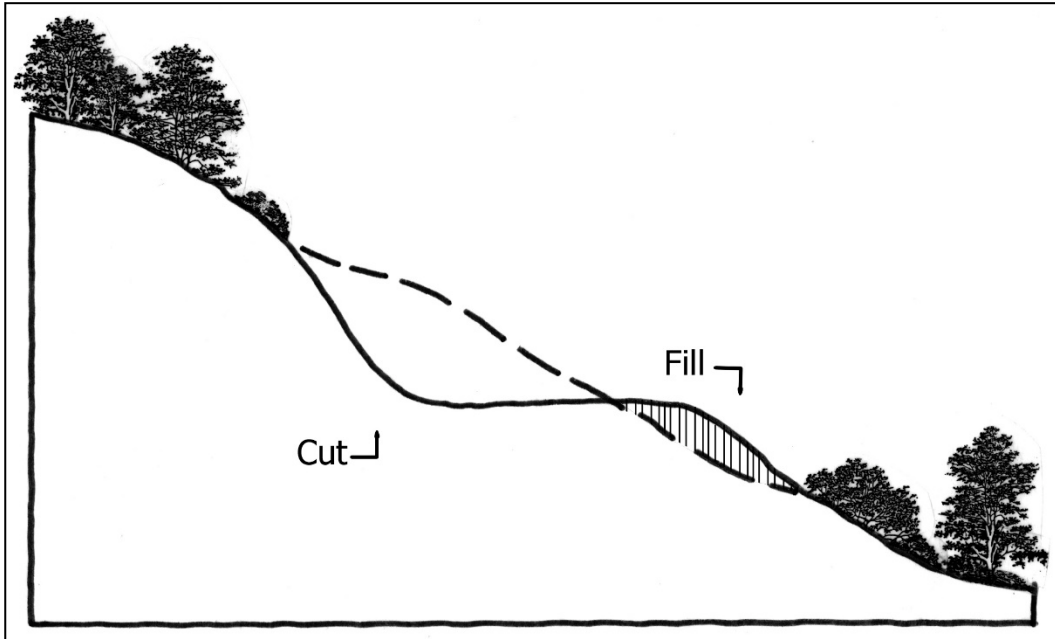


**Do this**

**Don't do this**

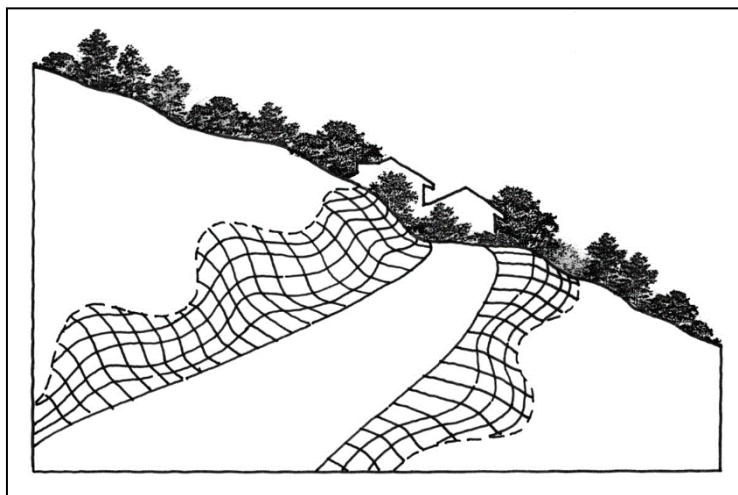
7. Contour grading techniques shall be used to provide a variety of both slope percentage and slope direction in a three-dimensional undulating pattern similar to existing, adjacent terrain. The following concepts shall be utilized:
  - a. Hard edges left by cut and fill operations shall be given a rounded appearance that closely resembles the natural contours of the land.





**Rounded edges resemble natural slope**

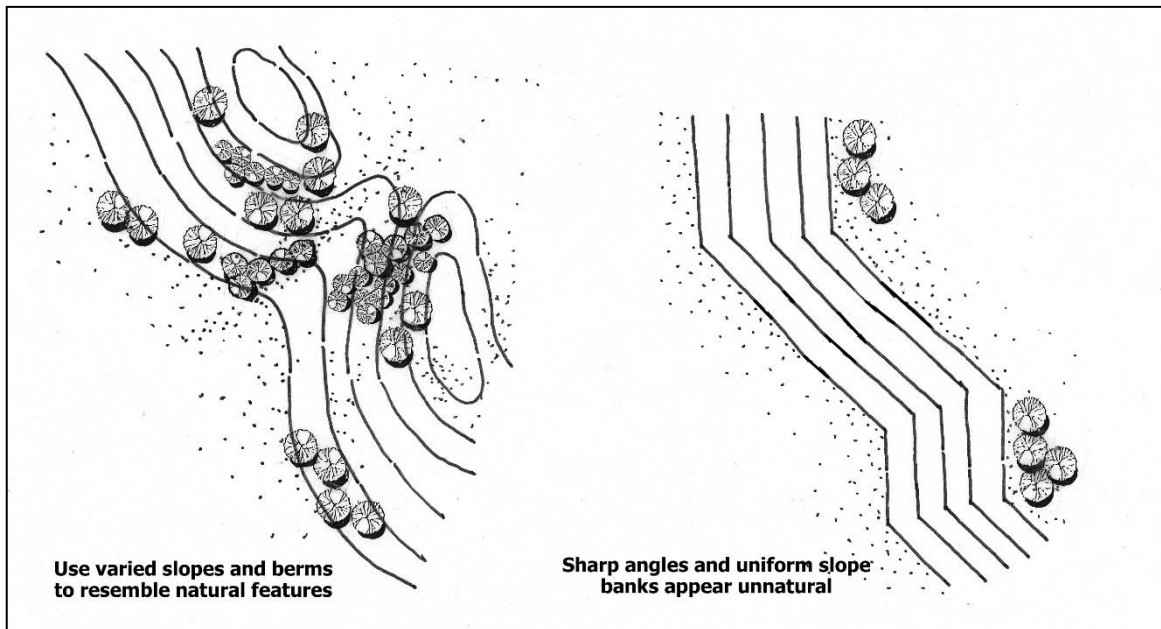
- b. Manufactured slopes adjacent to driveways and roadways shall be modulated by berming, regrading, and landscaping to create visually interesting and natural appearing streetscapes. However, preservation of trees and elimination of retaining walls is a priority.



**Modulate manufactured slopes to appear natural**



- c. Where cut and fill conditions are created, slopes shall be varied rather than left at a constant angle, which creates an unnatural, engineered appearance.



**Do this**

**Don't do this**

- d. The angle of any graded slope shall be gradually transitioned to the angle of the natural terrain. Creation of new grades slopes, significantly steeper than local natural slopes should be minimized.
8. Grading plans shall include provisions for restoration of vegetation on cuts and fills. All manufactured slopes shall be planted with native, fire-resistant, low water using plantings to control erosion.
9. An erosion/sedimentation control plan shall be included with all site plans and/or grading plans. The erosion/sedimentation control plan shall provide interim (during construction) and ultimate plans for control of erosion and sedimentation or describe in detail why this is not necessary.
10. Grading shall not occur during the rainy season (October 1 to April 1) unless approved by the Town Engineer. If grading is planned to occur between October 1 and April 1, interim provisions for erosion and sedimentation control shall be in place before grading begins.



## Guidelines:

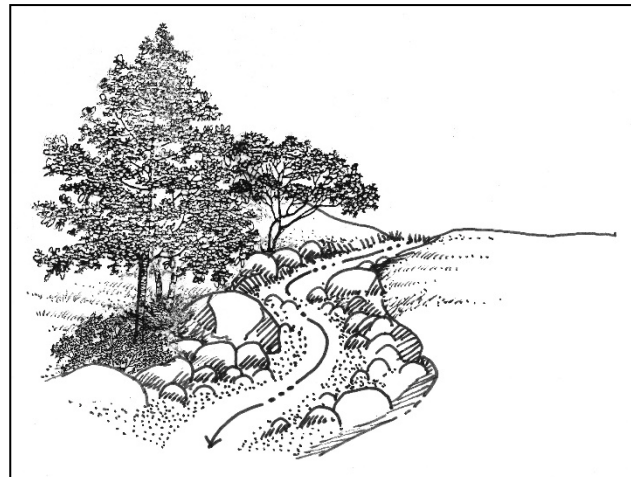
1. The creation of permanent flat pads, except for the house footprint and area needed for access, parking and turnaround, should be avoided

## B. Drainage.

### Standards:

1. Runoff shall be dispersed within the subject property to the greatest extent feasible. Runoff concentration that requires larger drainage facilities shall be avoided.
2. Upslope drainage shall not negatively impact downslope development.
3. Natural drainage courses shall be preserved with any native vegetation intact and shall be enhanced to the extent possible, and shall be incorporated as an integral part of the site design in order to preserve the natural character of the area.
4. Manmade drainage channels shall receive a naturalizing treatment such as rock and landscaping so that the structure appears as a natural part of the environment.

**Manufactured  
drainage courses  
shall simulate  
natural drainage  
courses**



### Guidelines:

1. Manmade drainage channels should be placed in the least visible locations possible.
2. Lining of natural drainage courses is discouraged.



3. Dry Stream effects (manufactured drainage courses designed to simulate natural drainage courses) that move water over the property are preferred over channeling or underground methods.

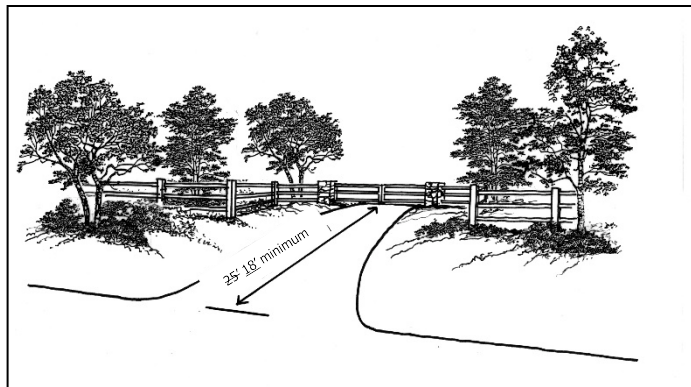
### C. Driveways and parking.

It is recommended that the Fire Department be consulted early in the design process about water supply, accessibility and the need for emergency vehicle turnarounds, turnouts, etc.

#### Standards:

See  
Chapter  
VII.B.  
Standard 2

1. Driveways shall be located so as to minimize the need for grading.
2. Driveways shall be paved in compliance with Town standards, and shall be installed prior to occupancy.
3. When a gated entrance is provided, the gates shall be set back a minimum of 18 feet from the right-of-way to allow vehicles to pull completely off the roadway while waiting for the gates to open. Gated entrances serving more than one house may be required to have a greater setback. Gates should open away from or parallel to the street.



**Entrance gates shall  
be set back at least  
18 feet from the  
street**

4. Driveways shall have an all-weather surface in compliance with Fire Department weight loading requirements (40,000 pounds).
5. The maximum slope of a driveway shall not exceed 15 percent unless it can be demonstrated that a flatter driveway cannot be constructed without excessive grading (more than 4 feet of cut or 3 feet of fill). Driveway slopes in excess of 15 percent require approval by the Town Engineer and Santa Clara County Fire Department.



## **Guidelines:**

1. Driveways serving one residence should have a 12-foot minimum width.
2. The maximum length of a driveway should be 300 feet unless the deciding body makes specific findings for deviation and places additional conditions such as turnouts and secondary accesses to reduce hazards. A turnaround area shall not have a grade that exceeds five (5) percent.
3. Driveway approaches should be located a safe distance from intersections. On adjoining properties, driveways should be spaced a minimum of 20 feet apart or located immediately adjacent to each other.
4. Shared driveways serving more than one lot are encouraged as a means of reducing grading and impervious surfaces.
5. Driveways should be located and maintained so as to ensure an adequate line of sight.

## **D. Safety.**

### **Geologic hazards.**

Potential geologic hazards, if not avoided or mitigated, can result in damage to the environment and structures and can place public safety at risk.

## **Standards:**

1. Site specific geologic engineering investigations and reports are required of qualifying projects in State of California Seismic Hazard Zones (Liquifaction and Earthquake Induced Landslide Areas) and in areas believed to be geologically hazardous as determined by the Director of Community Development and /or Town Engineer. Refer to California Geological Survey Seismic Hazard Zones Map, Los Gatos Quadrangle, dated September 23, 2002.
2. Construction shall be avoided in areas with geologic hazards (e.g., slope instability, seismic hazards, etc.) as identified in the site specific geologic investigations and reports, unless adequate mitigation design measures are proposed to achieve a low level of risk.

**Guidelines:** None.



### **Fire hazards.**

The hillsides above Los Gatos are areas of high fire hazard. House fires in the hillsides have the potential to become wildfires if not controlled quickly. A dependable, adequate water supply, automatic fire sprinklers, access for fire fighting equipment and fast response times are critical factors in gaining quick control over a structural fire. Factors that affect the speed at which a wildfire spreads include topography, available fuel, weather (wind, humidity) and availability of fire fighting resources. Lack of adequate circulation or evacuation routes can also impact public safety.

Development in the hillsides presents inherent conflicts between creating and maintaining a fire safe environment, preserving existing vegetation, and minimizing the visual impacts of new development. These conflicts can be minimized by incorporating the concept of fire defensible space into site planning and landscape design. The concept of defensible space involves reducing fuel load, designing structures and landscaping with fire safety in mind, and locating structures to minimize their exposure to wildfires.

### **Standards:**

1. Building locations shall be selected and structures designed to minimize exposure to wildfires (also see Chapter V. Section I.).
2. A landscape plan shall be provided and will be reviewed by the Town's Landscape Consultant with input from the Fire Department. The landscape plan shall create defensible space around the home, and if there is a fire ladder on the property it shall be eliminated in an environmentally sensitive manner.
3. Development shall have adequate fire access (also see Chapter III section C. and Chapter VII section b.2.).
4. A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties. If no public hydrant is available, there shall be an on-site water supply in a storage facility with an appropriate outlet valve in close proximity to an accessible hard road surface.
5. Water for fire suppression shall be available and labeled before any framing may begin.
6. Above ground water tanks shall not be located in required setback areas.



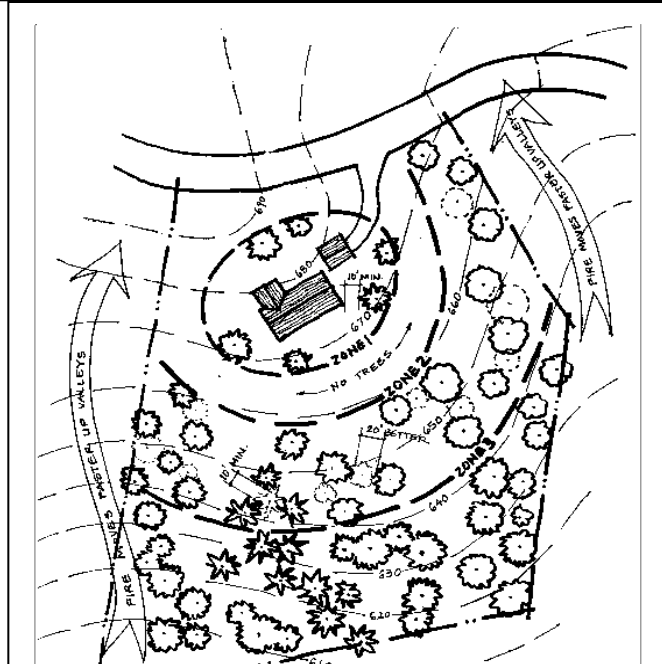
## **Guidelines:**

1. Development should avoid areas subject to severe fire danger. In order to achieve this, development should:
  - a. Be set back from the crest of a hill
  - b. Not be located at the top of a canyon
  - c. Not be located on or adjacent to slopes greater than 30%
  - d. Not be located within densely wooded areas

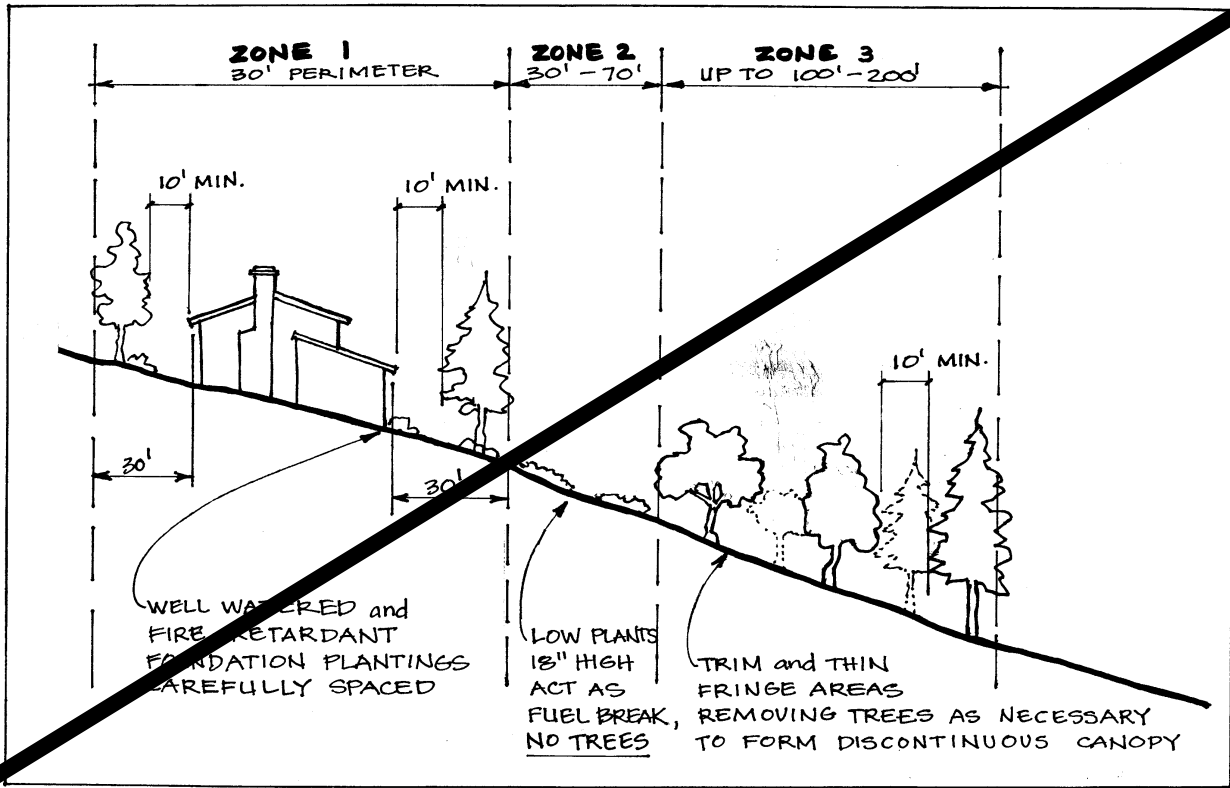
If this is not possible, measures designed to assure the highest degree of fire prevention, and fast effective means of evacuation and fire suppression shall be provided.

2. The fuel load within a defensible space should be minimized by use of selective pruning, thinning and clearing as follows:
  - Removal of flammable species and debris
  - Removal of dead, dying or hazardous trees
  - Mow dead grasses
  - Removal of dead wood from trees and shrubs
  - Thin tree crowns (maximum of 25%)
3. Discontinuous fuel sources should be created and maintained within a defensible space through use of the following techniques (see illustrations on page 27):
  - Thin vegetation to form discontinuous groupings of trees or shrubs
  - Limb trees up from the ground
  - Establish a separation between the lowest branches of a tree and any understory shrubs.
4. Landscaping within a defensible space should be designed with fire safety in mind. Landscaping in defensible space should be:
  - Fire resistant and drought tolerant
  - Predominantly low growing shrubs and groundcovers (limit shrubs to 30% coverage)
  - Limited near foundations (height and density)
5. Above ground tanks should not be located in areas of high visibility unless it can be demonstrated to the satisfaction of the decision making body that no other feasible locations are available.

Refer to  
Appendix  
A

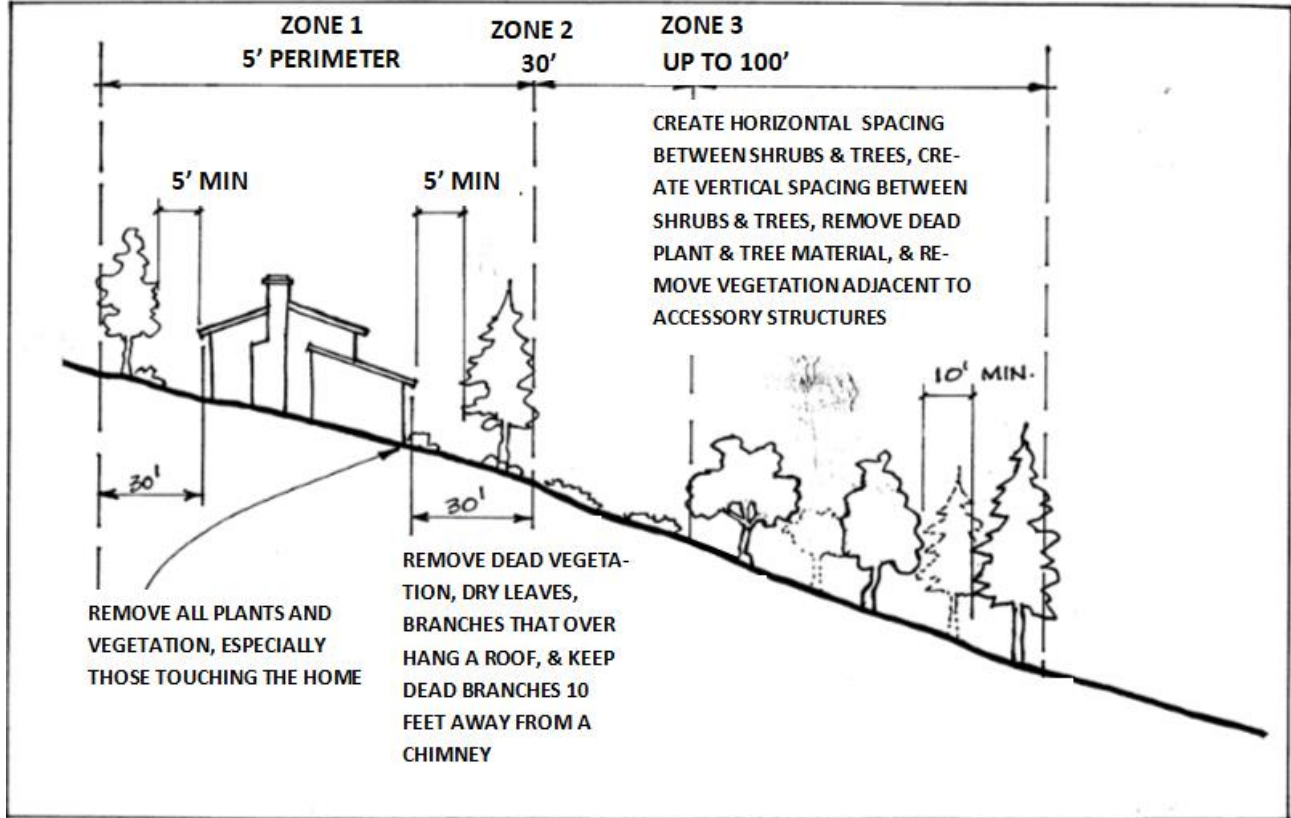


Defensible space  
 should be  
 maintained  
 around the home





**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**



**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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## IX. PROJECT REVIEW AND APPROVAL PROCESS

### A. Architecture and Site Approval

Architecture and site approval is required for all new construction including major additions and remodels in all areas of the Town shown on the Hillside Area Map on page 8. A subdivision or Planned Development application is required for any proposed land division.

The flow chart on page 66 outlines the steps an application for architecture and site approval will go through. The process begins with a meeting with the Community Development Department. It is highly recommended that applicants considering the design of a new home or remodel of an existing home discuss their ideas with Town staff **before** any plans are actually drawn and money and time are expended on a project that may not be entirely feasible.

An application for architecture and site approval or subdivision shall be accompanied by a written letter of justification that describes how the proposed project complies with the General Plan, Hillside Specific Plan and the Hillside Development Standards and Guidelines.

### B. Project Approval Authority

Projects may be approved by the Planning Commission, Development Review Committee (DRC), or Director of Community Development (Director) depending on a project's potential impact on surrounding properties and the overall community.

The Planning Commission is the decision making body for projects that have the greatest potential impact, while the DRC and Director make decisions on projects with less impact, as described in Subsections below.



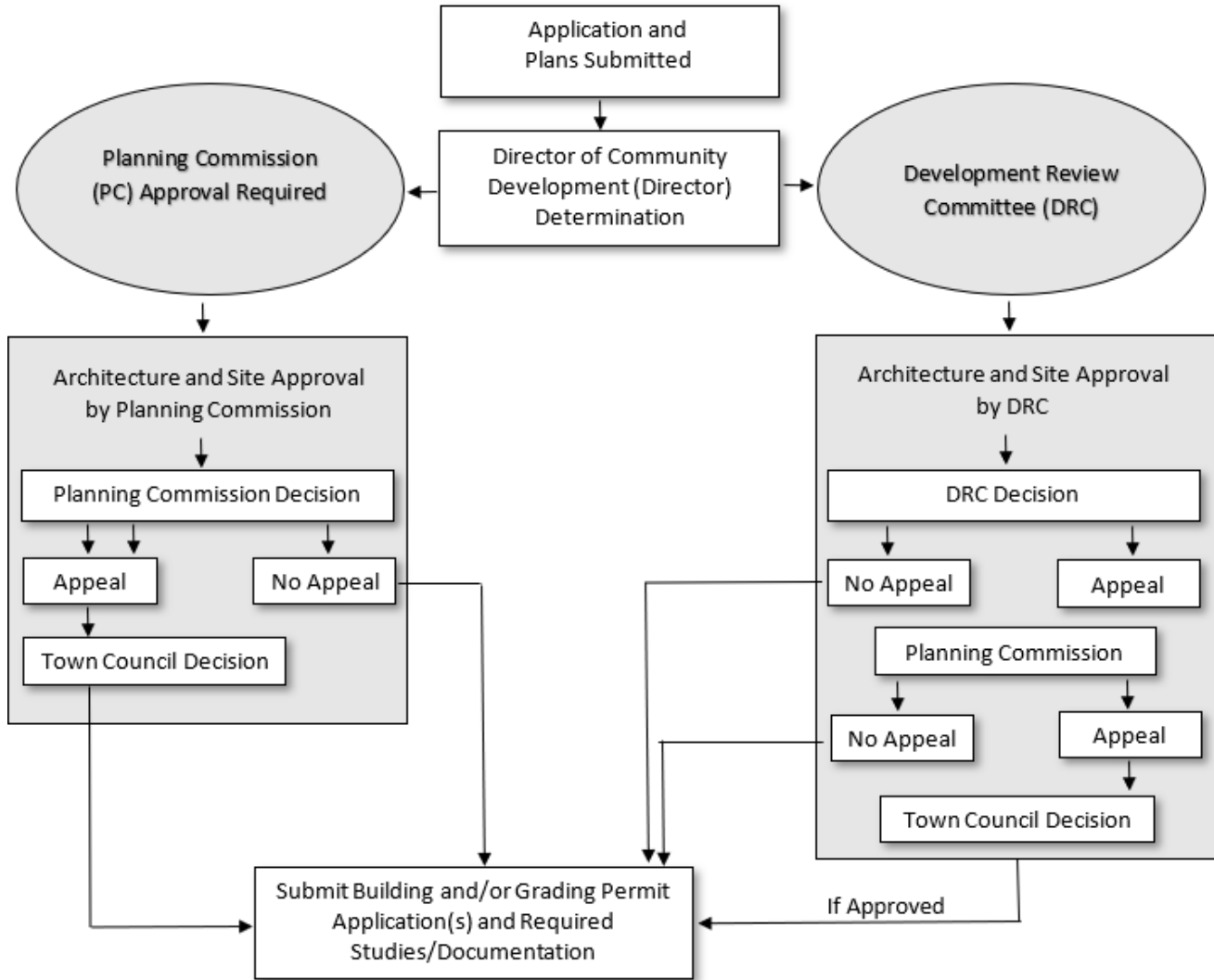
The subdivision and architecture and site approval processes are discretionary actions on the part of all decision making bodies. When reviewing projects, the decision making body may:

- (1) approve a project without imposing extra or special conditions;
- (2) approve a project and add special conditions to reduce the impact(s) of the project to an acceptable level and/or achieve compliance with these standards and guidelines; or
- (3) deny the project by stating specific reasons for its action.

The Director of Community Development may refer an application to the Planning Commission. The decisions of the Planning Commission, DRC, and Director are final unless appealed. Decisions of the Director and DRC may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the Town Council. Appeal procedures are outlined in the Town's Zoning Regulations.



## Architecture and Site Review Process





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## 1. Projects That May be Approved by the Director of Community Development

The Director has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. Accessory dwelling units pursuant to Section 29.10.320 of the Town Code.
- b. Accessory buildings that have a combined gross floor area greater than 450, but less than 600 square feet may be approved with a Minor Residential Application pursuant to Section 29.20.480 of the Town Code.
- c. Swimming pools that do not require a grading permit.

## 2. Projects That May be Approved by the Development Review Committee

The (DRC) has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. New houses that meet the allowable floor area ratio and that are not visible from any established viewing area.
- b. Accessory buildings, that have a combined gross floor area of 600 square feet or more but do not exceed 1,000 square feet in combined gross floor area.
- c. Swimming pools and game courts requiring a grading permit and/or retaining walls.
- d. Grading permits.



### 3. Projects That Require Planning Commission Approval

The Planning Commission has the authority to approve all architecture and site projects that do not fall within the authority of the DRC and any projects referred to it by the Director. The Planning Commission approves standard subdivisions and makes recommendations to the Town Council on Planned Development applications.

#### C. Application Period of Validity

An approved architecture and site application shall be valid for the period of time specified in the Town's Zoning Regulations.

#### D. Required findings

In addition to the considerations for architecture and site approval provided in the Town's Zoning Regulations, the decision making body shall also find that the proposed project meets or exceeds the objectives and requirements of the Hillside Development Standards and Guidelines and shall provide supportive evidence to justify making such findings.

#### E. Exceptions

Exceptions from the standards in this document may only be granted after carefully considering the constraints of the site. Any deviation from the standards contained in this document shall include the rationale and evidence to support the deviation. The burden of proof shall be on the applicant to show that there are compelling reasons for granting the requested deviation.

**Major exceptions** may only be granted by the Town Council or Planning Commission. Major exceptions include the following:

- a. building height
- b. maximum floor area





## ORDINANCE 2301

### ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 9 (FIRE PREVENTION AND PROTECTION) OF THE TOWN CODE REGARDING WEED ABATEMENT REGULATIONS

**WHEREAS**, the Town of Los Gatos; has traditionally adopted Chapter 49 of the California Fire Code (with amendments) which incorporates the legal requirements associated with State mandated defensible space;

**WHEREAS**, the State mandates 100 feet of defensible space around buildings and structures within Very High Fire Hazard Severity Zones;

**WHEREAS**, State law allows for jurisdictions to adopt additional defensible space standards based on severity of wildfire risk;

**WHEREAS**, the Los Gatos Wildland Urban Interface (WUI) planning area includes primarily Very High Fire Hazard Severity Zone (VHFHSZ) areas.

**WHEREAS**, the Town Council recognizes that in addition to the State mandated requirements the development and maintenance of defensible space is essential to reducing wildfire risk within the community;

**WHEREAS**, the proposed amendment changes will reduce the risk of wildfire and effectuate safer passage for first responders and residents in the event of a wildfire;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

#### SECTION II

##### CHAPTER 49 REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS

Section 4902 Definitions of Town Code Chapter 9 are hereby added/amended to read as follows:

**DEFENSIBLE SPACE.** An area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structure(s).

**REDUCED FUEL ZONE.** In this area of the defensible space, efforts are placed on ensuring fuels/vegetation are separated vertically and horizontally depending on the vegetation type.

**Wildland-Urban Interface Fire Area.** A geographical area identified by the state as a " Fire Hazard Severity Zone" in accordance with the Public Resources Code, Sections 4201 through 4204, and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. The Wildland-Urban Interface Fire Area is defined as all areas within the Town of Los Gatos as set forth and delineated on the map entitled "Wildland-Urban Interface Fire Area" which map and all notations, references, data, and other information shown thereon are hereby adopted and made a part of this chapter. The map properly attested, shall be on file in the Office of the Town Clerk of the Town of Los Gatos.

Section 4906.2 Application of Town Code Chapter 9 are hereby amended to read as follows:

2. Land designated as a Very-high Fire Hazard Severity Zone or as a Wildland Urban Interface Fire Area by the Town of Los Gatos.

Section 4907.2 Defensible Space Fuel Modification are hereby added to read as follows:

**4907.2 Defensible Space Fuel Modification.**

Persons owning, leasing, controlling, operating, or maintaining buildings or structures, and/or lands in, upon, or adjoining the locally adopted Wildland-Urban Interface Fire Area, shall at all times comply with the following:

1. Maintain defensible space of 100 feet from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law. The 100 feet of defensible space should be segregated into the following zones:
  - a. Maintain an effective defensible space by removing and clearing away flammable vegetation and other combustible materials from areas within 30 feet of such buildings or structures.

**Exception:** When approved by the Fire Chief or his/her designee, single specimens of trees, ornamental shrubbery or similar plants used as ground covers, provided that they do not form a means of rapidly transmitting fire from the native growth to any structure.
  - b. Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. Distances beyond an additional 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, 70 additional feet is insufficient.

**Exception:** When approved by the Fire Chief or his/her designee grass and other vegetation located more than 30 feet from buildings or structures and less than 18 inches in height above the ground need not be removed where necessary to stabilize the soil and prevent erosion.

- c. New construction must create a noncombustible area a minimum of 5 feet from structures.
2. Remove portions of trees, which extend within 10 feet of the outlet of any chimney or stovepipe.
3. Maintain any tree, shrub, or other plant adjacent to or overhanging any building or structure free of dead limbs, branches or other combustible material.
4. Maintain the roof of any structure and roof gutters free of leaves, needles, or other combustible materials.
5. Maintain defensible space as determined by the Fire Chief or his/her designee around water tank structures, water supply pumps, and pump houses.
6. Remove flammable vegetation a minimum of 10 feet around liquefied petroleum gas tanks/containers.
7. Firewood and combustible materials shall not be stored in unenclosed spaces beneath buildings or structures, or on decks or under eaves, canopies or other projections or overhangs. The storage of firewood and combustible material within the defensible space shall be located a minimum of 30 feet from structures and separated from the crown of trees by a minimum horizontal distance of 15 feet.

**Exception:** Firewood and combustible materials not for consumption on the premises shall be stored as approved by the Fire Chief or his/her designee.

8. Clear areas within 10 feet of fire apparatus access roads and driveways of non-fire-resistant vegetation growth.

**Exception:** Single specimens of trees, ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents, or similar plants used as ground cover, provided they do not form a means of readily transmitting fire.

Section 4907.3 Defensible Space Along Property Lines are hereby added to read as follows:

**4907.3 Defensible space along property lines.** Pursuant to Government Code Section 51182 and Public Resources Code Section 4291(a)(2):

1. When an occupied building is less than 100 feet from a property line and combustible vegetation on an adjacent parcel presents a fire hazard for the occupied building as determined by the Fire Chief or his/her designee then the owner of the adjacent parcel where the hazard exists shall be responsible for fuel management, including removal to the satisfaction of the Fire Chief or his/her designee.

Section 4907.4 Corrective Actions are hereby added to read as follows:

**4907.4 Corrective actions.** When the Fire Chief or his/her designee determines defensible space to be inadequate the Town Council is authorized to instruct the Fire Chief or his/her designee to give notice to the owner of the property upon which conditions regulated by Sections 4907.2 and 4907.3 exist to correct such conditions. If the owner fails to correct such conditions, the Town Council is authorized to cause the same to be done and make the expense of such correction a lien upon the property where such conditions exist.

### **SECTION III**

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

### **SECTION IV**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### **SECTION V**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION VI**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 21<sup>st</sup> day of January 2020 and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on 4<sup>th</sup> day of February 2020 and becomes effective 30 days after it is adopted.

In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

**COUNCIL MEMBERS:**

AYES: Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen  
NAYS: None  
ABSENT: None  
ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/20

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/2020

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**ORDINANCE 2303**

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (TREE PROTECTION) OF THE TOWN CODE  
REGARDING WEED ABATEMENT REGULATIONS**

**WHEREAS**, the Town of Los Gatos; recognizes that the community benefits from preserving the scenic beauty of the Town;

**WHEREAS**, the Town Council acknowledges that trees provide multiple benefits it also recognizes that a significant portion of the Town is located in a Very High Fire Hazard Severity Zone;

**WHEREAS**, the State mandates 100 feet of defensible space around buildings and structures within Very High Fire Hazard Severity Zones;

**WHEREAS**, the Town Council recognizes that the development and maintenance of defensible space is essential to reducing wildfire risk within the community;

**WHEREAS**, the proposed amendment changes will reduce the risk of wildfire and effectuate safer passage for first responders and residents in the event of a wildfire;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

**SECTION II**

**DIVISION 2 – TREE PROTECTION**

Section 29.10.0950. Intent of Town Code Chapter 29 are hereby amended to read as follows:

**Sec. 29.10.0950. - Intent.**

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees and contains individual trees of great beauty. The community of the Town benefit from preserving the scenic beauty of the Town, preventing erosion of topsoil, providing protection against flood hazards and risk of landslides, counteracting pollutants in the air, maintaining climatic balance, and decreasing wind velocities. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. While trees provide multiple benefits, it is also the intent of this division to acknowledge that a



portion of the Town is located in a Very High Fire Hazard Severity Zone as defined by the California Department of Forestry and Fire Protection (CAL FIRE) and the associated wildfire threat that exists for the community. It is the intent of this division to preserve as many protected trees as possible throughout the Town through staff review and the development review process. Special provisions regarding hillsides are included in section 29.10.0987 of this division in recognition of the unique biological and environmental differences between the hillside and non-hillside areas of the Town. This section does not supersede the provisions of Chapter 26 of this Code.

Section 29.10.0955 Definitions of Town Code Chapter 29 are hereby added to read as follows:

*Defensible Space* means an area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Section 29.10.0970 Exceptions are hereby amended to read as follows:

The following trees are excepted from the provisions of this division and may be removed or severely pruned without Town approval or issuance of a tree removal permit:

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*)-Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

Section 29.10.0992 Required Findings are hereby added to read as follows:

The Director, Director's designee, or deciding body shall approve a protected tree removal permit, severe pruning permit, or pruning permit for Heritage trees or large protected trees only after making at least one (1) of the following findings:

- (1) The tree is dead, severely diseased, decayed or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.
- (2) The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.
- (3) The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.
- (4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.
- (5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.
- (6) The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.
- (7) Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
- (8) The removal of the tree is unavoidable due to restricted access to the property.
- (9) The removal of the tree is necessary to repair a geologic hazard.
- (10) The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.
- (11) The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

### **SECTION III**

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

### **SECTION IV**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidly shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### **SECTION V**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION VI**


This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 21<sup>st</sup> day of January 2020 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 4<sup>th</sup> day of February 2020 and becomes effective 30 days after it is adopted.

In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

**COUNCIL MEMBERS:**

AYES: Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen  
NAYS: None  
ABSENT: None  
ABSTAIN: None

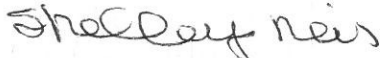
SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/20

ATTEST:

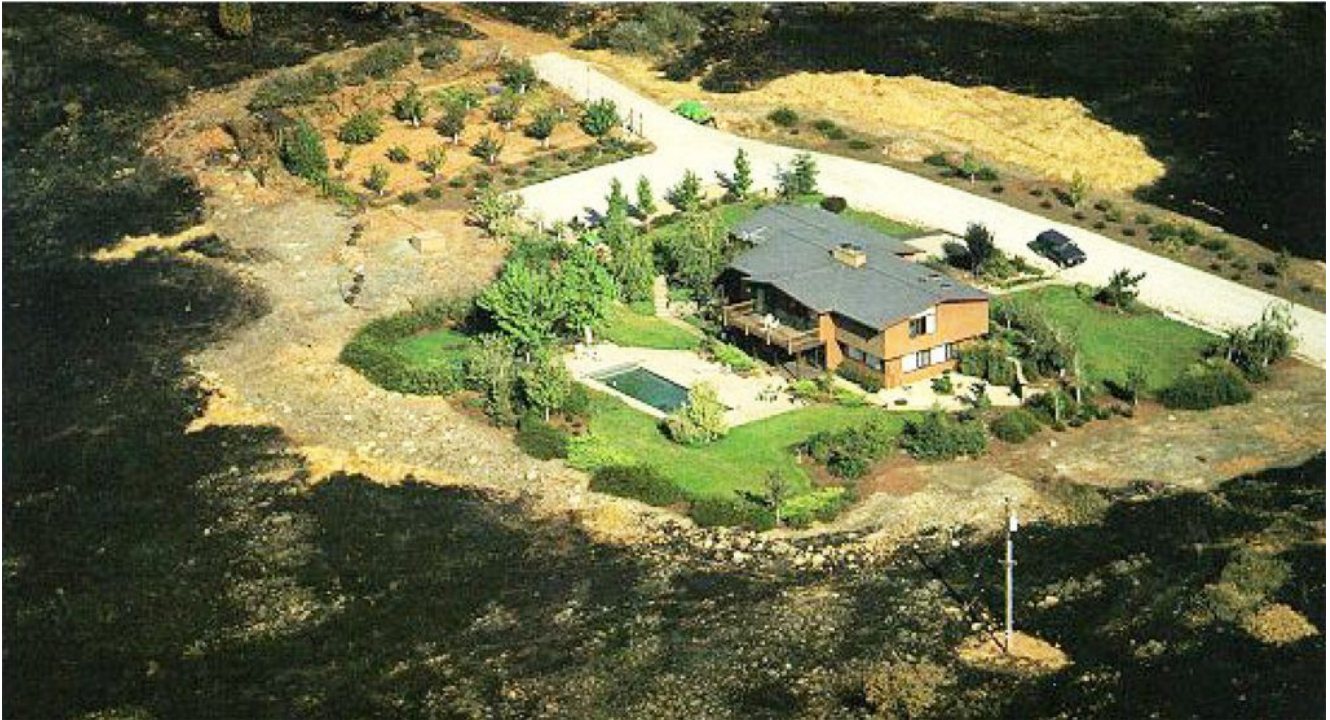


TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/2020

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## Defensible Space Saves Lives



Did you know that actively maintaining defensible space around your home will dramatically increase your home's chance of surviving a wildfire? Defensible space is the buffer you create between a building on your property and the grass, trees, shrubs, or any wildland area that surround it. This space is needed to slow or stop the spread of wildfire and protect your home from catching fire. Defensible space is also an important protection for our firefighters and other emergency responders entrusted with defending our homes and neighborhoods.

### Protecting Your Home

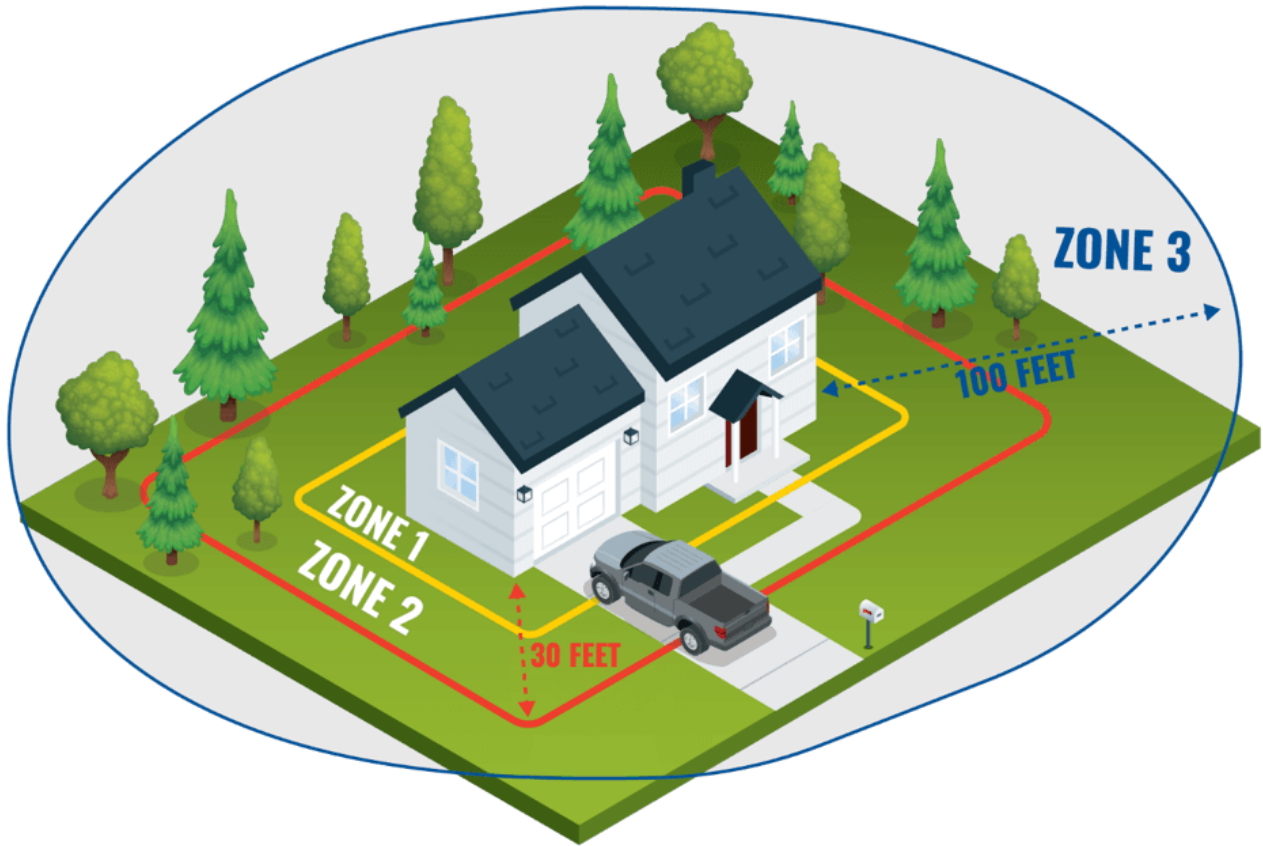
It's State law, that if you have property in a Very-high Fire Hazard Severity Zone or Wildland Urban Interface (WUI) Fire Area, you must have 100-feet of defensible space around any building or structure. If you are unsure whether or not you live in a mandatory defensible space zone, [click this link](#) to view a map of State and Town designated areas in Los Gatos.

In addition to State law, the Town of Los Gatos recently enacted several Municipal Codes amendments which enhance the safety of WUI residents. Specifically for new construction, there is a mandated 5-foot nonflammable zone and the Town enacted provisions that align with State law to recognize the importance of neighbors maintaining defensible space across property lines in certain instances. The new ordinances can be viewed through the links below:

[Ordinance 2301 - Amend Chapter 9 \(Fire Prevention & Protection\)](#)

## Defensible Space Zones

Following are guidelines from Santa Clara County Fire Department on how to create and maintain effective defensible space zones:



### **Zone 1, extends 0 to 5 feet out: The Noncombustible Zone**

- Remove all plants and vegetation, especially those touching your home.
- Clean roofs and gutters of dead leaves, debris and pine needles that could catch embers.
- Replace or repair any loose or missing shingles or roof tiles to prevent ember penetration.
- Reduce embers that could pass through vents in the eaves by installing 1/8 inch metal mesh screening.
- Clean debris from exterior attic vents and install 1/8 inch metal mesh screening to block embers.
- Repair or replace damaged or loose window screens and any broken windows.
- Screen or box-in areas below patios and decks with wire mesh to prevent debris and combustible materials from accumulating.
- Move any flammable material away from wall exteriors – mulch, flammable plants, leaves and needles, firewood piles – anything that can burn. Remove anything stored underneath decks or porches.
- Mandated for new construction

### **Zone 2, extends 30 feet out: The Clean and Green Zone**

- Remove all dead plants, grass and weeds (vegetation).
- Remove dead or dry leaves and pine needles from your yard, roof and rain gutters.
- Trim trees regularly to keep branches a minimum of 10 feet from other trees.
- Remove branches that hang over your roof and keep dead branches 10 feet away from your chimney.

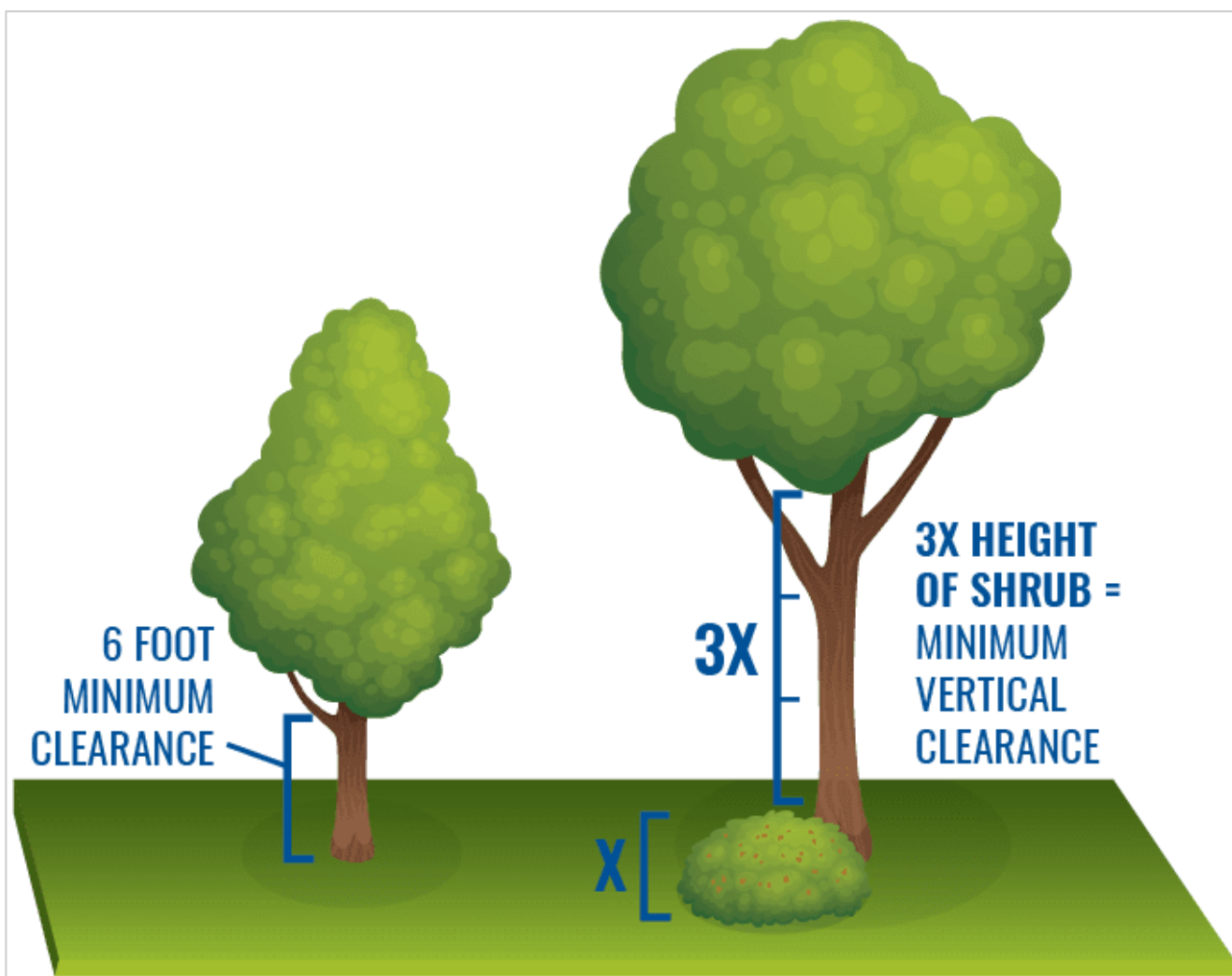
- Create a separation between trees, shrubs and items that could catch fire, such as patio furniture, wood piles, swing sets, etc.

### Zone 3, extends 100 feet out: The Reduced Fuel Zone

- Create horizontal spacing between shrubs and trees. (See diagram below)
- Create vertical spacing between grass, shrubs and trees. (See diagram below)
- Dispose of heavy accumulations of ground litter/debris.
- Remove dead plant and tree material.
- Remove small conifers growing between mature trees.
- Remove vegetation adjacent to storage sheds or other outbuildings within this area.
- Trees 30 to 60 feet from the home should have at least 12 feet between canopy tops.
- Trees 60 to 100 feet from the home should have at least 6 feet between the canopy tops.

### Plant and Tree Spacing

For vertical spacing remove all tree branches at least 6 feet from the ground. If there is a shrub near the tree, the branch clearance needs to be 3 times the height of the shrub. *Example: A 5-foot shrub is growing near a tree.  $3 \times 5 = 15$  feet of clearance needed between the top of the shrub and the lowest tree branch.*

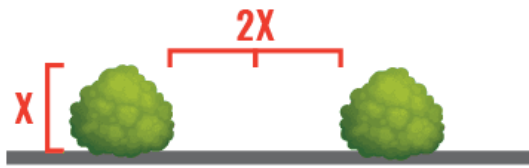




spacing between shrubs and trees depends on the slope of the land and the height of the shrubs or trees. Check the chart below to determine spacing distance.

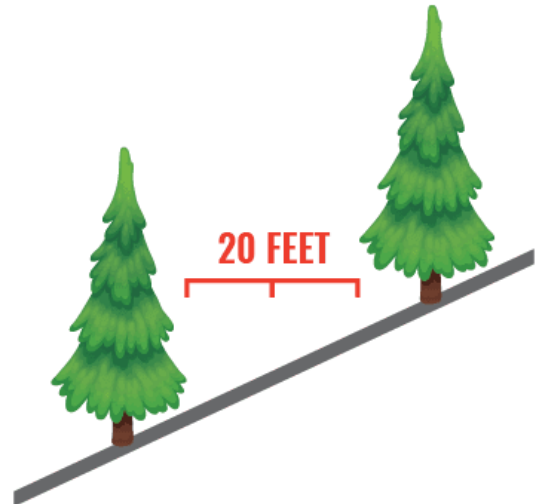
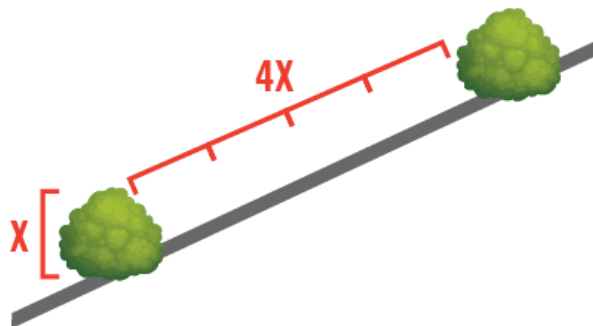
*Need your property inspected?*

## SHRUBS

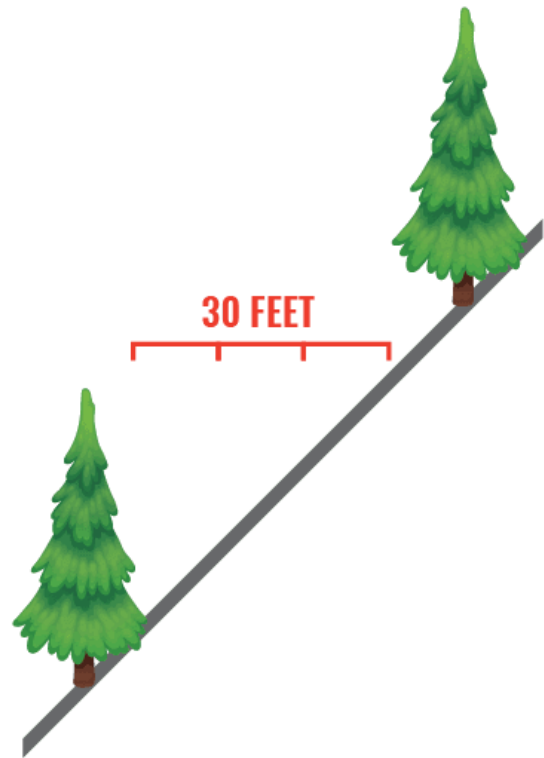
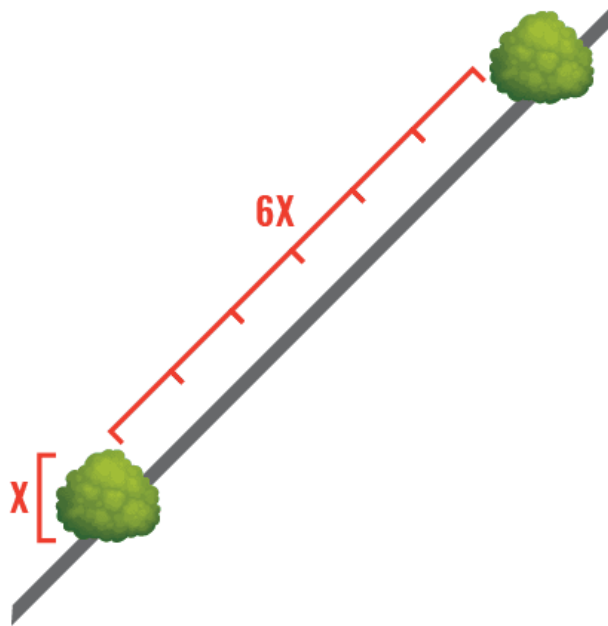


FLAT TO MILD SLOPE (LESS THAN 20%)

## TREES



MILD TO MODERATE SLOPE (20%-40%)



MODERATE TO STEEP SLOPE (MORE THAN 40%)

like a free inspection review of your property, contact the Fire Prevention Division at (408) 378-4010.

## Defensible Space Along Property Lines

Neighbors, neighborhoods, and communities are working together to help create unified defensible space.

Wildfire safety is a shared responsibility since fire doesn't respect property or political boundaries. Adequate defensible space is essential to ensuring that individual homes and neighborhoods are safeguarded from the devastation of wildfires. This includes working with your neighbors to protect both, your structures and the neighbor's building that may be close to parcel lines. Neighbors are encouraged to work together to help provide defensible space for their respective properties. The most effective solution is a cooperative approach.

In limited circumstances, neighbors are unable to reach a mutual agreement. The Fire Chief, or his/her designee, can assist in determining the risk one property's vegetation poses to another property's structure. If the risk exists, the property owner of the vegetation shall be responsible for fuel management. The Town adopted provisions in its Municipal Code consistent with California Government Code Section 51182(a)(2) which allows jurisdictions to require defensible space beyond property lines in certain circumstances. For an assessment of vegetation around your structures, call the Fire Prevention Division at (408) 378-4010.

*Example: A structure is within 70-feet of its property line. The adjacent property poses a significant vegetation threat negating the ability to achieve 100-feet of defensible space around the structure. In the event the neighbors couldn't reach a mutual understanding, the Fire Department would assess if the adjacent property owner would need to assist its neighbor by completing fuel management on another 30 feet on their property.*

## Nonflammable Vegetation



Not all plants combust equally. There are many beautiful trees and plants to grow in your garden that will reduce your property's risk of being affected by a wildfire. Check out the list below, compiled by [University of California Master Gardeners Santa Clara County](#):

**Trees:** California live oaks, native redwoods, California bay laurel, maples, citrus, cherry, apple, strawberry tree, dogwood, ash, loquat, 'Little Gem' magnolia, toyon, white alder, weeping bottlebrush, redbud.

**Large shrubs:** Aloe, ceanothus, cotoneaster, escallonia, currant, pineapple guava, flowering quince, Island bush poppy, Pacific wax myrtle, photinia, pittosporum, mock orange, plumbago, podocarpus, laurel, viburnum.

**Flowering plants:** Azalea, camellia, hibiscus, lavender, monkey flower, California fuchsia, coral bells, society garlic, salvia, rhododendron.

**Ground covers:** Woolley yarrow, Ajuga reptans, purple rockrose, creeping coprosma, creeping thyme, ice plant, mock strawberry, wild strawberry, evergreen candytuft, lantana, Lamium, African daisy, wooly thyme, star jasmine, sedum.

**Vines:** Trumpet vine, potato vine, Cape honeysuckle.

## Understanding Fire Weather

Red Flag Warnings are often preceded by a Fire Weather Watch, which is a National Weather Service (NWS) notice indicating that weather conditions in the next 12-72 hours may result in extreme fire behavior and trigger a Red Flag Warning. As of 2019, a Red Flag Warning may be accompanied by a Public Safety Power Outage, where PG&E shuts off power to power lines in areas at high risk of wildfire. NWS issues a Red Flag Warning when weather conditions in the next 24 hours may result in extreme fire behavior. These conditions may include: Low relative humidity, strong winds, dry fuels, and the possibility of dry lightning strikes.



**LOW RELATIVE HUMIDITY**



**STRONG WINDS**



**DRY FUELS**



**POSSIBILITY OF DRY LIGHTNING STRIKES**

### Tips for Red Flag Warnings

1. Do not use lawnmowers or spark-producing equipment in or near dry vegetation. Follow local fire restrictions on powered equipment use.
2. Report unattended outdoor fires immediately to 911.
3. Avoid all outdoor burning.
4. Extinguish outdoor fires properly, never leave barbecues or cooking fires unattended. Always drown them with plenty of water.
5. Soak ashes and charcoal in water and dispose of them in a metal can. These materials can ignite days after a fire or BBQ is extinguished.
6. Be READY for wildfire by maintaining at least 100 feet of defensible space around your home.
7. Ensure access roads to your home are cleared and properly labeled.
8. Do not throw cigarettes or matches out of a vehicle. They can ignite dry vegetation on the side of the road and start a wildfire.
9. Do not pull your vehicle over in dry grass.
10. Ensure trailer chains do not drag on the ground.
11. Report any sign of smoke or fire immediately by dialing 9-1-1.

## Stay Informed

Be aware of when a Red Flag Warning is issued by [registering for AlertSCC](#). AlertSCC is a free and easy way to get emergency alerts sent directly to your cell phone or mobile device, landline, or email. Alerts can include:

- Red Flag Warning
- Fire
- Earthquake
- Severe weather
- Crime incident that affects your neighborhood
- Instructions during a disaster
- Post-disaster information about shelters, transportation, or supplies

To: Planning Commission, meeting of September 23, 2020  
Re: HDS&G Modifications  
From: Dave Weissman, September 18, 2020

There are 2 loosely connected issues, that relate to visibility, in this agenda item. The **first item** relates to defining “elevation” for purposes of calculating visibility of an A&S application. I ask that the Commissioners read my letter in your packet, sent to the Policy Committee, and dated 8/6/2020. The Policy Committee voted 2-0 in favor of both defining elevation in Town codes and limiting elevation to include only the proposed home, not any accessory elements distinct from the home. I took this same position in my letter.

The **second item** concerns Fire Prevention and Protection. Now this Town has demonstrated a unique and consistent interest for the ecological health of our hillsides. For instance:

The 2004 Hillside Guidelines, page 51, require that all landscaping located “further than 30 feet from the primary residence, shall be indigenous and appropriate for the immediate natural habitat.”

The 2015 Tree Protection Ordinance revision was amended (Sec. 29.10.0970) to encourage the removal of non-native hillside trees. Specifically, no permit was needed and no replacement trees were required. Additionally, for protected trees removed during construction, Sec. 29.10.0987 requires all trees farther than 30’ from the house be replaced with native trees. Those trees within 30’ of the house, if native, must also be replaced with native trees.

Then, in 2019, the Town revised how the Visibility Analysis for proposed hillside homes was to be done. Relevant to our discussion are 2 adopted provisions:

1. Existing vegetation proposed to be removed shall not count as screening.
2. Trees counted as screening shall have a Deed Restriction prohibiting their removal. If that trees dies, it must be replaced.

Then the Paradise Firestorm arrived and prompted a necessary reevaluation of the Town’s good intentioned actions of the previous 15 years. We all agree that fire safety must take precedence.

So, folks can have different opinions as to what constitutes defensible space, but what our Town Council passed in January, 2020, is very clear: Section 4907.2 says that homeowners “shall at all times comply with the following” defensible space fuel modifications, and an extensive list is presented.

But these new defensible space policies created conflicts with previous Town efforts aimed at decreasing visibility of hillside homes and protecting the ecological health of the hillsides. And such conflicts were addressed at the Policy Committee meeting of 8/11/2020. At that meeting, Mayor Jensen took issue with the word “subject” that staff used in their report, saying that “subject” means the homeowner has the option of removing or not removing vegetation. I disagree with Ms. Jensen: the homeowner doesn’t have an option but is required to comply with specific conditions set forth in Sec. 4907.2. Simply put – a better term than “subject” to have been used in the staff report, would have been “required.” Homeowners don’t have a choice here, according to Sec. 4907.2, nor do I believe that they should. Hillside fire protection is everyone’s business – we must all work together.

So, I recommend the following actions (based on the numbering used in the staff report to the Policy Committee):

- A. **Yes** on item 1 – elevation should be defined and should only include the actual home, as was passed 2-0 by the Policy Committee.
- B. **Yes** on items 2 & 3 – existing trees and branches required to be removed for defensible space by Sec. 4907.2, should not be counted in the visibility analysis.
- C. **Yes** on item 4 – These non-native, and in some cases extremely flammable trees (think Eucalyptus) should be removed in the interest of defensible space. They should not be counted as providing screening, even if the builder says that they will be retained, because when the house is sold, whether it be in 1 week or 10 years, the new owner can then remove the entire tree without permits or replacement. In contrast, native trees, which are fire resistant, are still protected under Sec 29.10.0970 (3) and should be counted as providing screening.
- D. The Deed Restriction clause on page 14, h, of the Hillside Standards, should be amended to only apply to **native trees** protected under Sec. 29.10.0970 (3).



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 3

ADDENDUM

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DATE: September 22, 2020

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council for Approval of Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town Wide. Applicant: Town of Los Gatos.

REMARKS:

Exhibit 13 includes additional public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

EXHIBITS:

Previously received with September 23, 2020 Staff Report:

1. Required Findings
2. Town Council Policy Committee July 28, 2020 Minutes
3. Town Council Policy Committee July 28, 2020 Planning Staff Report (with Attachments 1 through 6)
4. Town Council Policy Committee August 11, 2020 Minutes
5. Town Council Policy Committee August 11, 2020 Planning Staff Report (with Attachment 7)
6. Draft Modifications to Chapter II (Constraints Analysis) of the HDS&G
7. Draft Modifications to Chapter III (Site Planning) of the HDS&G
8. Chapter IX (Project Review and Approval Process) of the HDS&G
9. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code
10. Ordinance 2303 Chapter 29, Division 2 (Tree Protection) of the Town Code
11. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>>
12. Public comments received by 11:00 a.m., Friday, September 18, 2020

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: September 22, 2020

Received with this Addendum Report:

13. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

**From:** Kathy Hemingway  
**Sent:** Monday, September 21, 2020 5:25 PM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** Comments in Regards to the Fire Prevention Section of the Hillside Development Standards and Guidelines

Dear Ms. Shoopman,

Hillside Development Standards and Guidelines comments for inclusion in the Planning Commission Staff Report/Addendum/Desk Item for the meeting on September 23 regarding the fire prevention standards for the Town of Los Gatos:

My comment is in regards to the Fire Prevention section of the Hillside Development Standards and Guidelines. In light of the recent and ongoing fires, I believe that fire is one of the biggest concerns in the rural, hillside areas. Just recently, the Planning Commission approved the installation of 4 fire pits on a property in our vicinity. Two were located in the backyard of the home but the other two were spaced in two separate areas along the hillside. At least the two in the backyard are visible by someone who might be in the home but the other two cannot be seen from the home. The flames are around 2 feet high and can be heard from a distance. Several times the fire pits have been left burning with no one around. I would like to propose that fire pits not be allowed in the rural areas or at least they must be installed within direct view and access from the home. And perhaps, for those homes with the fire pits already installed, the ordinance should disallow use of the fire pits during the annual fire season. There is nothing safe about fire where a combustible could find its way into the flames, catch fire, and then be blown to catch other combustibles. And if they are out of sight, out of mind, they are even more dangerous. I understand the appeal of sitting by the fire pit at night but unfortunately, the latest events have shown how truly vulnerable our rural areas are to any form of fire.

Thank you for the opportunity to express my concerns,

Kathy Hemingway

14680 Shannon Road

Los Gatos, CA

EXHIBIT 13

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Kendra Burch  
Matthew Hudes  
Reza Tavana

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin  
(619) 541-3405

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P R O C E E D I N G S :

CHAIR HANSSEN: Normally we would go through our meeting process but we've been informed that the public has not been able to access the link to attend the meeting, and so we need to make a continuance of the meeting and I'm asking Staff do we need to vote on that or how..

TOWN ATTORNEY SCHULTZ: Yes, there would be a motion to continue the meeting to a date certain. I think Mr. Paulson has recommended next Wednesday the 30<sup>th</sup>, but I understand that is also the date of when there's a candidate forum and so it's up to the Planning Commission as to which date you want to continue these items to.

JOEL PAULSON: Alternatively, thank you, through the Chair, potentially given we have a workshop on Tuesday and General Plan Advisory Committee on Thursday, possibly Monday if that works for the Planning Commission, and we can get the agenda reposted before the weekend so that link is corrected and we can move forward if that works for the Town Attorney as well as the Commission.

CHAIR HANSSEN: Okay. Without hearing from the other Commissioners we know that two of our Commissioners are running for Town Council and so I'm sure that Wednesday

1 won't be great, and then we would be down to four  
2 Commissioners because for Item 2 Commissioner Burch is  
3 recused due to proximity to the location, so I would  
4 recommend another date. So, you're suggesting Monday the...

5 TOWN ATTORNEY SCHULTZ: For clarification  
6 purposes, is that candidate forum all of the candidates or  
7 only certainly ones are on that Wednesday night?

8 CHAIR HANSSEN: Could Commissioner Hudes or  
9 Badame answer that? Commissioner Badame, could you answer  
10 the Town Attorney's question?

11 COMMISSIONER HUDES: I can answer.

12 CHAIR HANSSEN: Or Commissioner Hudes, either  
13 one.

14 COMMISSIONER HUDES: It is all of the candidates.

15 TOWN ATTORNEY SCHULTZ: Oh, okay, then yes, then  
16 obviously that night didn't work, so okay, it's either the  
17 Monday or the following Wednesday. Like I said, there's  
18 five, so the following Wednesday is the...

19 JOEL PAULSON: The 7<sup>th</sup>.

20 TOWN ATTORNEY SCHULTZ: ...7<sup>th</sup>.

21 CHAIR HANSSEN: Okay. I would like to hear from  
22 the Commissioners what date they prefer, and then we have  
23 to make a motion as what the date certain is. So,  
24  
25

1 Commissioner Badame, do you have a preference? I don't know  
2 if she's hearing me. Okay, how about Vice Chair Janoff?

3 VICE CHAIR JANOFF: Either date works for me.

4 CHAIR HANSSEN: Okay. Commissioner Tavana.

5 COMMISSIONER TAVANA: I'd have to say Monday  
6 would work the best for myself.

7 CHAIR HANSSEN: Versus the 7<sup>th</sup>, okay.

8 COMMISSIONER TAVANA: Yes.

9 CHAIR HANSSEN: Commissioner Barnett.  
10

11 COMMISSIONER BARNETT: Either day. Isn't the 7<sup>th</sup>  
12 Labor Day?

13 TOWN ATTORNEY SCHULTZ: That was September 7<sup>th</sup>.

14 CHAIR HANSSEN: Yeah, it was September 7<sup>th</sup>.

15 Commissioner Burch. Commissioner Burch, even though you're  
16 recused for Item 2 we have to do Item 3 as well, so is  
17 either date okay with you?

18 COMMISSIONER BURCH: Yes, yes, they should work  
19 fine for me.

20 CHAIR HANSSEN: Okay, and Commissioner Hudes.

21 COMMISSIONER HUDES: I prefer the 7<sup>th</sup>.

22 CHAIR HANSSEN: Okay, so we've got pretty much...  
23 and I'm okay with either day, so would someone want to make  
24 a motion for one date or the other?  
25

1 VICE CHAIR JANOFF: We haven't heard from  
2 Commissioner Badame.

3 CHAIR HANSSEN: Oh, that's right, okay.  
4 Commissioner Badame, can you hear us? No, she doesn't seem  
5 to be...

6 JOEL PAULSON: Sounds like she might be having  
7 audio trouble. Her mike is on.

8 TOWN ATTORNEY SCHULTZ: But she doesn't even hear  
9 us.  
10

11 CHAIR HANSSEN: Right. Commissioner Badame, can  
12 you hear us? I don't think she can hear us. Okay, so with  
13 that being said I think we need to go ahead and make a  
14 motion, or should we... I don't think we can...

15 JOEL PAULSON: Someone should make a motion for a  
16 date and then we'll move forward from there.

17 CHAIR HANSSEN: Okay. So, would one of the  
18 Commissioners make a motion for one date or the other? Vice  
19 Chair Janoff.

20 VICE CHAIR JANOFF: Yes, I'll move to continue  
21 tonight's agenda to a date certain of Monday the... Please  
22 give me the date.

23 JOEL PAULSON: September 28<sup>th</sup>.

24 VICE CHAIR JANOFF: Monday, September 28<sup>th</sup>.  
25



1 CHAIR HANSSEN: Would someone be seconding?  
2 Commissioner Tavana.

3 COMMISSIONER TAVANA: I'll second that.

4 CHAIR HANSSEN: So, we have a few Commissioners  
5 that prefer...at least one Commissioner that prefers the 7<sup>th</sup>  
6 but it sounds like pretty much everyone can make it on  
7 Monday, so I will go ahead and take the roll call vote and  
8 I'll start with Commissioner Burch.

9 COMMISSIONER BURCH: Yes.

10 CHAIR HANSSEN: And Commissioner Tavana.

11 COMMISSIONER TAVANA: Yes.

12 CHAIR HANSSEN: And I would ask Commissioner  
13 Badame but I... Can you hear us yet, Commissioner Badame?  
14

15 COMMISSIONER BURCH: She can't.

16 CHAIR HANSSEN: All right, so she can't, so we'll  
17 just have to go without her vote.

18 COMMISSIONER BURCH: How do I get on?

19 TOWN ATTORNEY SCHULTZ: I don't know.

20 COMMISSIONER BURCH: Hang on, I'll tell her.

21 COMMISSIONER BADAME: Okay, I'm going to maybe  
22 just check out and maybe get back in. I don't know how to  
23 do this.

24 JOEL PAULSON: We can hear you now, Commissioner...  
25

COMMISSIONER BURCH: She can't...

1 CHAIR HANSSEN: Can you hear us, Commissioner  
2 Badame?

3 COMMISSIONER BURCH: No, she cannot hear us.

4 CHAIR HANSSEN: Okay, but we can hear her.

5 COMMISSIONER BURCH: Right. If we're able to go  
6 ahead and mute her, we should. However, she did just say  
7 Monday the 28<sup>th</sup> does work for her.

8 CHAIR HANSSEN: Oh, she did. Okay, I missed that.  
9 Thank you. All right, so I'll consider that her vote for  
10 the 28<sup>th</sup>. And then Commissioner Barnett.

11 COMMISSIONER BARNETT: Yes, I'm in favor of the  
12 motion.

13 CHAIR HANSSEN: And Commissioner Hudes.

14 COMMISSIONER HUDES: Yes.

15 CHAIR HANSSEN: And Vice Chair Janoff.

16 VICE CHAIR JANOFF: Yes.

17 CHAIR HANSSEN: And then I vote yes as well, so  
18 it passes unanimously, so we will be continuing this entire  
19 meeting to Monday the 28<sup>th</sup>. I thank everyone for reading all  
20 the materials and being prepared and we will continue this  
21 meeting on Monday and we should be able to have members of  
22 the public in attendance as well. With that, I will say  
23 everyone have a good night and this meeting is adjourned.  
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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 3

**DATE:** September 18, 2020

**TO:** Planning Commission

**FROM:** Joel Paulson, Community Development Director

**SUBJECT:** Forward a Recommendation to the Town Council for Approval of Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town Wide. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Forward a recommendation to the Town Council for approval of modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines (HDS&G) regarding the visibility analysis.

**CEQA:**

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment.

**FINDINGS:**

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Exempt, Section 15061(b)(3); and
- The modifications to the HDS&G are consistent with the General Plan.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

Reviewed by: Planning Manager and Community Development Director

BACKGROUND:

On February 2, 2016, the Town Council adopted modifications to Chapter V. of the HDS&G regarding light reflectivity value (LRV) and returned modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis to staff with direction.

In response to the Council's direction, the Policy Committee held five meetings on April 20, 2017, May 18, 2017, June 26, 2017, July 20, 2017, and December 14, 2017 to discuss modifications to the visibility analysis.

On December 19, 2017, the Town Council approved the modifications to Chapter II. (Constraints Analysis), Section B. of the HDS&G regarding the visibility analysis.

On March 3, 2020, the Town Council considered an appeal of an Architecture and Site application for the construction of a hillside home that was 24 percent visible. The appeal was based in part on the appellant's concern about the inclusion of retaining walls and exterior features of the home in the elevation drawing for the purposes of the visibility analysis. At this meeting, the Town Council voted to refer an evaluation of Chapter II. (Constraints Analysis), Section B. of the HDS&G, regarding the visibility analysis to the Policy Committee.

Modifications to the HDS&G regarding the visibility analysis were forwarded to the Policy Committee on July 28, 2020. The Policy Committee continued discussion of the modifications to allow for additional public comment to be provided (Exhibit 2). On August 11, 2020, the Policy Committee reviewed five items, detailed in the Discussion section of this report regarding the visibility analysis. After discussion, the Committee recommended approval of modifications to Chapter II. (Constraints Analysis), Section B. and Chapter III. (Site Planning), Section D. of the HDS&G. The Committee had a split vote on the remaining items regarding modifications to, Chapter II. (Constraints Analysis), Section B. related to recent amendments to Chapter 9 (Fire Prevention and Protection) of the Town Code and Chapter 29, Division 2 (Zoning Regulations) of the Town Code, and modifications to Chapter IX. (Project Review and Approval Process) regarding the approval process (Exhibit 4).

DISCUSSION:

Chapter II. (Constraints Analysis), Section B. contains the required steps for completing a visibility analysis. The Chapter defines a visible home as a single-family residence where 24.5 percent or more of an elevation can be seen from any of the Town's established viewing areas (Exhibit 6).

Ordinance 2301 (Exhibit 9) was adopted by the Town Council on January 21, 2020, to amend Chapter 9 (Fire Prevention and Protection) to require that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law. Ordinance 2303 (Exhibit 10) was adopted

DISCUSSION (continued):

by the Town Council on January 21, 2020 to amend Chapter 29, Division 2 (Zoning Regulations) of the Town Code, to state that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is exempt and may be removed or severely pruned without Town approval or issuance of a tree removal permit.

Chapter III. (Site Planning), Section D. contains standards and guidelines for incorporating defensible space into site planning and landscape design. The chapter provides figures to illustrate the required zones of defensible space that should be maintained around a single-family residence (Exhibit 7).

Chapter IX. (Project Review and Approval Process), Section B. stipulates the deciding body for a project depending on a project's compliance with the HDS&G, the Town Code, and potential impacts on surrounding properties and the overall community (Exhibit 8).

A. Modifications to Chapter II. (Constraints Analysis) Regarding Elevations

Based on the direction provided by the Policy Committee, staff has prepared a modification to Chapter II., Section B. of the HDS&G for the Planning Commission's consideration. The potential amendment, shown in underline font in Exhibit 6, would make the following change:

- Provide written guidelines as to what elements of an exterior can be included in an elevation for purposes of the visibility analysis. An elevation would be defined as only pertaining to the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures.

B. Modifications to Chapter II. (Constraints Analysis) Regarding Trees Subject to Clearing

Chapter 9 of the Town Code requires that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law (Exhibit 9). In conformance with Santa Clara County Fire Department Guidelines, the 100 feet of defensible space is segregated into the following zones (Exhibit 11):

- Zone 1: New construction must create a noncombustible area a minimum of five feet from structures.
- Zone 2: Maintain an effective defensible space by removing and clearing away flammable vegetation and combustible growth from areas within 30 feet of such buildings or structures. This includes removing all dead vegetation and dead or dry leaves, trimming

DISCUSSION (continued):

trees regularly to keep branches a minimum of six feet from the grade, tree branches a minimum of ten feet from other trees, and ten feet away from a chimney.

- Zone 3: Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. A distance beyond 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, a distance of 70 feet is insufficient. This includes creating horizontal and vertical spacing between shrubs and trees, removing dead plants, tree material, and vegetation adjacent to accessory structures within the area, and maintaining distances between canopy tops.

Staff requested input from the Policy Committee regarding whether existing trees or branches subject to clearing in Zone 2 and Zone 3 should be included in a visibility analysis. The Policy Committee had a split vote regarding this item and requested that the item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

C. Modifications to Chapter II. (Constraints Analysis) Regarding Exceptions for Tree Removal

Chapter 29, Division 2 of the Town Code states that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is an exception and may be removed or severely pruned without Town approval or issuance of a tree removal permit (Exhibit 10):

29.10.0970. Exceptions.

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*) - Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

DISCUSSION (continued):

Staff requested input from the Policy Committee regarding whether existing trees meeting the exceptions listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application should be included in a visibility analysis. The Policy Committee had a split vote regarding this item and requested that the item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

D. Modifications to Chapter III. (Site Planning) Regarding Image Update

Based on the direction provided by the Policy Committee, staff has prepared a modification to Chapter III. of the HDS&G for the Planning Commission's consideration. The potential amendment, shown in underline font in Exhibit 7, would make the following change:

- Update the image on Page 29, Section D. to be in compliance with the amended defensible space zones based on the amendments made to Chapter 9 (Fire Prevention and Protection) and Chapter 29, Division 2 (Tree Protection) of the Town Code.

E. Modifications to Chapter IX. (Project Review and Approval Process) Regarding Approvals

A single-family home that meets the allowable floor area ratio and is not visible from any established viewing area may be approved by the Development Review Committee (DRC). Through completion of a visibility analysis, if a home is determined to be visible, the maximum allowable height is 18 feet. Currently, review by the Planning Commission is required for a visible single-family home regardless of the height (Exhibit 8).

The Policy Committee had a split vote regarding whether a visible home that meets the allowable floor area ratio and the maximum allowable height of 18 feet should be allowed to be approved by the DRC, as opposed to the current requirement for Planning Commission approval. The Committee requested that this item be forwarded to the Planning Commission for discussion noting the disagreements of the Committee (Exhibit 4).

PUBLIC COMMENTS:

Public comments received by 11:00 a.m., Friday, September 18, 2020 are included as Exhibit 12.

CONCLUSION:

A. Recommendation

Based on the direction of the Town Council Policy Committee, staff recommends that the Planning Commission review the information included in the staff report and forward a



CONCLUSION (continued):

recommendation to the Town Council for approval of the modifications to Chapter II. (Constraints Analysis) and Chapter III. (Site Planning) of the HDS&G, with any additional modifications to Chapter IX. (Project Review and Approval Process) of the HDS&G. The Commission should also include any comments or recommended changes in taking the following actions:

1. Make the required finding that the modifications to the Hillside Development Standards and Guidelines are consistent with the General Plan (Exhibit 1); and
2. Forward a recommendation to the Town Council for approval of the proposed modifications to Chapters II, III, and IX of the HDS&G (Exhibits 6 through 8).

B. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Forward a recommendation to the Town Council for denial of the proposed modifications to Chapters II, III, and IX of the Hillside Development Standards and Guidelines.

EXHIBITS:

1. Required Findings
2. Town Council Policy Committee July 28, 2020 Minutes
3. Town Council Policy Committee July 28, 2020 Planning Staff Report (with Attachments 1 through 6)
4. Town Council Policy Committee August 11, 2020 Minutes
5. Town Council Policy Committee August 11, 2020 Planning Staff Report (with Attachment 7)
6. Draft Modifications to Chapter II (Constraints Analysis) of the HDS&G
7. Draft Modifications to Chapter III (Site Planning) of the HDS&G
8. Chapter IX (Project Review and Approval Process) of the HDS&G
9. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code
10. Ordinance 2303 Chapter 29, Division 2 (Tree Protection) of the Town Code
11. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>>
12. Public comments received by 11:00 a.m., Friday, September 18, 2020

**PLANNING COMMISSION – September 23, 2020**  
**REQUIRED FINDINGS FOR:**

Consider Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines.

**FINDINGS**

**Required Findings for CEQA:**

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

**Required Findings for General Plan:**

- The proposed modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines are consistent with the General Plan.

EXHIBIT 1

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**DRAFT  
Minutes of the Town Council Policy Committee Regular Meeting  
July 28, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, July 28, 2020, at 5:00 p.m. via teleconference.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Jennifer Armer, Senior Planner; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

**1. Approve the Draft Minutes of January 28, 2020.**

Approved.

**VERBAL COMMUNICATIONS**

David Weissman

- Commented that Item #2 was placed on the Policy Committee agenda as a result of comments he had made at a prior Town Council meeting. He requested that when items are placed on an agenda that have been prompted by a comment from a speaker at a public meeting that the speaker be given advance notice of the item's placement on the agenda.

**OTHER BUSINESS**

**2. Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.**

In light of Mr. Weissman's comment, the Committee requested that this item be continued to the August Policy Committee meeting to allow sufficient time for review. The Committee also requested that Mr. Weissman be notified of the date and time of the August meeting once determined.

EXHIBIT 2

PAGE 2 OF 2

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of July 28,  
2020

DATE: August 11, 2020

**3. Discuss and Provide Direction to Staff on Potential Outdoor Lighting Regulation Modifications.**

Jennifer Armer, Senior Planner, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Planning Commission to approve the proposed modifications.

**ADJOURNMENT**

The meeting adjourned at 5:18 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the July 28, 2020 meeting as approved by the Town Council Policy Committee.

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Holly Zappala, Management Analyst



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 7/28/2020

ITEM NO:

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DATE: July 24, 2020  
TO: Council Policy Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.

**RECOMMENDATION:**

Discuss and provide direction on potential modifications to the Hillside Development Standards and Guidelines (HDS&G) regarding visibility.

**BACKGROUND:**

On February 2, 2016, the Town Council adopted modifications to Chapter V. of the HDS&G regarding light reflectivity value (LRV) and returned modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis to staff with direction.

In response to the Council's direction from February 2, 2016, the Policy Committee held five meetings on April 20, 2017, May 18, 2017, June 26, 2017, July 20, 2017, and December 14, 2017 to discuss modifications to the visibility analysis.

On December 19, 2017, the Town Council unanimously approved the modifications to Section B. of Chapter II. of the HDS&G regarding the visibility analysis.

**DISCUSSION:**

On March 3, 2020, the Town Council considered an appeal of an Architecture and Site application for the construction of a hillside home that was 24 percent visible. The appeal was based in part on the appellant's concern about the inclusion of retaining walls in the elevation drawing for the purposes of the visibility analysis. At this meeting, the Town Council unanimously voted to refer an evaluation of Section B. of Chapter II. of the HDS&G, regarding the visibility

**PREPARED BY:** Joel Paulson  
Community Development Director

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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DISCUSSION (continued):

analysis to the Policy Committee. Based on the discussion of the Town Council at the meeting, staff has presented the following topics for the Committee's discussion.

A. Chapter II. (Constraints Analysis) of the HDS&G

The HDS&G define a visible home as a single-family residence where 24.5 percent or more of an elevation can be seen from any of the Town's established viewing areas (Attachment 1). The HDS&G do not include written guidelines regarding what can be included in an elevation.

An architectural elevation is an orthographic drawing of the exterior of a residence from a horizontal point of view, wherein an exterior side is projected perpendicularly onto a drawing plane. Vertical planar surfaces of the exterior that are parallel to the drawing plane retain their true scale. Vertical planar surfaces of the exterior that are not parallel to the drawing surface are foreshortened. Depending on the dimensions of the drawing plane, vertical planar surfaces below the finished floor of the residence but above the grade as it steps down a slope, such as retaining walls, may be included in the drawing.

Staff is requesting input from the Committee on the following topic related to the visibility analysis:

1. Should an elevation be defined in the HDS&G, providing written guidelines as to what elements of an exterior can be included in an elevation for the purposes of the visibility analysis?

**Chapter 9 (Fire Prevention and Protection) of the Town Code**

On January 21, 2020, the Town Council adopted amendments to Chapter 9 (Fire Prevention and Protection) of the Town Code. The amendments require that a defensible space of 100 feet be maintained from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law (Attachment 2). In conformance with Santa Clara County Fire Department Guidelines, the 100 feet of defensible space is segregated into the following zones (Attachment 3):

- Zone 1: New construction must create a noncombustible area a minimum of five feet from structures.
- Zone 2: Maintain an effective defensible space by removing and clearing away flammable vegetation and combustible growth from areas within 30 feet of such buildings or structures. This includes removing all dead vegetation and dead or dry leaves, trimming trees regularly to keep branches a minimum of six feet from the grade, tree branches a minimum of ten feet from other trees, and ten feet away from a chimney.

DISCUSSION (continued):

- Zone 3: Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. A distance beyond 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, a distance of 70 feet is insufficient. This includes creating horizontal and vertical spacing between shrubs and trees, removing dead plants, tree material, and vegetation adjacent to accessory structures within the area, and maintaining distances between canopy tops.

Staff is requesting input from the Committee on the following topics related to the visibility analysis:

1. Should existing trees or branches subject to clearing located within 30 feet (Zone 2) of a single-family residence not be included in a visibility analysis?
2. Should existing trees or branches subject to clearing located within an additional reduced fuel zone of 70 feet (Zone 3) of a single-family residence not be included in a visibility analysis?

**Chapter 29 (Tree Protection) of the Town Code**

On January 21, 2020, the Town Council adopted amendments to Chapter 29 (Tree Protection) of the Town Code, which added that the removal or maintenance of an existing tree as required by Chapter 9 of the Town Code, is exempt and may be removed or severely pruned without Town approval or issuance of a tree removal permit (Attachment 4):

29.10.0970. Exceptions.

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*) - Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)



DISCUSSION (continued):

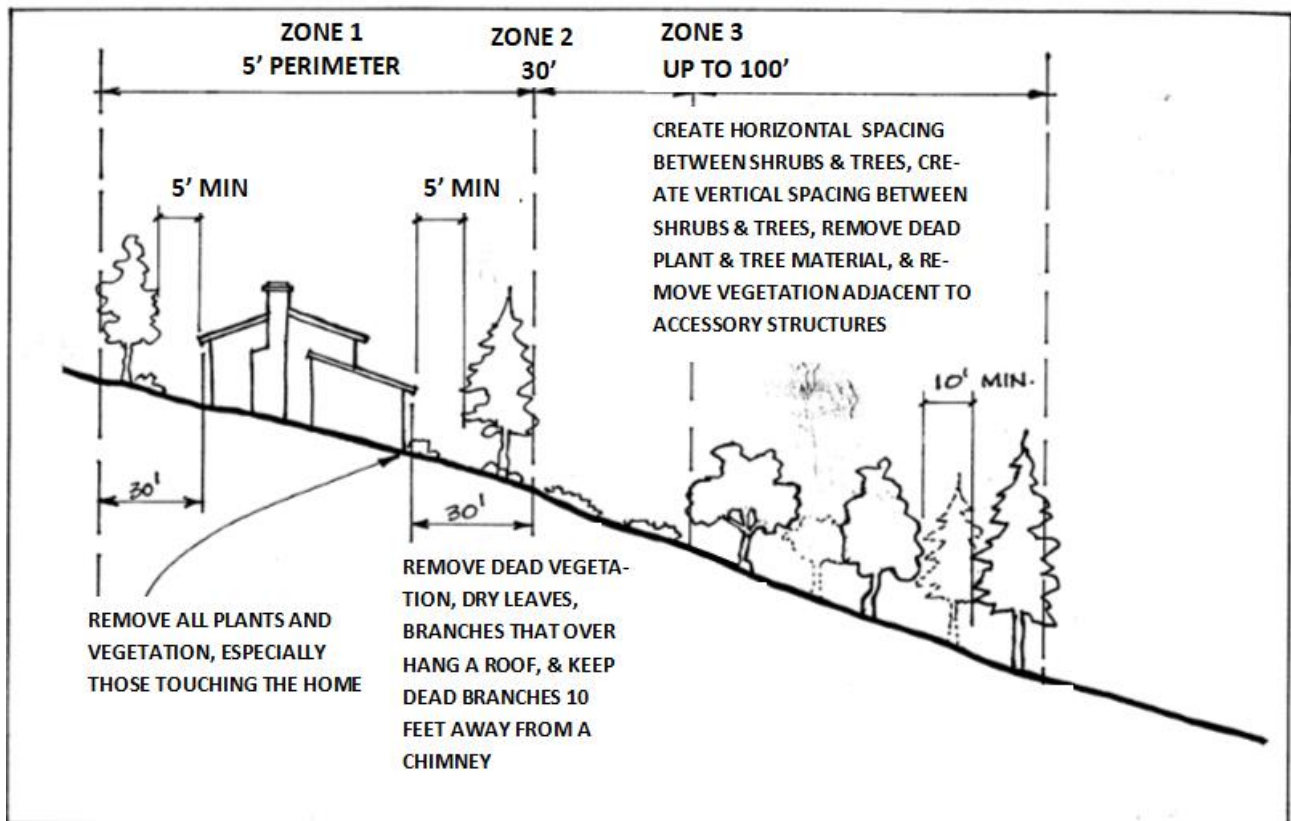
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

Staff is requesting input from the Committee on the following topic related to the visibility analysis:

1. Should all existing trees listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application not be included in a visibility analysis?

B. Chapter III. (Site Planning) of the HDS&G

Based on the amendments made to Chapter 9 (Fire Prevention and Protection) and Chapter 29 (Tree Protection) of the Town Code, the following image on page 29, Section D. (Safety) of the HDS&G has been modified to be in compliance with the required defensible space zones and would replace the existing image (Attachment 5).



DISCUSSION (continued):

C. Chapter IX. (Project Review and Approval Process) of the HDS&G

A single-family home that meets the allowable floor area ratio and is not visible from any established viewing area may be approved by the Development Review Committee (DRC). Through completion of a visibility analysis, if a home is determined to be visible, the maximum allowable height is 18 feet. Currently, review by the Planning Commission is required for a visible single-family home (Attachment 6).

Staff is requesting input from the Committee on the following topic:

1. Should a visible home that meets the allowable floor area ratio with a maximum height of 18 feet be allowed to be approved by the DRC?

Staff will be available at the meeting to answer questions and looks forward to receiving direction on potential modifications to the HDS&G.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office.

Attachments:

1. Chapter II. (Constraints Analysis) of the HDS&G (eight pages)
2. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code (five pages)
3. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>> (eight pages)
4. Ordinance 2303, Chapter 29 (Tree Protection) of the Town Code (five pages)
5. Chapter III. (Site Planning) of the HDS&G (ten pages)
6. Chapter IX. (Project Review and Approval Process) of the HDS&G (five pages)

PAGE 6 OF 6

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: July 24, 2020



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**DRAFT  
Minutes of the Town Council Policy Committee Special Meeting  
August 11, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Tuesday, August 11, 2020, at 5:00 p.m. via teleconference.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

**1. Approve the Draft Minutes of July 28, 2020.**

Approved.

**VERBAL COMMUNICATIONS**

Lee Fagot

- Commented that the Town should review its Police services and that it would be beneficial for the Police Department to contract with professional social service workers and mental health specialists to work with law enforcement officers in responding to calls regarding mental health crises. He also supported additional Police training regarding racial and social issues.

**OTHER BUSINESS**

**2. Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.**

Jocelyn Shoopman, Associate Planner, was available to respond to questions.

EXHIBIT 4

David Weissman

-Commented that when calculating the visibility of a proposed hillside home, exterior structures such as decks and stairs, should not be included because they would not be visible from valley floor viewing areas. He said that exterior features should only be included if they are necessary for the visibility analysis under discussion. Additionally, he added that trees that can be removed should also not be included in the visibility analysis.

Lee Quintana

-Agreed with David Weissman's comments and added that the definition of elevation should use simple language and be easy to understand.

After discussion, the Committee agreed to forward the following items to the Planning Commission for further discussion and recommendation to Town Council:

1. **Elevation.** The Committee approved a motion to forward a recommendation for elevation to be defined as only pertaining to the visible building elevations of the house, not including any exterior walls or decks and other ancillary structures, for the purposes of visibility analysis.
2. **Trees.** The Committee was split and approved a motion to forward the item without a recommendation, noting the positions of each of the Committee members.
  - Vice Mayor Spector recommended that existing trees and branches, subject to clearing in Zones 2 and 3 and all trees listed in Section 29.10.0970 of the Town Code that are proposed to remain as part of an application but that can be removed without a permit and not require a replacement, not be included in visibility analysis, noting she did not want to expand the opportunity for visibility with discretionary homeowner actions.
  - Mayor Jensen recommended that existing trees and branches that must be removed due to new mandatory fire prevention standards should not be included for the purpose of visibility analysis. Any trees that are subject to removal, but not required for removal, should not fall into that same category, noting that almost any trees could be removed, in which case no trees would count as a screen.
3. **Deciding Body: Development Review Committee versus Planning Commission.** The Committee was split and approved a motion to forward the item without a recommendation, noting the positions of each of the Committee members.
  - Vice Mayor Spector recommended that visible homes that meet the allowable floor area ratio with a maximum height of 18 feet go before the Planning Commission as the deciding body, noting that there may be other issues that may need consideration by the Planning Commission in addition to those referenced in the staff report.
  - Mayor Jensen recommended that visible homes that meet the allowable floor area ratio with a maximum height of 18 feet go before the Design

PAGE 3 OF 4

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of August 11, 2020

DATE: September 22, 2020

Review Committee as the deciding body, noting that it is a public hearing and subject to appeal to the Planning Commission, and would reduce the cost to the applicant.

**ADJOURNMENT**

The meeting adjourned at 5:28 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 11, 2020 meeting as approved by the Town Council Policy Committee.

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Holly Zappala, Management Analyst

PAGE 4 OF 4

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of August  
11, 2020

DATE: September 22, 2020



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 8/11/2020

ITEM NO: 2

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DATE: August 6, 2020  
TO: Council Policy Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Discuss and Provide Direction on Potential Modifications to the Hillside Development Standards and Guidelines Regarding Visibility.

**REMARKS:**

On July 28, 2020, the Council Policy Committee continued this item to allow for public comments to be provided. Attachment 7 contains public comments received by 11:00 a.m., Friday, August 7, 2020.

**Attachments:**

**Previously received with July 28, 2020 Staff Report:**

1. Chapter II. (Constraints Analysis) of the HDS&G (eight pages)
2. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code (five pages)
3. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>> (eight pages)
4. Ordinance 2303, Chapter 29 (Tree Protection) of the Town Code (five pages)
5. Chapter III. (Site Planning) of the HDS&G (ten pages)
6. Chapter IX. (Project Review and Approval Process) of the HDS&G (five pages)

**Received with this Staff Report:**

7. Public comments received by 11:00 a.m., Friday, August 7, 2020

**PREPARED BY:** Joel Paulson  
Community Development Director

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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PAGE 2 OF 2

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: July 24, 2020



## II. CONSTRAINTS ANALYSIS AND SITE SELECTION

### A. Prior to Selecting a Building Site.

#### 1. Constraints analysis.

Each development application subject to the Hillside Development Standards and Guidelines shall be accompanied by a constraints analysis when it is deemed necessary by the Town to identify the most appropriate area or areas on the lot for locating buildings given the existing constraints of the lot. This is a critical step in the overall planning and design of projects in the hillsides. When all constrained areas have been identified and mapped, the remaining area(s) will be designated as the "LEAST RESTRICTIVE DEVELOPMENT AREA" (LRDA). These are the areas most appropriate for development.

To ensure that new development is sensitive to the goal and objectives of the Hillside Development Standards and Guidelines and respects the existing site constraints, the following elements shall be mapped by appropriate professionals and taken into consideration when determining a site's LRDA:

- Topography, with emphasis on slopes over 30%
- Vegetation such as individual trees, groupings of trees and shrubs, habitat types
- Drainage courses and riparian corridors
- Septic systems
- Geologic constraints including landslides and active fault traces
- Wildlife habitats and movement corridors
- Visibility from off site
- Areas of severe fire danger
- Solar orientation and prevailing wind patterns
- Significant Ridgelines



Many of the above topics are covered in more detail in Chapter II.B. and Chapter III. The accurate determination of the LRDA early in the planning process could avoid delays once an application has been submitted. Site specific studies such as geotechnical or other environmental evaluations, tree survey and/or topographic survey may be necessary to accurately determine the LRDA.



## **2. Consultation with Neighbors.**

Before siting and designing the house and landscaping, the property owner, architect or builder should meet with neighbors to discuss any special concerns they might have. Resolution of issues early in the design process can save time and cost as well as reducing the processing time for applications. If a conflict occurs between a property owner's desire to develop their property and legitimate issues raised by a neighbor, a design solution will be sought that attempts to balance all issues or concerns that are raised by both parties.

## **3. Pre-application meeting/staff consultation/site visit.**

Before designing a project, the property owner/architect/builder is strongly encouraged to meet with Town staff to consider a building location that best preserves the natural terrain and landscape of the lot and positively addresses the objectives of the Hillside Development Standards and Guidelines. On heavily wooded lots, or on lots where trees may be impacted by proposed development, an arborist's report shall be prepared which evaluates potential tree impacts. The report shall be prepared at the applicant's expense.

### **B. Visibility Analysis.**

#### **1. Viewing areas.**

Each development project with the potential for being visible (see glossary for definition) from any established viewing area shall be subject to a visibility analysis. ("Potential" is defined as capable of being seen from a viewing area if trees or large shrubs are removed, significantly pruned, or impacted by construction.) The visibility analysis shall be conducted in compliance with established Town procedures using story poles that identify the building envelope. After installing the story poles, the applicant shall take photographs of the project from appropriate established viewing areas that clearly show the story poles and/or house and subject property. Visual aids such as photo simulations or three dimensional illustrations and/or a scale model may be required when it is deemed necessary to fully understand the impacts of a proposed project.

The following steps shall be taken in completing a visibility analysis:

- a. Install story poles per adopted policy.
- b. After the installation of story poles, photographs of the project shall be taken from the applicable viewing areas using 50 MM and 300 MM lenses. Other location(s) as deemed appropriate by the Community Development Director may be chosen in addition to the existing viewing areas.



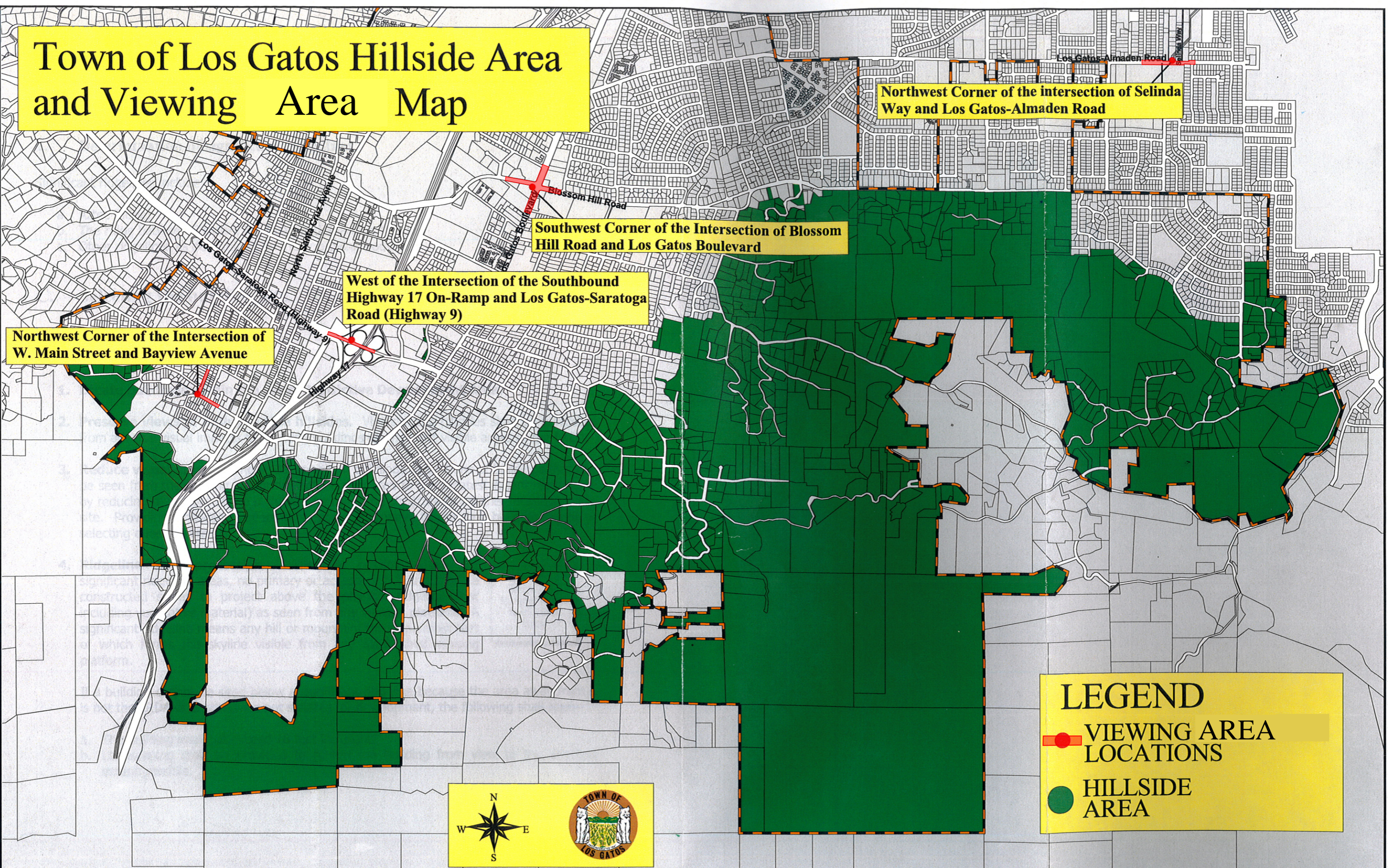
- c. A photograph with a 50 MM lens will represent the visibility of the proposed residence from the naked eye.
- d. A photograph with a 300 MM lens will represent an up-close perspective and help identify any visible story poles, netting, trees, and/or shrubbery.
- e. Existing vegetation and/or landscaping proposed to be removed entirely or partially shall not be included in the visibility analysis.
- f. If determined necessary by the Community Development Director, three dimensional illustrations or photo simulations of the structure may be required.
- g. A visible home is defined as a single-family residence where 24.5% or more of an elevation can be seen from any of the Town's established viewing areas, and/or determined by the Community Development Director. Percentages shall be rounded to the nearest whole number.
- h. An elevation is defined as the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures.
- i. A Deed Restriction shall be required that identifies the on-site trees that were used to provide screening in the visibility analysis and requires replacement screening pursuant to the Hillside Development Standards and Guidelines and/or the Tree Protection Ordinance, if these trees die or are removed.
- j. Trees with a poor health rating (less than 50 percent overall condition rating) shall not be included in the visibility analysis.
- k. The Community Development Director shall determine if the use of a third party consultant is required to peer review an applicant's visibility analysis.
- l. A five-year Maintenance Agreement shall be required for on-site trees that were used to provide screening in the visibility analysis and requires their preservation.

The locations of the viewing areas are shown on the map on the next page, and are as follows:

1. Blossom Hill Road/Los Gatos Boulevard
2. Los Gatos - Almaden Road/Selinda Way (across from Leigh High School)
3. Hwy 17 overcrossing/Los Gatos - Saratoga Road (Highway 9)
4. Main Street/Bayview Avenue
5. Other location(s) as deemed appropriate by the Community Development Director

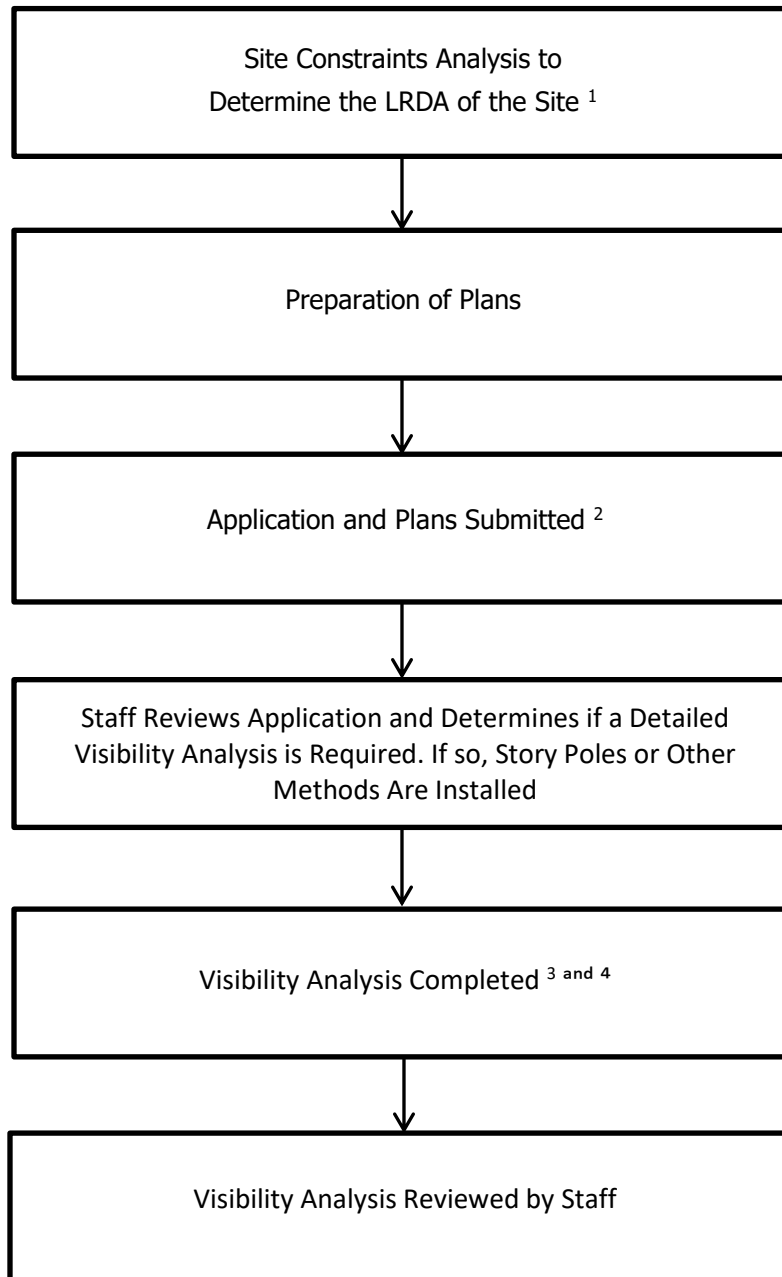
Viewing area locations are intended to provide a general vicinity for the visibility analysis and photo locations. Where there are obstructions (buildings, signs, or foreground vegetation) that block a clear and unobstructed view of the site, the origination point shall be adjusted in consultation with staff to the nearest point that provides a clear and unobstructed view by moving away from the viewing area location along a public road up to 500 feet in any direction.

# Town of Los Gatos Hillside Area and Viewing Area Map





## 2. Visibility Analysis Processing Flow Chart



<sup>1</sup> Page 12 and page 56 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168> and <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>2</sup> Page 63 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>3</sup> Page 13 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168>

<sup>4</sup> Division 2 – Tree Protection Ordinance [https://library.municode.com/ca/los\\_gatos/codes/code\\_of\\_ordinances?nodeId=CO\\_CH29ZORE\\_ARTIINGE\\_DIV2TRPR](https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodeId=CO_CH29ZORE_ARTIINGE_DIV2TRPR)



## 2. Determination of significant ridgelines.

Significant ridgelines include:

- a. Aztec Ridge;
- b. The ridge between Blossom Hill Road and Shannon Road;
- c. Other ridgelines as determined by the approving body

## C. Selecting the building site.

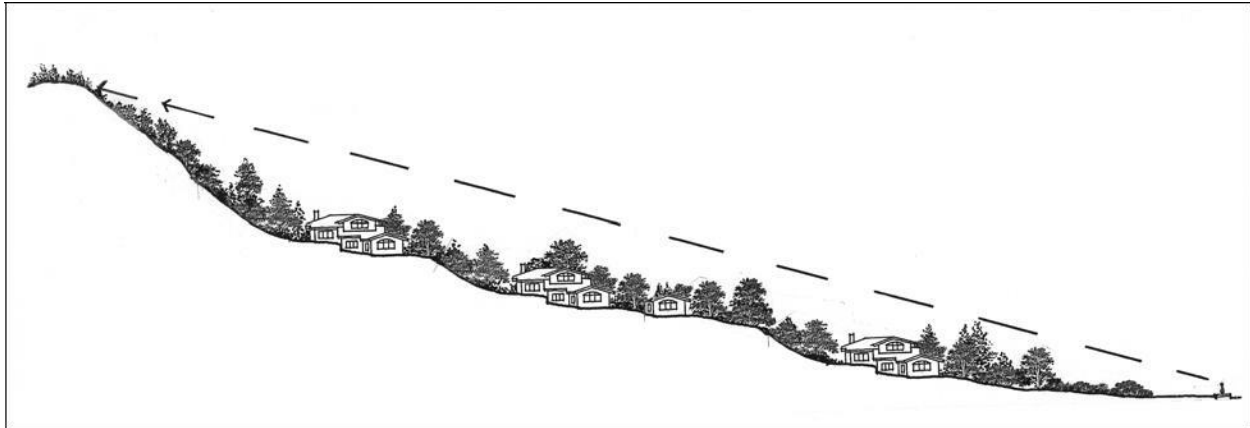
### Standards:

1. **Locate buildings within the Least Restrictive Development Area.**
2. **Preserve views of highly visible hillsides.** Views of the hillsides shall be protected from adverse visual impacts by locating buildings on the least visible areas of the LRDA.
3. **Reduce visual impact.** The visual impact of buildings or portions of buildings that can be seen from the viewing areas shall be mitigated to the greatest extent reasonable by reducing the height of the building or moving the structure to another location on the site. Providing landscape screening is not an alternative to reducing building height or selecting a less visible site.
4. **Ridgeline view protection.** Whenever possible within the significant ridgeline areas, no primary or accessory building shall be constructed so as to project above the physical ridgeline (not including vegetative material) as seen from any viewing areas.

Refer to the  
Blossom Hill  
Comprehensive  
Open Space  
Study

If a building cannot be sited below a significant ridgeline because the area away from it is not the LRDA or is otherwise not suitable for development, the following shall apply:

- a. The building shall not exceed 18 feet in height.
- b. Landscaping shall be provided to screen the building from view to the greatest extent possible.



**Houses do not project above significant ridgeline**

- 5. Preserve natural features.** Existing natural features shall be retained to the greatest extent feasible and integrated into the development project. Site conditions such as existing topography, drainage courses, rock outcroppings, trees, significant vegetation, wildlife corridors, and important views will be considered as part of the site analysis and will be used to evaluate the proposed site design.
- 6. Avoid hazardous building sites.** Building in areas with more than 30 percent slope or areas containing liquefiable soil with poor bearing capacity, slide potential, fault rupture zones and other geotechnical or fire hazards shall be avoided unless no alternative building site is available.
- 7. Protect riparian corridors.** Building sites shall be set back an appropriate distance from riparian corridors to be determined on a site by site basis. Natural drainage courses should be preserved in as close to their natural location and appearance as possible.
- 8. Protect wildlife.** Existing wildlife usage of the site and in particular any existing wildlife corridors shall be identified and avoided to the maximum extent possible.

## Guidelines:

- 1. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.
- 2. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.





- 3. Impact on adjacent properties.** Building sites should be located where they will have the least impact on adjacent properties and respect the privacy, natural ventilation and light, and views of neighboring homes.
- 4. Minimize grading.** The building site should be located to minimize grading.



### III. SITE PLANNING

The intent of this section is to ensure that new development fits into the topography with minimum impacts to the site physically and visually.

Refer to the  
Town's  
Grading  
Ordinance

#### A. Grading.

A grading permit shall be obtained as required by the Town's Grading Ordinance. Vegetation removal may qualify as grading.

#### Standards:

1. The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours.

Cuts and fills in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. Grade to the minimum amount necessary to accommodate buildings and to site structures consistent with slope contours. These are maximum numbers and may be reduced by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the Hillside Development Standards and Guidelines.

**Table 1**  
**Maximum Graded Cuts and Fills**

Site Element	Cut*	Fill*
House and attached garage	8'**	3'
Accessory Building*	4'	3'
Tennis Court*	4'	3'
Pool*	4'***	3'
Driveways*	4'	3'
Other (decks, yards) *	4'	3'

\* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

\*\* Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code.

\*\*\* Excludes excavation for pool.

2. Earthwork quantities (grading) shall be categorized as follows:
  - a. access: driveway, parking and fire turnaround, if applicable
  - b. house footprint
  - c. below grade square footage pursuant to Section 29.40.072 of the Town Code

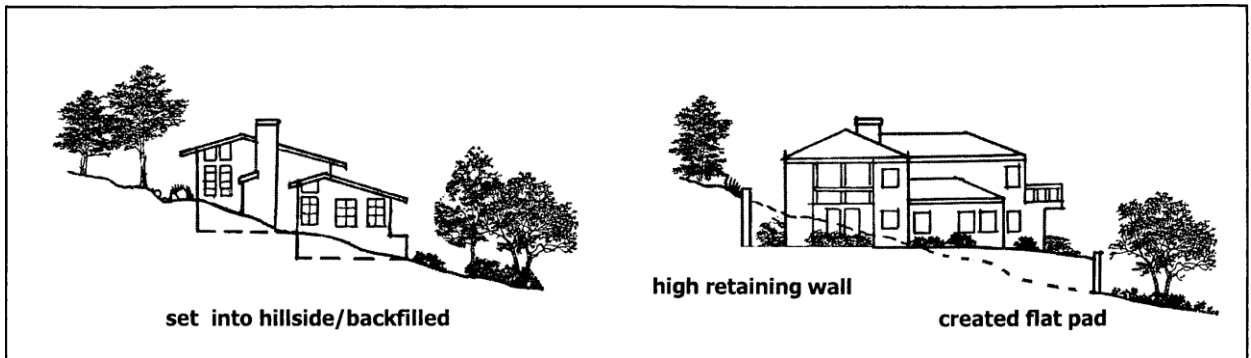
**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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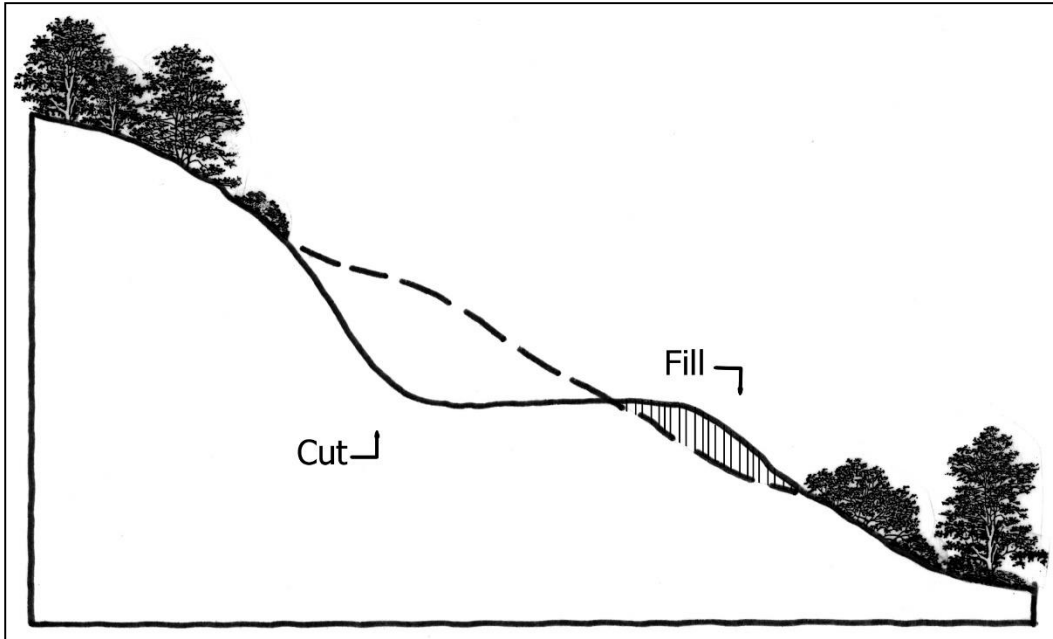
- d. other areas including landscaping, hardscape and outdoor spaces
  - e. total
3. Buildings shall be located in a manner that minimizes the need for grading and preserves natural features such as prominent knolls, ridgelines, ravines, natural drainage courses, vegetation, and wildlife habitats and corridors to the maximum extent possible.
  4. Unless specifically approved by the Town, strip grading for the purpose of clearing land of native vegetation is prohibited except for small areas adjacent to buildings, access drives, and parking areas.
  5. Graded areas shall not be larger than the area of the footprint of the house, plus that area necessary to accommodate access, guest parking, and turnaround areas.
  6. After placing development the site shall be restored as closely as possible to its original topography.



**Do this**

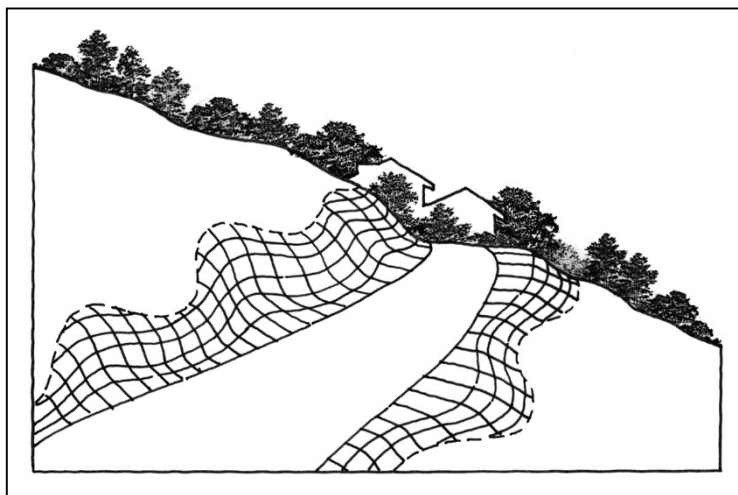
**Don't do this**

7. Contour grading techniques shall be used to provide a variety of both slope percentage and slope direction in a three-dimensional undulating pattern similar to existing, adjacent terrain. The following concepts shall be utilized:
  - a. Hard edges left by cut and fill operations shall be given a rounded appearance that closely resembles the natural contours of the land.



**Rounded edges resemble natural slope**

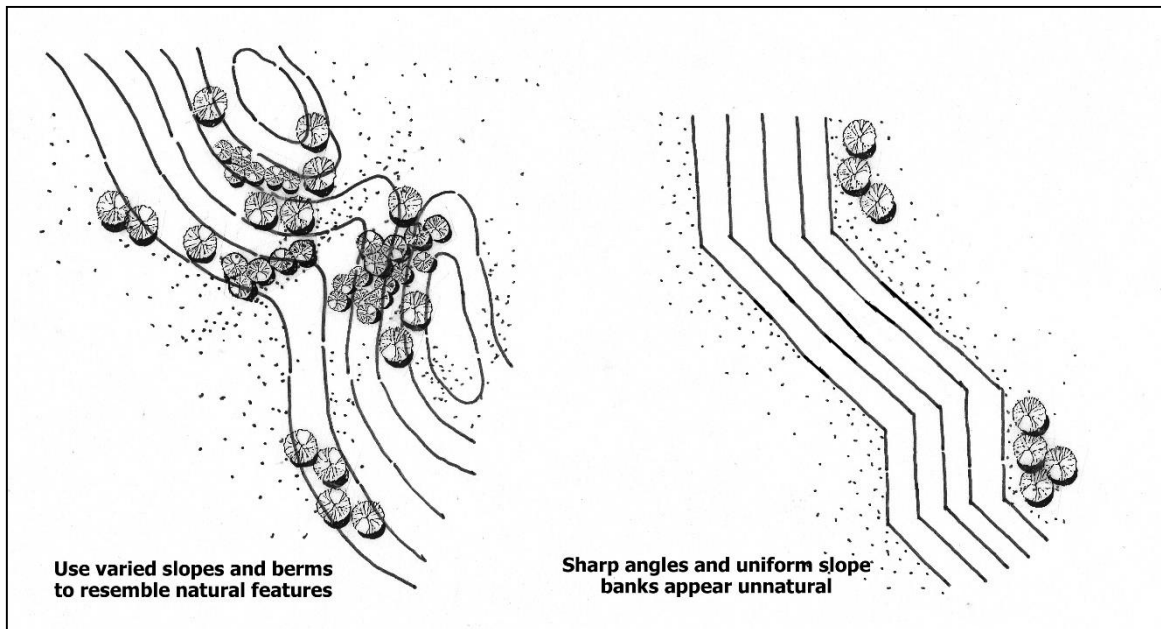
- b. Manufactured slopes adjacent to driveways and roadways shall be modulated by berming, regrading, and landscaping to create visually interesting and natural appearing streetscapes. However, preservation of trees and elimination of retaining walls is a priority.



**Modulate manufactured slopes to appear natural**



- c. Where cut and fill conditions are created, slopes shall be varied rather than left at a constant angle, which creates an unnatural, engineered appearance.



**Do this**

**Don't do this**

- d. The angle of any graded slope shall be gradually transitioned to the angle of the natural terrain. Creation of new grades slopes, significantly steeper than local natural slopes should be minimized.
8. Grading plans shall include provisions for restoration of vegetation on cuts and fills. All manufactured slopes shall be planted with native, fire-resistant, low water using plantings to control erosion.
9. An erosion/sedimentation control plan shall be included with all site plans and/or grading plans. The erosion/sedimentation control plan shall provide interim (during construction) and ultimate plans for control of erosion and sedimentation or describe in detail why this is not necessary.
10. Grading shall not occur during the rainy season (October 1 to April 1) unless approved by the Town Engineer. If grading is planned to occur between October 1 and April 1, interim provisions for erosion and sedimentation control shall be in place before grading begins.



## Guidelines:

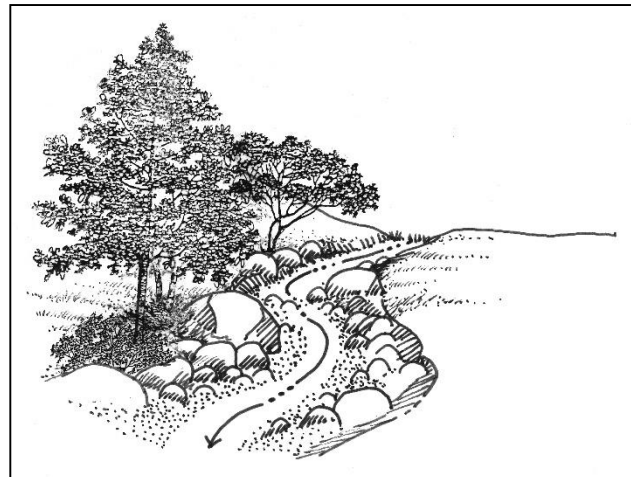
1. The creation of permanent flat pads, except for the house footprint and area needed for access, parking and turnaround, should be avoided

## B. Drainage.

### Standards:

1. Runoff shall be dispersed within the subject property to the greatest extent feasible. Runoff concentration that requires larger drainage facilities shall be avoided.
2. Upslope drainage shall not negatively impact downslope development.
3. Natural drainage courses shall be preserved with any native vegetation intact and shall be enhanced to the extent possible, and shall be incorporated as an integral part of the site design in order to preserve the natural character of the area.
4. Manmade drainage channels shall receive a naturalizing treatment such as rock and landscaping so that the structure appears as a natural part of the environment.

**Manufactured  
drainage courses  
shall simulate  
natural drainage  
courses**



### Guidelines:

1. Manmade drainage channels should be placed in the least visible locations possible.
2. Lining of natural drainage courses is discouraged.



3. Dry Stream effects (manufactured drainage courses designed to simulate natural drainage courses) that move water over the property are preferred over channeling or underground methods.

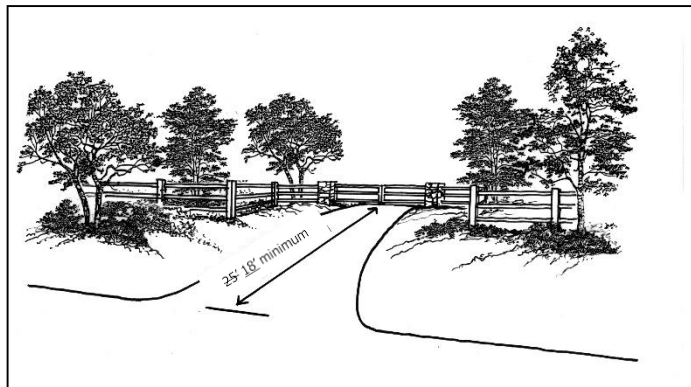
## C. Driveways and parking.

It is recommended that the Fire Department be consulted early in the design process about water supply, accessibility and the need for emergency vehicle turnarounds, turnouts, etc.

### Standards:

See  
Chapter  
VII.B.  
Standard 2

1. Driveways shall be located so as to minimize the need for grading.
2. Driveways shall be paved in compliance with Town standards, and shall be installed prior to occupancy.
3. When a gated entrance is provided, the gates shall be set back a minimum of 18 feet from the right-of-way to allow vehicles to pull completely off the roadway while waiting for the gates to open. Gated entrances serving more than one house may be required to have a greater setback. Gates should open away from or parallel to the street.



**Entrance gates shall  
be set back at least  
18 feet from the  
street**

4. Driveways shall have an all-weather surface in compliance with Fire Department weight loading requirements (40,000 pounds).
5. The maximum slope of a driveway shall not exceed 15 percent unless it can be demonstrated that a flatter driveway cannot be constructed without excessive grading (more than 4 feet of cut or 3 feet of fill). Driveway slopes in excess of 15 percent require approval by the Town Engineer and Santa Clara County Fire Department.





## **Guidelines:**

1. Driveways serving one residence should have a 12-foot minimum width.
2. The maximum length of a driveway should be 300 feet unless the deciding body makes specific findings for deviation and places additional conditions such as turnouts and secondary accesses to reduce hazards. A turnaround area shall not have a grade that exceeds five (5) percent.
3. Driveway approaches should be located a safe distance from intersections. On adjoining properties, driveways should be spaced a minimum of 20 feet apart or located immediately adjacent to each other.
4. Shared driveways serving more than one lot are encouraged as a means of reducing grading and impervious surfaces.
5. Driveways should be located and maintained so as to ensure an adequate line of sight.

## **D. Safety.**

### **Geologic hazards.**

Potential geologic hazards, if not avoided or mitigated, can result in damage to the environment and structures and can place public safety at risk.

## **Standards:**

1. Site specific geologic engineering investigations and reports are required of qualifying projects in State of California Seismic Hazard Zones (Liquifaction and Earthquake Induced Landslide Areas) and in areas believed to be geologically hazardous as determined by the Director of Community Development and /or Town Engineer. Refer to California Geological Survey Seismic Hazard Zones Map, Los Gatos Quadrangle, dated September 23, 2002.
2. Construction shall be avoided in areas with geologic hazards (e.g., slope instability, seismic hazards, etc.) as identified in the site specific geologic investigations and reports, unless adequate mitigation design measures are proposed to achieve a low level of risk.

**Guidelines:** None.



### **Fire hazards.**

The hillsides above Los Gatos are areas of high fire hazard. House fires in the hillsides have the potential to become wildfires if not controlled quickly. A dependable, adequate water supply, automatic fire sprinklers, access for fire fighting equipment and fast response times are critical factors in gaining quick control over a structural fire. Factors that affect the speed at which a wildfire spreads include topography, available fuel, weather (wind, humidity) and availability of fire fighting resources. Lack of adequate circulation or evacuation routes can also impact public safety.

Development in the hillsides presents inherent conflicts between creating and maintaining a fire safe environment, preserving existing vegetation, and minimizing the visual impacts of new development. These conflicts can be minimized by incorporating the concept of fire defensible space into site planning and landscape design. The concept of defensible space involves reducing fuel load, designing structures and landscaping with fire safety in mind, and locating structures to minimize their exposure to wildfires.

### **Standards:**

1. Building locations shall be selected and structures designed to minimize exposure to wildfires (also see Chapter V. Section I.).
2. A landscape plan shall be provided and will be reviewed by the Town's Landscape Consultant with input from the Fire Department. The landscape plan shall create defensible space around the home, and if there is a fire ladder on the property it shall be eliminated in an environmentally sensitive manner.
3. Development shall have adequate fire access (also see Chapter III section C. and Chapter VII section b.2.).
4. A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties. If no public hydrant is available, there shall be an on-site water supply in a storage facility with an appropriate outlet valve in close proximity to an accessible hard road surface.
5. Water for fire suppression shall be available and labeled before any framing may begin.
6. Above ground water tanks shall not be located in required setback areas.



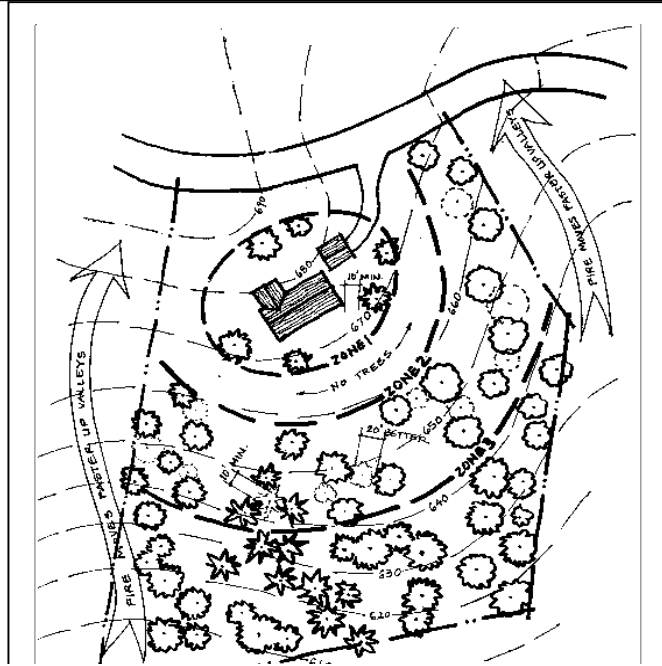
## **Guidelines:**

1. Development should avoid areas subject to severe fire danger. In order to achieve this, development should:
  - a. Be set back from the crest of a hill
  - b. Not be located at the top of a canyon
  - c. Not be located on or adjacent to slopes greater than 30%
  - d. Not be located within densely wooded areas

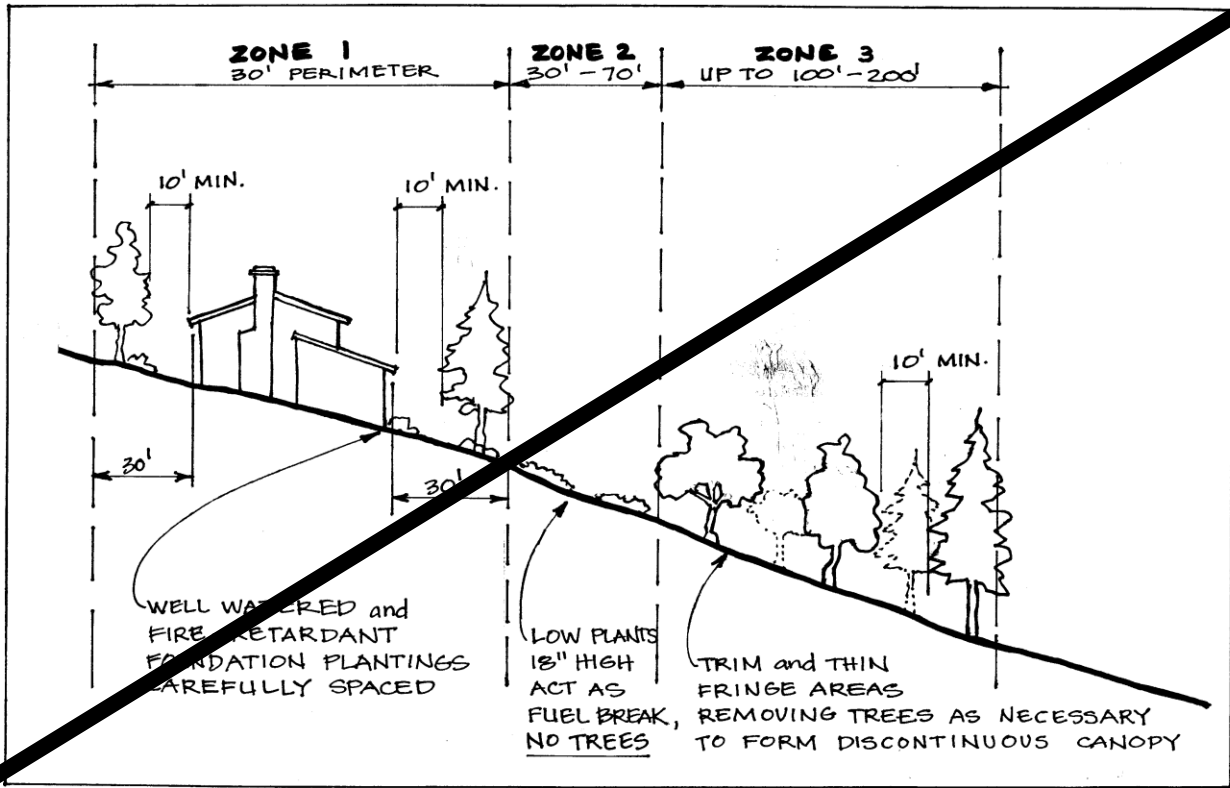
If this is not possible, measures designed to assure the highest degree of fire prevention, and fast effective means of evacuation and fire suppression shall be provided.

2. The fuel load within a defensible space should be minimized by use of selective pruning, thinning and clearing as follows:
  - Removal of flammable species and debris
  - Removal of dead, dying or hazardous trees
  - Mow dead grasses
  - Removal of dead wood from trees and shrubs
  - Thin tree crowns (maximum of 25%)
3. Discontinuous fuel sources should be created and maintained within a defensible space through use of the following techniques (see illustrations on page 27):
  - Thin vegetation to form discontinuous groupings of trees or shrubs
  - Limb trees up from the ground
  - Establish a separation between the lowest branches of a tree and any understory shrubs.
4. Landscaping within a defensible space should be designed with fire safety in mind. Landscaping in defensible space should be:
  - Fire resistant and drought tolerant
  - Predominantly low growing shrubs and groundcovers (limit shrubs to 30% coverage)
  - Limited near foundations (height and density)
5. Above ground tanks should not be located in areas of high visibility unless it can be demonstrated to the satisfaction of the decision making body that no other feasible locations are available.

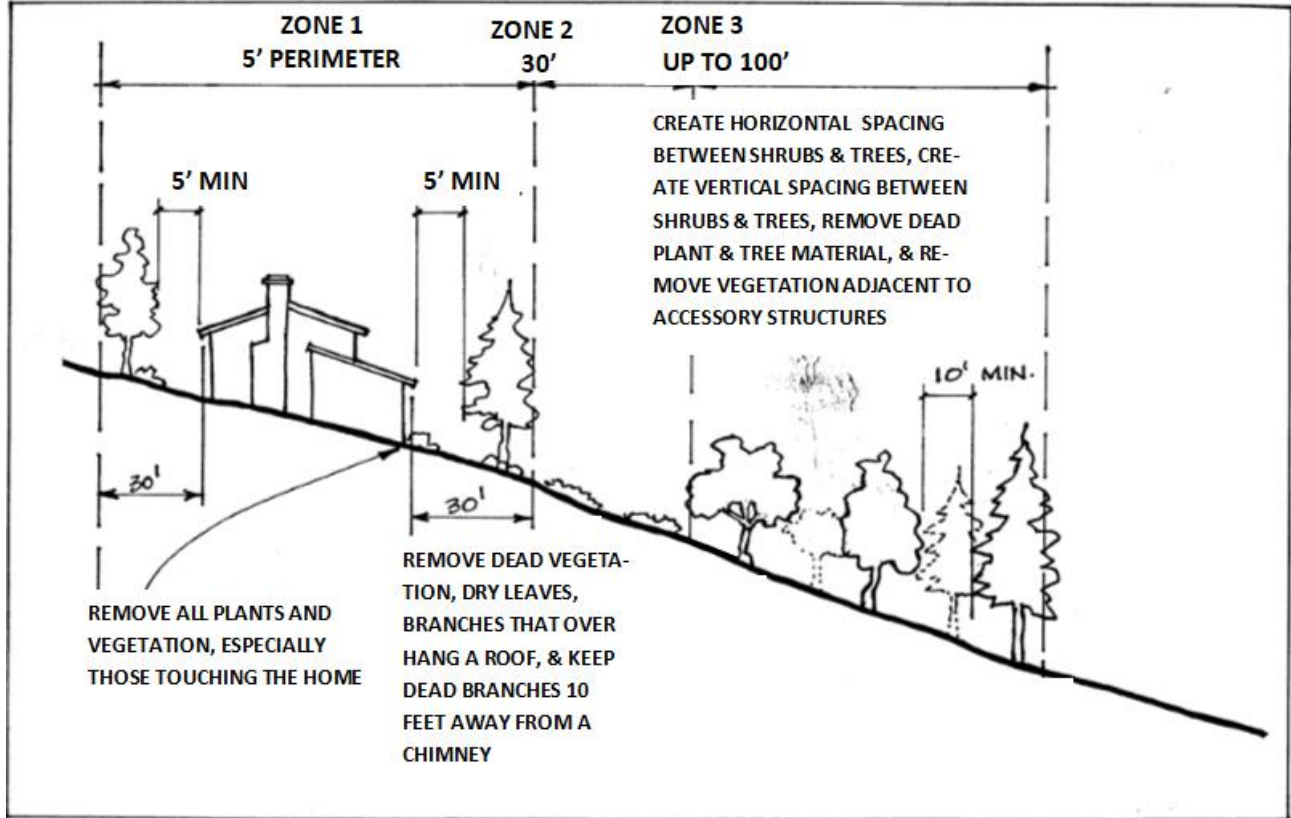
Refer to  
Appendix  
A



**Defensible space  
 should be  
 maintained  
 around the home**



**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**



**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**

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## IX. PROJECT REVIEW AND APPROVAL PROCESS

### A. Architecture and Site Approval

Architecture and site approval is required for all new construction including major additions and remodels in all areas of the Town shown on the Hillside Area Map on page 8. A subdivision or Planned Development application is required for any proposed land division.

The flow chart on page 66 outlines the steps an application for architecture and site approval will go through. The process begins with a meeting with the Community Development Department. It is highly recommended that applicants considering the design of a new home or remodel of an existing home discuss their ideas with Town staff **before** any plans are actually drawn and money and time are expended on a project that may not be entirely feasible.

An application for architecture and site approval or subdivision shall be accompanied by a written letter of justification that describes how the proposed project complies with the General Plan, Hillside Specific Plan and the Hillside Development Standards and Guidelines.

### B. Project Approval Authority

Projects may be approved by the Planning Commission, Development Review Committee (DRC), or Director of Community Development (Director) depending on a project's potential impact on surrounding properties and the overall community.

The Planning Commission is the decision making body for projects that have the greatest potential impact, while the DRC and Director make decisions on projects with less impact, as described in Subsections below.





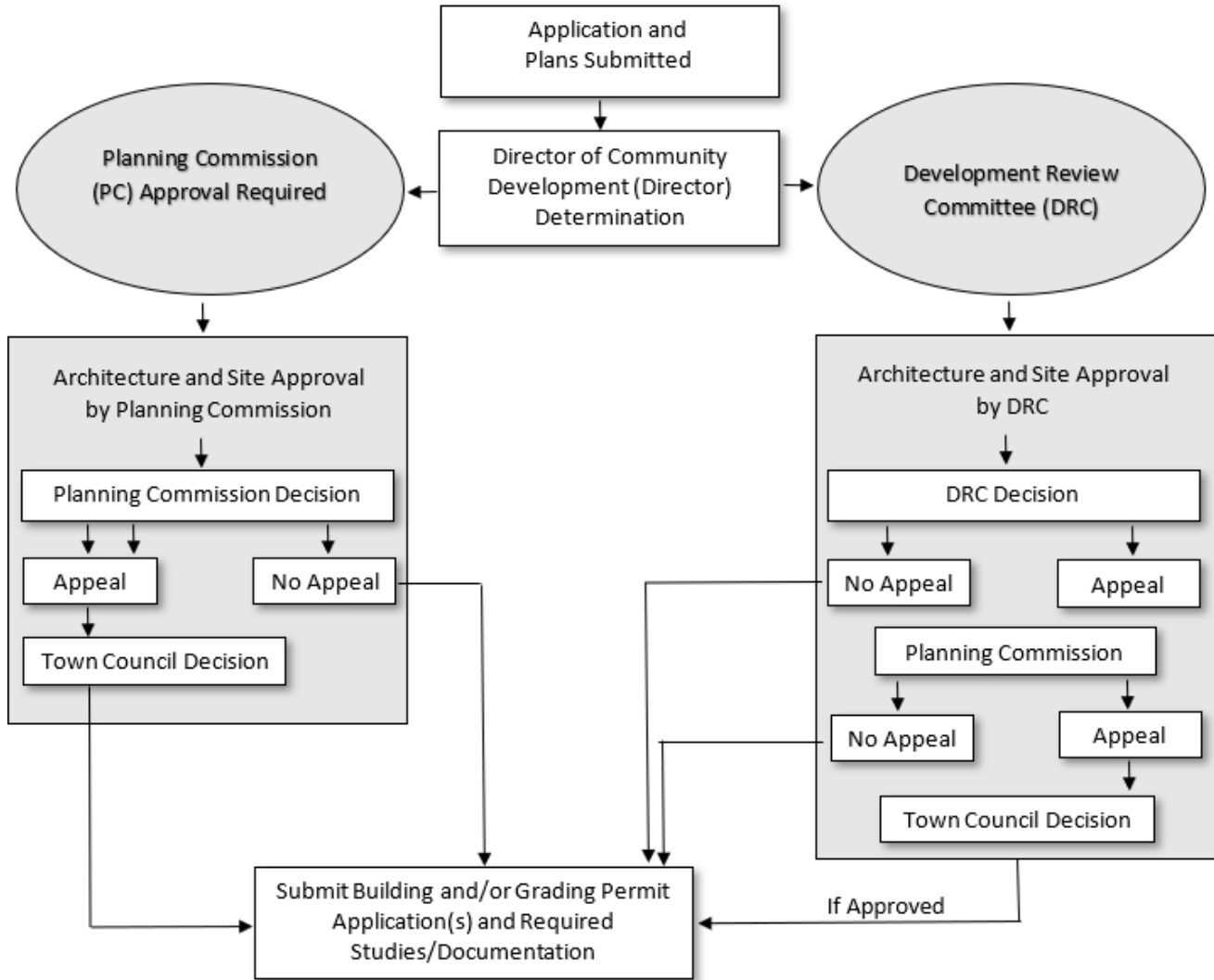
The subdivision and architecture and site approval processes are discretionary actions on the part of all decision making bodies. When reviewing projects, the decision making body may:

- (1) approve a project without imposing extra or special conditions;
- (2) approve a project and add special conditions to reduce the impact(s) of the project to an acceptable level and/or achieve compliance with these standards and guidelines; or
- (3) deny the project by stating specific reasons for its action.

The Director of Community Development may refer an application to the Planning Commission. The decisions of the Planning Commission, DRC, and Director are final unless appealed. Decisions of the Director and DRC may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the Town Council. Appeal procedures are outlined in the Town's Zoning Regulations.



## Architecture and Site Review Process





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## 1. Projects That May be Approved by the Director of Community Development

The Director has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. Accessory dwelling units pursuant to Section 29.10.320 of the Town Code.
- b. Accessory buildings that have a combined gross floor area greater than 450, but less than 600 square feet may be approved with a Minor Residential Application pursuant to Section 29.20.480 of the Town Code.
- c. Swimming pools that do not require a grading permit.

## 2. Projects That May be Approved by the Development Review Committee

The (DRC) has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. New houses that meet the allowable floor area ratio and that are not visible from any established viewing area.
- b. Accessory buildings, that have a combined gross floor area of 600 square feet or more but do not exceed 1,000 square feet in combined gross floor area.
- c. Swimming pools and game courts requiring a grading permit and/or retaining walls.
- d. Grading permits.



### 3. Projects That Require Planning Commission Approval

The Planning Commission has the authority to approve all architecture and site projects that do not fall within the authority of the DRC and any projects referred to it by the Director. The Planning Commission approves standard subdivisions and makes recommendations to the Town Council on Planned Development applications.

#### C. Application Period of Validity

An approved architecture and site application shall be valid for the period of time specified in the Town's Zoning Regulations.

#### D. Required findings

In addition to the considerations for architecture and site approval provided in the Town's Zoning Regulations, the decision making body shall also find that the proposed project meets or exceeds the objectives and requirements of the Hillside Development Standards and Guidelines and shall provide supportive evidence to justify making such findings.

#### E. Exceptions

Exceptions from the standards in this document may only be granted after carefully considering the constraints of the site. Any deviation from the standards contained in this document shall include the rationale and evidence to support the deviation. The burden of proof shall be on the applicant to show that there are compelling reasons for granting the requested deviation.

**Major exceptions** may only be granted by the Town Council or Planning Commission. Major exceptions include the following:

- a. building height
- b. maximum floor area



## ORDINANCE 2301

### ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 9 (FIRE PREVENTION AND PROTECTION) OF THE TOWN CODE REGARDING WEED ABATEMENT REGULATIONS

**WHEREAS**, the Town of Los Gatos; has traditionally adopted Chapter 49 of the California Fire Code (with amendments) which incorporates the legal requirements associated with State mandated defensible space;

**WHEREAS**, the State mandates 100 feet of defensible space around buildings and structures within Very High Fire Hazard Severity Zones;

**WHEREAS**, State law allows for jurisdictions to adopt additional defensible space standards based on severity of wildfire risk;

**WHEREAS**, the Los Gatos Wildland Urban Interface (WUI) planning area includes primarily Very High Fire Hazard Severity Zone (VHFHSZ) areas.

**WHEREAS**, the Town Council recognizes that in addition to the State mandated requirements the development and maintenance of defensible space is essential to reducing wildfire risk within the community;

**WHEREAS**, the proposed amendment changes will reduce the risk of wildfire and effectuate safer passage for first responders and residents in the event of a wildfire;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

#### SECTION II

##### CHAPTER 49 REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS

Section 4902 Definitions of Town Code Chapter 9 are hereby added/amended to read as follows:

**DEFENSIBLE SPACE.** An area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structure(s).

**REDUCED FUEL ZONE.** In this area of the defensible space, efforts are placed on ensuring fuels/vegetation are separated vertically and horizontally depending on the vegetation type.

**Wildland-Urban Interface Fire Area.** A geographical area identified by the state as a " Fire Hazard Severity Zone" in accordance with the Public Resources Code, Sections 4201 through 4204, and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. The Wildland-Urban Interface Fire Area is defined as all areas within the Town of Los Gatos as set forth and delineated on the map entitled "Wildland-Urban Interface Fire Area" which map and all notations, references, data, and other information shown thereon are hereby adopted and made a part of this chapter. The map properly attested, shall be on file in the Office of the Town Clerk of the Town of Los Gatos.

Section 4906.2 Application of Town Code Chapter 9 are hereby amended to read as follows:

2. Land designated as a Very-high Fire Hazard Severity Zone or as a Wildland Urban Interface Fire Area by the Town of Los Gatos.

Section 4907.2 Defensible Space Fuel Modification are hereby added to read as follows:

**4907.2 Defensible Space Fuel Modification.**

Persons owning, leasing, controlling, operating, or maintaining buildings or structures, and/or lands in, upon, or adjoining the locally adopted Wildland-Urban Interface Fire Area, shall at all times comply with the following:

1. Maintain defensible space of 100 feet from each side and from the front and rear of any building or structure, but not beyond the property line except as provided by law. The 100 feet of defensible space should be segregated into the following zones:
  - a. Maintain an effective defensible space by removing and clearing away flammable vegetation and other combustible materials from areas within 30 feet of such buildings or structures.

**Exception:** When approved by the Fire Chief or his/her designee, single specimens of trees, ornamental shrubbery or similar plants used as ground covers, provided that they do not form a means of rapidly transmitting fire from the native growth to any structure.
  - b. Maintain an additional reduced fuel zone of 70 feet from all buildings and structures with an emphasis on vertical and horizontal separation of fuels/vegetation. Distances beyond an additional 70 feet may be required when the Fire Chief or his/her designee, determines that due to steepness of terrain or other conditions, 70 additional feet is insufficient.

**Exception:** When approved by the Fire Chief or his/her designee grass and other vegetation located more than 30 feet from buildings or structures and less than 18 inches in height above the ground need not be removed where necessary to stabilize the soil and prevent erosion.

- c. New construction must create a noncombustible area a minimum of 5 feet from structures.
2. Remove portions of trees, which extend within 10 feet of the outlet of any chimney or stovepipe.
3. Maintain any tree, shrub, or other plant adjacent to or overhanging any building or structure free of dead limbs, branches or other combustible material.
4. Maintain the roof of any structure and roof gutters free of leaves, needles, or other combustible materials.
5. Maintain defensible space as determined by the Fire Chief or his/her designee around water tank structures, water supply pumps, and pump houses.
6. Remove flammable vegetation a minimum of 10 feet around liquefied petroleum gas tanks/containers.
7. Firewood and combustible materials shall not be stored in unenclosed spaces beneath buildings or structures, or on decks or under eaves, canopies or other projections or overhangs. The storage of firewood and combustible material within the defensible space shall be located a minimum of 30 feet from structures and separated from the crown of trees by a minimum horizontal distance of 15 feet.

**Exception:** Firewood and combustible materials not for consumption on the premises shall be stored as approved by the Fire Chief or his/her designee.

8. Clear areas within 10 feet of fire apparatus access roads and driveways of non-fire-resistant vegetation growth.

**Exception:** Single specimens of trees, ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents, or similar plants used as ground cover, provided they do not form a means of readily transmitting fire.

Section 4907.3 Defensible Space Along Property Lines are hereby added to read as follows:

**4907.3 Defensible space along property lines.** Pursuant to Government Code Section 51182 and Public Resources Code Section 4291(a)(2):

1. When an occupied building is less than 100 feet from a property line and combustible vegetation on an adjacent parcel presents a fire hazard for the occupied building as determined by the Fire Chief or his/her designee then the owner of the adjacent parcel where the hazard exists shall be responsible for fuel management, including removal to the satisfaction of the Fire Chief or his/her designee.

Section 4907.4 Corrective Actions are hereby added to read as follows:



**4907.4 Corrective actions.** When the Fire Chief or his/her designee determines defensible space to be inadequate the Town Council is authorized to instruct the Fire Chief or his/her designee to give notice to the owner of the property upon which conditions regulated by Sections 4907.2 and 4907.3 exist to correct such conditions. If the owner fails to correct such conditions, the Town Council is authorized to cause the same to be done and make the expense of such correction a lien upon the property where such conditions exist.

### **SECTION III**

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

### **SECTION IV**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### **SECTION V**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION VI**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 21<sup>st</sup> day of January 2020 and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on 4<sup>th</sup> day of February 2020 and becomes effective 30 days after it is adopted.

In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

**COUNCIL MEMBERS:**

AYES: Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen  
NAYS: None  
ABSENT: None  
ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/20

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/2020

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**ORDINANCE 2303**

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (TREE PROTECTION) OF THE TOWN CODE  
REGARDING WEED ABATEMENT REGULATIONS**

**WHEREAS**, the Town of Los Gatos; recognizes that the community benefits from preserving the scenic beauty of the Town;

**WHEREAS**, the Town Council acknowledges that trees provide multiple benefits it also recognizes that a significant portion of the Town is located in a Very High Fire Hazard Severity Zone;

**WHEREAS**, the State mandates 100 feet of defensible space around buildings and structures within Very High Fire Hazard Severity Zones;

**WHEREAS**, the Town Council recognizes that the development and maintenance of defensible space is essential to reducing wildfire risk within the community;

**WHEREAS**, the proposed amendment changes will reduce the risk of wildfire and effectuate safer passage for first responders and residents in the event of a wildfire;

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

**SECTION II**

**DIVISION 2 – TREE PROTECTION**

Section 29.10.0950. Intent of Town Code Chapter 29 are hereby amended to read as follows:

**Sec. 29.10.0950. - Intent.**

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees and contains individual trees of great beauty. The community of the Town benefit from preserving the scenic beauty of the Town, preventing erosion of topsoil, providing protection against flood hazards and risk of landslides, counteracting pollutants in the air, maintaining climatic balance, and decreasing wind velocities. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. While trees provide multiple benefits, it is also the intent of this division to acknowledge that a

portion of the Town is located in a Very High Fire Hazard Severity Zone as defined by the California Department of Forestry and Fire Protection (CAL FIRE) and the associated wildfire threat that exists for the community. It is the intent of this division to preserve as many protected trees as possible throughout the Town through staff review and the development review process. Special provisions regarding hillsides are included in section 29.10.0987 of this division in recognition of the unique biological and environmental differences between the hillside and non-hillside areas of the Town. This section does not supersede the provisions of Chapter 26 of this Code.

Section 29.10.0955 Definitions of Town Code Chapter 29 are hereby added to read as follows:

*Defensible Space* means an area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Section 29.10.0970 Exceptions are hereby amended to read as follows:

The following trees are excepted from the provisions of this division and may be removed or severely pruned without Town approval or issuance of a tree removal permit:

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
  - (1) Black Acacia (*Acacia melanoxylon*)
  - (2) Tulip Tree (*Liriodendron tulipifera*)
  - (3) Tree of Heaven (*Ailanthus altissima*)
  - (4) Blue Gum Eucalyptus (*E. globulus*)
  - (5) Red Gum Eucalyptus (*E. camaldulensis*)
  - (6) Other Eucalyptus (*E. spp.*)-Hillsides only
  - (7) Palm (except *Phoenix canariensis*)
  - (8) Privet (*Ligustrum lucidum*)
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Sec.29.10.0960 – Scope of Protected Trees.

Section 29.10.0992 Required Findings are hereby added to read as follows:

The Director, Director's designee, or deciding body shall approve a protected tree removal permit, severe pruning permit, or pruning permit for Heritage trees or large protected trees only after making at least one (1) of the following findings:

- (1) The tree is dead, severely diseased, decayed or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.
- (2) The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.
- (3) The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.
- (4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.
- (5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.
- (6) The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.
- (7) Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
- (8) The removal of the tree is unavoidable due to restricted access to the property.
- (9) The removal of the tree is necessary to repair a geologic hazard.
- (10) The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.
- (11) The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 – Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

### **SECTION III**

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

### **SECTION IV**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidly shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### **SECTION V**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION VI**


This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 21<sup>st</sup> day of January 2020 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 4<sup>th</sup> day of February 2020 and becomes effective 30 days after it is adopted.

In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

**COUNCIL MEMBERS:**

AYES: Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen  
NAYS: None  
ABSENT: None  
ABSTAIN: None

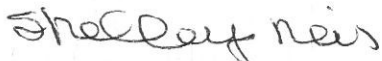
SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/20

ATTEST:



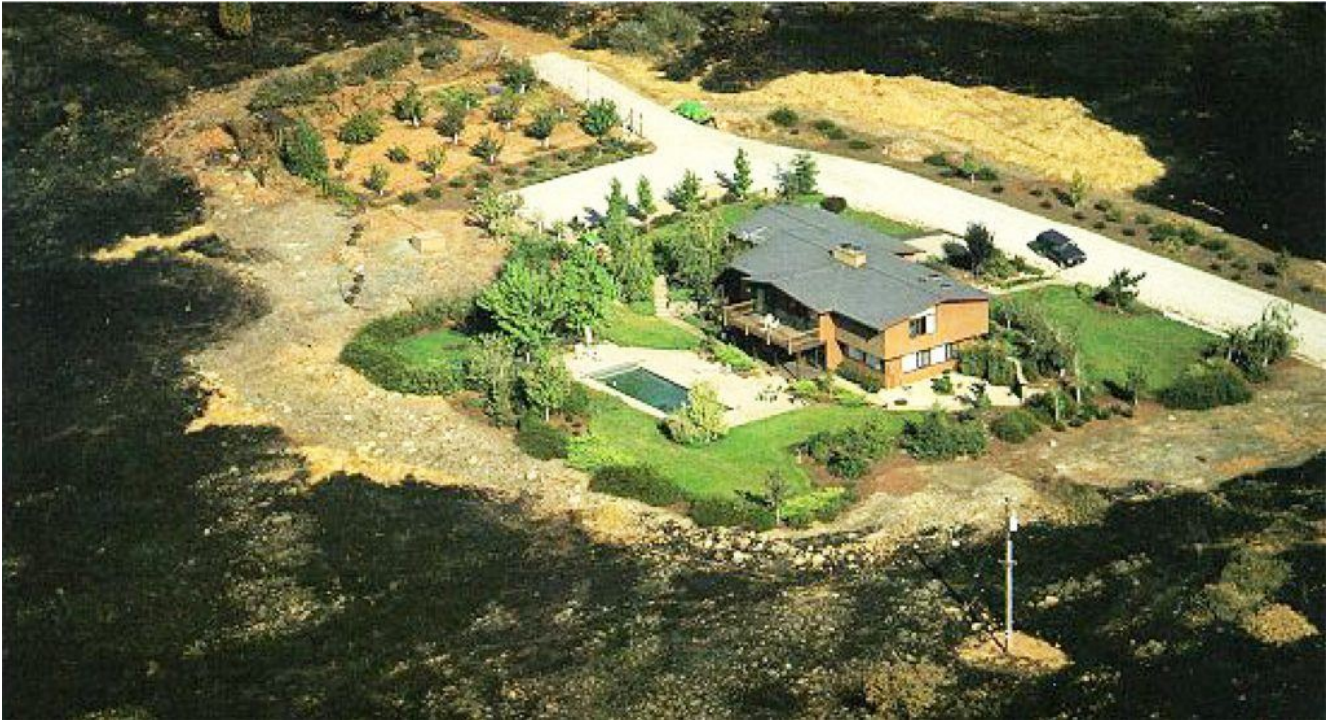
TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 2/5/2020



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## Defensible Space Saves Lives



Did you know that actively maintaining defensible space around your home will dramatically increase your home's chance of surviving a wildfire? Defensible space is the buffer you create between a building on your property and the grass, trees, shrubs, or any wildland area that surround it. This space is needed to slow or stop the spread of wildfire and protect your home from catching fire. Defensible space is also an important protection for our firefighters and other emergency responders entrusted with defending our homes and neighborhoods.

### Protecting Your Home

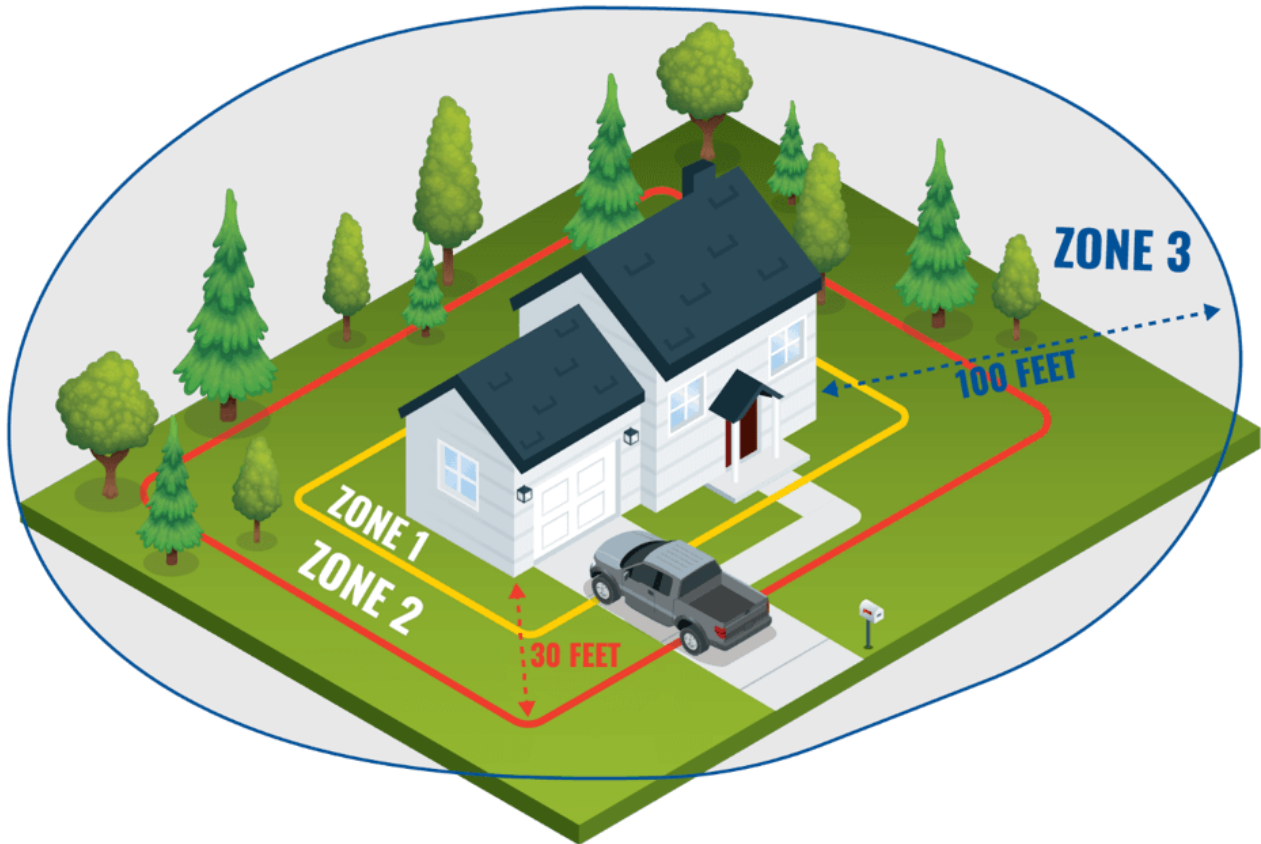
It's State law, that if you have property in a Very-high Fire Hazard Severity Zone or Wildland Urban Interface (WUI) Fire Area, you must have 100-feet of defensible space around any building or structure. If you are unsure whether or not you live in a mandatory defensible space zone, [click this link](#) to view a map of State and Town designated areas in Los Gatos.

In addition to State law, the Town of Los Gatos recently enacted several Municipal Codes amendments which enhance the safety of WUI residents. Specifically for new construction, there is a mandated 5-foot nonflammable zone and the Town enacted provisions that align with State law to recognize the importance of neighbors maintaining defensible space across property lines in certain instances. The new ordinances can be viewed through the links below:

[Ordinance 2301 - Amend Chapter 9 \(Fire Prevention & Protection\)](#)

## Defensible Space Zones

Following are guidelines from Santa Clara County Fire Department on how to create and maintain effective defensible space zones:



### **Zone 1, extends 0 to 5 feet out: The Noncombustible Zone**

- Remove all plants and vegetation, especially those touching your home.
- Clean roofs and gutters of dead leaves, debris and pine needles that could catch embers.
- Replace or repair any loose or missing shingles or roof tiles to prevent ember penetration.
- Reduce embers that could pass through vents in the eaves by installing 1/8 inch metal mesh screening.
- Clean debris from exterior attic vents and install 1/8 inch metal mesh screening to block embers.
- Repair or replace damaged or loose window screens and any broken windows.
- Screen or box-in areas below patios and decks with wire mesh to prevent debris and combustible materials from accumulating.
- Move any flammable material away from wall exteriors – mulch, flammable plants, leaves and needles, firewood piles – anything that can burn. Remove anything stored underneath decks or porches.
- Mandated for new construction

### **Zone 2, extends 30 feet out: The Clean and Green Zone**

- Remove all dead plants, grass and weeds (vegetation).
- Remove dead or dry leaves and pine needles from your yard, roof and rain gutters.
- Trim trees regularly to keep branches a minimum of 10 feet from other trees.

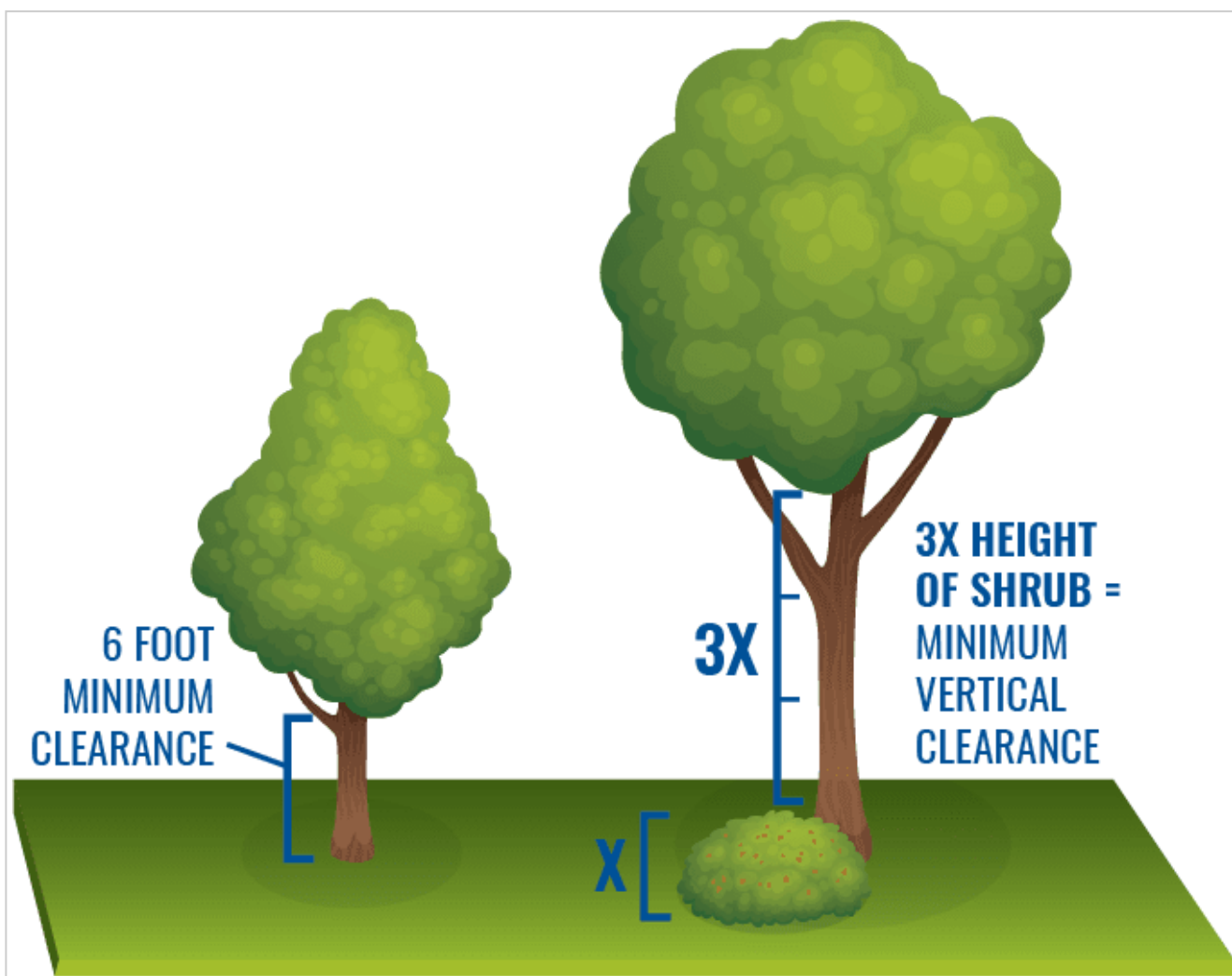
- Create a separation between trees, shrubs and items that could catch fire, such as patio furniture, wood piles, swing sets, etc.

### Zone 3, extends 100 feet out: The Reduced Fuel Zone

- Create horizontal spacing between shrubs and trees. (See diagram below)
- Create vertical spacing between grass, shrubs and trees. (See diagram below)
- Dispose of heavy accumulations of ground litter/debris.
- Remove dead plant and tree material.
- Remove small conifers growing between mature trees.
- Remove vegetation adjacent to storage sheds or other outbuildings within this area.
- Trees 30 to 60 feet from the home should have at least 12 feet between canopy tops.
- Trees 60 to 100 feet from the home should have at least 6 feet between the canopy tops.

### Plant and Tree Spacing

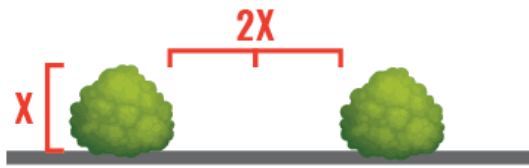
For vertical spacing remove all tree branches at least 6 feet from the ground. If there is a shrub near the tree, the branch clearance needs to be 3 times the height of the shrub. *Example: A 5-foot shrub is growing near a tree.  $3 \times 5 = 15$  feet of clearance needed between the top of the shrub and the lowest tree branch.*



spacing between shrubs and trees depends on the slope of the land and the height of the shrubs or trees. Check the chart below to determine spacing distance.

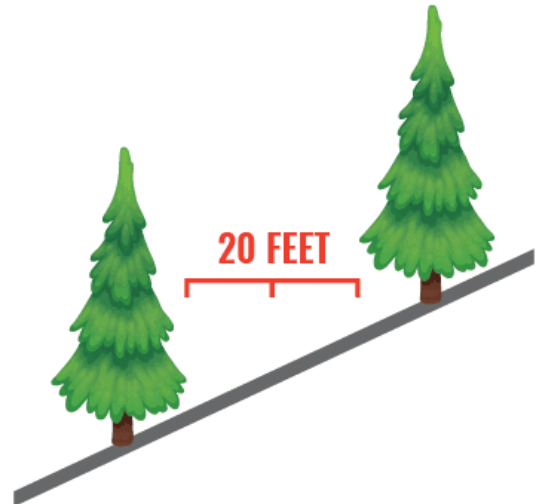
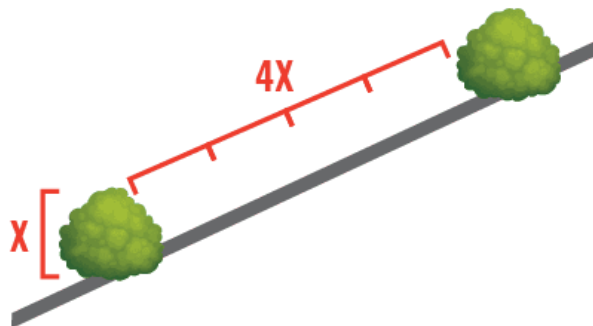
*Need your property inspected?*

## SHRUBS

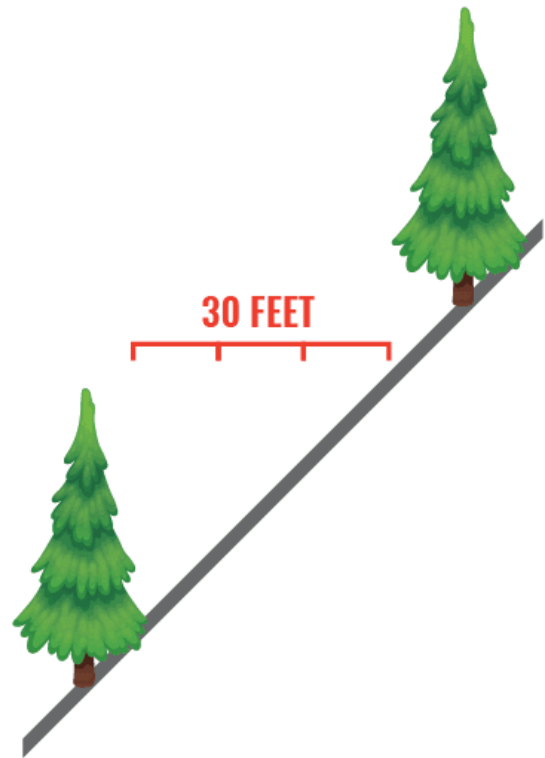
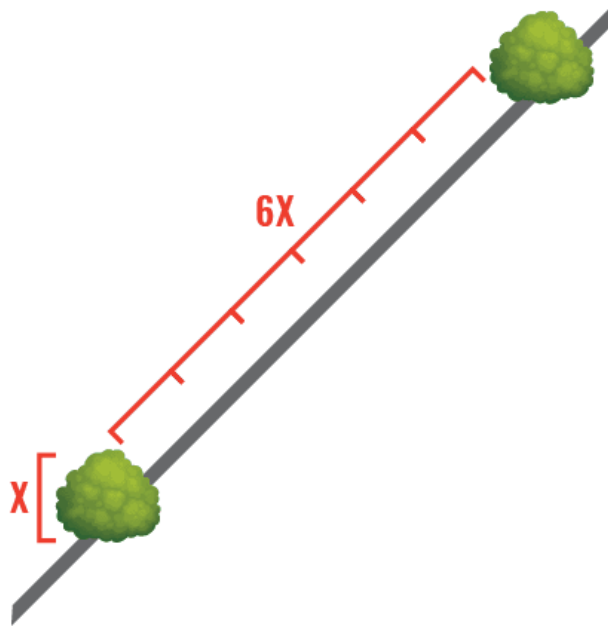


FLAT TO MILD SLOPE (LESS THAN 20%)

## TREES



MILD TO MODERATE SLOPE (20%-40%)



MODERATE TO STEEP SLOPE (MORE THAN 40%)

like a free inspection review of your property, contact the Fire Prevention Division at (408) 378-4010.

## Defensible Space Along Property Lines

Neighbors, neighborhoods, and communities are working together to help create unified defensible space.

Wildfire safety is a shared responsibility since fire doesn't respect property or political boundaries. Adequate defensible space is essential to ensuring that individual homes and neighborhoods are safeguarded from the devastation of wildfires. This includes working with your neighbors to protect both, your structures and the neighbor's building that may be close to parcel lines. Neighbors are encouraged to work together to help provide defensible space for their respective properties. The most effective solution is a cooperative approach.

In limited circumstances, neighbors are unable to reach a mutual agreement. The Fire Chief, or his/her designee, can assist in determining the risk one property's vegetation poses to another property's structure. If the risk exists, the property owner of the vegetation shall be responsible for fuel management. The Town adopted provisions in its Municipal Code consistent with California Government Code Section 51182(a)(2) which allows jurisdictions to require defensible space beyond property lines in certain circumstances. For an assessment of vegetation around your structures, call the Fire Prevention Division at (408) 378-4010.

*Example: A structure is within 70-feet of its property line. The adjacent property poses a significant vegetation threat negating the ability to achieve 100-feet of defensible space around the structure. In the event the neighbors couldn't reach a mutual understanding, the Fire Department would assess if the adjacent property owner would need to assist its neighbor by completing fuel management on another 30 feet on their property.*

## Nonflammable Vegetation



Not all plants combust equally. There are many beautiful trees and plants to grow in your garden that will reduce your property's risk of being affected by a wildfire. Check out the list below, compiled by [University of California Master Gardeners Santa Clara County](#):

**Trees:** California live oaks, native redwoods, California bay laurel, maples, citrus, cherry, apple, strawberry tree, dogwood, ash, loquat, 'Little Gem' magnolia, toyon, white alder, weeping bottlebrush, redbud.

**Large shrubs:** Aloe, ceanothus, cotoneaster, escallonia, currant, pineapple guava, flowering quince, Island bush poppy, Pacific wax myrtle, photinia, pittosporum, mock orange, plumbago, podocarpus, laurel, viburnum.

**Flowering plants:** Azalea, camellia, hibiscus, lavender, monkey flower, California fuchsia, coral bells, society garlic, salvia, rhododendron.

**Ground covers:** Woolley yarrow, Ajuga reptans, purple rockrose, creeping coprosma, creeping thyme, ice plant, mock strawberry, wild strawberry, evergreen candytuft, lantana, Lamium, African daisy, wooly thyme, star jasmine, sedum.

**Vines:** Trumpet vine, potato vine, Cape honeysuckle.

## Understanding Fire Weather

Red Flag Warnings are often preceded by a Fire Weather Watch, which is a National Weather Service (NWS) notice indicating that weather conditions in the next 12-72 hours may result in extreme fire behavior and trigger a Red Flag Warning. As of 2019, a Red Flag Warning may be accompanied by a Public Safety Power Outage, where PG&E shuts off power to power lines in areas at high risk of wildfire. NWS issues a Red Flag Warning when weather conditions in the next 24 hours may result in extreme fire behavior. These conditions may include: Low relative humidity, strong winds, dry fuels, and the possibility of dry lightning strikes.



**LOW RELATIVE HUMIDITY**



**STRONG WINDS**



**DRY FUELS**



**POSSIBILITY OF DRY LIGHTNING STRIKES**

### Tips for Red Flag Warnings

1. Do not use lawnmowers or spark-producing equipment in or near dry vegetation. Follow local fire restrictions on powered equipment use.
2. Report unattended outdoor fires immediately to 911.
3. Avoid all outdoor burning.
4. Extinguish outdoor fires properly, never leave barbecues or cooking fires unattended. Always drown them with plenty of water.
5. Soak ashes and charcoal in water and dispose of them in a metal can. These materials can ignite days after a fire or BBQ is extinguished.
6. Be READY for wildfire by maintaining at least 100 feet of defensible space around your home.
7. Ensure access roads to your home are cleared and properly labeled.
8. Do not throw cigarettes or matches out of a vehicle. They can ignite dry vegetation on the side of the road and start a wildfire.
9. Do not pull your vehicle over in dry grass.
10. Ensure trailer chains do not drag on the ground.
11. Report any sign of smoke or fire immediately by dialing 9-1-1.



## Stay Informed

Be aware of when a Red Flag Warning is issued by [registering for AlertSCC](#). AlertSCC is a free and easy way to get emergency alerts sent directly to your cell phone or mobile device, landline, or email. Alerts can include:

- Red Flag Warning
- Fire
- Earthquake
- Severe weather
- Crime incident that affects your neighborhood
- Instructions during a disaster
- Post-disaster information about shelters, transportation, or supplies

To: Planning Commission, meeting of September 23, 2020  
Re: HDS&G Modifications  
From: Dave Weissman, September 18, 2020

There are 2 loosely connected issues, that relate to visibility, in this agenda item. The **first item** relates to defining “elevation” for purposes of calculating visibility of an A&S application. I ask that the Commissioners read my letter in your packet, sent to the Policy Committee, and dated 8/6/2020. The Policy Committee voted 2-0 in favor of both defining elevation in Town codes and limiting elevation to include only the proposed home, not any accessory elements distinct from the home. I took this same position in my letter.

The **second item** concerns Fire Prevention and Protection. Now this Town has demonstrated a unique and consistent interest for the ecological health of our hillsides. For instance:

The 2004 Hillside Guidelines, page 51, require that all landscaping located “further than 30 feet from the primary residence, shall be indigenous and appropriate for the immediate natural habitat.”

The 2015 Tree Protection Ordinance revision was amended (Sec. 29.10.0970) to encourage the removal of non-native hillside trees. Specifically, no permit was needed and no replacement trees were required. Additionally, for protected trees removed during construction, Sec. 29.10.0987 requires all trees farther than 30’ from the house be replaced with native trees. Those trees within 30’ of the house, if native, must also be replaced with native trees.

Then, in 2019, the Town revised how the Visibility Analysis for proposed hillside homes was to be done. Relevant to our discussion are 2 adopted provisions:

1. Existing vegetation proposed to be removed shall not count as screening.
2. Trees counted as screening shall have a Deed Restriction prohibiting their removal. If that trees dies, it must be replaced.

Then the Paradise Firestorm arrived and prompted a necessary reevaluation of the Town’s good intentioned actions of the previous 15 years. We all agree that fire safety must take precedence.

So, folks can have different opinions as to what constitutes defensible space, but what our Town Council passed in January, 2020, is very clear: Section 4907.2 says that homeowners “shall at all times comply with the following” defensible space fuel modifications, and an extensive list is presented.

But these new defensible space policies created conflicts with previous Town efforts aimed at decreasing visibility of hillside homes and protecting the ecological health of the hillsides. And such conflicts were addressed at the Policy Committee meeting of 8/11/2020. At that meeting, Mayor Jensen took issue with the word “subject” that staff used in their report, saying that “subject” means the homeowner has the option of removing or not removing vegetation. I disagree with Ms. Jensen: the homeowner doesn’t have an option but is required to comply with specific conditions set forth in Sec. 4907.2. Simply put – a better term than “subject” to have been used in the staff report, would have been “required.” Homeowners don’t have a choice here, according to Sec. 4907.2, nor do I believe that they should. Hillside fire protection is everyone’s business – we must all work together.

So, I recommend the following actions (based on the numbering used in the staff report to the Policy Committee):

- A. **Yes** on item 1 – elevation should be defined and should only include the actual home, as was passed 2-0 by the Policy Committee.
- B. **Yes** on items 2 & 3 – existing trees and branches required to be removed for defensible space by Sec. 4907.2, should not be counted in the visibility analysis.
- C. **Yes** on item 4 – These non-native, and in some cases extremely flammable trees (think Eucalyptus) should be removed in the interest of defensible space. They should not be counted as providing screening, even if the builder says that they will be retained, because when the house is sold, whether it be in 1 week or 10 years, the new owner can then remove the entire tree without permits or replacement. In contrast, native trees, which are fire resistant, are still protected under Sec 29.10.0970 (3) and should be counted as providing screening.
- D. The Deed Restriction clause on page 14, h, of the Hillside Standards, should be amended to only apply to **native trees** protected under Sec. 29.10.0970 (3).



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 3

ADDENDUM

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DATE: September 22, 2020

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council for Approval of Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines Regarding the Visibility Analysis, Town Wide. Applicant: Town of Los Gatos.

REMARKS:

Exhibit 13 includes additional public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

EXHIBITS:

Previously received with September 23, 2020 Staff Report:

1. Required Findings
2. Town Council Policy Committee July 28, 2020 Minutes
3. Town Council Policy Committee July 28, 2020 Planning Staff Report (with Attachments 1 through 6)
4. Town Council Policy Committee August 11, 2020 Minutes
5. Town Council Policy Committee August 11, 2020 Planning Staff Report (with Attachment 7)
6. Draft Modifications to Chapter II (Constraints Analysis) of the HDS&G
7. Draft Modifications to Chapter III (Site Planning) of the HDS&G
8. Chapter IX (Project Review and Approval Process) of the HDS&G
9. Ordinance 2301 Chapter 9 (Fire Prevention and Protection) of the Town Code
10. Ordinance 2303 Chapter 29, Division 2 (Tree Protection) of the Town Code
11. Town of Los Gatos, 2020, *Be Wildfire Ready*, <<https://www.losgatosca.gov/2581/Be-Wildfire-Ready>>
12. Public comments received by 11:00 a.m., Friday, September 18, 2020

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: Hillside Development Standards and Guidelines Modifications

DATE: September 22, 2020

Received with this Addendum Report:

13. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

**From:** Kathy Hemingway  
**Sent:** Monday, September 21, 2020 5:25 PM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** Comments in Regards to the Fire Prevention Section of the Hillside Development Standards and Guidelines

Dear Ms. Shoopman,

Hillside Development Standards and Guidelines comments for inclusion in the Planning Commission Staff Report/Addendum/Desk Item for the meeting on September 23 regarding the fire prevention standards for the Town of Los Gatos:

My comment is in regards to the Fire Prevention section of the Hillside Development Standards and Guidelines. In light of the recent and ongoing fires, I believe that fire is one of the biggest concerns in the rural, hillside areas. Just recently, the Planning Commission approved the installation of 4 fire pits on a property in our vicinity. Two were located in the backyard of the home but the other two were spaced in two separate areas along the hillside. At least the two in the backyard are visible by someone who might be in the home but the other two cannot be seen from the home. The flames are around 2 feet high and can be heard from a distance. Several times the fire pits have been left burning with no one around. I would like to propose that fire pits not be allowed in the rural areas or at least they must be installed within direct view and access from the home. And perhaps, for those homes with the fire pits already installed, the ordinance should disallow use of the fire pits during the annual fire season. There is nothing safe about fire where a combustible could find its way into the flames, catch fire, and then be blown to catch other combustibles. And if they are out of sight, out of mind, they are even more dangerous. I understand the appeal of sitting by the fire pit at night but unfortunately, the latest events have shown how truly vulnerable our rural areas are to any form of fire.

Thank you for the opportunity to express my concerns,

Kathy Hemingway

14680 Shannon Road

Los Gatos, CA

EXHIBIT 13

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Kendra Burch  
Matthew Hudes  
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P R O C E E D I N G S :

CHAIR HANSSEN: Having finished Item 2 we are now ready to move on to Item 3, which is discuss and provide direction on potential modifications to the Hillside Design Standards and Guidelines regarding visibility. In this case the Town is the Applicant, so the Staff Report will be the Applicant's statement as well.

It is my understanding that we are to make a recommendation on the proposed language for elevation and then provide direction on trees to be included as well as the deciding body as both of these items had a split vote by the Policy Committee, and I'm hoping staff will explain in a little bit more detail. It was in our Staff Report as well.

So, Ms. Shoopman, I understand you are also giving the report for this item?

JOCELYN SHOOPMAN: Good evening, I am. In front of you is a consideration of modification to Chapters 2, 3, and 9 of the Hillside Design Standards and Guidelines regarding the visibility analysis as recommended by the Council Policy Committee and forwarded to you for your recommendation to the Council.

1 Recommendation from the Committee proposes to  
2 make the two following changes: 1) define an "elevation"  
3 for the purposes of a visibility analysis in Chapter 2; and  
4 2) update an image in Chapter 3 to comply with the amended  
5 defensible space zones.

6 The Committee had a split vote regarding the  
7 following three potential modifications: 1) Whether  
8 existing trees or branches subject to clearing in what's  
9 known as zones 2 and 3 should be included in a visibility  
10 analysis; 2) whether existing trees that meet the exception  
11 as part of Chapter 29 of the Town Code for removal without  
12 a permit but are proposed to remain as part of an  
13 application should be included in the visibility analysis;  
14 and lastly, 3) whether the deciding body for a visible home  
15 that meets the allowable floor area ratio and maximum  
16 allowable height of 18' should be allowed to be approved by  
17 the Development Review Committee as opposed to the current  
18 requirement for Planning Commission approval.

19  
20 This concludes Staff's presentation and we are  
21 available for any questions.

22 CHAIR HANSSEN: Thank you very much, Ms.  
23 Shoopman. Do any Commissioners have questions for Staff?  
24 Commissioner Hudes.  
25

1           COMMISSIONER HUDES: I think I know the answer,  
2 but these for consideration by the Planning Commission, are  
3 these one monolithic unit or is the Planning Commission  
4 able to separate the several changes that are being  
5 requested?

6           CHAIR HANSSEN: Commissioner Hudes, it was my  
7 intent, and I discussed it with the Vice Chair, to consider  
8 these as three separate motions, because it's entirely  
9 possible that people would have differing opinions just  
10 like Council did on any one of them, so it was my intent to  
11 separate it into three different motions.  
12

13           COMMISSIONER HUDES: Okay, thank you.

14           CHAIR HANSSEN: Any other Commissioners have  
15 questions for Staff before we move to public comments? All  
16 right, seeing none, so we will now move to the Public  
17 Comments portion of the hearing. Do we have any members of  
18 the public that would like to speak on this item? For  
19 anyone that does, we ask you to limit your comments to  
20 three minutes and you may choose to state your name and/or  
21 your address, or you can speak anonymously knowing that we  
22 will be recording this meeting for the public record. So,  
23 do we have anyone that wants to speak in Public Comments?  
24

25           JOEL PAULSON: We do. Dr. Weissman has his hand  
up. I'm going to allow him to speak.

1 CHAIR HANSSEN: Okay.

2 DR. DAVID WEISSMAN: Can you hear me now?

3 CHAIR HANSSEN: We can hear you.

4 DR. DAVID WEISSMAN: Thank you. If you find  
5 Agenda Item 3 confusing, I completely understand and hope  
6 my comments will be helpful. Item 1 on elevation is  
7 straightforward and was supported by the Policy Committee.  
8 Items 2 through 4 concern what vegetation can count as  
9 screening in visibility studies.  
10

11 Now, hillside homeowners generally want to see  
12 valley lights. How do I know? Just look at how realtors  
13 advertise hillside homes for sale. In contrast, flatlanders  
14 prefer to look at tree-covered hillsides and not see lots  
15 of nighttime light pollution and daytime reflective window  
16 glare.

17 Our Hillside Guidelines have "taken the side" of  
18 flatlanders. Native hillside trees are protected trees  
19 providing screening and now have deed restrictions against  
20 their removal, and if removed those trees must be replaced.  
21 Yard lights must shine down, window reflectivity is  
22 considered, etc. But in the situation of fire not all trees  
23 are equal, hence the basis for my proposed compromise.

24 Both Councilmembers Spector and Jensen agreed  
25 that all trees and branches required to be removed by our

1 new 2020 Defensive Space Ordinance shall not count in  
2 visibility calculations. Their disagreement related to  
3 those trees removed for defensive space.

4 I believe that non-native hillside trees, which  
5 in many cases are extremely flammable—think eucalyptus—  
6 should be removed in the interest of defensible space and  
7 ecological health. These trees should not be counted as  
8 providing screening even if the developer says that they  
9 will be retained, because when a house is sold, whether it  
10 be in one week or ten years, the new owner can then remove  
11 the entire tree without permits or replacement.

12 In contrast, native trees such as oaks, which are  
13 fire resistant, would be still protected under our Tree  
14 Ordinance and should be counted as providing screening.

15 I believe adoption of this dichotomy would  
16 address the concerns expressed by both Councilmembers  
17 Jensen and Spector, and should you agree to support these  
18 changes related to native versus non-native trees, then for  
19 consistency the deed restriction clause in the Hillside  
20 Standards on page 14, category H, should be amended to only  
21 apply to native trees that are protected under Section 29-  
22 10-0970, subcategory 3 of the Tree Protection Ordinance.  
23 Thank you.  
24  
25

1 CHAIR HANSSEN: Thank you for your comments. Do  
2 any Commissioners have questions for Dr. Weissman?  
3 Commissioner Hudes.

4 COMMISSIONER HUDES: Thank you, Dr. Weissman, for  
5 your comments and also for all the work that you've done on  
6 this.

7 Is there any grey area on the trees? Is it very  
8 clear as to in your proposal what would be permitted and  
9 what wouldn't be permitted to be removed?  
10

11 DR. DAVID WEISSMAN: If one separates native  
12 trees like oaks, which are pretty straightforward, from  
13 non-native trees, which are in that list, or just non-  
14 native trees in general, I think it's pretty clear. I think  
15 getting rid of non-native trees, which we have been  
16 encouraging in the Tree Protection Ordinance for years  
17 because they improve the ecological health, and now in the  
18 context of fire preventions it's just frosting on the cake,  
19 I think there's a very clear dichotomy there.

20 COMMISSIONER HUDES: Thank you.

21 CHAIR HANSSEN: Any other Commissioners have  
22 questions for Dr. Weissman? Okay. Director Paulson, are  
23 there any other members of the public that would like to  
24 speak on this item?  
25

1 JOEL PAULSON: Thank you, Chair. Let me take a  
2 look. Would anyone else in the attendees like to speak on  
3 this item? I don't see anyone else raising their hand,  
4 Chair.

5 CHAIR HANSSEN: Okay. All right, with that in  
6 mind we will... I'm going to ask a question of Staff. I don't  
7 need to ask the Town Staff to come back up and respond,  
8 even though you're the applicant, right?

9 JOEL PAULSON: That's correct. We're just here to  
10 answer questions at this point.

11 CHAIR HANSSEN: Okay, so I will close the public  
12 portion of the hearing and then we will move to our  
13 Commissioner deliberations. This is a time for you to ask  
14 any further questions of Staff or make comments or make a  
15 motion. The way I'd like to do this is to consider each of  
16 the three topics separately, so maybe we could start with  
17 the definition of "elevation."  
18

19 If I am recapping this correctly the Policy  
20 Committee made a proposed definition of elevation. The  
21 proposed language—I had it on page 14 of my packet—is  
22 already defined, they did agree on it, so I want to put  
23 that out to Commissioners and see if there are any comments  
24 or suggestions to modify the language, or if you think that  
25

1 that captures what is important for the definition of  
2 elevation. Any comments? Vice Chair Janoff.

3           VICE CHAIR JANOFF: Thank you. You know, I agree  
4 that what they have needed to be included, but my question  
5 has to do with retaining walls maybe at the front or the  
6 visible elevation. We looked at some applications recently  
7 for hillside development that have pretty massive retaining  
8 walls, and now the Town consulting architect is  
9 recommending plantings that would screen those retaining  
10 walls, but if the applicant doesn't plant anything we still  
11 are looking at something that would read from an observer  
12 as part of the front elevation or part of the visible  
13 elevation. So, my question is whether or not we should  
14 include visible retaining walls as part of the definition  
15 of elevation?  
16

17           CHAIR HANSSEN: Could I ask Staff, since I assume  
18 you were present at the Policy Committee meetings, was this  
19 discussed by the Councilmembers that formulated this  
20 definition and debate aside to not include retaining walls,  
21 or was it not discussed?  
22

23           JOCELYN SHOOPMAN: This was discussed by the  
24 Policy Committee at their multiple meetings and the  
25 ultimate conclusion was not to include them. In one  
specific case they were looking at it might give an



1 advantage to an applicant to include retaining walls as  
2 opposed to just looking at the building elevation itself  
3 and based on that input they chose not to include exterior  
4 features, specifically calling out retaining walls.

5 CHAIR HANSSEN: Interesting. Okay. I would have  
6 thought it would have been in the opposite. Any other  
7 comments on the language by Commissioners? What does the  
8 Commission feel about should retaining walls be considered  
9 as part of the elevation or should we go with the Policy  
10 Committee's direction? Commissioner Burch.

11  
12 COMMISSIONER BURCH: I think we should go with  
13 the Policy Committee's recommendation. Perhaps the only  
14 comment to that would be that obviously it would maybe  
15 matter on what the retaining wall was made of. If it is a  
16 natural stone façade or something that would actually blend  
17 in with the natural landscape, I think it makes clear sense  
18 that it wouldn't be included. If by any chance they were  
19 proposing something that didn't (inaudible) landscape  
20 perhaps we would look at that differently, however I would  
21 assume that Staff would catch that before anything came to  
22 us but I would defer to other Commissioners if they felt  
23 like we should add a language in there around the  
24 materials.  
25

1                   JOEL PAULSON: Through the Chair, I would just  
2 add that as Ms. Shoopman said, they had a lot of  
3 conversations about this. A member of the public brought it  
4 up and said it shouldn't be used over and over and so they  
5 ultimately decided not to include it. Again, as Ms.  
6 Shoopman said, you have some instances where it potentially  
7 helps an applicant from a calculation perspective and then  
8 you could have other items, as you're talking about, that  
9 actually would hurt the applicant, so they chose to only  
10 include the building and so that's what we brought forward  
11 as a recommendation. Through a motion if you want them to  
12 consider that or consider portions of that, I think that  
13 could be added into your motion as direction as this  
14 specific item goes forward.

16                   CHAIR HANSSEN: Thank you, Director Paulson. Do  
17 other Commissioners have comments on the idea about the  
18 retaining walls? Commissioner Barnett.

19                   COMMISSIONER BARNETT: I may be missing something  
20 here, but it seems to me that the definition is intended to  
21 tie into the visibility analysis, and from that perspective  
22 I would think that walls, decks, and exterior detached  
23 structures should all be considered as part of the  
24 elevation.  
25

1 CHAIR HANSSEN: So, including the retaining  
2 walls?

3 COMMISSIONER BARNETT: Correct.

4 CHAIR HANSSEN: Okay.

5 JOEL PAULSON: I guess I would just offer a  
6 little more background. The whole reason this came forward  
7 was an application on I want to say Santella that came  
8 before us and Staff had actually looked at walls and things  
9 like that because they can be visible, but in this case I  
10 think it turned out that it may have helped the applicant  
11 on the visibility analysis and so then that's when the  
12 Council sent this item back to Policy Committee for  
13 consideration just so that Staff could get clear direction  
14 on what we should be counting in the visibility analysis,  
15 and this is where we landed.

17 CHAIR HANSSEN: Thank you, Director Paulson. Vice  
18 Chair Janoff.

19 VICE CHAIR JANOFF: Just a question of  
20 clarification for Staff. I'm trying to figure out how the  
21 inclusion would help and I guess what I would say is  
22 there's a greater square footage.. If you could walk through  
23 (inaudible) example I maybe could better understand why the  
24 recommendation is going this direction.  
25

1 JOCELYN SHOOPMAN: I wasn't the project manager  
2 on this until the application but I can do my best to kind  
3 of give a background.

4 I believe in this case it was multiple retaining  
5 walls downhill that were included in this visibility  
6 analysis so it created a larger square footage amount that  
7 the Applicant was working for computing his calculation,  
8 and by including that additional square footage of  
9 retaining walls that were visible it resulted in the  
10 project being under that threshold of 25-percent.  
11

12 CHAIR HANSSEN: Commissioner Hudes.

13 COMMISSIONER HUDES: Thank you. Coming back to  
14 Commissioner Burch's question for Staff, how likely is it  
15 that we're going to get a retaining wall that isn't a  
16 natural compatible material on the hillside applications?  
17 And also would there be any existing retaining wall that  
18 wouldn't be of that type that would be part of the  
19 consideration here?

20 JOCELYN SHOOPMAN: We have seen some more  
21 contemporary and modern homes in our hillsides; I believe  
22 one was approved on Santella Court actually by the  
23 Commission in either 2018 or 2019. It was more of a  
24 contemporary style. It did have some concrete walls,  
25 although they also had landscaping to soften that material,

1 but that was reviewed by the Town's consulting architect  
2 with the Hillside Design Guidelines and found to be  
3 compliant. As far as you're saying, if there is existing  
4 retaining walls whether they can be including in a  
5 visibility analysis?

6 COMMISSIONER HUDES: Yes, my comments were  
7 strictly about the retaining walls. I remember the recent  
8 approval but I'm really talking about the materials that  
9 are used on the retaining walls, new and existing.

10  
11 JOCELYN SHOOPMAN: If Staff is completing a  
12 visibility analysis today we would be looking at what's  
13 visible, so is that the building elevation? Are those  
14 existing retaining walls regardless of their material? This  
15 is part of the questions of a Commission's consideration is  
16 should we still be looking at those visible walls  
17 regardless of the material?

18 COMMISSIONER HUDES: If I could just follow up.  
19 How likely is it that they will be of a non-natural  
20 material?

21 JOCELYN SHOOPMAN: It's a possibility. There are  
22 quite a few old structures and retaining walls out there,  
23 so I would say that yes, there's a possibility that we  
24 could see them.  
25

1 JOEL PAULSON: I would just add to that,  
2 Commissioner Hudes, I mean natural stucco is technically  
3 sand, so we see a lot of stucco walls, concrete walls; we  
4 see those quite often. Generally how they're treated in the  
5 hillside environment is either by screening as mentioned by  
6 Vice Chair Janoff, or by color to help them blend in.

7 COMMISSIONER HUDES: Okay, thank you.

8 CHAIR HANSSEN: Vice Chair Janoff.

9 VICE CHAIR JANOFF: I would like to support the  
10 addition of language as Commissioner Burch alluded to that  
11 if the material of the retaining wall is obvious and  
12 visible or non-natural or however you might want to phrase  
13 it, then it could be included in the elevation calculation.  
14 I'm having a little trouble understanding how it could  
15 work. I'm having a little trouble with the numbers on this  
16 one but I think there could be instances where you'd have a  
17 rather obvious retaining wall, and I'm thinking about that  
18 house. I can't remember the street but it's...the lands of  
19 pam is all I can remember, but it was that massive house up  
20 on a hillside and there were retaining walls and all kind  
21 of balustrades and stuff and you're just looking at it,  
22 going wow. I can't imagine why we would not want to include  
23 in that instance the retaining wall as part of that  
24 calculation.  
25

1 JOEL PAULSON: I think that was Jerrod Lane..

2 VICE CHAIR JANOFF: Yes.

3 JOEL PAULSON: ...and actually (inaudible) wasn't  
4 visible at all so that wasn't even an issue, because it was  
5 low enough in the hillside.

6 But that's the challenge and that's why Staff has  
7 historically looked at them. In the instance, just for this  
8 example, there was another planner as Ms. Shoopman  
9 mentioned, and so we counted all the retaining wall and a  
10 lot of the retaining wall was screened by existing  
11 vegetation, so that added to their total wall square  
12 footage for the calculation, which means technically the  
13 house could be more visible or other components could be  
14 more visible because they were getting credit for the wall  
15 that was screened by vegetation.  
16

17 So, that's where the challenge comes in. It kind  
18 of cuts both ways, so that was the challenge. There are  
19 always going to be items like that but that's why we were  
20 happy that the Council sent it to Policy Committee so you  
21 get clear direction. I think it gets to be challenging if  
22 we try to take it if it's a wall that's visible then we're  
23 going to count it, if it's not visible then we're not going  
24 to count it; that gets to be problematic from our  
25 perspective looking at that, but whatever the Commission

1 wants to put forward as a recommendation to Council, we'll  
2 carry that forward for their discussion.

3 VICE CHAIR JANOFF: Just a follow up. Thank you  
4 for that clarification; I now understand it's a difference  
5 between what's visible and not visible. Given that, I would  
6 think the language as proposed is probably fine. I would  
7 also expect that the consulting architect would provide the  
8 guidance for screening for color modification.

9 CHAIR HANSEN: Commissioner Hudes.  
10

11 COMMISSIONER HUDES: Yeah, I would agree with  
12 Vice Chair Janoff. I think that as it's written it would be  
13 a perceptible improvement in the way that we're evaluating  
14 elevation.

15 CHAIR HANSEN: Okay. So, the way that this works  
16 is if there are no further comments we could entertain a  
17 motion from a member of the Commission and the motion would  
18 be to forward a recommendation to Council to approve the  
19 language as is, or approve with modifications, or go back  
20 to the drawing board; those I think are the three options.  
21 I don't think the third option is one we would recommend,  
22 so would someone be able to make a motion to either do A or  
23 B? Vice Chair Janoff.

24 VICE CHAIR JANOFF: Yes, I'll make a motion to  
25 approve the language as is.



1 CHAIR HANSSEN: And then Commissioner Hudes had  
2 his hand up before Commissioner Badame.

3 COMMISSIONER HUDES: I second the motion.

4 CHAIR HANSSEN: Okay, great. Is there any further  
5 discussion by the Commission on this matter? Seeing none,  
6 we will do a roll call vote and I will start with  
7 Commissioner Badame.

8 COMMISSIONER BADAME: Yes.

9 CHAIR HANSSEN: And then Commissioner Tavana.  
10

11 COMMISSIONER TAVANA: Yes.

12 CHAIR HANSSEN: Commissioner Burch.

13 COMMISSIONER BURCH: Yes.

14 CHAIR HANSSEN: Commissioner Hudes.

15 COMMISSIONER HUDES: Yes.

16 CHAIR HANSSEN: Commissioner Barnett.

17 COMMISSIONER BARNETT: No.

18 CHAIR HANSSEN: Okay. And Vice Chair Janoff.

19 VICE CHAIR JANOFF: Yes.

20 CHAIR HANSSEN: And then I vote yes as well, so  
21 it passes 6-1 with Commissioner Barnett voting against. Are  
22 there any appeal rights for this action by the Commission,  
23 Director Paulson?  
24  
25

1 JOEL PAULSON: There are not any appeal rights  
2 because this is a recommendation, as will be the remainder  
3 of these motions.

4 CHAIR HANSSEN: Okay, thank you. All right, so  
5 then the second item was about trees and it is whether or  
6 not trees that are subject to required clearing by the Fire  
7 Department and also trees that don't require a permit to be  
8 removed should be included, and there was a split vote by  
9 the Policy Committee.

10 Vice Mayor Spector felt that we should be more  
11 conservative and remove any of these trees that could be  
12 removed without a permit or required by the Fire Department  
13 from screening, and I'm interpreting, but the Mayor felt  
14 that anybody could ultimately remove any trees so then no  
15 one would be able to include them in their analysis. I  
16 think I characterized the way that Staff said it, but if I  
17 didn't get that right, let us know.

18 We also heard testimony from Dr. Weissman  
19 recommending that we should exclude the trees that the Fire  
20 Department would require to be removed as well as the non-  
21 native trees that aren't protected by the ordinance, and I  
22 think that was his recommendation.

23 So, where does the Commission come out on this  
24 item? Commissioner Burch and then Commissioner Hudes.  
25

1           COMMISSIONER BURCH: We had a few discussions on  
2 this (inaudible) previously on hillside applications based  
3 on our own walking the site, recognizing which trees had  
4 been highlighted to be removed as part of the application,  
5 and then trying to determine how that actually lines up  
6 with the visibility analysis. Ultimately in most of those  
7 conversations what we circled back to was that we needed to  
8 make sure that in understanding which trees were going to  
9 be removed we were doing more of a visibility analysis  
10 based on that. What will be the reality? I kind of feel  
11 like yes, we need to be including the fact that they won't  
12 be there in the visibility analysis as much as we can to  
13 our abilities. I know in some instances that's very  
14 difficult but in others we've gone back on an application  
15 and actually seen that the removal of one or two in the  
16 application had a huge impact on how the development would  
17 be seen from different viewing points. So yes, I do feel  
18 like we should be taking the removal of those trees into  
19 consideration.  
20

21           JOEL PAULSON: Through the Chair, I would just  
22 like to say that the trees are one in the same but there's  
23 really two different components.

24           So, the exceptions. Those are trees that can be  
25 removed without any permit. The first one is the zone one,

1 two, and three. Zone one, they have to remove; zones two  
2 and three, they're not removing all of that vegetation,  
3 it's not a clearcutting the forest. It's kind of, I can't  
4 remember what the term is, I want to say lean and green or  
5 clean and green. They're limbing up trees, they're clearing  
6 vegetation that can be a fire ladder, things like that.  
7 It's not just cutting down the trees.

8  
9           So, there are two components of this when you're  
10 looking at that, and so ultimately I think they split on  
11 both of those issues, but we have a code that mirrors state  
12 code, which is similar to the fire code, which mirrors  
13 state code. I've talked to County Fire. They're not going  
14 out to properties and saying we have to do this. You know,  
15 we're getting more and more inquiries obviously, given the  
16 continuing news every week that's going on, so those  
17 provisions are available to property owners, but it's not  
18 just to remove all of those trees, it's really to limb up  
19 the ones in zones two and three and do some other clearing  
20 of vegetation. Then with the ones that are on the exception  
21 list, those are trees that people can just remove without a  
22 permit regardless. So, just so everyone understands there  
23 are kind of two separate but (inaudible) components.  
24  
25

1 COMMISSIONER BURCH: Thank you for that, because  
2 I was a little confused when reading it about how those  
3 different things meshed into each other, so thank you.

4 CHAIR HANSSEN: All right, so we really kind of  
5 have two tree issues to discuss. I think Vice Chair Janoff  
6 and then Commissioner Hudes.

7 VICE CHAIR JANOFF: I just wanted to clarify that  
8 what Director Paulson is talking about... I have a list of  
9 five items. It's a A, B, C, and D that I was expecting to  
10 walk through, not the list of three which were the  
11 decisions that I think Chair Hanssen is going through. I  
12 think the topic that Chair Hanssen was discussing is Item  
13 C, which is the visibility regarding tree removal, and then  
14 what Director Paulson is discussing is Item B, the tree  
15 clearing that's recommended by the Fire Department, so  
16 yeah, we do have two separate items for consideration.

18 CHAIR HANSSEN: I think you have a good point, so  
19 maybe we should do a separate motion on each one?

20 VICE CHAIR JANOFF: Yes.

21 CHAIR HANSSEN: To make it clearer, yeah, yeah.  
22 Okay, thank you for that clarification, Staff and also Vice  
23 Chair Janoff. Commissioner Hudes.

24 COMMISSIONER HUDES: I'm not sure which one it  
25 fits into or whatever, but the comments from Dr. Weissman,

1 I would be interested in Staff's reaction to that as to  
2 whether it makes sense and whether it's feasible to have  
3 different conditions for non-native versus native trees,  
4 whether they think it's a good idea.

5           JOEL PAULSON: I think as he also mentioned most  
6 of these trees in this exception list, which is Item C in  
7 the Staff Report, those are all non-native with the  
8 exception potentially of three, which is for fire  
9 prevention, but I'm not sure if Ms. Shoopman has any  
10 additional comments. I think that's a fairly simple  
11 distinction as none of the trees in one or two are probably  
12 going to be native.

14           JOCELYN SHOOPMAN: I would agree. We can easily  
15 separate native from non-native.

16           CHAIR HANSSEN: Commissioner Hudes.

17           COMMISSIONER HUDES: Do you think it's a good  
18 idea?

19           JOEL PAULSON: Well, neither of us are arborists  
20 and we didn't bring the arborist with us, but I think that  
21 might be some good direction should a motion go forward on  
22 Item C regarding a distinction between native and non-  
23 native, and potentially similarly in... It gets captured in B  
24 by C in and of itself, but that might be helpful direction  
25 to have them weigh in on, and we can also get some input

1 from either one of our consulting arborists or a Town  
2 arborist.

3 CHAIR HANSSEN: Vice Chair Janoff.

4 VICE CHAIR JANOFF: I guess I take a little bit  
5 different view from Dr. Weissman, and while I completely  
6 appreciate where he's going with his thinking with regard  
7 to preserving the native trees, and I agree that the native  
8 trees need to be discussed for our visibility analysis, the  
9 non-natives should absolutely not be required, and here's  
10 the reason. It's precisely what Dr. Weissman led with, and  
11 that is that people who buy hillside property really want  
12 the view and there's no way to get the view unless you cut  
13 your trees down, and I'm not aware that there's a follow up  
14 that would make anyone accountable to hey, you said you  
15 weren't going to cut that tree down even if it's a native.  
16 I mean you would like to believe that people would want to  
17 preserve the native trees but you can also understand where  
18 people say, "You know what? That oak tree is right in the  
19 middle of my beautiful view."  
20

21 I just want to show you something quickly. This  
22 is my view. I'm looking directly across the valley at  
23 Levi's Stadium, and it's a bigger view than that. When we  
24 purchased the property there were no trees in our view so  
25 we haven't had to made the decision about cutting down

1 trees, but there's got to be a lot of properties out there  
2 that say great, we got the permit, we got the house built,  
3 cut them down. So, I'm thinking that on a conservative side  
4 we shouldn't put any trees that are on the property that  
5 are larger than a certain diameter in the visibility  
6 analysis.

7 CHAIR HANSSEN: All right, so thank you for your  
8 direction on that. Are there other comments? Just to be  
9 clear, Vice Chair Janoff did bring up that there are  
10 actually three... So, B, C, and D are all on trees, right?  
11 Let me just make sure. Yeah, so B was about regarding trees  
12 subject to clearing, and then the exceptions for tree  
13 removal, and then site planning regarding image update.

14 So, if it's the will of the Commission maybe the  
15 best thing to do would be to take each one of these  
16 separately, even though we've been discussing all three of  
17 them, and see if we can get a motion on this. And again,  
18 we're making our recommendation to Council. But let's see  
19 if any of the Commissioners have any more comments on the  
20 tree analysis.  
21

22 While you guys are still thinking about it I will  
23 weigh in. I completely agree with Vice Chair Janoff. I also  
24 live in the hillsides and I haven't seen a lot of people  
25 cutting down trees because we haven't had a whole lot of



1 building; we don't have available lots in our neighborhood.  
2 And after we've heard so many of these hearings in the  
3 hillsides I think people are highly incented to improve  
4 their view, and so we should take the most conservative  
5 view on what could possibly be included in the visibility  
6 analysis, because it probably won't be there.

7           So, is there anyone that could make a motion?  
8 Vice Chair Janoff, do you feel comfortable making a motion?

9           VICE CHAIR JANOFF: I do, I'm just not entirely  
10 sure what my motion would be. I guess the more conservative  
11 view is... I can't tell whether it's Vice Mayor Spector's or  
12 Mayor Jensen's view, but I would recommend that the  
13 language be conservative in that we could expect all non-  
14 native trees that are not proposed to be removed could and  
15 probably will be removed and they should not be included in  
16 the visibility study.

17           With regard to the native trees, I think any tree  
18 that is under I think it's the 9" diameter shouldn't be  
19 included either because if they can be removed then they  
20 probably will be removed. I hope that's clear.

21           CHAIR HANSEN: I think that's pretty darned  
22 clear. Commissioner Burch had her hand up and then  
23 Commissioner Tavana.

1 COMMISSIONER BURCH: I was going to second the  
2 motion.

3 COMMISSIONER TAVANA: Same here. I'll second it.

4 CHAIR HANSSEN: Okay. All right, so we'll say  
5 Commissioner Tavana seconded it. So, we'll take Vice Chair  
6 Janoff's motion on the matter, which was to exclude the  
7 trees that were non-native that do not require a permit as  
8 well as any of the native that are under the diameter where  
9 they wouldn't require a permit for removal as well. Yes?  
10 Yes. Is there any further discussion on that? Okay, so then  
11 I will go ahead and take the roll call vote and I will  
12 start with Commissioner Badame.  
13

14 COMMISSIONER BADAME: Yes.

15 CHAIR HANSSEN: Commissioner Tavana.

16 COMMISSIONER TAVANA: Yes.

17 CHAIR HANSSEN: Commissioner Burch.

18 COMMISSIONER BURCH: Yes.

19 CHAIR HANSSEN: Commissioner Hudes.

20 COMMISSIONER HUDES: Yes.

21 CHAIR HANSSEN: Commissioner Barnett.

22 COMMISSIONER BARNETT: Yes.

23 CHAIR HANSSEN: Vice Chair Janoff.

24 VICE CHAIR JANOFF: Yes.  
25

1 CHAIR HANSSEN: And I vote yes as well, so that  
2 passes unanimously. So that's basically one motion that  
3 covered... Just to make sure I've got this right though, it  
4 covers B, C, and D?

5 VICE CHAIR JANOFF: No, just C.

6 CHAIR HANSSEN: Just C. Okay, right. Okay, so we  
7 still need to worry about B and D, right?

8 VICE CHAIR JANOFF: Yeah, and I'm prepared to  
9 make a motion on those as well.  
10

11 JOEL PAULSON: Through the Chair I would say your  
12 motion on C kind of covers B, because we wouldn't include  
13 any of those anyway because they're non-native and it's an  
14 additional requirement to not include any natives that are  
15 less than a certain diameter, and the zone language is  
16 really, again, where they're going to be trimming up  
17 vegetation and separating vegetation canopies, so they're  
18 going to have to do that anyway, but if you want to make a  
19 specific motion on B, that's fine as well.

20 CHAIR HANSSEN: I don't know what you think, Vice  
21 Chair Janoff, but I think we're covered on B given what  
22 Staff said.

23 VICE CHAIR JANOFF: That's fine. I'm okay with  
24 that.  
25

1 CHAIR HANSSEN: All right. Then with D I'm trying  
2 to remember...

3 VICE CHAIR JANOFF: D is the update on the  
4 graphic in the...

5 CHAIR HANSSEN: The graphics, yeah, yeah, okay.  
6 So, are there thoughts on that one? What's the Commission's  
7 thoughts on the recommendation? Commissioner Barnett.

8 COMMISSIONER BARNETT: I don't see any reason not  
9 to update the graphic.  
10

11 CHAIR HANSSEN: I think I agree with that. Other  
12 Commissioners have any thoughts on that one? It seems  
13 pretty straightforward. Okay, so can we get a motion on  
14 that one? Maybe Commissioner Barnett, or Commissioner Burch  
15 has her hand up.

16 COMMISSIONER BURCH: I'm just going to make the  
17 motion to approve the update of the image.

18 CHAIR HANSSEN: Right. Commissioner Hudes.

19 COMMISSIONER HUDES: I would second the motion  
20 and just make a comment that we're balancing the interests  
21 of the Town and visibility with safety and wildfire safety,  
22 and I think it's always important to err on the side of  
23 safety, especially in the environment that we're in, and so  
24 I believe all of these are useful changes for that reason  
25

1 and I think we need to continue to look at wildfire safety  
2 improvements that we can make whenever we can.

3 CHAIR HANSSEN: Well said, Commissioner Hudes.  
4 Okay, so we have a motion and we have a second. Any other  
5 comments by Commissioners? I'll go ahead with the roll call  
6 vote. Commissioner Badame.

7 COMMISSIONER BADAME: Yes.

8 CHAIR HANSSEN: Commissioner Tavana.

9 COMMISSIONER TAVANA: Yes.  
10

11 CHAIR HANSSEN: Commissioner Burch.

12 COMMISSIONER BURCH: Yes.

13 CHAIR HANSSEN: Commissioner Hudes.

14 COMMISSIONER HUDES: Yes.

15 CHAIR HANSSEN: Commissioner Barnett.

16 COMMISSIONER BARNETT: Yes.

17 CHAIR HANSSEN: Vice Chair Janoff.

18 VICE CHAIR JANOFF: Yes.

19 CHAIR HANSSEN: And I vote yes as well. All  
20 right, so we've got A, B, C, D, and so we still have E.

21 So, E is about the project review and if the  
22 application is over the visibility requirement of 24.5-  
23 percent and they are required in our Hillside Design  
24 Guidelines to reduce the height to 18', and so the question  
25

1 is whether or not the Development Review Committee could be  
2 the deciding body instead of the Planning Commission.

3           If I interpreted the comments from the Policy  
4 Committee accurately Vice Mayor Spector said that there  
5 could be other issues besides just the visibility that  
6 might affect whether it is approvable or not, so she was  
7 recommending to keep it with the Planning Commission, and  
8 the Mayor felt the other way that we should move it down to  
9 the Development Review Committee so that applicants  
10 wouldn't have to spend as much money and could get their  
11 approvals streamlined. Are there thoughts on that from the  
12 Commission? Commissioner Badame.

14           COMMISSIONER BADAME: I would be in favor of  
15 keeping the review process within the purview of the  
16 Planning Commission rather than the DRC due to other  
17 extenuating circumstances that might revolve around the  
18 approval or denial.

19           CHAIR HANSSEN: Other comments? Commissioner  
20 Hudes.

21           COMMISSIONER HUDES: Yeah, I would agree. I  
22 generally believe in streamlining, particularly when it  
23 comes to things that relate to the economic vitality of the  
24 Town. When it comes to the hillsides I don't think that  
25 streamlining in general yields good results and I think

1 there were reasons why we enacted the Hillside Design  
2 Standards and Guidelines and the decision-making bodies for  
3 them, and I think the Planning Commission is more familiar  
4 with some of the details of the analysis as well, and so I  
5 would be in support of keeping it with the Planning  
6 Commission.

7 CHAIR HANSSEN: Thank you. Commissioner Burch.

8 COMMISSIONER BURCH: I want to ask a couple of  
9 questions of Staff about it. I would assume if this is  
10 being reviewed internally that the application would be  
11 needing, as it said, FAR, visibility, height, privacy  
12 concerns, the reflectivity of the materials, including any  
13 of these updates that we're proposing as far as the  
14 visibility around what trees would remain or not. Is that a  
15 correct assumption?  
16

17 JOEL PAULSON: I can jump in. Yes, all of those  
18 things get analyzed. I think the other is understanding  
19 that the Policy Committee, potentially the Planning  
20 Commission and the Council, were going to make the  
21 modifications we already talked about. That means there are  
22 going to be far more homes that are visible, so you're  
23 going to have homes that may or may not be visible from a  
24 reality when they're built five years, ten years, or they  
25 can be visible right away, and so you're going to have a

1 lot more homes of that nature that will be paying an  
2 additional \$4,000 approximately and adding an additional  
3 six weeks approximately to their application timing to go  
4 to the Planning Commission, but either way. Staff is  
5 comfortable either way bringing it forward to the  
6 Commission, it's just really something to help, as  
7 mentioned, for streamlining for applicants.

8 COMMISSIONER BURCH: May I ask a quick follow up?

9 CHAIR HANSEN: Go ahead.

10 COMMISSIONER BURCH: Should the application come  
11 to DRC and they've checked all the boxes would it  
12 potentially be something that you would still though bring  
13 to the Commission should there be perhaps a lot of  
14 opposition by neighbors or somebody else who felt impacted  
15 by the property?  
16

17 JOEL PAULSON: We don't generally have a vote to  
18 see how many people like or dislike a project. We're  
19 looking at it objectively based on our standards. Obviously  
20 DRC is appealable. You're going to be seeing a lot more  
21 appeals, and you have seen a lot more appeals, and so we're  
22 going to be processing it from that standpoint. If they are  
23 a major exception or (inaudible) that after trying to work  
24 with applicants and neighbors, because generally what  
25 happens is we have the applicant work with the neighbor if



1 it's a privacy issue to try to come up with a solution.  
2 Seventy-five percent of the time they come up with a  
3 solution, 25-percent they don't, and then the process is  
4 that someone has to appeal whatever decision that is. So,  
5 generally that's the course of action.

6           COMMISSIONER BURCH: That was the answer that I  
7 was hoping that you would say, and so based on that I feel  
8 like with the conversations that we're having right now and  
9 the (inaudible) work that so many people have done in the  
10 last few years around really defining what requirements  
11 need to be met in the hillsides as far as visibility and  
12 materials and so forth(inaudible) setting those type of  
13 parameters in place so that Staff...

14           We are streamlining these things and we aren't  
15 holding up a potential homeowner additional months and  
16 additional fees, a home that theoretically meets all the  
17 requirements, and again, based on what Mr. Paulson just  
18 stated, if there are issues with potential neighbors they  
19 will appeal it and it would come to us, so I feel like all  
20 the work that's been happening is to help streamline these  
21 processes and make some things in the Town a bit easier for  
22 our residents. There are still things in place to make sure  
23 that somebody doesn't build a four-story glaringly white  
24 home in the hills that's visible from everywhere, so I  
25

1 think to me I feel a very safe thing to say is let's  
2 continue down that streamlining process.

3 CHAIR HANSSEN: Thank you. Do other Commissioners  
4 have comments? Commissioner Barnett.

5 COMMISSIONER BARNETT: Mr. Paulson, how often do  
6 you get neighbors appearing at the DRC?

7 JOEL PAULSON: We have neighbors at almost every  
8 DRC right now. Obviously we're in a different time so  
9 people have a lot more opportunity, because they're already  
10 on Zoom all day long so what's one more Zoom meeting? So we  
11 have had a lot more participation at DRC meetings.  
12

13 Like said, it gets to be challenging because  
14 we're looking at it from a technical perspective and  
15 people's views or privacy, those are important issues. We  
16 just don't have any objective standards, and if they meet  
17 those technical requirements then we try to look for  
18 solutions and try to get the applicants to work with  
19 adjacent neighbors, but sometimes they just can't come to a  
20 compromise, and then again, that's where a project gets  
21 appealed.

22 I don't have any objective numbers for you as far  
23 as what that looks like, but I'll definitely have Staff  
24 look into that over the last six months, how many agenda  
25

1 items have we had and how many folks have participated on  
2 any one of those agenda items.

3 COMMISSIONER BARNETT: That's helpful to know.  
4 Thank you.

5 CHAIR HANSSEN: Commissioner Hudes.

6 COMMISSIONER HUDES: I'm definitely respectful of  
7 the other Commissioners' points, however I don't think that  
8 streamlining in the hillsides is a valuable thing for the  
9 Town as whole and we have to balance the needs and  
10 requirements of the hillside homeowner with the needs and  
11 requirements of the Town, and we're not always going to be  
12 in a situation where residents can attend DRC meetings, and  
13 we've had glitches with notification and other things at  
14 times, and our hillsides are finite in terms of what they  
15 are and what is built on them.  
16

17 I think that we're really not talking about  
18 lengthening the time, we're talking about staying with the  
19 existing timeframe, so I don't really think that it's  
20 necessarily making it more difficult, I think we're just  
21 saying let's stand by what people have put together to  
22 protect our hillsides and that includes a hearing process  
23 with the Planning Commission, which is I think well  
24 equipped to balance the interests of the community and the  
25 homeowner. It's hard work and I know the DRC does a very

1 good job as well but I also think that we need additional  
2 prudent checks and balances on our hillsides and what gets  
3 put on them, and particularly when they are visible we need  
4 to really pay attention to that.

5 CHAIR HANSSEN: Commissioner Badame.

6 COMMISSIONER BADAME: I would like to add that  
7 hillside homes, they're a greater distance apart so they  
8 have a greater propensity to be seen, but for residents not  
9 to receive notice, so they wouldn't receive notice to even  
10 go to a DRC hearing to possibly object, so I'm still going  
11 to stick with Planning Commission purview on this one.

12 CHAIR HANSSEN: Thank you for your comments. I'm  
13 going to weigh in and say that with all due respect we have  
14 a lot of good things that have happened with the Hillside  
15 Design Guidelines but I can think of any number of times  
16 where we've had residences that were way more massive than  
17 they could be and by changing the flow of their  
18 architecture or something like that they could change the  
19 dynamics of the visibility as well, and so I think it's not  
20 as simple as always just making it 18' and having them  
21 comply with the other things. There are often ways that  
22 they could redo the design of the house or the situation of  
23 the house, and so I feel like in the case where a house is  
24 going to be visible we should really be diligent about that  
25

1 and so I side with Commissioner Hudes and others on that  
2 point. Vice Chair Janoff.

3 VICE CHAIR JANOFF: I just wanted to say that I  
4 agree with that. I think the notion that Staff is really  
5 limiting their decisions to objective criteria does mean  
6 that the more subjective or discretionary realm that a  
7 planning commission does have the opportunity to operate  
8 with them doesn't get addressed, and so I would be in favor  
9 of keeping the process the way it is with these  
10 applications coming to the Planning Commission.  
11

12 CHAIR HANSSEN: Thank you. Any other Commissioner  
13 want to make a comment on this? If not, I would entertain a  
14 motion. Commissioner Badame.

15 COMMISSIONER BADAME: I'll make a motion. I move  
16 to forward to Town Council a recommendation to retain  
17 project review and approval process with the Planning  
18 Commission.

19 CHAIR HANSSEN: For the homes that are visible,  
20 right?

21 COMMISSIONER BADAME: Yes, for the homes that are  
22 visible.

23 CHAIR HANSSEN: Okay, thank you. Is there a  
24 second? Commissioner Hudes had his hand up.  
25

COMMISSIONER HUDES: Second.

1 CHAIR HANSSEN: And any further discussion?

2 Seeing none, I will go with the roll call vote.

3 Commissioner Badame.

4 COMMISSIONER BADAME: Yes.

5 CHAIR HANSSEN: Commissioner Tavana.

6 COMMISSIONER TAVANA: Yes.

7 CHAIR HANSSEN: Commissioner Burch.

8 COMMISSIONER BURCH: No.

9 CHAIR HANSSEN: No? Okay. Commissioner Hudes.

10 COMMISSIONER HUDES: Yes.

11 CHAIR HANSSEN: Commissioner Barnett.

12 COMMISSIONER BARNETT: Yes.

13 CHAIR HANSSEN: Vice Chair Janoff.

14 VICE CHAIR JANOFF: Yes.

15 CHAIR HANSSEN: And then I vote yes as well, so  
16 it passes 6-1. Are there any appeal rights on this action?

17 It's probably the same as the others, so I'm asking Staff.

18  
19 JOEL PAULSON: I'm talking, I just don't have my  
20 mike on. There are no appeal rights for this as it is a  
21 recommendation to the Town Council.

22 CHAIR HANSSEN: Okay, thank you very much.

23

24

25

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**TOWN COUNCIL – October 20, 2020**  
**REQUIRED FINDINGS FOR:**

Consider Modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines

**FINDINGS**

**Required Findings for CEQA:**

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

**Required Findings for General Plan:**

- The proposed modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the Hillside Development Standards and Guidelines are consistent with the General Plan.



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**RESOLUTION 2020-**

Draft Resolution to be modified by Town Council deliberations and direction.

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS APPROVING AMENDMENTS  
TO CHAPTER II. (CONSTRAINTS ANALYSIS), CHAPTER III. (SITE  
PLANNING), AND CHAPTER IX. (PROJECT REVIEW AND APPROVAL  
PROCESS), OF THE HILLSIDE DEVELOPMENT STANDARDS AND  
GUIDELINES REGARDING THE VISIBILITY ANALYSIS, TOWN WIDE**

**WHEREAS**, the Hillside Development Standards and Guidelines (HDS&G) were adopted by the Town Council in January 2004; and

**WHEREAS**, on July 28, 2020, the Town Council Policy Committee held a public hearing to consider modifications to the HDS&G regarding the visibility analysis. The Committee continued the matter to August 11, 2020 to allow for additional public comments to be provided; and

**WHEREAS**, on August 11, 2020, the Town Council Policy Committee held a public hearing to consider modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the HDS&G regarding the visibility analysis; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on September 23, 2020; and

**WHEREAS**, on September 23, 2020, the Planning Commission held a public hearing to consider modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the HDS&G regarding the visibility analysis. The Commission continued the matter to September 28, 2020 due to technical errors; and

**WHEREAS**, on September 28, 2020, the Planning Commission held a public hearing to consider modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the HDS&G regarding the visibility analysis. The Planning Commission recommended that the Town Council approve the modifications with changes to modifications to Chapter II. (Constraints Analysis); and

ATTACHMENT 8

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 20, 2020; and

**WHEREAS**, the Town Council finds that the modifications are consistent with the General Plan and its Elements and that the modifications are exempt from the California Environmental Quality Act, Section 15061 (b)(3).

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Town Council of the Town of Los Gatos adopts the modifications to Chapter II. (Constraints Analysis), Chapter III. (Site Planning), and Chapter IX. (Project Review and Approval Process) of the HDS&G regarding the visibility analysis, attached hereto as Exhibits A through C.

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20th day of October, 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

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## II. CONSTRAINTS ANALYSIS AND SITE SELECTION

### A. Prior to Selecting a Building Site.

#### 1. Constraints analysis.

Each development application subject to the Hillside Development Standards and Guidelines shall be accompanied by a constraints analysis when it is deemed necessary by the Town to identify the most appropriate area or areas on the lot for locating buildings given the existing constraints of the lot. This is a critical step in the overall planning and design of projects in the hillsides. When all constrained areas have been identified and mapped, the remaining area(s) will be designated as the "LEAST RESTRICTIVE DEVELOPMENT AREA" (LRDA). These are the areas most appropriate for development.

To ensure that new development is sensitive to the goal and objectives of the Hillside Development Standards and Guidelines and respects the existing site constraints, the following elements shall be mapped by appropriate professionals and taken into consideration when determining a site's LRDA:

- Topography, with emphasis on slopes over 30%
- Vegetation such as individual trees, groupings of trees and shrubs, habitat types
- Drainage courses and riparian corridors
- Septic systems
- Geologic constraints including landslides and active fault traces
- Wildlife habitats and movement corridors
- Visibility from off site
- Areas of severe fire danger
- Solar orientation and prevailing wind patterns
- Significant Ridgelines



Many of the above topics are covered in more detail in Chapter II.B. and Chapter III. The accurate determination of the LRDA early in the planning process could avoid delays once an application has been submitted. Site specific studies such as geotechnical or other environmental evaluations, tree survey and/or topographic survey may be necessary to accurately determine the LRDA.



## **2. Consultation with Neighbors.**

Before siting and designing the house and landscaping, the property owner, architect or builder should meet with neighbors to discuss any special concerns they might have. Resolution of issues early in the design process can save time and cost as well as reducing the processing time for applications. If a conflict occurs between a property owner's desire to develop their property and legitimate issues raised by a neighbor, a design solution will be sought that attempts to balance all issues or concerns that are raised by both parties.

## **3. Pre-application meeting/staff consultation/site visit.**

Before designing a project, the property owner/architect/builder is strongly encouraged to meet with Town staff to consider a building location that best preserves the natural terrain and landscape of the lot and positively addresses the objectives of the Hillside Development Standards and Guidelines. On heavily wooded lots, or on lots where trees may be impacted by proposed development, an arborist's report shall be prepared which evaluates potential tree impacts. The report shall be prepared at the applicant's expense.

### **B. Visibility Analysis.**

#### **1. Viewing areas.**

Each development project with the potential for being visible (see glossary for definition) from any established viewing area shall be subject to a visibility analysis. ("Potential" is defined as capable of being seen from a viewing area if trees or large shrubs are removed, significantly pruned, or impacted by construction.) The visibility analysis shall be conducted in compliance with established Town procedures using story poles that identify the building envelope. After installing the story poles, the applicant shall take photographs of the project from appropriate established viewing areas that clearly show the story poles and/or house and subject property. Visual aids such as photo simulations or three dimensional illustrations and/or a scale model may be required when it is deemed necessary to fully understand the impacts of a proposed project.

The following steps shall be taken in completing a visibility analysis:

- a. Install story poles per adopted policy.
- b. After the installation of story poles, photographs of the project shall be taken from the applicable viewing areas using 50 MM and 300 MM lenses. Other location(s) as deemed appropriate by the Community Development Director may be chosen in addition to the existing viewing areas.



- c. A photograph with a 50 MM lens will represent the visibility of the proposed residence from the naked eye.
- d. A photograph with a 300 MM lens will represent an up-close perspective and help identify any visible story poles, netting, trees, and/or shrubbery.
- e. Existing vegetation and/or landscaping proposed to be removed entirely or partially shall not be included in the visibility analysis.
- f. If determined necessary by the Community Development Director, three dimensional illustrations or photo simulations of the structure may be required.
- g. A visible home is defined as a single-family residence where 24.5% or more of an elevation can be seen from any of the Town's established viewing areas, and/or determined by the Community Development Director. Percentages shall be rounded to the nearest whole number.
- h. An elevation is defined as the visible building elevations of a home, not including exterior features such as walls, decks, and detached accessory structures.
- i. Existing trees and/or branches subject to clearing in Zone 2 and Zone 3 pursuant to Chapter 9 (Fire Prevention and Protection) of the Town Code shall not be included in the visibility analysis.
- j. Existing trees listed in Section 29.10.0970 of the Town Code that are proposed to remain and all trees which have a diameter of less than eight inches of any trunk or in the case of multi-trunk trees, a total diameter of less than eight inches of the sum of all trunks shall not be included in the visibility analysis.
- k. A Deed Restriction shall be required that identifies the on-site trees that were used to provide screening in the visibility analysis and requires replacement screening pursuant to the Hillside Development Standards and Guidelines and/or the Tree Protection Ordinance, if these trees die or are removed.
- l. Trees with a poor health rating (less than 50 percent overall condition rating) shall not be included in the visibility analysis.
- m. The Community Development Director shall determine if the use of a third party consultant is required to peer review an applicant's visibility analysis.
- n. A five-year Maintenance Agreement shall be required for on-site trees that were used to provide screening in the visibility analysis and requires their preservation.

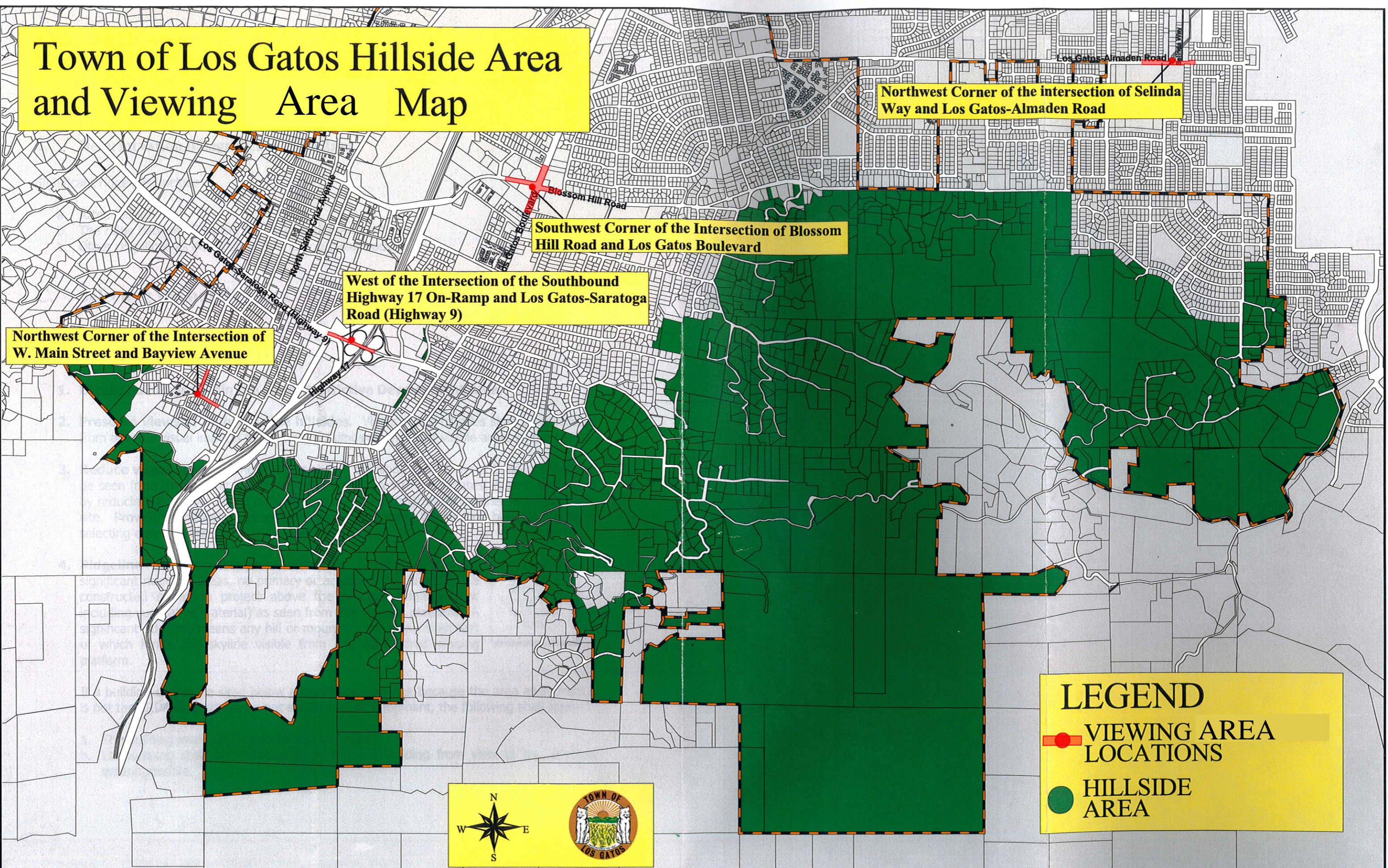
The locations of the viewing areas are shown on the map on the next page, and are as follows:

1. Blossom Hill Road/Los Gatos Boulevard
2. Los Gatos - Almaden Road/Selinda Way (across from Leigh High School)
3. Hwy 17 overcrossing/Los Gatos - Saratoga Road (Highway 9)
4. Main Street/Bayview Avenue
5. Other location(s) as deemed appropriate by the Community Development Director

Viewing area locations are intended to provide a general vicinity for the visibility analysis and photo locations. Where there are obstructions (buildings, signs, or foreground vegetation) that block a clear and unobstructed view of the site, the origination point shall be adjusted in consultation with staff to the nearest point that provides a clear and unobstructed view by moving away from the viewing area location along a public road up to 500 feet in any direction.

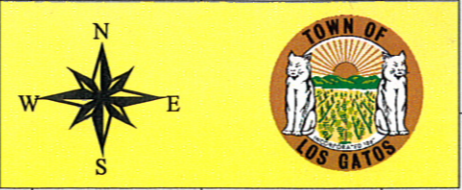


# Town of Los Gatos Hillside Area and Viewing Area Map



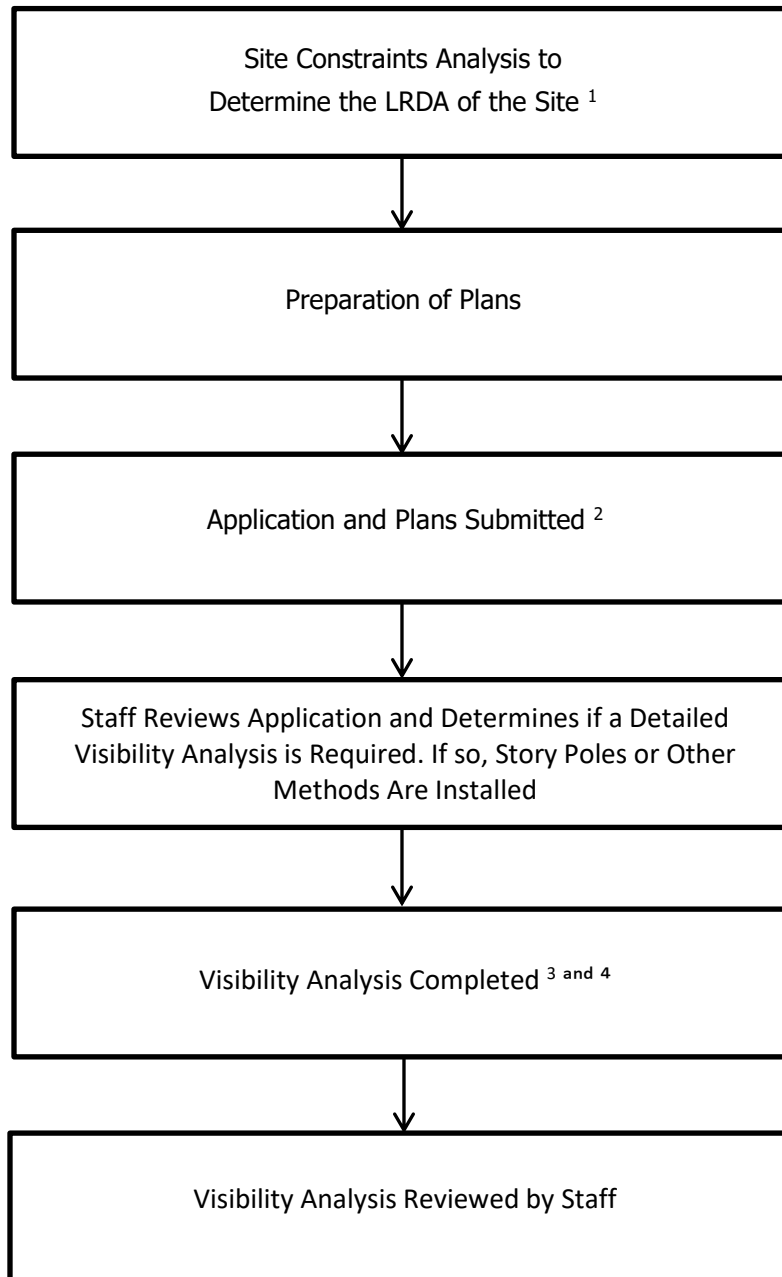
**LEGEND**

- VIEWING AREA LOCATIONS
- HILLSIDE AREA





## 2. Visibility Analysis Processing Flow Chart



<sup>1</sup> Page 12 and page 56 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168> and <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>2</sup> Page 63 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/175>

<sup>3</sup> Page 13 of the HDS&G <http://www.losgatosca.gov/DocumentCenter/View/168>

<sup>4</sup> Division 2 – Tree Protection Ordinance [https://library.municode.com/ca/los\\_gatos/codes/code\\_of\\_ordinances?nodeId=CO\\_CH29ZORE\\_ARTIINGE\\_DIV2TRPR](https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodeId=CO_CH29ZORE_ARTIINGE_DIV2TRPR)



## 2. Determination of significant ridgelines.

Significant ridgelines include:

- a. Aztec Ridge;
- b. The ridge between Blossom Hill Road and Shannon Road;
- c. Other ridgelines as determined by the approving body

## C. Selecting the building site.

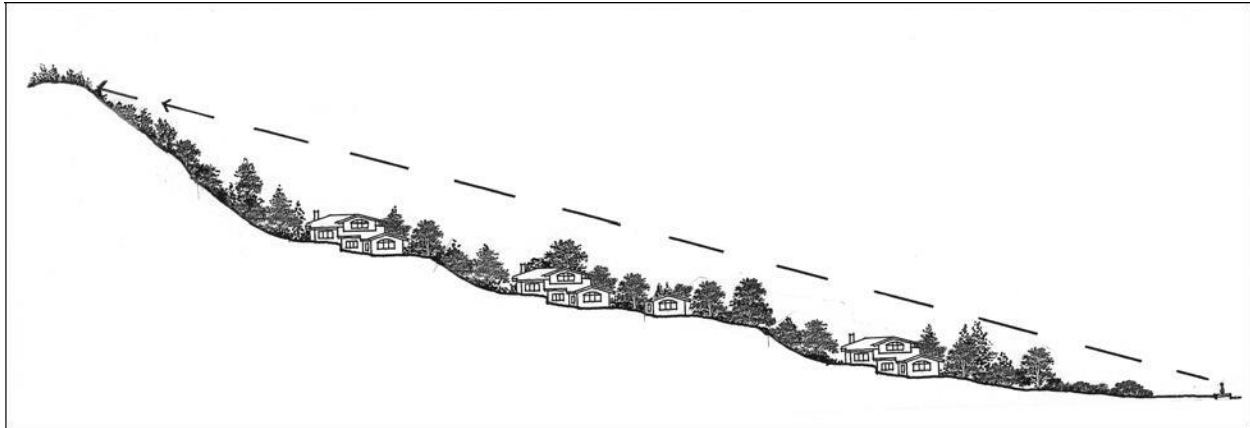
### Standards:

1. **Locate buildings within the Least Restrictive Development Area.**
2. **Preserve views of highly visible hillsides.** Views of the hillsides shall be protected from adverse visual impacts by locating buildings on the least visible areas of the LRDA.
3. **Reduce visual impact.** The visual impact of buildings or portions of buildings that can be seen from the viewing areas shall be mitigated to the greatest extent reasonable by reducing the height of the building or moving the structure to another location on the site. Providing landscape screening is not an alternative to reducing building height or selecting a less visible site.
4. **Ridgeline view protection.** Whenever possible within the significant ridgeline areas, no primary or accessory building shall be constructed so as to project above the physical ridgeline (not including vegetative material) as seen from any viewing areas.

Refer to the  
Blossom Hill  
Comprehensive  
Open Space  
Study

If a building cannot be sited below a significant ridgeline because the area away from it is not the LRDA or is otherwise not suitable for development, the following shall apply:

- a. The building shall not exceed 18 feet in height.
- b. Landscaping shall be provided to screen the building from view to the greatest extent possible.



**Houses do not project above significant ridgeline**

- 5. Preserve natural features.** Existing natural features shall be retained to the greatest extent feasible and integrated into the development project. Site conditions such as existing topography, drainage courses, rock outcroppings, trees, significant vegetation, wildlife corridors, and important views will be considered as part of the site analysis and will be used to evaluate the proposed site design.
- 6. Avoid hazardous building sites.** Building in areas with more than 30 percent slope or areas containing liquefiable soil with poor bearing capacity, slide potential, fault rupture zones and other geotechnical or fire hazards shall be avoided unless no alternative building site is available.
- 7. Protect riparian corridors.** Building sites shall be set back an appropriate distance from riparian corridors to be determined on a site by site basis. Natural drainage courses should be preserved in as close to their natural location and appearance as possible.
- 8. Protect wildlife.** Existing wildlife usage of the site and in particular any existing wildlife corridors shall be identified and avoided to the maximum extent possible.

## Guidelines:

- 1. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.
- 2. Solar orientation.** Building sites should be selected to take maximum advantage of solar access.



- 3. Impact on adjacent properties.** Building sites should be located where they will have the least impact on adjacent properties and respect the privacy, natural ventilation and light, and views of neighboring homes.
- 4. Minimize grading.** The building site should be located to minimize grading.



### III. SITE PLANNING

The intent of this section is to ensure that new development fits into the topography with minimum impacts to the site physically and visually.

Refer to the  
Town's  
Grading  
Ordinance

#### A. Grading.

A grading permit shall be obtained as required by the Town's Grading Ordinance. Vegetation removal may qualify as grading.

#### Standards:

1. The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours.

Cuts and fills in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. Grade to the minimum amount necessary to accommodate buildings and to site structures consistent with slope contours. These are maximum numbers and may be reduced by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the Hillside Development Standards and Guidelines.

**Table 1**  
**Maximum Graded Cuts and Fills**

Site Element	Cut*	Fill*
House and attached garage	8'**	3'
Accessory Building*	4'	3'
Tennis Court*	4'	3'
Pool*	4'***	3'
Driveways*	4'	3'
Other (decks, yards) *	4'	3'

\* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

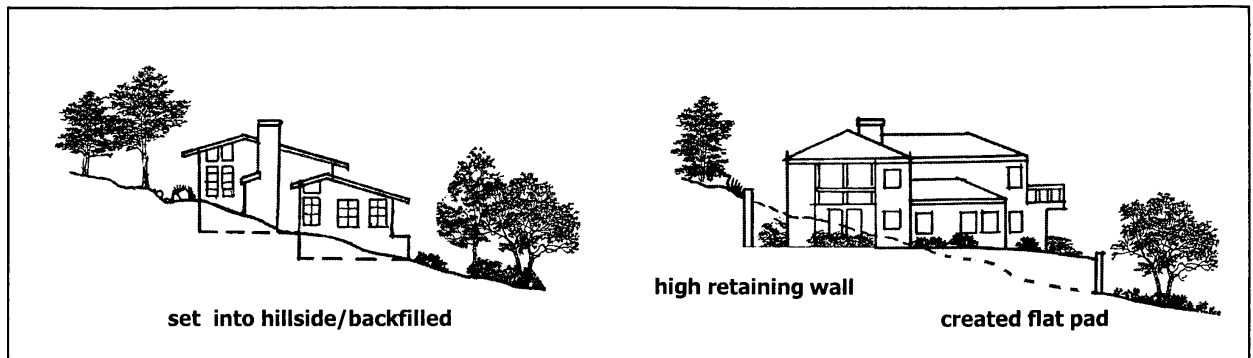
\*\* Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code.

\*\*\* Excludes excavation for pool.

2. Earthwork quantities (grading) shall be categorized as follows:
  - a. access: driveway, parking and fire turnaround, if applicable
  - b. house footprint
  - c. below grade square footage pursuant to Section 29.40.072 of the Town Code



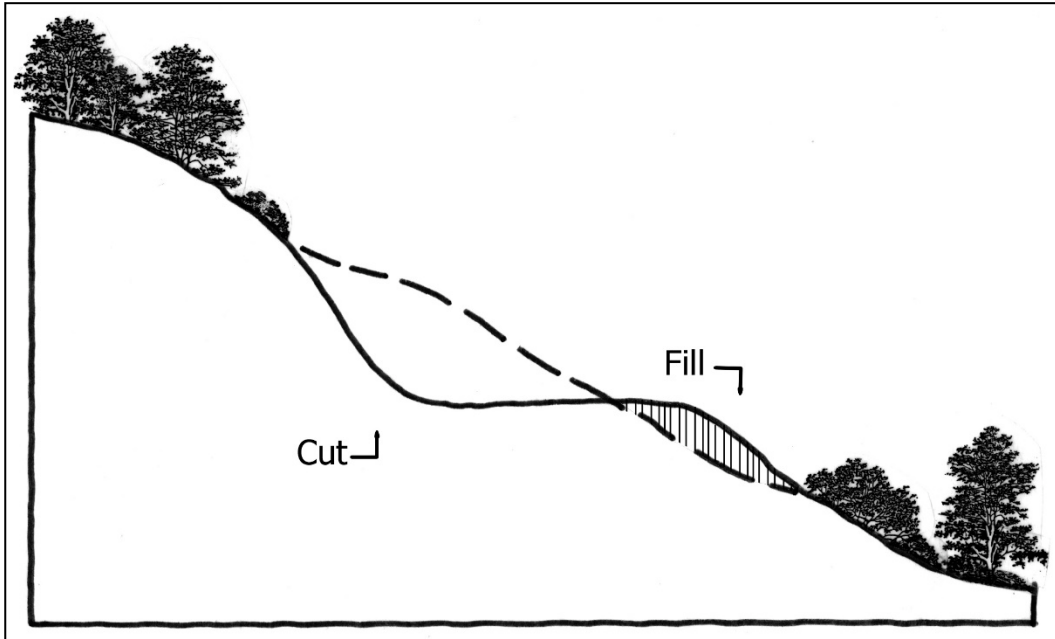
- d. other areas including landscaping, hardscape and outdoor spaces
  - e. total
3. Buildings shall be located in a manner that minimizes the need for grading and preserves natural features such as prominent knolls, ridgelines, ravines, natural drainage courses, vegetation, and wildlife habitats and corridors to the maximum extent possible.
  4. Unless specifically approved by the Town, strip grading for the purpose of clearing land of native vegetation is prohibited except for small areas adjacent to buildings, access drives, and parking areas.
  5. Graded areas shall not be larger than the area of the footprint of the house, plus that area necessary to accommodate access, guest parking, and turnaround areas.
  6. After placing development the site shall be restored as closely as possible to its original topography.



**Do this**

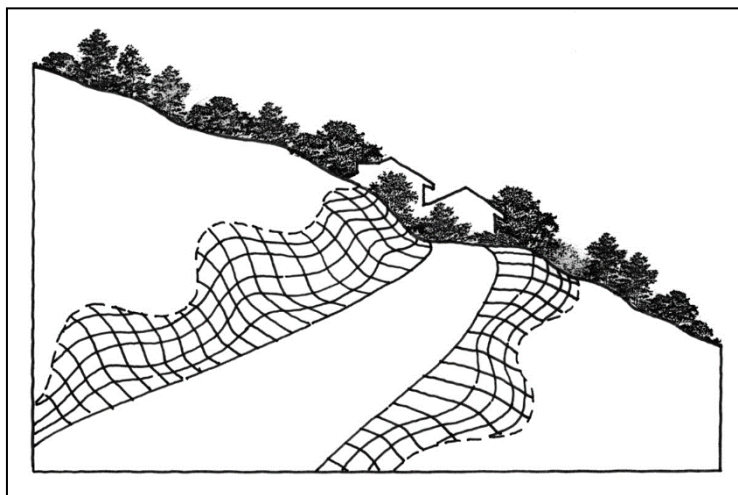
**Don't do this**

7. Contour grading techniques shall be used to provide a variety of both slope percentage and slope direction in a three-dimensional undulating pattern similar to existing, adjacent terrain. The following concepts shall be utilized:
  - a. Hard edges left by cut and fill operations shall be given a rounded appearance that closely resembles the natural contours of the land.



**Rounded edges resemble natural slope**

- b. Manufactured slopes adjacent to driveways and roadways shall be modulated by berming, regrading, and landscaping to create visually interesting and natural appearing streetscapes. However, preservation of trees and elimination of retaining walls is a priority.

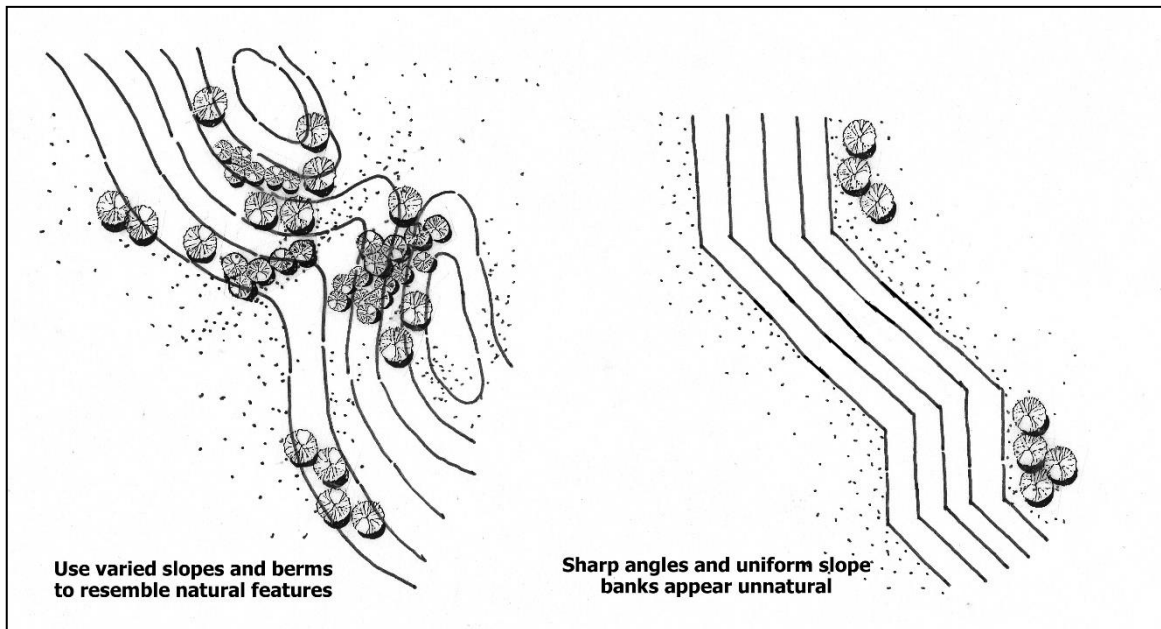


**Modulate manufactured slopes to appear natural**





- c. Where cut and fill conditions are created, slopes shall be varied rather than left at a constant angle, which creates an unnatural, engineered appearance.



**Do this**

**Don't do this**

- d. The angle of any graded slope shall be gradually transitioned to the angle of the natural terrain. Creation of new grades slopes, significantly steeper than local natural slopes should be minimized.
8. Grading plans shall include provisions for restoration of vegetation on cuts and fills. All manufactured slopes shall be planted with native, fire-resistant, low water using plantings to control erosion.
9. An erosion/sedimentation control plan shall be included with all site plans and/or grading plans. The erosion/sedimentation control plan shall provide interim (during construction) and ultimate plans for control of erosion and sedimentation or describe in detail why this is not necessary.
10. Grading shall not occur during the rainy season (October 1 to April 1) unless approved by the Town Engineer. If grading is planned to occur between October 1 and April 1, interim provisions for erosion and sedimentation control shall be in place before grading begins.



## Guidelines:

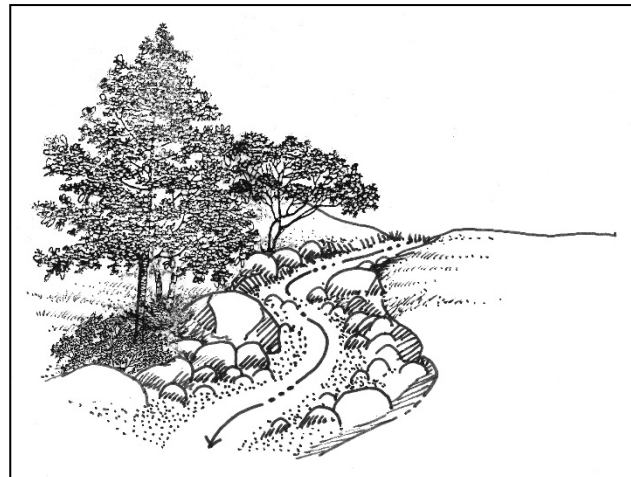
1. The creation of permanent flat pads, except for the house footprint and area needed for access, parking and turnaround, should be avoided

## B. Drainage.

### Standards:

1. Runoff shall be dispersed within the subject property to the greatest extent feasible. Runoff concentration that requires larger drainage facilities shall be avoided.
2. Upslope drainage shall not negatively impact downslope development.
3. Natural drainage courses shall be preserved with any native vegetation intact and shall be enhanced to the extent possible, and shall be incorporated as an integral part of the site design in order to preserve the natural character of the area.
4. Manmade drainage channels shall receive a naturalizing treatment such as rock and landscaping so that the structure appears as a natural part of the environment.

**Manufactured  
drainage courses  
shall simulate  
natural drainage  
courses**



### Guidelines:

1. Manmade drainage channels should be placed in the least visible locations possible.
2. Lining of natural drainage courses is discouraged.



3. Dry Stream effects (manufactured drainage courses designed to simulate natural drainage courses) that move water over the property are preferred over channeling or underground methods.

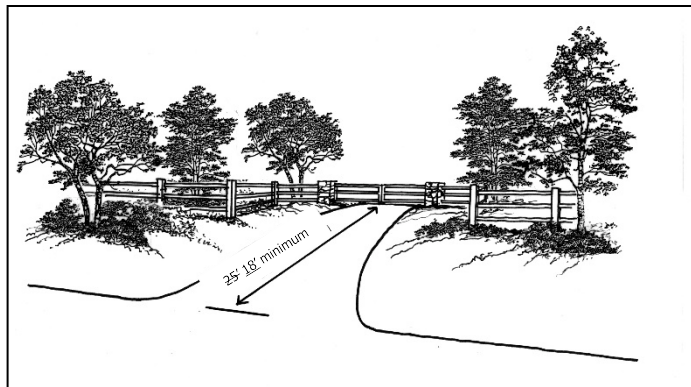
### C. Driveways and parking.

It is recommended that the Fire Department be consulted early in the design process about water supply, accessibility and the need for emergency vehicle turnarounds, turnouts, etc.

#### Standards:

See  
Chapter  
VII.B.  
Standard 2

1. Driveways shall be located so as to minimize the need for grading.
2. Driveways shall be paved in compliance with Town standards, and shall be installed prior to occupancy.
3. When a gated entrance is provided, the gates shall be set back a minimum of 18 feet from the right-of-way to allow vehicles to pull completely off the roadway while waiting for the gates to open. Gated entrances serving more than one house may be required to have a greater setback. Gates should open away from or parallel to the street.



**Entrance gates shall  
be set back at least  
18 feet from the  
street**

4. Driveways shall have an all-weather surface in compliance with Fire Department weight loading requirements (40,000 pounds).
5. The maximum slope of a driveway shall not exceed 15 percent unless it can be demonstrated that a flatter driveway cannot be constructed without excessive grading (more than 4 feet of cut or 3 feet of fill). Driveway slopes in excess of 15 percent require approval by the Town Engineer and Santa Clara County Fire Department.



## **Guidelines:**

1. Driveways serving one residence should have a 12-foot minimum width.
2. The maximum length of a driveway should be 300 feet unless the deciding body makes specific findings for deviation and places additional conditions such as turnouts and secondary accesses to reduce hazards. A turnaround area shall not have a grade that exceeds five (5) percent.
3. Driveway approaches should be located a safe distance from intersections. On adjoining properties, driveways should be spaced a minimum of 20 feet apart or located immediately adjacent to each other.
4. Shared driveways serving more than one lot are encouraged as a means of reducing grading and impervious surfaces.
5. Driveways should be located and maintained so as to ensure an adequate line of sight.

## **D. Safety.**

### **Geologic hazards.**

Potential geologic hazards, if not avoided or mitigated, can result in damage to the environment and structures and can place public safety at risk.

## **Standards:**

1. Site specific geologic engineering investigations and reports are required of qualifying projects in State of California Seismic Hazard Zones (Liquifaction and Earthquake Induced Landslide Areas) and in areas believed to be geologically hazardous as determined by the Director of Community Development and /or Town Engineer. Refer to California Geological Survey Seismic Hazard Zones Map, Los Gatos Quadrangle, dated September 23, 2002.
2. Construction shall be avoided in areas with geologic hazards (e.g., slope instability, seismic hazards, etc.) as identified in the site specific geologic investigations and reports, unless adequate mitigation design measures are proposed to achieve a low level of risk.

**Guidelines:** None.



### **Fire hazards.**

The hillsides above Los Gatos are areas of high fire hazard. House fires in the hillsides have the potential to become wildfires if not controlled quickly. A dependable, adequate water supply, automatic fire sprinklers, access for fire fighting equipment and fast response times are critical factors in gaining quick control over a structural fire. Factors that affect the speed at which a wildfire spreads include topography, available fuel, weather (wind, humidity) and availability of fire fighting resources. Lack of adequate circulation or evacuation routes can also impact public safety.

Development in the hillsides presents inherent conflicts between creating and maintaining a fire safe environment, preserving existing vegetation, and minimizing the visual impacts of new development. These conflicts can be minimized by incorporating the concept of fire defensible space into site planning and landscape design. The concept of defensible space involves reducing fuel load, designing structures and landscaping with fire safety in mind, and locating structures to minimize their exposure to wildfires.

### **Standards:**

1. Building locations shall be selected and structures designed to minimize exposure to wildfires (also see Chapter V. Section I.).
2. A landscape plan shall be provided and will be reviewed by the Town's Landscape Consultant with input from the Fire Department. The landscape plan shall create defensible space around the home, and if there is a fire ladder on the property it shall be eliminated in an environmentally sensitive manner.
3. Development shall have adequate fire access (also see Chapter III section C. and Chapter VII section b.2.).
4. A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties. If no public hydrant is available, there shall be an on-site water supply in a storage facility with an appropriate outlet valve in close proximity to an accessible hard road surface.
5. Water for fire suppression shall be available and labeled before any framing may begin.
6. Above ground water tanks shall not be located in required setback areas.



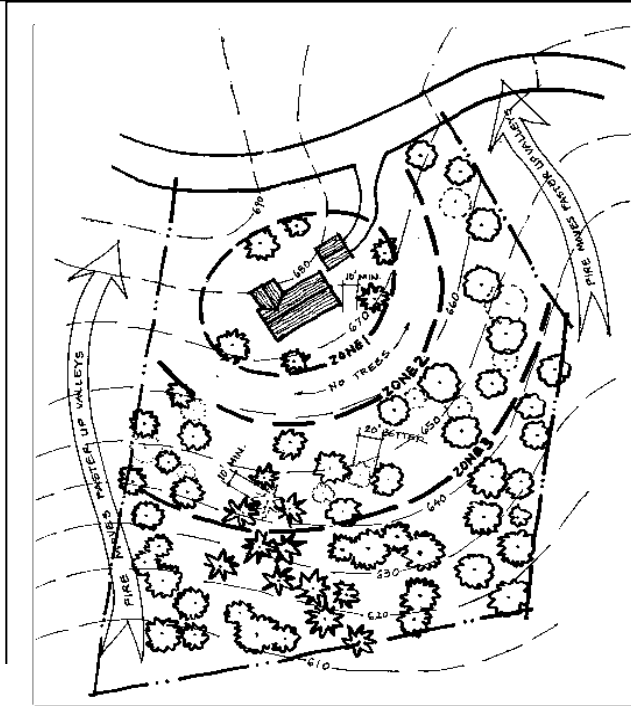
## **Guidelines:**

1. Development should avoid areas subject to severe fire danger. In order to achieve this, development should:
  - a. Be set back from the crest of a hill
  - b. Not be located at the top of a canyon
  - c. Not be located on or adjacent to slopes greater than 30%
  - d. Not be located within densely wooded areas

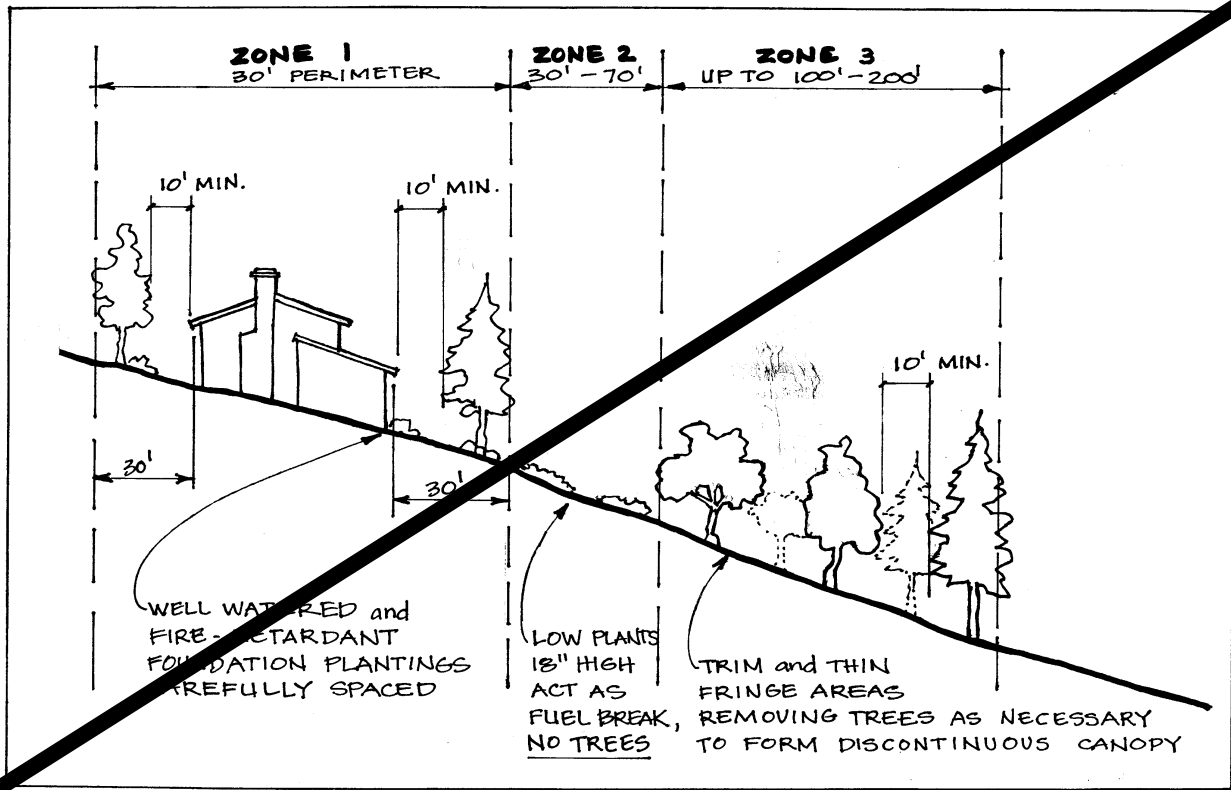
If this is not possible, measures designed to assure the highest degree of fire prevention, and fast effective means of evacuation and fire suppression shall be provided.

2. The fuel load within a defensible space should be minimized by use of selective pruning, thinning and clearing as follows:
  - Removal of flammable species and debris
  - Removal of dead, dying or hazardous trees
  - Mow dead grasses
  - Removal of dead wood from trees and shrubs
  - Thin tree crowns (maximum of 25%)
3. Discontinuous fuel sources should be created and maintained within a defensible space through use of the following techniques (see illustrations on page 27):
  - Thin vegetation to form discontinuous groupings of trees or shrubs
  - Limb trees up from the ground
  - Establish a separation between the lowest branches of a tree and any understory shrubs.
4. Landscaping within a defensible space should be designed with fire safety in mind. Landscaping in defensible space should be:
  - Fire resistant and drought tolerant
  - Predominantly low growing shrubs and groundcovers (limit shrubs to 30% coverage)
  - Limited near foundations (height and density)
5. Above ground tanks should not be located in areas of high visibility unless it can be demonstrated to the satisfaction of the decision making body that no other feasible locations are available.

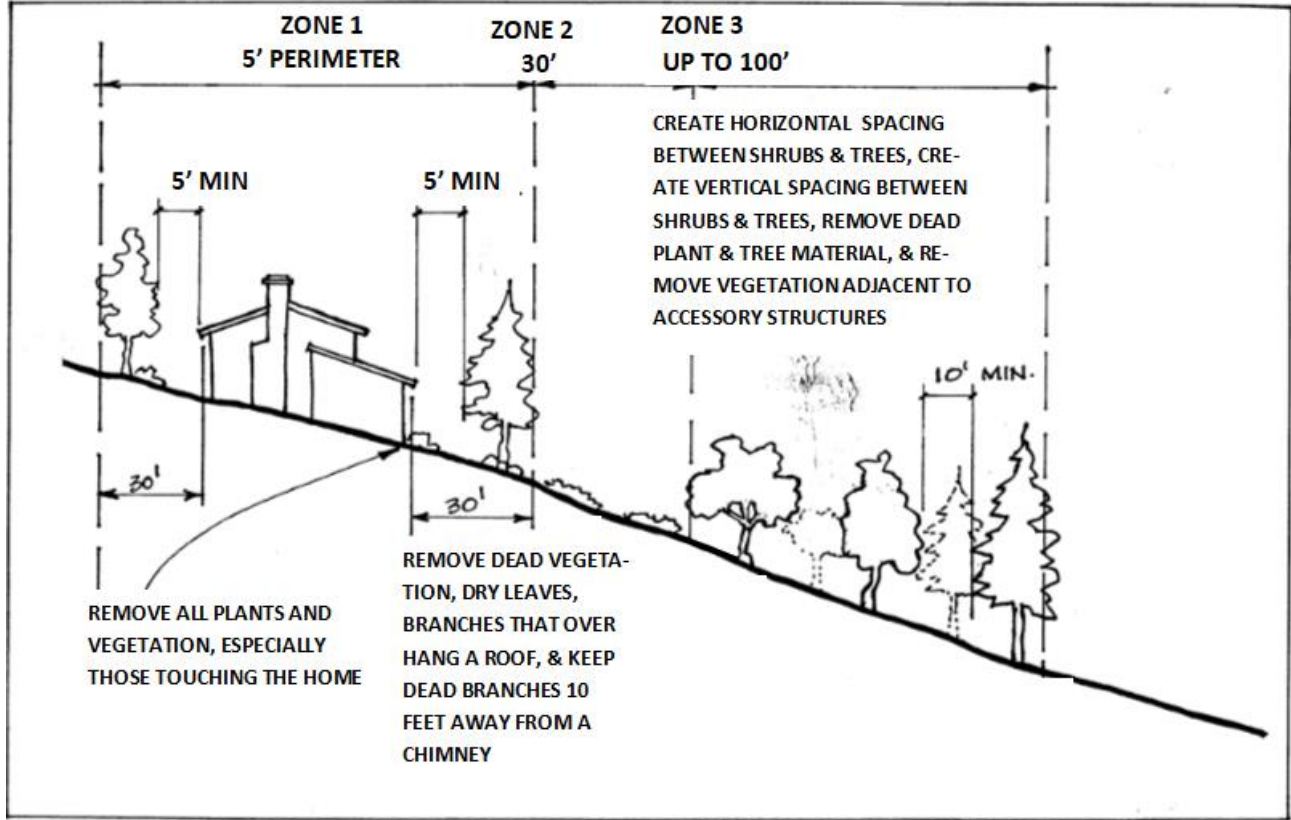
Refer to  
Appendix  
A



Defensible space should be maintained around the home



**TOWN OF LOS GATOS**  
**HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES**





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## IX. PROJECT REVIEW AND APPROVAL PROCESS

### A. Architecture and Site Approval

Architecture and site approval is required for all new construction including major additions and remodels in all areas of the Town shown on the Hillside Area Map on page 8. A subdivision or Planned Development application is required for any proposed land division.

The flow chart on page 66 outlines the steps an application for architecture and site approval will go through. The process begins with a meeting with the Community Development Department. It is highly recommended that applicants considering the design of a new home or remodel of an existing home discuss their ideas with Town staff **before** any plans are actually drawn and money and time are expended on a project that may not be entirely feasible.

An application for architecture and site approval or subdivision shall be accompanied by a written letter of justification that describes how the proposed project complies with the General Plan, Hillside Specific Plan and the Hillside Development Standards and Guidelines.

### B. Project Approval Authority

Projects may be approved by the Planning Commission, Development Review Committee (DRC), or Director of Community Development (Director) depending on a project's potential impact on surrounding properties and the overall community.

The Planning Commission is the decision making body for projects that have the greatest potential impact, while the DRC and Director make decisions on projects with less impact, as described in Subsections below.



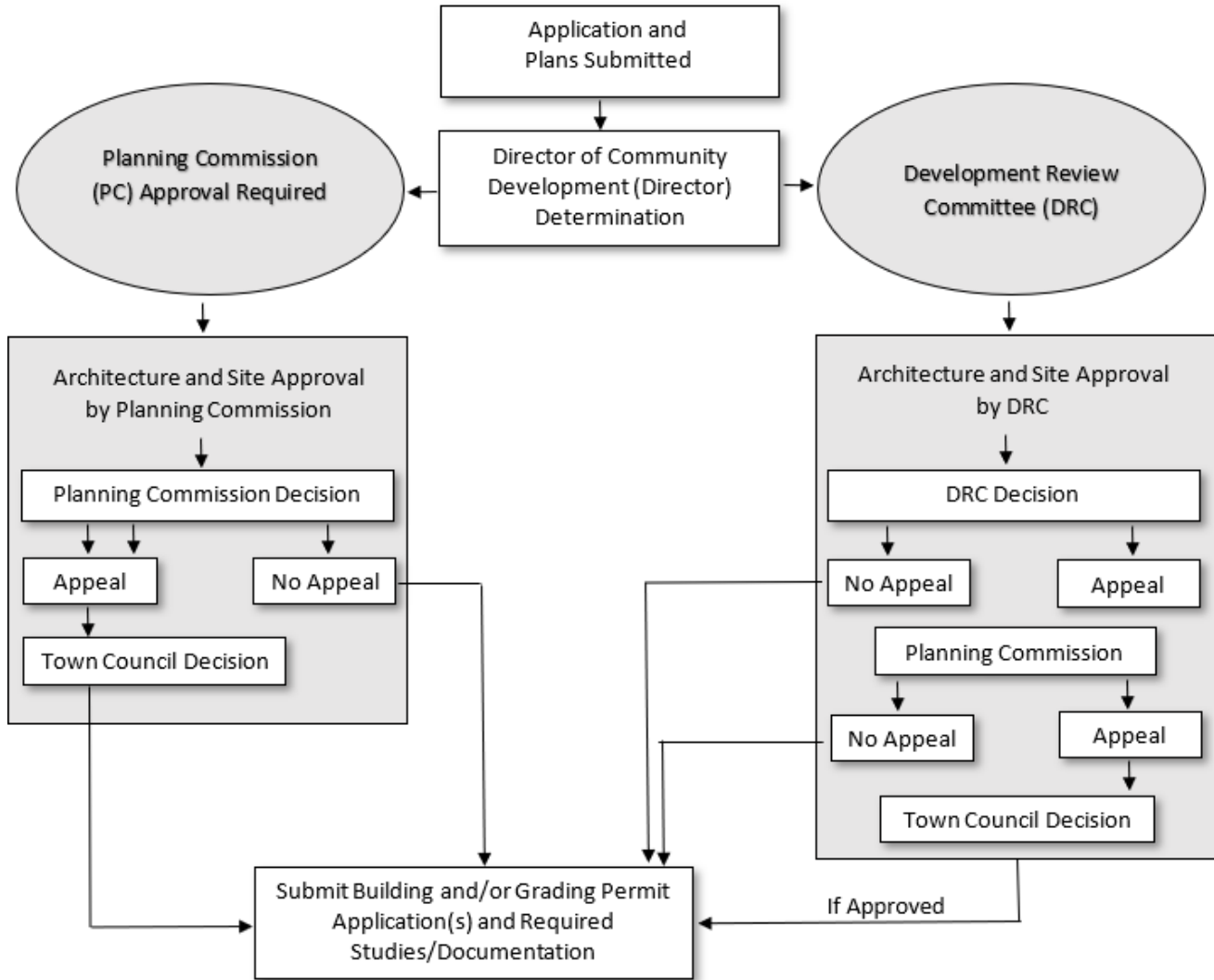
The subdivision and architecture and site approval processes are discretionary actions on the part of all decision making bodies. When reviewing projects, the decision making body may:

- (1) approve a project without imposing extra or special conditions;
- (2) approve a project and add special conditions to reduce the impact(s) of the project to an acceptable level and/or achieve compliance with these standards and guidelines; or
- (3) deny the project by stating specific reasons for its action.

The Director of Community Development may refer an application to the Planning Commission. The decisions of the Planning Commission, DRC, and Director are final unless appealed. Decisions of the Director and DRC may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the Town Council. Appeal procedures are outlined in the Town's Zoning Regulations.



## Architecture and Site Review Process





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## 1. Projects That May be Approved by the Director of Community Development

The Director has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. Accessory dwelling units pursuant to Section 29.10.320 of the Town Code.
- b. Accessory buildings that have a combined gross floor area greater than 450, but less than 600 square feet may be approved with a Minor Residential Application pursuant to Section 29.20.480 of the Town Code.
- c. Swimming pools that do not require a grading permit.

## 2. Projects That May be Approved by the Development Review Committee

The (DRC) has the authority to review and approve the following types of projects provided they comply with all development standards and guidelines:

- a. New houses that meet the allowable floor area ratio and that are not visible from any established viewing area.
- b. Accessory buildings, that have a combined gross floor area of 600 square feet or more but do not exceed 1,000 square feet in combined gross floor area.
- c. Swimming pools and game courts requiring a grading permit and/or retaining walls.
- d. Grading permits.



### 3. Projects That Require Planning Commission Approval

The Planning Commission has the authority to approve all architecture and site projects that do not fall within the authority of the DRC and any projects referred to it by the Director. The Planning Commission approves standard subdivisions and makes recommendations to the Town Council on Planned Development applications.

#### C. Application Period of Validity

An approved architecture and site application shall be valid for the period of time specified in the Town's Zoning Regulations.

#### D. Required findings

In addition to the considerations for architecture and site approval provided in the Town's Zoning Regulations, the decision making body shall also find that the proposed project meets or exceeds the objectives and requirements of the Hillside Development Standards and Guidelines and shall provide supportive evidence to justify making such findings.

#### E. Exceptions

Exceptions from the standards in this document may only be granted after carefully considering the constraints of the site. Any deviation from the standards contained in this document shall include the rationale and evidence to support the deviation. The burden of proof shall be on the applicant to show that there are compelling reasons for granting the requested deviation.

**Major exceptions** may only be granted by the Town Council or Planning Commission. Major exceptions include the following:

- a. building height
- b. maximum floor area

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**From:** David Weissman  
**Sent:** Tuesday, October 13, 2020 4:50 PM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** for Council Meeting 10/20/2020, Visibility Analysis

Dear Council Members,  
I have no additional comments for the Council, other than what I included in my letter sent to the Planning Commission for their September 23, 2020 meeting. I believe my letter is Exhibit 12 in the Commission's packet for their September meeting.

--  
Dave Weissman





**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 8

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**DATE:** October 15, 2020  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Consider an Appeal of a Planning Commission Decision Denying a Request for a Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-07-114. Architecture and Site Application S-20-012. Property Owners/Applicant/Appellant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**RECOMMENDATION:**

Consider an appeal of a Planning Commission decision denying a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) located at 14225 Walker Street.

**BACKGROUND:**

The subject parcel is approximately 1.77 acres, located within the North 40 Specific Plan area west of Los Gatos Boulevard, and is currently vacant (Attachment 1, Exhibit 1). The entire North 40 Specific Plan area is approximately 40 acres bounded by Highway 17, Highway 85, Los Gatos Boulevard, and Lark Avenue.

On June 17, 2015, the Town Council adopted the North 40 Specific Plan, providing more detailed land use and development requirements and guidance for the subject area than occurs in the General Plan. The approval of the North 40 Specific Plan also amended the zoning of the entire area to North 40 Specific Plan.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

---

BACKGROUND (continued):

On August 1, 2017, the Town Council adopted a resolution to approve the Phase I Architecture and Site application (S-13-090) and Vesting Tentative Map application (M-13-014) for the construction of a new multi-use, multi-story mixed use development, which includes residential units, a market hall, and on-site and off-site improvements on the southern 20.7 acres of the North 40 Specific Plan area.

On September 4, 2018, the Town Council adopted a resolution to approve a minor amendment to the North 40 Specific Plan to provide the opportunity for Development Agreements as an additional mechanism to achieve the desired community for the North 40 area.

The application for a modification to the existing Architecture and Site application to remove underground parking for construction of the market hall (S-20-012) was considered by the Planning Commission on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020. On September 28, 2020, the Planning Commission denied Architecture and Site application S-20-012. The record associated with the Planning Commission can be found in Attachments 1 through 16 and Attachment 21. On October 1, 2020, the decision of the Planning Commission was appealed to the Town Council by the applicant, Michael Keaney with Summerhill Homes (Attachment 17).

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case by November 23, 2020. The Council must at least open the public hearing for the item, and it may continue the matter to a date certain if the Council does not complete its work on the item.

Pursuant to Town Code Section 29.10.020, any person or persons or entity or entities who can demonstrate that their property will be injured by the decision may appeal to the Town Council any decision of the Planning Commission regarding non-residential and mixed-use projects. Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission or wherein its decision is not based on substantial evidence in the record as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

Architecture and Site application S-13-090 included approval of a multi-story, mixed-use Market Hall with 50 affordable apartments for seniors, 20,700 square feet of retail space, a 2,722-square foot community room, and a four-story parking garage with 303 parking spaces.

The parking garage for the Market Hall consisted of three above grade levels and one below grade level. A total of 303 parking spaces were approved, resulting in an excess of 179 parking spaces over the number required by the North 40 Specific Plan development regulations (Attachment 1, Exhibit 5). The parking requirement is consistent with current commercial parking requirements for the downtown at one parking space per 300 square feet of gross floor area. 129 of the proposed 303 parking spaces were to be located on the below grade level. The applicant is proposing to remove the below grade level and modify the remaining three above grade levels resulting in a total of 176 parking spaces proposed, meeting and exceeding by 52 parking spaces the number required by the North 40 Specific Plan regulations for the Market Hall building.

B. Planning Commission

On August 26, 2020, the Planning Commission considered the application and continued the matter to September 9, 2020 to allow Commissioners to complete a site visit and to allow for additional public comments to be provided. On September 9, 2020, the Commission considered the application and continued the matter to September 23, 2020 to allow the Commissioners and the public additional time to review the project's compliance with the Town's objective standards pursuant to the Housing Accountability Act (HAA).

The issue of the applicability of the HAA and other housing laws became one of the discussion considerations by the Planning Commission. Town Attorney Rob Schultz advised the Commission that because the entirety of the application involves a housing development, housing laws did apply to a modification of the application. As such, the HAA requires housing developments to be approved if they meet all objective standards (see Attachment 8, Exhibit 13).

On September 23, 2020 the Commission continued the matter to a special meeting on September 28, 2020 due to technical errors with the teleconference meeting. On September 28, 2020 the Commission received the staff report, opened the public hearing, and considered testimony from the applicant and the public. After asking questions, the Planning Commission closed the public hearing and discussed the project. After completing its

DISCUSSION (continued):

deliberations, the Commission denied the application (4-2-1, Hanssen and Janoff opposed and Burch recused). Attachments 4, 7, 11, and 16 contain the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on October 1, 2020 by the applicant, Michael Keaney with Summerhill Homes (Attachment 17). The appellant provided the reasons for the appeal to the Town Council, wherein the Planning Commission's decision was an error or abuse of discretion and was not supported by substantial evidence in the record, as noted below (verbatim) followed by staff analysis in *italic font*.

In addition, the applicant provided a supplemental letter, as well as the applicant's attorney, concurring with the Town Attorney's analysis of the applicability of State housing laws (see Attachments 22 and 23).

The denial of the requested modification by the Planning Commission was in error and was an abuse of discretion, and their decision is not supported by substantial evidence in the record. The Planning Commission was properly advised by the City Attorney and by staff but ignored this advice in denying the requested modification. They were advised that the application had to be evaluated in accordance with objective standards of review, the definition of which was read to them, and that their discretion was circumscribed by State laws, including the Housing Accountability Act and the Housing Element law. They were further advised that the modification complied with all objective parking and other standards of the Town. The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by a Commissioner. It was not based on the applicable City Zoning Code or any other application objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record. Additional reasons for denial were stated that are irrelevant to the scope of permissible analysis by the Planning Commission. Thus, the Planning Commission erred, abused its discretion, and failed to base its decision upon substantial evidence in the record. Its denial was an arbitrary and capricious act, lacking in legal or factual support and should be overturned by the City Council.

*As detailed in the Planning Commission minutes for the September 28, 2020 meeting (Attachment 16), the motion to deny the application was based on the analysis of the parking requirements that had been created by a Commissioner and shared at the meeting (see Attachment 21). The analysis detailed that the modified project would not be in compliance with the total number of parking spaces required for the Transition*

DISCUSSION (continued):

*District by the North 40 Specific Plan development regulations consistent with commercial parking requirements for the downtown at the time the original Architecture and Site application (S-13-090) was approved on August 1, 2017.*

*Based on staff's review of the information created by a Commissioner and shared at the September 28<sup>th</sup> Planning Commission meeting, staff does not concur with the findings of the analysis. Since the approval of the original Architecture and Site application (S-13-090) by the Council on August 1, 2017, Ordinance 2272 was adopted by the Council on April 3, 2018 to amend Section 29.10.150 of the Town Code to revise the required parking requirements for restaurants. Section 2.5.8 (a) of the North 40 Specific Plan states that the number of off-street parking spaces required for a non-residential use shall be consistent with the parking required in the downtown as required within Division 4 of the Zoning Ordinance. Section 29.10.150 (b) (1) of Division 4 of the Zoning Ordinance requires one parking space for each 300 square feet of gross floor area for retail and commercial stores, shops, restaurants, bars, taverns, and nightclubs.*

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. Notice was also published in the Los Gatos Weekly. Given the large amount of public interest, social media messages also welcomed the public to participate in this hearing. Public comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m., October 15, 2020 are included in Attachments 24 and 25.

CONCLUSION:

A. Recommendation

Staff originally recommended approval of the application to the Planning Commission because the proposal is consistent with the objective standards of the North 40 Specific Plan. As Secretary to the Commission, staff would typically recommend that the Town Council uphold the decision of the Planning Commission and adopt a resolution denying the appeal and denying the application (Attachment 18). However, given the applicability of the HAA and Housing Element Law requirements to rely on objective standards and by-right findings respectively, staff recommends that the Town Council take the following action:

Adopt a resolution granting the appeal and approving the application with the required Findings and Considerations (Attachment 20, Exhibit A) and recommended Conditions of Approval (Attachment 20, Exhibit B), determining that the Planning Commission's

CONCLUSION (continued):

decision should be reversed or modified, and finding one or more of the following in accordance with Town Code Section 29.20.275:

- a. There was an error or abuse of discretion by the Planning Commission; or
- b. The Planning Commission's decision is not supported by substantial evidence in the record.

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution denying the appeal and denying the application (Attachment 18).
2. Adopt a resolution to grant the appeal and remand the application back to the Planning Commission for its review and decision (Attachment 19) particularly if the basis for granting the appeal is, in whole or in part, due to information not presented to or considered by the Planning Commission, and finding one or more of the following in accordance with Town Code Section 29.20.275:
  - a. There was an error or abuse of discretion by the Planning Commission; or
  - b. The Planning Commission's decision is not supported by substantial evidence in the record.
3. Continue the application to a date certain with specific direction.

COORDINATION:

The Community Development Department coordinated with the Town Attorney, Parks and Public Works Department, and the Santa Clara County Fire Department in the review of the proposed project.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required for the proposed removal of the underground parking.

Attachments:

1. August 26, 2020 Planning Commission Staff Report, with Exhibits 1-7
2. August 26, 2020 Planning Commission Addendum, with Exhibit 8
3. August 26, 2020 Planning Commission Desk Item, with Exhibit 9

Attachments (continued):

4. August 26, 2020 Planning Commission Verbatim Minutes
5. September 9, 2020 Planning Commission Staff Report, with Exhibit 10
6. September 9, 2020 Planning Commission Desk Item, with Exhibit 11
7. September 9, 2020 Planning Commission Verbatim Minutes
8. September 23, 2020 Planning Commission Staff Report, with Exhibits 12-14
9. September 23, 2020 Planning Commission Addendum, with Exhibits 15-16
10. September 23, 2020 Planning Commission Desk Item, with Exhibit 17
11. September 23, 2020 Planning Commission Verbatim Minutes
12. September 28, 2020 Planning Commission Staff Report, with Exhibits 12-14
13. September 28, 2020 Planning Commission Addendum, with Exhibits 15-16
14. September 28, 2020 Planning Commission Desk Item, with Exhibit 17
15. September 28, 2020 Planning Commission Desk Item B, with Exhibit 18
16. September 28, 2020 Planning Commission Verbatim Minutes
17. Appeal of Planning Commission decision, received October 1, 2020
18. Draft Resolution to Deny Appeal and Deny Project
19. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
20. Draft Resolution to Grant Appeal and Approve Project, with Exhibits A and B
21. Parking Summary Table Provided by Commissioner Hudes at the September 28, 2020 Planning Commission meeting
22. Letter from the Applicant, received October 14, 2020
23. Letter from Applicant's Attorney Dated October 8, 2020
24. Letter from the Planning Commission Chair and Vice Chair, received October 13, 2020
25. Public Comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m. October 15, 2020



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 08/26/2020

ITEM NO: 3

**DATE:** August 20, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**RECOMMENDATION:**

Consider approval of a request for a modification to an existing Architecture and Site Application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area.

**PROJECT DATA:**

General Plan Designation: North 40 Specific Plan  
Zoning Designation: North 40 Specific Plan  
Applicable Plans & Standards: General Plan; North 40 Specific Plan  
Parcel Size: 1.77 acres  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Agriculture, Commercial, and Residential	North 40 Specific Plan (N40 SP)	N40 SP
East	Commercial and Residential	Mixed Use Commercial	CH and R-1:8
South	Commercial and Residential	N40 SP	N40 SP
West	Commercial and Residential	N40 SP	N40 SP

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

Reviewed by: Planning Manager and Community Development Director



PAGE 2 OF 6

SUBJECT: 14225 Walker Street/S-20-012

DATE: August 20, 2020

CEQA:

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required.

FINDINGS:

- That the project is consistent with the North 40 Specific Plan.

CONSIDERATIONS:

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

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

On June 17, 2015, the Town Council adopted the North 40 Specific Plan, providing more detailed land use and development guidance for the area than occurs in the General Plan. The approval of the North 40 Specific Plan also amended the zoning of the property to North 40 Specific Plan.

On August 1, 2017, the Town Council adopted a resolution to approve the Phase I Architecture and Site application S-13-090 and Vesting Tentative Map application M-13-014 for the construction of a new multi-use, multi-story mixed use development, which includes residential units, a market hall, and on-site and off-site improvements on 20.7 acres of the North 40 Specific Plan Area.

On September 4, 2018, the Town Council adopted a resolution to approve amendments to the North 40 Specific Plan.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject parcel is approximately 1.77 acres, located within the North 40 Specific Plan Area east of Los Gatos Boulevard, and is currently vacant (Exhibit 1).

PROJECT DESCRIPTION (continued):

B. Project Summary

Architecture and Site application S-13-090 included approval of a multi-story, mixed use building (Market Hall) with 50 affordable apartments for seniors, 20,700 square feet of retail space, a 2,722-square foot community room, and a four-story parking garage with 303 parking spaces. The approved parking garage consisted of three above grade levels and one below grade level. The applicant is proposing to remove the below grade level, eliminating 127 parking spaces.

C. Zoning Compliance

The multi-story, mixed use building (Market Hall) is a permitted use within the Transition District in the North 40 Specific Plan.

DISCUSSION:

A. Architecture and Site Analysis

Architecture and Site application S-13-090 included approval of a multi-story, mixed use building with 50 affordable apartments for seniors, 20,700 square feet of retail space, a 2,722-square foot community room, and a four-story parking garage with 303 parking spaces. The parking garage consisted of three above grade levels and one below grade level. The applicant is proposing to remove the below grade level, eliminating 127 parking spaces. No exterior modifications to the existing Market Hall building are proposed with the modification as detailed in Sheets A7.0 through A10.0 of Exhibit 6.

B. Parking

Architecture and Site application S-13-090 included approval of a four-story garage with three above grade levels and one below grade level. A total of 303 parking spaces were proposed, with 129 parking spaces in the below grade level. Based on the proposed uses within the Market Hall, the North 40 Specific Plan development regulations require 124 parking spaces. The approved application provided 179 parking spaces in excess of the requirements contained in the North 40 Specific Plan (Attachment 4). With the elimination of the below grade level, the applicant is proposing to modify the remaining three, above grade levels, resulting in a total of 176 parking spaces, 52 parking spaces in excess of the requirements for the Market Hall building (Attachment 5). Sheet A.11 of Attachment 6 details the required parking for the Transition District. With the proposed modification, the proposal would result in 45 parking spaces in excess of the requirements for the proposed uses in the Transition District.

DISCUSSION (continued):

<b>Parking</b>			
<b>Approved Number of Parking Spaces</b>		<b>Proposed Number of Parking Spaces</b>	
Level 0	129	Level 0	N/A
Level 1	63	Level 1	59
Level 2	69	Level 2	70
Level 3	42	Level 3	47
<b>Total</b>	<b>303</b>	<b>Total</b>	<b>176</b>
Required Number of Parking Spaces	124	Required Number of Parking Spaces	124

C. Grading

By removing the below grade level of the parking structure, the applicant states that the project will reduce excavation impacts related to the off hauling of soil, as well as reduce the construction time required to construct the below grade parking level (Attachment 5). In addition, the applicant states that by reducing the number of excess parking spaces, it will limit impacts related to automobile use and encourage the utilization of public transit, bikes, and other environmentally sustainable transportation methods for accessing the Market Hall.

D. CEQA Determination

An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants located within 300 feet of the subject property. Public comments received by 11:00 a.m., Friday, August 21, 2020 are included as Exhibit 7.

CONCLUSION:

A. Summary

The applicant is requesting approval of an Architecture and Site application to modify Architecture and Site application S-13-090 for parking requirements for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area.

CONCLUSION (continued):

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:

1. Make the finding that no further environmental analysis is required (Exhibit 2);
2. Make the finding that the project complies with the North 40 Specific Plan (Exhibit 2);
3. Make the considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
4. Approve Architecture and Site Application S-20-012 with the conditions contained in Exhibit 3 and the development plans in Exhibit 6.

C. Alternatives

Alternatively, the Commission can:

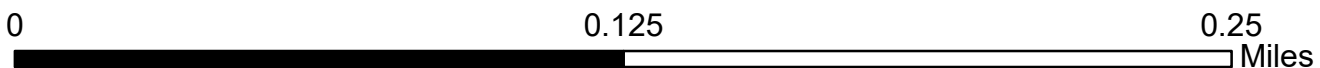
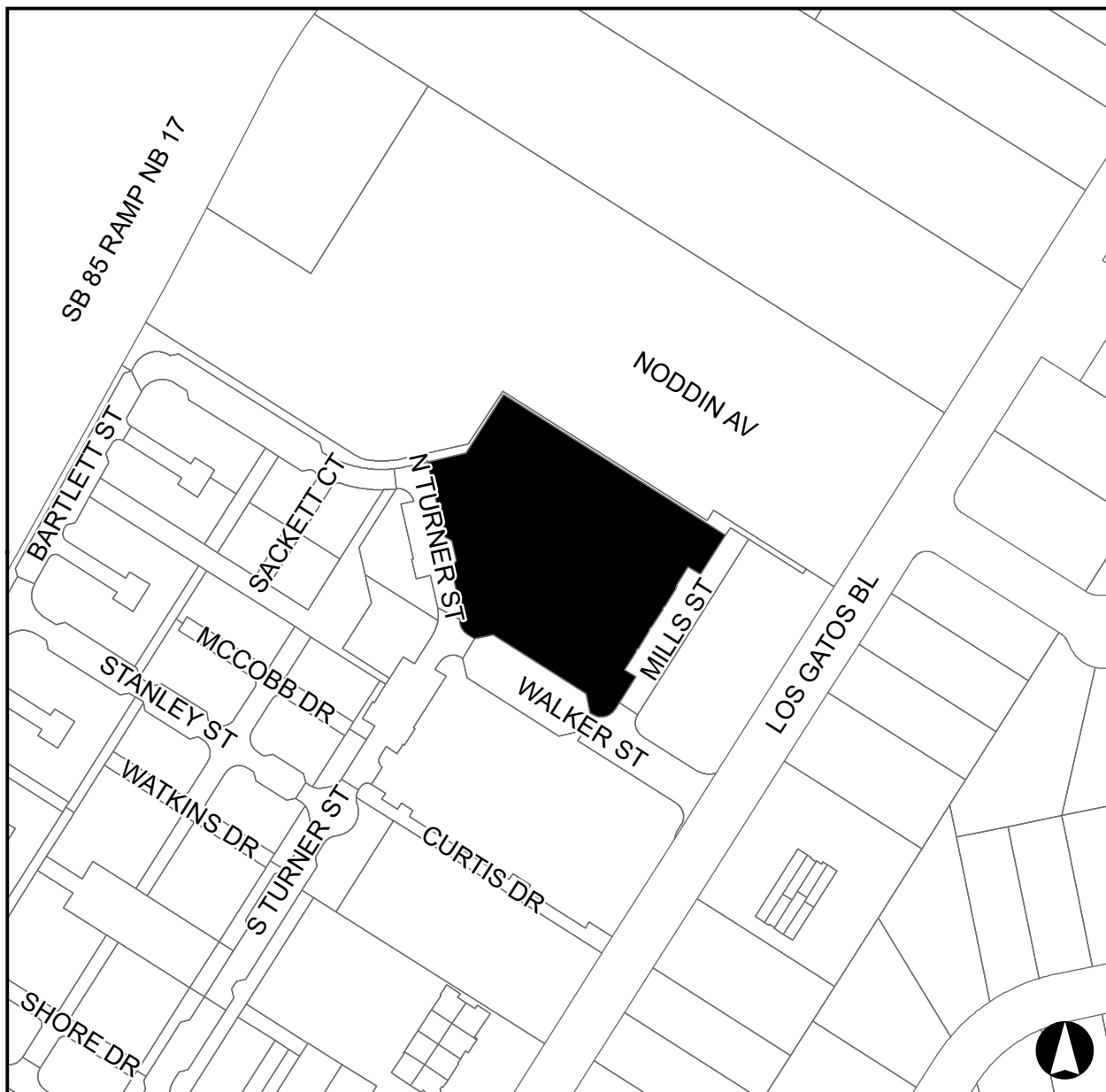
1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

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# 14225 Walker Street



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**PLANNING COMMISSION – August 26, 2020**  
**REQUIRED FINDINGS & CONSIDERATIONS FOR:**

**14225 Walker Street**  
**Architecture and Site Application S-20-012**

**Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017**

**PROPERTY OWNER/APPLICANT: Summerhill N40, LLC**

**FINDINGS**

**Required findings for CEQA:**

- An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required.

**Compliance with the North 40 Specific Plan:**

- The project is in compliance with the North 40 Specific Plan.

**CONSIDERATIONS:**

**Considerations in review of Architecture & Site applications:**

- As required by Section 29.20.150 of the Town Code, the considerations in review of an Architecture and Site application were all made in reviewing this project.



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**PLANNING COMMISSION – August 26, 2020**  
**CONDITIONS OF APPROVAL**

**14225 Walker Street**  
**Architecture and Site Application S-20-012**

**Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area.**

**APN 424-56-017**

**PROPERTY OWNER/APPLICANT: Summerhill N40, LLC**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC or the Planning Commission depending on the scope of the changes.
2. EXPIRATION: The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. OUTDOOR LIGHTING: Outdoor lighting shall comply with Town Code and Building Code regulations.
4. OPEN SPACE: The required open space shall be maintained in accordance with the requirements of the North 40 Specific Plan.
5. TANDEM GARAGES: Tandem garages are permitted for the required parking within the residential units. Tandem garages shall maintain a minimum interior clearance of 11 feet by 38 feet.
6. NOISE: The applicant shall comply with all recommendations provided by Charles M. Salter within the report dated January 20, 2016. The letter and/or recommendations shall be printed on the building permit plan set for all affected buildings.
7. PARKING GARAGE GATE(S): Prior to issuance of a building permit for the multi-story parking garage, the applicant shall retain a parking consultant and coordinate with the Los Gatos Monte Sereno Police Department regarding number and location of gated access points to the parking garage.
8. MITIGATION MONITORING AND REPORTING PLAN: The applicant shall comply with all relevant mitigation measures included in the adopted mitigation monitoring and reporting plan prepared with the certified EIR.
9. GENERAL: All existing trees shown on the plan and trees required to remain or to be planted are specific subjects of approval of this plan, and must remain on the site.

EXHIBIT 3

10. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval and may be secured to the satisfaction of the Town Attorney.
11. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building plans detailing how the Conditions of Approval will be addressed.

*Building Division*

12. PERMITS REQUIRED: A separate Building Permit shall be required for each new commercial building and a separate Building Permit will be required for the residential portion.
13. APPLICABLE CODES: The current codes, as amended and adopted by the Town of Los Gatos as of January 1, 2017, are the 2016 California Building Standards Code, California Code of Regulations Title 24, Parts 1-12.
14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. BUILDING AND SUITE NUMBERS: Submit requests for new building addresses to the Building Division prior to submitting for the building permit application process.
16. SIZE OF PLANS: Submit four sets of construction plans, minimum size 24" x 36", maximum size 30" x 42".
17. AIR QUALITY: To limit the project's construction-related dust and criteria pollutant emissions, the following the Bay Area Air Quality Management District (BAAQMD)-recommended basic construction measures shall be included in the project's grading plan, building plans, and contract specifications:
  - a. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes. Clear signage shall be provided for construction workers at all access points.
  - b. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. All non-road diesel construction equipment shall at a minimum meet Tier 3 emission standards listed in the Code of Federal Regulations Title 40, Part 89, Subpart B, §89.112.
  - c. Developer shall designate an on-site field supervisor to provide written notification of construction schedule to adjacent residential property owners and tenants at least one week prior to commencement of demolition and one week prior to commencement of grading with a request that all windows remain closed during demolition, site grading, excavation, and building construction activities in order to minimize exposure to NOx and PM10. The on-site field supervisor shall monitor construction emission levels within five feet of the property line of the adjacent residences for NOx and PM10 using the appropriate air quality and/or particulate monitor.

18. SOILS REPORT: A Soils Report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with the Building Permit Application. This report shall be prepared by a licensed Civil Engineer specializing in soils mechanics.
19. SHORING: Shoring plans and calculations will be required for all excavations which exceed five (5) feet in depth or which remove lateral support from any existing building, adjacent property, or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to the Cal/OSHA regulations.
20. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project Building Inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the Soils Report, and that the building pad elevations and on-site retaining wall locations and elevations have been prepared according to the approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered Civil Engineer for the following items:
  - a. Building pad elevation
  - b. Finish floor elevation
  - c. Foundation corner locations
  - d. Retaining wall(s) locations and elevations
21. TITLE 24 ENERGY COMPLIANCE: All required California Title 24 Energy Compliance Forms must be blue-lined (sticky-backed), i.e. directly printed, onto a plan sheet.
22. SITE ACCESSIBILITY: At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones and public streets or sidewalks to the accessible building entrance that they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public. At least one accessible route shall connect all accessible buildings, facilities, elements and spaces that are on the same site.
23. ACCESSIBLE PARKING: The parking lots, as well as the parking structure, where parking is provided for the public as clients, guests or employees, shall provide handicap accessible parking. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.
24. BACKWATER VALVE: The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12 inches above the elevation of the next upstream manhole.
25. HAZARDOUS FIRE ZONE: All projects in the Town of Los Gatos require Class A roof assemblies.
26. SPECIAL INSPECTIONS: When a special inspection is required by CBC Section 1704, the Architect or Engineer of Record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the Building Permit. The Town

Special Inspection form must be completely filled-out and signed by all requested parties prior to permit issuance. Special Inspection forms are available from the Building Division Service Counter or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building).

27. BLUE PRINT FOR A CLEAN BAY SHEET: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program Sheet (page size same as submitted drawings) shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at ARC Blue Print for a fee or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building).
28. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development – Planning Division: (408) 354-6874
  - b. Engineering/Parks & Public Works Department: (408) 399-5771
  - c. Santa Clara County Fire Department: (408) 378-4010
  - d. West Valley Sanitation District: (408) 378-2407
  - e. Santa Clara County Environmental Health Department: (408) 918-3479
  - f. Bay Area Air Quality Management District
  - g. Local School District: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

*Engineering Division*

29. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
30. PRIOR APPROVALS: All conditions per prior approvals (including Resolution 2017-045, etc.) shall be deemed in full force and affect for this approval.
31. DESIGN CHANGES: Any proposed changes to the approved plans shall be subject to the approval of the Town prior to the commencement of any and all altered work. The Owner, Applicant and/or Developer's project engineer shall notify, in writing, the Town Engineer at least seventy-two (72) hours in advance of all the proposed changes. Any approved changes shall be incorporated into the final "as-built" plans.
32. PLANS AND STUDIES: All required plans and studies shall be prepared by a Registered Professional Engineer in the State of California and submitted to the Town Engineer for review and approval. Additionally, any studies imposed by the Planning Commission or Town Council shall be funded by the Owner, Applicant and/or Developer.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

33. REQUIRED FIRE DEPARTMENT ACCESS: Compliance with the following is required; CFC Sec. 503, 504, 506, 509 and Santa Clara County Fire Department Standard Detail and Specification A-1. Minimum required roadway width is 20 feet. Note specifically the requirements for a minimum 26-foot wide roadway serving buildings more than 30 feet in

height from the lowest level of Fire Department Access. No parking is allowed within these minimum required widths. Minimum vertical clearance is 13'6". REVISION 11/18/2015 Plans provided to this office show access as required.

34. FIRE SPRINKLERS REQUIRED: System requirements will vary depending upon the occupancy classification and projected use of each structure. It appears that the largest single structure will be a commercial multistory structure of 18,000 square feet. Applicants are advised to consult with the San Jose Water Company to determine what existing and proposed infrastructure will be required to meet the anticipated demand. CFC Chapter 9 and CRC Section 313 as adopted and amended by LGTC.
35. WATER SUPPLY REQUIREMENTS: Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7
36. PUBLIC FIRE HYDRANT(S) REQUIRED: Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be determined by the currently adopted edition of the California Fire Code, with a minimum single hydrant flow of 1,500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Section 507, and Appendix B, Table B 105.1 and Appendix C.
37. HOSE VALVES/STANDPIPES REQUIRED: Hose valves/standpipes shall be installed as per the 2010 CFC Section 905, or where emergency access has been deemed minimal, shall be equipped with standpipes designed per NFPA Standard #14 and be equipped with 2-1/2" inch hose valves, located within the stair enclosure(s). Note specifically, within parking structure(s) at stairwells and on any proposed podium within certain courtyard areas.
38. FIRE APPARATUS (LADDER TRUCK) ACCESS ROADS REQUIRED: Provide access roadways with a paved all weather surface and a minimum unobstructed width of a minimum 26 feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of 60 feet outside and 31 feet inside, a maximum slope of 10 percent and vehicle loading of 75,000 pounds. CFC Section 503 and SCCFC SD&S A-1.
39. PARKING ALONG ROADWAYS: The required width of fire access roadways shall not be obstructed in any manner and, parking shall not be allowed along roadways less than 28 feet in width. Parking may be permitted along one side of roadways 28-35 feet in width. For roadways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured curb face to curb face, with parking space based on an 8-foot width. CFC Section 503.
40. GROUND LADDER ACCESS: Ground-ladder rescue from second and third floor sleeping rooms shall be made possible for fire department operations. With the climbing angle of

seventy-five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Section 503 and 1029 NFPA 1932 Section 5.1.8. through 5.1.9.2.

41. REQUIRED BUILDING ACCESS: Exterior doors and openings required by this code or the International Building Code shall be maintained readily accessible for emergency access by the fire department. An approved access walkway leading from fire apparatus access roads to exterior openings shall be provided when required by the fire code official. CFC Section 504.
42. KEY BOXES WHERE REQUIRED: Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for lifesaving or firefighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official. Locks. An approved lock shall be installed on gates or similar barriers when required by the fire code official. Key box maintenance. The operator of the building shall immediately notify the fire code official and provide the new key when a lock is changed or rekeyed. The key to such lock shall be secured in the key box CFC Section 506.
43. TIMING OF INSTALLATION: When fire apparatus roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternating methods of protection are provided. Temporary street signs shall be installed at each intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Section 501.
44. EMERGENCY GATE/ACCESS GATE REQUIREMENTS: Gate installations shall conform with Fire Department Standard Details and Specification G-1 and when open shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be fire department approved prior to installation. Gates across the emergency access roadways shall be equipped with an approved access device. If the gates are operated electronically, an approved Knox key switch shall be installed, if they are operated manually, then an approved Knox padlock shall be installed. Gates providing access from a road to a driveway or other roadway shall be at least 30 feet from the road being exited. CFC Section 503 and 506.
45. CONSTRUCTION SITE FIRE SAFETY: All construction sites must comply with applicable provisions of the CFC Chapter 14 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. Plan pages specifically dedicated to safety plans, including proposed temporary access and water supply for each phase will be required CFC Chapter 14.
46. PREMISES IDENTIFICATION: Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background CFC Section 505.

Project Description

Market Hall is a mixed-use building located within Phase 1 of the North 40 Specific Plan. The building features 50 affordable apartments for seniors, 20,700 square feet of retail space, a 2,772 square foot community room, and 303 parking spaces. Parking is distributed across four floors, three above ground and one subterranean. Per code requirements, 124 parking spaces are required, which leaves an excess of 179 parking spaces.

SummerHill is requesting to amend the Market Hall plans to eliminate the subterranean parking level. This still leaves 52 excess parking spaces beyond what is required per the specific plan parking requirements.

As described in our project justification letter, these are excess parking spaces not required or needed by the project. Their removal, and the removal of the associated excavation, soil off haul and concrete pours, will benefit the community due to reduced construction activity, a faster horizon for the affordable housing, and reducing traffic during both construction and operation. 52 parking spaces beyond what is required by code will still be provided, and no negative impact on the surrounding community will occur based on this change.

Market Hall - Parking Requirements							
Use	Size (1)	Ratio (2)	Parking Req	Original Parking		Revised Parking	
Senior Housing	50	½ space per unit	25	129	Level 0		Level 0
Senior Guest	50	½ space per unit	25	63	Level 1	59	Level 1
Market Hall	18,729	1 space per 300 sqft	62	69	Level 2	70	Level 2
Bakery	2,032	1 space per 300 sqft	7	42	Level 3	47	Level 3
Comm. Room	2,772	1 space per 590 sqft	5	Total:	Excess:	Total:	Excess:
<b>Total</b>	<b>23,583</b>		<b>124</b>	<b>303</b>	<b>179</b>	<b>176</b>	<b>52</b>

1) Size based on latest building permit plans

2) Ratio per city code and specific plan – 1 space per 300 for retail, ½ space per unit for residential

Transition District Parking		
Parking Area	Original Parking	New Parking
Market Hall	303	176
Parking Area A	64	UNCHANGED
Parking Area B	55	UNCHANGED
Parking Area C	36	UNCHANGED
<b>Total</b>	<b>458</b>	<b>331</b>



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City of Los Gatos Staff and Planning Commission,  
RE: Letter of Justification for an Amendment to Approved Architectural and Site Approval S-13-090

We are requesting a modification to our Approved Architectural and Site Approval, File Number S-13-090 to modify the Market Hall Building to remove the underground level of the project.

As approved, the Market Hall Building included 303 total parking spaces across four levels – three above ground levels with a combined 176 parking spaces, and one underground parking level with 129 spaces. As shown in the table below, of these, 50 are reserved for the use of the Senior Affordable Housing. The Specific Plan dictates that commercial space within Phase 1 of North Forty shall comply with the Down Town Parking Requirements per Town Code Section 29.10.150(b). Parking Guidelines call for 62 for the main Market Hall space, 7 for the proposed bakery, and 5 for the community room, and 50 for the residential portion, for a total of 124 parking spaces. This means that, as approved, the Market Hall building is providing 179 parking spaces beyond what are required.

Market Hall - Parking Requirements							
Use	Size (1)	Ratio (2)	Parking Req	Original Parking		Revised Parking	
Senior Housing	50	½ space per unit	25	129	Level 0		Level 0
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Market Hall	18,729	1 space per 300 sqft	62	69	Level 2	70	Level 2
Bakery	2,032	1 space per 300 sqft	7	42	Level 3	47	Level 3
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<b>Total</b>	<b>23,583</b>		<b>124</b>	<b>303</b>	<b>179</b>	<b>176</b>	<b>52</b>

- 1) Size based on latest building permit plans
- 2) Ratio per city code and specific plan – 1 space per 300 for retail, ½ space per unit for residential

The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan.

SummerHill is proposing to remove the subterranean parking level. This leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the commercial interests at North 40.

Removal of the underground parking will have a number of benefits, both over the course of construction as well as in the future operation of the Market Hall. The construction of a subterranean parking structure necessarily entails a number of impacts such as excavation, off hauling of soil, and significant additional construction time. During operation, reducing the number of excess parking spaces provided will limit traffic impacts, green house gasses, and encourage the utilization of public transit, bikes, and other more environmentally sustainable methods for utilizing Market Hall.

Construction Impacts

Construction of Market Hall as currently designed involves the off haul of approximately 18,200 cubic yards of soil. It is anticipated that this will require approximately 1,700 truck trips to remove material from the site, and 400 inbound truck-loads of concrete to complete the basement. Eliminating the basement parking will eliminate the need for these truck trips to and from the site during construction.

#### Benefits for operations

A fundamental concept in transportation planning is the idea of 'induced demand'. This is a phenomenon where, by providing excess capacity (such as on a highway, road, or in a parking structure), additional demand is effectively created to utilize this space. Providing so many extra parking spaces in Market Hall runs the risk of inducing additional demand for the project. This induced demand has negative effects on the surrounding community by increasing traffic, noise, and pollution. Additionally, lowering the number of parking spaces will increase the appeal of better and more sustainable transit options such as biking or public transit to access the site.

Vacant parking garages can also serve to attract unwanted behavior since they are out of site of the public, residents, and police. Eliminating the basement level will therefor also remove a potential future source of public and private nuisance and of public safety enforcement inquiries, leading to better operations for the site.

Fundamentally, the underground parking level is neither required nor needed by the project. Its removal, and the removal of the associated excavation, soil off haul and concrete pours, will benefit the community due to reduced construction activity, a faster horizon for the affordable housing, and reducing traffic during both construction and operation. Market Hall will still provide 52 parking spaces above what is required by code, and no negative impact on the surrounding community will occur based on this change.

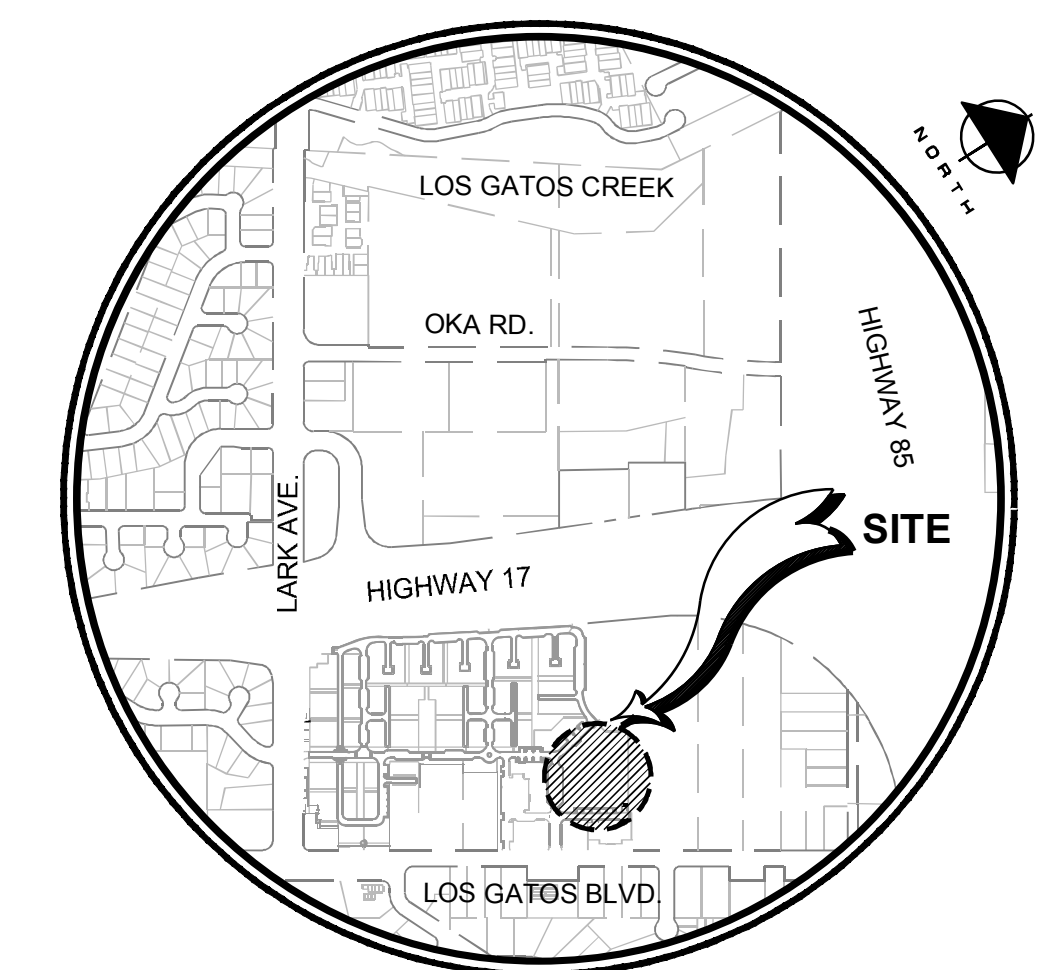
# Market Hall Modification

## A&S - S-13-090



### Sheet Index

- A.0 - Cover Sheet
- A.1 - Site Plan
- A.2 - Basement 1
- A.3 - Floor 1
- A.4 - Floor 2
- A.5 - Floor 3
- A.6 - Floor 4
- A.7 - Elevations
- A.8 - Elevations
- A.9 - Elevations
- A.10 - Elevations
- A.11 - Building Area and Parking Tabulations
- L3.0 - Landscape Planting Plan
- L3.1 - Landscape Planting Plan



**Overall Site Plan**

**Vicinity Map**

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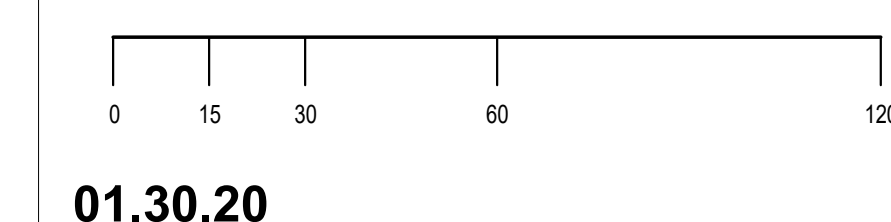
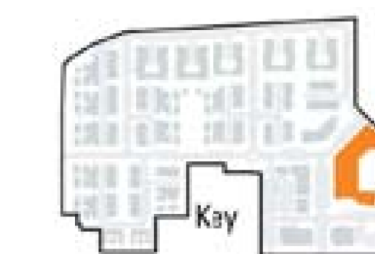
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### North Forty Building B1

14225 - 14235 WALKER STREET  
14200 MILL STREET  
LOS GATOS, CA 95032

20171043

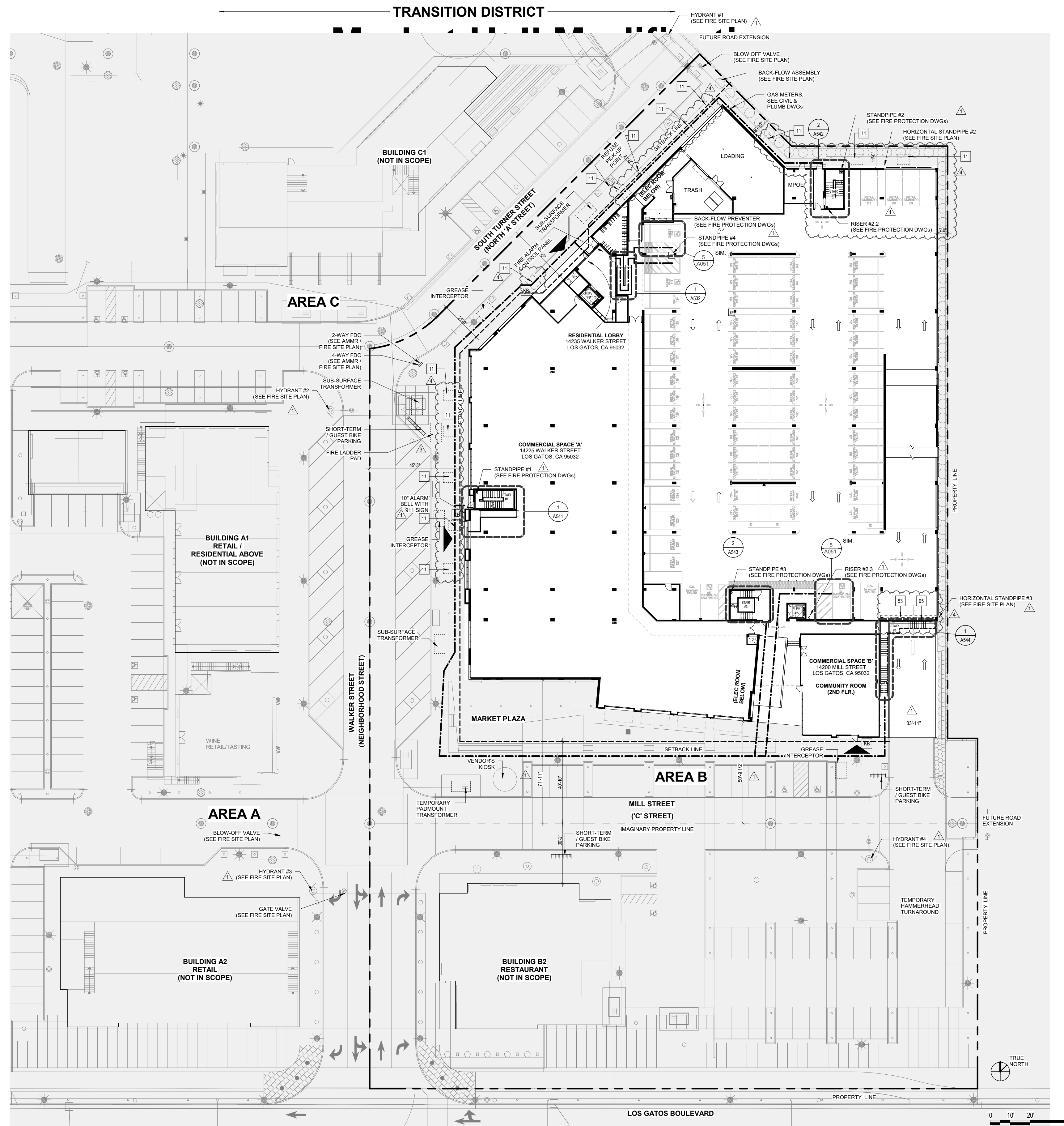
### Modified Market Hall Design



A.0

COVER SHEET

EXHIBIT 6



**NO SIGNIFICANT CHANGES  
FROM APPROVED A&S**

## Market Hall Building Site Plan

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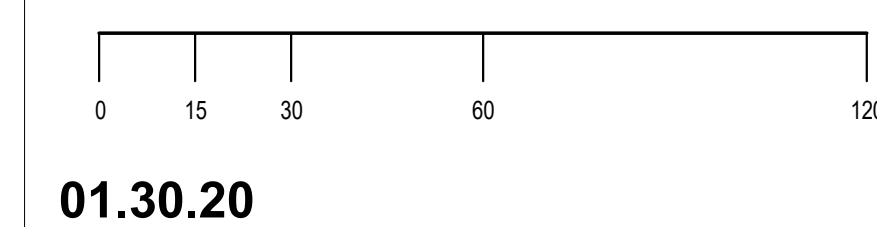
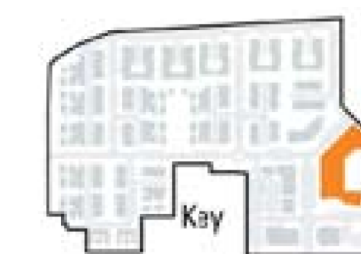
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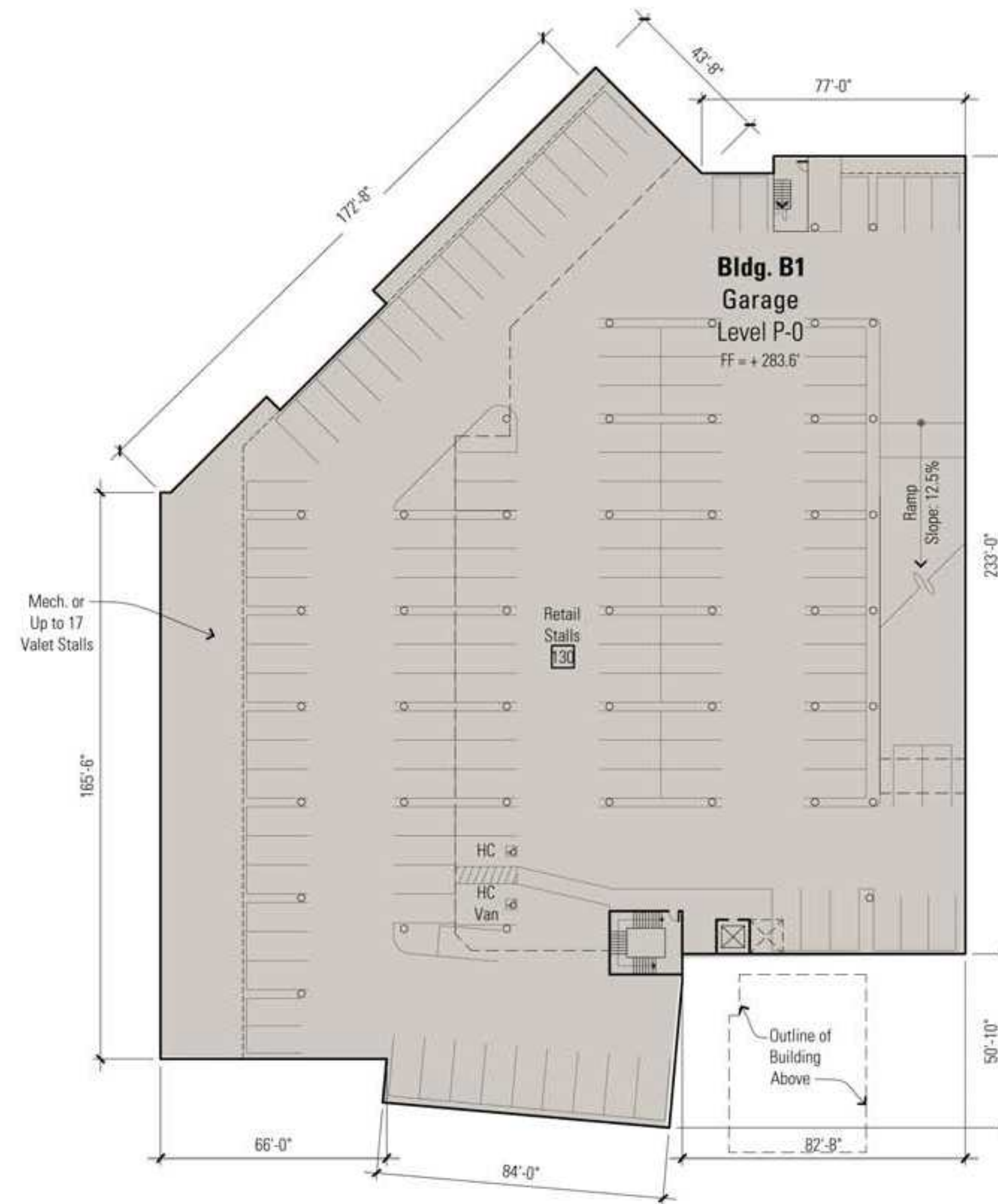


01.30.20

A.1

SITE PLAN

AS APPROVED



**Building B1  
Basement Floor Plan**

**EARTHWORK SUMMARY**

ITEM	ESTIMATED CUT (EXCESS)	ESTIMATED FILL (SHORT)	MAX CUT	MAX FILL
STREETS AND PADS	19,800 CY	21,000 CY	11.8FT	4.4FT
MARKET HALL GARAGE	18,200 CY	-	9.8FT	-
TRENCH SPOILS*	6,000 CY	-	28.1FT	-
INFILTRATION TRENCH SPOILS	5,500 CY	-	20.0FT	-
COMPACTION & CONSOLIDATION ASSUMED 0.3FT OVER ENTIRE SITE	-	8,700 CY	-	-
<b>TOTALS</b>	<b>49,500 CY</b>	<b>29,700 CY</b>	<b>-</b>	<b>-</b>

NET: 19,800 CY EXCESS \*CIVIL MAIN IMPROVEMENTS ONLY INCLUDING 24" WATER TRANSMISSION LINE BY SJWC

AS PROPOSED



**BUILDING B1 - BASEMENT FLOOR PLAN**

**THE BASEMENT IS ELIMINATED.**

**EARTHWORK SUMMARY**

ITEM	ESTIMATED CUT (EXCESS)	ESTIMATED FILL (SHORT)	MAX CUT	MAX FILL
STREETS AND PADS	19,800 CY	21,000 CY	11.8FT	4.4FT
<del>MARKET HALL GARAGE</del>	<del>18,200 CY</del>	<del>-</del>	<del>9.8FT</del>	<del>-</del>
TRENCH SPOILS*	6,000 CY	-	28.1FT	-
INFILTRATION TRENCH SPOILS	5,500 CY	-	20.0FT	-
COMPACTION & CONSOLIDATION ASSUMED 0.3FT OVER ENTIRE SITE	-	8,700 CY	-	-
<b>TOTALS</b>	<b>-48,500 CY</b>	<b>29,700 CY</b>	<b>-</b>	<b>-</b>

NET: 1,600 CY EXCESS \*CIVIL MAIN IMPROVEMENTS ONLY INCLUDING 24" WATER TRANSMISSION LINE BY SJWC

Transition District  
Floor Plans Area B

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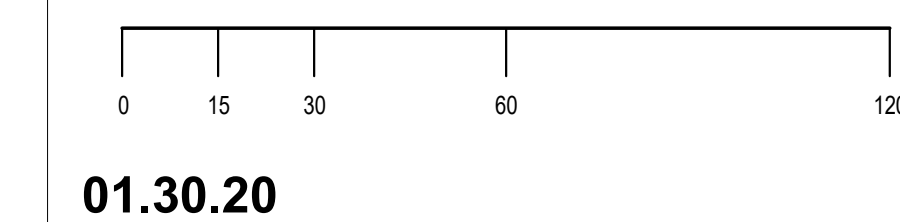
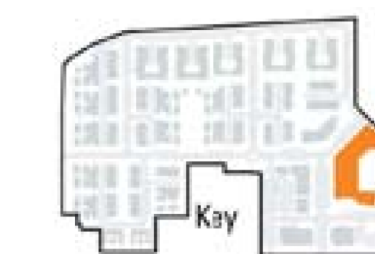
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**Modified Market Hall Design**

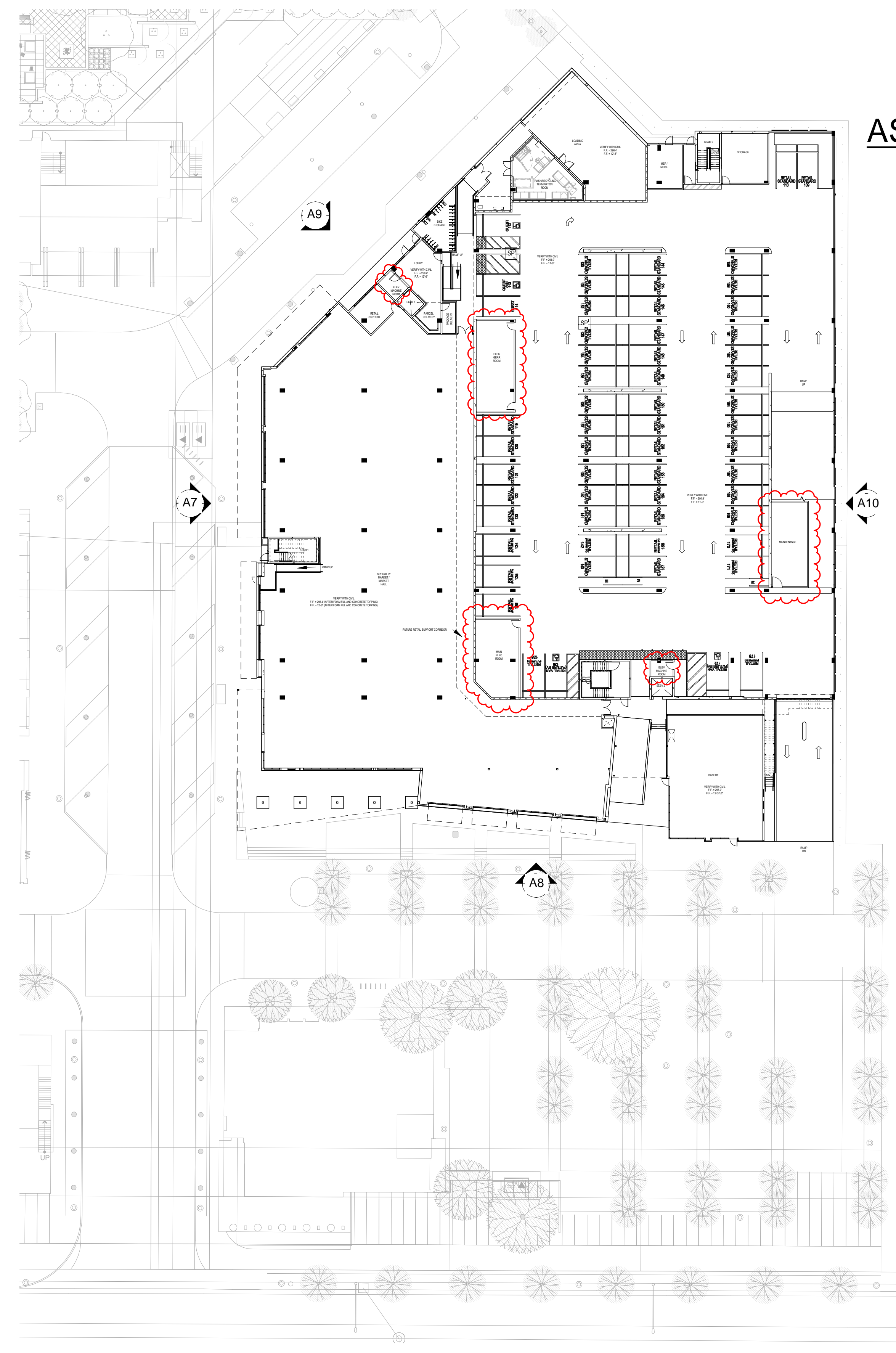
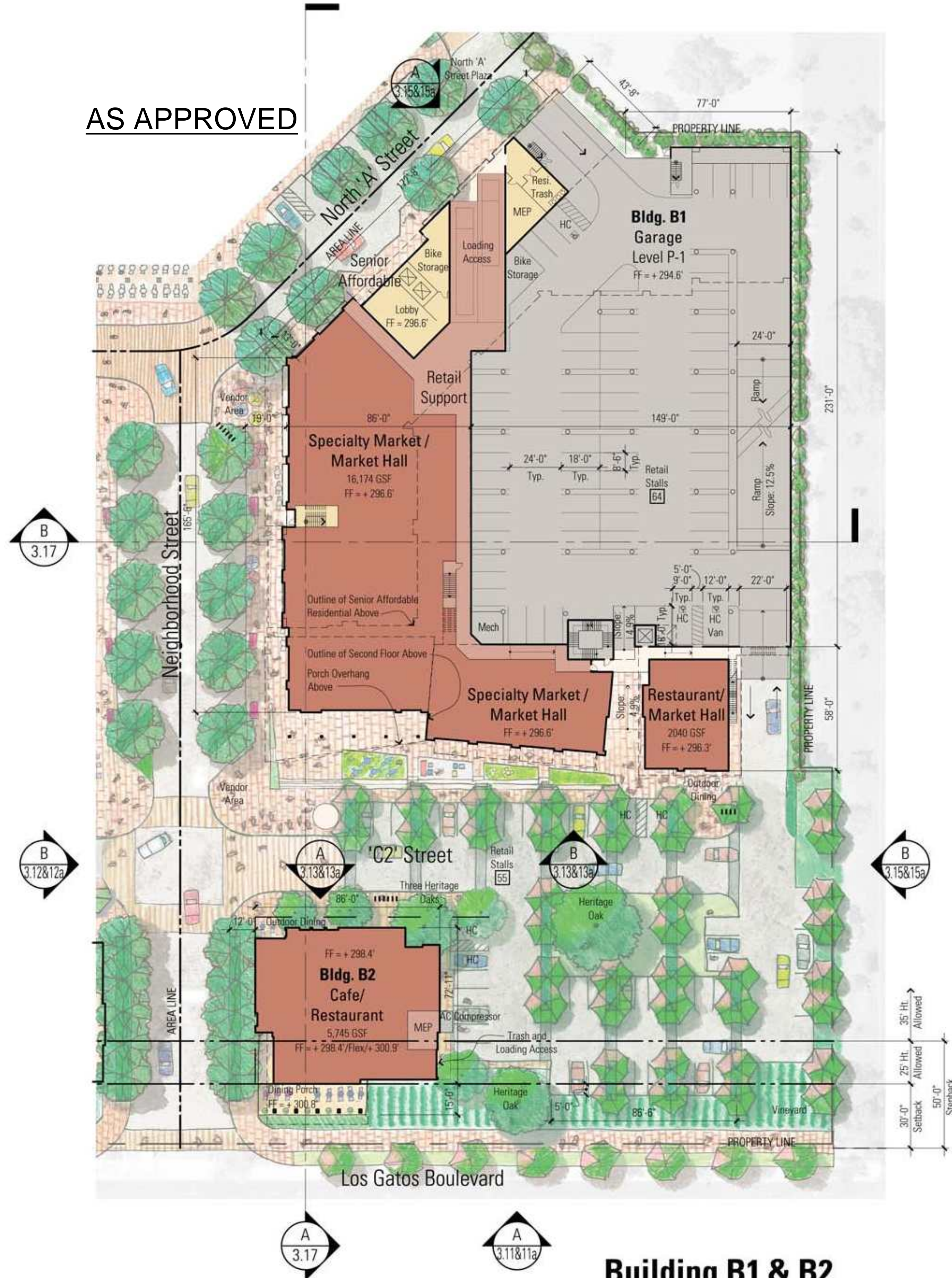


A.2

BASEMENT 1

AS APPROVED

AS PROPOSED



**Building B1 & B2  
First Floor Plan**

**BUILDING B1 - FIRST FLOOR PLAN**

**PARKING LAYOUT HAS CHANGED TO ELIMINATE THE RAMP TO THE BASEMENT AND EQUIPMENT ROOMS HAVE BEEN RECONFIGURED.**

PROVIDED PARKING ON GARAGE LEVEL P1	
RETAIL	56
SENIOR VISITOR	3
<b>SUB-TOTAL</b>	<b>59</b>

PROVIDED PARKING PER FLOOR	
LEVEL P1	59
LEVEL P2	70
LEVEL 3	47
<b>GRAND TOTAL</b>	<b>176</b>

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Floor Plans Area B

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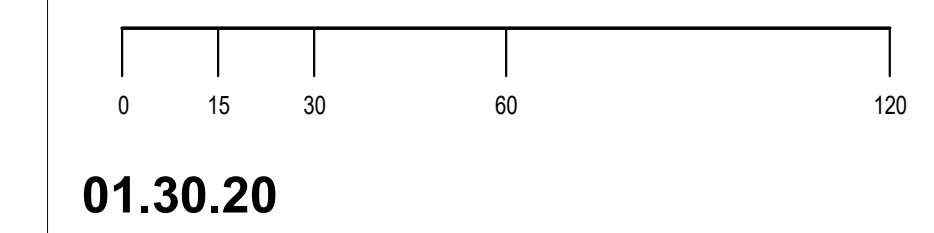
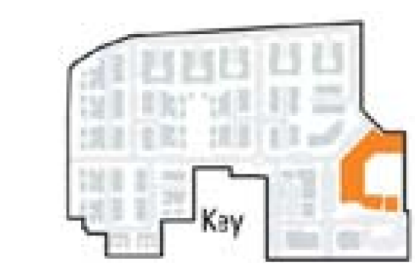
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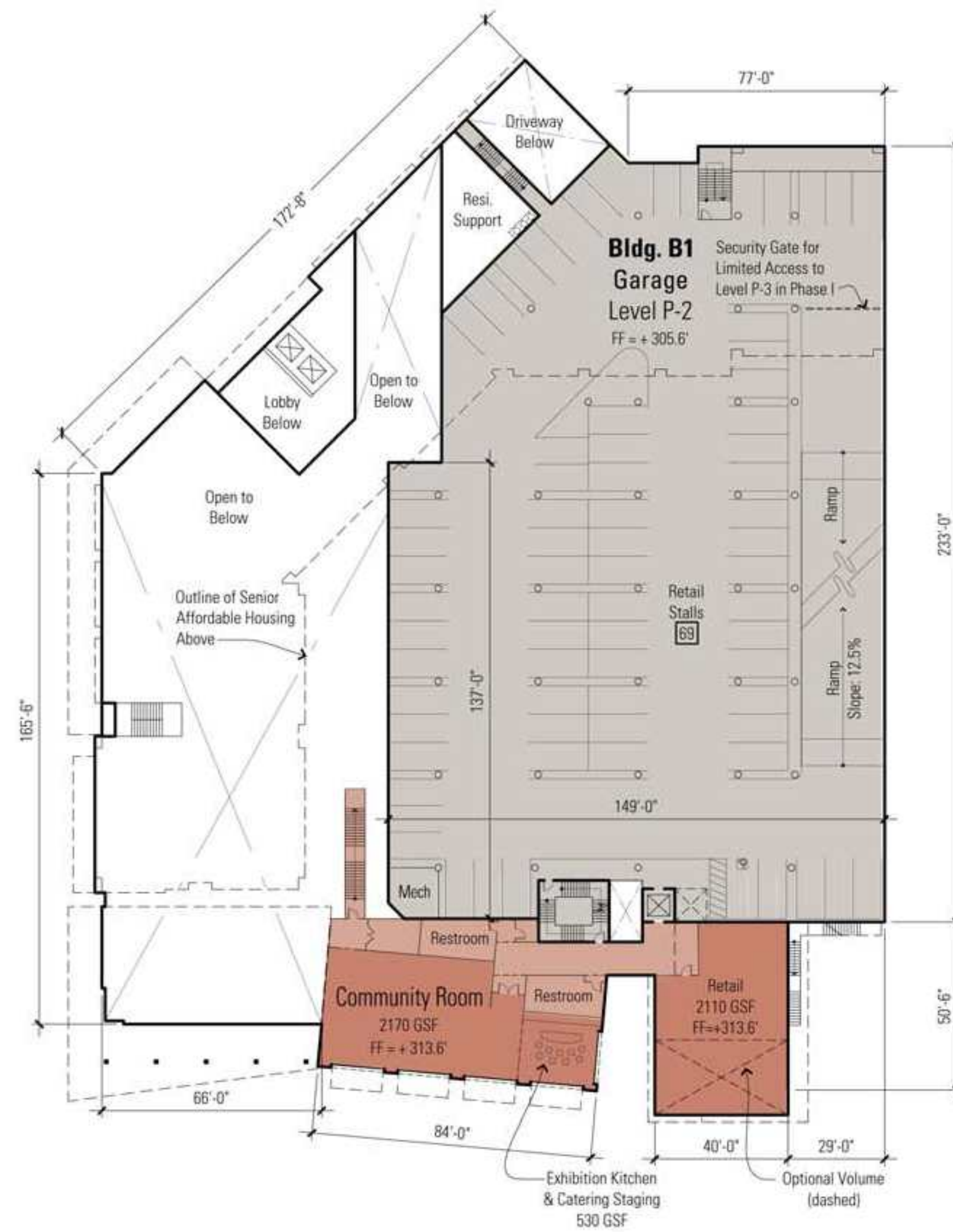


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**A.3**

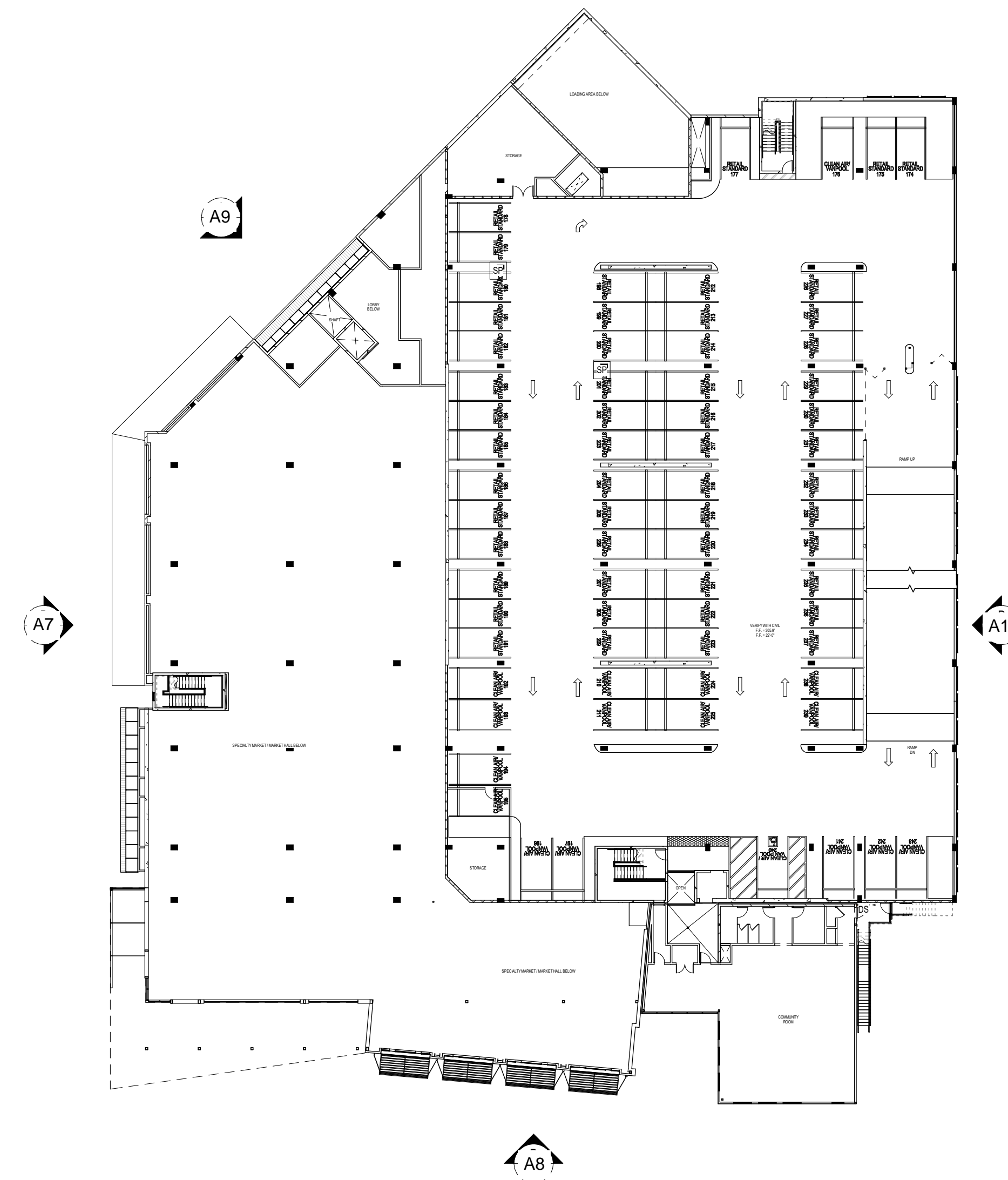
FLOOR 1

AS APPROVED



**Building B1  
Second Floor Plan**

AS PROPOSED



**BUILDING B1 - SECOND FLOOR PLAN**

**NO SIGNIFICANT CHANGES  
FROM APPROVED A&S**

PROVIDED PARKING ON GARAGE LEVEL P2	
RETAIL	70
SUB-TOTAL	70

PROVIDED PARKING PER FLOOR	
LEVEL P1	59
LEVEL P2	70
LEVEL 3	47
GRAND TOTAL	176

Transition District  
Floor Plans Area B

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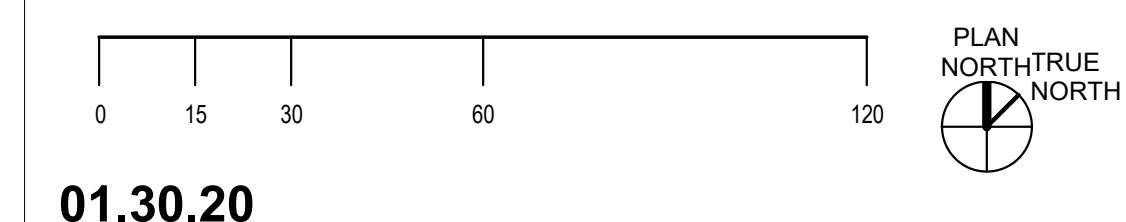
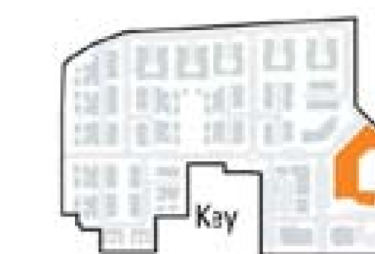
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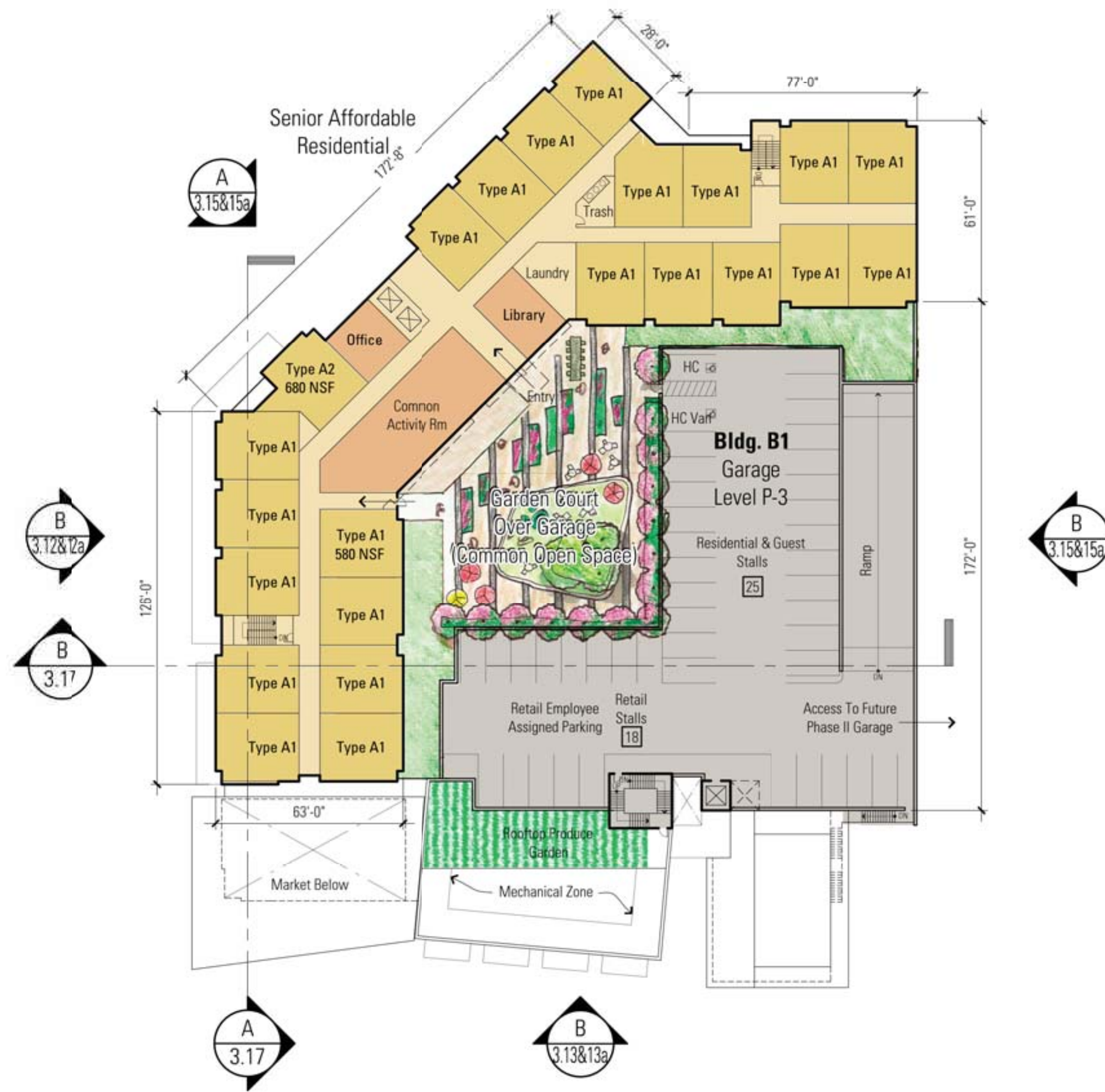
**A.4**

FLOOR 2

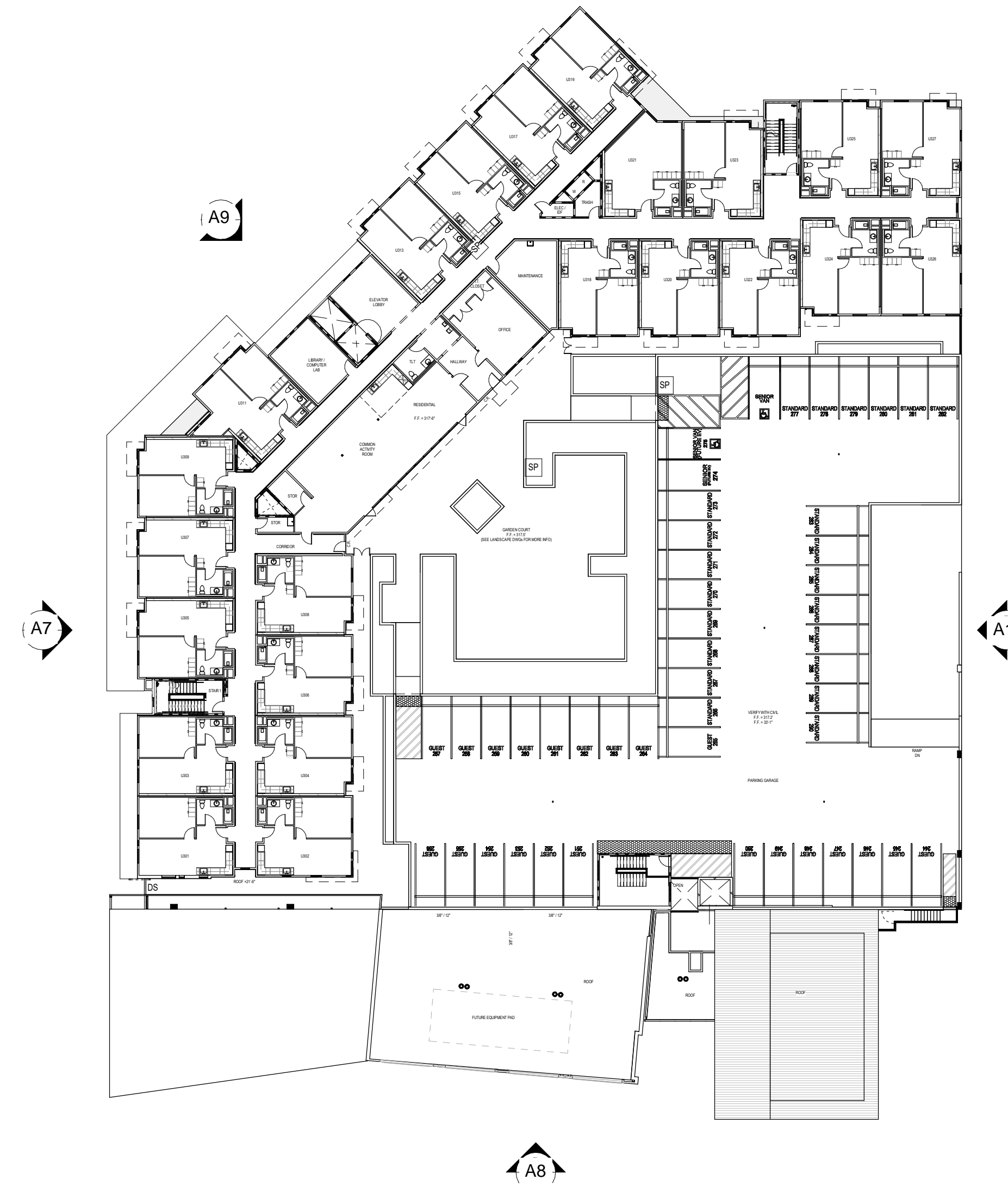


AS APPROVED

AS PROPOSED



**Building B1**  
**Third Floor Plan**  
FF = + 317.6'



**BUILDING B1 - THIRD FLOOR PLAN**  
**NO SIGNIFICANT CHANGES FROM APPROVED A&S**

PROVIDED PARKING ON GARAGE LEVEL 3	
SENIOR	25
SENIOR VISITOR	22
SUB-TOTAL	47

PROVIDED PARKING PER FLOOR	
LEVEL P1	59
LEVEL P2	70
LEVEL 3	47
GRAND TOTAL	176

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Transition District  
Floor Plans Area B



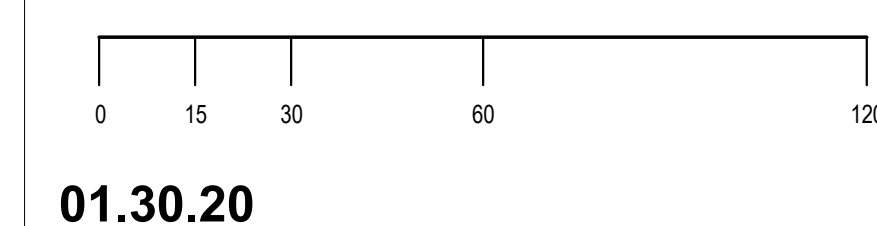
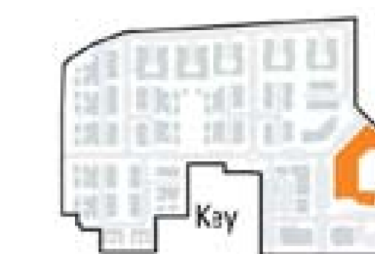
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**North Forty Building B1**  
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Modified Market Hall Design

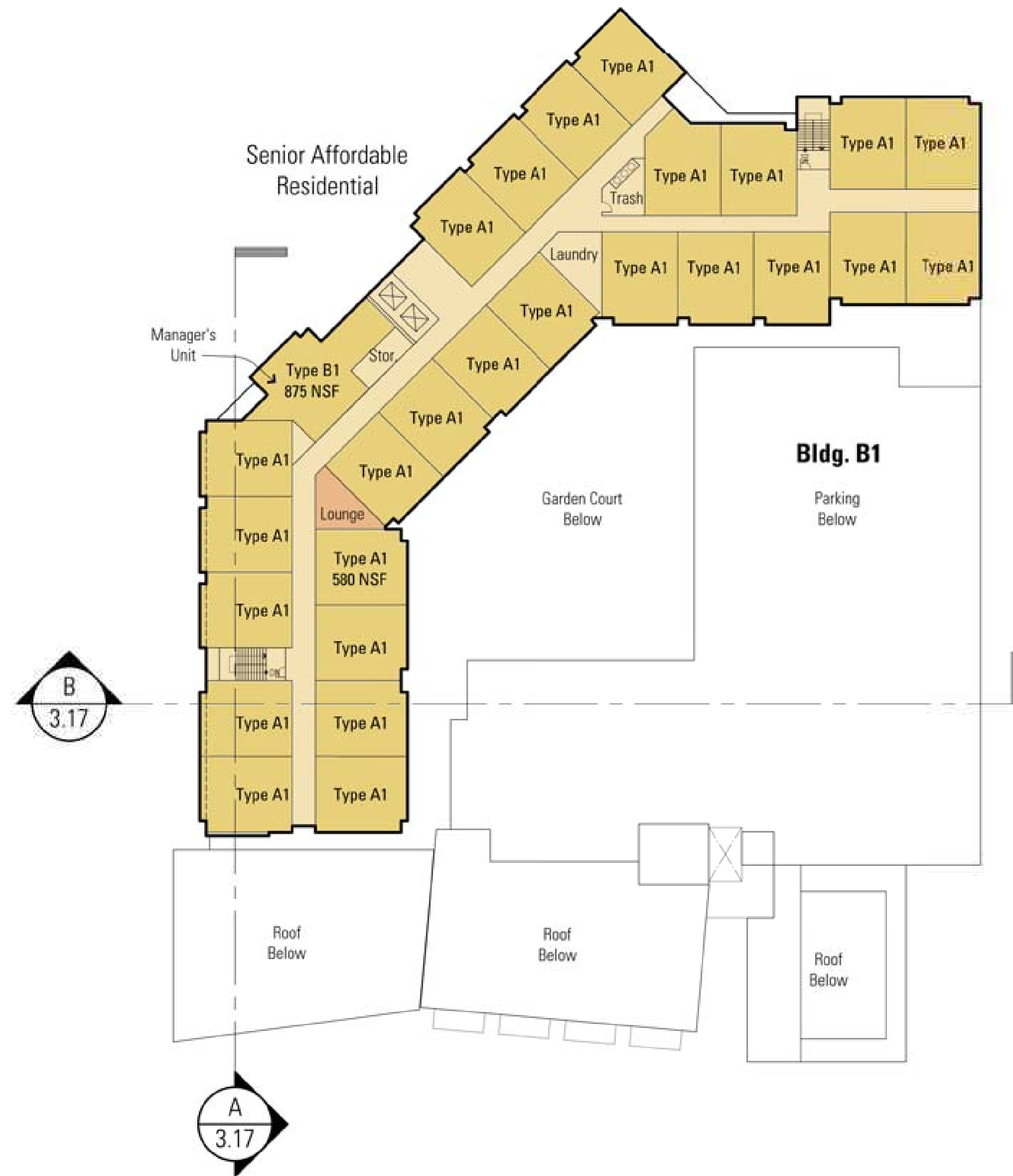


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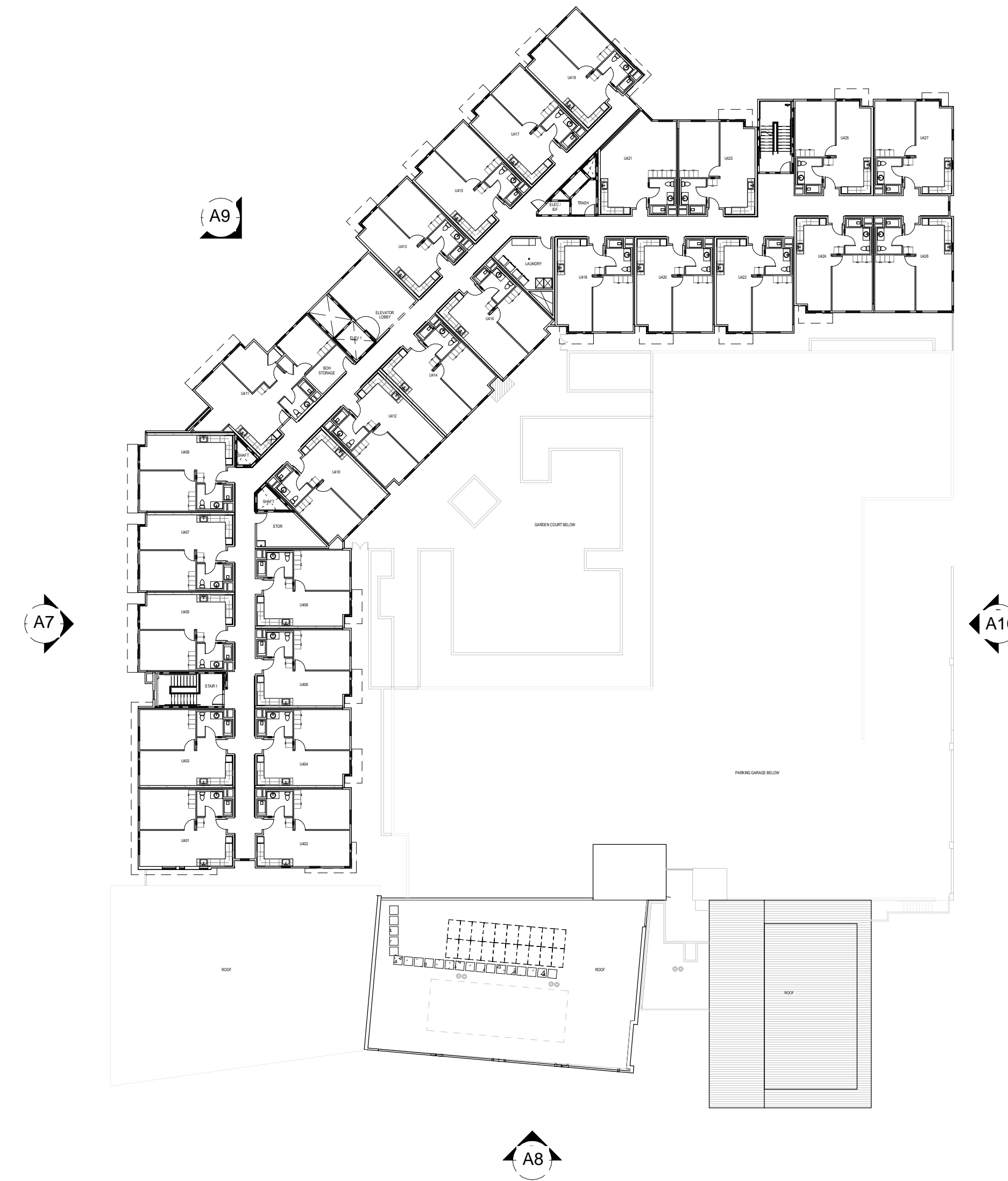
**A.5**  
FLOOR 3

AS APPROVED

AS PROPOSED



**Building B1**  
**Fourth Floor Plan**  
 FF = + 327.9'



**BUILDING B1 - FOURTH FLOOR PLAN**  
**NO SIGNIFICANT CHANGES FROM APPROVED A&S**

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Transition District  
 Floor Plans Area B



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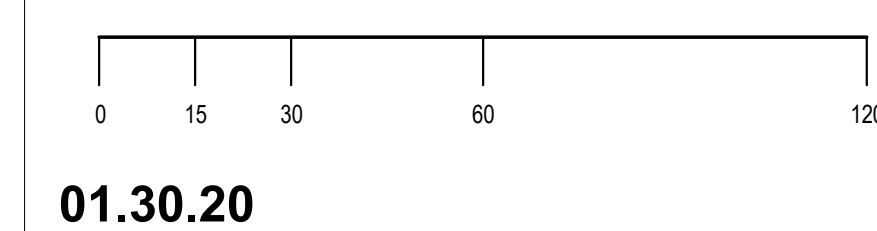
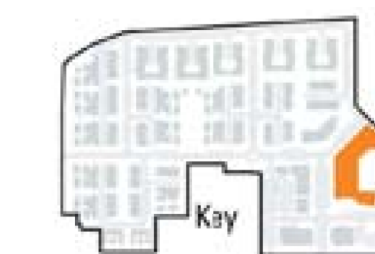
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Modified Market Hall Design



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**A.6**

FLOOR 4

**AS APPROVED**



**AS PROPOSED**



**ELEVATION "B" - NEIGHBORHOOD STREET LOOKING NORTH**

**NO SIGNIFICANT CHANGES FROM APPROVED A&S**

Transition District  
Exterior Elevations - Neighborhood Street

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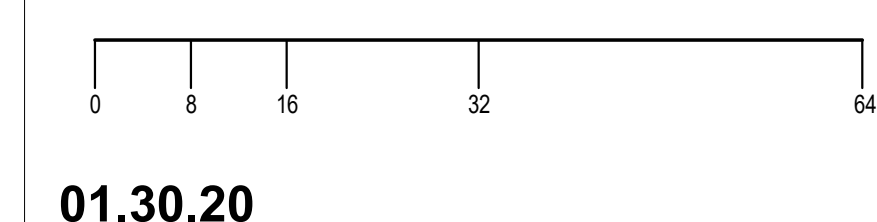
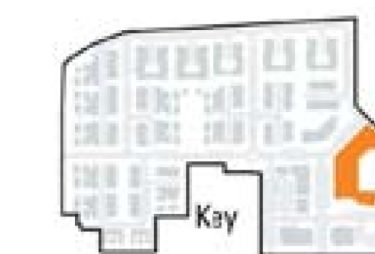
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**North Forty Building B1**

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14200 MILL STREET  
LOS GATOS, CA 95032

20171043

**Modified Market Hall Design**



**A.7**

ELEVATIONS

AS APPROVED



**Building B1 - Specialty Market and Senior Affordable Residential  
East Elevation**

**Elevation 'B' - 'C2' Street looking West**

AS PROPOSED



**ELEVATION "B" - 'C2' STREET LOOKING WEST  
NO SIGNIFICANT CHANGES FROM APPROVED A&S**

Transition District  
Exterior Elevations - Neighborhood Street

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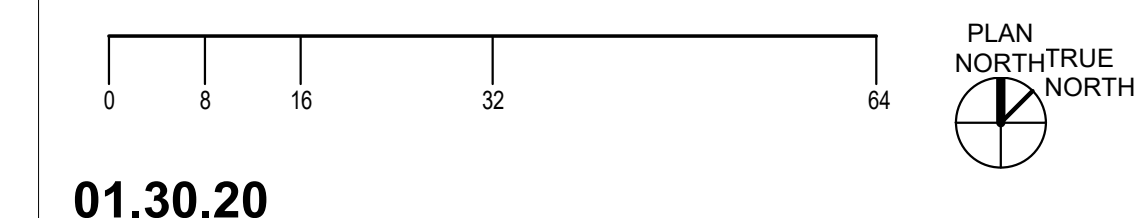
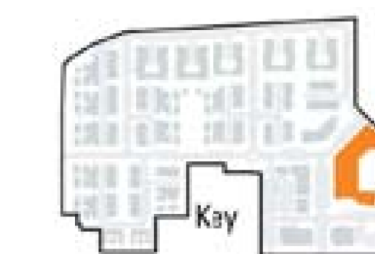
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**Modified Market Hall Design**



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**A.8**

ELEVATIONS

**AS APPROVED**



**Elevation 'A' - North 'A' Street Looking Northeast**

**AS PROPOSED**



**ELEVATION "A" - NORTH "A" STREET LOOKING NORTHEAST  
NO SIGNIFICANT CHANGES FROM APPROVED A&S**

Transition District  
Exterior Elevations - Additional Market and Senior Affordable Residential Facades

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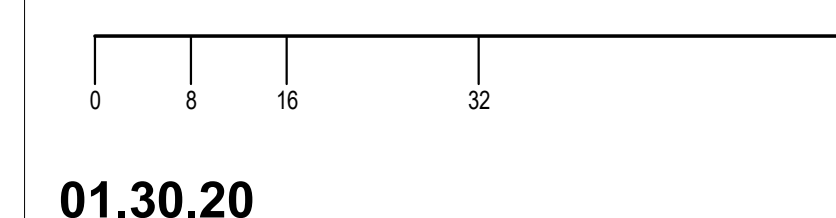
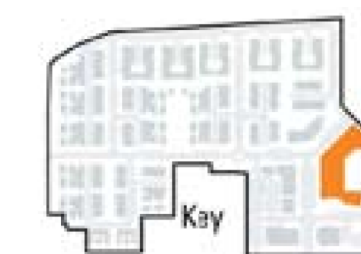
SUMMERHILL HOMES  
777 S. California Ave  
Palo Alto, CA, 94304

**North Forty Building B1**

14225 - 14235 WALKER STREET  
14200 MILL STREET  
LOS GATOS, CA 95032

20171043

**Modified Market Hall Design**



01.30.20



**A.9**

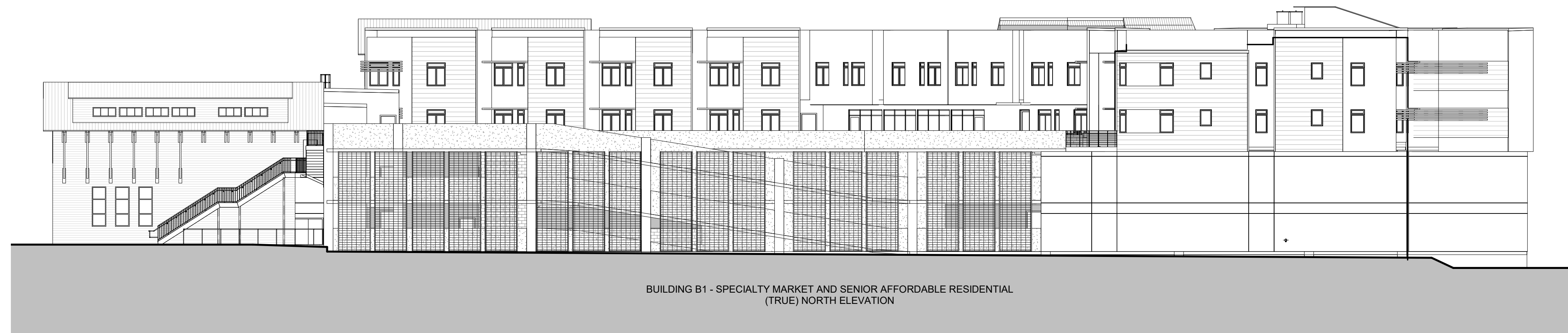
ELEVATIONS

**AS APPROVED**



**Elevation 'B' - Phase I Property Line looking South**

**AS PROPOSED**



**ELEVATION "B" - PHASE I PROPERTY LINE LOOKING SOUTH**

**NO SIGNIFICANT CHANGES FROM APPROVED A&S**

Transition District

Exterior Elevations - Additional Market and Senior Affordable Residential Facades

NORTH FORTY | LOS GATOS, CA



Architecture + Planning  
12555 W. Jefferson Blvd.  
Suite 100  
Los Angeles, CA 90066  
ktgy.com  
310.394.2623



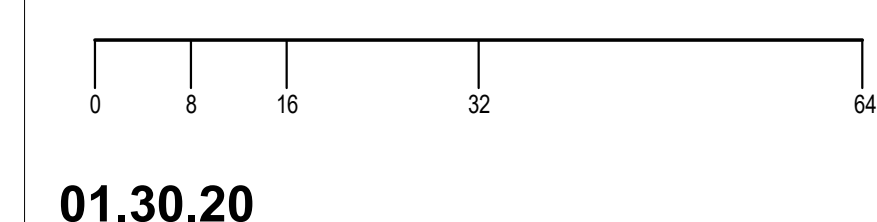
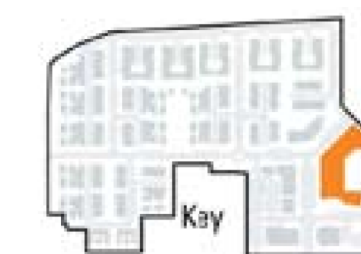
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**North Forty Building B1**

14225 - 14235 WALKER STREET  
14200 MILL STREET  
LOS GATOS, CA 95032

20171043

**Modified Market Hall Design**



**A.10**

ELEVATIONS

BUILDING AREA AND PARKING TABULATIONS - TRANSITION DISTRICT (AREA A, B, C)

3/14/2016

Notes: see below to side		RESIDENTIAL AREA TABULATIONS							COMMERCIAL AREA TABULATIONS										GARAGE AREA TABULATIONS		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Floor Level	Unit Count	Residential Net Unit Area (SF)	Approximate Residential Gross to Net Factor	Residential Gross Area (SF)	Residential Circulation and Support Area (SF)	Residential Amenity Area (SF)	Total Gross Residential Area (SF)	Specialty Market Leasable Area (SF)	Specialty Market Circulation and Support Area (SF)	Retail and Personal Service Leasable Area (SF)	Retail and Personal Service Circulation and Support Area (SF)	Restaurant/ Cafe Leasable Area (SF)	Restaurant/ Cafe Circulation and Support Area (SF)	Bar/Tavern Leasable Area (SF)	Bar/Tavern Circulation and Support Area (SF)	Community Room Leasable Area (SF)	Community Room Circulation and Support Area (SF)	Total Gross Commercial Area (SF)	Residential Garage Area (SF)	Commercial Garage Area (SF)	
<b>AREA A: Mixed-Use</b>																					
Building A1	basement	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0	0	0	0	2534	382	0	0	2916	0	0	
Building A1	ground	n/a	n/a	n/a	n/a	538	0	538	0	0	8,231	291	0	0	0	0	0	8,522	0	0	
Building A1	2nd	10	8.950	1.15	10,432	1,225	0	11,657	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Building A1 Total</b>		<b>10</b>	<b>8,950</b>		<b>10,432</b>	<b>1,763</b>	<b>0</b>	<b>12,195</b>	<b>0</b>	<b>0</b>	<b>8,231</b>	<b>291</b>	<b>0</b>	<b>0</b>	<b>2,534</b>	<b>382</b>	<b>0</b>	<b>11,438</b>	<b>0</b>	<b>0</b>	
<b>Building A2</b>																					
Building A2	ground	n/a	n/a	n/a	n/a	n/a	n/a	0	0	7,912	300	0	0	0	0	0	0	8,212	0	0	
Building A2	mezz*	n/a	n/a	n/a	n/a	n/a	n/a	0	0	2,500	486	0	0	0	0	0	0	2,986	0	0	
<b>Building A2 Total</b>		<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>0</b>	<b>0</b>	<b>10,412</b>	<b>786</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11,198</b>	<b>0</b>	<b>0</b>	
<b>AREA B: Mixed-Use &amp; Senior Affordable</b>																					
<b>Building B1</b>																					
Building B1	ground	0	0	n/a	0	2,574	0	2,574	15,850	4,540	0	0	2,040	0	0	0	0	22,430	0	32,743	
Building B1	2nd	0	0	n/a	0	1,066	0	1,066	530	0	2,110	781	0	0	0	2,170	945	6,536	0	31,670	
Building B1	3rd	23	13.440	1.09	14,756	4,728	2,537	22,021	0	0	0	0	0	0	0	0	0	0	18,029	0	
Building B1	4th	27	15.955	1.09	17,547	4,367	236	22,150	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Building B1 Total</b>		<b>50</b>	<b>29,395</b>		<b>32,303</b>	<b>12,735</b>	<b>2,773</b>	<b>47,811</b>	<b>16,380</b>	<b>4,540</b>	<b>2,110</b>	<b>781</b>	<b>2,040</b>	<b>0</b>	<b>0</b>	<b>2,170</b>	<b>945</b>	<b>28,966</b>	<b>18,029</b>	<b>64,413</b>	
<b>Building B2 Total</b>		<b>ground</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,483</b>	<b>262</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5,745</b>			
<b>AREA C: Restaurant/Retail</b>																					
<b>Building C1</b>																					
Building C1	ground	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	2,000	0	4,862	295	0	0	0	7,158	0	0	
Building C2	mezzanine	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0	0	1,300	388	0	0	0	3,486	0	0	
<b>Building C1 Total</b>		<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>0</b>	<b>0</b>	<b>2,000</b>	<b>0</b>	<b>6,162</b>	<b>684</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10,644</b>	<b>0</b>	<b>0</b>	
<b>TRANSITION DISTRICT (AREA A, B, C) TOTAL</b>		<b>60</b>	<b>38,345</b>		<b>42,735</b>	<b>14,498</b>	<b>2,773</b>	<b>60,006</b>	<b>16,380</b>	<b>4,540</b>	<b>22,753</b>	<b>1,858</b>	<b>13,885</b>	<b>946</b>	<b>2,534</b>	<b>382</b>	<b>2,170</b>	<b>945</b>	<b>67,991</b>	<b>18,029</b>	<b>120,402</b>

Notes: see below to side	RESIDENTIAL REQUIRED PARKING TABULATIONS					COMMERCIAL REQUIRED PARKING TABULATIONS* (excl. mezzanine)										TOTAL PROVIDED PARKING TABULATIONS					
	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	
	Resident		Guest		Total	Specialty Market		Retail		Restaurant/Cafe		Bar/Tavern		Community Room		Total	PROVIDED Residential	PROVIDED Residential Guest	PROVIDED Commercial	PROVIDED Total	
	Stalls per Unit	Number of Stalls	Stalls per Unit	Number of Stalls	REQUIRED Number of Residential Stalls	1 stall per leasable SF noted	Number of Stalls	1 stall per leasable SF noted	Number of Stalls	1 stall per leasable SF noted	Number of Stalls	1 stall per leasable SF noted	Number of Stalls	1 stall per leasable SF noted	Number of Stalls	REQUIRED Number of Commercial Stalls					
<b>Senior Affordable</b>																					
Residential Parking Required (stalls per unit)		0.50	25																		
Guest Parking Required (stalls per unit)				0.50	25																
Residential and Guest Parking Proposed (stalls per unit)*						50															
<b>Senior Affordable Parking Subtotal</b>						<b>50</b>															
<b>Residential Parking</b>																					
Residential 1-Bedroom Parking Required (stalls per unit)		6	1.00	6																	
Residential 2-Bedroom Parking Required (stalls per unit)		4	2.00	8																	
Guest Parking Required (stalls per unit)					0.50	5															
<b>Residential Parking Subtotal</b>			<b>14</b>			<b>19</b>															
<b>Retail</b>																					
Retail Parking Required (1 stall per leasable SF noted)										300		300		100		75		590			
<b>Retail Parking Subtotal</b>										<b>300</b>		<b>300</b>		<b>100</b>		<b>75</b>		<b>590</b>			
<b>TRANSITION DISTRICT (AREA A, B, C) TOTAL</b>						<b>69</b>															
<b>TRANSITION DISTRICT AREA D - SEE SHEET 6.5</b>																					

ORIGINAL BLDG B1 RETAIL = 254  
 ORIGINAL OTHER RETAIL = 135  
 TOTAL ORIGINAL ENTITLEMENT RETAIL = 389  
 REVISED BLDG B1 RETAIL = 126  
 ORIGINAL OTHER RETAIL = 135  
 REVISED ENTITLEMENT RETAIL = 261  
 39 + 30 + 261 = 330  
 330 PROVIDED - 285 REQ'D = 45 EXTRA  
 complies with min. required  
 extra stalls

Transition District Building Area and Parking Tabulations

NORTH FORTY | LOS GATOS, CA

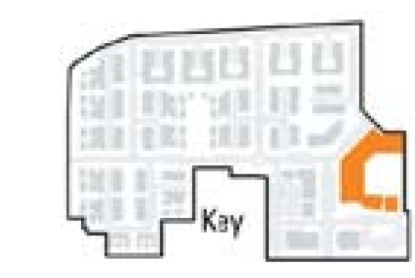


Architecture + Planning  
 12555 W. Jefferson Blvd.  
 Suite 100  
 Los Angeles, CA 90066  
 ktgy.com  
 310.394.2623



North Forty Building B1 20171043  
 14225 - 14235 WALKER STREET  
 14200 MILL STREET  
 LOS GATOS, CA 95032

Modified Market Hall Design

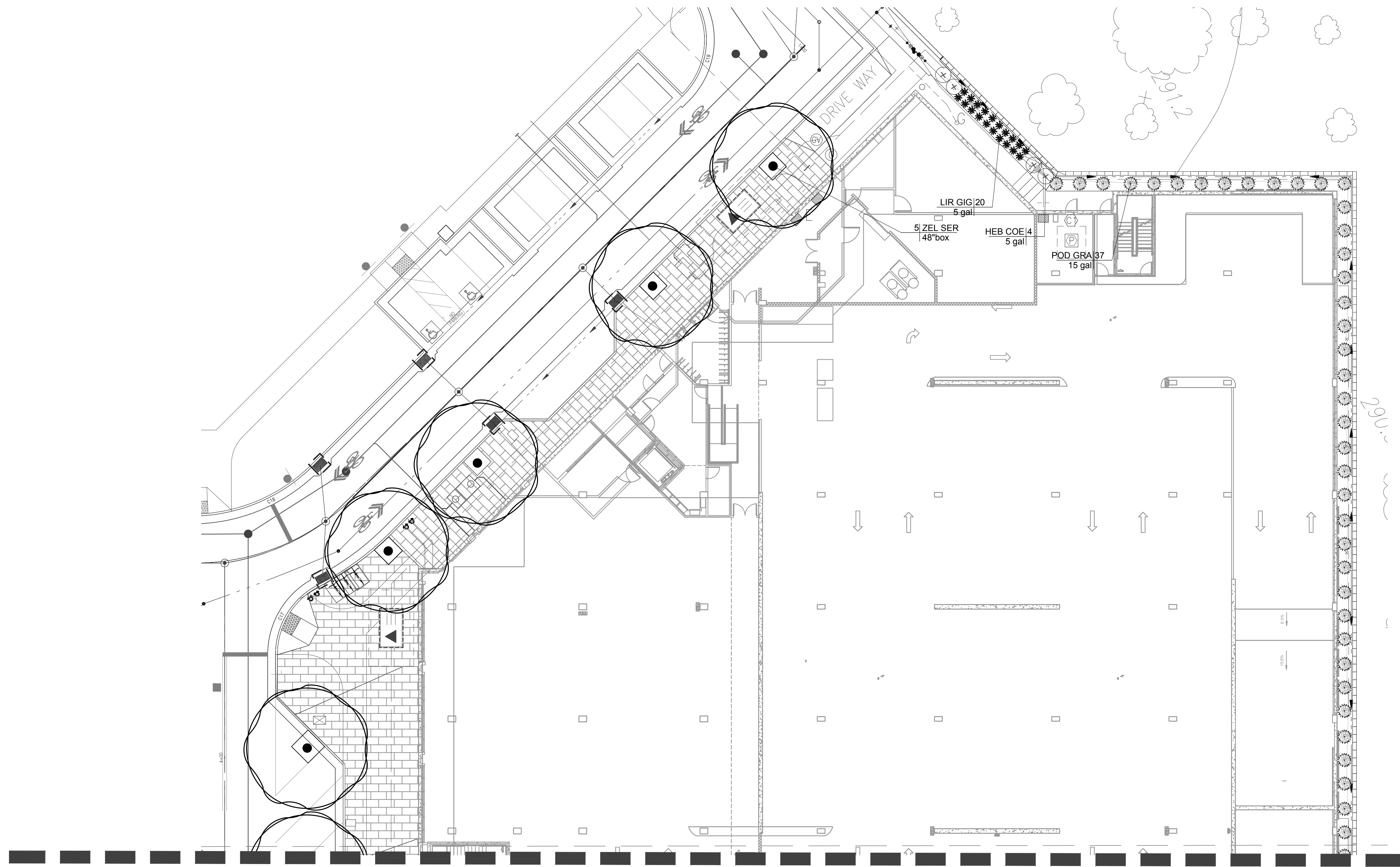


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A.11

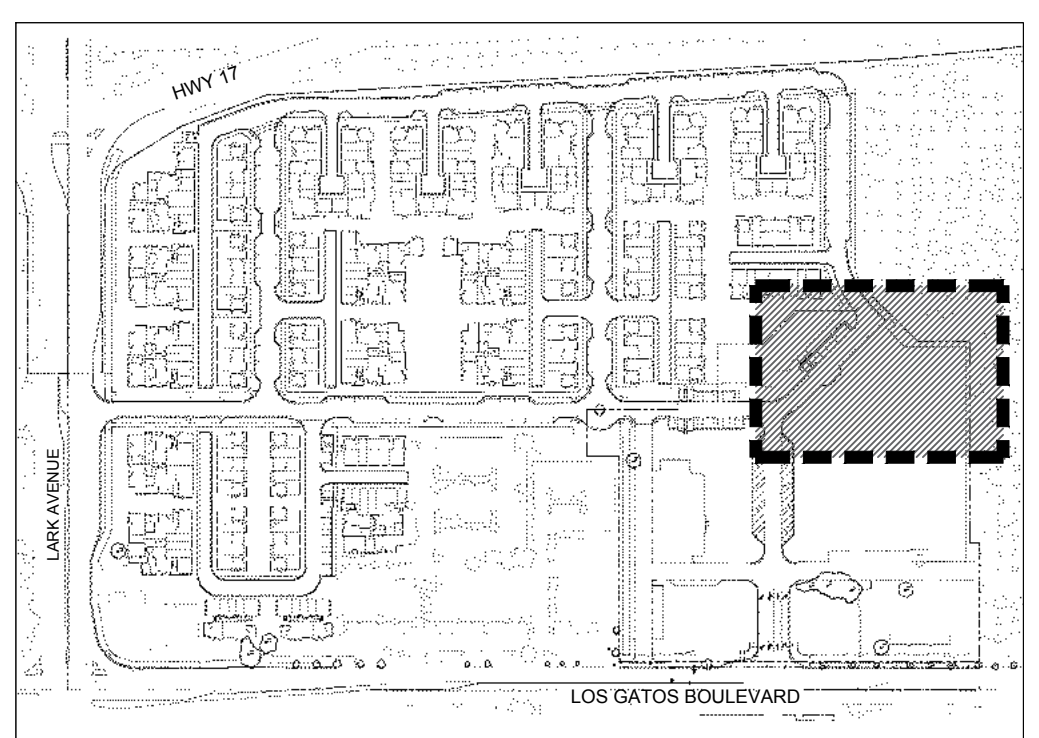
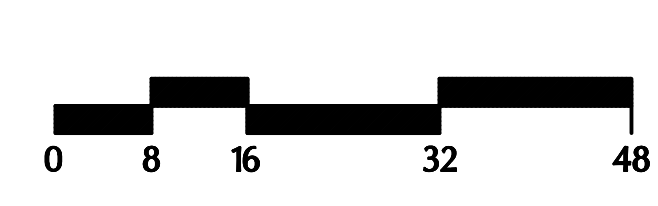
BUILDING AREA AND PARKING TABULATIONS



MATCHLINE L3.1

**NO SIGNIFICANT CHANGES FROM APPROVED A&S**

NOTES:  
SEE L3.1 FOR PLANT LEGEND



KEYMAP

CLIENT:  
SUMMERHILL HOMES  
777 SOUTH CALIFORNIA AVE.  
PALO ALTO  
CA 94304  
TEL. 650.842.2421



**VAN DORN ABED**  
LANDSCAPE ARCHITECTS, INC.  
81 14TH ST. SAN FRANCISCO, CA  
ZIP 94103 PH (415) 864-7621 FAX (415) 864-4796

PROJECT MANAGER: **HN**  
DESIGNED BY: **HN**  
CHECKED BY: **Z/A**

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PROJECT NAME/LOCATION:  
**NORTH 40 - MARKET HALL**  
LOS GATOS  
DRAWING TITLE:  
**LANDSCAPE CONSTRUCTION DRAWINGS**

REVISIONS:	NO.	DESCRIPTION	BY:	DATE

SHEET TITLE:  
**PLANTING PLAN**

SCALE:  
**1/16" = 1'-0"**

ISSUE DATE:  
**07/11/19**

PROJECT NO.:  
**V1732**

SHEET NO.:  
**L3.0**

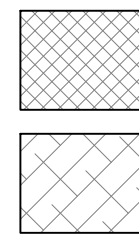


**PLANT SCHEDULE**

TREES	CODE	BOTANICAL NAME	COMMON NAME	CONT	QTY	REMARKS
	PYR ARI	Pyrus calleryana 'Aristocrat' TM	Aristocrat Flowering Pear	24"box	12	M
	ZEL SER	Zelkova serrata	Sawleaf Zelkova	48"box	9	M

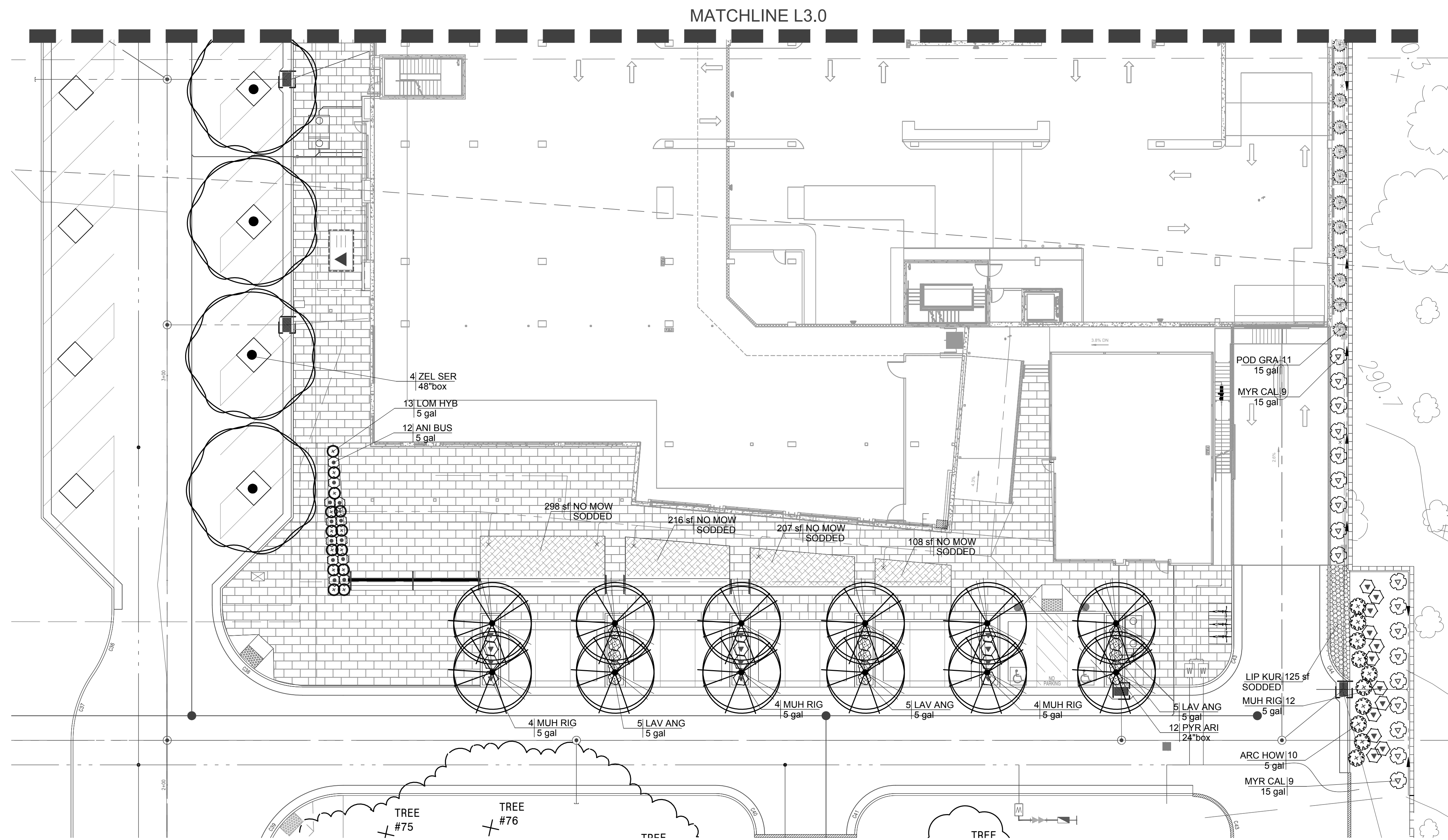
  

SHRUBS	CODE	BOTANICAL NAME	COMMON NAME	SIZE	QTY	REMARKS
	ANI BUS	Anigozanthos x 'Bush Tango'	Red-Green Kangaroo Paw	5 gal	12	L
	HEB COE	Hebe x 'Coed'	Hebe	5 gal	4	M
	LAV ANG	Lavandula angustifolia	English Lavender	5 gal	15	L
	LIR GIG	Liriope gigantea	Giant Liriope	5 gal	20	
	LOM HYB	Lomandra hybrid Platinum Beauty	Variegated Dwarf Mat Rush	5 gal	13	L
	MUH RIG	Muhlenbergia rigens	Deer Grass	5 gal	12	L / 4H x 3.5W
	MYR CAL	Myrica californica	Pacific Wax Myrtle	15 gal	18	L
	POD GRA	Podocarpus gracilior	Fern Pine	15 gal	51	L

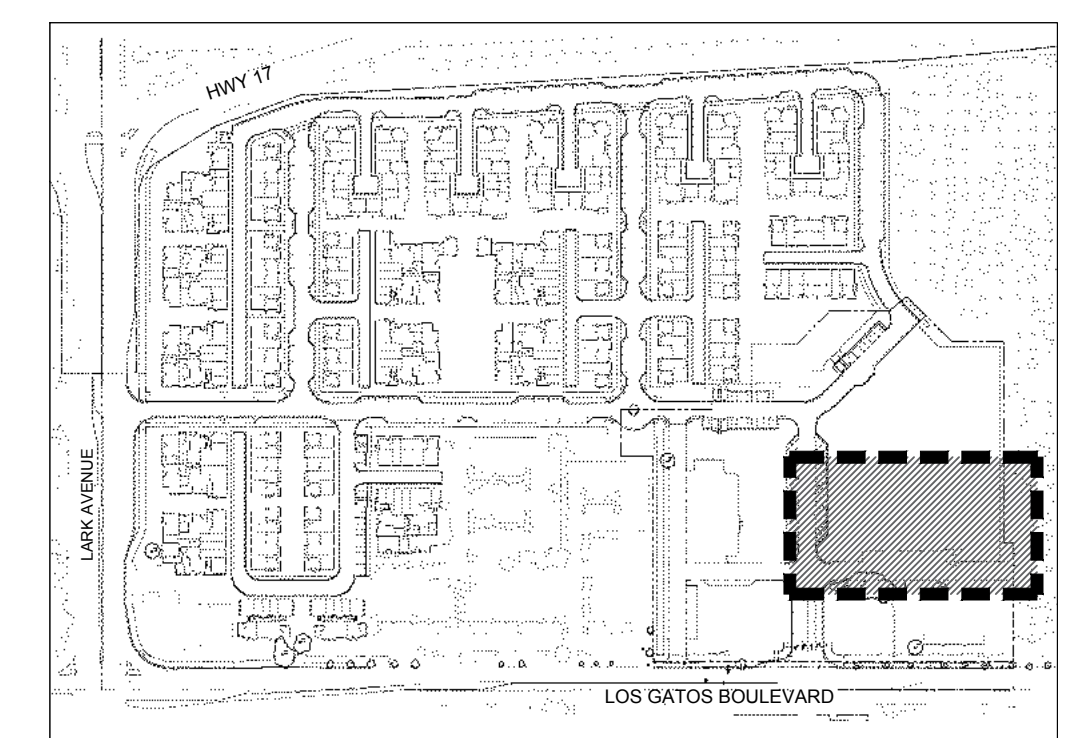
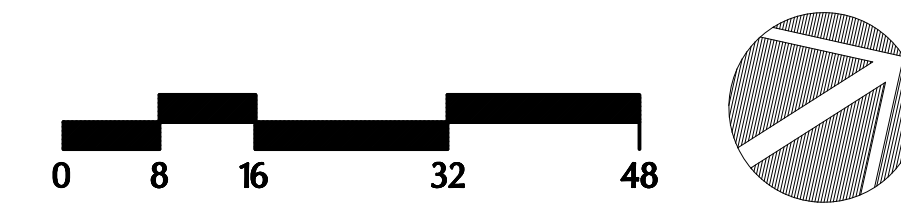


LIP KUR Lippia nodiflora 'Kurapia' Kurapia SODDED 125 sf L Available through Delta Bluegrass Company

NO MOW Native fescue sod mix CALIFORNIA NATIVE SOD: NATIVE MOW FREE SOD SODDED 828 sf AVAILABLE FROM: WWW.DELTABLUEGRASS.COM



**NO SIGNIFICANT CHANGES FROM APPROVED A&S**



CLIENT:  
**SUMMERHILL HOMES**  
 777 SOUTH CALIFORNIA AVE.  
 PALO ALTO CA 94304  
 TEL. 650.842.2421



**VAN DORN ABED**  
 LANDSCAPE ARCHITECTS, INC.  
 81 14TH ST. SAN FRANCISCO, CA  
 ZIP 94103 PH (415) 864-9211 FAX (415) 864-4796

PROJECT MANAGER: **HN**  
 CHECKED BY: **Z/A**

PROJECT NAME/LOCATION:  
**NORTH 40 - MARKET HALL**  
 LOS GATOS CA

DRAWING TITLE:  
**LANDSCAPE CONSTRUCTION DRAWINGS**

REVISIONS:	NO.	DESCRIPTION	BY:	DATE

SHEET TITLE:  
**PLANTING PLAN**

SCALE:  
**1/16" = 1'-0"**

ISSUE DATE:  
**07/11/19**

PROJECT NO.:  
**V1732**

SHEET NO.:  
**L3.1**  
 OF



June 26, 2020

Town of Los Gatos  
Attn: Joel Paulson  
110 E. Main Street  
Los Gatos, CA 95030

22645 Grand Street  
Hayward, CA 94541

510.582.1460 Phone  
510.582.6523 Fax

**Re: North 40 – Market Hall Design  
Modification to Design**

Dear Mr. Paulson:

Eden Housing has been working tirelessly for over 50 years to build and maintain high quality, service-enhanced affordable housing communities that meets the needs of lower income families, seniors and persons with disabilities. We are anxious to have the affordable homes within the North 40 development complete and ready for our seniors to move into.

We have reviewed the proposed changes to the design that eliminate the below ground level of parking and are in full support of this modification and urge you to support SummerHill Home’s request for the modification for the reasons stated below.

First, as a shared user of the Market Hall building we want to ensure there is a proper amount of parking -- without creating excessive traffic in a building occupied by senior citizens. After reviewing the chart of parking provided and seeing the excess spaces provided in a smaller building, we believe the only impact to adding more parking spaces would be to the detriment of our senior citizens safety with additional, unnecessary vehicular traffic.

Secondly, as an operator in a mixed-use building, we are required to pay Homeowner’s expenses (our fair share) to ensure the property maintenance and upkeep of all the common areas. The elimination of the excess spaces will assist in keeping these expenses lower so that the burden of maintaining this space does not rest on the shoulders of the affordable apartments and allow us to put more money into the spaces that our low-income seniors will use.

Finally, there is a dire need for affordable apartments needed in our communities for all persons – regardless of age or circumstance. The elimination of this subgrade parking structure will shorten the construction period for the building – thus providing affordable homes to our senior citizens that much more quickly.

We urge you to support the modification. The amount of parking remaining is more than adequate to meet the needs of our community.

Very Sincerely,

Linda Mandolini, President and CEO  
EDEN HOUSING, INC.





August 13, 2020

Joe Paulson  
Planning Department  
Town of Los Gatos

Re: North 40

Dear Mr. Paulson,

Silicon Valley Bicycle Coalition is a non-profit member-based organization with the mission to create a healthy, community, environment, and economy through bicycling for people in San Mateo and Santa Clara Counties. We are writing to support the proposed changes to the Market Hall at North Forty as furthering the goals we share to create safe and friendly transportation connections throughout the region.

We have reviewed the proposed change to the project to eliminate the unneeded underground parking and are in full support. When a building has excessive unneeded parking, it creates induced demand for cars – the very knowledge that there will be no issue parking encourages people who might otherwise bike, walk, or take transit to drive instead.

SVBC strongly supports the proposed project changes and the safer and more active streets they will deliver. Combined with the expansive TDM measures and plans to significantly increase existing bicycle facilities on Los Gatos Boulevard, Lark Avenue, and through the project, we believe that this reduction in excess unneeded parking will make both the project and Los Gatos a safer and more bike and pedestrian friendly place.

We urge the planning commission to approve the revision to the project and create a better community for us all.

Thank you for your consideration.

Sincerely,

Shiloh Ballard  
President and Executive Director

Silicon Valley Bicycle Coalition  
[www.bikesiliconvalley.org](http://www.bikesiliconvalley.org)  
96 N. Third St, Suite 375  
San Jose, CA 95112  
408-287-7259

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*SunPower Corp.*

**PRESIDENT AND EXECUTIVE DIRECTOR**

Shiloh Ballard

*SVBC is a 501(c)(3) non-profit organization*



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 08/26/2020

ITEM NO: 3

ADDENDUM

---

DATE: August 25, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 8 includes additional public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

EXHIBITS:

Previously received with the August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Received with this Addendum Report:

8. Public Comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

---

Reviewed by: Planning Manager and Community Development Director

---

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Intentionally  
Left Blank***

**From:** [REDACTED]  
**Sent:** Tuesday, August 25, 2020 8:28 AM  
**To:** PublicComment <[PublicComment@losgatosca.gov](mailto:PublicComment@losgatosca.gov)>; Lainey Richardson

[REDACTED]  
**Cc:** Marcia Jensen <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>; BSpector <[BSpector@losgatosca.gov](mailto:BSpector@losgatosca.gov)>; Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>

**Subject:** 3. Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017. Archit

Please do not cave and allow them to change the plan after work has begun. They obviously thought they would win as they have yet to dig the hole and are already putting in plumbing etc.

They are bullies and are ruining out town. Have you driven down LG Blvd and or Lark Ave lately?

Not just "No"....."Hello No"!!!

Do not let this happen!!!

Lainey Richardson  
[REDACTED]  
Los Gatos, CA  
50 plus year resident

**From:** Laura Steger [REDACTED]  
**Sent:** Monday, August 24, 2020 8:14 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment #3 - Underground Garage Item of North 40 Project

Hello,

I am a resident of the Town Los Gatos and live in the La Rinconada area of Los Gatos. I would like to provide a public comment opposing the application from the Developer of the North 40 project to remove the underground parking located under the Market Hall of such project. Certainly, eliminating this underground parking structure will cause an overflow need for cars to use street parking and/or ground lots within the development. Also, it is my understanding that residential units that are part of the North 40 project are being allotted minimal parking spaces and, therefore, this underground parking lot can potentially serve as overflow residential parking when needed. Additionally, the underground parking lot can serve the mid-size retail stores that will be permitted under the second phase of the North 40 project, and minimize the need for large, ground-level parking lots. The Developer of the North 40 project presumably felt that an underground parking structure was necessary when they included this in their plan and submitted their plan to the Town for approval and permitting. I would surmise that the need for such parking has not changed based on the density of the North 40 project and based on no overriding factors that have significantly changed this need. With this said, I ask that the Planning Commission deny the Developer's application to remove the underground parking lot located under the Market Hall of the North 40 project.

Thank you.  
Laura Steger  
[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, August 25, 2020 8:28 AM  
**To:** PublicComment <[PublicComment@losgatosca.gov](mailto:PublicComment@losgatosca.gov)>; Lainey Richardson

[REDACTED]  
**Cc:** Marcia Jensen <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>; BSpector <[BSpector@losgatosca.gov](mailto:BSpector@losgatosca.gov)>; Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>

**Subject:** 3. Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017. Archit

Please do not cave and allow them to change the plan after work has begun. They obviously thought they would win as they have yet to dig the hole and are already putting in plumbing etc.

They are bullies and are ruining out town. Have you driven down LG Blvd and or Lark Ave lately?

Not just "No"....."Hello No"!!!

Do not let this happen!!!

Lainey Richardson  
[REDACTED]  
Los Gatos, CA  
50 plus year resident



**From:** Jay Lord [REDACTED]  
**Sent:** Monday, August 24, 2020 7:11:11 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Opposed to Latest North 40 Changes!

Hi Joel,

I am a resident in Los Gatos for the past 30+ years who lives near this North 40 project. I **strongly** oppose the developers latest proposal to remove the underground parking located under the Market Hall (I believe it's item #3 in the August 26 Planning Commission meeting).

Seriously this cost saving/profit increasing strategy by the developer is a short sighted blatant developer shortcut. And on top of that, they try to slip it past us while we are all consumed with covid 19, fires, school online learning, etc.

The reduction of the underground parking structure means cars parked on ground lots or through the streets. However, the residential units have minimal parking, one car garage and street parking, which means any residential parking overflow has nowhere to go. Removing the underground parking also limits what stores can be permitted in the second phase of the North 40. The underground parking will serve those stores, minimizing the need for large ground level parking lots.

Allowing these developers to go back and make incremental changes to the overall application puts all the work the Town and it's residents did to ensure the North 40 would be an asset to the Town, a step behind. We should hold the developer responsible to uphold what was agreed upon.

Please Joel do the right thing.

Thank you!  
Jay

Jay Lord

[REDACTED]  
Los Gatos  
[REDACTED]

From: Judy Comcast [REDACTED]  
Sent: Monday, August 24, 2020 3:19 PM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
Subject: Upcoming council meeting - agenda #3

Hello Mr Paulson- My note is regarding #3 in the upcoming agenda for the council meeting (North 40) I'm responding to a recent and alarming notification that I received regarding suggested changes benefitting the North 40 developers. I'm imploring you- DO NOT allow them to make the change of not putting in the underground garage. How dare they try to switch this item in their development plans! They've made enough intrusions into our beautiful town- the plans were approved and that should be it! They stand to make millions of dollars and will not put any of that money back into the town! They will leave us scarred with ugly homes and much unneeded retail space while taking away one of the last open spaces that Los Gatos has (they didn't even keep one tree from the historic orchard). Please do not allow them to run rough shot all over us again! I will loose faith in the town council and all it it suppose to stand for- the right of the people- for the people!

Regards,  
Judy McCool - resident of Los Gatos 21 years

Please excuse any auto correct mistakes. :-( Regards, Judy McCool Sent from my iPhone

**From:** Jeff Powell [REDACTED]  
**Sent:** Monday, August 24, 2020 2:54 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment Item # 3

Hi,

My name is Jeff and I am resident of Los Gatos.

I wanted to provide my written feedback for the August 26th meeting on public comment item #3.

I am opposed to the modification of the building to plan in north 40 to remove the underground parking. A lot of time, planning and negotiation was done to finalize the current building plan. As part of this plan adequate parking is a MUST. Modifying the plan at this point seems like a clear attempt to maximize the profit at the expense of the community (over-crowded street parking, traffic, etc). I request the committee reject this modification and require the underground parking to be put in place as was in the building plan.

Thank you,  
Jeff

Good evening Joel! I was just made aware of changes or elimination to the North 40 parking garage. This is NOT acceptable! The time and energy from everyone, attending meetings etc. would come down to a giant waste of time. The community finally went along with a very controversial project and for the owners to want to change a crucial, important part of the project should unanimously be rejected.

Thank-you,

Susan Burnett



**From:** Kathy Kroesche [REDACTED]  
**Sent:** Sunday, August 23, 2020 8:14 PM  
**To:** Joel Paulson <[jpaulson@logatosca.gov](mailto:jpaulson@logatosca.gov)>  
**Subject:** North 40

Please require North 40 developers to keep current commitments to providing sufficient onsite parking.

Thank you.

Kathy

--

Take Care,

**Kathy Kroesche**

[REDACTED]

<https://truaurabeauty.com/kathyk> Protect and nourish the microbiome of your largest organ.  
<https://kathykroesche.norwex.biz/> Create a safe haven by reducing chemicals.

**From:** Vicki Wagner [REDACTED]  
**Sent:** Sunday, August 23, 2020 3:27:28 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Underground Parking

Dear Mr. Paulson,

I am writing to ask that the Planning Commission not approve the developer's request to remove the underground parking planned for the shops at the North 40 development.

This will unduly cause parking and traffic congestion as people will be competing for street parking.

We live near the intersection of Lark and LG Blvd, and we're already worried about traffic congestion around the development, as we use Highway 17 daily.

And we fear it will only get worse in the future as more and more shops and people move into the development.

Please do not undo all of the planning that went into the traffic and parking mitigation by removing the underground parking lot.

Thank You  
Vicki and Jim Wagner  
[REDACTED]  
Los Gatos, CA 95032

**From:** Rochelle Greenfield [REDACTED]  
**Sent:** Sunday, August 23, 2020 1:44:57 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Parking

The developer of the north 40 must build the underground parking structure. Do not let them get away with changing the plans. We may not need parking now but we will when the project is completed.

Thank you  
Rochelle greenfield

[REDACTED]  
Sent from my iPhone

**From:** Wilma Lee <[REDACTED]>  
**Sent:** Sunday, August 23, 2020 12:33:17 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking

Hello,

I am a Los Gatos resident.

I thought North 40 is a bad idea to begin with, but I now understand that there is an application to remove the underground parking located under the Market Hall. I strongly oppose this and I hope that it will not pass.

Already the residential units have minimal parking and there should be an ample parking plan for the North 40. It will adversely affect the neighboring residents and will attract less customers if parking is difficult.

Please don't allow them to make a bad idea even worse for our town of Los Gatos.

Thanks,  
Wilma Lee



**From:** Judy Peterson [REDACTED]  
**Sent:** Sunday, August 23, 2020 12:05 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking @ planning

Mr. Paulson and Planning Commissioners:

I've reviewed the North 40 proposal to reduce Market Hall parking and am not opposed to less parking but am concerned about safety for seniors.

If memory serves, there was quite a bit of discussion during the approval process about the underground parking being secured by gates so seniors could go safely from their cars to an elevator and up to their apartments.

I don't see any mention of plans for secure senior parking in SummerHill's current request and would like to know how this issue is being addressed.

Thank you,  
Judy Peterson

**From:** Amber Reynolds [REDACTED]  
**Sent:** Saturday, August 22, 2020 4:40 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment Item # 3 Request for Modification to an Existing Architecture and Site Application (S-13-090)

To whom it may concern:

I respectfully ask the committee to decline the request for modification to the approved plans.

With the addition of housing and business space to Los Gatos in the North 40 development, will come cars. These vehicles need places to be parked. The vehicles need to be parked safely and in proximity to their destination. Limiting available parking will cause people to look for overflow options in adjacent neighborhoods and business parking lots. The current adjacent businesses stand to lose customers if overflow North 40 parking impacts their customers ability to park. Adjacent neighborhoods will not be as capable of spotting individuals that do not belong, increasing their risk of property damage, vandalism and theft. Additionally, people will begin walking across very busy intersections in an effort to get to their final destination and an increase in pedestrian incidents and potential fatalities is a very likely outcome.

I appreciate the committee hearing my concerns. I sincerely hope the committee will hold the developers to their original plan.

Amber Reynolds, CPA  
[REDACTED] Los Gatos CA 95032

**From:** [REDACTED]  
**Sent:** Saturday, August 22, 2020 11:03 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment Item #3

Dear Chairwoman Hanssen, Vice Chair Janoff, and Commissioners Badame, Barnett, Burch, Hudes, and Tevana:

Please deny the request from the north 40 developers to remove underground parking below the commercial building (the Market Hall). Here is why I would like to see this denial:

--Before this request, I was already concerned about the lack of parking for the senior housing that will be located above the Market Hall. In the current plan, there is only 1 space allotted on top of the building for every 2 senior units. Plans for parking for the senior units assumed that there would be only one occupant for each senior unit. In fact, in all likelihood, in many units, there will be at least two people. The developer also assumed that many of the seniors would not have cars because they wouldn't be able to afford them. I think this will not turn out to be true. So there are already parking issues in the marketplace area related to the senior housing without the elimination of whatever number of parking spaces were supposed to go into an underground garage. Seniors and their guests will almost certainly need to park on the street as will shoppers, creating an untenable overflow situation.

--In general, I think developers should live up to their commitments. The developer committed to providing the underground parking. There was a great deal of discussion surrounding this parking during the hearings. It was very clear that the community wanted this parking. The provision of this parking was part of why the project was approved in the first place. Now the developer claims this parking is too expensive. Our community is not responsible for the profitability of a development. The developer was supposed to calculate all expenses in its proposal. If the developer made an error in figuring out the profitability of the development, the community should not have bear the responsibility of bailing the developer out.

Sincerely,

Barbara Dodson  
[REDACTED]  
Los Gatos, Ca 95032

From: Yanli Xiao <[REDACTED]>  
Sent: Sunday, August 23, 2020 12:59 AM  
To: Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
Subject: Public Comment Item # 3 - underground garage

Dear Planning Committees,

I am writing to express my concern about North 40's application to remove the underground parking located under the Market Hall.

North 40 will bring in a lot of people after it is done. Without enough underground parking spots, it will hugely increase the parking demands on the street. The streets around North 40 are not able to afford the traffic and parking capacity. I am living at Lester Lane, which is walking distance to the North 40 project. Please take into the accounts of the existing residents around the area. Thank you in advance.

Regards,  
Yanli Xiao

[REDACTED]  
Los Gatos 95032

**From:** William Linder [REDACTED]  
**Sent:** Sunday, August 23, 2020 9:51:31 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Item # 3 ( underground parking)

There is little question that parking availability is the lifeline for such a project. I am against any modification of the current plan which would eliminate under ground parking.  
William Linder. Monte Sereno

Sent from my iPhone

**From:** Martha Kirsten [REDACTED]  
**Sent:** Sunday, August 23, 2020 7:16:14 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 concerns

Hello Joel,

I am writing to you regarding the North 40 development. The LG planning commission has approved the FiINAL plan that includes underground parking. Please do your job and NOT change this. This development is huge and this parking is a crucial part of it. It is unbelievable that the developer is trying to do this, only to protect their bottom line. Please do not cave in to their request. The traffic is going to be next to intolerable when this opens. Please don't make the parking a problem as well.  
From a very concerned Los Gatos resident,

Martha Kirsten

[REDACTED]  
Los Gatos

**From:** Donna Flowers <[REDACTED]>  
**Sent:** Sunday, August 23, 2020 8:30:48 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking structure

Hi,

I am a concerned Los Gatos citizen who lives/owns within walking distance of the North 40 project. I am dismayed to learn that the developer has requested time to try to remove the underground parking structure. Clearly he does not have LG interest in mind. Parking is always at a premium here, even Courtside Club has an issue with parking after adding another lot. Sometimes in the past on a Saturday or Sunday we choose to go to Campbell downtown because of the horrible parking in downtown LG.

Please do not let this developer reduce his expenses to the detriment of the town! We need that underground parking. It even sounds like the residents have to park a second car on the street due to 1 car garages? Where is the parking for the town?

Thank you,  
Donna Flowers  
[REDACTED]

**From:** Cassandra Joseph [REDACTED]  
**Sent:** Sunday, August 23, 2020 8:50:15 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** Cassandra Joseph [REDACTED]  
**Subject:** North 40 Developer seeking to nix underground parking

Dear Mr. Paulson,

I'm writing this email to voice my opposition regarding the North 40 developer attempting to remove underground parking. I have followed the North 40 development project for about 7 years. My husband and I have had mixed feeling about it over the years, but we are hopeful that the town will do right by it's citizens and that it will end up being a wonderful, upscale gathering place. I oppose the request to remove underground parking. That was part of the deal, and the developer needs to follow through. I assume it's a money saving effort on their part, and that is just NOT ok. I live fairly close to the North 40, and neighbors and ourselves are concerned about parking already. To hear they want to remove the underground parking is unacceptable. Please stand by the community members of Los Gatos and do not allow the developer to skate away from their obligation. Thank you for your time.

Sincerely,

Cassandra Joseph

[REDACTED]  
Los Gatos



**From:** Sue Raisty [REDACTED]  
**Sent:** Saturday, August 22, 2020 11:47:47 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Don't let North 40 developers remove promised parking

To the town council,  
Please don't allow the North 40 developer to remove the promised underground parking from the project. The planned residential units have very minimal parking and without the underground structure, parking will overflow onto Los Gatos boulevard and nearby side streets, impacting the quality of life for other Los Gatos residents so that this developer can avoid the cost of making good on the promises they made to the community.

Sincerely,  
Susan Raisty

[REDACTED]  
Los Gatos resident since 2009

**From:** Jeff Morris <[REDACTED]>  
**Sent:** Saturday, August 22, 2020 10:52:04 PM  
**To:** Joel Paulson <[jpaulson@osgatosca.gov](mailto:jpaulson@osgatosca.gov)>  
**Subject:** North 40 deviation from the plan on parking?!!

Please tell me this is not true.  
I have a business on Lark and there are parking issues here already!!

**From:** Scott Savage [REDACTED]  
**Sent:** Saturday, August 22, 2020 8:29:24 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Objection to removal of underground parking from North 40 Market Place

Good evening,

Earlier this evening I was alerted to a request that is reportedly scheduled to be heard by the Planning Commission this week. It has been reported that the developers of the North 40 complex are requesting to amend the development proposal to remove the already required underground parking lot from the plan. I am concerned that because of the Covid situation, information about this proposed amendment has not been disseminated to impacted parties as it should have been.

If this is truly the case, as a neighbor in an adjoining neighborhood I vehemently oppose approving any such amendment. It stands to reason that parking from both the residential and commercial developments will be displaced as a result of the reduction of available parking spots and that vehicles will be parked in the adjoining neighborhoods, adding to an already infuriating traffic situation in the north end neighborhoods. I am certain that this is just a cost savings to the developers which, if approved, will be at the expense of the neighboring Los Gatos residents. This is a change which will not be tolerated by the Towns' residents.

The existing plan was approved after years of meetings and discussion with all stakeholders and any proposed amendments should be required to undergo the same level of scrutiny. That being said, at this time there should be no further amendments to the plan and all parties should be bound by the existing agreement.

Thank you in advance for your consideration.

Scott Savage  
[REDACTED]  
Los Gatos, CA 95032

**From:** Cathleen Bannon [REDACTED]  
**Sent:** Saturday, August 22, 2020 7:51:50 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 underground parking

Hi- wanted to share my opposition to the removal of the underground parking at the upcoming North 40 development.

First, I think this issue should be tabled after the issues of the current fires to make sure the community is aware of the request to charge the project.

However, if it must be decided, the current plan was approved as it will supply appropriate parking to keep new shoppers & residents off the streets. We cannot put ourselves in a position of NOT planning for the future when that underground parking will be needed for the second phase of the larger project and any increased popularity of the development in the future. The entire town is already worried about the influx this development will bring. Do not let the developers scale back on any of the infrastructure promised.

Cathleen & Grant Bannon  
[REDACTED]

**From:** Vicki Streeter <[REDACTED]>  
**Sent:** Saturday, August 22, 2020 6:32:52 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** Marcia Jensen <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>  
**Subject:** North Forty project changes

Dear Mr. Paulson

I'm writing to you regarding the proposal to change the parking for the North Forty project. Let me just say that this feels like a bait & switch. The developers pushed their way in with one proposal of underground parking and now that they've started they want to ditch that and impact the neighborhood with overflow parking. Is it that they maybe overrunning their costs? What other reason for the change. Their problem should not become Los Gatos citizens problem.

The neighborhoods around the Westfield Mall In San Jose bordering Stevens Creek and Forest Ave have battled the parking issues for years. They are now creating monstrous parking structures and I feel that Los Gatos will see the same in years to come.

It's heartbreaking enough to see the area turned into a shopping center please don't dump "salt in the wound" by allowing the overflow traffic into the neighborhoods.

Thank you for listening. I do hope this is not approved for the sake of our lovely town.

Regards

Jim and Vicki Streeter  
[REDACTED]

Sent from my itty bitty iPhone. I apologize for spelling errors.

**From:** Ken Aitchison <[REDACTED]>  
**Sent:** Saturday, August 22, 2020 6:13:52 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 proposal - Opposition to upcoming proposed changes

Hello Joe

I was recently made aware of an item that will come up at the Los Gatos Planning Commission this Wednesday 8/26.

Apparently, the developers of the North 40 project will be submitting an application to remove the underground parking located under the Market Hall. I am opposed to the entire project, but this change in particular should be soundly defeated by the commission. Traffic and parking will undoubtedly be heavily impacted by the project as it is currently planned.

Removing this additional parking will mean:

1. Even more cars parked on nearby streets
2. Cars circulating in the parking lot looking for empty spots which will create even more traffic backups on the local streets

Please do what is right for the residents of Los Gatos and don't let the developers get away with this ploy to save money at our eventual expense.

Sincerely

Dr. Kenneth Aitchison

[REDACTED]  
Los Gatos  
[REDACTED]

**From:** Ruth And John Ransom [REDACTED]  
**Sent:** Saturday, August 22, 2020 4:20:07 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** No 40 parking

Please do not let the North 40 change the original plans for underground parking. They are trying to cut costs without any thought to the needs of the people who will be living there. It's bad enough that this project was passed, please don't make another mistake by allowing less parking spaces.

Thank you for your consideration

John and Ruth Ransom  
Los Gatos residents since 1986

Sent from my iPhone

**From:** Lisa Miller [REDACTED]  
**Sent:** Saturday, August 22, 2020 2:44:44 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Parking

Dear Mr. Paulson,

My name is Lisa Miller and I am a Los Gatos resident. My home is near Lark Avenue ([REDACTED]) and the intense construction currently underway for the development of the North 40. It is my understanding that an application is being made to remove the underground parking structure located under the Market Hall. I am asking you to consider the effect this will have on the residents of this community and to reject this attempt to remove it from the plan. The removal of the underground parking structure will force parking to ground lots *or through the neighboring streets* - which includes the street where my home is located along with all my neighbors.

It is also my understanding the residential units have minimal parking, one car garage and street parking, which means any residential parking overflow has no where to go. Highland Oaks Drive and its adjoining cul-de-sacs will become parking areas and this is unacceptable.

In addition to keeping our already overcrowded street parking accessible to the residents is the benefit underground parking will provide the North 40 retail stores and their customers reducing the need for large ground level parking lots.

I implore you and the entire Planning Commission to reject any attempt to remove the planned underground parking structure and to hold the developer to their agreement to provide sufficient underground parking.

I thank you for your consideration in this important matter.

Regards,

Lisa Miller  
[REDACTED]  
[REDACTED]



**From:** [REDACTED]  
**Sent:** Saturday, August 22, 2020 11:55:55 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking

I would like to respond to the reduction of parking spaces at the north 40.  
I would not agree to reduce any parking. I look around town and there is a problem with the lack of parking now. This was done a long time ago. I understand that they never thought there would be that need. I would hope the town would learn from that and not grant the reduction of parking.

Thank you,  
Kim Gavin

Sent from my iPad

**From:** Travis Hsu Engelman [REDACTED]  
**Sent:** Saturday, August 22, 2020 11:47:24 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 must have underground parking

Hi - I was informed the developers at North 40 are asking to revise the plan so they don't have to build underground parking. While I understand they would like to be more profitable - they are changing what has been agreed to.

I live across the street from N40 and would be tormented by people parking and walking to this establishment.

Please keep me updated on the request and tell me when I can voice my opinion to the planning commission.

Thanks  
Travis engelman

[REDACTED]  
[REDACTED]

**From:** Mark Miller [REDACTED]  
**Sent:** Saturday, August 22, 2020 10:34:10 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** Lisa Miller [REDACTED]; Andrew Miller <[REDACTED]>; Matthew Miller [REDACTED]; Teresa Siguenza [REDACTED] <[rg](#)>; Yuan and Maria Chou [REDACTED]; Marie-Ange Eyoum [REDACTED]; Renee Devore [REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** North 40 Parking

Dear Mr. Paulson,

My name is Mark Miller and I am a Los Gatos resident. My home is near Lark Avenue and the intense construction currently underway for the development of the North 40. It is my understanding that an application is being made to remove the underground parking structure located under the Market Hall. I am asking you to consider the effect this will have on the residents of this community and to reject this attempt to remove it from the plan. The removal of the underground parking structure will force parking to ground lots *or through the neighboring streets* - which includes the street where my home is located along with all my neighbors.

It is also my understanding the residential units have minimal parking, one car garage and street parking, which means any residential parking overflow has no where to go. Highland Oaks Drive and its adjoining cul-de-sacs will become parking areas and this is unacceptable.

In addition to keeping our already overcrowded street parking accessible to the residents is the benefit underground parking will provide the North 40 retail stores and their customers reducing the need for large ground level parking lots.

I implore you and the entire Planning Commission to reject any attempt to remove the planned underground parking structure and to hold the developer to their agreement to provide sufficient underground parking.

I thank you for your consideration in this important matter.

Regards,

Mark Miller  
[REDACTED]  
[REDACTED]

**From:** Pat <[REDACTED]>  
**Sent:** Saturday, August 22, 2020 11:02:34 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40/ Underground parking Market Hall

Please do not allow the North 40 to remove the underground parking beneath Market Hall that was previously mandated. We need the parking there so as to not encroach on neighboring area.

Thank you.

Patricia Blackburn  
Jim Blackburn

**From:** Connie Kirby [REDACTED]  
**Sent:** Saturday, August 22, 2020 9:30:23 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Proposed Parking Changes to North 40

Greetings -

Under NO circumstances should underground parking in the North 40 development be eliminated!

Where are retail customers supposed to park? Where are visitors supposed to park?

Congestion on surrounding streets will already increase with increased traffic from residents. If underground parking is eliminated traffic would surely be impacted negatively.

Available parking will mitigate traffic issues in general and prevent overflow of cars on neighboring streets.

Thanks!

Connie Kirby  
Los Gatos, CA  
[www.ckirbyconsulting.com](http://www.ckirbyconsulting.com)

*"When you find yourself in a hole,  
stop digging!" (Will Rogers)*

**From:** T H [REDACTED]  
**Sent:** Friday, August 21, 2020 10:59:56 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 underground parking

Hi - I want to send an email expressing my concern for the application from developers to not have underground parking in North 40. We need to have underground to allow the development to be successful.

Thanks for your consideration.

- Ting

Sent from my iPhone

**From:** Marie-Ange Eyoum <[REDACTED]>  
**Sent:** Friday, August 21, 2020 6:41:53 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** DO NOT Support The North 40 underground parking removal

Hi Mr. Joel Paulson, My name is Marie Tagne and I live with my husband and 2 little children across the North 40 Development.

It came to our attention today that this topic will be in front of the Planning Commission next Wednesday night, given the fact that an application is being submitted by the developer to remove the underground parking located under the Market Hall.

While the current plan seems to have an abundance of parking from the map shared, the reduction of the underground parking structure means cars will have to park on ground lots or through the streets. However, the residential units have minimal parking (I heard one car garage), which implies that any residential parking overflow has nowhere to go. I believe this will lead to Highland Oaks Drive and it's cul-de-sacs (where we live) becoming overflow parking areas for North 40.

We want to make sure we hold the developer of North 40 project responsible to keep the promises made when they shared this with Los Gatos Community.

I am not able to make it to the planning Commission meeting next week, but wanted to send my voice and comment to you prior to the meeting via email to say that My family and I do NOT support this change.

Thanks for your consideration.

Marie-Ange Eyoum Tagne,  
Los Gatos Resident [REDACTED]



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 08/26/2020

ITEM NO: 3

DESK ITEM

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DATE: August 26, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 9 includes additional public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

EXHIBITS:

Previously received with the August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with the August 25, 2020 Addendum Report:

8. Public Comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: August 26, 2020

EXHIBITS (continued):

Received with this Desk Item Report:

9. Public Comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

**From:** shannon susick

**Sent:** Wednesday, August 26, 2020 10:56:48 AM (UTC-08:00) Pacific Time (US & Canada)

**To:** Joel Paulson; Laurel Prevetti; Planning; Council

**Subject:** Planning Commission Meeting This Evening; desk item

Good Morning Planning & Staff,

Please deny the proposed changes to underground parking as mandated in the specific Plan and approved by planning previously tonight.

It is the one component of the plan that makes sense in terms of some assemblance of open space, minimizing pavement and protecting the environment.

Thank you so much,

**Shannon Holmes Susick**



**From:** Jeff Loughridge [REDACTED]  
**Sent:** Wednesday, August 26, 2020 10:45 AM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Planning Commission Meeting Item No. 3 Request for Modification to an Existing Architecture and Site

August 26, 2020

Town of Los Gatos  
Attn: Joel Paulson  
110 E. Main Street  
Los Gatos, CA 95030

**Re: North 40 - Market Hall Design/Modification to Design**

Dear Mr. Paulson,

It is my understanding that Summerhill Homes who are currently responsible for Phase One of the North 40 are asking to eliminate the underground portion of the Market Hall parking.

Underground parking solutions have many advantages over aboveground parking:

- It makes more land available for non-parking uses
- It offers easier access control to help reduce crime
- Due to the parking structure, parked cars are unseen
- Less obstruction of views or sunlight

As a resident, I don't look at the North 40 in phases. I look at it as one large North 40 project. And when Phase One was being negotiated by the developer and was finally agreed on, Market Hall was to include an underground level included in the parking structure.

The underground parking portion under the Market Hall was included with idea that any excess parking from the parking structure would be used for Phase Two. Phase One is part of a complete project for the Town of Los Gatos. Phase Two is also just another part of that same project.

Housing estimates were shared between Phase One and Two, so why not parking? Phase Two can include whatever is negotiated with the Town by the developer.

Utilizing current parking requirements for ONLY the Phase One portion of the North 40 is irresponsible of the town to consider since we know for a fact that Phase Two will require additional parking. The less above ground parking necessary will make more land available for other, more productive and efficient uses.

Summerhill knew what the project was and what it included before they agreed to build it. They knew it included underground parking.

Complete parking requirements for a development the size of the North 40 will be somewhat vague until the whole project plan is more complete. Eliminating 127 parking spaces at this point would be irresponsible for the town to consider. Seldom, if ever, do we get a developer to agree

to underground parking of any kind. We have the underground parking agreed to in the current plan.

I would imagine that if the Town of Los Gatos could turn back time to say, 1970 and have a developer suggest downtown underground parking, we would have been crazy to turn it down. And considering the current Los Gatos downtown parking situation, that 1970 underground parking would come in very handy now.

127 extra parking spaces might seem like a luxury now, but by leaving it in the plan gives us all the potential of a better final project in the future. This reduces the need for 127 above ground parking spaces which would have to be absorbed into the rest of the North 40.

By keeping this parking we can avoid the potential risk of excess parking spilling out into the North 40 or surrounding neighborhoods.

Summerhill's contention of "induced demand" does not make sense in terms of the whole project, Phase One and Two. Any "extra" parking spaces can and will, be utilized in Phase Two. Plus the environmental impact report has already included the parking from the underground portion of the parking structure.

Opening the Architecture and Sighting application to eliminate the underground parking portion of the parking structure makes me think that other things could potentially be renegotiated once that application is opened. It seems a very dangerous precedent to open the application in the first place for any reason. I think that this would be a very bad idea.

Was there a specific error in the Architecture and site application at the time that the application was filed that would require us to reopen? If not, then why do we feel compelled to open the application to remove something that the developer "just doesn't want to do it"?

The Los Gatos downtown has always had a shortage of parking and is constantly struggling to provide workaround solutions to this problem. Why design the North 40 to include these same problems? It just doesn't make any sense.

It would be a shame to have wasted all that work to get the project to where it is now, on paper, only to have a new developer whittle away the good work done.

I get the feeling when reading staff's report, that eliminating the underground parking is an insignificant change as well as a no brainer.

I don't agree. I think it would be bad for the North 40 project and bad for the Town of Los Gatos and its residents.

From: Sheldon Gilbert [REDACTED]  
Sent: Wednesday, August 26, 2020 9:39 AM  
To: Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
Subject: Public Comment Item # 3 Request for Modification to an Existing Architecture and Site Application (S-13-090)

To: Town of Los Gatos and the Town of Los Gatos Planning Department and Planning Commission:

As a resident of the Los Gatos, I want to ask you to deny the application by SummerHill to eliminate the underground parking at their North 40 project. Parking is always a problem in our city and at projects like this. Although, as a former BPAC commissioner, I always support efforts to encourage alternate forms of transportation, but I find it rather cynical that SummerHill has stated in their application their belief that by reducing the number of excess parking spaces, it will limit impacts related to automobile use and encourage the utilization of public transit, bikes, and other environmentally sustainable transportation methods for accessing the Market Hall. If that was their real goal, then they should develop a bike path, provide additional bike lanes and traffic mitigation. They could build bike lockers or expand the parking lots to include locations for bike and scooter rental. Just making it harder to drive and park will only push the traffic problems they are sure to create onto the neighborhood streets and adjacent properties that they are already sure to be adversely impacting.

I strongly encourage you to reject this application.

Thank you,

Sheldon Gilbert

**From:** ginger rowe <[REDACTED]>  
**Sent:** Wednesday, August 26, 2020 7:01 AM  
**To:** Council <[Council@losgatosca.gov](mailto:Council@losgatosca.gov)>; [jpaulson@losgatos.ca.gov](mailto:jpaulson@losgatos.ca.gov); [lprevetti@losgatos.ca.gov](mailto:lprevetti@losgatos.ca.gov); [planning@losgatos.ca.gov](mailto:planning@losgatos.ca.gov)  
**Subject:** North 40

It has been brought to my attention that Summehill Homes is now trying to change their original plans of providing underground parking for their facility. I am asking you NOT to allow the change. We all know the problems we have had with parking in Los Gatos over the years! Now is the time to continue with the original plan. We won't be able to add these structures later. This town has always had issues with too many stories, and the town has never supported to continue to build up on existing structures...

It is with a great deal time and lots of years of this planning that this project was approved. It would be a big mistake to change now. I'm sure that there have been hurdles and issues that have happened during construction that has them asking to change, but I urge you NOT to allow the change. This new development will bring lots of interest and potential employees and visitors. There will be no place for run off or any extra places to add structures later.

Again, please do NOT approve or recommend the change to more forward with removing the underground parking structure in the North 40.

Thank you,  
**Ginger Rowe**  
Time Out Clothing  
[REDACTED]  
Los Gatos, CA. 95030  
[REDACTED]  
[www.timeoutclothing.com](http://www.timeoutclothing.com)

From: Mitzi <[REDACTED]>  
Sent: Wednesday, August 26, 2020 8:36 AM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
Subject: North 40 Changes

To Whom It May Concern,

I'm asking that the proposed underground parking structure elimination for the North 40 be denied. The developers need to be held to the infrastructure they committed to for the project to be approved. We do not need to create a parking nightmare that the town will have to deal with for decades to come.

I'm asking you to hold the developers to the infrastructure they knew was important to the project when it was approved. This project is already a blight on our town landscape, please do not make it even worse.

Sincerely,  
Mitzi Anderson  
[REDACTED], Los Gatos

Sent from my iPhone

**From:** Pat Blair [REDACTED]  
**Sent:** Wednesday, August 26, 2020 8:59 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking

Dear Mr. Paulson,

Parking is always an issue in any town. Why not be forward thinking? How often do we say, if only, with roads and parking? You only have one chance to do this right! There are so many reasons why existing parking is minimal at best, and probably inadequate. Please please do the right thing and provide the extra parking space that we know will be needed.

Pat Blair  
[REDACTED]  
Los Gatos



From: Smita [REDACTED]  
Sent: Wednesday, August 26, 2020 9:10 AM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>  
Subject: Please do not allow SummerHill to change the plan

Hello:

I am a resident of a nearby neighborhood to North 40 and am concerned to hear that Summerhill has applied to remove underground parking from their plan. They need to keep underground parking as part of their plan, they should not be allowed to remove it. The rationale is below.  
I also plan to participate in the meeting.

Why should they be required to have underground parking?

#1 This was the final agreement between the Town and Grosvenor/Summerhill. This agreement was also part of the very lengthy deliberations and discussions between Grosvenor, the Planning Committee, Town Council, and the community members.

The senior housing only has 25 parking spaces for 50 units. What if a couple has two cars or visitors? The bakery only has 7 required parking spaces. Where do they expect the employees to park along with the customers?

The community center has 5-7 parking spaces. Where are all of the people, going to the community center, going to park?

It is my understanding that residential units that are part of the North 40 project are being allotted minimal parking spaces and, therefore, this underground parking lot can potentially serve as overflow residential parking when needed.

If you look at every development in this town parking is sorely lacking.

The 127 spaces of underground parking is needed to provide additional parking for this development. This is much needed parking that will be utilized. It is common sense to follow the plan and put in the underground parking now and have enough spaces for all needs. Los Gatos Blvd. cannot provide more parking. The neighborhoods, who fought against this project in the first place, do not want cars from the North 40 in their neighborhoods, including ACE Hardware or Office Depot.

These neighborhoods already have too many cars parked on their streets from medical offices, Trader Joe's and pre-Covid Google bus commuters.

Thanks,  
Smita Jain Kanungo

**From:** Ira Nanda [REDACTED]  
**Sent:** Wednesday, August 26, 2020 9:30 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>  
**Subject:** Please do not allow SummerHill to change the plan

Hello,

I am a resident of a neighborhood close to North 40 and am concerned to hear that Summerhill has applied to remove underground parking from their plan. They need to keep underground parking as part of their plan, they should not be allowed to remove it. Please see rationale below.

**Why should they be required to have underground parking?**

1. This was the final agreement between the Town and Grosvenor/Summerhill. This agreement was also part of the very lengthy deliberations and discussions between the Planning Committee, Town Council, and the community members.
2. The senior housing only has 25 parking spaces for 50 units. What if a couple has two cars or visitors?
3. The bakery only has 7 required parking spaces. Where do they expect the employees to park along with the customers?
4. The community center has 5-7 parking spaces. Where are all of the people, going to the community center, going to park?
5. It is my understanding that residential units that are part of the North 40 project are being allotted minimal parking spaces and, therefore, this underground parking lot can potentially serve as overflow residential parking when needed.

The 127 spaces of underground parking is needed to provide additional parking for this development. This is much needed parking that will be utilized. It is imperative that the plan is followed and put in the underground parking now and have enough spaces for all needs. Los Gatos Blvd. cannot provide more parking. The neighborhoods, who fought against this project in the first place, do not want cars from the North 40 in their neighborhoods, including ACE Hardware or Office Depot.

These neighborhoods already have too many cars parked on their streets from medical offices, Trader Joe's and pre-Covid Google bus commuters.

Thanks,  
Ira Nanda

**From:** C. W. Tripp [REDACTED]  
**Sent:** Tuesday, August 25, 2020 10:38 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40

Hi, I'm against eliminating the parking below ground in the N. 40. Charles Tripp (60 year resident)

Barbara Dodson

Los Gatos, CA 95032

Dear Planning Commissioners:

**SUBJECT: ITEM #3. ELIMINATION OF 127 PARKING SPACES IN AN UNDERGROUND GARAGE IN THE NORTH 40**

Here are remarks I plan to make if I'm able to work my way through the Zoom system.

.....  
I'm opposed to the elimination of the underground parking garage. Here are my comments.

1. **ALREADY NOT ENOUGH PARKING FOR THE SENIOR RESIDENCES.** There was already a potential lack of adequate parking in the Market Place complex before this proposal. Specifically, the allotted housing for seniors and their guests was not realistic in the original proposal. The allotment was ½ space per unit plus ½ space per guest for a total of 50 spaces related to the senior housing. The developer kept the allotment low with the assertion that most of the low-income seniors wouldn't have cars because they couldn't afford them. The developer also assumed that each senior unit would have only one resident.

It is in fact entirely possible that each senior unit will have two or even more residents, not just one resident. It is also entirely possible that there will be one car connected to each unit for a total of 50 cars, thus using up all the unit spaces and guest spaces. In that case, where would guests park?

2. **NOT ENOUGH SPACES FOR SHOPPERS.** Supposing that the residents of the 50 senior units use their 50 allotted parking spots, only 126 will remain to be used in connection with the Market Hall, Bakery, and Community Room. It's very likely some seniors and their guests will need to use some of these spaces. So will employees at the Market Hall and bakery. It appears possible that not enough spaces will remain for shoppers.
3. **BENEFITS STATEMENT FEELS BOGUS.** I just need to mention that for me the developer's benefit statement doesn't ring true. The developer states that reducing the number of parking spaces will limit traffic impacts and greenhouse gasses and encourage the use of public transit and bikes. Just on the face of it, it's unlikely that people will use buses and bikes to get to the North 40. It seems more likely that the reduction in parking will reduce people's interest in using the Market Place.
4. **DON'T WE WANT TO "INDUCE DEMAND"?** Further, the notion of induced demand—that so-called excess capacity will induce additional demand for the project and increase traffic, noise, and pollution--does not feel like it applies to this situation. It feels much more likely that the Market Place will be a failure if there is not enough parking, which is the likely outcome of the elimination of the underground parking. And don't we want to induce demand for the Market Place

and nearby shops and restaurants? Don't we want the area to be a success? Who would want to drive to the North 40 to shop if they knew there was no place to park? Also I think we all would prefer a few extra parking spaces when we go shopping.

5. **WILL TENANTS WANT TO RENT IN A MARKET PLACE WITH INADEQUATE PARKING?** I don't think so.
  
6. **DEVELOPERS SHOULD STICK TO THEIR COMMITMENTS.** The original developer committed to building the underground garage. There was a good deal of discussion about the garage during the original hearings. The developer didn't want to build the garage then. The new developer doesn't want to do it now. But the underground garage was a condition of the approval of the project. The Commission should compel the developer to follow through on what was originally agreed to.

Sincerely,  
Barbara Dodson

**From:** Paula Bowen [REDACTED]  
**Sent:** Tuesday, August 25, 2020 8:08:30 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** N40 Underground Parking

I oppose the application to remove the underground parking located under the Market Hall. While the current plan has an abundance of parking. The reduction of the underground parking structure means cars parked on ground lots or through the streets. However, the residential units have minimal parking, one car garage and street parking, which means any residential parking overflow has nowhere to go. Overall, this can lead to Highland Oaks Drive and its cul-de-sacs becoming potential overflow parking areas. Removing the underground parking also limits what stores can be permitted in the second phase of the North 40. That portion of the overall North 40 project has been slated for mid-size upscale retail stores. The underground parking will serve those stores, minimizing the need for large ground level parking lots. Without the underground parking this will create major problems for the residents and visitors to the shops and residents. I believe removing it will impact not only residents, local close residents, and businesses. This could also mean less open spaces for the enjoyment of local families. Please make the developer keep to his promised plans as once built it cannot be added.

Best regards  
Paula Bowen  
[REDACTED]  
Los Gatos

**From:** Perez Family [REDACTED] >  
**Sent:** Tuesday, August 25, 2020 6:38:35 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Changes

I have recently been made aware that the developers of the North 40 have expressed a desire to eliminate the underground parking-structure as required in the original Town Project Approval. My concern is the developer is showing signs of not complying to the original plan. This is already a contentious build and any additional movements away from that should not be taken lightly.

Regards,  
Beth Perez  
LG Resident over 20 years

**From:** Julie Oderio [REDACTED]  
**Sent:** Tuesday, August 25, 2020 12:53 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment Item #3

Hello,

I realize I am missing the 11am deadline for comments relating to tonight's meeting. Unfortunately, I cannot be there live and still wanted to express my opinion on the proposed removal of a significant amount of parking from the North 40.

This project was approved with the underground parking and to allow the developer to remove that condition would be a material change to this project and adversely affect the surrounding area. I request that you deny their request for all the obvious reasons, however if you chose to accept their modification, the entire project should be subject to reevaluation. Are they willing to remove or modify another aspect of the project to compensate for this very material change? We are all bound by the existing approval, however, if you negotiate some more favorable terms for the town; that should be included in their offer/request for change, i.e a reduction in overall square footage. Otherwise, it should remain as-is, there is no justification significant enough to justify removing valuable underground parking from a project of this size.

There can NEVER be too much parking.

Thank you,

Julie Oderio  
Los Gatos, CA



**From:** Susan Carter Anderson [REDACTED]  
**Sent:** Tuesday, August 25, 2020 12:13 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** Ben Carter [REDACTED]  
**Subject:** No change for North 40 parking structure

Dear Mr. Paulson,

I am writing to you today ***in favor of keeping the parking spaces*** below the Market Hall. This development is only Phase 1 and, in a high density plan, ample parking is key to long term success.

The allocation of 1/2 a parking space per senior is outdated as there is a growing interest in automated cars to improve senior driving safety. <https://www.aarp.org/auto/trends-lifestyle/info-2019/self-driving-car-benefits.html> In addition, the developers assertion that more parking makes a more dangerous lot is in contrast to what we all know to be the case. Lack of parking makes people aggressive. We don't need that.

Parking is always a factor when a potential business reviews the viability of a new location. We need to draw people into Los Gatos, not shut them out.

Growth and density in Los Gatos is only going to increase. Signing away a chance to keep adequate parking is short sighted. We need to plan for the long term.

Bike lane improvements have a large margin for improvement in our town. What was done to improve safety near Fisher Middle is a great example of the kind of aggressive work that needs to be done regardless of the parking. What will motivate people to ride their bike to the market will be the ability to safely get there, not lack of parking. You can both improve bike safety and keep ample parking. It doesn't have to be a choice.

Thank you for your consideration. I honestly look forward to the North 40 retail potentially bringing in some new or exciting businesses. Just keep the parking!

Regards,

Ben Carter and Susan Carter Anderson, homeowners  
[REDACTED]

**From:** Elke Billingsley [REDACTED]  
**Sent:** Tuesday, August 25, 2020 11:56 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** KEEP - Underground parking lot at North 40 - for meeting agenda on Aug. 26, 2020

To Whom It May Concern:

I am against the North 40 developer requesting not to have underground parking. This was part of the agreement when the project was approved and needs to remain that way. When residents, guests or shoppers visit the development but are not able to find parking, this will result in an even bigger traffic mess than originally planned.

Please do not approve the change to remove underground parking from this project. Do not let the developer bully the town into agreeing to this.

Thank you,

Elke Billingsley

Los Gatos resident and home owner

**From:** b c [REDACTED]  
**Sent:** Tuesday, August 25, 2020 11:38 AM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Public Comment Item #3 North 40

Regarding the hearing and public comment for the North 40 Modification Application;

I "oppose" the application and am in hopes that the Board will deny the modification application. I believe that Los Gatos, along with the community, has lost a lot of the towns "feel along with other things too many to mention" and we are going to have to live with what has been approved. Los Gatos gave up many of the peoples wishes, in order to avoid a lengthy and costly legal battle, leading both sides to come to an agreement and reach a final resolution. This should be the last of any requests, from the developers team, Los Gatos should have to deal with on this project. The developers along with their design team, engineers, architects, lawyers etc. are very aware of what they agreed to and should not be allowed to play the game of "let's agree now to what we have gotten Los Gatos to go along with, having the full intention of coming back for a modification down the road when the dust has settled". This is a very common approach of commercial developers getting through the planning dept., non stop tweeking until they get exactly what they intended in the first place. I again want to state I am OPPOSED to the North 40 Modification Application.

Thank you for your consideration,  
Barbara Carson  
local resident

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Kendra Burch  
Matthew Hudes  
Reza Tavana

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin  
(619) 541-3405

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P R O C E E D I N G S:

CHAIR HANSSEN: We will now move on to Item 3, which is considering approval of a request for a modification to an existing Architecture and Site Application, S-13-090, to remove underground parking for construction of a commercial building otherwise known as the Market Hall in the North 40 Specific Plan. This is APN 424-56-017, Architecture and Site Application S-20-012. The property owner and applicant is Summerhill N40, LLC. I understand Ms. Shoopman will be giving the Staff Report for this item.

JOEL PAULSON: Before you start, Chair, I think Commissioner Burch has a comment.

CHAIR HANSSEN: Oh, I'm sorry.

COMMISSIONER BURCH: Yeah. Based on the proximity of my home to the property I have to recuse myself at this time.

CHAIR HANSSEN: Yes, of course. Thank you very much, and thank you for making me stop before I...

COMMISSIONER BURCH: Of course.

CHAIR HANSSEN: Okay. All right, thank you.

1 JOCELYN SHOOPMAN: Good evening. On August 2,  
2 2017 the Town Council adopted a resolution to approve the  
3 phase one Architecture and Site Application and Vesting  
4 Tentative Map Application for the construction of a new  
5 multi-use, multi-story, mixed-use development on 20.7 acres  
6 of the North 40 Specific Plan Area. The approved  
7 Architecture and Site Application included a multi-story  
8 mixed-use building referred to as the Market Hall, with  
9 residential units above, retail space, a community room,  
10 and a four-story parking garage.

11  
12 The applicant is requesting a modification to the  
13 approved application to remove the below-grade level of the  
14 parking garage. With the elimination of the below-grade  
15 level the applicant is proposing to modify the remaining  
16 three above-grade levels resulting in a total of 176  
17 parking spaces being provided. This is 52 parking spaces in  
18 excess of the parking requirements for the Market Hall  
19 building.

20 Based on the analysis contained in the report  
21 Staff recommends approval of the Architecture and Site  
22 Application subject to the recommended Conditions of  
23 Approval. This concludes Staff's presentation but we are  
24 available to answer any questions.  
25

1 CHAIR HANSSEN: Do any Commissioners have any  
2 questions for Ms. Shoopman? Commissioner Hudes.

3 COMMISSIONER HUDES: I don't know if you're going  
4 to ask for disclosures about site visit but I did have  
5 disclosure and a comment about site visit; I don't know if  
6 this is the appropriate time.

7 CHAIR HANSSEN: You know, I should have asked if  
8 anyone has visited the site in question. I assumed that  
9 everyone had at one point or another but if there is anyone  
10 that had visited the site that needed to make a disclosure  
11 about their visit. Commissioner Hudes.

12 COMMISSIONER HUDES: I had a couple of points  
13 here. First of all disclosure. I've been contacted by a  
14 number of residents about this issue. I told them that I  
15 was not permitted to discuss it and so I did not have a  
16 discussion about it.

17  
18 But secondly, after reading the comments that  
19 came in from residents I grew concerned about other issues  
20 with the site, including whether the reconfiguration to  
21 exclude the basement parking has already occurred, and I  
22 attempted to visit the site but it was locked, and since  
23 the correspondence came in last night and noon today I did  
24 reach out to Staff and I contacted the construction manager  
25 but there wasn't time to do a site visit, and I think a

1 visit to the site is in order, and that gets to my other  
2 point.

3 I'm concerned about holding the hearing on this  
4 important topic when residents aren't able to attend due to  
5 wildfires. They either are not able to attend or not able  
6 to participate in the timeframe on such an important issue.  
7 There were still evacuation orders for areas adjacent to  
8 our hillside neighborhoods even yesterday, and I know  
9 things have gotten better but there were comments raised  
10 about this by some of the residents as well and I think  
11 it's about perception on this sensitive issue, that we need  
12 to be cognizant to folk's concerns, not only about the  
13 opportunity to give testimony but also the possibility of  
14 action being taken not in full sunshine because of the  
15 wildfire situation and the number of residents that are  
16 concerned about this issue.

18 So, because of my inability to do a site visit  
19 and the wildfire situation I believe that a continuance  
20 would be in order in order have better due process for the  
21 Town's residents.

22 CHAIR HANSSEN: Staff, could you comment on if we  
23 were to continue this item to allow for more time for  
24 public testimony as well as the opportunity for  
25



1 Commissioners to visit the site since it was locked when  
2 this continuance would take place?

3           JOEL PAULSON: I can start and then if the Town  
4 Attorney has anything additional. Should the Commission  
5 believe that Commissioner Hudes' point raises an issue that  
6 folks think a continuance is in order, then that is  
7 something that the Commission can do. I think we have  
8 about, let me just check, not including the applicant's  
9 team probably ten to twelve folks in the attendee list. I'm  
10 not sure how many of those folks are interested in speaking  
11 but ultimately that is the choice of the Commission.  
12

13           CHAIR HANSSEN: Commissioner Hudes, go ahead.

14           COMMISSIONER HUDES: Just to follow up, if we  
15 were to do a continuance what would be the appropriate time  
16 to have that discussion and introduce a motion?

17           JOEL PAULSON: I would look to the Town Attorney  
18 for that, whether or not we should open the hearing and let  
19 the applicant speak and ultimately let those in the  
20 audience speak, or whether that should or could be done  
21 prior to that.

22           TOWN ATTORNEY SCHULTZ: So, to add to that, it's  
23 up to the desire of the Commission to decide that. There  
24 are two ways we can handle in the past. One would be to  
25 take up that motion for continuance right now and continue

1 it to a date certain and take no public testimony. As you  
2 know, in the past what we've done is taking the testimony  
3 and then continued the hearing. The issue with that though  
4 is if you take public testimony now it becomes difficult  
5 for Staff as to trying to monitor people that are trying to  
6 speak a second time, which wouldn't be allowed during the  
7 continued hearing of the public comment. So, although you  
8 can continue it after hearing it, I would recommend that if  
9 you're going to continue it that it should be done now so  
10 that everybody knows the date that it's going to continued  
11 and you hear all the public testimony at the same time, but  
12 as I said, it's up to the Commission.  
13

14 CHAIR HANSSEN: I'd like to hear from other  
15 members of the Commission on the suggestion—it's not a  
16 motion at this point—by Commissioner Hudes. Vice Chair  
17 Janoff.

18 VICE CHAIR JANOFF: Thank you. I have a question  
19 for Commissioner Hudes. Would you please elaborate on your  
20 interest in seeing the stage of development of the proposed  
21 site?

22 COMMISSIONER HUDES: Sure. There were at least  
23 one or two residents raised that that construction has  
24 progressed already as though it did not include a basement,  
25 and I was interested in seeing that. Also, in terms of

1 understanding a little bit better about the way the  
2 building would be reconfigured. I am not certain about all  
3 that. It would be helpful to actually visit the site, but  
4 more important was to visit the site to see what progress  
5 has been made and has it actually gotten ahead of this  
6 decision.

7 CHAIR HANSSEN: Vice Chair Janoff.

8 VICE CHAIR JANOFF: Just to follow up on that.  
9 Could Staff elaborate whether the progress of the build of  
10 this particular building, the Market Hall, has that begun?  
11

12 JOEL PAULSON: They have been doing utilities.  
13 Actually, the applicant would be the best one to ask about  
14 that but what I can say is they have building permits in  
15 for the building, which includes the underground garage,  
16 and so ultimately they would need to do that earthwork.  
17 They obviously have not done that earthwork yet and they  
18 wouldn't do that earthwork until a building permit was  
19 issued, which hasn't happened.

20 And just to answer Commissioner Hudes' other  
21 comment, there are no exterior changes to the footprint of  
22 the building, and so the only difference is you would no  
23 longer have that underground portion, so it doesn't  
24 actually have any exterior modifications.  
25

1 CHAIR HANSSEN: Any other Commissioners have any  
2 comments on this? Commissioner Badame.

3 COMMISSIONER BADAME: Would it be possible to get  
4 testimony from the applicant so we could make an inquiry as  
5 to what has progressed so far, and then close the hearing  
6 without getting public testimony from members of the  
7 audience, and then decide whether we want the continuance  
8 or not based upon the testimony of the applicant? Is that a  
9 possibility or no? If not, I'm going to go for a  
10 continuance.  
11

12 TOWN ATTORNEY SCHULTZ: I'd say that's not. You  
13 don't have the ability to open that issue up to just one  
14 person. You can single out the issue but you're going to  
15 have to let other people, because the applicant might have  
16 a different testimony as to what's happening out there  
17 compared to other people.

18 COMMISSIONER BADAME: Okay.

19 TOWN ATTORNEY SCHULTZ: I will say that issue is  
20 somewhat irrelevant to this issue. If they've done work  
21 that they weren't allowed to do then that's a code  
22 compliance issue and it has nothing to do with the current  
23 application in front of you. As Mr. Paulson said, I believe  
24 they've even pulled their building permits to do the  
25 underground garage yet but I could be incorrect.

1 COMMISSIONER BADAME: Thank you.

2 CHAIR HANSSEN: I did want to make a comment on  
3 this. With all gratitude towards all the people that came  
4 to this meeting on Zoom tonight that might have wanted to  
5 speak, and with all the gratitude to all the residents who  
6 have already made comments, we did have at least one  
7 comment if not more from the public saying that they felt  
8 that there were people that wouldn't have an opportunity to  
9 speak on this, and since the North 40 is such an important  
10 topic to so many residents in our town it would be my  
11 preference to continue just simply to make sure we have  
12 captured all the possible public testimony that we can  
13 either via additional written comments or people coming to  
14 the meeting, and as Commissioner Hudes pointed out the  
15 wildfires are an issue.

17 I would also advocate doing the continuance now  
18 versus trying to proceed through the hearing and then  
19 trying to track who had made comments and who didn't. So,  
20 that would be my preference but I wanted to see if any  
21 other Commissioners wanted to comments or make a motion on  
22 the idea of continuing at this point. Commissioner Tavana.

24 COMMISSIONER TAVANA: I would definitely agree  
25 with you, Chair Hanssen and Commissioner Hudes. I think  
giving people a little bit more time, especially

1 considering the circumstance, on the topic of the North 40  
2 more time to review and/or attend the meeting if they  
3 weren't able to tonight, so I would support a continuance  
4 now as opposed to carrying everything out and making that  
5 decision later.

6 CHAIR HANSSEN: Thank you for your comments.  
7 Commissioner Barnett.

8 COMMISSIONER BARNETT: Based on the comments from  
9 Town Attorney Rob Schultz I think that a continuance would  
10 be appropriate, that for example we can't have testimony  
11 from the applicant today and then expect people to comment  
12 on it at a subsequent meeting.

14 CHAIR HANSSEN: Right, okay. So, then, if there  
15 are no other comments from other Commissioners would one of  
16 you like to make a motion to continue? Commissioner Hudes.

17 COMMISSIONER HUDES: If I could check with Staff  
18 first on the date, would September 9<sup>th</sup> be available?

19 JOEL PAULSON: Yes, we can put it on the  
20 September 9<sup>th</sup> meeting.

21 COMMISSIONER HUDES: I would move to continue  
22 this item to September 9<sup>th</sup>, date certain.

23 CHAIR HANSSEN: Okay, and do I have a second?  
24 Commissioner Badame.

25 COMMISSIONER BADAME: Second.

1 CHAIR HANSSEN: Any other comments by  
2 Commissioners? Commissioner Barnett.

3 COMMISSIONER BARNETT: I'd like to make it clear  
4 that there is an opportunity for continued public input  
5 during this extended period.

6 CHAIR HANSSEN: Absolutely. Thank you. I think  
7 that's really important to point out. Commissioner Hudes.

8 COMMISSIONER HUDES: And I just wanted to inquire  
9 about a site visit. Do I need to have a reason that people  
10 agree with to do the site visit? What's the procedure for  
11 moving forward with the site visit?  
12

13 JOEL PAULSON: Staff will work with the applicant  
14 to gain access. Obviously this is an active construction  
15 site so you probably will need a hard hat and a vest at a  
16 minimum, but I will work with the applicant to see when we  
17 can schedule a site visit for yourself and anyone else on  
18 the Commission who is interested in a site visit. You can  
19 just email me and we'll move forward from there.

20 COMMISSIONER HUDES: Great, thank you.

21 CHAIR HANSSEN: All right, thank you. All right,  
22 so then if there are no other comments then we will take  
23 another roll call vote on this matter, so I will start with  
24 Commissioner Tavana.  
25

COMMISSIONER TAVANA: Yes.

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CHAIR HANSSEN: Commissioner Badame.

COMMISSIONER BADAME: Yes.

CHAIR HANSSEN: Commissioner Hudes.

COMMISSIONER HUDES: Yes.

CHAIR HANSSEN: Commissioner Barnett.

COMMISSIONER BARNETT: Yes.

CHAIR HANSSEN: Vice Chair Janoff.

VICE CHAIR JANOFF: Yes.

CHAIR HANSSEN: And I vote yes as well, so it passes unanimously. Director Paulson, are there any appeal rights on this item?

JOEL PAULSON: Thank you, Chair. There are not appeal rights on a continuance and we will come back to this item on September 9<sup>th</sup>.

CHAIR HANSSEN: Okay. Sounds great.



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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/09/2020

ITEM NO: 2

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**DATE:** September 2, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

On August 26, 2020, the Planning Commission continued this item to allow Commissioners to complete a site visit and to allow for additional public comments to be provided. Attachment 10 contains public comments received between 11:01 a.m., Wednesday, August 26, 2020 and 11:00 a.m., Friday, September 4, 2020.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 4, 2020

EXHIBITS (continued):

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Received with this Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

**From:** Sheryl Poulson <sheryl.poulson@gmail.com>  
**Sent:** Friday, September 4, 2020 10:52 AM  
**To:** Planning Comment <PlanningComment@losgatosca.gov>; jpaulson@losgatos.gov  
**Cc:** James Poulson <jrpoulson@gmail.com>  
**Subject:** North 40 parking

Joel, and all at our planning commission, my family and I live in the Highland Oaks neighborhood and like the majority, if not all, of our neighbors are vehemently opposed to the proposed elimination of the underground parking space. This change, if allowed to go through, will very likely force visitors, shoppers & residents to find parking elsewhere ending up creating further degradation to the surrounding communities and businesses. This is so typical of large projects like this in where the developers interests in reducing their cost, post contractual agreements, begin to eliminate promised features. **We must not allow** the elimination of the already minimally planned agreed upon parking or another changes to the plan.

Your concerned citizens,  
James & Sheryl Poulson and family

Please reply.

EXHIBIT 10

**From:** Joan Oloff <[lgfootcntr@aol.com](mailto:lgfootcntr@aol.com)>  
**Sent:** Thursday, September 3, 2020 4:27 PM  
**To:** Eric Christianson <[EChristianson@losgatosca.gov](mailto:EChristianson@losgatosca.gov)>  
**Subject:** 14225 Walker

Hi Eric,

I hope you are doing well during these crazy times!

I am reaching out to you regarding the proposed modification of 14225 Walker St (removal of underground parking).

I apologize, as I could not attend the planning commission meeting.

Eric, this development already under-estimates the parking needs for the development. Allowing them to proceed without building out the parking grade would be a huge problem and greatly impact the surrounding community.

Please help me express my concerns to the appropriate people on the Planning Commission. I am very interested in the outcome of the meeting.

Again, my apologies for not being able to participate on 8/26.

All my best,  
Joan Oloff, D.P.M., F.A.C.F.A.S.  
[lgfootcntr@aol.com](mailto:lgfootcntr@aol.com)  
408-356-2774

Barbara Dodson

239 Marchmont Drive  
Los Gatos, CA 95032  
September 3, 2020

Dear Members of the Planning Commission:

**SUBJECT: ELIMINATION OF THE UNDERGROUND GARAGE IN THE NORTH FORTY**

I oppose the elimination of the underground parking garage. I think it will result in an insufficient amount of parking, and while looking at the SummerHill proposal I think I've come across the fact that SummerHill's provision of parking for the Transition District A, B, & C, with the elimination of the garage, will be below the Town's required number of parking stalls.

I think that SummerHill's proposal has focused on parking for the Market Hall and argued that without the underground garage SummerHill would still be fulfilling the Town's requirements for parking. However, the Market Hall parking in the garage is just one component of the parking for the entire Transition District A, B & C. With the elimination of the parking garage, SummerHill **will not** meet the Town's requirements for the Transition District A, B & C.

According to Sheet A.11 in SummerHill's proposal, the Town's requirement for parking stalls in the Transition District A, B, & C is 354. With the elimination of the underground garage, SummerHill will be providing only 330 parking spots. The bottom line for me is that we can't approve the SummerHill proposal because it provides 24 fewer parking spots than required by the Town.

I hope I have my numbers correct in the explanatory material below.

*Just as a note: SummerHill has provided inconsistent numbers, making it confusing to figure out exactly what is being proposed. In some places, SummerHill says it's providing 330 spaces for the Transition District A, B, & C; in other places it says it's providing 331.*

*As another example, in the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Community Room as 5, but in A.11 the required number of parking spaces for the Community Room is listed as 4. In the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Market Hall as 62 as 5, but in A.11 the required number of parking spaces for the "Specialty Market" is listed as 55.*

- 1. SUMMERHILL'S NUMBERS SHOW THAT IT IS NOT PROVIDING THE AMOUNT OF HOUSING THAT THE TOWN REQUIRES FOR THE TRANSITION DISTRICT (Areas A, B, C).**

- **In the adopted Developer's Phase 1 Plan from 2016:** Based on the table titled Transition District Area A, B & C Building Area and Parking Tabulations (Table 3.22, page 58), the required number of parking stalls was 354 for the Transition District Area A, B & C (69 residential stalls/residential guest stalls + 285 commercial stalls). The original developer committed to providing more than that: 458 (389 commercial stalls (total for the specialty market, retail, restaurant/café, bar/tavern, and community room); and 69 residential/residential guest stalls.

TOTAL ADOPTED IN 2016 FOR THE TRANSITION DISTRICT Area A, B & C:  
458 PARKING STALLS

- The SummerHill proposal provides for only 330 parking spaces for the Transition District A, B & C. (See A.11: Transition District Building Area and Parking Tabulations on page 62 in the Agenda Packet. This is SummerHill's revised version of Table 6.22.)
- By eliminating the underground garage, SummerHill would provide 24 fewer parking spaces than required by the Town for the Transition District A, B & C. (354-330=24)
- Both Table 6.22 in the Developer's proposal and Table A.11 in SummerHill's proposal show that the Town requirement for commercial stalls is 285. Table A.11 shows that under SummerHill's proposal, SummerHill would provide only 261 commercial parking stalls.
- Under its proposal, SummerHill would provide 24 fewer than the required number of commercial parking stalls (285-261=24) for the Transition District A, B & C.

**THE MATH using numbers from Sheet A.11**

Town required number of parking spaces for the Transition District A, B & C:  
354

285 **required** commercial spaces + 39 **required** residential stalls +  
30 **required** residential guest stalls = **354 required parking spaces**

Number of total spaces proposed by SummerHill: 330  
261 commercial spaces + 39 residential stalls +  
30 residential guest stalls = 330 provided parking spaces

**OTHER MATH using numbers from Table 6.22 on page 58 of the Developer's Proposal, which is the proposal adopted by the Town**

Parking spaces in the adopted plan in 2016: 458  
Parking spaces SummerHill wants to eliminate: 127  
Number of total spaces proposed by SummerHill  
for the Transition District A, B, & C: 331

**The Summerhill proposal drops the number of total parking spaces for the Transition District A, B & C below the Town's requirement of 354. SummerHill is**

shortchanging the Town by 24 (or 23, depending on which Table you use) parking spaces.

**2. SUMMERHILL SAYS IT IS PROVIDING EXCESS PARKING. HOW DID SUMMERHILL COME UP WITH ITS (I believe, incorrect) NUMBERS? SUMMERHILL APPEARS TO HAVE CONFUSED THE REQUIRED NUMBER OF COMMERCIAL PARKING SPACES WITH THE REQUIRED NUMBER OF TOTAL PARKING SPACES. (See the notes in red in A.11 on the right -- p. 62 in the Agenda Packet.)**

- In the red notes next to the section outlined in red called Retail, SummerHill implies that it will provide a TOTAL OF 330 parking spaces for retail.
- SummerHill does its math to reach 330 *commercial* stalls by including 39 *residential* stalls and 30 *residential* guest stalls.
- SummerHill has a deficit of 24 parking stalls below the requirement of 285 commercial stalls. It does not have 45 extra commercial stalls as is claimed.

Also note on Sheet A.11 that in the column headed "Total. Required Number of Commercial Stalls." SummerHill lists 285. Then, just 2 columns to the right, under "Provided Commercial Stalls," it lists 261. In its own chart, SummerHill clearly shows that there is a deficit of 24 commercial parking stalls.

**3. THE PARKING GARAGE ALREADY HAD AN INSUFFICIENT NUMBER OF PARKING SPACES.** The developer wants to drop the number of parking spaces in the garage from 303 to 176. But there was already a lack of parking in the garage in the adopted plan. Specifically, the parking for the 50-unit senior complex wasn't realistic. The allotment was 1 space per senior unit for a total of 50 spaces--½ space for each resident and ½ space for guests. The developer said most of the seniors wouldn't be able to afford cars. It also assumed each senior unit would have just one resident.

In fact it's possible that each senior unit will have two or even more residents. There may be one or more cars connected to each unit for a possible total of more than 50 cars. This uses up all the unit spaces and then some without accounting for guests. Suppose the residents of the 50 senior units use their 50 parking spots. 126 spaces remain for the Market Hall, Bakery, and Community Room. Let's say 10 seniors and their guests use 30 additional spaces. We're down to 96 spaces. How about employees at the Market Hall and bakery? Let's say they use 20 spaces. We're down to 76 spaces for shoppers and people using the community room. Is this enough???

How about overflow parking from other areas? There will be 71 one-bedroom units with one garage each. Suppose two people live in these units and each person has a car. We now have 71 more cars that will be seeking parking. The garage would be a logical space for these residents to use.



4. **WE NEED AN EXPLANATION FOR WHY THE DEVELOPER THINKS THE NEW PARKING ALLOCATIONS ARE ADEQUATE.** The developer claims to be justifying the new lowered parking allocations using city code and the specific plan. Logic and common sense have clearly not been applied here. For example, the 2,032 square foot bakery has 7 spaces. Is this for employees as well as patrons? Will there be seating within the bakery? If yes, 7 parking spaces are hardly enough. How about the community room? It gets 4 parking spaces for its 2,772 square feet. Obviously more than 5 people can easily attend a meeting in such a space. Where are they supposed to park?
  
5. **PARKING WILL STILL BE NEEDED FOR FUTURE DEVELOPMENT.** The SummerHill proposal states that “The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan.”

But the need for parking for future development has not changed. There will still be future development and thus still a need for parking.

Sincerely,

Barbara Dodson

**From:** Fremont Bainbridge <[fbainbridge58@gmail.com](mailto:fbainbridge58@gmail.com)>  
**Sent:** Tuesday, September 1, 2020 7:03:43 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Underground Parking

Joel,

I read on Nextdoor that the developer of the North 40 area wants to eliminate previously agreed upon underground parking. I object to this, both on principle and practically. This is not a trivial change, and I don't think there is any reason to believe that parking requirements are now substantially less originally planned for. I hope this will be rejected.

Sincerely,  
Fremont Bainbridge

Sent from my mobile phone.

**From:** awnalee visalli <[awnaleevisalli@gmail.com](mailto:awnaleevisalli@gmail.com)>  
**Sent:** Monday, August 31, 2020 8:55:50 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Parking at North 40

I live across Lark from the North 40 and urge you to make sure that MAXIMUM parking is allocated for. Parking is always an issue, especially in such highly populated areas.

Less parking at the North 40 means me and my families health, home and happiness will be affected negatively. Please push for as much parking as possible and MORE.

Thank you,

Awnalee Visalli  
LG resident of 13 years.

**From:** Henry Richards <[hrichards@rxdox.net](mailto:hrichards@rxdox.net)>  
**Sent:** Monday, August 31, 2020 3:11 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Underground Parking at "North 40"

Dear Planning Commission,

I was concerned to learn that the current owner/developer of the "North 40" project will now seek a waiver from the requirement to provide the additional underground parking originally required by the Planning Commission in the permit process.

Although I understand the argument that "plans have changed", that was not a part of the original agreements. This argument is only valid if the original agreement stipulated some sort of "change order" accommodation.

There is already sufficient and reasonable concern regarding the impact on traffic congestion at an already busy corridor and intersection. The costs associated with the underground parking was "built in" to the original "Grosvenor" proposals by which the Planning Commission approved the project. SummerHill would argue that the underground parking requirement was part of the Grosvenor plan and that they shouldn't be responsible to live up to it. This does not reflect customary business practices of mergers and acquisitions in which the buyer (SummerHill) assumes all debts, obligations, and contractual agreements of the seller (Grosvenor). That is to say that costs, profit margins, and liabilities were all accommodated by the original agreement. Hence, "they bought it" and "they own it" including all original requirements... otherwise they should've renegotiated with the Town for a waiver or variance.

They are saying that the additional parking is no longer needed... but, what if it is? I would argue that building for "excess capacity" (when it should not impact the value of the project) far outweighs falling short and letting the rest of us suffer the consequences.

Henry Richards  
Los Gatos Resident

**From:** Philippa Alvis <[philippaalvis@gmail.com](mailto:philippaalvis@gmail.com)>  
**Sent:** Sunday, August 30, 2020 5:40:07 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** underground parking in North 40

Dear Mr. Paulson

Although I am not a resident of Los Gatos, I do live in the area affected by the North 40 development. I urge you to flatly deny the applicant 's request for elimination of the underground parking. The planned development is totally under allocated for all parking as provided. Since many of us in the area will patronize the commercial sector of this development--bringing tax dollars to Los Gatos-- we need convenient parking that will NOT impact the housing development nor the adjacent local streets. No matter how the current developer howls and cries about his loss of partnership, or any other excuse, as a reason or cause for his request to omit the underground parking, I strongly urge you to deny this request. The North 40 development is bad enough as it is---no need to make it worse by eliminating essential parking !

Philippa and Jack Alvis  
17664 Blanchard Dr.  
Monte Sereno 95030

**From:** Erin Kasenchak <[ekasenchak@yahoo.com](mailto:ekasenchak@yahoo.com)>

**Sent:** Sunday, August 30, 2020 9:02:59 AM

**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>

**Subject:** North 40 parking

Hello - as a long time LG resident who was not pleased with the handling of the North 40 community awareness to begin with, I must adamantly request that the town ensure the developers stick with their commitment to underground parking. As everyone is aware, parking is an issue in downtown LG and will likely be at the North 40 if it's as successful as everyone hopes. Part of that success will depend on whether people want to visit and feel they can easily find parking. Think of Santa rows terrible parking. The need for adequate parking that does not take away from planned open space was agreed to by the developer. Please make them honor that.

Erin Kasenchak

**From:** Lou Albert <[loua@mac.com](mailto:loua@mac.com)>  
**Sent:** Saturday, August 29, 2020 5:28:04 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Please deny the N40 parking change petition

Hi Joel

I'm a longtime LG resident and I am urging the planning commission to deny the North 40 developer's petition to eliminate the current slated underground parking garage. This project is already going to bring many unhelpful issues to our town. Having parking spill over and/or create more surface parking once this development is finished is avoidable and not in the best interest of our community.

Thank you

Lou Albert

Sent from my iPhone

**From:** Diane Dreher <[ddreher@scu.edu](mailto:ddreher@scu.edu)>  
**Sent:** Friday, August 28, 2020 4:48:19 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>  
**Cc:** Diane Dreher <[ddreher@scu.edu](mailto:ddreher@scu.edu)>  
**Subject:** Concern about proposed elimination of 127 parking spaces in North 40

Diane Dreher, Ph.D.  
223 Arroyo Grande Way  
Los Gatos, CA 95032

Dear Planning Commissioners:

**Re: proposed elimination of 127 parking spaces in North 40 underground garage**

I ask you to reject SummerHill's request to eliminate these 127 parking spaces, maintaining the original contractual agreement for the following reasons:

1. **Concern for senior residents.** Earlier Town Council discussions pointed to the lack of adequate parking in the Market Place complex. The original plan was for one-half space per unit, based on the assumption that many low-income seniors would not own cars, and one-half space for guests for a total of 50 spaces devoted to the 71 one-bedroom units of senior housing. The current request to reduce the number of available spaces would cause additional hardship to those seniors with cars who would need ADA accommodation by elevator to accessible parking of their cars in the underground parking garage.
2. **Concern about the math.** The developers also assumed that for the 71 one-bedroom units there would be only one senior resident per unit, when, in fact, there may be quite a few couples in a single unit. It is also possible that there would be one car connected to each unit, using all 50 spaces, leaving no room for guests to park. These guests might include essential caregivers as well as family members.
3. **Concern about the math re: shoppers.** If all 50 resident spaces are used, then guests would need to park in the remaining 126 parking spots planned for the Market Hall, Bakery, and Community Room. Where, then, would the shoppers park? The reduction in parking spaces would likely sabotage the Market Hall, discouraging away potential customers.
4. **Concern about developers keeping their word.** The reduction of parking places seems like a "bait and switch" to me. During the original hearings, the developers sounded reluctant to build the underground parking structure but agreed to 303 spaces for the garage. Now they want to reduce the number to 176. The number of parking spaces was part of the original contractual agreement approved by the Town Council. Any change would be a violation of that contract. Letting the developers arbitrarily change their plans would set a bad precedent, opening the way for further changes by SummerHill that would break their word and betray the interests of the citizens of Los Gatos.



I, therefore, urge the Planning Commission to reject the developer's request to eliminate these 127 parking places in the proposed underground garage.

Sincerely,

Diane Dreher

--

Diane Dreher

Professor of English

Associate Director, Applied Spirituality Institute

<https://www.scu.edu/ic/about/affiliated-works/asi/>

Santa Clara University

500 El Camino Real

Santa Clara CA 95053

(408) 554-4954

[ddreher@scu.edu](mailto:ddreher@scu.edu)

Follow my Tao of Inner Peace page <https://www.facebook.com/TaoOfInnerPeace/>

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**newsletter** <https://www.facebook.com/TaoOfInnerPeace/app/141428856257/>

<http://www.dianedreher.com>

<https://www.northstarpersonalcoaching.com/>

**"Our greatest natural resources are our hearts and minds, together with those of the people around us."**

*The Tao of Personal Leadership*

Check out my blogs:

<http://www.psychologytoday.com/blog/your-personal-renaissance>

<https://blogs.scu.edu/writeherewritenow/>

**From:** Liana Palmer <lianapalm@aol.com>  
**Sent:** Wednesday, August 26, 2020 7:31 PM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** Fwd: North 40 don't scratch below garage parking

Hi again,  
This is  
Liana Palmer  
16345 Los Gatos Blvd, #30  
Los Gatos, CA 95032  
408-455-2582

Please do not let Summerhill off the hook for this parking that in original plan provides spaces for future Phase II. Grovsner developers made this below surface parking and Summerhill just wants to reduce costs despite their stated reasons that are phony.

Thank you, Liana Palmer

**From:** Liana Palmer <lianapalm@aol.com>  
**Sent:** Wednesday, August 26, 2020 7:26 PM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40 don't scratch below garage parking

The justification of SummerHill is weak. It is a **bait and switch**. This lot was intended to provide some parking that would be used by the Phase II structures. Eliminating it would put more parking on the surface of Phase II.

**From:** Suzi Hellwege <[sjhellwege@gmail.com](mailto:sjhellwege@gmail.com)>  
**Sent:** Wednesday, August 26, 2020 5:56:33 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** north 40 changes

Hello Joel:

I just heard that underground parking for the North 40 project is being removed from builder plans. I live near 85/17 and about a mile away from the project, and feel strongly that the developer should be held to the original plan. Without adequate parking cars may spill out to neighborhoods or impede parking for residents of that project. Also, the traffic impact will be greater if cars have to circle to find parking.

Please register my opinion as a 30+ year resident of Campbell and soon to be resident of Los Gatos.

Thank you,  
Susan Hellwege  
White Oaks Court, Campbell

**From:** Amy Despars <[amydespars@hotmail.com](mailto:amydespars@hotmail.com)>

**Sent:** Wednesday, August 26, 2020 4:17 PM

**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>

**Subject:** Fw: Just Say No to the North 40 Developers

To the Los Gatos Town Council

Please do not allow Summerhill to change the final agreement between the Town and Grosvenor/Summerhill. This agreement was also part of the very lengthy deliberations and discussions between Grosvenor, the Planning Committee, Town Council, and the community members throughout the process.

Below is how I understand the original plan to work.

The senior housing only has 25 parking spaces for 50 units. What if a couple has two cars or visitors? The bakery only has 7 required parking spaces. Where do they expect the employees to park along with the customers? The community center has 5-7 parking spaces. Where are all of the people going to the community center, going to park?

It is my understanding that residential units that are part of the North 40 project are being allotted minimal parking spaces and, therefore, this underground parking lot can potentially serve as overflow residential parking when needed.

The 127 spaces of underground parking is needed to provide additional parking for this development. This is much needed parking that will be utilized. It is common sense to follow the plan and put in the underground parking now and have enough spaces for all needs. Los Gatos Blvd. cannot handle more parked cars. The neighborhoods, who fought against this project in the first place, do not want cars from the North 40 in their neighborhoods, including ACE Hardware or Office Depot. These neighborhoods already have too many cars parked on their streets from medical offices, Trader Joe's and pre-Covid Google bus commuters.

The PAMF building on Gateway and Los Gatos Blvd. was originally slated to be mixed use with medical, retail, restaurant. To our disappointment the agreed upon plan at the time got changed thanks to the developers. Please do not let this happen again. Developers do not live in our neighborhoods and are not looking out for the communities best interest. They just want to make money.

**PLEASE DO NOT ALLOW ANY CHANGES TO THE ORIGINAL PLAN.**

Thank you for your time.

Amy Despars

267 Longridge Rd.

Los Gatos, Ca 95032

**From:** Teresa Siguenza <[t62siguenza@gmail.com](mailto:t62siguenza@gmail.com)>

**Sent:** Wednesday, August 26, 2020 3:54 PM

**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>

**Subject:** North 40 disgrace

Hello,

I am a 15 year resident of 118 Highland Oaks Way, Los Gatos, CA 95032. We are on the first cul de sac as you turn off of Lark Avenue. This means that the cars for the North 40 will be parking on our street and along the connecting streets as well. Now, I find out that the developers are changing the parking plan to cut the amount of parking. THIS IS UNACCEPTABLE!

There are 6 houses in our cul de sac. All six houses have older children who are drivers themselves which means that all of these houses have at least 4 cars. There are ONLY 6 spaces of parking on our street. Therefore, if any one of us has guests, they must take one of those 6 street spaces. But, if the North 40 has less parking, then those cars will be taking up our guest spaces. This is not fair!

Our children have never felt safe with the amount of cars that pull in just to turn around (and they go extremely fast) or to circumvent the long line to turn right at Los Gatos Blvd. Cutting parking in the North 40 means more cars to enter Highland Oaks Drive and Highland Oaks Way (and the cul de sacs further down). They won't be looking out for kids! They want the closest space to park with the quickest way to get to their North 40 residence/ shopping.

The developers of the North 40 made a big deal about "owing the owners of the North 40" and "the town already gave the approval to the development in the first place" as an excuse to bring a lawsuit to the town for not going through with the development. So, I think it's only fair to discuss what the developers OWE us, the townspeople, who they want to shop in their shops and buy their houses. Develop the parking structures as was originally planned and do not change it! We could possibly take up a lawsuit to them for going back on their word.

My children MUST stay safe! Adding more cars to our streets because developers want to make more money is NOT keeping my kids safe! The potential for children getting hit in our neighborhood increases 100 fold with every car that is now going to be driving through our streets because of the lack of parking!

Please stop their changes to the parking structures on the North 40 and keep our neighborhood safe. This practice of changing plans is not in good faith and should be sold out as such!

Sincerely,  
Teresa Siguenza  
Los Gatos resident

**From:** Patricia Ernstrom <[pernstrom@me.com](mailto:pernstrom@me.com)>

**Sent:** Wednesday, August 26, 2020 11:58 AM

**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>; Council <[Council@losgatosca.gov](mailto:Council@losgatosca.gov)>

**Subject:** North 40 Parking and Lighting

Dear Los Gatos Town Council Members and Town Staff:

It has been brought to my attention that the developer of the North 40 has returned to the Town in an attempt to change the approved plan for underground parking.

While I am still very disappointed in the overall outcome and approved plans for the North 40 related to a host of considerations including density, traffic and impact on existing downtown businesses, the idea that Summerhill is now trying to remove a key element -- the underground parking -- should not be allowed. Even with the parking that is already part of the plan, it may be insufficient.

Please do not allow Summerhill to change the plan regarding the agreed provision of parking.

As an additional note (that I have made before Council previously), Los Gatos and the region are experiencing the many negative effects of LIGHT POLLUTION. I would continue to ask the Council and Staff to be vigilant in ensuring this major project as well as all new construction and projects, take into account and ONLY permit LOW IMPACT LIGHTING. Our night sky is one of Los Gatos' treasures, and slowly but surely, the ability to see stars and enjoy the quietness of the evenings, are now getting overshadowed by blaring "city lights", street lights and exterior residential light schemes.

Thank you for your ongoing commitment to ensuring the TOWN of Los Gatos retains its unique charm. You are the stewards working on the residents behalf, and we are asking for your help.

Warm Regards,

Patricia Ernstrom

**From:** Hua Jiang <[hua@huajiang.org](mailto:hua@huajiang.org)>  
**Sent:** Wednesday, August 26, 2020 11:41 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Underground parking

Dear Mr. Paulson,

My name is Hua Jiang. I am writing to express my opposition to the proposed plan to remove underground parking of the North 40 project. The removal would lead to vehicles circling around already congested LG/Lark intersection, and force overflow traffic to park in adjacent residential areas.

If the underground parking level was not necessary, why would the builder propose it in the first place? Such bait-and-switch strategy deserves a sound defeat. I am respectfully asking the commission to reject the proposal.

Thank you for your consideration.

-Hua Jiang  
Linda Ave, Los Gatos



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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/09/2020

ITEM NO: 2

DESK ITEM

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DATE: September 9, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC.

REMARKS:

Exhibit 11 includes additional public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public Comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public Comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 9, 2020

EXHIBITS (continued):

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday, August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Received with this Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

From: Robert Gore [REDACTED]  
Sent: Tuesday, September 8, 2020 6:09 PM  
To: Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
Subject: North 40 underground parking

has anything changed with regard to underground north 40 parking?

Robert Gore  
[REDACTED]

Sent from my iPhone

EXHIBIT 11

From: Kathy Parker [REDACTED]  
Sent: Wednesday, September 9, 2020 6:02 AM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
Subject: Re: North 40 Proposed Changes - NO

As long-time residents of Los Gatos my husband and I are emphatically against the proposed elimination of the underground parking garage on the North 40 development. This would lead to the adjacent neighborhoods having to deal with increased parking on their streets, which they can ill-afford, and also increased pedestrian traffic on Lark Ave. and Los Gatos Blvd. as people would have to cross them to get to their cars. It is not fair to the adjacent neighborhoods to make them deal with the increase in car and foot traffic, nor to have them have to deal with the intricacies of permit parking schemes.

The developers agreed to the parking set-up, it is now up to them to adhere to it.

Joseph and Kathy Parker  
[REDACTED]

**From:** John Kirsten [REDACTED]  
**Sent:** Wednesday, September 9, 2020 5:29 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40 concerns

Hello Joel,

I am writing to you regarding the North 40 development. The LG planning commission has approved the FiNAL plan that includes underground parking. Please do your job and NOT change this. This development is huge and this parking is a crucial part of it. It is unbelievable that the developer is trying to do this, only to protect their bottom line. Please do not cave in to their request. The traffic is going to be next to intolerable when this opens. Please don't make the parking a problem as well.  
From a very concerned Los Gatos resident,

John Kirsten

[REDACTED]  
Los Gatos

**From:** Andrew Cohen

**Sent:** Monday, September 7, 2020 6:03:29 PM (UTC-08:00) Pacific Time (US & Canada)

**To:** Planning

**Subject:** North 40 Underground Parking

To the LG Town Council and Planning Commission,

I am writing to express my concern with Summerhill's proposal to reduce the total number of underground parking spaces. The elimination of these underground spaces will reduce the total available parking in the complex below the Town's requirement of 354 by approximately 23 to 24 spaces. This will likely result in cars being parked in the surrounding neighborhoods and in the surrounding shopping areas creating more traffic and congestion.

Please make sure the Town and Summerhill execute the project to the original planned number of parking spaces including the number that were planned for underground. Let's do what is best for The new North 40 residents and businesses, surrounding neighborhood and businesses, and Los Gatos.

Best regards,

Andrew Cohen

██████████ Los Gatos, CA

**From:** [REDACTED]  
**Sent:** Monday, September 7, 2020 10:55:54 AM (UTC-08:00) Pacific Time (US & Canada)  
**To:** Planning; Joel Paulson; Laurel Prevetti  
**Subject:** North 40 Parking

I oppose to the elimination of the underground parking garage as it will result in an insufficient amount of parking and below the Town's required number of parking stalls. The Market Hall parking in the garage is just one component of the parking for the entire Transition District A, B & C. With the elimination of the parking garage, SummerHill **will not** meet the Town's requirements.

- 1. THE PARKING GARAGE ALREADY HAD AN INSUFFICIENT NUMBER OF PARKING SPACES.** The developer wants to drop the number of parking spaces in the garage from 303 to 176. But there was already a lack of parking in the garage in the adopted plan. Specifically, the parking for the 50-unit senior complex wasn't realistic. The allotment was 1 space per senior unit for a total of 50 spaces--½ space for each resident and ½ space for guests. The developer said most of the seniors wouldn't be able to afford cars. It also assumed each senior unit would have just one resident.

In fact it's possible that each senior unit will have two or even more residents. There may be one or more cars connected to each unit for a possible total of more than 50 cars. This uses up all the unit spaces and then some.

- 2. PARKING WILL STILL BE NEEDED FOR FUTURE DEVELOPMENT.** The SummerHill proposal states that "The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan."

But the need for parking for future development has not changed. There will still be future development and thus still a need for parking.

Regards,

Suzy Seandel



**From:** John Despars [REDACTED]  
**Sent:** Monday, September 7, 2020 7:28:42 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 parking

Los Gatos town-

Please keep the underground parking. We don't need more cars on Los Gatos blvd.

Thank you

Sent from my iPad

**From:** Hua Jiang [REDACTED]  
**Sent:** Monday, September 7, 2020 1:33:01 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Jocelyn Shoopman <[jshoopman@losgatosca.gov](mailto:jshoopman@losgatosca.gov)>  
**Subject:** North 40 Underground Parking

Dear Town Planning Commission Staff,

My name is Hua Jiang. I am writing to express my opposition to the proposed plan to remove underground parking of the North 40 project. The removal would lead to vehicles circling around already congested LG/Lark intersection, and force overflow traffic to park in adjacent residential areas.

If the underground parking level was not necessary, why would the builder(s) propose it in the first place? Such bait-and-switch strategy deserves a sound defeat. I am respectfully asking the Commission to reject the proposal.

Thank you for your consideration.

-Hua Jiang  
Linda Ave, Los Gatos

**From:** Maria Ladle Ristow [REDACTED]  
**Sent:** Sunday, September 6, 2020 6:26:17 PM  
**To:** Planning <[Planning@losgatosca.gov](mailto:Planning@losgatosca.gov)>; Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** Planning Commission Meeting, 9/6/20; Item #2

Dear Planning Commissioners and Town Staff,

Regarding Item # 2, Consider Approval of a Request for Modification to an Existing Architecture and Site Application to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. I was intending to speak at the Planning Commission meeting of 8/26/20, but since the meeting was continued, I will submit those comments in writing.

I encourage you to deny the request. There are very good reasons to retain the planned underground parking. While I don't believe in requiring over-parking anywhere, we know from a land-use point of view that a parking garage can store cars more efficiently than surface parking. The Town of Los Gatos created the North 40 Specific Plan so that the entire 40+ acres would be cohesive and work together, regardless of the fact that there are several different landowners, and the development will occur in phases. Underground parking was requested by a large number of residents as the Specific Plan was formulated. It is unfortunate that the developer that planned the parking garage, is not the one building it, but those 174 extra spaces could possibly offset street parking in the next phase of whatever is built. Whether the next phase is office, a hotel, housing, or anything else the town approves, cars will be a part of it, and they will need storage. And once the Market Hall garage is completed, there will be no going back and digging below-grade parking later. Please stick with the original approval and deny this request to eliminate the underground parking.

Thank you,  
Maria Ristow

**From:** MARY PATTERSON [REDACTED]  
**Sent:** Sunday, September 6, 2020 3:27:16 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Parking

Mr. Paulson,

Please do not allow a change in the underground parking for the North 40 complex. The development will already be an eyesore that causes additional traffic and we don't need their cars parked all over our streets.

This development was approved and shoved down our throats, so they should have to abide by their contract.

Thank you,  
Mary Patterson  
Los Gatos

From: jan prinzivalli

Sent: Friday, September 4, 2020 6:10:29 PM (UTC-08:00) Pacific Time (US & Canada)

To: Planning

Subject: North Forty

Please do not allow the developers at the North 40 to deviate from the original plan and reduce the number of parking spaces on the site.

Thank you-

Jan Prinzivalli



Sent from my iPhone

From: Rochelle Greenfield [REDACTED]  
Sent: Friday, September 4, 2020 1:11 PM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
Subject: North 40

Build the garage as per plans or donate the 4m to the city.

Thank you  
Rochelle Greenfield

Sent from my iPhone

**From:** Bernard Greenfield [REDACTED]  
**Sent:** Friday, September 4, 2020 1:14 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40

I have lived in Los Gatos for over 40 years. The developer, having compelled the town to allow development, should be required to strictly adhere to the approved plan(s). No deviation- they must build the garage.

Sent from my iPhone  
Bernard Greenfield

[REDACTED]  
Greenfield

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** Sheryl Poulson [REDACTED]  
**Sent:** Friday, September 4, 2020 11:30 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Cc:** James Poulson [REDACTED]  
**Subject:** North 40 parking

Joel, and all at our planning commission, my family and I live in the Highland Oaks neighborhood and like the majority, if not all, of our neighbors are vehemently opposed to the proposed elimination of the underground parking space. This change, if allowed to go through, will very likely force visitors, shoppers & residents to find parking elsewhere ending up creating further degradation to the surrounding communities and businesses. This is so typical of large projects like this in where the developers interests in reducing their cost, post contractual agreements, begin to eliminate promised features. **We must not allow** the elimination of the already minimally planned agreed upon parking or another changes to the plan.

Your concerned citizens,  
James & Sheryl Poulson and family

Please reply.



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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Kendra Burch  
Matthew Hudes  
Reza Tavana

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin  
(619) 541-3405

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P R O C E E D I N G S :

CHAIR HANSSEN: We will move on to Item 2 on the agenda, which is considering an approval of a request for modification to existing Architecture and Site Application S-13-090 to remove underground parking for construction of a commercial building otherwise known as the Market Hall in the North 40 Specific Plan Area. This is APN 424-56-017, Architecture and Site Application is S-20-012, the property owner/applicant is Summerhill N40, LLC, and for the members of the audience this item was continued from the last meeting on August 26, 2020 to allow Commissioners an opportunity for a site visit and to also allow more time for public comments.

May I have a show of hands from Commissioners that have been able to visit the site? Okay, and are there any disclosures? Commissioner Burch.

COMMISSIONER BURCH: Due to the proximity of my home to the property I do have to recuse myself from this item.

CHAIR HANSSEN: Thank you for letting us know, Commissioner Burch, and then we will see you back for Item

1 3. All right, great. Thank you. And then there were no  
2 other disclosures by Commissioners. Okay.

3 I understand that Ms. Shoopman will be giving the  
4 Staff Report for this item.

5 JOCELYN SHOOPMAN: Good evening. On August 26<sup>th</sup>  
6 the Planning Commission continued the proposal to modify  
7 the approved Architecture and Site Application to remove a  
8 below-grade level of the parking garage to its September 9<sup>th</sup>  
9 meeting. A Desk Item report has been provided to the  
10 Commission this evening that contains additional public  
11 comments that were provided after the publication of the  
12 Staff Report.  
13

14 This concludes Staff's presentation but we are  
15 available to answer any questions.

16 CHAIR HANSSEN: This would be a good time to ask  
17 questions because we did end up continuing the hearing from  
18 last time, and Commissioner Hudes has his hand up.

19 COMMISSIONER HUDES: Yes, this is concerning  
20 guidance that we got from the Town Attorney within the last  
21 few hours. Is that guidance confidential or is that  
22 information that the public can know about?  
23

24 TOWN ATTORNEY SCHULTZ: The public can certainly  
25 know about that and I will try to articulate that to you  
and to the public.

1           As we all know this project was part of  
2 litigation. The Town Council originally denied this project  
3 and then litigation occurred and the court made the Town go  
4 back and rescind its denial and look at the project under  
5 what's known as the Housing Accountability Act, and what  
6 the court said, and it applies to this modification and it  
7 actually applies to any housing development or mixed-use  
8 project of more than one unit, is that you have to base  
9 your decision under that Housing Accountability Act and you  
10 must base your decision on specific objective General Plan,  
11 Specific Plan, or Zoning Code. You've got to find those  
12 objective standards; that's the only way you can deny a  
13 housing project under state law.  
14

15           There have been many subjective reasons in the  
16 correspondence that you've received, such as that if they  
17 don't have the garage there will be a parking problem,  
18 we'll be under-parked, it might be needed for future  
19 development, or the applicant promised it therefore they  
20 should have to do it. All of those are subjective reasons  
21 why you would want to deny it and we just don't have the  
22 discretion under state law anymore to deny a project based  
23 on discretion.  
24

25           The big issue is whether they meet our parking  
standards. There is some correspondence that talks about

1 the math that they've used and whether they have adequately  
2 described the parking standards and whether they meet our  
3 parking standards. If you determine that there is  
4 insufficient evidence to reach the conclusion that without  
5 the underground parking structures they do not meet our  
6 parking standards, then that's something that you could  
7 deny this project on, but you can't deny it on all of the  
8 other subjective reasons that I mentioned and plus many  
9 others; that simply is not a reasonable basis to deny this  
10 project.  
11

12 CHAIR HANSSEN: Commissioner Hudes, and then I  
13 also saw Commissioner Badame had her hand up as well.

14 COMMISSIONER HUDES: That's really helpful. We  
15 get into areas where it isn't always apparent to those of  
16 us who are not attorneys about whether we are looking at  
17 something that is a standard or an objective standard or a  
18 subjective standard. Is it okay with Staff if we ask that  
19 question when we are deliberating or if there's a follow up  
20 question during testimony to find out whether we are  
21 dealing with an objective or not?  
22

23 TOWN ATTORNEY SCHULTZ: Yes, if you can point to  
24 sections in, like I said, our Zoning Code and Specific Plan  
25 that are objective standards and you don't believe they've  
met those objective standards with regard to the

1 underground parking, absolutely, you can ask Staff that  
2 question and that's what we're looking for, your guidance.  
3 Although Staff analyzes a project we don't have all the  
4 answers, and if you can come up with objective standards to  
5 either deny or approve this project then certainly we're  
6 going to help you.

7           COMMISSIONER HUDES: Thank you.

8           CHAIR HANSSEN: Commissioner Badame.

9           COMMISSIONER BADAME: I'm concerned that I  
10 literally got this information ten minutes ago.  
11 Commissioner Barnett and I have been tied up in a  
12 Conceptual Development Advisory Committee hearing for  
13 almost a couple of hours, so just receiving this  
14 information, which I think is very important in making that  
15 decision. I need time to digest it and research it further.  
16 Is that possible where we could maybe continue this  
17 conversation or the hearing if other Commissioners agree to  
18 it, or we just get a Desk Item and we just deal with it  
19 with the legal advice we get?

20           CHAIR HANSSEN: It's certainly an option to  
21 continue the... I'll look to Staff for guidance on this but  
22 we've already continued this item one time, so Director  
23 Paulson, do you have a comment on this?  
24  
25

1                   JOEL PAULSON: As you've mentioned, we've  
2 continued this already one time for some previous concerns  
3 raised by Commissioners. I get a little bit worried that we  
4 are just delaying. There's also the possibility you could  
5 take a 15-20 minute recess. I'm not sure how much research  
6 Commissioner Badame is interested in doing, but maybe she  
7 just hasn't had a chance to read through the email, so  
8 that's another option that we could just take a short  
9 recess so that Planning Commissioner can look through that  
10 item—maybe some other folks haven't had a chance to look at  
11 it either—and then reconvene the meeting, unless the Town  
12 Attorney has other options. Obviously, ultimately decisions  
13 are the Planning Commission's but that's just my input on  
14 that and if the Town Attorney has an additional input.

16                   TOWN ATTORNEY SCHULTZ: I apologize in giving it  
17 to the Planning Commission at the late hour. I assume that  
18 the Planning Commissioners were aware of the Housing  
19 Accountability Act. Like I said, it doesn't apply to this  
20 project, it applies to all housing projects that you must  
21 base your denial on objective standards not subjective  
22 standards; that goes forward for any project.

24                   But certainly what I would suggest is you open up  
25 the testimony and you hear all the testimony. If there is  
something that you need further clarification from Staff



1 because of the math, parking calculations that you're not  
2 satisfied with the determination that was made by the  
3 applicant or by Staff, that certainly would be a reason to  
4 continue it. It's a single issue in my mind unless you can  
5 come up with other objective standards that are a Specific  
6 Plan or parking regulations. It's really dealing with  
7 whether they meet our parking regulations without the  
8 underground parking structure.

9  
10 COMMISSIONER BADAME: Okay, thank you. I'll read  
11 through the email as we further our discussion.

12 CHAIR HANSSEN: So, Commissioner Badame and the  
13 rest of the Commission, I think we should go ahead with the  
14 public portion of the hearing, hear from the applicant, and  
15 then if it turns out that any of you feel that you need  
16 more time to have all the facts we can take a recess or if  
17 absolutely necessary, we'll continue it. And Commissioner  
18 Hudes has his hand up.

19 COMMISSIONER HUDES: Yeah, I'm sorry, I do have  
20 some questions of Staff that would be helpful to know  
21 before hearing from the applicant because it's difficult to  
22 be able to ask intelligent follow up questions if I'm not  
23 sure about how we're evaluating this, and actually why  
24 we're evaluating this as well, so I did have a few  
25 contextual questions for Staff, not about the specifics of

1 the proposal but the purview of the Commission and how we  
2 are to evaluate this.

3 CHAIR HANSSEN: I think that's perfectly  
4 appropriate at this time and this is the best time to do  
5 that before we proceed into the applicant testimony. That  
6 way we can avoid duplicate questioning and so on and so  
7 forth. So, go ahead, and I have some questions as well.

8 COMMISSIONER HUDES: Great. I'm just trying to  
9 understand when I'm relating this back to the Specific Plan  
10 and there are some things that are not clear about what  
11 type of project this is. In the Specific Plan there is a  
12 discussion about mixed-use projects 2.5.10, but there is  
13 also a reference to a residential use for affordable  
14 housing that has a different entry in one of the tables for  
15 the parking requirements. So, are we to evaluate this as a  
16 mixed-use?  
17

18 JOEL PAULSON: Commissioner Hudes, you said  
19 2.5.1?

20 COMMISSIONER HUDES: .10.

21 JOEL PAULSON: Right, so that's maximum  
22 development capacity.

23 COMMISSIONER HUDES: No, I'm sorry, this is in  
24 the Land Use and Development Standards, page 2-22.

25 JOEL PAULSON: So, 2.5.10?

1 COMMISSIONER HUDES: Yes.

2 JOEL PAULSON: And where do you see parking  
3 requirements in there?

4 COMMISSIONER HUDES: The last paragraph on the  
5 left-hand column D says, "Dedicated parking spaces shall be  
6 provided for residents and shall be clearly distinguished  
7 from spaces provided for commercial and/or office use." So,  
8 that falls under 2.5.10. Is this considered a mixed-use  
9 project?  
10

11 JOEL PAULSON: Yes, this is a mixed-use project  
12 and the parking for the senior affordable housing will be  
13 demarcated and the Applicant can probably provide  
14 additional information on that.

15 COMMISSIONER HUDES: Okay. The other question I  
16 have is on page 3-21 of the Design Guidelines; there's an  
17 item M. Does that not apply because that's a different type  
18 of housing, or does that apply?

19 JOEL PAULSON: What page was that on?

20 COMMISSIONER HUDES: 3-21.

21 JOEL PAULSON: Okay, 21. Thank you. Twenty-  
22 second. And so you're looking at 3.3.1, Site Planning and  
23 Design? You said letter D?  
24  
25

1 COMMISSIONER HUDES: No, I'm on letter M, 3-21 of  
2 the Residential Design Guidelines. Does that not apply to  
3 this project?

4 JOEL PAULSON: That is more strictly for the  
5 residential specific projects, so that would be most of the  
6 rest of the phase one project.

7 COMMISSIONER HUDES: Okay. And on page 3-22,  
8 3.3.2 D, it says, "Below grade parking is encouraged with  
9 entries placed at the rear or sides of the structure  
10 whenever possible." Does that not apply because of the word  
11 "encourage"?

12 JOEL PAULSON: That is not an objective standard  
13 because it says encourage.

14 COMMISSIONER HUDES: Okay. Those are all the  
15 questions I have now. I have quite a few relating to the  
16 math but I'll hold that until we hear.

17 CHAIR HANSEN: Okay. I do have a question for  
18 Staff, and if any other Commissioners do as well I'm happy  
19 to have you raise your hand.

20 So, Director Paulson, for the benefit of the  
21 Commission as well as the audience, there were tables in  
22 the Staff Report that talked about the parking requirements  
23 and it basically says that even with removing the  
24 underground parking that based on the information in this  
25

1 Specific Plan there will be above the parking that's  
2 required that was agreed to in the Specific Plan.  
3 Specifically, I wanted to ask about the two different parts  
4 of it. So, the origin of the decision that got into the  
5 Specific Plan where the senior housing needs basically one  
6 parking space per resident, a half for the resident and a  
7 half for a guest, the origin of that was it's spelled out  
8 in the Specific Plan or some other document?  
9

10 JOEL PAULSON: Yes, that is in Table 2-4 on page  
11 2-15 of the Specific Plan.

12 CHAIR HANSSEN: Okay. According to the plan that  
13 was approved and that they are building to, that decision  
14 was already made that that's the amount of parking that was  
15 needed, and I guess when the applicant speaks too we can  
16 find out, but Eden Housing is managing the project and I  
17 don't know if they're going to be available tonight or not,  
18 but they contributed to this thing to determine the amount  
19 of parking that was needed.

20 JOEL PAULSON: As I recall, yes, they thought  
21 that this would be adequate parking for this type of use.

22 CHAIR HANSSEN: Okay. And then as far as the  
23 spaces for the commercial application, could you just  
24 explain how that's calculated and how it got into the plan?  
25

1 JOEL PAULSON: Sure. Again, page 2-15, 2.5.8  
2 spells out the parking requirements and it in summary says  
3 that the non-residential uses in the Specific Plan Area  
4 shall utilize the downtown requirements for those non-  
5 residential uses, and so generally restaurant, commercial,  
6 retail, personal service, those are one parking space for  
7 every 300 square feet.

8 CHAIR HANSSEN: And that's what came into the  
9 Staff Report was those numbers that were agreed to in the  
10 Specific Plan that are... And then in the case of commercial  
11 it's similar but maybe not exactly the same. The  
12 methodology for calculating the amount of parking is  
13 similar to what we use elsewhere in town?

14 JOEL PAULSON: What we use in a downtown  
15 specifically, yes.

16 CHAIR HANSSEN: Okay. Commissioner Hudes, you had  
17 your hand up.

18 COMMISSIONER HUDES: Yeah, coming back to that,  
19 that's in the same section as the mixed-use parking  
20 requirement, and so when we're looking at the number of  
21 off-street spaces required for a mixed-use there's non-  
22 residential and residential. How does that relate to mixed-  
23 use?  
24  
25

JOEL PAULSON: If you look at Table 2-4.

1 COMMISSIONER HUDES: Yes, I'm looking at it.

2 JOEL PAULSON: So, A is the non-residential use  
3 in a mixed-use building, which we have here, which is the  
4 downtown parking requirements, and then B is residential  
5 uses and the parking requirements are split up between  
6 senior affordable housing units, those have the same  
7 parking requirements, one bedroom units, and units that  
8 have two bedrooms or more; those are the parking  
9 requirements for a mixed-use building.  
10

11 COMMISSIONER HUDES: I did have one more question  
12 about whether this is the purview of the Planning  
13 Commission. There's a table that basically defines who  
14 makes decisions; it's part of the Implementation Plan, and  
15 so my question is why is this before the Planning  
16 Commission? The discretionary approval summary table on E-  
17 3.

18 JOEL PAULSON: Right. That's what lays out the  
19 requirements. Because the modification was a modification  
20 to the architecture and site, Planning Commission is the  
21 deciding body on that.

22 COMMISSIONER HUDES: But "Reduced parking  
23 requirement for senior/affordable housing," that says  
24 that's approved by the Director of Community Development,  
25 the findings can be made, or I guess the DRC.

1 JOEL PAULSON: They're not asking for a reduction  
2 in senior parking.

3 COMMISSIONER HUDES: Okay, so this is why it's  
4 under the purview of the Planning Commission, because it's  
5 a mixed-use parking reduction?

6 JOEL PAULSON: They're changing aspects, removing  
7 the one level of underground parking. I felt that that type  
8 of modification you needed to go through the architecture  
9 and site process, and the Planning Commission is the  
10 deciding body for all architecture and site processes.

11 COMMISSIONER HUDES: Okay, thank you.

12 CHAIR HANSSEN: And I just had two more quick  
13 questions and then we'll hear from the applicant.

14 A number of the public comments came in and  
15 talked holistically about parking for the entire North 40  
16 complex. What I wanted to ask Staff was supposing that the  
17 plan numbers were wrong in the Specific Plan and it turns  
18 out we really don't have enough parking, which many people  
19 are convinced of that, are we able to use the holistic  
20 parking requirements of the North 40 phase one project  
21 relative to making this decision on this particular  
22 building?

23 JOEL PAULSON: I think I follow what you're  
24 saying, but ultimately every project has to provide the  
25



1 required parking at a minimum level as required by the  
2 Specific Plan. The phase one project exceeded that number.  
3 Any future project that comes in and goes before the  
4 Planning Commission will have to show that they are  
5 providing adequate parking pursuant to the Specific Plan  
6 for their specific project.

7 CHAIR HANSSEN: So you're saying as proposed all  
8 of the rest of the phase one plan is meeting the parking  
9 requirements that are set on the Specific Plan as well?  
10

11 JOEL PAULSON: That's correct.

12 CHAIR HANSSEN: That's one thing. The final  
13 question I had was supposing that it is the will of the  
14 Town and the Commission on a going forward basis to revisit  
15 the parking standards that are in the phase one, you know,  
16 the current North 40 Specific Plan approved, before we get  
17 a phase two. Is that possible?

18 JOEL PAULSON: That is possible. It would require  
19 a Specific Plan modification but it would not be applicable  
20 retroactive to the phase one project.

21 CHAIR HANSSEN: All right, that answers my  
22 question. Do any other Commissioners have questions for  
23 Staff before we go to hear from the applicant? Seeing none,  
24 we will now open the public hearing and first give the  
25 applicant an opportunity to address the Commission for up

1 to five minutes, and I thought I saw in the attendees list  
2 we do have someone from Summerhill Homes that will be  
3 speaking.

4 JOEL PAULSON: I would ask that whoever is going  
5 to represent Summerhill Homes please raise your hands, and  
6 it looks like Mr. Keeney, so I will allow him to talk.

7 CHAIR HANSSEN: Okay, Mr. Keeney.

8 MICHAEL KEENEY: Thank you. Can you hear me?

9 CHAIR HANSSEN: We can hear you.  
10

11 MICHAEL KEENEY: Good evening, Chair Hanssen,  
12 members of the Planning Commission and Staff. My name is  
13 Michael Keeney and I'm the Development Manager for  
14 Summerhill Homes on the North 40 project.

15 As you've probably observed we are well underway  
16 with the construction of the project. We've started home  
17 construction and we are progressing on off-site  
18 transportation improvements of well over \$10 million to  
19 support the project and expand traffic capacity in the area  
20 for the benefit of the Town and future residents.

21 As currently designed the Market Hall garage has  
22 an excess of 179 parking spaces as determined by the Town's  
23 parking regulations. The excess parking spaces were  
24 included in the original design based upon the previous  
25 developer's strategies related to the potential development

1 of phase two. That developer is no longer involved in the  
2 Market Hall development and Summerhill Homes has no  
3 involvement in the potential development of phase two.  
4 There is no obligation in the conditions or Specific Plan  
5 for Market Hall to provide parking for future phases.  
6 Accordingly, we are requesting the elimination of the  
7 basement portion of the garage structure, reducing the  
8 parking spaces in the garage by 127. This would leave a  
9 total of 176, which is 52 in excess of what's required by  
10 the Town parking regulations.  
11

12           With this modification there will be  
13 significantly more parking than is required and the  
14 proposed modification has several benefits to the project  
15 and the Town of Los Gatos.

16           The elimination of the basement will result in  
17 reduced construction activity, noise, and dust from a  
18 shorter construction duration. It will result in the  
19 reduction of approximately 1,700 truck trips that would be  
20 required to off-haul the soil for the basement excavation  
21 and approximately 400 concrete trips to build the basement.  
22

23           The elimination of the basement removes a  
24 potential public safety problem, particularly if it is  
25 rarely used, and the modification is supported by the  
Silicon Valley Bicycle Coalition and our affordable housing

1 partner, Eden Housing, who will own and manage the senior  
2 affordable housing units that will be a part of the  
3 building.

4 It will also result in reduced operating expenses  
5 for the affordable housing and the commercial uses in  
6 addition to reduced construction costs.

7 You have received several comments regarding how  
8 the parking was calculated and what the correct  
9 calculations should be, and I can understand that they're a  
10 little tricky, but we have based our calculations on what  
11 the Town is requiring based on the current code. The  
12 parking tables that are included in the A&S Application are  
13 based on what was included in the code at the time and  
14 based on assumptions about the land use.

15 To date the only building that has submitted for  
16 a building permit is the Market Hall, and we've refined the  
17 design and worked with Staff to determine what the parking  
18 requirement based on the current Zoning Code. These numbers  
19 are reflected in the Market Hall Parking Requirements Table  
20 that we included in our Letter of Justification and are  
21 consistent with what's before you in this proposal.

22 Jennifer, do you have that Exhibit 2 that I was  
23 going to use later? It might be good to use it now.  
24  
25

1           In response to the comments about the parking  
2 tables, we did put together a table that's based on the  
3 Market Hall building permit as proposed and the assumptions  
4 on what the Commercial District would have remaining. So,  
5 this table reflects what's in the square footage  
6 assumptions of the A&S for the remaining commercial pads at  
7 the current code requirements and as you can see, there is  
8 a surplus of parking. The surplus of parking in aggregate  
9 is 45 spaces because the Market Hall has a surplus of 52  
10 but the commercial pads are a little short; that's noted in  
11 the footnote. In total you have a surplus of parking  
12 district-wide of 22-percent with Market Hall having a  
13 surplus of 61-percent.

15           We would like to thank Staff for moving this  
16 application forward in a timely manner and for your  
17 accurate summary of the project's compliance and exceedance  
18 of the parking required for the building, and we're  
19 available to answer any questions you may have.

20           I should also add Eden Housing is available, and  
21 some of our other consultants as well, if something comes  
22 up that's more appropriate for them.

23           CHAIR HANSSEN: Okay, good. So, if Commissioners  
24 have questions for Eden Housing, they're available as well  
25 tonight. At this point do any Commissioners have questions

1 for the applicant? I see Commissioner Hudes has his hand  
2 up.

3 COMMISSIONER HUDES: Thank you. I have many  
4 questions but I'm going to wait until after public  
5 testimony because almost all of them were raised by the  
6 public.

7 I had one question before then though and that is  
8 regarding the progress of the project. Has the project  
9 proceeded with the assumption that the underground parking  
10 will be eliminated?  
11

12 MICHAEL KEENEY: No, there's nothing that we've  
13 done with construction to date that would be changed by the  
14 decision of the Planning Commission. All of the  
15 infrastructure to serve the building has been under  
16 construction to the extent that it can be and nothing has  
17 been installed that would prevent the structure from being  
18 built in either design.

19 COMMISSIONER HUDES: Thank you.

20 CHAIR HANSSEN: Do other Commissioners have  
21 questions? Vice Chair Janoff.

22 VICE CHAIR JANOFF: Yes, thank you. Mr. Kenney,  
23 could you please to the best of your knowledge summarize  
24 the commercial or residential non-designated parking that  
25 is outside of the Market Hall or the commercial parking

1 requirements within those vicinities? There are a number of  
2 spaces beyond the Market Hall and the commercial buildings.  
3 Do you have any idea what those would be just so that we  
4 have a general understanding of what parking there might be  
5 in excess of what is being discussed tonight?

6           MICHAEL KEENEY: The surface parking sort of in  
7 the transition district is approximately 130 stalls. The  
8 individual commercial pads haven't been fully designed and  
9 we're not the applicant for those, but the preliminary  
10 estimates are for 130 stalls both on the private streets  
11 throughout the Commercial District and on surface parking  
12 lots on the commercial pads.

14           VICE CHAIR JANOFF: So those include the  
15 commercial parking pads that are not associated with Market  
16 Hall?

17           MICHAEL KEENEY: Correct, and that's shown on the  
18 table that was up there.

19           VICE CHAIR JANOFF: Thank you.

20           CHAIR HANSSEN: Before we go to public comments I  
21 did have a question and it's about the senior housing  
22 parking. I would say the standard is defined in the North  
23 40 Specific Plan but we did get many, many, many questions  
24 from the public about how could it be possible that only  
25 one half space for each resident, and one's a half space

1 for their guests, would be needed? And then in addition how  
2 would it be placed? So, I was hoping that either Summer  
3 Hill, or if Eden Housing is available, could answer that  
4 question, because the public can make their comments but we  
5 can't respond to them during the meeting, so I was hoping  
6 we could hear from Eden Housing about why they're  
7 comfortable with that number, because people are thinking  
8 they might have teenage kids, they might have multiple  
9 cars, they might have caregivers. Like how would they end  
10 up not using the other parking, or how did that work? So,  
11 is there somebody that could speak to that?  
12

13 MICHAEL KEENEY: Well, maybe let me give you just  
14 a couple answers and then I'll pass it off, and if there's  
15 need for follow up Eden is available.

16 There are a total of 50 spaces allocated for the  
17 affordable housing. They're on the third floor of the  
18 parking structure, so 47 of the 50 spaces are on the third  
19 floor of the parking structure and there is a security gate  
20 between the second and third floor, so effectively the  
21 senior affordable project has its own floor of parking  
22 that's in a secure environment, and Eden would have an  
23 onsite apartment manager and onsite coordination with their  
24 tenants to help manage the parking along with everything  
25 else and make sure that there weren't problems with that.



1 That's sort of the simple big picture explanation. If you  
2 would like more information and details Dixie from Eden  
3 Housing can probably raise her hand and Joel can allow her  
4 to respond as well?

5 CHAIR HANSSEN: If that's possible, it would be  
6 great if we could hear from Dixie.

7 DIXIE LIRA-BAUS: Hi. Good evening,  
8 Commissioners. Can you hear me all very well?

9 CHAIR HANSSEN: Yes.

10 DIXIE LIRA-BAUS: Fantastic. Thank you for  
11 allowing the opportunity to just provide comment on this.

12 Eden Housing is proud to be a partner with Summer  
13 Hill on this project. We own and operate 36 senior  
14 properties amongst our entire portfolio totaling about  
15 2,700 units. Of that, four of those properties are located  
16 in Santa Clara County with over 300 units of senior  
17 housing.

18 Throughout the history we've parked each of our  
19 senior buildings at a .5 ratio in suburban locations, and  
20 in urban locations we sometimes park those to a lesser  
21 degree, especially if they're adjacent to a transit  
22 oriented stop. We find that in looking at this development  
23 and looking at the needs across our portfolio that parking  
24 at a .5 ratio for the units themselves are more than  
25

1 adequate and having visitor parking at a .5 is also  
2 adequate.

3           What we tend to do when we are looking at all of  
4 our developments is in managing spots when residents come  
5 into the development if they do not have a vehicle they  
6 aren't issued a parking pass to park in there and that has  
7 been able to help us manage parking demands in terms of our  
8 senior facilities. In our history that's just how we've  
9 operated our developments. I'm available to answer any  
10 additional questions you may have.  
11

12           CHAIR HANSEN: Commissioner Hudes has a question  
13 for you.

14           COMMISSIONER HUDES: Thank you. It's a little  
15 difficult to understand, but I wanted to ask simply one of  
16 our residents, Dr. Drayer (phonetic), raised the question:  
17 What is that assumption of the transportation needs of the  
18 50-percent of seniors who will have no place to park? In  
19 the assumption that some of the households have more than  
20 one vehicle, will they be taking public transit? Will they  
21 be riding a bicycle? How will they get to the healthcare?  
22 What's the assumption for that group that has no place to  
23 park?  
24

25           DIXIE LIRA-BAUS: Thank you, Commissioner.  
Actually, we don't make those assumptions. We just look

1 across our portfolio needs and the historical needs within  
2 our facilities and find that it's been an adequate level of  
3 parking for our senior developments. Of course additional  
4 public transportation mitigates that, and yes, some  
5 families will indeed have more than one vehicle, some will  
6 not have any vehicle. We found that to be quite common,  
7 especially when our seniors are aging in place, meaning  
8 they tend to stay there for very long periods of time. Yes,  
9 sir, did you have a follow up?

10  
11 COMMISSIONER HUDES: Yes. I appreciate the  
12 averages but we're dealing with a specific here. Is there  
13 specific public transit that you're relying on for this  
14 development to satisfy that requirement?

15 MICHAEL KEENEY: Dixie, maybe I can help out a  
16 little bit with this one. This is Mike.

17 DIXIE LIRA-BAUS: Thank you, Mike.

18 MICHAEL KEENEY: The project has a traffic demand  
19 management plan, which has now been approved, which  
20 includes funding for a Town-wide shuttle bus program or  
21 other transportation measures as the Town deems appropriate  
22 to help reduce traffic, and the TDM plan has an obligation  
23 to provide a transportation coordinator.

24  
25 So, in addition to the administrative support  
that Eden's team provides to their residents, the Market

1 Hall structure as a condominium entity in coordination with  
2 the for sale residential side of the project will have a  
3 transportation coordinator who is responsible for providing  
4 outreach to all of the residents in the community to help  
5 assist them with things like carpool coordination,  
6 different kinds of transportation benefits, bicycle,  
7 different ways to reduce trips and provide assistance to  
8 everyone.

9  
10 The obligation is to achieve a 15-percent  
11 reduction in trips from the project site and it's completed  
12 with annual reporting to the Town, and if compliance isn't  
13 achieved then it's the obligation of the associations and  
14 the transportation coordinator to identify alternate  
15 solutions to achieve that objective.

16 CHAIR HANSSEN: Okay, thank you. Commissioner  
17 Hudes, you have a follow up question?

18 COMMISSIONER HUDES: I'm not sure that answered  
19 by question. I was really asking about what specific public  
20 transit is being relied on for this project.

21 MICHAEL KEENEY: The public transit in the area  
22 is a VTA bus line on Los Gatos Boulevard. It basically  
23 loops up Los Gatos Boulevard and I believe it comes down  
24 Santa Cruz to the VTA station in Campbell.  
25

1           COMMISSIONER HUDES: Okay. I'm well aware of what  
2 this is. It's extremely limited but thank you.

3           CHAIR HANSSEN: Thank you for your comments and  
4 there will be an opportunity for Commissioners to ask  
5 additional questions after we take public testimony. If  
6 there are no more questions from Commissioners we will go  
7 ahead and move on to public testimony. Mr. Paulson, it  
8 looks like we have some hands up I can see in the attendees  
9 list.

10           JOEL PAULSON: We do. Again, for those in the  
11 audience who wish to speak on this item, please use the  
12 raised hand feature. The person at the top of the list  
13 currently is Maria Ristow.

14           CHAIR HANSSEN: Before I hand over the floor to  
15 Ms. Ristow I do want to remind anyone that's speaking  
16 during the public portion of the meeting that you may  
17 choose to state your name and address for the record or you  
18 may choose to speak anonymously, and honestly it's your  
19 choice, but we do ask that you limit your comments to three  
20 minutes. So, thank you, and go ahead, Ms. Ristow.

21           MARIA RISTOW: Okay, thank you. Maria Ristow, and  
22 I'm scrambling to try and catch up with this because I had  
23 submitted a letter actually stating that we should retain  
24 the underground parking with the concern that the entire  
25

1 North 40, regardless of how it's developed, has been  
2 envisioned as one project under the Specific Plan and  
3 there's no way we're going to go back and dig out under a  
4 parking structure if we don't put the underground parking  
5 in right now.

6           What's thrown me for a loop is this discussion of  
7 the Housing Accountability Act, and I was trying to rush  
8 through the data from the previous meeting and I really  
9 think there needs to be another look taken at this, because  
10 I've been through this with the North 40 before and the  
11 Housing Accountability Act requires that the residential be  
12 two-thirds to qualify, I believe, which is like 67-percent  
13 or more than 66-percent.

14           If I go back quickly to Exhibit 6 from the prior  
15 meeting, the total gross residential is listed at 47,811  
16 square feet. The total gross commercial is 28,966, and so  
17 if you do the math, if this parcel by itself is being  
18 looked at, that comes out to 62.27-percent residential. I  
19 don't know, maybe I'm wrong, maybe this is the whole thing  
20 taken, but if we're talking about just this parcel I don't  
21 see how the Housing Accountability Act applies here.

22           I'm thinking that there are grounds to take  
23 another look at this or take more time looking at it. But I  
24 apologize, I'm like rapidly trying to go back and pour  
25

1 through documents while I'm trying to listen to this Zoom  
2 meeting, but anyway, I don't know if that's helpful. I know  
3 you can't answer my questions, but I want to throw those  
4 numbers out there. Thank you.

5 CHAIR HANSSSEN: Thank you, Ms. Ristow, and we do  
6 have the opportunity for any Commissioners to ask questions  
7 of anyone that speaks from the public. Do any Commissioners  
8 wish to ask questions? Vice Chair Janoff.

9 VICE CHAIR JANOFF: Yes, this is a question for  
10 the Town Attorney. You mentioned in your notes to us that  
11 the Housing Accountability Act does apply, and it sounded  
12 like what you were saying is that it applied as a result of  
13 the court order. That's how I read your guidance. Could you  
14 please comment whether the Housing Accountability Act  
15 actually does or does not apply to this question that we  
16 have before us tonight?

17 TOWN ATTORNEY SCHULTZ: The 66-percent  
18 requirement actually came in after the project was  
19 approved, so there could very well be an issue raised by  
20 Maria whether this actual project that's in front of you...  
21 If you'll give me a few minutes, I can look at those  
22 changes that were made. There were a couple of changes that  
23 were made after our project at court, one being that  
24 attorney's fees are now mandatory because the developer in  
25

1 this case didn't get attorney's fees, so they went to  
2 Sacramento and got that changed. And there were some  
3 changes in regard to the percentage, so I can look at those  
4 as you continue on with public comment and come back to me.

5           JOEL PAULSON: And through the Chair, I would  
6 just offer that this is one component of the entire phase  
7 one, but they have vested the other portions, which it's  
8 still part of the entire phase one that was originally  
9 approved, so as the Town Attorney is looking through that  
10 information the parking is specific to this portion because  
11 this portion hasn't been vested yet from that perspective,  
12 but I just offer those comments as well.

14           CHAIR HANSEN: Thank you very much. All right,  
15 so who's up next, Director Paulson?

16           JOEL PAULSON: One second. Leanna will be up  
17 next, and so I will allow her to talk.

18           CHAIR HANSEN: Okay.

19           JOEL PAULSON: So Leanna, if you unmute yourself  
20 you'll be able to speak.

21           LEANNA PALMER: Hello, my name is Leanna Palmer,  
22 and do you need my address?

23           CHAIR HANSEN: Only if you choose to submit it.

24           LEANNA PALMER: Oh, okay. Well, in Los Gatos. I  
25 am calling just to kind of speak informally briefly that



1 I'm opposed to eliminating the underground parking, maybe  
2 for the reasons that the Town Attorney says are not good  
3 reasons.

4           Grosvenor spent a lot of time planning the entire  
5 40 acres and some of those meetings I attended, and the  
6 underground parking was to accommodate some of the parking  
7 that would be required on the other phase two portion, and  
8 by Summer Hill taking this over from Grosvenor I think that  
9 they need to follow through with the plan they took over. I  
10 don't have the numbers to say it's not going to be enough  
11 parking if they eliminate the underground, but I'm just  
12 saying I think it's really needed so that parking doesn't  
13 overflow into the residential neighborhood around it, or  
14 out on the street, and then the Town would have to change  
15 the street construction.

17           And the other thing is would Summer Hill need to  
18 pay Grosvenor more money or whatever for what they've done  
19 since they're eliminating a whole expensive part of what  
20 they've bought into and now they will, I don't know,  
21 presumably have a greater profit by just ticking off this  
22 thing they don't need to build?

24           Okay, so that's my not very coherent comment but  
25 I'm just very opposed to letting them off the hook on this

1 bait and switch operation. So, thank you for letting me  
2 speak.

3 CHAIR HANSSEN: Thank you so much for your  
4 comments. It's very much appreciated by everyone on the  
5 Commission. Do any Commissioners have any questions for the  
6 speaker? Commissioner Hudes.

7 COMMISSIONER HUDES: Actually, this is a question  
8 for the Chair or Town Attorney. This is a virtual public  
9 meeting. In a normal public meeting you'd know who is  
10 there, how many people are there. Of course, we don't know  
11 how many will speak but can we get some sense about how  
12 many participants or observers there are tonight?  
13

14 CHAIR HANSSEN: There are 26 attendees in the  
15 list. I don't know if you can click on Participants at the  
16 bottom but you can see there are panelists and there are  
17 attendees, but there are 26. We don't always know who's  
18 here to speak about which item; we also have two other  
19 items after this. I presume that most people are here to  
20 speak about Item 2.

21 COMMISSIONER HUDES: Okay, thank you, and I am  
22 able to see it but I want to make sure the public has the  
23 experience of a public hearing.

24 CHAIR HANSSEN: Okay, yes. And I will also note I  
25 didn't completely carry it out but I believe we got

1 approximately 50 letters from members of the public. All  
2 right, so who would be next, Director Paulson?

3 JOEL PAULSON: Next will be Kendra Burch.

4 KENDRA BURCH: Hello. I want to thank everybody  
5 for taking the time tonight to look again at this item and  
6 to allow us to speak.

7 I had a prepared statement to make concerning our  
8 neighborhood, our proximity to the property, then presented  
9 to us as more of an overall project. However, in light of  
10 some of the changes I am going to try off the cuff to make  
11 a few comments.

12 Unfortunately, knowing that we need to look at  
13 this in a little bit of a different way, not so much as  
14 maintaining the existing approved application, instead  
15 we're taking a look at this through the lens of compliance  
16 with Housing Accountability Act and with court orders. I  
17 think that's left a number of us in the lurch of being able  
18 to create comments.

19 I was at my kid's Zoom open house for school and  
20 unfortunately I didn't have an opportunity to take a look  
21 at those items to create some probably better statements to  
22 make around that, and because of that I would ask that the  
23 Planning Commission consider continuing this, not only to  
24 allow all of you time to take a look at those documents but  
25

1 to allow residents to spend some time looking at them too  
2 and educating ourselves around what that means. I think  
3 that it would be very valuable in allowing us to do that,  
4 simply because then you're going to hear a lot of us that  
5 originally had the same thing to say over and over again,  
6 which was please maintain the existing application. I think  
7 if we had time to review those we could probably have a  
8 more substantial conversation with you. That's all. Thank  
9 you.

10  
11 CHAIR HANSSEN: Thank you so much for your  
12 comments. Do any Commissioners have any questions for I  
13 guess it's Ms. Burch in this context. All right. Okay,  
14 who's next?

15 JOEL PAULSON: Thank you, Chair. Next will be Ms.  
16 Dodson.

17 BARBARA DODSON: Hello. Hi, this is Barbara  
18 Dodson. I do oppose eliminating the underground garage. I  
19 know that Summer Hill's proposal focused on parking just  
20 for the Market Hall, however, the Market Hall parking is  
21 just one element of the parking for the entire Transition  
22 District A, B, and C.

23 According to sheet A.11 in Summer Hill's proposal  
24 the Town's requirement for parking stalls in this area in  
25 District A, B, and C is 354 stalls. Without the underground

1 garage Summer Hill will provide only 330 parking spots for  
2 District A, B, and C. This becomes clear just by looking at  
3 sheet A.11. Under Required Commercial Stalls for the Area  
4 we see 285. Under Provided Commercial Stalls for the Area  
5 we see 261. The bottom line for me is that we can't approve  
6 the Summer Hill proposal because it provides 24 fewer  
7 parking spaces than required by the Town.

8 I guess I need everyone to look carefully at  
9 sheet A.11 because it shows that they're not providing the  
10 number of spots that are required by the Town, and I would  
11 like to get some explanation for why they think they are.

12 I'll also point out that one of the senior units  
13 has two bedrooms, so why are there not two parking spots  
14 provided for a two-bedroom unit?

15 Finally, I do think developers should stick to  
16 their commitments. The original developer committed to  
17 building the underground garage. There was a lot of  
18 discussion about this during the original hearings. The  
19 original developer didn't want to build the garage, the new  
20 developer doesn't want to do it now, but the garage was a  
21 condition of the approval of the project.

22 I don't see why it is legal for someone to buy  
23 out a project and then say, "Well, there are certain parts  
24  
25

1 that I just don't feel like doing," and I would really like  
2 to hear the legal argument for how that can happen.

3 I also think it's really ridiculous that Mr.  
4 Schultz did not make this information available to the  
5 public. I would have certainly changed my remarks if I had  
6 known that this was information that was necessary, so I  
7 would like you to provide this information in a public-  
8 friendly forum so that we can all take a look at it and  
9 proceed from there. Thank you.  
10

11 CHAIR HANSSEN: Thank you very much for your  
12 comments, Ms. Dodson. Commissioner Hudes has a question for  
13 you.

14 COMMISSIONER HUDES: Thank you, and thank you for  
15 doing all of the work on the important calculations and  
16 requirements. You pointed out in your letter that there was  
17 a discrepancy between 330 and 331 parking places. Has that  
18 discrepancy been resolved?

19 BARBARA DODSON: No. I mean that's a discrepancy  
20 in the proposal that Summer Hill has given. I mean, it's in  
21 the material that we're all reading. Sometimes it says 330,  
22 sometimes it says 331. The original number of parking  
23 spaces for A, B, and C was 485, so then when they deducted  
24 176 in one of their tabulations, that's where they came up  
25

1 with 331 I think is what happened. So, just in different  
2 places they did different math.

3 COMMISSIONER HUDES: Okay, thank you. We don't  
4 have the opportunity really to interact with Staff at this  
5 point, but I have your notes. Thank you.

6 CHAIR HANSSEN: Do any other Commissioners have  
7 questions for the speaker? Again, thank you very much for  
8 all your research and for providing them in writing as  
9 well. Are there other attendees that wish to speak on this  
10 item.

11  
12 JOEL PAULSON: I see one hand raised but it's  
13 Leanna who has already spoke and is not able to speak  
14 again. I will open it up in case there is a second person  
15 using that computer, but if it's Leanna she will not be  
16 able to speak again, so I will open it up just for that.  
17 Leanna, is there another member of your household that  
18 wishes to speak?

19 LEANNA PALMER: No.

20 JOEL PAULSON: Okay, thank you. And with that I  
21 would just again note anyone who wishes to speak on this  
22 item, please use the raised hand feature. I am not seeing  
23 anyone using the raised hand feature, Chair.

24 CHAIR HANSSEN: All right, so then if there are  
25 no other speakers at this point for this item we will now

1 close the public portion of the public hearing and ask if  
2 any Commissioners have questions of Staff. Oh wait, I  
3 apologize. This is the time when we would ask the Applicant  
4 to come back and respond for up to three minutes. I  
5 apologize. So, Summer Hill, if you would like an additional  
6 opportunity to respond to things that were raised during  
7 public comments, this would be the time to do so.

8           JOEL PAULSON: Thank you, Chair. I've allowed Mr.  
9 Keeney to speak.

10           MICHAEL KEENEY: Thank you, Commissioners. This  
11 is Mike Keeney with Summer Hill Homes. We appreciate the  
12 comments and participation of the public in this hearing.  
13 We are pleased to be developing this project in the Town of  
14 Los Gatos and believe it will be an asset to the community  
15 for many years to come.

16           The application is an amendment to an approved  
17 project that we have a building permit for for the Market  
18 Hall structure and we would like to start construction as  
19 soon as possible. We believe strongly that this  
20 modification will result in a more pedestrian- and bike-  
21 friendly development that is consistent with the goals and  
22 spirit of the Specific Plan.

23           As discussed, this parking was originally to  
24 serve phase two of the North 40. It's inclusion in the  
25



1 project is unnecessary and counterproductive. Construction  
2 of the basement would be a waste of financial resources and  
3 would materially increase the operating costs of Market  
4 Hall, thus further jeopardizing the success of this retail  
5 project, and the operating costs of the additional parking  
6 spaces will also have a negative financial impact on the  
7 affordable senior housing project.

8  
9           You heard from the community that if the basement  
10 is eliminated it will result in a parking overflowing into  
11 the existing neighborhood. Jennifer, do you have the  
12 walking exhibit that we set up that you could put up? We  
13 put together an exhibit to look at some of the surrounding  
14 neighborhoods and the walking distances that someone would  
15 have to travel if they parked there to get to Market Hall,  
16 which will probably pop up here on the screen in a second.  
17 As you can see, it's a 9-15 minute walk from these  
18 neighborhoods to the Market Hall building, and as we  
19 discussed, the Market Hall will have 45 more parking spaces  
20 than it is required to have, so it's just unrealistic to  
21 conclude that customers of Market Hall will be parking ten  
22 minutes away when the parking structure has a surplus of  
23 parking as is.

24  
25           Good planning, fairness, and common sense support  
this request before you. If there was fact-based evidence

1 that the elimination of the parking would negatively impact  
2 the surrounding neighborhoods we would not be pursuing this  
3 design amendment.

4           Summer Hill has built multiple projects in the  
5 Town of Los Gatos over the last 20 years, most recently the  
6 Sorellas project on Prospect Avenue. We are proud of these  
7 projects and our partnership with the Town and community  
8 that has developed with the past project in the North 40.  
9 Our focus has been to create communities that are well  
10 thought out and become positive experiences for the Town  
11 and our future homeowners. This design revision is  
12 consistent with that philosophy and we ask for your  
13 approval to this modification.  
14

15           We are available to answer any questions you may  
16 have, and in particular I know there are some questions  
17 about the parking calculations in the A&S approval versus  
18 the new code requirements that we've shown, so we're happy  
19 to talk more about that and answer any questions you might  
20 have. Thank you.

21           CHAIR HANSSEN: And this would be a great time  
22 for any Commissioners to ask Mr. Keeney any additional  
23 questions, including anything that came up during the  
24 public comments. Commissioner Hudes.  
25

1                   COMMISSIONER HUDES: Thank you. I have a number  
2 of questions about the math and the requirements for  
3 parking. I also have questions about the agreement, the  
4 phase one/phase two, the bike aspects of it, the safety  
5 aspects, the neighborhood, and community benefit, but I  
6 don't want to totally monopolize this so I'd maybe like to  
7 start with an explanation about the comments and a reaction  
8 to the comments that we got from Ms. Dodson on sheet A.11.  
9 Could you maybe just simply tell me why there is not a  
10 deficit of 24 spaces.  
11

12                   MICHAEL KEENEY: The parking table in A.11 is a  
13 duplication of the Architecture and Site approval parking  
14 table, and Staff could probably help characterize how that  
15 was prepared, but it was prepared at the time of the A&S  
16 approval with assumptions about the land uses that would  
17 likely be there and it was based on the parking  
18 requirements in the code at the time, which was more  
19 specific to specific land uses.  
20

21                   The application that we've submitted is exclusive  
22 to the Market Hall Parcel 27 of the final map, and Parcel  
23 27, the Market Hall, is obligated to meet its parking ratio  
24 per the Specific Plan of one per 300, and that's the number  
25 that's in our Letter of Justification, which is the square  
footage that we estimate if the garage was eliminated.

1           The commercial space within the garage doesn't  
2 really change with the elimination of the basement. There  
3 are some tweaks to the mechanical rooms and stuff but it  
4 doesn't really affect the leasable square footage, which is  
5 what the parking calculations are based on, so it's a  
6 pretty accurate number for what the building would be if we  
7 completed the redesign to eliminate the basement.

8           The estimates that I provided in the table that I  
9 put up during my presentation are based on the gross square  
10 footages in the remaining commercial parcels from the  
11 Specific Plan, so that's at one per 300 based on the table  
12 on A.11, and those numbers will change. When an Applicant  
13 comes forward on each of those buildings they'll submit a  
14 Building Permit and they'll have square footage  
15 calculations that have to meet the one per 300 requirement  
16 of the Specific Plan. So it could change a little bit, but  
17 if anything it would likely go down and it would be their  
18 obligation to comply with the obligation to provide their  
19 parking.  
20

21           COMMISSIONER HUDES: If I could go back maybe to  
22 the beginning of your answer. The requirements, are you  
23 saying that they are based on current code requirements,  
24 not the requirements that were done in the original  
25 application?

1           MICHAEL KEENEY: That's correct. We're complying  
2 with the zoning requirement for the parking for the use  
3 we've proposed at one per 300 square feet. The previous  
4 calculation was more complicated.

5           COMMISSIONER HUDES: And why does the previous  
6 calculation not apply now?

7           MICHAEL KEENEY: That might be a better question  
8 for Staff, but I believe the Specific Plan references the  
9 Downtown Parking Guidelines and therefore we're following  
10 the Downtown Parking Guidelines.

11           COMMISSIONER HUDES: But it's your justification  
12 letter; it doesn't rely on Staff.

13           MICHAEL KEENEY: It relies on the code.

14           COMMISSIONER HUDES: And it's your obligation to  
15 make the argument about why that code doesn't apply and why  
16 a different code applies?  
17

18           MICHAEL KEENEY: Well, it's the code that the  
19 building is being permitted under. It's the Zoning Code for  
20 the Specific Plan as it stands when the permit is being  
21 issued.

22           COMMISSIONER HUDES: Okay. I had another question  
23 on the math. There is reference to 330 or 331 parking  
24 places. What's the correct number?  
25

1           MICHAEL KEENEY: The correct number that I would  
2 suggest you concentrate on is the numbers for Market Hall  
3 and the parking requirements in the Letter of  
4 Justification. The parking estimates for the remainder of  
5 the Commercial District are estimates based on the  
6 Architecture and Site approval. I don't know exactly why  
7 there's one spot off. It could be as Ms. Dodson also  
8 pointed out, that the community room in Market Hall has a  
9 slightly different parking requirement and that's because  
10 the square footages are slightly different, so that parking  
11 requirement actually increased by one space because the  
12 community room increased by one space or by a couple of  
13 hundred square feet from the Architecture and Site approval  
14 table.

16           COMMISSIONER HUDES: Again, are you able to  
17 clarify that at this time or do you need to do some  
18 research before clarifying that?

19           MICHAEL KEENEY: The table that we prepared and  
20 submitted, which was up earlier, is our estimate of the  
21 commercial square footage based on the one per 300 and the  
22 square footage estimates for Buildings A-1, A-2, D-2, and  
23 C. But what those buildings ultimately are permitted at and  
24 what their parking requirement is is to be determined. When  
25 they submit a permit they would comply with the one per 300

1 requirement. So the table that is being referenced is a  
2 combination of the revision to Market Hall and the previous  
3 parking requirements based on the land uses intended at the  
4 time the Specific Plan was approved, so there are quite a  
5 few variables that have changed during that time.

6 (Inaudible) provides one parking space off, no.

7 COMMISSIONER HUDES: Okay. I had some other  
8 questions, but I don't want to dominate this, so if other  
9 folks would like I'll just hold mine for a few minutes.

10 CHAIR HANSSEN: Would other Commissioners like to  
11 ask any questions of the Applicant at this point?  
12 Commissioner Barnett.

13 COMMISSIONER BARNETT: Is it Summer Hill's  
14 position that the only reason for the underground parking  
15 was to accommodate the parking in phase two? If so, what  
16 evidence is there of that?

17 MICHAEL KEENEY: Well, I think in addition to us  
18 saying it, it's been said by members of the public during  
19 this hearing. I think we've heard that from Staff. I think  
20 that was a known publicly discussed component. I think at  
21 the time it was also a consideration that there might be  
22 more commercial at the site and as the project evolved that  
23 was reduced. But I apologize, I wasn't the project manager  
24  
25

1 at that time, so I don't have all the history from the  
2 actual approval.

3           COMMISSIONER BARNETT: So, is it fair to say that  
4 you may or may not know whether... Summer Hill's position is  
5 that there is an excess parking in the underground garage  
6 because it's... Let me start over. Is it Summer Hill's  
7 position then that the underground parking is not necessary  
8 to accommodate the retail and senior housing and the  
9 community room?  
10

11           MICHAEL KEENEY: Yeah, our position is that the  
12 Market Hall building is over-parked with this revision by  
13 approximately 60-percent and that that's more than adequate  
14 for the uses that are proposed, and that it provides a  
15 surplus for the adjacent commercial uses as they develop,  
16 and that when and if phase two develops they would  
17 obviously have to meet all the Specific Plan requirements  
18 to move forward with their project and provide the parking  
19 that's required for the Specific Plan just like we do.

20           CHAIR HANSSEN: Does that answer your question,  
21 Commissioner Barnett?

22           COMMISSIONER BARNETT: Yes, it did. Thank you.

23           CHAIR HANSSEN: Before I go back to Commissioner  
24 Hudes I wanted to follow up on where the conversation was  
25 going with Commissioner Barnett. If I heard you correctly,



1 the way this process works is when you submit the  
2 Architecture and Site Application, or when you did submit  
3 the original Architecture and Site for the entire phase one  
4 project, you had an estimate on how much commercial space  
5 there would be and you said that has evolved over time, and  
6 then you said it went down. So, how much less commercial  
7 space than was proposed with the A&S are we going to have  
8 now than we thought we were having?  
9

10 MICHAEL KEENEY: For the Market Hall?

11 CHAIR HANSSEN: No, for the entire phase one,  
12 because we were talking about the difference of what Ms.  
13 Dodson was presenting, which was all the commercial parking  
14 requirements for the phase one application versus... And this  
15 hearing is only about the Market Hall, but you talked about  
16 the process overall when you submitted an Architecture and  
17 Site that it's based on estimated, and I thought you said  
18 when you were talking to Commissioner Barnett that there  
19 actually is less commercial space overall than was  
20 originally intended and that we won't really know the  
21 answer for sure about how much parking is needed until  
22 those commercial developers come in and build out those  
23 pads and so on and so forth. So, did I get that right?  
24  
25

1           MICHAEL KEENEY: No, I didn't mean to say that  
2 the total square footage of the commercial would be  
3 reduced. What I wanted to represent was that then...

4           The table that I put up during my presentation  
5 that had the parking estimate that we put together for the  
6 entire Commercial District—which is Exhibit 2 if Jennifer  
7 wants to put it up—and that square footage number which is  
8 shown in the table is approximately the gross square  
9 footage number from the Architecture and Site approval.  
10

11           So, the distinction is that when the commercial  
12 sites are actually worked out for Building Permits, that  
13 square footage, some of it gets netted out for corridors  
14 and backup house space that isn't leasable square footage,  
15 so what I was trying to say was that the commercial  
16 estimate that I'm including here is a conservative estimate  
17 and that likely the square footage would be slightly lower.  
18 Not the leasable square footage but the square footage the  
19 parking calculation was based on.

20           CHAIR HANSSEN: Because of stuff that's not  
21 needed for the actual commercial use?

22           MICHAEL KEENEY: Correct.

23           CHAIR HANSSEN: It's sort of support stuff.

24           MICHAEL KEENEY: And that's definitely shown in  
25 the A&S table, it's just that it's a really complicated

1 table and I didn't think we'd want to go through that level  
2 of detail.

3 CHAIR HANSSEN: But to close this out, so I think  
4 I understand. I didn't hear you correctly that there's  
5 actually less space but what you did say, and I'm asking a  
6 question, is that we are honestly going to know what the...  
7 Other than the Market Hall there's this 39,025 additional  
8 square footage of which there are pads right now and we  
9 aren't really going to know what parking is required for  
10 those commercial pad applications until there is a  
11 developer, is that correct?  
12

13 MICHAEL KEENEY: That's generally correct, but  
14 the table that we put together is based on sort of a  
15 combination of the A&S site plans and everything else, and  
16 currently there is sufficient... What's programmed there has  
17 the space to be parked there but it may evolve a little as  
18 people work out the details of the design, but they would  
19 have to meet that same requirement, so they would have to  
20 provide... At that square footage the obligation for those  
21 parcels in total would be a 130 parking spaces, and as  
22 currently laid out that appears to be something that can be  
23 accommodated on their current plans.  
24

25 CHAIR HANSSEN: And it's your belief that you  
stated already that that's going to be more than adequate

1 for any commercial uses that are in addition to the Market  
2 Hall in this phase one?

3           MICHAEL KEENEY: That's our expectation based on  
4 the development partners that we've talked to for the  
5 Market Hall and the commercial use as a whole.

6           CHAIR HANSSEN: Okay, I think I'm clear. Are  
7 there any other Commissioners that would like to ask  
8 questions of the Applicant at this point? Commissioner  
9 Hudes, you had your hand up.

10           COMMISSIONER HUDES: Sure. I did have a number of  
11 questions that essentially came from the public and so I'd  
12 like to maybe see if I could get them correct.

13           Mr. Lord and a number of residents have commented  
14 on the need to hold the developer responsible to what was  
15 agreed following the lawsuit. Was the outcome of the  
16 lawsuit satisfactory to the Applicant, and if changes are  
17 requested now over three years later why didn't the  
18 Applicant make the case for flexibility at the time during  
19 the legal process?  
20

21           MICHAEL KEENEY: I think that we are pleased with  
22 the results of the project. I think we're very happy to be  
23 building this project in the Town of Los Gatos. We would  
24 have preferred that there wasn't a lawsuit. As I mentioned  
25

1 before, we've worked on a number of projects in the Town  
2 and think it's a great place to do business.

3           As far as why we wouldn't have asked for parking  
4 changes earlier in the process, it takes a while to get a  
5 building of this type designed. It involved us working with  
6 a retail partner. We're mostly a for sale developer and not  
7 a retail developer, but the project was obligated to  
8 provide the affordable housing and we wanted to provide the  
9 affordable housing, and that component of it is essential  
10 to the success of the residential portion of the project.  
11 So, as we worked through the retail design and discussed it  
12 with potential partners we felt that there was an  
13 opportunity to improve the project by reducing the parking  
14 in the basement.

16           CHAIR HANSSSEN: And Commissioner Hudes, I think  
17 it's fine to ask a few more questions.

18           COMMISSIONER HUDES: Thank you. These are  
19 questions that have pretty much come from the public, and I  
20 know it's difficult for the public to speak on these Zoom  
21 sessions, but they're questions that I think are important.

22           In the justification letter there's a statement  
23 that Grosvenor is no longer involved. How is that relevant  
24 to the parking requirement? How is that fact relevant?  
25

1           MICHAEL KEENEY: Well, the original partnership  
2 between Summer Hill and Grosvenor involved Grosvenor  
3 developing the Market Hall and the commercial pads, so when  
4 they chose not to move forward with that we took that on,  
5 but as a part of doing that we also are going to maybe do  
6 it in a slightly different way, and so our change is based  
7 on what we think is the right thing to do for the project  
8 as a whole as opposed to what Grosvenor might have been  
9 trying to accomplish.  
10

11           COMMISSIONER HUDES: As a follow up, was Summer  
12 Hill compensated for that by Grosvenor already?

13           MICHAEL KEENEY: We don't usually talk about how  
14 our land transactions are structured. Grosvenor was the  
15 initial applicant and when they chose not to move forward  
16 we had the opportunity to take their position.

17           COMMISSIONER HUDES: The reason I'm asking is in  
18 the justification letter you are talking about how much  
19 money will be saved by not doing this, and so I think it's  
20 legitimate to ask that question since you're using that for  
21 justification.  
22

23           MICHAEL KEENEY: I'm not sure I understand.  
24 You're saying that if Grosvenor chose not to move forward  
25 with the project that they should be compensated for it?

1           COMMISSIONER HUDES: No, in your letter you  
2 raised a justification point, which is that expenditure  
3 will be saved, is that correct?

4           MICHAEL KEENEY: Yeah, I think we've mentioned  
5 that in our presentation and in the Letter of Justification  
6 along with a number of other benefits.

7           COMMISSIONER HUDES: So as a follow-on to that,  
8 has Summer Hill already been compensated for those spaces  
9 that are now going to be removed?  
10

11           MICHAEL KEENEY: We haven't been paid anything by  
12 anybody because we haven't actually built any component of  
13 the project yet. We have not received any revenue from the  
14 project that I'm aware of.

15           COMMISSIONER HUDES: Okay, thank you.

16           CHAIR HANSSEN: Now, do any other Commissioners  
17 have questions for the Applicant?

18           JOEL PAULSON: And Chair, I just wanted to note  
19 for the record—this is Joel Paulson, Community Development  
20 Director—that Commissioner Burch had to step away.  
21 Obviously she was recused from this, so if she comes back  
22 in before or after we get to the next item I will be adding  
23 her to the group.

24           CHAIR HANSSEN: Absolutely. Thank you very much.  
25 All right, I think we've asked quite a few questions and we

1 did hear public comment and we have quite a few letters, so  
2 I'm going to suggest that we close the public portion of  
3 the public hearing and take time for the Commissioners to  
4 ask additional questions for Staff, comment on the  
5 application, and consider what kind of motion the  
6 Commission would like to make on this matter. So,  
7 Commissioner Hudes has his hand up.

8           COMMISSIONER HUDES: I did have some other  
9 questions that were raised. I just was sort of taking a  
10 break, but I did have a few more questions of the  
11 Applicant.  
12

13           CHAIR HANSSEN: Okay, I apologize. I  
14 misunderstood you. All right, so I will reopen the public  
15 portion of the hearing just to allow Commissioner Hudes to  
16 ask a few additional questions.

17           COMMISSIONER HUDES: This has to do with the  
18 configuration of the parking for the seniors. Ms. Peterson  
19 and Yon Lee Jeow (phonetic) pointed out that there could be  
20 safety implications of the reconfiguration. Could you  
21 discuss that? Is there anything to do with the way that  
22 this parking area will be configured and accessible that's  
23 different than the original underground parking for the  
24 seniors?  
25



1           MICHAEL KEENEY: Is this a question for Summer  
2 Hill?

3           COMMISSIONER HUDES: Yes.

4           MICHAEL KEENEY: This is Michael Keeney. The Eden  
5 portion of the building is unchanged. Their parking was  
6 programmed for the top floor adjacent to their units and  
7 they never were programmed for any parking in the basement.  
8 The third floor of the parking structure will be part of a  
9 commercial condominium that they will own and it contains  
10 47 of the 50 stalls, and the ramp from the second floor  
11 where the commercial parking is will have a security gate  
12 so that only residents or guests can get access to their  
13 spaces.  
14

15           COMMISSIONER HUDES: So, the elimination of the  
16 basement parking will have no effect on the security  
17 measure or access that are being provided for the seniors,  
18 is that correct?

19           MICHAEL KEENEY: No change, that's correct.

20           COMMISSIONER HUDES: Another question. This  
21 relates to the use of the parking in phase two. My  
22 understanding is that the additional parking was meant for  
23 phase 2 which is largely retail, is that correct?  
24

25           MICHAEL KEENEY: I'm not an expert on the second  
phase of the Specific Plan. Staff could maybe comment, but

1 I believe it has a higher concentration in retail and  
2 office, yes.

3 COMMISSIONER HUDES: I believe there are only 16  
4 residential units in phase two, is that correct?

5 MICHAEL KEENEY: I'm not sure of the answer to  
6 that. I'm sure Staff knows.

7 COMMISSIONER HUDES: Is this change by  
8 eliminating the parking that would be used by phase two  
9 significantly changing the uses in that phase two?  
10

11 MICHAEL KEENEY: Like I said, I'm not extremely  
12 close to the phase two portion of the program, but the  
13 parking in the garage was... Had Grosvenor developed phase  
14 two in conjunction with phase one, which I think at some  
15 point they intended, then there would have been an  
16 opportunity for the positive, which would both have been  
17 Grosvenor, to negotiate easements with themselves to allow  
18 for shared uses of that parking.

19 But the Market Hall building is a standalone  
20 structure that does not have any easement or legal  
21 obligation to provide parking to other components of the  
22 project, so I don't think it would change how phase two  
23 would be developed; it would be developed in compliance  
24 with the Specific Plan and it would have the parking that's  
25

1 required based on the uses that were proposed consistent  
2 with what's allowed by the Specific Plan.

3 COMMISSIONER HUDES: Okay, thank you. That raises  
4 questions for Staff that I'll ask later. Thanks.

5 CHAIR HANSSEN: And Vice Chair Janoff had her  
6 hand up.

7 VICE CHAIR JANOFF: Thank you. I just want to be  
8 perfectly clear, we're talking about phase one and phase  
9 two as though they are now still connected in concept, and  
10 Mr. Keeney, if you could please restate, which I think  
11 you've done several times, that although Grosvenor had a  
12 plan for developing phase one and phase two, the current  
13 situation is that Grosvenor is no longer a developer for  
14 the North 40 in any capacity and Summer Hill's interest is  
15 only in phase one?  
16

17 MICHAEL KEENEY: That's correct, but there are  
18 some things that as the developer of phase one we have done  
19 to help provide future infrastructure for phase two, so  
20 there are connections for storm lines, water lines, future  
21 road connections are all consistent with the Specific Plan  
22 to allow phase two to develop per the Specific Plan, but it  
23 would be for the phase two developer to connect to those  
24 facilities and their project would have to meet the  
25 requirement of the Specific Plan just like phase one did.

1 We're trying to provide as much infrastructure for them to  
2 build on top of ours as possible, but not necessarily  
3 something for their benefit and not for ours.

4 VICE CHAIR JANOFF: Okay, so just to further  
5 clarify, when we're talking about requirements for parking,  
6 residential or commercial, the current scope is only for  
7 phase one. You may have developed infrastructure that  
8 supports whatever happens in phase two, but currently the  
9 Summer Hill interest in terms of above-ground square  
10 footage that would have a parking requirement, we're only  
11 talking about phase one, is that correct?  
12

13 MICHAEL KEENEY: Yes, in regard to the structure.  
14 When it comes to something like the size of the storm  
15 drains so it can handle the runoff from their property,  
16 we've accommodated that.

17 VICE CHAIR JANOFF: Okay, so I'm not talking  
18 about storm drains.

19 MICHAEL KEENEY: (Inaudible).

20 VICE CHAIR JANOFF: Excuse me. Storm drains don't  
21 require parking. I'm only talking about what does require  
22 parking and I think I'm clear that any connection to phase  
23 two above-ground buildout that would have an interest in  
24 borrowing parking or counting parking from phase two,  
25 that's no longer what we have before us. We are only

1 working on phase one above-ground parking requirements,  
2 which is the Summer Hill scope, is that correct?

3 MICHAEL KEENEY: Yes.

4 VICE CHAIR JANOFF: Okay, thank you.

5 CHAIR HANSSEN: I think that's clear. Thank you  
6 for your question. All right, so Commissioner Hudes, did  
7 you want to ask any more questions of the Applicant or do  
8 you want to save your questions for Staff, or what?

9  
10 COMMISSIONER HUDES: I'm just looking at them. I  
11 think the rest of the questions are for Staff at this  
12 point. Maybe I'll just ask one last one and that is that a  
13 number of residents raised the question about neighborhood  
14 impact and community benefit. Not much has been said about  
15 this. There's an aspect of this, the removal of the parking  
16 may cause a problem for the residents in nearby  
17 neighborhoods, it may cause the zoning of other areas to  
18 become an issue. Do you have any statement that you'd like  
19 to make about community benefit? You're asking for this  
20 reduction. Are you offering any additional open space or  
21 reduced density or reduced height? I know that it's not a  
22 requirement, but I'm asking this because you're asking for  
23 something that does affect the community.

24  
25 MICHAEL KEENEY: I think there were a number of  
community benefits identified at the time the project was

1 approved and we are of the opinion that this is a further  
2 community benefit that will improve the quality of the  
3 project and to encourage the goals of the Specific Plan.

4 COMMISSIONER HUDES: Thank you.

5 CHAIR HANSSEN: Commissioner Badame.

6 COMMISSIONER BADAME: To the Applicant, can you  
7 just elaborate on how it would improve the quality of the  
8 project, be a little bit more specific on that?

9 MICHAEL KEENEY: One of the things that came up  
10 and led us to look into this was the preparation of the  
11 Transportation Demand Management Program, and one of the  
12 programs that was looked at was the fact that providing  
13 additional parking and building has the opportunity to  
14 create more vehicle trips to the structure and discourage  
15 pedestrian and bicycle trips, so reducing unnecessary  
16 parking I think is considered a benefit for transportation-  
17 oriented...a reduction in traffic and a pedestrian- and bike-  
18 friendly project, and that's part of the reason the Silicon  
19 Valley Bicycle Coalition provided a letter of support.

20 COMMISSIONER BADAME: Thank you.

21 CHAIR HANSSEN: All right, Commissioner Hudes.

22 COMMISSIONER HUDES: Now that that's been raised  
23 I would be interested to know how much community benefit  
24  
25

1 are we going have by reducing the amount of parking? This  
2 induced demand that was stated, how much is that?

3           MICHAEL KEENEY: I don't have an answer for that.  
4 I'd have to consult with the transportation engineer to try  
5 to identify a percentage. From the consultants I've worked  
6 with there's a general consensus that if there's less  
7 parking available people are more likely to find another  
8 way to get there.

9           COMMISSIONER HUDES: Okay.

10           MICHAEL KEENEY: And I guess more importantly, if  
11 there's enough parking to begin with there's not really a  
12 benefit to providing that much more. The project does have  
13 a number of bike corridors through it and around it with  
14 improvements on Los Gatos Boulevard and Lark extending to  
15 the Los Gatos Creek Trail to improve the bicycle  
16 transportation network throughout the region and connects  
17 to regional facilities, and all that was done partly I  
18 believe at the direction of some of the members of the  
19 Planning Commission that were on the Commission at the time  
20 the project was approved. I believe that was something that  
21 was added towards the end and expanded and enhanced because  
22 it was something that the community and the Commission and  
23 the Council identified as a benefit to the community.  
24  
25

          COMMISSIONER HUDES: Thank you.

1 CHAIR HANSSEN: Commissioner Badame.

2 COMMISSIONER BADAME: I would just like to expand  
3 on your comment that if there's less parking available that  
4 people are going to find another way to get there, but did  
5 you consider that people might give up and not go there  
6 because they can't find parking? Would that not affect the  
7 viability of the project?

8 MICHAEL KEENEY: I think that would be the case  
9 if you were going below what's required. When you talk to  
10 the Transportation Demand Management people, that's what  
11 they would like. They would like to see even greater  
12 reductions. We're providing 60-percent more parking than is  
13 required. It just seems unnecessary to go above and beyond  
14 that.  
15

16 CHAIR HANSSEN: Anything else before we close the  
17 public hearing? Commissioner Barnett.

18 COMMISSIONER BARNETT: Some of the members of the  
19 public were concerned about increased circulation in the  
20 development because of the lack of parking and possibly  
21 raising safety issues. I was wondering if you had any  
22 comment on that?

23 MICHAEL KEENEY: We are completing over \$10  
24 million in improvements in and around the project site on  
25 Los Gatos Boulevard and Lark, which includes improved bike



1 corridors, crosswalks, signal improvements, a number of  
2 improvements to help improve pedestrian safety at all of  
3 those significant intersections and bring them up to a  
4 current enhanced standard, so I think the project as a  
5 whole is going to greatly improve the pedestrian safety in  
6 the neighborhood.

7           COMMISSIONER BARNETT: My question is whether  
8 circulation by cars who are looking for parking might  
9 create itself a problem and even a safety issue?  
10

11           MICHAEL KEENEY: If we were parked at below the  
12 ratios that are required then that would be a concern of  
13 ours, but since we're 60-percent in excess of what the  
14 Town's code requires we're very comfortable that there is  
15 adequate parking for the uses that we're proposing.

16           COMMISSIONER BARNETT: Okay, thank you.

17           CHAIR HANSSEN: All right, so last call for  
18 questions of the Applicant before I close the public  
19 hearing. Going once. All right, so we're going to close the  
20 public portion of the public hearing and now I will ask if  
21 any Commissioners have additional questions to ask of  
22 Staff, wish to make comments on the application, or  
23 introduce a motion for consideration by the Commission?  
24 Right, I will go with Vice Chair Janoff, and then  
25 Commissioner Hudes had his hand up.

1                   VICE CHAIR JANOFF: This is a question for the  
2 Town Attorney. Did you have an opportunity to check the  
3 applicability of the Housing Accountability Act on what we  
4 have before us?

5                   TOWN ATTORNEY SCHULTZ: I did. The Housing  
6 Accountability Act states, as Ms. Ristow stated, "Mixed-use  
7 developments consisting of residential and non-residential  
8 uses with at least two-thirds of the square footage  
9 designated for residential use." Since this is amendment to  
10 the approved Architecture and Site approval for phase one  
11 Staff and I used the entire phase project to reach the  
12 conclusion that it meets the requirements of the mixed-use  
13 and that the Housing Accountability Act apply. We didn't  
14 look at it from just a market senior housing space project.  
15 If the Planning Commission does not agree with that  
16 conclusion, then it should make the specific findings that  
17 the Housing Accountability Act does not apply.

18                   VICE CHAIR JANOFF: Thank you.

19                   CHAIR HANSSEN: Commissioner Hudes, do you still  
20 have a question?

21                   COMMISSIONER HUDES: Yes, thank you. Coming back  
22 to that, this information that was provided during the  
23 hearing by Council and was provided in a note to us several  
24 hours before was not provided to the public, and so the  
25

1 public has struggled with their questions and with framing  
2 that in the context of the Housing Accountability Act, not  
3 that they're all expected to be experts in the Housing  
4 Accountability Act. Wouldn't we normally give the public  
5 some time to react to those criteria that are then being  
6 used in the hearing?

7  
8 TOWN ATTORNEY SCHULTZ: Since 2015 I've issued  
9 many memos and opinions regarding the Housing  
10 Accountability Act as applied to Town projects. It was not  
11 in this Staff Report; I apologize for that. I can  
12 regurgitate all those Staff Reports and white papers again  
13 if the Planning Commission wants to continue it for that  
14 basis.

15 CHAIR HANSSEN: I'm going to say something now. A  
16 concern I had in listening to the public hearing—so I'm  
17 making a comment—is that as Commissioner Hudes stated, some  
18 members of the public were struggling with this new  
19 information to them because if I'm going to net out what I  
20 thought I heard from the public was accommodation of two  
21 general areas.

22 One is that there were some grounds for the fact  
23 that the developments plans that were submitted said they  
24 were going to do this underground parking garage should  
25 mean that they are held to that, but instead that's not

1 really an objective standard like the parking requirements  
2 are.

3           And then there's a whole other category of  
4 comments from the public where there is disbelief about the  
5 parking requirements being adequate for what they perceive  
6 will happen when all those people move in and so on and so  
7 forth.

8           That being the case, I feel uncomfortable with  
9 there being any possibility whatsoever that the Housing  
10 Accountability Act might possibly not apply, that people  
11 would have more chance to at least consider it and get  
12 comfortable with it and maybe make the comments that they  
13 would have made having that information. That was just a  
14 thought I had going through this thing that made me  
15 uncomfortable, and some of the people that spoke are some  
16 of our most involved community members. I don't know what  
17 other Commissioners think.

18  
19           TOWN ATTORNEY SCHULTZ: Just as one other  
20 comment, because I've heard a couple of times about an  
21 agreement for the project. There was no agreement for this  
22 project. This went through a normal approval process even  
23 though it was in litigation; we rescinded our denial and  
24 granted approval of the project. That gives the Applicant  
25 on any project to come in and ask for modifications. The

1 only way you can prevent that is by actually entering into  
2 an agreement, what's called a development agreement, and we  
3 did not do that in phase one. We're considering that and  
4 hopefully that can happen in phase two, so that if you get  
5 public benefits or you get agreements on stuff that's not  
6 required by Town Code, then you can hold them to that  
7 commitment. But the idea that there was an agreement to do  
8 an underground structure is not a correct statement,  
9 because we do not have any agreement.

10  
11 The analogy I've used is that they had said they  
12 were going to build a 30' sound wall. Even though the CEQA  
13 documents or the requirements was a 20' sound wall they  
14 could come in and ask for that modification and so long as  
15 they met the CEQA requirements and met the Zoning Code,  
16 then it would be allowed, and that's kind of here is at  
17 least—and I'm not a math expert—but at least if they've met  
18 the requirements of the parking then under the Housing  
19 Accountability Act, and really under any other findings,  
20 the project should be approved.

21 CHAIR HANSSEN: Okay, so you answered the  
22 question that I wanted to ask earlier, which was because  
23 not everyone in the public understands this process, so  
24 when Summer Hill/Grosvenor submitted the original  
25 Architecture and Site for this project they submitted a

1 series of development plans. That's what happens with every  
2 approval we do for Architecture and Site. So when we  
3 approve it we usually say within accordance with the  
4 development plans attached as exhibit blah, blah, blah. So,  
5 I think what you're saying is that even though they submit  
6 those plans it's not a legally binding agreement that  
7 everything in their plan is going to be exactly the way it  
8 was unless we create a development agreement. Did I get  
9 that right?

10  
11 TOWN ATTORNEY SCHULTZ: Well, it had to go by the  
12 Conditions of Approval unless they come in for a  
13 modification, and that's what they've done.

14 CHAIR HANSSEN: Right.

15 TOWN ATTORNEY SCHULTZ: But the comments that  
16 there was an agreement that was reached between the Town  
17 and the developer and they're not upholding that agreement  
18 is not a correct statement. There is no agreement signed by  
19 both parties that this is exactly what's going to be done.  
20 It allows for modifications; even our Specific Plan allows  
21 for modifications to the approvals.

22 CHAIR HANSSEN: Okay. Thank you very much. All  
23 right, so I'd like hear from other Commissioners about  
24 where we think we are. We know what feedback we've gotten  
25 from the public so far. We have some people from the public

1 that asked for more time. I think we're clear on what the  
2 parking requirements are, and so what do my fellow  
3 commissioners think about what we should do as our next  
4 step in terms of a motion? And it's fine to make comments  
5 without making a motion. Vice Chair Janoff.

6 VICE CHAIR JANOFF: This is not a motion, just a  
7 couple of questions. Question for the Town Attorney. Mr.  
8 Schultz, if we were to agree that the Housing  
9 Accountability Act is not applicable to the matter before  
10 us would it be your opinion—and I'll ask Staff separately—  
11 that there is still no objective criteria that the proposed  
12 change doesn't meet? In other words, would you say that the  
13 project still meets the technical and objective  
14 requirements of the Specific Plan, the General Plan, the  
15 Zoning Code, and the Housing Element? My question is  
16 assuming the Housing Accountability Act isn't applicable  
17 here, are we at the same place in terms of your opinion in  
18 regard to objective standards?

19 TOWN ATTORNEY SCHULTZ: I got a little bit  
20 confused with your question. If the Housing Accountability  
21 Act does apply...

22 VICE CHAIR JANOFF: Does not apply.

23 TOWN ATTORNEY SCHULTZ: If it does not apply,  
24 then you still should be using your standards and criteria  
25

1 and it meets its parking regulations. You're still going to  
2 have to come up with findings as to what it does not comply  
3 with. You just can use subjective reasons also, but you're  
4 going to have to have specific reasons and findings.

5 VICE CHAIR JANOFF: So, my question, I'll ask  
6 Staff. If we didn't take the Housing Accountability Act  
7 into consideration would it be Staff's opinion the project  
8 as proposed still meets all Town criteria?  
9

10 JOCELYN SHOOPMAN: Staff's opinion would be that  
11 it meets the parking requirements for Town Code and per the  
12 Specific Plan.

13 JOEL PAULSON: Yes, I concur with that as well.

14 VICE CHAIR JANOFF: Okay. Back to the question of  
15 the Chair. I think given the late receipt of the statement  
16 from the Town Attorney and the way that it describes the  
17 criteria to be met and what the obligations of the Planning  
18 Commission are, I think it's fair to say that the public  
19 requires the opportunity to look at those words carefully  
20 and follow up on the documents referenced so that we're all  
21 on board. Those of us who have had a little bit more time  
22 to think about where we are and the criteria required for  
23 us to deny the application before us, we may be in a  
24 different position, but I think until everyone is at the  
25 same place with the same knowledge it would be inadvisable



1 for us to proceed with a vote tonight to approve or deny  
2 the application, so I would be in favor of a continuance. I  
3 don't like the idea of dragging this out continually but I  
4 think there's just too much of a curveball that came too  
5 late for the public to really understand.

6 CHAIR HANSSEN: Commissioner Tavana.

7 COMMISSIONER TAVANA: You know, after hearing  
8 everything tonight I would definitely have to say I am  
9 opposed and I would deny this tonight based on what I've  
10 heard. I feel the burden of responsibility comes on Summer  
11 Hill Homes to present subjective proof as to why they want  
12 to make this change, so I would definitely say I would be  
13 comfortable denying it tonight or continuing based on what  
14 everybody else on the Commission wants to do.

15 CHAIR HANSSEN: Commissioner Tavana, I'd like to  
16 ask you a question back. What grounds... Because we have to  
17 have... Supposing we'd have findings, what are your thoughts  
18 and your thinking and where your position stood? You know,  
19 what grounds we have for...

20 COMMISSIONER TAVANA: I guess we don't know  
21 necessarily whether the Housing Accountability Act applies  
22 currently tonight. I haven't got a clear understanding of  
23 whether or not it is applicable and I just feel there's a  
24 sincere lack of good faith in this project. If it was  
25

1 approved at 303 original parking spots, why is it okay to  
2 go down to 179? Where is that justification? I haven't seen  
3 that tonight. You know, it could be 124, that's all that is  
4 required by the Town, but I don't necessarily see how we  
5 can go from 303 to 179 with no justification here other  
6 than that Grosvenor is no longer part of the project.  
7 That's kind of where I'm at right now with this.

8 CHAIR HANSEN: All right, well, it's in the  
9 Specific Plan, but thank you for sharing that. Okay, so  
10 thank you for your comments. Commissioner Hudes.

11 TOWN ATTORNEY SCHULTZ: And just to be clear  
12 before, I'm fine with doing a memorandum to the public and  
13 to the Planning Commission if they want to continue it, but  
14 my opinion will be that it has to comply with the Housing  
15 Accountability Act because this is an amendment to phase  
16 one, which is the entire phase one project. That's the way  
17 it has come in and that's the way my analysis will be in  
18 that, so there isn't any... As far as my conclusion, it  
19 applies. Whether you can find objective standards based on  
20 the evidence and the math of doing it, or whether you  
21 haven't been convinced that they've shown how the  
22 calculations project out is an issue for the Planning  
23 Commission to decide.  
24  
25

CHAIR HANSEN: Okay. Commissioner Hudes.

1           COMMISSIONER HUDES: Adding to comments, I would  
2 be in favor of continuing the item if only for the reason  
3 that we owe it to the public because this information that  
4 was provided to us just a few hours before the hearing is  
5 also I think valuable information for the public,  
6 particularly since there's a difference of opinion between  
7 some members of the public and with the very late breaking  
8 information that it would be wise to allow this enough time  
9 for the public to understand that basis and the  
10 implications of making a decision under the Housing  
11 Accountability Act versus not.  
12

13           I did have three other questions, and if there  
14 were to be a continuance I would wonder whether it would be  
15 appropriate to ask them now or to do that at another time,  
16 so I'm just sort of putting that out there.

17           CHAIR HANSSEN: It sounds like there's some  
18 momentum for a continuance, although we don't have a motion  
19 at this point, then I would say defer any questions till  
20 then, although I want to ask Staff a question before we  
21 make a motion on continuing or not.  
22

23           Supposing that it is the will of the Commission  
24 to continue, since I've already closed the public hearing,  
25 one of the reasons we'd be continuing is to allow the  
public time to respond and comment on the possibility of

1 additional objective standards that we haven't thought of  
2 or applicability of the Housing Accountability Act, and we  
3 do have people in Town that are very thorough and will do  
4 their homework as well. Will we be able to reopen public  
5 comment if we continue?

6           JOEL PAULSON: I'd look to the Town Attorney. You  
7 always have that option to reopen for additional public  
8 comment at the next hearing even if it's continued. That's  
9 generally something that hasn't happened often unless there  
10 was significant change in the project, but I believe—and  
11 the Town Attorney can confirm—that's up to you and you can  
12 make that determination.  
13

14           TOWN ATTORNEY SCHULTZ: In this case I would  
15 state that you would want to reopen the public comment  
16 because the reason why you're continuing it is because of  
17 the issue with the Housing Accountability Act and therefore  
18 you'll want to hear from the public as to reasoning behind  
19 that.

20           CHAIR HANSEN: Good. That helps a lot.  
21 Commissioner Badame.

22           COMMISSIONER BADAME: I would just like to  
23 provide my comments. I did recommend a continuance at the  
24 start of the public hearing two hours ago. My position has  
25

1 not changed, so I would be in support of a motion to  
2 continue.

3 CHAIR HANSSEN: Would you like to make that  
4 motion?

5 COMMISSIONER BADAME: Certainly. I move to  
6 continue Architecture and Site Application S-20-012,  
7 consideration of an approval of a request for modification  
8 to an existing Architecture and Site Application to remove  
9 underground parking for construction of a commercial  
10 building, the Market Hall, in the North 40 Specific Plan  
11 Area. I would look to Staff to determine a date certain.  
12

13 JOEL PAULSON: September 23<sup>rd</sup>.

14 COMMISSIONER BADAME: All right, I'd like to  
15 include that in my motion, the date of September 23<sup>rd</sup>.

16 CHAIR HANSSEN: Commissioner Hudes.

17 COMMISSIONER HUDES: I would second the motion,  
18 and also ask the Town Attorney, Mr. Schultz, if it's  
19 appropriate to make available to the public the information  
20 that you provided to the Planning Commission since they're  
21 going to be provided an opportunity for another public  
22 hearing.

23 TOWN ATTORNEY SCHULTZ: The analysis will be part  
24 of the Staff Report; it comes out before the next meeting.  
25

COMMISSIONER HUDES: Okay, thank you.

1 CHAIR HANSSEN: All right, so we have a motion  
2 and a second. Are there any further comments or discussion  
3 that Commissioners would like to make at this point?  
4 Commissioner Barnett.

5 COMMISSIONER BARNETT: I suggest that the motion  
6 include the continuance with public hearing as well.

7 COMMISSIONER BADAME: I would agree to add that  
8 to my motion.

9 CHAIR HANSSEN: And Commissioner Hudes?  
10

11 COMMISSIONER HUDES: Yes, I agree.

12 CHAIR HANSSEN: So the motion as amended. Are  
13 there any other comments or questions that Commissioners  
14 have before we take a roll call vote? Seeing none, I will  
15 do the roll call vote, and please answer yes, no, or  
16 abstain. I'll start with Commissioner Badame.

17 COMMISSIONER BADAME: Yes.

18 CHAIR HANSSEN: Commissioner Tavana.

19 COMMISSIONER TAVANA: Yes.

20 CHAIR HANSSEN: Commissioner Hudes.

21 COMMISSIONER HUDES: Yes.

22 CHAIR HANSSEN: Commissioner Barnett.

23 COMMISSIONER BARNETT: Yes.

24 CHAIR HANSSEN: Vice Chair Janoff.

25 VICE CHAIR JANOFF: Yes.

1 CHAIR HANSSEN: And I vote yes as well, so it  
2 passes unanimously. Mr. Paulson, are there appeal rights  
3 for this action by the Commission?

4 JOEL PAULSON: Chair Hanssen, no, there are not  
5 appeal rights because an action has not been taken other  
6 than continuing it to a future public hearing.

7 CHAIR HANSSEN: Okay. Thank you very much.  
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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 2

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**DATE:** September 18, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**REMARKS:**

On August 26, 2020, the Planning Commission continued this item to allow Commissioners to complete a site visit and to allow for additional public comments to be provided.

On September 9, 2020, the Planning Commission continued this item to allow the Commissioners and public additional time to review the project's compliance with the Town's objective standards pursuant to the Housing Accountability Act.

Attachment 12 includes the applicant's response regarding the project's compliance with the parking requirements in the Specific Plan. Attachment 13 includes a memorandum from the Town Attorney and Attachment 14 contains public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020.

**EXHIBITS:**

**Previously received with August 26, 2020 Staff Report:**

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 18, 2020

EXHIBITS (continued):

7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Received with this Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

VIA E-MAIL

September 17, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

At the Planning Commission hearing on September 9, 2020 there were a number of questions about the calculations used for determining the required and proposed parking for the Market Hall and the Transition District as a whole. In our A&S Amendment we provided documentation on the parking change associated with the Market Hall located on Lot 27. Sheet A.11 in the plans focused on the changes to the Market Hall. The table that it was based on was Sheet 3.22 of the approved A&S plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan. In order to clarify what the required parking is today based on the current Town Code we have prepared Exhibit A attached to this letter. This table takes the square footage proposed for Market Hall and combines it with the Gross Square Footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

In addition, at Staffs request we have provided a summary of the residential square footage totals for the project, a table of the parking proposed and required for the residential portion of Phase I within the Lark District and Transition District D, and a site plan with a count of all of the surface parking currently proposed for Phase I.

Lastly, we have prepared a line by line response to the letter provided by Barbara Dodson questioning the accuracy of the parking requirements. Exhibit A is a complete summary of the required parking for the Transitional District and helps explain most of the questions in the letter.

As can be seen in Exhibit A, the Market Hall meets the Towns parking requirements and based on the Gross Square footage from the approved A&S the Transition District as a whole will have a surplus of 46 parking spaces.

Please let us know if you need any additional information.

Very Truly Yours,

SummerHill Homes



Michael Keaney

CC: Joel Paulson

**Exhibit A**

Transition District Parking Summary											
Commercial Transition District	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Market Hall</b>											<b>176</b>
Gross Commercial SF	20,760				69					69	
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										<b>124</b>	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										<b>57</b>	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	
									<b>Surplus</b>	<b>46</b>	

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

- Notes:
- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes  
 Date: September 14, 2020

<b>Lark District &amp; Transition District Area D</b>				
	Number of Units	Required Parking Per Unit	Total Required	Total Provided
<b>Covered Parking Stalls</b>				
1 Bedroom	69	1	69	69
2 Bedroom and 2+ bedroom	191	2	382	382
Subtotal			451	451
<b>Guest Parking Stalls</b>				
1 Bedroom	71	0.5	35.50	
2 Bedroom and 2+ Bedroom	189	0.5	94.50	
Subtotal			130	130
<b>Total</b>	<b>260</b>		<b>581</b>	<b>581</b>

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

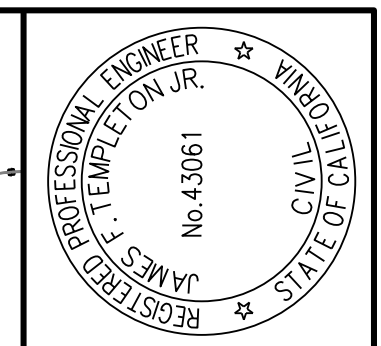
<b>Total Residential SF Lark District and Transition District D</b>	
	<b>Total SF</b>
<b>Bellaterra Approved Building Permit</b>	
Rowhomes	169,458
Garden Clusters	113,466
Condo Clusters	122,440
<b>Subtotal</b>	<b>405,364</b>
<b>Hirschman Parcel</b>	
Garden Cluster	11,112
<b>Parcel A Loft Units*</b>	12,195
<b>Affordable Housing</b>	44,966
<b>Total</b>	<b>473,637</b>

\* SF from Sheet 3.22 of Approved A&S Plans

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT. INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS. AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT.

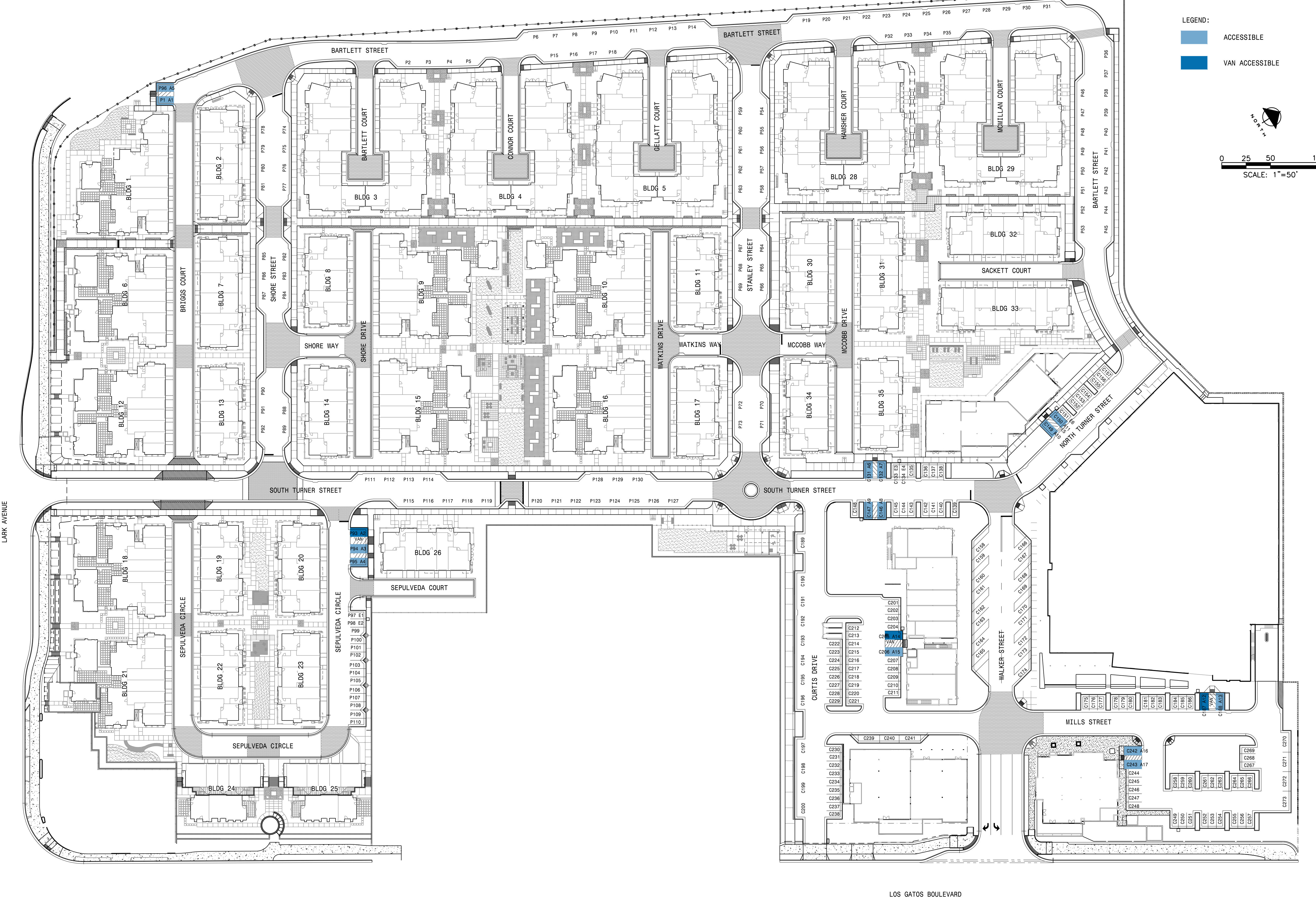


DATE: APRIL 4, 2020  
 SCALE: AS SHOWN ON PLAN  
 DESIGN: JDB  
 DRAWN: FR  
 CHECK: CTR  
 ENCR: NB  
 PROJECT NO.: 19890-011

PLAN FOR THE IMPROVEMENT OF  
**LOS GATOS NORTH 40 - PHASE 1**  
**COMMERCIAL**  
**PARKING SPACES**

**MACKAY & SOMPS**  
 ENGINEERS PLANNERS SURVEYORS  
 51428 FRANKLIN DR., PLEASANTON, CA 94588  
 (925)225-0690

REVISIONS	BY	DATE



LEGEND:  
 ACCESSIBLE  
 VAN ACCESSIBLE



0 25 50 100  
 SCALE: 1"=50'

SummerHill Responses to Letter from Barbara Dodson:  
Responses Provided in Red Text

Barbara Dodson

Los Gatos, CA 95032

September 3, 2020

Dear Members of the Planning Commission:

**SUBJECT: ELIMINATION OF THE UNDERGROUND GARAGE IN THE NORTH FORTY**

I oppose the elimination of the underground parking garage. I think it will result in an insufficient amount of parking, and while looking at the SummerHill proposal I think I've come across the fact that SummerHill's provision of parking for the Transition District A, B, & C, with the elimination of the garage, will be below the Town's required number of parking stalls.

I think that SummerHill's proposal has focused on parking for the Market Hall and argued that without the underground garage SummerHill would still be fulfilling the Town's requirements for parking. However, the Market Hall parking in the garage is just one component of the parking for the entire Transition District A, B & C. With the elimination of the parking garage, SummerHill will not meet the Town's requirements for the Transition District A, B & C.

According to Sheet A.11 in SummerHill's proposal, the Town's requirement for parking stalls in the Transition District A, B, & C is 354. With the elimination of the underground garage, SummerHill will be providing only 330 parking spots.

Response: Sheet A.11 in the A&S Amendment Application was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Sheet 3.22 was an attempt to estimate parking requirements that could be anticipated with a hypothetical set of land uses and the code requirements in place at that time. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

The bottom line for me is that we can't approve the SummerHill proposal because it provides 24 fewer parking spots than required by the Town.

Response: If the A&S amendment is approved the Market Hall will provide 176 parking spaces, and there will be 143 parking spaces in the transition district. This is a total of 319 parking spaces. Based on the SF proposed in the A&S approval for the transition district this is a surplus of 46 parking spaces. Exhibit A has a summary of the required and proposed parking for the transition district.

I hope I have my numbers correct in the explanatory material below.



Just as a note: SummerHill has provided inconsistent numbers, making it confusing to figure out exactly what is being proposed. In some places, SummerHill says it's providing 330 spaces for the Transition District A, B, & C; in other places it says it's providing 331.

**Response:** The 330 required parking spaces was consistent with the concept described above to calculate the required parking based only on the change to the Market Hall building on Lot 27 and not analyze the full district based on the parking required by the Town code. The correct parking requirement per the Town code for the transition district is shown on the attached Exhibit A.

As another example, in the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Community Room as 5, but in A.11 the required number of parking spaces for the Community Room is listed as 4. In the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Market Hall as 62 as 5, but in A.11 the required number of parking spaces for the "Specialty Market" is listed as 55.

**Response:** The required parking for the community room increased because the square footage increased. Exhibit A has a complete summary of the required parking for the transition district, including the Community Room.

1. SUMMERHILL'S NUMBERS SHOW THAT IT IS NOT PROVIDING THE AMOUNT OF HOUSING THAT THE TOWN REQUIRES FOR THE TRANSITION DISTRICT (Areas A, B, C).

In the adopted Developer's Phase 1 Plan from 2016: Based on the table titled Transition District Area A, B & C Building Area and Parking Tabulations (Table 3.22, page 58), the required number of parking stalls was 354 for the Transition District Area A, B & C (69 residential stalls/residential guest stalls + 285 commercial stalls). The original developer committed to providing more than that: 458 (389 commercial stalls (total for the specialty market, retail, restaurant/café, bar/tavern, and community room); and 69 residential/residential guest stalls.

**Response:** The required parking table on sheet 3.22 was not based on what is required by the code for parking. Exhibit A summarizes what is required by the code.

TOTAL ADOPTED IN 2016 FOR THE TRANSITION DISTRICT Area A, B & C:

458 PARKING STALLS

- The SummerHill proposal provides for only 330 parking spaces for the Transition District A, B & C. (See A.11: Transition District Building Area and Parking Tabulations on page 62 in the Agenda Packet. This is SummerHill's revised version of Table 6.22.)

**Response:** Exhibit A more accurately shows the required and provided parking for Market Hall and the transition district. 273 parking spaces are required and 319 are being provided.

- By eliminating the underground garage, SummerHill would provide 24 fewer parking spaces than required by the Town for the Transition District A, B & C. (354-330=24)

**Response:** Per Exhibit A there are currently 46 more spaces provided in the transition district than are required.

• Both Table 6.22 in the Developer’s proposal and Table A.11 in SummerHill’s proposal show that the Town requirement for commercial stalls is 285. Table A.11 shows that under SummerHill’s proposal, SummerHill would provide only 261 commercial parking stalls.

Response: Exhibit A includes commercial and residential parking that is required. Currently there are 69 residential parking spaces required and 204 commercial spaces required.

• Under its proposal, SummerHill would provide 24 fewer than the required number of commercial parking stalls ( $285-261=24$ ) for the Transition District A, B & C.

Response: Per Exhibit A there is a surplus of 46 spaces in the transition district.

THE MATH using numbers from Sheet A.11

Town required number of parking spaces for the Transition District A, B & C: 354

285 required commercial spaces + 39 required residential stalls +  
30 required residential guest stalls = 354 required parking spaces

Number of total spaces proposed by SummerHill: 330

261 commercial spaces + 39 residential stalls +  
30 residential guest stalls = 330 provided parking spaces

Response: As mentioned in an earlier response sheet A.11 was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

OTHER MATH using numbers from Table 6.22 on page 58 of the Developer’s Proposal, which is the proposal adopted by the Town

Parking spaces in the adopted plan in 2016: 458

Parking spaces SummerHill wants to eliminate: 127

Number of total spaces proposed by SummerHill

for the Transition District A, B, & C: 331

The Summerhill proposal drops the number of total parking spaces for the Transition District A, B & C below the Town’s requirement of 354. SummerHill is shortchanging the Town by 24 (or 23, depending on which Table you use) parking spaces.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code.

2. SUMMERHILL SAYS IT IS PROVIDING EXCESS PARKING. HOW DID SUMMERHILL COME UP WITH ITS (I believe, incorrect) NUMBERS? SUMMERHILL APPEARS TO HAVE CONFUSED THE REQUIRED NUMBER OF

COMMERCIAL PARKING SPACES WITH THE REQUIRED NUMBER OF TOTAL PARKING SPACES. (See the notes in red in A.11 on the right -- p. 62 in the Agenda Packet.)

- In the red notes next to the section outlined in red called Retail, SummerHill implies that it will provide a TOTAL OF 330 parking spaces for retail.
- SummerHill does its math to reach 330 commercial stalls by including 39 residential stalls and 30 residential guest stalls.
- SummerHill has a deficit of 24 parking stalls below the requirement of 285 commercial stalls. It does not have 45 extra commercial stalls as is claimed.

Also note on Sheet A.11 that in the column headed "Total. Required Number of Commercial Stalls." SummerHill lists 285. Then, just 2 columns to the right, under "Provided Commercial Stalls," it lists 261. In its own chart, SummerHill clearly shows that there is a deficit of 24 commercial parking stalls.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code. Exhibit A summarized the required and proposed parking for the transitional district.

3. THE PARKING GARAGE ALREADY HAD AN INSUFFICIENT NUMBER OF PARKING SPACES. The developer wants to drop the number of parking spaces in the garage from 303 to 176. But there was already a lack of parking in the garage in the adopted plan. Specifically, the parking for the 50-unit senior complex wasn't realistic. The allotment was 1 space per senior unit for a total of 50 spaces--½ space for each resident and ½ space for guests. The developer said most of the seniors wouldn't be able to afford cars. It also assumed each senior unit would have just one resident.

In fact it's possible that each senior unit will have two or even more residents. There may be one or more cars connected to each unit for a possible total of more than 50 cars. This uses up all the unit spaces and then some without accounting for guests.

Response: Eden has thirty-six properties containing two thousand seven hundred and four units. Four of those properties are in Santa Clara County and contain three hundred and five units. All of the suburban properties are parked at a ratio of 0.5 spaces per units. Urban properties in their portfolio have fewer spaces per unit. Eden's lease agreement limits the number of occupants in a 1-bedroom unit to two occupants.

Suppose the residents of the 50 senior units use their 50 parking spots. 126 spaces remain for the Market Hall, Bakery, and Community Room. Let's say 10 seniors and their guests use 30 additional spaces. We're down to 96 spaces.

Response: The senior parking is on the 3<sup>rd</sup> floor and is gated.

How about employees at the Market Hall and bakery? Let's say they use 20 spaces. We're down to 76 spaces for shoppers and people using the community room. Is this enough???

Response: The Town codes required parking for this land use is intended to accommodate parking for customers and employees.

How about overflow parking from other areas? There will be 71 one-bedroom units with one garage each. Suppose two people live in these units and each person has a car. We now have 71 more cars that will be seeking parking. The garage would be a logical space for these residents to use.

**Response: The residential portion of the project meets its parking requirement. The garage is private property. It will have a gate that will be closed after hours.**

4. WE NEED AN EXPLANATION FOR WHY THE DEVELOPER THINKS THE NEW PARKING ALLOCATIONS ARE ADEQUATE. The developer claims to be justifying the new lowered parking allocations using city code and the specific plan. Logic and common sense have clearly not been applied here. For example, the 2,032 square foot bakery has 7 spaces. Is this for employees as well as patrons? Will there be seating within the bakery? If yes, 7 parking spaces are hardly enough. How about the community room? It gets 4 parking spaces for its 2,772 square feet. Obviously more than 5 people can easily attend a meeting in such a space. Where are they supposed to park?

**Response: Per Exhibit A, the parking in the transition district will exceed what is required.**

5. PARKING WILL STILL BE NEEDED FOR FUTURE DEVELOPMENT. The SummerHill proposal states that "The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan."

But the need for parking for future development has not changed. There will still be future development and thus still a need for parking.

**Response: Future phases of the project will be required to meet their parking requirements on their portion of the project.**

Sincerely,

Barbara Dodson

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**TOWN OF LOS GATOS**  
**OFFICE OF THE TOWN ATTORNEY**

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**MEMORANDUM**

**To:** Planning Commission  
**From:** Robert Schultz, Town Attorney  
**Date:** September 18, 2020  
**Subject:** The Role of the Planning Commission and the Applicability of the Housing Accountability Act and By Right Development to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area.

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The Planning Commission at their last meeting requested further analysis of the applicability of the Housing Accountability Act to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area (Phase 1 Modification Application). This memorandum addresses the Role of the Planning Commission in addition to the applicability of the Housing Accountability Act and the Town's Housing Element/ By Right Development to the Phase 1 Modification Application.

**Role of the Planning Commission**

Based upon the questions and comments put forth by the Planning Commissioners at the last meeting, I thought it would be important to first review the role of the Planning Commission as it relates to all land use decisions.

The Planning Commission acts on behalf of the Town Council in deciding on and recommending land use activities and related matters. The Planning Commission derives its authority and duties through California Government Code Section 65101. That authority is further detailed in the Los Gatos Town Code defining the composition and duties of the Planning Commission. One of the duties of the Planning Commission is to review individual projects for consistency with the General Plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations. The Planning Commission is required to evaluate the facts and information and then deliberate and determine how the applicable ordinance or law applies to the information provided.

Pursuant to the landmark case of *Topanga Assn. For A Scenic Community v. County of Los Angeles* (1974), the Planning Commission must explain land use decisions through the adoption of findings. Topanga defined findings as legally relevant sub-conclusions which expose the agency's

mode of analysis of facts, regulations, and policies, and bridge the analytical gap between raw data and ultimate decision. Therefore, the findings of the Planning Commission must be relevant to adopted, applicable criteria in statutes, ordinances or policies. In a way, The Planning Commission operates as a court in that the Planning Commission must apply the Town's local land use regulations to a specific application just as a court applies the law to a specific set of facts. Basically, the findings of the Planning Commission are an explanation of how they progressed from the facts through established fixed rule, standard, law, or policies to the decision.

Based upon the forgoing, and as I explained in our last meeting, findings such as the proposed modification is a "cost saving/profit increasing strategy" or that "they stand to make millions of dollars" or that the developers must "stick with their commitment" or "uphold the agreement" or that this is a "bait and switch" or "will force visitors, shoppers & residents to find parking elsewhere" or that the developers "are bullies and are ruining our town" are inadequate and improper findings pursuant to *Topanga Assn. For A Scenic Community v. County of Los Angeles (1974)*. Although all of these statements may not lack evidentiary support, they lack legal relevance and even if they are assumed to be correct, those findings simply do not meet the legal requirements set forth in code and case law.

### **Background of North 40 Phase 1 Project**

The approved North 40 Phase 1 Project includes: 260 residential condominiums/rowhomes, 10 rental apartments (including two live-work units), 49 affordable senior rental units, one additional unit to be reserved for a moderate-income manager of the senior units, and approximately 62,000 square feet of commercial floor area and a four-story parking garage with 303 parking spaces. The approved parking garage consisted of three above grade levels and one below grade level. The approved project subdivides the 20.7-acre Phase 1 project area into 113 lots to provide for 320 residential units and commercial space. (Phase 1 Project).

Prior to the approval, the Town Council denied the Phase 1 Project based on the Project's inconsistencies with the Town's General Plan, Housing Element, and Specific Plan. Thereafter, the applicants filed a lawsuit against the Town asserting that: (1) the Town of Los Gatos violated the Town's Housing Element; (2) the Town violated the State's Housing Accountability Act; and (3) the Town violated the State Density Bonus Law. The lawsuit requested the Court to direct "the Town to comply with its clear, mandatory, and ministerial duty to approve the project in compliance with the Town's Housing Element, the Housing Accountability Act, and the Density Bonus Law."

On June 9, 2017, the Santa Clara County Superior Court issued a Decision and Judgment against the Town. The Decision and Judgment determined that the findings adopted by the Town Council were discretionary determinations made under subjective policies in the Specific Plan, instead of under objective policies as required by the Housing Accountability Act.

On September 10, 2017, the Town Council rescinded its denial of the Phase 1 Project pursuant to the court order and approved the project as set forth above. The Applicants are now requesting a modification to the Phase 1 Project, (an existing and approved Architecture and Site Application), to remove the underground parking for the Market Hall. The removal of the below grade level would eliminate 127 parking spaces. No exterior modifications to the existing Market Hall building are proposed (Phase 1 Modification Application).

### **Applicability of Housing Accountability Act**

The Court Decision and Judgment directed the Town to reconsider the Project under the provisions of Government Code §65589.5(j) of the Housing Accountability Act (HAA). The HAA was originally enacted in 1982 and is often referred to as California’s “Anti NIMBY law.” The intent of the legislation was to address the “problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created.”

The HAA requires local governments to approve any “housing development project,” including specified mixed use projects, if they comply 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...” The Court Decision and Judgment determined that the Applicant’s “project is within the statutes definition of a housing development project.” Subdivision (j) of Section 65589.5 reads:

(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.



The HAA defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(8).

Since the Decision and Judgment required the Town to consider the Phase 1 Project under the HAA, the HAA would certainly apply to any modifications to the Phase 1 Project. Therefore, in order to deny the Phase 1 Modification Application, the Planning Commission must cite to specific written objective identified Town Standards and Policies and cannot deny the Phase 1 Modification Application for subjective criteria. As explained in *Honchariw v. County of Stanislaus*, the HAA was intended to “take away an agency’s ability to use what might be called a ‘subjective’ development ‘policy’.

### **Applicability of Housing Element/By Right Development**

In addition to complying with the HAA, the Town must comply with Housing Element Law. Housing Element Law requires the Town to demonstrate how the community plans to accommodate its “fair share” of its regional housing needs. To do so, the Town must establish an inventory of sites designated for new housing that is sufficient to accommodate its fair share. The Town must also identify regulatory barriers to housing development and propose strategies to reduce or eliminate those barriers.

The Town’s Housing Element required adoption of the North 40 Specific Plan with certain development assumptions in order to meet existing and projected housing needs in the Town and to obtain certification of the Housing Element from the State. The Town’s Housing Element (Action HOU 1.7) required the Town to rezone 13.5 acres within the North 40 Specific Plan Area to comply with a minimum density of 20 units per acre and establish “by-right” development for these units. More specifically, the Town’s Housing Element states:

Additional opportunities for affordable housing are being facilitated through the consideration of the North 40 Specific Plan and associated rezoning of 13.5 acres with a minimum density of 20 units per acre to yield 270 units. The Specific Plan would provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through “by right development” in the consideration of Architecture and Site applications. This process involves site and architectural review and if a proposal meets the objective criteria in the Design Guidelines, then the project is approved. Therefore, the Planning application process and review is not an undue burden or constraint on the production of affordable housing.

Based upon the Town’s Housing Element, the approval of the Phase 1 Project and now this Phase 1 Modification Application are entitled to “by right” development. This means that pursuant to our Housing Element, the Planning Commission must only apply objective standards in its review, analysis, and determination on whether to approve or deny the Phase 1 Modification Application.

These are the same legal principles that are set forth under the HAA and are adopted in the Court's Decision and Judgment and restrict the Planning Commission from using subjective criteria and findings to condition or deny this Phase 1 Modification Application.

**Conclusion**

Under the Housing Accountability Act and Housing Element Law, the Phase 1 Modification Application may only be reviewed for conformance with objective Town standards and policies and the Planning Commission must apply those policies to facilitate the proposed housing development and must not use subjective standards or policies to deny the Phase 1 Modification Application.

**RWS**

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From: [REDACTED]  
Sent: Wednesday, September 9, 2020 11:37 AM  
To: Sally Zarnowitz <[SZarnowitz@losgatosca.gov](mailto:SZarnowitz@losgatosca.gov)>  
Subject: New Voicemail Message from 408-XXX-XXXX

Hello, I'm calling regarding the underground parking garage. It is extremely important that it be kept underground and promises be kept. It is extremely important. Thank you.

EXHIBIT 14

Barbara Dodson

Los Gatos, CA 95032  
September 16, 2020

Dear Members of the Planning Commission:

**SUBJECT: THE SUMMERHILL PLAN WOULD CREATE A PARKING SHORTAGE IN THE TRANSITION AREA A, B & C IN THE NORTH FORTY**

Since our Town lawyer is now claiming that we need “objective” criteria for denying SummerHill’s proposal, here’s my personal list of **objective** reasons to reject SummerHill’s proposal.

1. The SummerHill proposal would create a parking shortage in the Transition District A, B & C. The Market Hall and garage cannot be considered in isolation. The application inappropriately focuses on the Market Hall and garage without admitting its impact on the total amount of parking needed for commercial uses in the Transition District A, B and C. This wider impact is that parking in the Transition District A, B and C would be reduced by between 4 and 24 spaces. . *(Note: There is 11,438 sq ft of commercial area in Building A1; 11,198 in Building A2; and restaurant/retail of 10,644 sq ft marked for Area C. The proposal deals only with parking in area B.)*

SummerHill doesn’t provide consistent numbers, although their numbers always show that their proposal would create a shortage, not an excess, of parking spaces for the Transition District. Here are two ways in which the SummerHill numbers show parking shortages.

A SHORTAGE OF 24 SPACES. This is shown just using numbers in A.11. The **required** number of commercial spaces is 285 (column 36). The **provided** number of commercial spaces is 261 (column 39). There is a shortage of 24 spaces

A SHORTAGE OF 4 SPACES. This uses Sheet A.11 and Exhibit 4. The required number of commercial stalls in the Transition District is 285 (A.11). In Exhibit 4, Market Hall commercial stalls are given as 126 (176 – 50 resident-related stalls). Also in Exhibit 4, additional Transition District Parking is given as 155. Thus the total commercial parking SummerHill would provide would be 126 + 155, which equals 281. There is no excess parking. In this way of looking at it, there is a clear shortage of 4 spaces for the district (285 required – 281 provided).

2. To put item 1 above in another way: The application is based on the false assumption that the garage was intended for use only by occupants of the Market Hall complex—senior housing, senior guests, market hall, bakery, and community room. In fact, the garage was also intended for use by customers at nearby retail

outlets, restaurants, and bars in addition to occupants of the Market Hall complex itself. (Just think about Santana Row. Are shoppers limited to parking in the garage under the hotel if they want to shop at Anthropologie, which has a different parking lot across the street?) Given this fact, the parking in the underground garage is needed to accommodate these parking requirements.

3. Building on the point in item 2 above, the applicant fails to clearly show where the parking for the retail, restaurant/café, and bar/tavern that are not inside the Market Hall would be located and whether the removal of the underground garage has an impact on the availability of parking for these commercial outlets. Exhibit 4: Transition District Parking shows that Parking Areas A, B, and C (which provide surface parking) would provide a total of 155 spaces. But based on A.11, retail, restaurant/café, and bar tavern outside of the Market Hall would require 213 spaces. Here's the math from A.11:

Retail spaces	55
Restaurant/café spaces	124
Bar/tavern spaces	34
Total:	213

There is a 58-space difference ( $213 - 155 = 58$ ). Where would these 58 spaces be located? Were they originally planned for the garage? (Following on this, Exhibit 4 in the SummerHill proposal says there would be an “excess” of 52 spaces in the parking garage. If the 58 unaccounted for spaces are considered, then there is a **shortage** of 6 spaces in the parking garage.)

4. The applicant provides conflicting numbers about how much parking it would provide in the Transition District. In some places, the applicant says that there would be 331 total spaces in the Transition District; in others the applicant uses a total of 330 spaces. Other inconsistencies are: 7 spaces for the bakery listed in Exhibit 4 versus no listing in A.11; 5 spaces for the community room in Exhibit 4 versus 4 spaces for the community room in A.11; 62 spaces listed for the Market Hall in Exhibit 4 versus 55 spaces for the “specialty market” listed in A.11.

Numbers for the amount of total commercial parking are also inconsistent. In A.11 the total of provided commercial parking is given as 261. However, using Exhibit 4, when you add the amount of commercial parking, you get a total of 281 (commercial parking of 126 in the garage + 155 in parking areas A, B). How much commercial parking will actually be provided? There's no way of knowing based on this proposal. The Commission cannot approve the application without consistent numbers and accurate data being given.

5. The applicant makes false statements and uses bogus math.

Example 1: The applicant says that removing the subterranean parking level “leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the **commercial interests** at North 40.” (page 49,

Exhibit 5) However, A.11 under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285.” Since removing the subterranean parking level actually leaves the project with only 261 commercial spaces and a **deficit of 24 spaces**, the applicant has made a false statement.

Example 2: The computations  $39 + 30 + 261 = 330$  and  $330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$  in red to the right of A.11 creates a false impression. They imply that SummerHill would provide 45 extra commercial spaces. But to come up with the 45 Extra supposedly commercial stalls, SummerHill mixes residential stalls (the 39 and the 30) with commercial stalls (the 261). SummerHill then uses the required number of commercial stalls (the 285) to come up with its extra 45. In fact, lookin at the situation this way, SummerHill has a **shortage of 24 parking stalls** for the Transition District A, B & C.

6. If the applicant claims that the numbers in A.11 are no longer accurate or are out of date, then the entire application must be thrown out for containing inaccurate data. It is the applicant’s responsibility to provide accurate data. Commissioners cannot make their decisions without accurate data.

.....  
I’m wondering if you might ask SummerHill these questions based on Sheet A.11. I’d love to get answers.

Main Questions

- Under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285. Is this number still accurate? If not, what is the accurate number?
- Under TOTAL PROVIDED PARKING TABULATIONS, **PROVIDED Commercial Stalls, we have 261** (column 39). **Since this number is not the total of the numbers provided in the table (the total is 285), where does this number come from and what is the explanation for this reduced number of parking stalls?**

Subquestions

Under Commercial Required Parking Tabulations, in column 27, under the heading Specialty Market/Number of Stalls, we have the number 55. Is this number still accurate? If not, what is the accurate number?

- Under Commercial Required Parking Tabulations, in column 29, under the heading Retail/Number of Stalls, we have the number 68. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 33, under the heading Bar/Tavern/Number of Stalls, we have the number 34. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 35, under the heading Community Room/Number of Stalls, we have the number 4. Is this number still accurate? If not, what is the accurate number?

- Looking at the tabulations in red to the right of A.11, what is the number 126 labeled Revised Bldg B1 Retail based on?
- What is the computation  $39 + 30 + 261 = 330$  supposed to show? *The implication of the bottom two computations in red*

$$39 + 30 + 261 = 330$$

$$330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$$

*is that SummerHill is providing 45 extra commercial parking spaces. However, the numbers 39 and 30 used in the computations are the numbers for residential stalls and residential guest stalls respectively. Therefore SummerHill is making a false statement; it is NOT providing "45 Extra" if indeed it is trying to show that it is providing extra commercial stalls.*

*In fact, SummerHill has a **deficit of 24 parking stalls** for the Transition District A, B & C.*

- In the bottom computation in red, why is the number 285 being used? (*THIS APPEARS TO BE AN ADMISSION THAT 285 COMMERCIAL STALLS ARE REQUIRED AS LISTED IN COLUMN 36. HOWEVER, IN COLUMN 39 SUMMERHILL ADMITS THAT IT IS PROVIDING ONLY 261 COMMERCIAL STALLS, 24 STALLS BELOW THE REQUIREMENT.*)

Thank you for your service to the Town.

Sincerely,  
Barbara Dodson



**From:** Jean Mundell [REDACTED]  
**Sent:** Monday, September 14, 2020 9:43 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** north 40

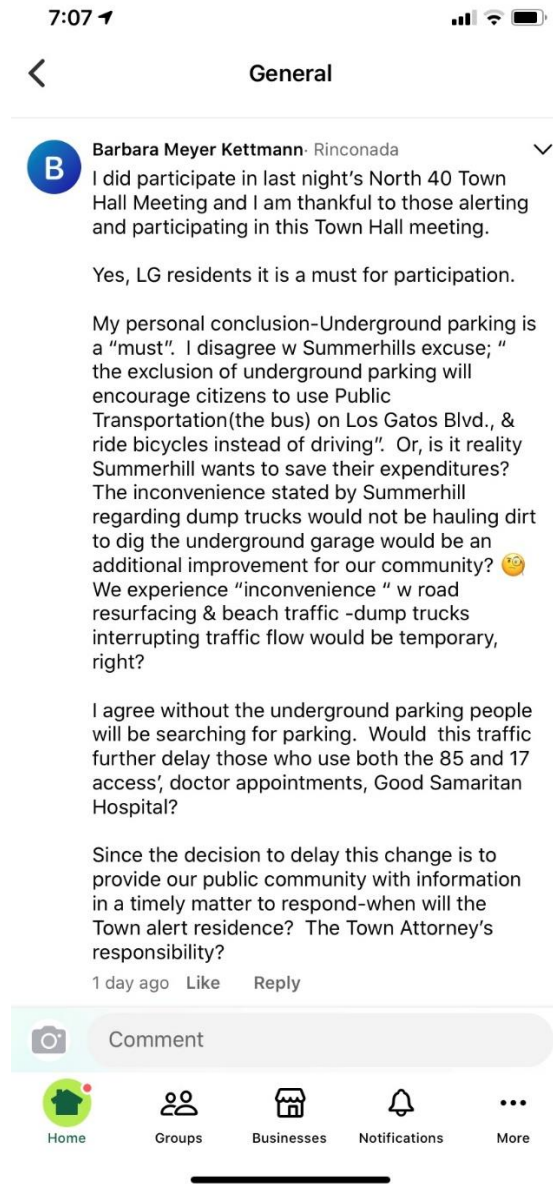
This has been a long and arduous process. Plans should be followed as agreed upon.

No backsliding.

Jean Mundell  
I live off Lark Ave. Need I say more?

**From:** Barbara Kettmann [REDACTED]  
**Sent:** Monday, September 14, 2020 7:23 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40

To the Town Council of Los Gatos



**Barbara Meyer Kettmann · Rinconada** ✓

I did participate in last night's North 40 Town Hall Meeting and I am thankful to those alerting and participating in this Town Hall meeting.

Yes, LG residents it is a must for participation.

My personal conclusion-Underground parking is a "must". I disagree w Summerhills excuse; "the exclusion of underground parking will encourage citizens to use Public Transportation(the bus) on Los Gatos Blvd., & ride bicycles instead of driving". Or, is it reality Summerhill wants to save their expenditures? The inconvenience stated by Summerhill regarding dump trucks would not be hauling dirt to dig the underground garage would be an additional improvement for our community? 😊 We experience "inconvenience " w road resurfacing & beach traffic -dump trucks interrupting traffic flow would be temporary, right?

I agree without the underground parking people will be searching for parking. Would this traffic further delay those who use both the 85 and 17 access, doctor appointments, Good Samaritan Hospital?

Since the decision to delay this change is to provide our public community with information in a timely matter to respond-when will the Town alert residence? The Town Attorney's responsibility?

1 day ago Like Reply

I thought I have registered w the Town. Los Gatos Home owner since 1986. Keep original plans for underground parking and please does the Town have current meeting notes posted, links for Zoom? Last week the link I was given to access was listening & viewing Council members only.

Regards,  
Barbara Kettmann  
Sent from my iPhone

**From:** Lori Day [REDACTED]  
**Sent:** Sunday, September 13, 2020 11:39:07 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Changes

Dear Joel,

I am writing to you regarding the requested change to remove the underground parking in the North 40. We ask that the Planning Commission deny this request, parking is necessary in order for the North 40 to be successful and not to move penetrate the surrounding neighborhood. Let's keep the developer to task and the approved plan.

Thank you

Lori & Chris Day  
[REDACTED]  
Los Gatos 95032

**From:** Charles Wade [REDACTED]  
**Sent:** Saturday, September 12, 2020 4:12:02 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** N. 40 Garage

Mr Paulson, I think it is atrocious that the developers would even try for this change. Traffic and parking were big items in all the years this was negotiated. To change at this point makes a mockery of all the efforts expended to make this a positive addition to LG. Thanks.

From: Angela Di Berardino [REDACTED]  
Sent: Friday, September 11, 2020 3:39 PM  
To: Jocelyn Shoopman <jshoopman@losgatosca.gov>  
Subject: North 40!!!!

Underground parking is essential to combatting our parking problems!!! Everybody KNOWS that!!! Do NOT allow this to be removed!!!!!!!!!!!!

Sent from my iPhone

**From:** Babette Ito [REDACTED]  
**Sent:** Friday, September 11, 2020 8:50 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40 parking

Hi - I'm a resident of 15 years in Los Gatos. Please do not allow the developers to get away with what they agreed to in the current plan - especially the parking. The street congestion will be bad enough and will affect the hospital ambulance and other emergency vehicles. There needs to be underground parking.  
Thank you

--  
Yours,  
Babette Ito  
[REDACTED]

**From:** Jocelyn Fong <[JFong@losgatosca.gov](mailto:JFong@losgatosca.gov)>  
**Sent:** Thursday, September 10, 2020 4:57:36 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Voicemail: No name.(9/9) 11:36 AM

Someone called saying they wanted to keep the underground parking.

***Jocelyn Fong***  
CDD Administrative Assistant

**From:** r pathak

**Sent:** Wednesday, September 9, 2020 12:24:55 PM (UTC-08:00) Pacific Time (US & Canada)

**To:** Planning

**Cc:** Pathak Rahul

**Subject:** need Underground Parking

Dear Staff,

Is the the Town of Los Gatos committed to underground Parking at North 40?

Thank you,  
Sookmunny



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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 2

ADDENDUM

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DATE: September 22, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 15 includes a letter from the applicant responding to a public comment on the project's compliance with the parking requirements in the Specific Plan.

Exhibit 16 includes additional public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 22, 2020

EXHIBITS (continued):

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Previously received with September 23, 2020 Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan
13. Town Attorney Memorandum
14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

Received with this Addendum Report:

15. Applicant's response to a public comment regarding the project's compliance with the parking requirements in the Specific Plan
16. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

VIA E-MAIL

September 21, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Response to Letter Submitted by Barbra Dodson, dated September 16, 2020

Dear Ms. Shoopman:

We have reviewed the comment letter prepared by Barbra Dodson on September 16, 2020. It contains many of the same comments and questions that were included in her letter dated September 3, 2020. We provided a response to that letter on September 17, 2020. The more recent letter examines Sheet A.11 in the plans. As mentioned in our previous response, Sheet A.11 in our plan set was intended to show only the changes proposed to Market Hall by the proposed amendment to the approved A&S. The table on Sheet A.11 was based on what was shown on Sheet 3.22 of the approved A&S plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan and the code requirements in place at that time.

In order to clarify what the required parking is based on the current Town Code, we have prepared Exhibit A attached to this letter. This table takes the square footage proposed for Market Hall and combines it with the Gross Square Footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

We have attached Exhibit A for your reference.



Please let us know if you have any question.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

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Barbara Dodson

Los Gatos, CA 95032  
September 16, 2020

Dear Members of the Planning Commission:

**SUBJECT: THE SUMMERHILL PLAN WOULD CREATE A PARKING SHORTAGE IN THE TRANSITION AREA A, B & C IN THE NORTH FORTY**

Since our Town lawyer is now claiming that we need “objective” criteria for denying SummerHill’s proposal, here’s my personal list of **objective** reasons to reject SummerHill’s proposal.

1. The SummerHill proposal would create a parking shortage in the Transition District A, B & C. The Market Hall and garage cannot be considered in isolation. The application inappropriately focuses on the Market Hall and garage without admitting its impact on the total amount of parking needed for commercial uses in the Transition District A, B and C. This wider impact is that parking in the Transition District A, B and C would be reduced by between 4 and 24 spaces. .  
*(Note: There is 11,438 sq ft of commercial area in Building A1; 11,198 in Building A2; and restaurant/retail of 10,644 sq ft marked for Area C. The proposal deals only with parking in area B.)*

SummerHill doesn’t provide consistent numbers, although their numbers always show that their proposal would create a shortage, not an excess, of parking spaces for the Transition District. Here are two ways in which the SummerHill numbers show parking shortages.

A SHORTAGE OF 24 SPACES. This is shown just using numbers in A.11. The **required** number of commercial spaces is 285 (column 36). The **provided** number of commercial spaces is 261 (column 39). There is a shortage of 24 spaces

A SHORTAGE OF 4 SPACES. This uses Sheet A.11 and Exhibit 4. The required number of commercial stalls in the Transition District is 285 (A.11). In Exhibit 4, Market Hall commercial stalls are given as 126 (176 – 50 resident-related stalls). Also in Exhibit 4, additional Transition District Parking is given as 155. Thus the total commercial parking SummerHill would provide would be 126 + 155, which equals 281. There is no excess parking. In this way of looking at it, there is a clear shortage of 4 spaces for the district (285 required – 281 provided).

2. To put item 1 above in another way: The application is based on the false assumption that the garage was intended for use only by occupants of the Market Hall complex—senior housing, senior guests, market hall, bakery, and community



room. In fact, the garage was also intended for use by customers at nearby retail outlets, restaurants, and bars in addition to occupants of the Market Hall complex itself. (Just think about Santana Row. Are shoppers limited to parking in the garage under the hotel if they want to shop at Anthropologie, which has a different parking lot across the street?) Given this fact, the parking in the underground garage is needed to accommodate these parking requirements.

3. Building on the point in item 2 above, the applicant fails to clearly show where the parking for the retail, restaurant/café, and bar/tavern that are not inside the Market Hall would be located and whether the removal of the underground garage has an impact on the availability of parking for these commercial outlets. Exhibit 4: Transition District Parking shows that Parking Areas A, B, and C (which provide surface parking) would provide a total of 155 spaces. But based on A.11, retail, restaurant/café, and bar tavern outside of the Market Hall would require 213 spaces. Here's the math from A.11:

Retail spaces	55
Restaurant/café spaces	124
Bar/tavern spaces	34
Total:	213

There is a 58-space difference ( $213 - 155 = 58$ ). Where would these 58 spaces be located? Were they originally planned for the garage? (Following on this, Exhibit 4 in the SummerHill proposal says there would be an "excess" of 52 spaces in the parking garage. If the 58 unaccounted for spaces are considered, then there is a **shortage** of 6 spaces in the parking garage.)

4. The applicant provides conflicting numbers about how much parking it would provide in the Transition District. In some places, the applicant says that there would be 331 total spaces in the Transition District; in others the applicant uses a total of 330 spaces. Other inconsistencies are: 7 spaces for the bakery listed in Exhibit 4 versus no listing in A.11; 5 spaces for the community room in Exhibit 4 versus 4 spaces for the community room in A.11; 62 spaces listed for the Market Hall in Exhibit 4 versus 55 spaces for the "specialty market" listed in A.11.

Numbers for the amount of total commercial parking are also inconsistent. In A.11 the total of provided commercial parking is given as 261. However, using Exhibit 4, when you add the amount of commercial parking, you get a total of 281 (commercial parking of 126 in the garage + 155 in parking areas A, B). How much commercial parking will actually be provided? There's no way of knowing based on this proposal.

The Commission cannot approve the application without consistent numbers and accurate data being given.

5. The applicant makes false statements and uses bogus math.

Example 1: The applicant says that removing the subterranean parking level “leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the **commercial interests** at North 40.” (page 49, Exhibit 5) However, A.11 under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285.” Since removing the subterranean parking level actually leaves the project with only 261 commercial spaces and a **deficit of 24 spaces**, the applicant has made a false statement.

Example 2: The computations  $39 + 30 + 261 = 330$  and  $330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$  in red to the right of A.11 creates a false impression. They imply that SummerHill would provide 45 extra commercial spaces. But to come up with the 45 Extra supposedly commercial stalls, SummerHill mixes residential stalls (the 39 and the 30) with commercial stalls (the 261). SummerHill then uses the required number of commercial stalls (the 285) to come up with its extra 45. In fact, looking at the situation this way, SummerHill has a **shortage of 24 parking stalls** for the Transition District A, B & C.

6. If the applicant claims that the numbers in A.11 are no longer accurate or are out of date, then the entire application must be thrown out for containing inaccurate data. It is the applicant’s responsibility to provide accurate data. Commissioners cannot make their decisions without accurate data.

.....  
I’m wondering if you might ask SummerHill these questions based on Sheet A.11. I’d love to get answers.

Main Questions

- Under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285. Is this number still accurate? If not, what is the accurate number?
- Under TOTAL PROVIDED PARKING TABULATIONS, **PROVIDED Commercial Stalls, we have 261** (column 39). **Since this number is not the total of the numbers provided in the table (the total is 285), where does this number come from and what is the explanation for this reduced number of parking stalls?**

Subquestions

Under Commercial Required Parking Tabulations, in column 27, under the heading Specialty Market/Number of Stalls, we have the number 55. Is this number still accurate? If not, what is the accurate number?

- Under Commercial Required Parking Tabulations, in column 29, under the heading Retail/Number of Stalls, we have the number 68. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 33, under the heading Bar/Tavern/Number of Stalls, we have the number 34. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 35, under the heading Community Room/Number of Stalls, we have the number 4. Is this number still accurate? If not, what is the accurate number?
- Looking at the tabulations in red to the right of A.11, what is the number 126 labeled Revised Bldg B1 Retail based on?
- What is the computation  $39 + 30 + 261 = 330$  supposed to show? *The implication of the bottom two computations in red*

$$39 + 30 + 261 = 330$$

$$330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$$

*is that SummerHill is providing 45 extra commercial parking spaces. However, the numbers 39 and 30 used in the computations are the numbers for residential stalls and residential guest stalls respectively. Therefore SummerHill is making a false statement; it is NOT providing "45 Extra" if indeed it is trying to show that it is providing extra commercial stalls.*

*In fact, SummerHill has a **deficit of 24 parking stalls** for the Transition District A, B & C.*

- In the bottom computation in red, why is the number 285 being used? (*THIS APPEARS TO BE AN ADMISSION THAT 285 COMMERCIAL STALLS ARE REQUIRED AS LISTED IN COLUMN 36. HOWEVER, IN COLUMN 39 SUMMERHILL ADMITS THAT IT IS PROVIDING ONLY 261 COMMERCIAL STALLS, 24 STALLS BELOW THE REQUIREMENT.*)

Thank you for your service to the Town.

Sincerely,

Barbara Dodson

**From:** Sharon Elder <[REDACTED]>  
**Sent:** Monday, September 21, 2020 9:22:55 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 underground parking structure

Hi, my name is Sharon Elder and the resident of Los Gatos. It's my understanding that the developers of the North 40 project are now proposing to remove the underground parking structure that was originally passed as part of their overall plan.

I feel that by removing this parking structure will force traffic on the side roads and dissuade shoppers from going to these new shopping developments because they will have nowhere to park.

I feel that in good faith the developers of the North 40 project should continue with our original plan which was to build and ensure that there is sufficient parking for their development. Their plan was passed because it made allowances for parking that they are now renegeing on.

Rgds  
Sharon Elder  
[REDACTED], Los Gatos

Sent from my iPhone

**From:** Amy Nishide [REDACTED]  
**Sent:** Friday, September 18, 2020 7:19:01 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** North 40 parking garage proposed elimination

I am against this. Not including the the parking is extremely short-sighted. The entire North 40 was envisioned as one plan under the specific plan and should be built. Just because Summerhill took over for Grosvenor, doesn't mean the garage can be eliminated. In the future, parking overflow could spill into the neighborhood and create significant issues. Don't be short-sighted. Think long term.

Amy Nishide  
Los Gatos

She believes they should retain the underground parking because of the concern that the entire North Forty has been envisioned as one project under the Specific Plan and there would be no way to go back and dig out under a parking structure if they don't put the underground parking in now.

Los Gatos, CA 95032  
September 20, 2020

Dear Members of the Planning Commission:

Obviously it's hard for members of the community to keep up with SummerHill's ever changing story. SummerHill submitted an application in which it said it would be providing either 330 or 331 parking spaces in the Transition District. Now, with its new Exhibit A, it says it will be providing 319 spaces. Previously SummerHill claimed excess of 52 spaces; now the excess is 46.

Can approval really be based on an addendum that contradicts the original proposal?

Assuming that Sheet A.11 had old information that is no longer reliable, we still have Exhibit 4 that

SummerHill created for this proposal. Based on Exhibit 4, we should still have 331 spaces. Where did the 12 spaces shown in Exhibit go when Exhibit A was put together? What is the breakdown? If we accept Exhibit 4, there should still be 176 spaces in a garage without an underground area. There should still be 155 spaces in Parking Areas A, B, and C combined. So why aren't there still 331 parking spaces in the Transition District?

It looks like SummerHill aims to reduce the parking in Parking Areas A, B, and C along with eliminating the underground garage. In Exhibit 4, Parking Areas A, B, and C provide a combined total of 155 spaces. Exhibit A lists only 143 spaces to be provided in addition to the spaces in the above-ground garage. It looks like SummerHill plans to reduce the parking in Parking Areas A, B, and C by 12 spaces. Doesn't SummerHill have to apply for approval of this additional change as well?

I urge you to deny this application on the basis that SummerHill has provided ever changing numbers, making it impossible for the Commission to make a decision. If Exhibit A now provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false.

Some questions:

From the SummerHill comments, it sounds like parking requirements in the Town Code were different in 2016 when the Phase 1 proposal was approved. It sounds like the old requirements are used in Sheet A.11 (which shows a requirement for 354 parking spots in the Transition District A, B & C) and that SummerHill is reducing parking based on requirements that have changed since 2016. If that's the case, wouldn't SummerHill still have to abide by parking requirements that were in place at the time of approval?

If the above question is not relevant, what changed between 2016 and now so that 354 spaces were required then but only 319 are required now?

SummerHill was party to the 2016 proposal that was approved by Town Council, along with Grosvenor and Eden Housing. Why should SummerHill now be allowed to distance itself from what was approved just because Grosvenor has pulled out?

Just as a note, I find it alarming that SummerHill projects that it will provide roughly 9% less parking than the Town used as part of the basis for approval of Phase 1. The 2016 proposal included a total of 1,039 parking spaces. SummerHill now plans to provide a total of 900 spaces for Phase 1.

Thank you for your service to the community.

Sincerely,

Barbara Dodson



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 2

DESK ITEM

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DATE: September 23, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 17 includes an additional letter from the applicant responding to a public comment on the project's compliance with the parking requirements in the Specific Plan.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 23, 2020

EXHIBITS (continued):

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Previously received with September 23, 2020 Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

Previously received with September 23, 2020 Addendum Report:

15. Applicant's response to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

16. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020

Received with this Desk Item Report:

17. Additional response from the applicant responding to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

VIA E-MAIL

September 23, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

SummerHill Has prepared the attached response to the Letter submitted by Barbara Dodson and included in the Staff Report Addendum. As we have previously stated, our application is for Market Hall, Lot 27, but in order to help answer questions from the community and the Planning Commission we have prepared and provided Exhibit A: Transition District Parking Summary, which accurately summarizes the parking that is required and provided for the Transition District.

As can be seen in Exhibit A, the Market Hall meets the Towns parking requirements and based on the Gross Square footage from the approved A&S, the Transition District as a whole will have a surplus of 46 parking spaces.

Please let us know if you need any additional information.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

SummerHill Responses to Letter from Barbara Dodson Received 9/21/20:  
Responses Provided in Red Text

Los Gatos, CA 95032  
September 20, 2020

Dear Members of the Planning Commission:

Obviously it's hard for members of the community to keep up with SummerHill's ever changing story. SummerHill submitted an application in which it said it would be providing either 330 or 331 parking spaces in the Transition District. Now, with its new Exhibit A, it says it will be providing 319 spaces. Previously SummerHill claimed excess of 52 spaces; now the excess is 46.

Response: Our application was for a modification to Market Hall on Lot 27. It does not propose any changes to the parking for Building A1, A2, B2, or C1. Our Project Description included a table that showed Transition District Parking. It has Parking Area A, B and C as unchanged and only changed Market Hall. The total is correctly shown as 331 spaces. The parking for Area A, B and C is based on counting the surface stalls shown on the Site Plan from the approved A&S plan set. The Market Hall has a surplus of 52. The Transition district as a whole has a surplus of 46 spaces based on the square footages and land uses proposed in the A&S Plans on Sheet 3.22.

Can approval really be based on an addendum that contradicts the original proposal?

Response: The request for a modification for the Market Hall on Lot 27 has always identified a required parking of 124 stalls and a proposed parking of 176 stalls. This is included in our Letter of Justification which is Exhibit 5 of the staff report.

Assuming that Sheet A.11 had old information that is no longer reliable, we still have Exhibit 4 that SummerHill created for this proposal. Based on Exhibit 4, we should still have 331 spaces. Where did the 12 spaces shown in Exhibit go when Exhibit A was put together? What is the breakdown? If we accept Exhibit 4, there should still be 176 spaces in a garage without an underground area. There should still be 155 spaces in Parking Areas A, B, and C combined. So why aren't there still 331 parking spaces in the Transition District?

Response: Exhibit 4 includes a table showing "Original Parking" in the A&S Approved Plan set and what was included for Market Hall with the basement parking. The "New Parking" column has the 176 stalls for Market Hall proposed in our modification, and shows the remainder of the Transition District as unchanged. Exhibit A is a summary of:

1. Required parking per the Town Code
2. Proposed parking for Market Hall without the basement and surface parking as shown on the Phase I Commercial Parking Spaces Exhibit prepared by MacKay and Soms.

The approved In-Tract Private Improvement Plans include 58 surface parking stalls, the same as shown on the approved A&S Plan Set. The 12 space difference between 331 shown in Exhibit 4 (Approved A&S Plan Set) and the 319 in Exhibit A (Mackay and Soms Phase I Parking Exhibits) is a result of conceptual modifications to the commercial surface parking lots. This still results in a surplus of 46 parking stalls for the Transition District. It should be noted that the commercial surface parking lot designs are preliminary and no application has been filed at this time. The remaining commercial buildings in Phase I will have to comply with the parking requirements in the Town Code and the Specific Plan to obtain a building permit.

It looks like SummerHill aims to reduce the parking in Parking Areas A, B, and C along with eliminating the underground garage. In Exhibit 4, Parking Areas A, B, and C provide a combined total of 155 spaces. Exhibit A lists only 143 spaces to be provided in addition to the spaces in the above-ground garage. It looks like SummerHill plans to reduce the parking in Parking Areas A, B, and C by 12 spaces. Doesn't SummerHill have to apply for approval of this additional change as well?

**Response:** Our application only applies to Market Hall, Lot 27. All other information is provided for reference only. The remaining commercial buildings in Phase I will have to comply with the Town Code parking requirements and the Specific Plan to obtain a building permit.

I urge you to deny this application on the basis that SummerHill has provided ever changing numbers, making it impossible for the Commission to make a decision. If Exhibit A now provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false.

**Response:** Our request to remove the basement parking from the Market Hall and provide 176 parking stalls, 52 more than required by the Town code is described in our Letter of Justification and Project Description. It is accurate and has never changed.

Some questions:

From the SummerHill comments, it sounds like parking requirements in the Town Code were different in 2016 when the Phase 1 proposal was approved. It sounds like the old requirements are used in Sheet A.11 (which shows a requirement for 354 parking spots in the Transition District A, B & C)) and that SummerHill is reducing parking based on requirements that have changed since 2016. If that's the case, wouldn't SummerHill still have to abide by parking requirements that were in place at the time of approval?

If the above question is not relevant, what changed between 2016 and now so that 354 spaces were required then but only 319 are required now?

SummerHill was party to the 2016 proposal that was approved by Town Council, along with Grosvenor and Eden Housing. Why should SummerHill now be allowed to distance itself from what was approved just because Grosvenor has pulled out?

**Response:** The Specific Plan Parking Requirements for Parking Non-Residential Parking is established in Section 2.5.8.a: Non-Residential Use: The number of off-street parking

spaces shall be consistent with the parking required in Downtown as required within Division 4 of the Zoning Ordinance. This section of the code was updated after the approval of the A&S for Phase I. Exhibit A reflects what is required by the current Town Code.

Just as a note, I find it alarming that SummerHill projects that it will provide roughly 9% less parking than the Town used as part of the basis for approval of Phase 1. The 2016 proposal included a total of 1,039 parking spaces. SummerHill now plans to provide a total of 900 spaces for Phase 1.

Response: With the proposed modification there are currently proposed to be 46 more stalls than are required for the Transition District.

Thank you for your service to the community.

Sincerely,

Barbara Dodson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Kendra Burch  
Matthew Hudes  
Reza Tavana

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin  
(619) 541-3405



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P R O C E E D I N G S :

CHAIR HANSSEN: Normally we would go through our meeting process but we've been informed that the public has not been able to access the link to attend the meeting, and so we need to make a continuance of the meeting and I'm asking Staff do we need to vote on that or how..

TOWN ATTORNEY SCHULTZ: Yes, there would be a motion to continue the meeting to a date certain. I think Mr. Paulson has recommended next Wednesday the 30<sup>th</sup>, but I understand that is also the date of when there's a candidate forum and so it's up to the Planning Commission as to which date you want to continue these items to.

JOEL PAULSON: Alternatively, thank you, through the Chair, potentially given we have a workshop on Tuesday and General Plan Advisory Committee on Thursday, possibly Monday if that works for the Planning Commission, and we can get the agenda reposted before the weekend so that link is corrected and we can move forward if that works for the Town Attorney as well as the Commission.

CHAIR HANSSEN: Okay. Without hearing from the other Commissioners we know that two of our Commissioners are running for Town Council and so I'm sure that Wednesday

1 won't be great, and then we would be down to four  
2 Commissioners because for Item 2 Commissioner Burch is  
3 recused due to proximity to the location, so I would  
4 recommend another date. So, you're suggesting Monday the...

5 TOWN ATTORNEY SCHULTZ: For clarification  
6 purposes, is that candidate forum all of the candidates or  
7 only certainly ones are on that Wednesday night?

8 CHAIR HANSSEN: Could Commissioner Hudes or  
9 Badame answer that? Commissioner Badame, could you answer  
10 the Town Attorney's question?

11 COMMISSIONER HUDES: I can answer.

12 CHAIR HANSSEN: Or Commissioner Hudes, either  
13 one.

14 COMMISSIONER HUDES: It is all of the candidates.

15 TOWN ATTORNEY SCHULTZ: Oh, okay, then yes, then  
16 obviously that night didn't work, so okay, it's either the  
17 Monday or the following Wednesday. Like I said, there's  
18 five, so the following Wednesday is the...

19 JOEL PAULSON: The 7<sup>th</sup>.

20 TOWN ATTORNEY SCHULTZ: ...7<sup>th</sup>.

21 CHAIR HANSSEN: Okay. I would like to hear from  
22 the Commissioners what date they prefer, and then we have  
23 to make a motion as what the date certain is. So,  
24  
25

1 Commissioner Badame, do you have a preference? I don't know  
2 if she's hearing me. Okay, how about Vice Chair Janoff?

3 VICE CHAIR JANOFF: Either date works for me.

4 CHAIR HANSSEN: Okay. Commissioner Tavana.

5 COMMISSIONER TAVANA: I'd have to say Monday  
6 would work the best for myself.

7 CHAIR HANSSEN: Versus the 7<sup>th</sup>, okay.

8 COMMISSIONER TAVANA: Yes.

9 CHAIR HANSSEN: Commissioner Barnett.  
10

11 COMMISSIONER BARNETT: Either day. Isn't the 7<sup>th</sup>  
12 Labor Day?

13 TOWN ATTORNEY SCHULTZ: That was September 7<sup>th</sup>.

14 CHAIR HANSSEN: Yeah, it was September 7<sup>th</sup>.

15 Commissioner Burch. Commissioner Burch, even though you're  
16 recused for Item 2 we have to do Item 3 as well, so is  
17 either date okay with you?

18 COMMISSIONER BURCH: Yes, yes, they should work  
19 fine for me.

20 CHAIR HANSSEN: Okay, and Commissioner Hudes.

21 COMMISSIONER HUDES: I prefer the 7<sup>th</sup>.

22 CHAIR HANSSEN: Okay, so we've got pretty much...  
23 and I'm okay with either day, so would someone want to make  
24 a motion for one date or the other?  
25

1 VICE CHAIR JANOFF: We haven't heard from  
2 Commissioner Badame.

3 CHAIR HANSSEN: Oh, that's right, okay.  
4 Commissioner Badame, can you hear us? No, she doesn't seem  
5 to be...

6 JOEL PAULSON: Sounds like she might be having  
7 audio trouble. Her mike is on.

8 TOWN ATTORNEY SCHULTZ: But she doesn't even hear  
9 us.  
10

11 CHAIR HANSSEN: Right. Commissioner Badame, can  
12 you hear us? I don't think she can hear us. Okay, so with  
13 that being said I think we need to go ahead and make a  
14 motion, or should we... I don't think we can...

15 JOEL PAULSON: Someone should make a motion for a  
16 date and then we'll move forward from there.

17 CHAIR HANSSEN: Okay. So, would one of the  
18 Commissioners make a motion for one date or the other? Vice  
19 Chair Janoff.

20 VICE CHAIR JANOFF: Yes, I'll move to continue  
21 tonight's agenda to a date certain of Monday the... Please  
22 give me the date.

23 JOEL PAULSON: September 28<sup>th</sup>.

24 VICE CHAIR JANOFF: Monday, September 28<sup>th</sup>.  
25

1 CHAIR HANSSEN: Would someone be seconding?  
2 Commissioner Tavana.

3 COMMISSIONER TAVANA: I'll second that.

4 CHAIR HANSSEN: So, we have a few Commissioners  
5 that prefer...at least one Commissioner that prefers the 7<sup>th</sup>  
6 but it sounds like pretty much everyone can make it on  
7 Monday, so I will go ahead and take the roll call vote and  
8 I'll start with Commissioner Burch.

9 COMMISSIONER BURCH: Yes.

10 CHAIR HANSSEN: And Commissioner Tavana.

11 COMMISSIONER TAVANA: Yes.

12 CHAIR HANSSEN: And I would ask Commissioner  
13 Badame but I... Can you hear us yet, Commissioner Badame?

14 COMMISSIONER BURCH: She can't.

15 CHAIR HANSSEN: All right, so she can't, so we'll  
16 just have to go without her vote.

17 COMMISSIONER BURCH: How do I get on?

18 TOWN ATTORNEY SCHULTZ: I don't know.

19 COMMISSIONER BURCH: Hang on, I'll tell her.

20 COMMISSIONER BADAME: Okay, I'm going to maybe  
21 just check out and maybe get back in. I don't know how to  
22 do this.

23 JOEL PAULSON: We can hear you now, Commissioner...

24 COMMISSIONER BURCH: She can't...

1 CHAIR HANSSEN: Can you hear us, Commissioner  
2 Badame?

3 COMMISSIONER BURCH: No, she cannot hear us.

4 CHAIR HANSSEN: Okay, but we can hear her.

5 COMMISSIONER BURCH: Right. If we're able to go  
6 ahead and mute her, we should. However, she did just say  
7 Monday the 28<sup>th</sup> does work for her.

8 CHAIR HANSSEN: Oh, she did. Okay, I missed that.  
9 Thank you. All right, so I'll consider that her vote for  
10 the 28<sup>th</sup>. And then Commissioner Barnett.

11 COMMISSIONER BARNETT: Yes, I'm in favor of the  
12 motion.

13 CHAIR HANSSEN: And Commissioner Hudes.

14 COMMISSIONER HUDES: Yes.

15 CHAIR HANSSEN: And Vice Chair Janoff.

16 VICE CHAIR JANOFF: Yes.

17 CHAIR HANSSEN: And then I vote yes as well, so  
18 it passes unanimously, so we will be continuing this entire  
19 meeting to Monday the 28<sup>th</sup>. I thank everyone for reading all  
20 the materials and being prepared and we will continue this  
21 meeting on Monday and we should be able to have members of  
22 the public in attendance as well. With that, I will say  
23 everyone have a good night and this meeting is adjourned.  
24  
25

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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 2

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**DATE:** September 18, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**REMARKS:**

On August 26, 2020, the Planning Commission continued this item to allow Commissioners to complete a site visit and to allow for additional public comments to be provided.

On September 9, 2020, the Planning Commission continued this item to allow the Commissioners and public additional time to review the project's compliance with the Town's objective standards pursuant to the Housing Accountability Act.

Attachment 12 includes the applicant's response regarding the project's compliance with the parking requirements in the Specific Plan. Attachment 13 includes a memorandum from the Town Attorney and Attachment 14 contains public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020.

**EXHIBITS:**

**Previously received with August 26, 2020 Staff Report:**

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 18, 2020

EXHIBITS (continued):

7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Received with this Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

VIA E-MAIL

September 17, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

At the Planning Commission hearing on September 9, 2020 there were a number of questions about the calculations used for determining the required and proposed parking for the Market Hall and the Transition District as a whole. In our A&S Amendment we provided documentation on the parking change associated with the Market Hall located on Lot 27. Sheet A.11 in the plans focused on the changes to the Market Hall. The table that it was based on was Sheet 3.22 of the approved A&S plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan. In order to clarify what the required parking is today based on the current Town Code we have prepared Exhibit A attached to this letter. This table takes the square footage proposed for Market Hall and combines it with the Gross Square Footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

In addition, at Staffs request we have provided a summary of the residential square footage totals for the project, a table of the parking proposed and required for the residential portion of Phase I within the Lark District and Transition District D, and a site plan with a count of all of the surface parking currently proposed for Phase I.

Lastly, we have prepared a line by line response to the letter provided by Barbara Dodson questioning the accuracy of the parking requirements. Exhibit A is a complete summary of the required parking for the Transitional District and helps explain most of the questions in the letter.

As can be seen in Exhibit A, the Market Hall meets the Towns parking requirements and based on the Gross Square footage from the approved A&S the Transition District as a whole will have a surplus of 46 parking spaces.

Please let us know if you need any additional information.

Very Truly Yours,

SummerHill Homes



Michael Keaney

CC: Joel Paulson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

<b>Lark District &amp; Transition District Area D</b>				
	Number of Units	Required Parking Per Unit	Total Required	Total Provided
<b>Covered Parking Stalls</b>				
1 Bedroom	69	1	69	69
2 Bedroom and 2+ bedroom	191	2	382	382
Subtotal			451	451
<b>Guest Parking Stalls</b>				
1 Bedroom	71	0.5	35.50	
2 Bedroom and 2+ Bedroom	189	0.5	94.50	
Subtotal			130	130
<b>Total</b>	<b>260</b>		<b>581</b>	<b>581</b>

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

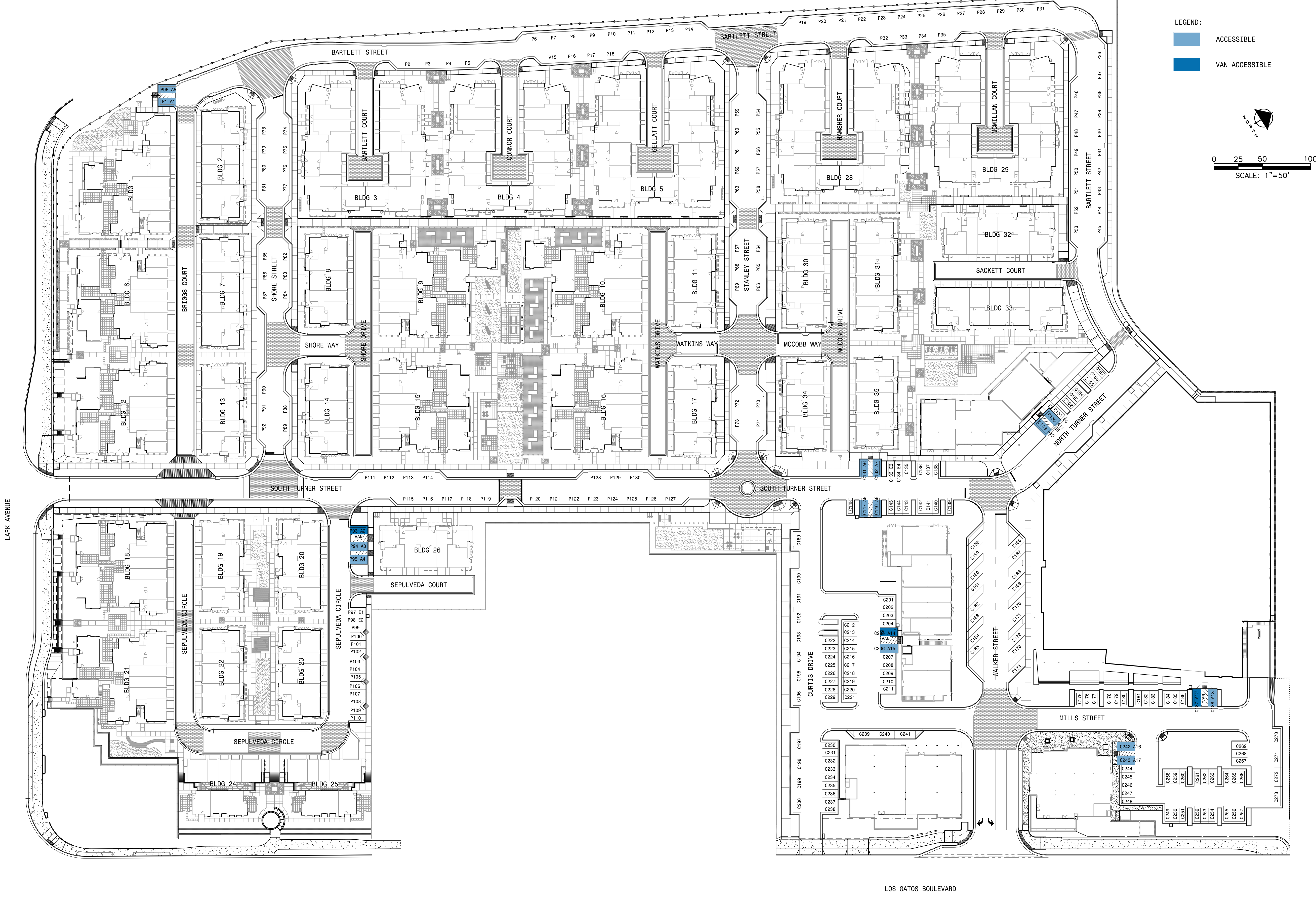
<b>Total Residential SF Lark District and Transition District D</b>	
	<b>Total SF</b>
<b>Bellaterra Approved Building Permit</b>	
Rowhomes	169,458
Garden Clusters	113,466
Condo Clusters	122,440
<b>Subtotal</b>	<b>405,364</b>
<b>Hirschman Parcel</b>	
Garden Cluster	11,112
<b>Parcel A Loft Units*</b>	12,195
<b>Affordable Housing</b>	44,966
<b>Total</b>	<b>473,637</b>

\* SF from Sheet 3.22 of Approved A&S Plans

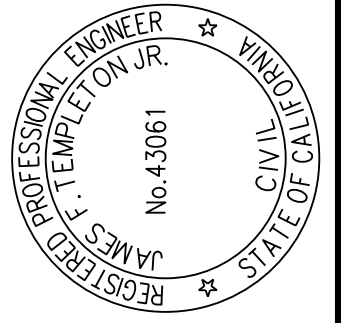
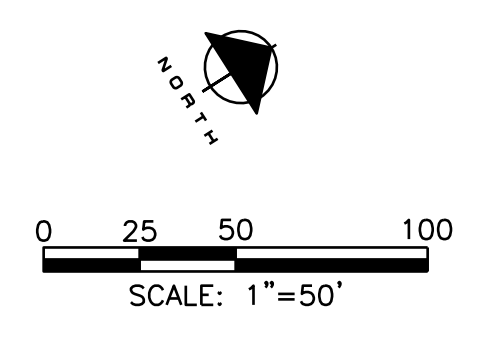
Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

CONTRACTOR AGREES THAT THE CONTRACTOR SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY, THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL MAINTAIN, INSURE AND HOLD THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, FEES AND COSTS, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE CONTRACTOR OR THE ENGINEER.



LEGEND:  
 ACCESSIBLE  
 VAN ACCESSIBLE



DATE: APRIL 4, 2020  
 SCALE: AS SHOWN ON PLAN  
 DESIGN: JDB  
 DRAWN: FR  
 CHECK: CTR  
 ENCR: NB

PLAN FOR THE IMPROVEMENT OF  
**LOS GATOS NORTH 40 - PHASE 1**  
**COMMERCIAL**  
**PARKING SPACES**

**MACKAY & SOMPS**  
 ENGINEERS PLANNERS SURVEYORS  
 51428 FRANKLIN DR., PLEASANTON, CA 94588  
 (925) 225-0690

REVISIONS	BY	DATE

PROJECT NO.: 19890-011

LOS GATOS

CALIFORNIA

SummerHill Responses to Letter from Barbara Dodson:  
Responses Provided in Red Text

Barbara Dodson

Los Gatos, CA 95032

September 3, 2020

Dear Members of the Planning Commission:

**SUBJECT: ELIMINATION OF THE UNDERGROUND GARAGE IN THE NORTH FORTY**

I oppose the elimination of the underground parking garage. I think it will result in an insufficient amount of parking, and while looking at the SummerHill proposal I think I've come across the fact that SummerHill's provision of parking for the Transition District A, B, & C, with the elimination of the garage, will be below the Town's required number of parking stalls.

I think that SummerHill's proposal has focused on parking for the Market Hall and argued that without the underground garage SummerHill would still be fulfilling the Town's requirements for parking. However, the Market Hall parking in the garage is just one component of the parking for the entire Transition District A, B & C. With the elimination of the parking garage, SummerHill will not meet the Town's requirements for the Transition District A, B & C.

According to Sheet A.11 in SummerHill's proposal, the Town's requirement for parking stalls in the Transition District A, B, & C is 354. With the elimination of the underground garage, SummerHill will be providing only 330 parking spots.

Response: Sheet A.11 in the A&S Amendment Application was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Sheet 3.22 was an attempt to estimate parking requirements that could be anticipated with a hypothetical set of land uses and the code requirements in place at that time. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

The bottom line for me is that we can't approve the SummerHill proposal because it provides 24 fewer parking spots than required by the Town.

Response: If the A&S amendment is approved the Market Hall will provide 176 parking spaces, and there will be 143 parking spaces in the transition district. This is a total of 319 parking spaces. Based on the SF proposed in the A&S approval for the transition district this is a surplus of 46 parking spaces. Exhibit A has a summary of the required and proposed parking for the transition district.

I hope I have my numbers correct in the explanatory material below.



Just as a note: SummerHill has provided inconsistent numbers, making it confusing to figure out exactly what is being proposed. In some places, SummerHill says it's providing 330 spaces for the Transition District A, B, & C; in other places it says it's providing 331.

**Response:** The 330 required parking spaces was consistent with the concept described above to calculate the required parking based only on the change to the Market Hall building on Lot 27 and not analyze the full district based on the parking required by the Town code. The correct parking requirement per the Town code for the transition district is shown on the attached Exhibit A.

As another example, in the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Community Room as 5, but in A.11 the required number of parking spaces for the Community Room is listed as 4. In the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Market Hall as 62 as 5, but in A.11 the required number of parking spaces for the "Specialty Market" is listed as 55.

**Response:** The required parking for the community room increased because the square footage increased. Exhibit A has a complete summary of the required parking for the transition district, including the Community Room.

1. SUMMERHILL'S NUMBERS SHOW THAT IT IS NOT PROVIDING THE AMOUNT OF HOUSING THAT THE TOWN REQUIRES FOR THE TRANSITION DISTRICT (Areas A, B, C).

In the adopted Developer's Phase 1 Plan from 2016: Based on the table titled Transition District Area A, B & C Building Area and Parking Tabulations (Table 3.22, page 58), the required number of parking stalls was 354 for the Transition District Area A, B & C (69 residential stalls/residential guest stalls + 285 commercial stalls). The original developer committed to providing more than that: 458 (389 commercial stalls (total for the specialty market, retail, restaurant/café, bar/tavern, and community room); and 69 residential/residential guest stalls.

**Response:** The required parking table on sheet 3.22 was not based on what is required by the code for parking. Exhibit A summarizes what is required by the code.

TOTAL ADOPTED IN 2016 FOR THE TRANSITION DISTRICT Area A, B & C:

458 PARKING STALLS

- The SummerHill proposal provides for only 330 parking spaces for the Transition District A, B & C. (See A.11: Transition District Building Area and Parking Tabulations on page 62 in the Agenda Packet. This is SummerHill's revised version of Table 6.22.)

**Response:** Exhibit A more accurately shows the required and provided parking for Market Hall and the transition district. 273 parking spaces are required and 319 are being provided.

- By eliminating the underground garage, SummerHill would provide 24 fewer parking spaces than required by the Town for the Transition District A, B & C. (354-330=24)

**Response:** Per Exhibit A there are currently 46 more spaces provided in the transition district than are required.

• Both Table 6.22 in the Developer’s proposal and Table A.11 in SummerHill’s proposal show that the Town requirement for commercial stalls is 285. Table A.11 shows that under SummerHill’s proposal, SummerHill would provide only 261 commercial parking stalls.

Response: Exhibit A includes commercial and residential parking that is required. Currently there are 69 residential parking spaces required and 204 commercial spaces required.

• Under its proposal, SummerHill would provide 24 fewer than the required number of commercial parking stalls ( $285-261=24$ ) for the Transition District A, B & C.

Response: Per Exhibit A there is a surplus of 46 spaces in the transition district.

THE MATH using numbers from Sheet A.11

Town required number of parking spaces for the Transition District A, B & C: 354

285 required commercial spaces + 39 required residential stalls +

30 required residential guest stalls = 354 required parking spaces

Number of total spaces proposed by SummerHill: 330

261 commercial spaces + 39 residential stalls +

30 residential guest stalls = 330 provided parking spaces

Response: As mentioned in an earlier response sheet A.11 was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

OTHER MATH using numbers from Table 6.22 on page 58 of the Developer’s Proposal, which is the proposal adopted by the Town

Parking spaces in the adopted plan in 2016: 458

Parking spaces SummerHill wants to eliminate: 127

Number of total spaces proposed by SummerHill

for the Transition District A, B, & C: 331

The Summerhill proposal drops the number of total parking spaces for the Transition District A, B & C below the Town’s requirement of 354. SummerHill is shortchanging the Town by 24 (or 23, depending on which Table you use) parking spaces.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code.

2. SUMMERHILL SAYS IT IS PROVIDING EXCESS PARKING. HOW DID SUMMERHILL COME UP WITH ITS (I believe, incorrect) NUMBERS? SUMMERHILL APPEARS TO HAVE CONFUSED THE REQUIRED NUMBER OF

COMMERCIAL PARKING SPACES WITH THE REQUIRED NUMBER OF TOTAL PARKING SPACES. (See the notes in red in A.11 on the right -- p. 62 in the Agenda Packet.)

- In the red notes next to the section outlined in red called Retail, SummerHill implies that it will provide a TOTAL OF 330 parking spaces for retail.
- SummerHill does its math to reach 330 commercial stalls by including 39 residential stalls and 30 residential guest stalls.
- SummerHill has a deficit of 24 parking stalls below the requirement of 285 commercial stalls. It does not have 45 extra commercial stalls as is claimed.

Also note on Sheet A.11 that in the column headed "Total. Required Number of Commercial Stalls." SummerHill lists 285. Then, just 2 columns to the right, under "Provided Commercial Stalls," it lists 261. In its own chart, SummerHill clearly shows that there is a deficit of 24 commercial parking stalls.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code. Exhibit A summarized the required and proposed parking for the transitional district.

3. THE PARKING GARAGE ALREADY HAD AN INSUFFICIENT NUMBER OF PARKING SPACES. The developer wants to drop the number of parking spaces in the garage from 303 to 176. But there was already a lack of parking in the garage in the adopted plan. Specifically, the parking for the 50-unit senior complex wasn't realistic. The allotment was 1 space per senior unit for a total of 50 spaces--½ space for each resident and ½ space for guests. The developer said most of the seniors wouldn't be able to afford cars. It also assumed each senior unit would have just one resident.

In fact it's possible that each senior unit will have two or even more residents. There may be one or more cars connected to each unit for a possible total of more than 50 cars. This uses up all the unit spaces and then some without accounting for guests.

Response: Eden has thirty-six properties containing two thousand seven hundred and four units. Four of those properties are in Santa Clara County and contain three hundred and five units. All of the suburban properties are parked at a ratio of 0.5 spaces per units. Urban properties in their portfolio have fewer spaces per unit. Eden's lease agreement limits the number of occupants in a 1-bedroom unit to two occupants.

Suppose the residents of the 50 senior units use their 50 parking spots. 126 spaces remain for the Market Hall, Bakery, and Community Room. Let's say 10 seniors and their guests use 30 additional spaces. We're down to 96 spaces.

Response: The senior parking is on the 3<sup>rd</sup> floor and is gated.

How about employees at the Market Hall and bakery? Let's say they use 20 spaces. We're down to 76 spaces for shoppers and people using the community room. Is this enough???

Response: The Town codes required parking for this land use is intended to accommodate parking for customers and employees.

How about overflow parking from other areas? There will be 71 one-bedroom units with one garage each. Suppose two people live in these units and each person has a car. We now have 71 more cars that will be seeking parking. The garage would be a logical space for these residents to use.

**Response: The residential portion of the project meets its parking requirement. The garage is private property. It will have a gate that will be closed after hours.**

4. WE NEED AN EXPLANATION FOR WHY THE DEVELOPER THINKS THE NEW PARKING ALLOCATIONS ARE ADEQUATE. The developer claims to be justifying the new lowered parking allocations using city code and the specific plan. Logic and common sense have clearly not been applied here. For example, the 2,032 square foot bakery has 7 spaces. Is this for employees as well as patrons? Will there be seating within the bakery? If yes, 7 parking spaces are hardly enough. How about the community room? It gets 4 parking spaces for its 2,772 square feet. Obviously more than 5 people can easily attend a meeting in such a space. Where are they supposed to park?

**Response: Per Exhibit A, the parking in the transition district will exceed what is required.**

5. PARKING WILL STILL BE NEEDED FOR FUTURE DEVELOPMENT. The SummerHill proposal states that "The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan."

But the need for parking for future development has not changed. There will still be future development and thus still a need for parking.

**Response: Future phases of the project will be required to meet their parking requirements on their portion of the project.**

Sincerely,

Barbara Dodson

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**TOWN OF LOS GATOS**  
**OFFICE OF THE TOWN ATTORNEY**

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**MEMORANDUM**

**To:** Planning Commission  
**From:** Robert Schultz, Town Attorney  
**Date:** September 18, 2020  
**Subject:** The Role of the Planning Commission and the Applicability of the Housing Accountability Act and By Right Development to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area.

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The Planning Commission at their last meeting requested further analysis of the applicability of the Housing Accountability Act to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area (Phase 1 Modification Application). This memorandum addresses the Role of the Planning Commission in addition to the applicability of the Housing Accountability Act and the Town's Housing Element/ By Right Development to the Phase 1 Modification Application.

**Role of the Planning Commission**

Based upon the questions and comments put forth by the Planning Commissioners at the last meeting, I thought it would be important to first review the role of the Planning Commission as it relates to all land use decisions.

The Planning Commission acts on behalf of the Town Council in deciding on and recommending land use activities and related matters. The Planning Commission derives its authority and duties through California Government Code Section 65101. That authority is further detailed in the Los Gatos Town Code defining the composition and duties of the Planning Commission. One of the duties of the Planning Commission is to review individual projects for consistency with the General Plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations. The Planning Commission is required to evaluate the facts and information and then deliberate and determine how the applicable ordinance or law applies to the information provided.

Pursuant to the landmark case of *Topanga Assn. For A Scenic Community v. County of Los Angeles (1974)*, the Planning Commission must explain land use decisions through the adoption of findings. Topanga defined findings as legally relevant sub-conclusions which expose the agency's

mode of analysis of facts, regulations, and policies, and bridge the analytical gap between raw data and ultimate decision. Therefore, the findings of the Planning Commission must be relevant to adopted, applicable criteria in statutes, ordinances or policies. In a way, The Planning Commission operates as a court in that the Planning Commission must apply the Town's local land use regulations to a specific application just as a court applies the law to a specific set of facts. Basically, the findings of the Planning Commission are an explanation of how they progressed from the facts through established fixed rule, standard, law, or policies to the decision.

Based upon the forgoing, and as I explained in our last meeting, findings such as the proposed modification is a "cost saving/profit increasing strategy" or that "they stand to make millions of dollars" or that the developers must "stick with their commitment" or "uphold the agreement" or that this is a "bait and switch" or "will force visitors, shoppers & residents to find parking elsewhere" or that the developers "are bullies and are ruining our town" are inadequate and improper findings pursuant to *Topanga Assn. For A Scenic Community v. County of Los Angeles (1974)*. Although all of these statements may not lack evidentiary support, they lack legal relevance and even if they are assumed to be correct, those findings simply do not meet the legal requirements set forth in code and case law.

### **Background of North 40 Phase 1 Project**

The approved North 40 Phase 1 Project includes: 260 residential condominiums/rowhomes, 10 rental apartments (including two live-work units), 49 affordable senior rental units, one additional unit to be reserved for a moderate-income manager of the senior units, and approximately 62,000 square feet of commercial floor area and a four-story parking garage with 303 parking spaces. The approved parking garage consisted of three above grade levels and one below grade level. The approved project subdivides the 20.7-acre Phase 1 project area into 113 lots to provide for 320 residential units and commercial space. (Phase 1 Project).

Prior to the approval, the Town Council denied the Phase 1 Project based on the Project's inconsistencies with the Town's General Plan, Housing Element, and Specific Plan. Thereafter, the applicants filed a lawsuit against the Town asserting that: (1) the Town of Los Gatos violated the Town's Housing Element; (2) the Town violated the State's Housing Accountability Act; and (3) the Town violated the State Density Bonus Law. The lawsuit requested the Court to direct "the Town to comply with its clear, mandatory, and ministerial duty to approve the project in compliance with the Town's Housing Element, the Housing Accountability Act, and the Density Bonus Law."

On June 9, 2017, the Santa Clara County Superior Court issued a Decision and Judgment against the Town. The Decision and Judgment determined that the findings adopted by the Town Council were discretionary determinations made under subjective policies in the Specific Plan, instead of under objective policies as required by the Housing Accountability Act.

On September 10, 2017, the Town Council rescinded its denial of the Phase 1 Project pursuant to the court order and approved the project as set forth above. The Applicants are now requesting a modification to the Phase 1 Project, (an existing and approved Architecture and Site Application), to remove the underground parking for the Market Hall. The removal of the below grade level would eliminate 127 parking spaces. No exterior modifications to the existing Market Hall building are proposed (Phase 1 Modification Application).

### **Applicability of Housing Accountability Act**

The Court Decision and Judgment directed the Town to reconsider the Project under the provisions of Government Code §65589.5(j) of the Housing Accountability Act (HAA). The HAA was originally enacted in 1982 and is often referred to as California’s “Anti NIMBY law.” The intent of the legislation was to address the “problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created.”

The HAA requires local governments to approve any “housing development project,” including specified mixed use projects, if they comply 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...” The Court Decision and Judgment determined that the Applicant’s “project is within the statutes definition of a housing development project.” Subdivision (j) of Section 65589.5 reads:

(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.



The HAA defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(8).

Since the Decision and Judgment required the Town to consider the Phase 1 Project under the HAA, the HAA would certainly apply to any modifications to the Phase 1 Project. Therefore, in order to deny the Phase 1 Modification Application, the Planning Commission must cite to specific written objective identified Town Standards and Policies and cannot deny the Phase 1 Modification Application for subjective criteria. As explained in *Honchariw v. County of Stanislaus*, the HAA was intended to “take away an agency’s ability to use what might be called a ‘subjective’ development ‘policy’.

### **Applicability of Housing Element/By Right Development**

In addition to complying with the HAA, the Town must comply with Housing Element Law. Housing Element Law requires the Town to demonstrate how the community plans to accommodate its “fair share” of its regional housing needs. To do so, the Town must establish an inventory of sites designated for new housing that is sufficient to accommodate its fair share. The Town must also identify regulatory barriers to housing development and propose strategies to reduce or eliminate those barriers.

The Town’s Housing Element required adoption of the North 40 Specific Plan with certain development assumptions in order to meet existing and projected housing needs in the Town and to obtain certification of the Housing Element from the State. The Town’s Housing Element (Action HOU 1.7) required the Town to rezone 13.5 acres within the North 40 Specific Plan Area to comply with a minimum density of 20 units per acre and establish “by-right” development for these units. More specifically, the Town’s Housing Element states:

Additional opportunities for affordable housing are being facilitated through the consideration of the North 40 Specific Plan and associated rezoning of 13.5 acres with a minimum density of 20 units per acre to yield 270 units. The Specific Plan would provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through “by right development” in the consideration of Architecture and Site applications. This process involves site and architectural review and if a proposal meets the objective criteria in the Design Guidelines, then the project is approved. Therefore, the Planning application process and review is not an undue burden or constraint on the production of affordable housing.

Based upon the Town’s Housing Element, the approval of the Phase 1 Project and now this Phase 1 Modification Application are entitled to “by right” development. This means that pursuant to our Housing Element, the Planning Commission must only apply objective standards in its review, analysis, and determination on whether to approve or deny the Phase 1 Modification Application.

These are the same legal principles that are set forth under the HAA and are adopted in the Court's Decision and Judgment and restrict the Planning Commission from using subjective criteria and findings to condition or deny this Phase 1 Modification Application.

**Conclusion**

Under the Housing Accountability Act and Housing Element Law, the Phase 1 Modification Application may only be reviewed for conformance with objective Town standards and policies and the Planning Commission must apply those policies to facilitate the proposed housing development and must not use subjective standards or policies to deny the Phase 1 Modification Application.

**RWS**

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From: [REDACTED]  
Sent: Wednesday, September 9, 2020 11:37 AM  
To: Sally Zarnowitz <[SZarnowitz@losgatosca.gov](mailto:SZarnowitz@losgatosca.gov)>  
Subject: New Voicemail Message from 408-XXX-XXXX

Hello, I'm calling regarding the underground parking garage. It is extremely important that it be kept underground and promises be kept. It is extremely important. Thank you.

EXHIBIT 14

Barbara Dodson

Los Gatos, CA 95032  
September 16, 2020

Dear Members of the Planning Commission:

**SUBJECT: THE SUMMERHILL PLAN WOULD CREATE A PARKING SHORTAGE IN THE TRANSITION AREA A, B & C IN THE NORTH FORTY**

Since our Town lawyer is now claiming that we need “objective” criteria for denying SummerHill’s proposal, here’s my personal list of **objective** reasons to reject SummerHill’s proposal.

1. The SummerHill proposal would create a parking shortage in the Transition District A, B & C. The Market Hall and garage cannot be considered in isolation. The application inappropriately focuses on the Market Hall and garage without admitting its impact on the total amount of parking needed for commercial uses in the Transition District A, B and C. This wider impact is that parking in the Transition District A, B and C would be reduced by between 4 and 24 spaces. . *(Note: There is 11,438 sq ft of commercial area in Building A1; 11,198 in Building A2; and restaurant/retail of 10,644 sq ft marked for Area C. The proposal deals only with parking in area B.)*

SummerHill doesn’t provide consistent numbers, although their numbers always show that their proposal would create a shortage, not an excess, of parking spaces for the Transition District. Here are two ways in which the SummerHill numbers show parking shortages.

A SHORTAGE OF 24 SPACES. This is shown just using numbers in A.11. The **required** number of commercial spaces is 285 (column 36). The **provided** number of commercial spaces is 261 (column 39). There is a shortage of 24 spaces

A SHORTAGE OF 4 SPACES. This uses Sheet A.11 and Exhibit 4. The required number of commercial stalls in the Transition District is 285 (A.11). In Exhibit 4, Market Hall commercial stalls are given as 126 (176 – 50 resident-related stalls). Also in Exhibit 4, additional Transition District Parking is given as 155. Thus the total commercial parking SummerHill would provide would be 126 + 155, which equals 281. There is no excess parking. In this way of looking at it, there is a clear shortage of 4 spaces for the district (285 required – 281 provided).

2. To put item 1 above in another way: The application is based on the false assumption that the garage was intended for use only by occupants of the Market Hall complex—senior housing, senior guests, market hall, bakery, and community room. In fact, the garage was also intended for use by customers at nearby retail

outlets, restaurants, and bars in addition to occupants of the Market Hall complex itself. (Just think about Santana Row. Are shoppers limited to parking in the garage under the hotel if they want to shop at Anthropologie, which has a different parking lot across the street?) Given this fact, the parking in the underground garage is needed to accommodate these parking requirements.

3. Building on the point in item 2 above, the applicant fails to clearly show where the parking for the retail, restaurant/café, and bar/tavern that are not inside the Market Hall would be located and whether the removal of the underground garage has an impact on the availability of parking for these commercial outlets. Exhibit 4: Transition District Parking shows that Parking Areas A, B, and C (which provide surface parking) would provide a total of 155 spaces. But based on A.11, retail, restaurant/café, and bar tavern outside of the Market Hall would require 213 spaces. Here's the math from A.11:

Retail spaces	55
Restaurant/café spaces	124
Bar/tavern spaces	34
Total:	213

There is a 58-space difference ( $213 - 155 = 58$ ). Where would these 58 spaces be located? Were they originally planned for the garage? (Following on this, Exhibit 4 in the SummerHill proposal says there would be an “excess” of 52 spaces in the parking garage. If the 58 unaccounted for spaces are considered, then there is a **shortage** of 6 spaces in the parking garage.)

4. The applicant provides conflicting numbers about how much parking it would provide in the Transition District. In some places, the applicant says that there would be 331 total spaces in the Transition District; in others the applicant uses a total of 330 spaces. Other inconsistencies are: 7 spaces for the bakery listed in Exhibit 4 versus no listing in A.11; 5 spaces for the community room in Exhibit 4 versus 4 spaces for the community room in A.11; 62 spaces listed for the Market Hall in Exhibit 4 versus 55 spaces for the “specialty market” listed in A.11.

Numbers for the amount of total commercial parking are also inconsistent. In A.11 the total of provided commercial parking is given as 261. However, using Exhibit 4, when you add the amount of commercial parking, you get a total of 281 (commercial parking of 126 in the garage + 155 in parking areas A, B). How much commercial parking will actually be provided? There's no way of knowing based on this proposal. The Commission cannot approve the application without consistent numbers and accurate data being given.

5. The applicant makes false statements and uses bogus math.

Example 1: The applicant says that removing the subterranean parking level “leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the **commercial interests** at North 40.” (page 49,

Exhibit 5) However, A.11 under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285.” Since removing the subterranean parking level actually leaves the project with only 261 commercial spaces and a **deficit of 24 spaces**, the applicant has made a false statement.

Example 2: The computations  $39 + 30 + 261 = 330$  and  $330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$  in red to the right of A.11 creates a false impression. They imply that SummerHill would provide 45 extra commercial spaces. But to come up with the 45 Extra supposedly commercial stalls, SummerHill mixes residential stalls (the 39 and the 30) with commercial stalls (the 261). SummerHill then uses the required number of commercial stalls (the 285) to come up with its extra 45. In fact, lookin at the situation this way, SummerHill has a **shortage of 24 parking stalls** for the Transition District A, B & C.

6. If the applicant claims that the numbers in A.11 are no longer accurate or are out of date, then the entire application must be thrown out for containing inaccurate data. It is the applicant’s responsibility to provide accurate data. Commissioners cannot make their decisions without accurate data.

.....  
I’m wondering if you might ask SummerHill these questions based on Sheet A.11. I’d love to get answers.

Main Questions

- Under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285. Is this number still accurate? If not, what is the accurate number?
- Under TOTAL PROVIDED PARKING TABULATIONS, **PROVIDED Commercial Stalls, we have 261** (column 39). **Since this number is not the total of the numbers provided in the table (the total is 285), where does this number come from and what is the explanation for this reduced number of parking stalls?**

Subquestions

Under Commercial Required Parking Tabulations, in column 27, under the heading Specialty Market/Number of Stalls, we have the number 55. Is this number still accurate? If not, what is the accurate number?

- Under Commercial Required Parking Tabulations, in column 29, under the heading Retail/Number of Stalls, we have the number 68. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 33, under the heading Bar/Tavern/Number of Stalls, we have the number 34. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 35, under the heading Community Room/Number of Stalls, we have the number 4. Is this number still accurate? If not, what is the accurate number?

- Looking at the tabulations in red to the right of A.11, what is the number 126 labeled Revised Bldg B1 Retail based on?
- What is the computation  $39 + 30 + 261 = 330$  supposed to show? *The implication of the bottom two computations in red*

$$39 + 30 + 261 = 330$$

$$330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$$

*is that SummerHill is providing 45 extra commercial parking spaces. However, the numbers 39 and 30 used in the computations are the numbers for residential stalls and residential guest stalls respectively. Therefore SummerHill is making a false statement; it is NOT providing "45 Extra" if indeed it is trying to show that it is providing extra commercial stalls.*

*In fact, SummerHill has a **deficit of 24 parking stalls** for the Transition District A, B & C.*

- In the bottom computation in red, why is the number 285 being used? (*THIS APPEARS TO BE AN ADMISSION THAT 285 COMMERCIAL STALLS ARE REQUIRED AS LISTED IN COLUMN 36. HOWEVER, IN COLUMN 39 SUMMERHILL ADMITS THAT IT IS PROVIDING ONLY 261 COMMERCIAL STALLS, 24 STALLS BELOW THE REQUIREMENT.*)

Thank you for your service to the Town.

Sincerely,  
Barbara Dodson



**From:** Jean Mundell [REDACTED]  
**Sent:** Monday, September 14, 2020 9:43 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** north 40

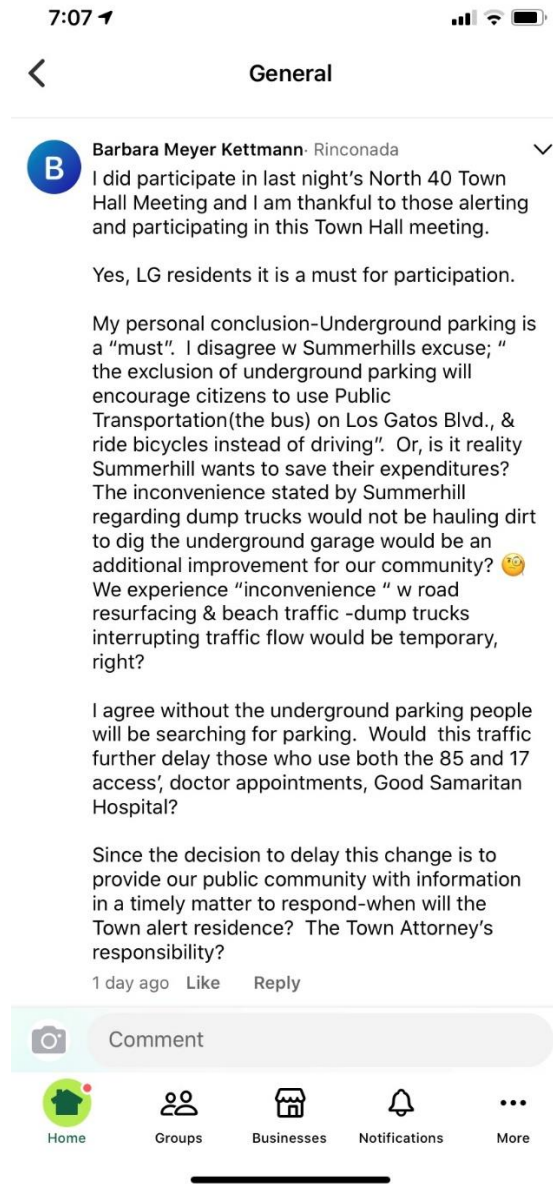
This has been a long and arduous process. Plans should be followed as agreed upon.

No backsliding.

Jean Mundell  
I live off Lark Ave. Need I say more?

**From:** Barbara Kettmann [REDACTED]  
**Sent:** Monday, September 14, 2020 7:23 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40

To the Town Council of Los Gatos



Barbara Meyer Kettmann · Rinconada

I did participate in last night's North 40 Town Hall Meeting and I am thankful to those alerting and participating in this Town Hall meeting.

Yes, LG residents it is a must for participation.

My personal conclusion-Underground parking is a "must". I disagree w Summerhills excuse; "the exclusion of underground parking will encourage citizens to use Public Transportation(the bus) on Los Gatos Blvd., & ride bicycles instead of driving". Or, is it reality Summerhill wants to save their expenditures? The inconvenience stated by Summerhill regarding dump trucks would not be hauling dirt to dig the underground garage would be an additional improvement for our community? 😊 We experience "inconvenience " w road resurfacing & beach traffic -dump trucks interrupting traffic flow would be temporary, right?

I agree without the underground parking people will be searching for parking. Would this traffic further delay those who use both the 85 and 17 access, doctor appointments, Good Samaritan Hospital?

Since the decision to delay this change is to provide our public community with information in a timely matter to respond-when will the Town alert residence? The Town Attorney's responsibility?

1 day ago Like Reply

I thought I have registered w the Town. Los Gatos Home owner since 1986. Keep original plans for underground parking and please does the Town have current meeting notes posted, links for Zoom? Last week the link I was given to access was listening & viewing Council members only.

Regards,  
Barbara Kettmann  
Sent from my iPhone

**From:** Lori Day [REDACTED]  
**Sent:** Sunday, September 13, 2020 11:39:07 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Changes

Dear Joel,

I am writing to you regarding the requested change to remove the underground parking in the North 40. We ask that the Planning Commission deny this request, parking is necessary in order for the North 40 to be successful and not to move penetrate the surrounding neighborhood. Let's keep the developer to task and the approved plan.

Thank you

Lori & Chris Day  
[REDACTED]  
Los Gatos 95032

**From:** Charles Wade <[REDACTED]>  
**Sent:** Saturday, September 12, 2020 4:12:02 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** N. 40 Garage

Mr Paulson, I think it is atrocious that the developers would even try for this change. Traffic and parking were big items in all the years this was negotiated. To change at this point makes a mockery of all the efforts expended to make this a positive addition to LG. Thanks.

From: Angela Di Berardino [REDACTED]  
Sent: Friday, September 11, 2020 3:39 PM  
To: Jocelyn Shoopman <jshoopman@losgatosca.gov>  
Subject: North 40!!!!

Underground parking is essential to combatting our parking problems!!! Everybody KNOWS that!!! Do NOT allow this to be removed!!!!!!!!!!!!

Sent from my iPhone

**From:** Babette Ito [REDACTED]  
**Sent:** Friday, September 11, 2020 8:50 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40 parking

Hi - I'm a resident of 15 years in Los Gatos. Please do not allow the developers to get away with what they agreed to in the current plan - especially the parking. The street congestion will be bad enough and will affect the hospital ambulance and other emergency vehicles. There needs to be underground parking.  
Thank you

--  
Yours,  
Babette Ito  
[REDACTED]

**From:** Jocelyn Fong <[JFong@losgatosca.gov](mailto:JFong@losgatosca.gov)>  
**Sent:** Thursday, September 10, 2020 4:57:36 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Voicemail: No name.(9/9) 11:36 AM

Someone called saying they wanted to keep the underground parking.

***Jocelyn Fong***  
CDD Administrative Assistant

**From:** r pathak

**Sent:** Wednesday, September 9, 2020 12:24:55 PM (UTC-08:00) Pacific Time (US & Canada)

**To:** Planning

**Cc:** Pathak Rahul

**Subject:** need Underground Parking

Dear Staff,

Is the the Town of Los Gatos committed to underground Parking at North 40?

Thank you,  
Sookmunny



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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 2

ADDENDUM

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**DATE:** September 22, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 15 includes a letter from the applicant responding to a public comment on the project's compliance with the parking requirements in the Specific Plan.

Exhibit 16 includes additional public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 22, 2020

EXHIBITS (continued):

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Previously received with September 23, 2020 Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan
13. Town Attorney Memorandum
14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

Received with this Addendum Report:

15. Applicant's response to a public comment regarding the project's compliance with the parking requirements in the Specific Plan
16. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020.

VIA E-MAIL

September 21, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Response to Letter Submitted by Barbra Dodson, dated September 16, 2020

Dear Ms. Shoopman:

We have reviewed the comment letter prepared by Barbra Dodson on September 16, 2020. It contains many of the same comments and questions that were included in her letter dated September 3, 2020. We provided a response to that letter on September 17, 2020. The more recent letter examines Sheet A.11 in the plans. As mentioned in our previous response, Sheet A.11 in our plan set was intended to show only the changes proposed to Market Hall by the proposed amendment to the approved A&S. The table on Sheet A.11 was based on what was shown on Sheet 3.22 of the approved A&S plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan and the code requirements in place at that time.

In order to clarify what the required parking is based on the current Town Code, we have prepared Exhibit A attached to this letter. This table takes the square footage proposed for Market Hall and combines it with the Gross Square Footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

We have attached Exhibit A for your reference.



Please let us know if you have any question.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

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Barbara Dodson

Los Gatos, CA 95032  
September 16, 2020

Dear Members of the Planning Commission:

**SUBJECT: THE SUMMERHILL PLAN WOULD CREATE A PARKING SHORTAGE IN THE TRANSITION AREA A, B & C IN THE NORTH FORTY**

Since our Town lawyer is now claiming that we need “objective” criteria for denying SummerHill’s proposal, here’s my personal list of **objective** reasons to reject SummerHill’s proposal.

1. The SummerHill proposal would create a parking shortage in the Transition District A, B & C. The Market Hall and garage cannot be considered in isolation. The application inappropriately focuses on the Market Hall and garage without admitting its impact on the total amount of parking needed for commercial uses in the Transition District A, B and C. This wider impact is that parking in the Transition District A, B and C would be reduced by between 4 and 24 spaces. .  
*(Note: There is 11,438 sq ft of commercial area in Building A1; 11,198 in Building A2; and restaurant/retail of 10,644 sq ft marked for Area C. The proposal deals only with parking in area B.)*

SummerHill doesn’t provide consistent numbers, although their numbers always show that their proposal would create a shortage, not an excess, of parking spaces for the Transition District. Here are two ways in which the SummerHill numbers show parking shortages.

A SHORTAGE OF 24 SPACES. This is shown just using numbers in A.11. The **required** number of commercial spaces is 285 (column 36). The **provided** number of commercial spaces is 261 (column 39). There is a shortage of 24 spaces

A SHORTAGE OF 4 SPACES. This uses Sheet A.11 and Exhibit 4. The required number of commercial stalls in the Transition District is 285 (A.11). In Exhibit 4, Market Hall commercial stalls are given as 126 (176 – 50 resident-related stalls). Also in Exhibit 4, additional Transition District Parking is given as 155. Thus the total commercial parking SummerHill would provide would be 126 + 155, which equals 281. There is no excess parking. In this way of looking at it, there is a clear shortage of 4 spaces for the district (285 required – 281 provided).

2. To put item 1 above in another way: The application is based on the false assumption that the garage was intended for use only by occupants of the Market Hall complex—senior housing, senior guests, market hall, bakery, and community



room. In fact, the garage was also intended for use by customers at nearby retail outlets, restaurants, and bars in addition to occupants of the Market Hall complex itself. (Just think about Santana Row. Are shoppers limited to parking in the garage under the hotel if they want to shop at Anthropologie, which has a different parking lot across the street?) Given this fact, the parking in the underground garage is needed to accommodate these parking requirements.

3. Building on the point in item 2 above, the applicant fails to clearly show where the parking for the retail, restaurant/café, and bar/tavern that are not inside the Market Hall would be located and whether the removal of the underground garage has an impact on the availability of parking for these commercial outlets. Exhibit 4: Transition District Parking shows that Parking Areas A, B, and C (which provide surface parking) would provide a total of 155 spaces. But based on A.11, retail, restaurant/café, and bar tavern outside of the Market Hall would require 213 spaces. Here's the math from A.11:

Retail spaces	55
Restaurant/café spaces	124
Bar/tavern spaces	34
Total:	213

There is a 58-space difference ( $213 - 155 = 58$ ). Where would these 58 spaces be located? Were they originally planned for the garage? (Following on this, Exhibit 4 in the SummerHill proposal says there would be an "excess" of 52 spaces in the parking garage. If the 58 unaccounted for spaces are considered, then there is a **shortage** of 6 spaces in the parking garage.)

4. The applicant provides conflicting numbers about how much parking it would provide in the Transition District. In some places, the applicant says that there would be 331 total spaces in the Transition District; in others the applicant uses a total of 330 spaces. Other inconsistencies are: 7 spaces for the bakery listed in Exhibit 4 versus no listing in A.11; 5 spaces for the community room in Exhibit 4 versus 4 spaces for the community room in A.11; 62 spaces listed for the Market Hall in Exhibit 4 versus 55 spaces for the "specialty market" listed in A.11.

Numbers for the amount of total commercial parking are also inconsistent. In A.11 the total of provided commercial parking is given as 261. However, using Exhibit 4, when you add the amount of commercial parking, you get a total of 281 (commercial parking of 126 in the garage + 155 in parking areas A, B). How much commercial parking will actually be provided? There's no way of knowing based on this proposal.

The Commission cannot approve the application without consistent numbers and accurate data being given.

5. The applicant makes false statements and uses bogus math.

Example 1: The applicant says that removing the subterranean parking level “leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the **commercial interests** at North 40.” (page 49, Exhibit 5) However, A.11 under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285.” Since removing the subterranean parking level actually leaves the project with only 261 commercial spaces and a **deficit of 24 spaces**, the applicant has made a false statement.

Example 2: The computations  $39 + 30 + 261 = 330$  and  $330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$  in red to the right of A.11 creates a false impression. They imply that SummerHill would provide 45 extra commercial spaces. But to come up with the 45 Extra supposedly commercial stalls, SummerHill mixes residential stalls (the 39 and the 30) with commercial stalls (the 261). SummerHill then uses the required number of commercial stalls (the 285) to come up with its extra 45. In fact, looking at the situation this way, SummerHill has a **shortage of 24 parking stalls** for the Transition District A, B & C.

6. If the applicant claims that the numbers in A.11 are no longer accurate or are out of date, then the entire application must be thrown out for containing inaccurate data. It is the applicant’s responsibility to provide accurate data. Commissioners cannot make their decisions without accurate data.

.....  
I’m wondering if you might ask SummerHill these questions based on Sheet A.11. I’d love to get answers.

Main Questions

- Under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285. Is this number still accurate? If not, what is the accurate number?
- Under TOTAL PROVIDED PARKING TABULATIONS, **PROVIDED Commercial Stalls, we have 261** (column 39). **Since this number is not the total of the numbers provided in the table (the total is 285), where does this number come from and what is the explanation for this reduced number of parking stalls?**

Subquestions

Under Commercial Required Parking Tabulations, in column 27, under the heading Specialty Market/Number of Stalls, we have the number 55. Is this number still accurate? If not, what is the accurate number?

- Under Commercial Required Parking Tabulations, in column 29, under the heading Retail/Number of Stalls, we have the number 68. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 33, under the heading Bar/Tavern/Number of Stalls, we have the number 34. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 35, under the heading Community Room/Number of Stalls, we have the number 4. Is this number still accurate? If not, what is the accurate number?
- Looking at the tabulations in red to the right of A.11, what is the number 126 labeled Revised Bldg B1 Retail based on?
- What is the computation  $39 + 30 + 261 = 330$  supposed to show? *The implication of the bottom two computations in red*

$$39 + 30 + 261 = 330$$

$$330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$$

*is that SummerHill is providing 45 extra commercial parking spaces. However, the numbers 39 and 30 used in the computations are the numbers for residential stalls and residential guest stalls respectively. Therefore SummerHill is making a false statement; it is NOT providing "45 Extra" if indeed it is trying to show that it is providing extra commercial stalls.*

*In fact, SummerHill has a **deficit of 24 parking stalls** for the Transition District A, B & C.*

- In the bottom computation in red, why is the number 285 being used? (*THIS APPEARS TO BE AN ADMISSION THAT 285 COMMERCIAL STALLS ARE REQUIRED AS LISTED IN COLUMN 36. HOWEVER, IN COLUMN 39 SUMMERHILL ADMITS THAT IT IS PROVIDING ONLY 261 COMMERCIAL STALLS, 24 STALLS BELOW THE REQUIREMENT.*)

Thank you for your service to the Town.

Sincerely,

Barbara Dodson

**From:** Sharon Elder [REDACTED]  
**Sent:** Monday, September 21, 2020 9:22:55 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 underground parking structure

Hi, my name is Sharon Elder and the resident of Los Gatos. It's my understanding that the developers of the North 40 project are now proposing to remove the underground parking structure that was originally passed as part of their overall plan.

I feel that by removing this parking structure will force traffic on the side roads and dissuade shoppers from going to these new shopping developments because they will have nowhere to park.

I feel that in good faith the developers of the North 40 project should continue with our original plan which was to build and ensure that there is sufficient parking for their development. Their plan was passed because it made allowances for parking that they are now renegeing on.

Rgds  
Sharon Elder  
[REDACTED] Los Gatos

Sent from my iPhone

**From:** Amy Nishide [REDACTED]  
**Sent:** Friday, September 18, 2020 7:19:01 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** North 40 parking garage proposed elimination

I am against this. Not including the the parking is extremely short-sighted. The entire North 40 was envisioned as one plan under the specific plan and should be built. Just because Summerhill took over for Grosvenor, doesn't mean the garage can be eliminated. In the future, parking overflow could spill into the neighborhood and create significant issues. Don't be short-sighted. Think long term.

Amy Nishide  
Los Gatos

She believes they should retain the underground parking because of the concern that the entire North Forty has been envisioned as one project under the Specific Plan and there would be no way to go back and dig out under a parking structure if they don't put the underground parking in now.

Los Gatos, CA 95032  
September 20, 2020

Dear Members of the Planning Commission:

Obviously it's hard for members of the community to keep up with SummerHill's ever changing story. SummerHill submitted an application in which it said it would be providing either 330 or 331 parking spaces in the Transition District. Now, with its new Exhibit A, it says it will be providing 319 spaces. Previously SummerHill claimed excess of 52 spaces; now the excess is 46.

Can approval really be based on an addendum that contradicts the original proposal?

Assuming that Sheet A.11 had old information that is no longer reliable, we still have Exhibit 4 that

SummerHill created for this proposal. Based on Exhibit 4, we should still have 331 spaces. Where did the 12 spaces shown in Exhibit go when Exhibit A was put together? What is the breakdown? If we accept Exhibit 4, there should still be 176 spaces in a garage without an underground area. There should still be 155 spaces in Parking Areas A, B, and C combined. So why aren't there still 331 parking spaces in the Transition District?

It looks like SummerHill aims to reduce the parking in Parking Areas A, B, and C along with eliminating the underground garage. In Exhibit 4, Parking Areas A, B, and C provide a combined total of 155 spaces. Exhibit A lists only 143 spaces to be provided in addition to the spaces in the above-ground garage. It looks like SummerHill plans to reduce the parking in Parking Areas A, B, and C by 12 spaces. Doesn't SummerHill have to apply for approval of this additional change as well?

I urge you to deny this application on the basis that SummerHill has provided ever changing numbers, making it impossible for the Commission to make a decision. If Exhibit A now provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false.

Some questions:

From the SummerHill comments, it sounds like parking requirements in the Town Code were different in 2016 when the Phase 1 proposal was approved. It sounds like the old requirements are used in Sheet A.11 (which shows a requirement for 354 parking spots in the Transition District A, B & C) and that SummerHill is reducing parking based on requirements that have changed since 2016. If that's the case, wouldn't SummerHill still have to abide by parking requirements that were in place at the time of approval?

If the above question is not relevant, what changed between 2016 and now so that 354 spaces were required then but only 319 are required now?

SummerHill was party to the 2016 proposal that was approved by Town Council, along with Grosvenor and Eden Housing. Why should SummerHill now be allowed to distance itself from what was approved just because Grosvenor has pulled out?

Just as a note, I find it alarming that SummerHill projects that it will provide roughly 9% less parking than the Town used as part of the basis for approval of Phase 1. The 2016 proposal included a total of 1,039 parking spaces. SummerHill now plans to provide a total of 900 spaces for Phase 1.

Thank you for your service to the community.

Sincerely,

Barbara Dodson



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 2

DESK ITEM

**DATE:** September 23, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 17 includes an additional letter from the applicant responding to a public comment on the project's compliance with the parking requirements in the Specific Plan.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

Reviewed by: Planning Manager and Community Development Director



PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 23, 2020

EXHIBITS (continued):

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Previously received with September 23, 2020 Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

Previously received with September 23, 2020 Addendum Report:

15. Applicant's response to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

16. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020

Received with this Desk Item Report:

17. Additional response from the applicant responding to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

VIA E-MAIL

September 23, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

SummerHill Has prepared the attached response to the Letter submitted by Barbara Dodson and included in the Staff Report Addendum. As we have previously stated, our application is for Market Hall, Lot 27, but in order to help answer questions from the community and the Planning Commission we have prepared and provided Exhibit A: Transition District Parking Summary, which accurately summarizes the parking that is required and provided for the Transition District.

As can be seen in Exhibit A, the Market Hall meets the Towns parking requirements and based on the Gross Square footage from the approved A&S, the Transition District as a whole will have a surplus of 46 parking spaces.

Please let us know if you need any additional information.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

SummerHill Responses to Letter from Barbara Dodson Received 9/21/20:  
Responses Provided in Red Text

Los Gatos, CA 95032  
September 20, 2020

Dear Members of the Planning Commission:

Obviously it's hard for members of the community to keep up with SummerHill's ever changing story. SummerHill submitted an application in which it said it would be providing either 330 or 331 parking spaces in the Transition District. Now, with its new Exhibit A, it says it will be providing 319 spaces. Previously SummerHill claimed excess of 52 spaces; now the excess is 46.

Response: Our application was for a modification to Market Hall on Lot 27. It does not propose any changes to the parking for Building A1, A2, B2, or C1. Our Project Description included a table that showed Transition District Parking. It has Parking Area A, B and C as unchanged and only changed Market Hall. The total is correctly shown as 331 spaces. The parking for Area A, B and C is based on counting the surface stalls shown on the Site Plan from the approved A&S plan set. The Market Hall has a surplus of 52. The Transition district as a whole has a surplus of 46 spaces based on the square footages and land uses proposed in the A&S Plans on Sheet 3.22.

Can approval really be based on an addendum that contradicts the original proposal?

Response: The request for a modification for the Market Hall on Lot 27 has always identified a required parking of 124 stalls and a proposed parking of 176 stalls. This is included in our Letter of Justification which is Exhibit 5 of the staff report.

Assuming that Sheet A.11 had old information that is no longer reliable, we still have Exhibit 4 that SummerHill created for this proposal. Based on Exhibit 4, we should still have 331 spaces. Where did the 12 spaces shown in Exhibit go when Exhibit A was put together? What is the breakdown? If we accept Exhibit 4, there should still be 176 spaces in a garage without an underground area. There should still be 155 spaces in Parking Areas A, B, and C combined. So why aren't there still 331 parking spaces in the Transition District?

Response: Exhibit 4 includes a table showing "Original Parking" in the A&S Approved Plan set and what was included for Market Hall with the basement parking. The "New Parking" column has the 176 stalls for Market Hall proposed in our modification, and shows the remainder of the Transition District as unchanged. Exhibit A is a summary of:

1. Required parking per the Town Code
2. Proposed parking for Market Hall without the basement and surface parking as shown on the Phase I Commercial Parking Spaces Exhibit prepared by MacKay and Soms.

The approved In-Tract Private Improvement Plans include 58 surface parking stalls, the same as shown on the approved A&S Plan Set. The 12 space difference between 331 shown in Exhibit 4 (Approved A&S Plan Set) and the 319 in Exhibit A (Mackay and Soms Phase I Parking Exhibits) is a result of conceptual modifications to the commercial surface parking lots. This still results in a surplus of 46 parking stalls for the Transition District. It should be noted that the commercial surface parking lot designs are preliminary and no application has been filed at this time. The remaining commercial buildings in Phase I will have to comply with the parking requirements in the Town Code and the Specific Plan to obtain a building permit.

It looks like SummerHill aims to reduce the parking in Parking Areas A, B, and C along with eliminating the underground garage. In Exhibit 4, Parking Areas A, B, and C provide a combined total of 155 spaces. Exhibit A lists only 143 spaces to be provided in addition to the spaces in the above-ground garage. It looks like SummerHill plans to reduce the parking in Parking Areas A, B, and C by 12 spaces. Doesn't SummerHill have to apply for approval of this additional change as well?

**Response:** Our application only applies to Market Hall, Lot 27. All other information is provided for reference only. The remaining commercial buildings in Phase I will have to comply with the Town Code parking requirements and the Specific Plan to obtain a building permit.

I urge you to deny this application on the basis that SummerHill has provided ever changing numbers, making it impossible for the Commission to make a decision. If Exhibit A now provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false.

**Response:** Our request to remove the basement parking from the Market Hall and provide 176 parking stalls, 52 more than required by the Town code is described in our Letter of Justification and Project Description. It is accurate and has never changed.

Some questions:

From the SummerHill comments, it sounds like parking requirements in the Town Code were different in 2016 when the Phase 1 proposal was approved. It sounds like the old requirements are used in Sheet A.11 (which shows a requirement for 354 parking spots in the Transition District A, B & C)) and that SummerHill is reducing parking based on requirements that have changed since 2016. If that's the case, wouldn't SummerHill still have to abide by parking requirements that were in place at the time of approval?

If the above question is not relevant, what changed between 2016 and now so that 354 spaces were required then but only 319 are required now?

SummerHill was party to the 2016 proposal that was approved by Town Council, along with Grosvenor and Eden Housing. Why should SummerHill now be allowed to distance itself from what was approved just because Grosvenor has pulled out?

**Response:** The Specific Plan Parking Requirements for Parking Non-Residential Parking is established in Section 2.5.8.a: Non-Residential Use: The number of off-street parking

spaces shall be consistent with the parking required in Downtown as required within Division 4 of the Zoning Ordinance. This section of the code was updated after the approval of the A&S for Phase I. Exhibit A reflects what is required by the current Town Code.

Just as a note, I find it alarming that SummerHill projects that it will provide roughly 9% less parking than the Town used as part of the basis for approval of Phase 1. The 2016 proposal included a total of 1,039 parking spaces. SummerHill now plans to provide a total of 900 spaces for Phase 1.

Response: With the proposed modification there are currently proposed to be 46 more stalls than are required for the Transition District.

Thank you for your service to the community.

Sincerely,

Barbara Dodson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/28/2020

ITEM NO: 2

DESK ITEM B

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DATE: September 28, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Exhibit 18 includes additional public comments received between 11:01 a.m., Wednesday, September 23, 2020 and 11:00 a.m., Monday, September 28, 2020.

EXHIBITS:

Previously received with August 26, 2020 Staff Report:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020
7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 28, 2020

EXHIBITS (continued):

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Previously received with September 23, 2020 Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

Previously received with September 23, 2020 Addendum Report:

15. Applicant's response to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

16. Public comments received between 11:01 a.m., Friday, September 18, 2020 and 11:00 a.m., Tuesday, September 22, 2020

Previously received with September 23, 2020 Desk Item Report:

17. Additional response from the applicant responding to a public comment regarding the project's compliance with the parking requirements in the Specific Plan

Received with this Desk Item B Report:

18. Public comments received between 11:01 a.m., Wednesday, September 23, 2020 and 11:00 a.m., Monday, September 28, 2020

From: Jennifer Grewal [REDACTED]  
Sent: Saturday, September 26, 2020 6:22 PM  
To: Council <[Council@losgatosca.gov](mailto:Council@losgatosca.gov)>  
Subject: North 40

Good evening Tom councilmembers. I just read the below on Nextdoor. I know that the parking information is correct but cannot vouch for the remainder of the assertions in this post. However they are concerning to me enough to write and say please hold the developer completely accountable.

Our town needs sanity. We are a traffic mess and keeping this project accountable so that it does not create more of a mess is imparative.

Please - we need as minimal intrusion from this large development as possible. Do not allow it to become another unplanned unmitigated mess adding more than necessary to our traffic mess.

Thank you.

--

NORTH 40 TRAVESTY! The current North 40 application does NOT meet the Housing Authority Act! The HAA requirements are for the entire Phase 1 of the North 40 but the application Summerhill submitted is only for 1 specific area. Therefore the town attorney is wrong to say the commission can only rule inline with the HAA requirements. Summerhill is duping our town by already removing access points to the underground parking ( not mentioned in the report)!

How many "small changes" will Summerhill make before the Planning Commission's carefully created plan ends up not what was promised to the town that which makes our town better?

All hands on deck to stop Summerhill's snowballing us into something the town of Los Gatos doesn't want and can't live with!

The next town meeting is September 28 at 7 pm!

Jennifer Croft Grewal  
[REDACTED]  
[REDACTED]

**From:** CRUMPTON FAMILY [REDACTED]  
**Sent:** Friday, September 25, 2020 1:49 PM  
**To:** Planning Comment <[PlanningComment@losgatosca.gov](mailto:PlanningComment@losgatosca.gov)>  
**Subject:** North Forty- Disapprove of modifications

Dear Los Gatos Town Council,

We disapprove of the following modifications to the North Forty previously agreed to underground parking. As you are most aware, Los Gatos needs more parking spaces, and we should use this opportunity to increase the number of spaces. Also, these parking spaces may lighten the load of cars parked on our streets.

**Consider approval of a request for modification to an existing Architecture and Site Application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.**

Respectfully,

Mr. and Mrs. Thomas Crumpton,

Crumpton Family

[REDACTED]  
Los Gatos, CA 95032

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Melanie Hanssen, Chair  
Kathryn Janoff, Vice Chair  
Mary Badame  
Jeffrey Barnett  
Matthew Hudes  
Reza Tavana

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin  
(619) 541-3405

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P R O C E E D I N G S :

CHAIR HANSSEN: So then we will move on to Item 2 on the agenda, which is considering approval of a request for modification to an existing Architecture and Site Application S-13-090 to remove underground parking for construction of a commercial building known as the Market Hall in the North 40 Specific Plan Area. APN 424-56-017. Architecture and Site Application S-20-12. The property owner/applicant is Summer Hill North 40, LLC.

This item was continued for a second time from our last meeting on September 9<sup>th</sup> to allow Commissioners and the public to review our Town Attorney's comments regarding the Housing Accountability Act and this application. It was also necessary to continue this from our scheduled meeting on September 23<sup>rd</sup> due to issues with Zoom and public access.

With that being said, I want to ask if we have any additional disclosures since our last meeting by Commissioners for this application? Commissioner Burch.

COMMISSIONER BURCH: I don't know if I have to disclose this again, but I will be recusing myself due to my residence's proximity to the project, so I will be listening in as a resident and neighbor.

1 CHAIR HANSSEN: Thank you very much, Commissioner  
2 Burch, and we'll see you back for Item 3, I assume.

3 COMMISSIONER BURCH: Okay.

4 CHAIR HANSSEN: All right, so I understand Ms.  
5 Shoopman will be giving the Staff Report for this item,  
6 however we've also asked our Town Attorney to recap the  
7 information in his letter that was distributed with the  
8 agenda for this meeting, and so Ms. Shoopman, do you have  
9 any additional comments about the application before our  
10 Town Attorney speaks?  
11

12 ASSOC. PLANNER SHOOPMAN: I don't have any  
13 additional comments. It was just to remind the Commission  
14 that there are two separate Desk Items for the meeting:  
15 one, a letter from the Applicant and two; additional public  
16 comments that have been received.

17 CHAIR HANSSEN: Okay. Thank you very much. And I  
18 assume all the Commissioners have received those items.  
19 Okay, so I will ask now for the Town Attorney to give us a  
20 recap of the information he had in his letter for the  
21 benefit of the public and any Commissioners that wanted  
22 additional information.

23 TOWN ATTORNEY SCHULTZ: Good evening, Chair and  
24 Commissioners. The Planning Commission at its meeting  
25 requested further analysis of the applicability of the

1 Housing Accountability Act for this project and I have  
2 provided that to you in a memorandum that addresses not  
3 only the Housing Accountability Act but also it addresses  
4 our Housing Element and the role of the Planning Commission  
5 in general as to all land use decisions.

6           By way of background, the approved North 40 phase  
7 one project includes 260 residential condominiums and  
8 rowhouses, ten rental apartments, 49 affordable senior  
9 housing units, one unit for a moderate-income manager, the  
10 senior units, approximately 62 square feet of commercial  
11 space, and a four-story parking garage with 303 parking  
12 spaces. The approved parking garage consists of three  
13 above-level and one below-grade level of parking.

14           As you review my memorandum it's important to  
15 understand that prior to the approval of the original  
16 project the Planning Commission and the City Council denied  
17 the project. Thereafter the Applicants filed a lawsuit  
18 against the Town asserting that the Town had violated the  
19 Town's Housing Element, that the Town had violated the  
20 state's Housing Accountability Act, and the Town had  
21 violated the state's density bonus laws.

22           On June 9, 2017 the Santa Clara County Superior  
23 Court issued a decision against the Town. The decision  
24 determined that the findings adopted by the Town Council  
25

1 were made under subjective policies instead of under  
2 objective policies that is required by the Housing  
3 Accountability Act.

4           On September 10, 2017 the Town Council rescinded  
5 its denial of the proposed phase 1 project pursuant to the  
6 court order and approved the project, as I mentioned above  
7 describing the project as approved.

8           The Applicant is now requesting a modification to  
9 the phase one project to remove the underground level of  
10 the parking for the Market Hall. My legal analysis is that  
11 the Housing Accountability Act is applicable to the  
12 modification of the approved project. The court decision  
13 related to the project required the Town consider the  
14 project under the provisions of the Housing Accountability  
15 Act. The Housing Accountability Act is often referred to as  
16 "California Anti-NIMBY," NIMBY standing for, "Not in My  
17 Backyard."

18           The intent of the law was to address problems  
19 that the state was having where local governments were  
20 adopting housing standards and policy and then failing to  
21 comply with their own policies when specific housing  
22 projects were at stake. The Housing Accountability Act  
23 requires local governments to approve certain housing  
24  
25



1 development projects if they comply with objective general  
2 plan and zoning standards and criteria.

3           Just an interesting note is that because the Town  
4 denied this project the first time around state legislators  
5 actually amended the Housing Accountability Act and  
6 strengthened it further to require that if a public agency  
7 doesn't comply with the Housing Accountability Act it's  
8 subject to fines and attorney fees are mandatory to the  
9 applicant.

10  
11           Since the decision required the Town to consider  
12 the phase one project under the Housing Accountability Act  
13 it is my legal opinion that it would to any modifications  
14 of that exact same project. My legal analysis also  
15 concludes that our Housing Element and by-right development  
16 is also applicable to the modification of the approved  
17 project.

18           State Housing Element law requires the Town to  
19 demonstrate how it plans to accommodate its fair share of  
20 reasonable housing need. To do so the Town must establish  
21 an inventory of sites designated for new housing that is  
22 sufficient to accommodate its fair share of housing. The  
23 Town's Housing Element designates the North 40 for new  
24 housing and establishes by-right development for housing  
25 units on the North 40. By-right development means that if

1 the project meets objective criteria, then the project must  
2 be approved.

3           Based on my review, both the Housing  
4 Accountability Act and the by-right development restrict  
5 the Planning Commission from using subjective criteria for  
6 findings to condition or deny the project. However, it is  
7 important for me to point out that you do not have to or  
8 are required to follow my legal analysis, but if you do not  
9 you should have to find and develop and make findings as to  
10 the reasons that the Housing Accountability Act and our  
11 Housing Elements do not apply to this application.

12           The other issue I address in my memorandum is the  
13 role of the Planning Commission as it relates not only to  
14 this land use decision but to all land use decisions. Your  
15 role for all land use decisions is in a quasi-judicial  
16 role, which literally means that you're acting as a court  
17 and require land use proceedings to be similar to those  
18 followed in the court proceedings. This requires you to act  
19 like a court for all land use decisions and apply the  
20 Town's local land use regulations just as court requires a  
21 law to be put forth to a specific set of facts of that  
22 case. The law requires you to evaluate the facts and  
23 information and then deliberate and determine how the  
24 Town's applicable standards, ordinance, and laws apply to  
25

1 those facts and information you have been provided. You  
2 must then adopt findings of how you progressed from those  
3 facts to our established standards, laws, rules, and  
4 regulations to make that decision.

5           The legal requirement to make findings linking  
6 the facts to our Town standards is required whether or not  
7 the Housing Accountability Act or the by-right development  
8 is applicable or not. The only difference is if the Housing  
9 Accountability Act and the by-right development is  
10 applicable you must only use objective standards. If it's  
11 not applicable then you can use both objective and  
12 subjective standards that are in our rules, regulations,  
13 and laws, but you simply just cannot ignore and have no  
14 linkage between the facts and our standards, and this is  
15 why I pointed out to you in your last meeting or the  
16 meeting before that that standards such as we need the  
17 parking, or that the cost savings and profit is a strategy  
18 of the developer; or that they stand to make millions of  
19 dollars; or we need to uphold their agreement; or this is a  
20 bait and switch; or it will force visitors, shoppers, and  
21 residents to find other parking.

22           All of those statements are inadequate and  
23 improper facts and statements to make findings upon.

24 Although all these statements may be true, they just do not

1 provide legal findings that will stand up in a court as  
2 they do not link those facts to anywhere in our standards,  
3 rules, and regulations.

4 And with that, I'm available for any questions or  
5 comments that you have regarding my memorandum and any  
6 other clarification that you need.

7 CHAIR HANSSEN: Thank you very much to our Town  
8 Attorney, and it looks like you have a question from  
9 Commissioner Hudes.  
10

11 COMMISSIONER HUDES: Thank you. Based on the  
12 opinion that you gave us about the Housing Accountability  
13 Act, the requirement for two-thirds residential, is that  
14 based on strictly the Market Hall building or is that based  
15 on the scope of the phase one application?

16 TOWN ATTORNEY SCHULTZ: That's based on the  
17 project as a whole because that's where it's being  
18 modified. That's just my personal opinion; you won't find  
19 that in case law. There's very little case law that  
20 interprets that. Certainly if you just base it on the  
21 Market Hall I don't believe they make it, or just under it,  
22 but for any project in town that seeks a modification you  
23 don't separate out, you don't piecemeal out a part of it  
24 and say it's only coming in for a height modification. It's  
25 a modification to the entire project, the entire Conditions

1 of Approval, and that's why I based my decision on that  
2 it's applicable to the entire project.

3           In fact, the density bonus is related to the  
4 entire project, so if you're only looking at the Market  
5 Hall it wouldn't take into account all the other  
6 availability of state laws. And also because the Housing  
7 Accountability Act is interpreted by courts very widespread  
8 because of the intent to prevent anti-NIMBYism; that's why  
9 I reached that conclusion. If the position of the Planning  
10 Commission is that it does not apply because of the fact  
11 that the Market Hall and that component of this project  
12 doesn't meet, then those are the findings that you can  
13 make.  
14

15           CHAIR HANSSEN: Commissioner Hudes had a follow  
16 up question.

17           COMMISSIONER HUDES: As a follow up to that, does  
18 that have any bearing on whether the parking requirements  
19 are looked at only for the Market Hall building or for the  
20 project as a whole, as you said?

21           TOWN ATTORNEY SCHULTZ: My opinion is you have to  
22 look at it as a whole. You don't get to use the Housing  
23 Accountability Act to your advantage and then say the  
24 parking only applies to the Market Hall.  
25

          COMMISSIONER HUDES: Thank you.

1 CHAIR HANSSEN: Do any other Commissioners have  
2 any questions of the Town Attorney? And you also have an  
3 opportunity to ask questions of Staff. I don't see any  
4 hands raised at the moment.

5 I do have one question for the Town Attorney that  
6 I wanted to ask. We did go over this in our last meeting  
7 but for the benefit of people that might be tuning in for  
8 the first time, we've gotten so many letters from people,  
9 and really heartfelt letters from people in town, talking  
10 about how the developer is reneging on their commitment,  
11 and because there were proposals made in previous  
12 iterations even at the time the application was filed and  
13 approved, where the total amount of parking that was  
14 supposed to be delivered or was intended to be delivered  
15 was more than what they're talking about right now. So, my  
16 question to the Town Attorney is is there any validity to  
17 they're not holding up to their agreement?  
18

19 TOWN ATTORNEY SCHULTZ: No, there is no  
20 agreement, and in fact our code and the Specific Plan  
21 specifically mention how you ask for a modification and  
22 that's what they've done in this case. The procedure and  
23 process for seeking a modification is available at any time  
24 to any application on any project.  
25

1           The only time you have an agreement is if you've  
2 entered into a development agreement with the applicant or  
3 with the developer. Then you're taking it outside of our  
4 standards, our laws, our rules, our regulations, and you  
5 enter into what is called a development agreement, then  
6 that agreement is binding and can prevent an Applicant from  
7 coming back in for a modification.

8           The other way to look at this project is just to  
9 look at it as if there was no modification, there was no  
10 original project approved, and the project is coming forth  
11 before you without an underground garage, and the question  
12 is without that underground garage do they meet our parking  
13 regulations? Do they have enough parking onsite? The reason  
14 I say that is at least I have not found anything in our  
15 code, in our Specific Plan, or our General Plan that states  
16 that an Applicant will build an underground garage. So,  
17 that's really your only issue tonight is have they met our  
18 parking standards with regard to parking in our Specific  
19 Plan, General Plan, and zoning?

21           CHAIR HANSSEN: Thank you very much. Vice Chair  
22 Janoff has a question.

23           VICE CHAIR JANOFF: I have two questions. Just to  
24 follow up on what you just were talking about regarding a  
25 development agreement, can you confirm whether or not there

1 is a development agreement in existence for this  
2 development?

3 TOWN ATTORNEY SCHULTZ: There is not. There is  
4 not. Town Council during... When we went through the  
5 moratorium on the second phase I think there was a majority  
6 that wants us to pursue that type of an agreement on the  
7 second phase, but for the first phase right now there's no  
8 development agreement whatsoever.

9 VICE CHAIR JANOFF: So there is no notion that  
10 previously established estimates are numbers that the  
11 developer must be held to?  
12

13 TOWN ATTORNEY SCHULTZ: That is correct.

14 VICE CHAIR JANOFF: Okay, so my second question,  
15 if I may, Chair?

16 CHAIR HANSSEN: Please, go ahead.

17 VICE CHAIR JANOFF: The fact that we have  
18 estimated and/or changing numbers with regard to the number  
19 of parking spaces is not an objective standard on which the  
20 Planning Commission could deny the Applicant's request?

21 TOWN ATTORNEY SCHULTZ: I'm not sure I understand  
22 your question. Yes, it's a clean slate and you have to look  
23 at with this modification will it meet our parking  
24 regulations? And all of our parking regulations, I believe  
25 at least, are objective standards. They say exactly how



1 many parking spaces you need per square foot, per use, per  
2 what's being proposed out there. Yes, what they provided in  
3 the past, what was in their first application, is not  
4 relevant. What you look at is what is the required parking  
5 under our standards, and I don't believe there's any... There  
6 might be some parking standards that could be considered  
7 subjective within our policies, but for the most part  
8 they're calculated as objective standards.

9  
10 VICE CHAIR JANOFF: Just to follow up, if I may?  
11 The question was one of the letters received from the  
12 public indicated that because the numbers of parking  
13 provided by the Applicant changed from Exhibit A.11 to  
14 Exhibit 4 and to Exhibit A the assertion from that member  
15 of the public was that because those estimated parking  
16 numbers changed, that that is an objective standard, that  
17 they're not consistent is an objective standard on which we  
18 could deny the proposal, and what I understand you to be  
19 saying is that is not an objective standard?

20 TOWN ATTORNEY SCHULTZ: That's correct. It is not  
21 what they proposed or what was approved, the question is  
22 what do our rules, regulations, and standards require of  
23 the Applicant?

24 VICE CHAIR JANOFF: One more question, if I  
25 might? Probably is best for Staff.

1 CHAIR HANSSEN: Okay, yeah.

2 VICE CHAIR JANOFF: Staff, is it fair to say that  
3 the estimated number of parking spaces could remain in flux  
4 until the Specific Plan for the commercial buildout of the  
5 plans in phase one are presented to the Town for review and  
6 approval of the permits, is that correct?

7 DIRECTOR PAULSON: Ms. Shoopman, you're on mute,  
8 but if you'd rather I speak I'd be more than happy. Go  
9 ahead.  
10

11 ASSOC. PLANNER SHOOPMAN: Thanks. That's true, we  
12 don't have any proposals for those other commercial  
13 buildings at this time. What we have is the proposal for  
14 the Market Hall. Any other use that came in for those other  
15 commercial components would have to show that they meet the  
16 requirement for that.

17 VICE CHAIR JANOFF: And even on the Market Hall  
18 we don't have the specific commercial buildout at this time  
19 to know precisely the number of leasable square footage  
20 upon which the parking ratio would be determined, is that  
21 correct?

22 ASSOC. PLANNER SHOOPMAN: We have estimates of  
23 the uses in the Market Hall from the Applicant. They've  
24 shown a community room, they've shown the bakery  
25 potentially, and they've shown the residential units above.

1           VICE CHAIR JANOFF:     And could the commercial  
2 numbers change based on a smaller footprint of leasable  
3 commercial space?

4           ASSOC. PLANNER SHOOPMAN:     I believe there's a  
5 possibility of that, and the Director can confirm that.

6           DIRECTOR PAULSON: Thank you. Through the Chair,  
7 Joel Paulson, Community Development Director.

8           The footprint for the Market Hall building hasn't  
9 changed. The other pad buildings have changed slightly.  
10 Given our current parking requirements, and these are tied  
11 back to the downtown, if they had some small offices or  
12 something that they proposed in part of either the Market  
13 Hall or one of the other tenant buildings that, again, as  
14 Ms. Shoopman mentioned, they would need to show that they'd  
15 meet the requirements, because for example, parking for  
16 office is parked at a different ratio than the one per 300,  
17 which is most of the other uses that are anticipated for  
18 the phase one of the North 40.

19           VICE CHAIR JANOFF: Thank you.

20           CHAIR HANSSEN: Commissioner Hudes.

21           COMMISSIONER HUDES: I understand that the  
22 original application had certain requests and now we're  
23 looking at an application for the Market Hall. My question  
24 is about the modification to the Market Hall application  
25

1 that we're considering now. There was information that was  
2 presented to us on 8/26 which is inconsistent with later  
3 documents. Are we to consider all the information that's  
4 been presented in this application?

5           DIRECTOR PAULSON: I'm not sure what specifically  
6 information you're looking at. Right now, I think the  
7 latest information is Exhibit A, which has a table for the  
8 Transition District in Market Hall, but I look to Ms.  
9 Shoopman to confirm that.

10           ASSOC. PLANNER SHOOPMAN: Yes, the most recent is  
11 Exhibit A that was provided by the Applicant from their  
12 letter dated September 21<sup>st</sup>.

13           COMMISSIONER HUDES: I understand. This is really  
14 a question I think for the Town Attorney. If we've been  
15 presented with documents as part of this application for  
16 modification along the course of the three or four meetings  
17 that we've had, are we to consider all of that information?

18           TOWN ATTORNEY SCHULTZ: Yes, you are. That's all  
19 part of the record and you should consider it all, and if  
20 there are discrepancies between documents you should try to  
21 resolve those, and if you can't that could be the basis for  
22 your decision for either denial or approval. So yes, all  
23 documents that have been submitted for the modification are  
24 part of the record and should be taken into consideration.  
25

1 COMMISSIONER HUDES: Thank you, Mr. Schultz.

2 CHAIR HANSSEN: If any other Commissioners have  
3 questions—I don't see any at the moment—but I did want to  
4 ask a question of Staff. We discussed it at a previous  
5 meeting, but again I want to make sure we're all on the  
6 same page.

7 The objective standard for parking for this  
8 application, which we're holding onto, is defined where and  
9 can you summarize what it is?  
10

11 ASSOC. PLANNER SHOOPMAN: It's defined in the  
12 Specific Plan on we're looking at 2.518, Parking  
13 Requirements, and that references the number the off-street  
14 spaces required and references the Zoning Code for that.

15 CHAIR HANSSEN: So that is the standard for which  
16 you did your analysis when you determined that the  
17 Applicant's proposal to remove the parking garage continued  
18 to meet the parking requirements, because those were the  
19 ones that were set forth in the North 40 Specific Plan,  
20 correct?

21 ASSOC. PLANNER SHOOPMAN: Correct.

22 CHAIR HANSSEN: Okay.

23 DIRECTOR PAULSON: I believe you asked for some  
24 specificity. For the commercial, under what's currently  
25 before you we're looking at the majority of the space at

1 the one per 300 square feet, and then the community room at  
2 the one per 590 square feet parking requirement for that  
3 community room. And then the residential parking is laid  
4 out in Table 2-4 in the Parking Requirements, which is half  
5 a space for each senior unit and half a guest space for  
6 each senior unit, and then one space for a one bedroom unit  
7 plus half a guest space, and for two bedrooms or more it's  
8 two spaces plus half a guest space.

9  
10 CHAIR HANSSSEN: Thank you very much. And to  
11 follow up on that, supposing that the concerns of residents  
12 become realized and it turns out that there isn't enough  
13 parking at the end, what can we do to improve the situation  
14 going forward should we decide that we need more stringent  
15 parking standards for further expansion? What can we do?

16 DIRECTOR PAULSON: I think there are a couple  
17 options there. The first one would be as part of whatever  
18 decision you render that ultimately future direction would  
19 be provided to the Town Council to reconsider the parking  
20 in the Specific Plan so that you could look at the  
21 potential of modifying the parking requirements for later  
22 phases, so that's an option.

23 I know there's been a lot of comments about  
24 spilling over into adjacent residential areas. We obviously  
25 have parking methods that we can use, whether it's permit

1 parking or some other mechanism that could be looked at,  
2 and ultimately I think when we get there, if that does come  
3 to light, then hopefully well before that the Town Council  
4 has decided to take a relook at the Specific Plan and  
5 determine whether or not those parking standards should be  
6 adjusted and go through that Specific Plan amendment  
7 process.

8 CHAIR HANSSEN: Thank you very much. Commissioner  
9 Tavana has his hand up.

10 COMMISSIONER TAVANA: Yeah, quick question here.  
11 This is really the Specific Plan, since we're talking about  
12 that. In Section 3.3.2, part D, it says, "Below-grade  
13 parking is encouraged with entries placed at the rear or  
14 sides of the structures whenever possible." I'm wondering  
15 if that could be used as a reason to leave the underground  
16 parking structure and if it's about removing parking and  
17 they want to reduce parking maybe from the third or fourth  
18 level? Could that be used as a subjective standard?

19 DIRECTOR PAULSON: It cannot. That was actually  
20 brought up at not the last meeting but I think the meeting  
21 before that, by Commissioner Hudes, and that is  
22 specifically in the residential section and that is not an  
23 objective standard. Encouraging something is not an  
24 objective standard.  
25

1 CHAIR HANSSEN: I did have one more question on  
2 the parking. It did come to my attention that the way we  
3 look at this thing is based on what the parking code is at  
4 the time that they go for their Building Permit, so I'm  
5 asking Staff, I understand there was a change in how we do  
6 restaurant parking and how that flows through to this  
7 application, so I was wondering if you could just go  
8 through that?

9 ASSOC. PLANNER SHOOPMAN: The Town Code was  
10 amended for how we deal with required parking for  
11 restaurants. It used to be based on the number of seats in  
12 a restaurant or bar; that's no longer the case. It's based  
13 on the parking requirements just like any other commercial  
14 use; it's one space per 300 square feet and that's the  
15 gross floor area.

16 CHAIR HANSSEN: So the way this flows through to  
17 the North 40 Specific Plan is... I don't have the plan in  
18 front of me, but my understanding is it refers to whatever  
19 the downtown parking code is that's in place or something  
20 like that, not the number of seats per restaurant. It's  
21 based on whatever the downtown parking code is, or did I  
22 not get that right?

23 DIRECTOR PAULSON: That's correct.  
24  
25



1 CHAIR HANSSEN: Okay. So if it turned out they  
2 needed a few less spots on account of that standard... I  
3 don't know if that's the case, but if they did, that's the  
4 standard we'd be holding them to because we're referring to  
5 the North 40 Specific Plan that refers to the parking code  
6 that we're using downtown. Okay, and I think Commissioner  
7 Badame had her hand up. Go ahead.

8 COMMISSIONER BADAME: Thank you, Chair. My  
9 question is can we use land use policies within a specific  
10 plan as objective findings?  
11

12 DIRECTOR PAULSON: I'll start and see what the  
13 Town Attorney has to add, if anything, but ultimately it  
14 would depend on which policy or standard you're using and  
15 what it says. We would have to evaluate that on a case-by-  
16 case basis. If you have a specific one in mind, let us know  
17 and we'll take a look at that.

18 TOWN ATTORNEY SCHULTZ: Within your General Plan  
19 and Specific Plan there are both many objective and  
20 subjective standards. Most in the Zoning Code are almost  
21 always objective, but you'll find even some subjective  
22 standards within your Zoning Code, so they all have a  
23 mixed... And the issue is whether when you look at that  
24 specific language whether they're objective or subjective.  
25

COMMISSIONER BADAME: Thank you.

1 CHAIR HANSSEN: Commissioner Tavana.

2 COMMISSIONER TAVANA: I have a question, yeah,  
3 about the Traffic Impact Analysis. How many parking spaces  
4 were accounted for in the Traffic Impact Analysis for phase  
5 one?

6 DIRECTOR PAULSON: Two things to that point. The  
7 parking is not looked at in a traffic impact analysis, and  
8 parking is also no longer a CEQA issue that needs to be  
9 addressed.  
10

11 COMMISSIONER TAVANA: To follow up that, so the  
12 thorough review of parking access circulation and supply,  
13 it says here at least a TIA should be conducted when  
14 parcel-level development proposals are submitted. Was that  
15 conducted or is that not a requirement, you're saying?

16 DIRECTOR PAULSON: A Traffic Impact Analysis was  
17 done. I don't have the Traffic Impact Analysis in front of  
18 me but they look at all of those things, but now parking is  
19 no longer a CEQA issue, and to further that we no longer  
20 also use LOS or CEQA perspective, it's now vehicle miles  
21 traveled, which the Town is still trying to go through even  
22 though that is in place as of July 1<sup>st</sup> of this year.

23 COMMISSIONER TAVANA: Okay.

24 CHAIR HANSSEN: Do any other Commissioners have  
25 questions of Staff? Commissioner Barnett.

1                   COMMISSIONER BARNETT: Concerning the question of  
2 whether a land use provision in the General Plan is  
3 subjective or objective, I'd like to suggest LU-13.4, which  
4 states that, "New development on Los Gatos Boulevard shall  
5 be designed to minimize adverse impacts on adjacent  
6 residential areas." Would you consider that subjective or  
7 objective?

8                   DIRECTOR PAULSON: I'd defer to the Town  
9 Attorney, but with the original approval that policy has  
10 been reviewed and determined to be inappropriate, but I'm  
11 not sure if the Town Attorney has any additional input on  
12 that.  
13

14                   TOWN ATTORNEY SCHULTZ: It's for you to  
15 deliberate. If you remember and reviewed the tapes from two  
16 years ago, I'm really not going to decide whether a policy  
17 is objective or subjective, that's for the Planning  
18 Commission to decide. I'm providing you the law. I will  
19 provide the definition of objective and then maybe you can  
20 debate whether that policy is subjective or objective.  
21 Objective means involving no personal or subjective  
22 judgment by a public official and being uniformly  
23 verifiable by reference to an external and uniform  
24 benchmark or criterion available and knowledgeable by both  
25

1 the development applicant and the proponent and the public  
2 official.

3 COMMISSIONER BARNETT: Okay.

4 TOWN ATTORNEY SCHULTZ: I know that's a lot of  
5 legalize in there, but the big one is it involves no  
6 personal subjective judgment, and if you read that policy  
7 at least you could certainly reach the conclusion that two  
8 people could have a different opinion as to whether there  
9 would be an impact to neighboring neighborhoods and  
10 therefore it would be subject to a personal judgment.  
11

12 CHAIR HANSSEN: Did that answer your question,  
13 Commissioner Barnett? And Commissioner Hudes has his hand  
14 up.

15 COMMISSIONER HUDES: Thank you for the  
16 information about the parking. On the Applicant's chart in  
17 the original modification application they have a version  
18 of 3.22 and it refers to parking for non-commercial...well,  
19 for other commercial uses such as restaurant and bar as 100  
20 square feet other than 300 feet. How did those numbers get  
21 arrived at and were they reviewed by Staff?

22 DIRECTOR PAULSON: Those were assumptions made by  
23 the developer based on the requirements at the time, which  
24 was seats. What I envision they did was they imagined we're  
25 going to have X square footage of restaurant and assume

1 we're going to have X square footage of bar. Based on that  
2 square footage and other operations here's a reasonable  
3 metric to use for that so that they were accounting for  
4 that, knowing that the one per 300 may not work in all  
5 those instances, and so they looked at that and made that  
6 assumption. We were aware of that assumption, but  
7 ultimately it was just that, an assumption.

8 COMMISSIONER HUDES: Okay, thank you.

9  
10 CHAIR HANSEN: Do any other Commissioners have  
11 questions of Staff before we go to hear from the Applicant?  
12 Okay. Go ahead, Commissioner Barnett. And for the  
13 Commission, we will have another chance to ask questions of  
14 Staff when we make our deliberations, but I think it's good  
15 to get as many questions out as we can now. So,  
16 Commissioner Barnett.

17 COMMISSIONER BARNETT: I think this has been  
18 touched on, but it's not clear in my mind which law would  
19 apply, the Town Code relating to downtown parking at the  
20 time the original application was made, and now that the  
21 modification is applied for.

22 DIRECTOR PAULSON: I believe the Town Attorney  
23 answered that previously and it's what the current  
24 regulations are, but I would look to him to confirm that.  
25

1                   COMMISSIONER BARNETT: That was my question,  
2 thank you.

3                   TOWN ATTORNEY SCHULTZ: That is correct. the time  
4 of the modification application was filed would be the time  
5 that...the laws that they have to comply with, just as if we  
6 had strengthened and changed the parking or any other  
7 regulation. If they come in for a modification they would  
8 have to comply with it.

9                   DIRECTOR PAULSON: And just for the Commission's  
10 information, that modification was made in 2018, so well  
11 before this application was submitted.

12                   CHAIR HANSSEN: I had just one more follow up  
13 question about the other commercial pads. Right now—I think  
14 this was touched on a little bit earlier—the other pads are  
15 not purchased by a developer or under contract by a  
16 developer, so at the moment my understanding is that the  
17 information that's coming from the Applicant in terms of  
18 parking is estimated numbers only based on what the  
19 possible maximum square footage could be, is that correct?  
20 And we won't know until those developers come in and make a  
21 specific proposal what parking requirements they'll have  
22 specifically? So, that's my question. Is that right?  
23

24                   DIRECTOR PAULSON: I believe the numbers are  
25 biggest on the pads that were in the original Architecture

1 and Site, but the Applicant could probably provide  
2 additional information on that. When those additional pads  
3 come in we're going to check them against the parking  
4 requirements and make sure that they still meet that, and  
5 if there is any significant expansion of footprint, for  
6 example, then that's probably something that may generate  
7 the need for a modification.

8  
9 CHAIR HANSSEN: Thank you very much. That answers  
10 my question. Are there any other questions from  
11 Commissioners before I go to the Applicant? Seeing none, we  
12 will open up the public hearing and first give the  
13 Applicant an opportunity to address the Commission for up  
14 to five minutes, and I think I saw Mr. Keeney in the  
15 attendee's list for Summer Hill.

16 DIRECTOR PAULSON: Yes, I have allowed Mr. Keeney  
17 to speak, so he can just unmute himself and he will have  
18 five minutes.

19 MICHAEL KEENEY: Yes, I'm here. Can you guys hear  
20 me?

21 CHAIR HANSSEN: Yes.

22 DIRECTOR PAULSON: Yes.

23 MICHAEL KEENEY: Great. Good evening,  
24 Commissioner Hanssen, members of the Planning Commission,  
25 and Staff. My name is Michael Keeney and I am the

1 Development Manager for Summer Hill Homes on the North 40  
2 project.

3           As we explained at the hearing on September 9<sup>th</sup>,  
4 the proposed modification for Market Hall is consistent  
5 with the North 40 Specific Plan and the Town Code. Per the  
6 Town Code, Market Hall is required to provide 76 commercial  
7 parking spaces and 50 residential spaces for a total of 124  
8 required spaces. With the proposed amendment Market Hall  
9 will provide 126 commercial spaces and 50 residential  
10 spaces. This is a surplus of 52 commercial spaces, or 70-  
11 percent more than is required.  
12

13           At our last Planning Commission meeting there  
14 were a number of questions and public comments about the  
15 parking calculations for Market Hall and the Commercial  
16 Transition District as a whole. To help clarify these  
17 questions for the Commission and the community we've  
18 prepared the Transition District Parking Summary, which is  
19 Exhibit A that I think Staff can put up on your screen and  
20 is included in your packet. It was in the Desk Item that we  
21 provided and it was also in our response letter prior to  
22 the hearing. There it is.  
23

24           This table provides a complete summary of the  
25 parking requirements for the Transition District. Market  
Hall is shaded in blue and includes the gross square



1 footage based on our proposed design. The items in orange  
2 are the gross square footages for each building based on  
3 what was proposed in the approved A&S plans as shown on  
4 sheet 3.22 of that plan set. The green are the remaining  
5 residential units from the same sheet 3.22. Staff has  
6 reviewed this table and concurs that it accurately reflects  
7 the information included in the A&S approved plans and is  
8 in compliance with the requirements of the Specific Plan.  
9

10 As you can see from the table, the total required  
11 parking for the Transition District is 273 parking spaces  
12 and as currently proposed there would be a total of 319  
13 parking spaces, a surplus of 46 spaces for the District as  
14 a whole.

15 There's no obligation in the conditions or the  
16 Specific Plan for Market Hall to provide parking for future  
17 phases. You can see from the Transition District Parking  
18 Summary, with the proposed modification we have provided  
19 more parking than is required by the Town Code and the  
20 Staff Report is found in conformance with the Specific  
21 Plan.

22 This is the third hearing that the Planning  
23 Commission has held for the proposed modification to Market  
24 Hall. We appreciate the Commission's desire to ensure  
25 public participation and we believe that the Commission and

1 the public have had a full opportunity to review and  
2 comment thoroughly on the plans. We respectfully request  
3 that the Commission find that the proposed amendment is  
4 consistent with the Specific Plan and the Zoning Code and  
5 approve this modification tonight.

6 We are available to answer any questions that you  
7 may have. Thank you.

8 CHAIR HANSSEN: Thank you, Mr. Keeney. We do have  
9 questions from Commissioners. Commissioner Badame.

10 COMMISSIONER BADAME: Mr. Keeney, thank you. I'm  
11 looking at sheet A-3 and I just want to ask you, are there  
12 any other modifications to the plans other than removal of  
13 the underground parking?  
14

15 MICHAEL KEENEY: So, sheet A-3 of our plan set  
16 application, correct?

17 COMMISSIONER BADAME: Correct.

18 MICHAEL KEENEY: That's the third floor plan, and  
19 to answer your question there are no other modifications to  
20 the appearance of the building from the outside. There are  
21 some minor modifications internal to the garage to  
22 accommodate mechanical equipment rooms and things like that  
23 that may have been in the basement and are now in areas  
24 where like the ramp used to allow access to the basement,  
25 so there are a few kind of backup house rooms that are

1 shifting around, but nothing that's visible from the  
2 exterior.

3           COMMISSIONER BADAME: Is there an entrance or an  
4 exit on the northwest side that's been removed that  
5 provides ingress/egress to the commercial area, the  
6 Commercial District?

7           MICHAEL KEENEY: What you're seeing in the as-  
8 proposed drawing...

9           COMMISSIONER BADAME: Yes.

10           MICHAEL KEENEY: ...is eventually what was approved  
11 in the Building Permit. So, during the Building Permit  
12 process that access point was eliminated.

13           COMMISSIONER BADAME: So, the only access, the  
14 only ingress/egress is on the east side of the garage?

15           MICHAEL KEENEY: That's correct, yes.

16           COMMISSIONER BADAME: And this was previously  
17 approved? If Staff could confirm that.

18           DIRECTOR PAULSON: This was approved as the  
19 potential for modifications for the garage, that's correct.

20           COMMISSIONER BADAME: So that's part of this  
21 application, removing that ingress/egress point? That's  
22 what I understand.

23           DIRECTOR PAULSON: I don't have the Building  
24 Permit plans in front of me and I'm not sure... I'm trying to  
25

1 scroll through the plans to see which sheet A-3 you're  
2 looking at, and so I'll look at that, but without the  
3 underground there would be only one ingress/egress point if  
4 the underground is not approved. I'll have to go back and  
5 see if I can dig up the Building Permit plans from when  
6 this was done as part of the original plan check.

7  
8 COMMISSIONER BADAME: That would be important to  
9 me, because we may have a circulation issue. Thank you.

10 CHAIR HANSEN: Do other Commissioners have  
11 questions for the Applicant? While I'm waiting to see if  
12 anyone else has any questions I did have a question for the  
13 Applicant.

14 In your projections for the entire Transition  
15 District you talked about a surplus of 46 spaces of which  
16 52 are from the parking garage with the Market Hall and  
17 then there would be six spaces that would be needed by the  
18 remainder of the commercial pads. Now, I'm completely  
19 familiar with the fact that we don't actually have  
20 proposals for those pads, but supposing that they did turn  
21 out to be exactly what you had suggested and had estimated  
22 there would be a shortage of six spaces, my question to the  
23 Applicant is how would that work out for those developers?  
24 Yes, we know they'd have to be able to deal with the code  
25 that's in place at the time, but if they really are short

1 six spaces would they be able to share space with the  
2 parking garage which does have overages, and how would that  
3 work?

4           MICHAEL KEENEY: I think, if I understand, you're  
5 saying that with the potential shortfall in the Commercial  
6 District how would we accommodate allowing for some of that  
7 overflow parking within the Market Hall? I think that's  
8 what you're getting at?

9           CHAIR HANSSEN: That is my question, yes, thank  
10 you.

11           MICHAEL KEENEY: The Market Hall isn't obligated  
12 to do that, but we're hoping that the developer of the  
13 commercial space in Market Hall will also be the developer  
14 of the commercial pads. The goal is for it all to be  
15 developed concurrently with one developer and then  
16 ultimately one manager of the commercial property that  
17 manages the whole district. So, it's in our interest and in  
18 that master developer/commercial developer's interest to  
19 have some shared parking agreements to make all of that  
20 work. Our expectation would be that we would work something  
21 out with them to accommodate their parking needs.

22           CHAIR HANSSEN: That makes sense. I mean, I think  
23 it's in everyone's best interest for it to be successful,  
24 so I think that what you're saying is that we can't count  
25

1 on it but we can assume that that would be the case. Okay,  
2 thank you.

3 MICHAEL KEENEY: It's certainly in our interest  
4 to accommodate (inaudible).

5 CHAIR HANSSEN: Absolutely. Do any other  
6 Commissioners have questions for the Applicant before I go  
7 to public comments? All right, seeing none we will now move  
8 to the public comments portion of the hearing, and I see we  
9 have quite a number of people in the attendees, but I don't  
10 know who wants to speak, so this would be the time to speak  
11 on this item. I ask anyone that would like to speak to  
12 limit your comments to three minutes, and as I said  
13 earlier, for any oral comments during the meeting you may  
14 choose to state your name and address or speak anonymously  
15 and do understand that the meeting is being recorded for  
16 the public record. So, Mr. Paulson, can you let me know if  
17 there are members of the public that would like to speak?

18 DIRECTOR PAULSON: There are. The first speaker  
19 will be Mark Miller. I'm going to allow him to talk. Can  
20 you unmute yourself, Mr. Miller?

21 MARK MILLER: Yeah. Can you hear me?

22 DIRECTOR PAULSON: Yes.

23 MARK MILLER: Great. Thank you for the  
24 opportunity, by the way, to speak. I think I understand the  
25

1 Town's needs to comply with the Housing Accountability Act  
2 and the by-right development. But if you'll excuse my  
3 subjective comment for a moment, my neighbors and I already  
4 deal with employees of the carwash overflow and overflow  
5 from PAMF. I can only imagine the overflow, what that would  
6 look like, if insufficient parking existed at the North 40,  
7 and that would be just incredible. And that doesn't even  
8 count the short-cutters that race through the neighborhood  
9 trying to find a way around Park Avenue and Los Gatos  
10 Boulevard.

11  
12           It's difficult to look at this any other way than  
13 how it's going to affect myself and my neighbors, and my  
14 family obviously. The first question that came to my mind  
15 when I heard the opening comments, I understand there's no  
16 development agreement. Well, why not? Isn't that something  
17 that would protect us? I mean, I would think that there  
18 would be measure in place to protect the residents.

19           Another thing that comes to mind that... I don't  
20 know where I am on three minutes here, but some comments  
21 were made. I think Mr. Keeney said that there is full  
22 opportunity to review. I'd like to know where I'd review  
23 that, because I'm not aware of it. I didn't see that. I'd  
24 like somebody to tell me where that is. I'm sure it's in  
25 full view somewhere, but I didn't even know about this

1 meeting until I was told from some of my neighbors, and so  
2 I have some concerns about transparency here and I want  
3 some assurances that the Town is operating in the best  
4 interests of its residents. That's my comment. Thank you.

5 CHAIR HANSSEN: Thank you so much for your  
6 comments. And for the benefit of the commenter as well as  
7 other commenters, we're not able to address questions  
8 directly, however we may be able to during our  
9 deliberations talk about the issues that you bring up. With  
10 that, do any Commissioners have any questions for the  
11 speaker? Seeing none, is there someone else that would like  
12 to speak on this item?  
13

14 DIRECTOR PAULSON: There is. The next person I'm  
15 going to let speak is Mr. Lockridge.

16 JEFF LOCKRIDGE: Okay, hi, my name is Jeff  
17 Lockridge and I live at the north end of Los Gatos near the  
18 North 40.

19 I personally have worked hard to get the North 40  
20 to be the best that it can be for the Town, and it's my  
21 understanding that Summer Hill Homes who are currently  
22 building on the North 40 are requesting now, after the  
23 fact, the elimination of underground parking for the  
24 portion under the Market Hall.  
25



1           The Market Hall plan included that four-story  
2 parking garage, three above-grade levels and one below-  
3 grade level, and this was approved years ago and designed  
4 to accommodate parking at the North 40. As a resident of  
5 Los Gatos I don't look at the North 40 in phases. It's one  
6 North 40 project. That's why it's called 40. If it was less  
7 than that it might be 20 or 18. Utilizing the current  
8 parking requirements for only the phase one portion of the  
9 North 40 would be irresponsible for the Town to consider  
10 since we know for a fact phase two will require additional  
11 parking.  
12

13           Summer Hill knew what the project was and what it  
14 included before they signed on and agreed to build it. They  
15 knew it included underground parking. So, just how much  
16 money will they save eliminating what they already agreed  
17 to build? And you can't claim anti-NIMBYism, because we  
18 want it built there, we want *more* parking built there, not  
19 less parking. Not in my back yard is... It's in my back yard.  
20 Built it in my back yard. So, that doesn't even apply.  
21

22           Does Summer Hill have to abide by a subjective  
23 versus objective reasoning for any of these changes to  
24 modifications, minimums versus maximums? If you ask me,  
25 maximums should be in place in all cases, because that's  
what might be required objectively.

1 I realize that senior housing parking  
2 requirements are just one-half space per unit. I also know  
3 through personal experience the consequences that just one-  
4 half parking space creates. It does not represent the  
5 reality of the real parking requirements for senior  
6 housing. I have personal experience of dealing in another  
7 senior development in Los Gatos and struggle on a daily  
8 basis to deal with those irresponsible and unrealistic  
9 parking requirements. I would support pursuing a  
10 development agreement as a Town of Los Gatos application  
11 modification. I think we should apply for a modification  
12 and it should include a development agreement. I'd like to  
13 know if that's subjective or objective.  
14

15 I think that the modification should be denied.  
16 Thank you.

17 CHAIR HANSSEN: Thank you very much for your  
18 comments. Do any Commissioners have questions? Vice Chair  
19 Janoff.

20 VICE CHAIR JANOFF: Thank you. In consideration  
21 of Mr. Lockridge's comments and question for the Town  
22 Attorney, is it possible to enter into a development  
23 agreement after the fact?  
24

25 TOWN ATTORNEY SCHULTZ: I have never done one  
before, but at any time an agreement can be reached. I've

1 done many development agreements, but I've never done one  
2 after a project has been approved, but certainly if the  
3 Applicant wanted a development agreement at this point in  
4 time I believe one could be entered into.

5 A previous speaker asked why a development  
6 agreement wasn't done for phase one? The Council at that  
7 time did not want to enter into a development agreement,  
8 but as I mentioned when we were going through making  
9 changes to phase two they have specifically added language  
10 about a development agreement and the intent is to do a  
11 development agreement on phase two.

12  
13 VICE CHAIR JANOFF: Thank you.

14 CHAIR HANSSEN: Do any other Commissioners have  
15 questions of the speaker? Then we will move on and see if  
16 there are any other speakers. I see someone with their hand  
17 up.

18 DIRECTOR PAULSON: Yes, thank you. I'm going to  
19 allow Barbara Dodson to speak.

20 CHAIR HANSSEN: Okay, go ahead.

21 BARBARA DODSON: Can you hear me? Oh, okay. Good  
22 evening.

23 Obviously it's hard for members of the community  
24 to keep up with Summer Hill's ever-changing story. Summer  
25 Hill submitted an application in which it said it would be

1 providing either 330 or 331 parking spaces in the  
2 Transition District. Now in its new Exhibit A it says it  
3 will be providing 319 spaces. Previously Summer Hill  
4 claimed excess of 52 spaces; now the excess is 46. Can  
5 approval really be based on an addendum that contradicts  
6 the original proposal?

7 I also think it's important to remember that  
8 Summer Hill was party to the original 2016 proposal along  
9 with Grosvenor and Eden Housing. It didn't take over a  
10 proposal that was agreed to by another party, Summer Hill  
11 was party to the original proposal. If it didn't want to  
12 build the garage it should have said so in 2016. Approval  
13 with the three applicants, Grosvenor, Summer Hill, and  
14 Eden, was based on a commitment to include an underground  
15 garage. It's not acceptable now to say well, we really  
16 don't want to do that after all. The notion that there was  
17 no agreement is, I think, debatable, hence the underground  
18 garage was a Condition of Approval and was the subject of  
19 considerable discussion.  
20

21 Another point, since we don't know how much  
22 commercial space there will be it seems a bad idea to  
23 reduce parking. Parking continues to rely only on  
24 assumptions. Thank you.  
25

1 CHAIR HANSSEN: Thank you so much for your  
2 comments and thank you also for all of your written  
3 comments as well. With the amount of research that you've  
4 done we truly appreciate it. I want to know if any  
5 Commissioners have any questions for the speaker? I don't  
6 see anyone with their hand up, so is there anyone else that  
7 would like to speak on this matter? Director Paulson is on  
8 mute and he's talking.

9  
10 DIRECTOR PAULSON: Thank you for that. I see that  
11 Mr. Miller has his hand up again. We only allow folks to  
12 speak once, however we may have another family member, so  
13 I'm going to allow him to speak just to find out if it's  
14 another family member on the same computer.

15 MARK MILLER: That is correct.

16 LISA MILLER: That is correct. This is Lisa,  
17 Mark's wife, and I just had a couple of questions that came  
18 up.

19 If Commissioner Badame hadn't commented about the  
20 changes being made with no review beyond Staff, how would  
21 anyone know about them? And how many other changes have  
22 been made from the approved set of documents, the  
23 construction documents being used to build the project?  
24 This has been going on for a long time. I don't know, where  
25 is his transparency?

1 CHAIR HANSSEN: Thank you very much for your  
2 comments. As I said, we can't directly answer your  
3 question, but we could during our deliberations address  
4 some of the questions with Staff. Are there any questions  
5 for the speaker from the other Commissioners? I don't see  
6 anyone with their hands up. Is there anyone else that would  
7 like to speak on this item?

8 DIRECTOR PAULSON: Yes, we do have another person  
9 with their hand up. It's looks like Maria Ristow. I'm going  
10 to allow her to talk.

11 CHAIR HANSSEN: Okay.

12 MARIA RISTOW: Hi, Maria Ristow. I'm just  
13 concerned that this is even continued from the beginning. I  
14 mean, it seemed like at the first meeting when this came up  
15 there was plenty of residential opposition to allowing this  
16 change, and now as the continuations have occurred there's  
17 more and more data coming up about why we can't just say  
18 build the parking. When we created the Specific Plan, I  
19 think Jeff Lockridge put it really well, this is for the  
20 whole North 40, and so the parking should be considered for  
21 the entire scope of the project.

22 Going into it, the first developer to go in had  
23 to do all of the traffic mitigation, \$12 million for the  
24 entire buildout. I don't understand why when there was a  
25

1 plan to build the underground parking that may or may not  
2 be excessive for this part, knowing that cars will be  
3 involved in phase two, knowing that we'll need more  
4 parking, knowing that underground parking is superior to  
5 street parking in terms of aesthetics, why we can't hold  
6 them to this agreement and Summer Hill can figure it out  
7 with the next project. I know whoever—it was probably  
8 Summer Hill—did all of the initial infrastructure, that  
9 they will be able to hold other developers to reimburse  
10 them for what they've done, why can't they figure that out  
11 with the parking garage if they've built excessive parking?  
12

13 I don't understand why this is even an issue  
14 right now, but I think we need the underground parking.  
15 We'll never be able to go back to an existing parking  
16 garage and dig underground parking again, and I would like  
17 to see this move forward. Thank you.

18 CHAIR HANSSEN: Thank you for your comments. Do  
19 any Commissioners have questions for Ms. Ristow? Vice Chair  
20 Janoff.

21 VICE CHAIR JANOFF: Thank you. Not a question for  
22 Ms. Ristow but for either the Town Attorney or Staff. A  
23 couple of people tonight have talked about why Summer Hill  
24 shouldn't be held to the general proposal for the entire  
25 North 40, not just phase one. Would someone please comment

1 on that? And maybe this goes back to the Applicant. I don't  
2 fully understand the transfer of the project from Grosvenor  
3 to Summer Hill in its scope, but if someone from Staff  
4 could please comment on why the phase two portion, which is  
5 largely commercial that the phase one underground parking  
6 was to support, why that is not under consideration by the  
7 Planning Commission at this time?

8           DIRECTOR PAULSON: I'll start, and then if the  
9 Town Attorney has any additional information, but  
10 ultimately our Town Council requires the parking to be  
11 provided on the site or with the project that is before  
12 you. So, they may or may not have overparked it with  
13 anticipation of wanting to build less parking on the phase  
14 two. Whether it's phase 2, 3, 4, 7, whatever number it is,  
15 when any future project comes in they will have to show how  
16 they're meeting the parking requirements for their specific  
17 property. That will be done with every subsequent project  
18 that comes to the Town for review. And then I'd defer to  
19 the Town Attorney as well.

21           TOWN ATTORNEY SCHULTZ: In very layman's terms,  
22 each project that comes in front of you is analyzed on its  
23 own merits, and with this or any other project there can be  
24 many other parcels around it, but let's say for the North  
25 40 there are other parcels that are much smaller, and if



1 they came in with a proposal they need to meet their  
2 parking regulations. We wouldn't say to that proposed even  
3 if it's three or four acres, because there are some parcels  
4 out there that are smaller than this proposed, and if they  
5 came in and proposed a project we wouldn't be able to tell  
6 them you need to do an underground project because there  
7 may be some other future projects. That's just not the way  
8 land use law works. You have to meet the regulations for  
9 your proposed project and not for other ones around there.  
10

11 Now, the way this was supposed to be proposed and  
12 it was going to supposedly work would be as yes, they were  
13 overparked and they were going to be providing parking for  
14 phase two, and what would have happened is when phase two  
15 would have been developed they would have been able to use—  
16 let's just assume numbers, I'm just throwing out numbers—  
17 there were 400 parking spaces required because of the  
18 parking on phase two. They would have been able to use and  
19 get a parking agreement with phase one and, let's say,  
20 provide only 300 spaces because they had 100 spaces in a  
21 shared parking agreement. That no longer will be available,  
22 so phase two now will have to develop their own parking to  
23 meet all the regulations and they won't be able to do a  
24 shared parking agreement with phase one.  
25

1 But if the comments are that this overparking was  
2 going to be used by phase two and phase two was still going  
3 to have to meet all of its parking regulations, that's not  
4 the way it was going to happen. They would have used a  
5 shared agreement to use these parking spaces.

6 So yes, (inaudible) of now will on any future  
7 development and there won't be that ability to do a shared  
8 parking agreement with phase one because those extra spaces  
9 have been eliminated for the most part.

10 VICE CHAIR JANOFF: A quick follow up, if I may?

11 CHAIR HANSSEN: Go ahead.

12 VICE CHAIR JANOFF: Given the history of the  
13 North 40 when there was sort of a master plan for all 40  
14 acres, under that vision there was the sharing of the  
15 parking obligation as a notion. But since that larger 40  
16 acres is no longer what's being developed, or we don't have  
17 plans for it, we don't know at this point whether that will  
18 be commercial or housing or if it's ever developed at all,  
19 so we are not, practically speaking, even though the  
20 promise of a lot of parking sounded pretty great to a lot  
21 of residents in town, that is no longer a consideration for  
22 tonight.

23 TOWN ATTORNEY SCHULTZ: That is correct. We have  
24 no application in the process. We don't know if because of  
25

1 the climate changes and everything happening with brick and  
2 mortar, it might not even be commercial. A project could  
3 come forward that states that they want to enter a  
4 development agreement to supply additional housing and  
5 they'd still have to meet the requirements for housing but  
6 there wouldn't be any commercial parking requirements.

7           So, at this point in time we don't know, or it  
8 could be that they want to do even more commercial than is  
9 even allowed in our Specific Plan and then have to provide  
10 additional parking, which this underground would have been  
11 able to help out on that phase two, but instead might  
12 require an underground parking on phase two.

13           CHAIR HANSSEN: Commissioner Hudes.

14           COMMISSIONER HUDES: Thank you. We don't have an  
15 application for phase two, but I just want to verify we do  
16 have an application for phase one that was submitted on  
17 8/1/2017, is that correct?

18           DIRECTOR PAULSON: 8/1/2017?

19           COMMISSIONER HUDES: Or it was approved on  
20 8/1/2017.

21           TOWN ATTORNEY SCHULTZ: It might have been.  
22 That's about the time when it was approved.

23           DIRECTOR PAULSON: By the Council? The Council's  
24 original approval?  
25

1 COMMISSIONER HUDES: Correct.

2 DIRECTOR PAULSON: Yes.

3 COMMISSIONER HUDES: Okay, and that approval has  
4 parking requirements noted in it, correct?

5 DIRECTOR PAULSON: The parking requirements for  
6 the Specific Plan have not changed. The parking for the  
7 restaurant and bars, and Ms. Shoopman mentioned earlier,  
8 has changed, so there is no correlating piece for the  
9 Specific Plan. So, now we're under the new modification,  
10 and as the Town Attorney mentioned before, we would use the  
11 parking requirements that are currently in place.  
12

13 COMMISSIONER HUDES: Thank you.

14 CHAIR HANSSEN: I want to remind the Commission  
15 that we're still in public comments, so we're only able to  
16 ask generally questions of the people that spoke, but I  
17 allowed it; it's fine. Are there any other members of the  
18 public that would like to speak on this matter?

19 DIRECTOR PAULSON: Yes, Ms. Quintana has her hand  
20 raised. I'm going to allow her to speak.

21 CHAIR HANSSEN: Go ahead.

22 DIRECTOR PAULSON: We have a similar issue we've  
23 had with her in the past. I'm going to have to move her up  
24 into the panelists and let her speak, so hold on one  
25

1 second. So, Ms. Quintana, if you unmute yourself then you  
2 can go ahead and speak.

3           LEE QUINTANA: I'm unmuted. I just want to add  
4 one thing to the discussion and that's just to... Excuse me.  
5 My recollection of the changes to the parking is they were  
6 the result of the fact that downtown businesses felt that  
7 there should be equity in the parking requirements between  
8 downtown and the North 40 and that the North 40 was being  
9 required to supply more parking than was required downtown  
10 and therefore was putting downtown at... (Audio cuts out.)

11           CHAIR HANSSEN: Okay, was there anything else? I  
12 see she's on mute now.

13           DIRECTOR PAULSON: Now try it.

14           CHAIR HANSSEN: Okay. Ms. Quintana, I'm assuming  
15 your comments are completed, because you're on mute right  
16 now.

17           DIRECTOR PAULSON: Okay, I'm going to move her  
18 back to attendees. She hasn't unmuted.

19           CHAIR HANSSEN: All right, do any Commissioners  
20 have questions of Ms. Quintana? All right, and then  
21 Director Paulson, do we have anyone else that wanted to  
22 speak in public comments?

23           DIRECTOR PAULSON: I don't see anyone else with a  
24 hand raised. If you would like to speak on this item,  
25

1 please use the raised hand feature. Just give it a couple  
2 seconds here. I do not see anyone with their hands raised,  
3 Chair.

4 CHAIR HANSSSEN: Okay. As the Commission knows and  
5 the public knows, we've received quite a number of written  
6 comments as well, but since there is no one else that has  
7 raised their hand to speak in the hearing tonight I will  
8 now invite back the Applicant to address the Commission for  
9 up to three minutes.

10  
11 MICHAEL KEENEY: Thank you, Chair Hansson. We  
12 wanted to clarify one thing that came up. Commissioner  
13 Badame was asking about the secondary access point to the  
14 garage and we were able to go back and double check on the  
15 history of that from our perspective. The elimination of  
16 the second access point to the garage that was shown in the  
17 original A&S approval was done during the schematic design  
18 in coordination with Planning and the Building Department  
19 in the Spring of 2018. It was done at the discretion of the  
20 Director of Planning, as is consistent with the Town's  
21 policy.

22 There's still a loading area in that location and  
23 the Building Permit that we have been issued for the  
24 building includes that modification. The modification to  
25

1 eliminate the basement has no relationship to how that  
2 access point would be implemented going forward.

3           With that, we'd like to thank Staff and the  
4 Commission for taking the time to review our proposed  
5 modification, and we're available to answer any questions  
6 you may have.

7           CHAIR HANSSEN: Thank you very much. Are there  
8 Commissioners that would like to ask the Applicant  
9 questions? Commissioner Hudes.  
10

11           COMMISSIONER HUDES: You mentioned that you have  
12 a building. When was that permit issued?

13           MICHAEL KEENEY: I don't have the exact date in  
14 front of me, but I believe it was in January of this year.

15           COMMISSIONER HUDES: Okay, thank you.

16           CHAIR HANSSEN: All right, do any other  
17 Commissioners have questions of the Applicant? I do want to  
18 remind the Commission that once I close the public hearing  
19 we won't be able to ask questions of the Applicant,  
20 although we can ask questions of Staff. It doesn't look  
21 like anyone else has any questions for the Applicant, so  
22 then I will close the public hearing and then we will move  
23 to having questions from the Commission. Normally we would  
24 say questions or comments from the Commission or a motion,  
25 but I would prefer if we could have a discussion about the

1 application before we get to the stage of a motion so that  
2 we can kind of see where the pulse of the Commission is.  
3 That being the case, I'm going open it up to questions or  
4 comments or questions of Staff from the Commission.  
5 Commissioner Badame.

6           COMMISSIONER BADAME: This is probably for Staff,  
7 but I'm concerned about the Building Permit that was issued  
8 and that was in advance of the potential loss of this  
9 parking, and now with the loss of parking should this  
10 proceed we've got an ingress and egress issue that impacts  
11 the rest of the development that's supposed to be a fully  
12 integrated project. It concerns me with the circulation  
13 patterns throughout this development that might affect  
14 traffic going through the residential area and backing up  
15 to Los Gatos Boulevard. Is that something that we can  
16 revisit or make a finding on tonight?  
17

18           DIRECTOR PAULSON: I'm not aware of any objective  
19 standards related to circulation. I know we have looked at  
20 it, and I'll have to try to go back through my emails. We  
21 looked at other parking garage situations, whether  
22 underground or otherwise. We looked to see whether or not a  
23 certain number of spaces, whether there was a relationship  
24 to what was appropriate for one versus two. Obviously, a  
25 lot of that has to do with site configurations, as was



1 mentioned. There have been modifications from the original  
2 conceptual A&S approval that was done. This was one of  
3 those modifications that was permitted and understand if  
4 you are aware of an objective standard relating to  
5 circulation and you want to use that as a finding for  
6 denial or otherwise, then that's perfectly fine, as I  
7 believe the Town Attorney mentioned before.

8 COMMISSIONER BADAME: Thank you.

9 CHAIR HANSSSEN: Commissioner Hudes.

10 COMMISSIONER HUDES: The Building Permit that was  
11 issued, did that contain underground parking?  
12

13 DIRECTOR PAULSON: I'm sorry, I think Mr. Kenney  
14 misspoke. The Building Permit I don't think has been issued  
15 for that building. We have issued Building Permits for some  
16 of the models. They have a Building Permit in currently  
17 that's been in plan check, I believe it's ready to be  
18 issued, and it does include the underground parking. So,  
19 currently the plans that we've been reviewing include the  
20 underground parking.

21 COMMISSIONER HUDES: I wasn't clear. What permits  
22 have been issued?

23 DIRECTOR PAULSON: There have been a number of  
24 infrastructure permits issued, grading permits issued, site  
25 improvements issued, offsite improvements issued, three of

1 the models—they're basically building one of each building  
2 type for the residential component—and I believe they've  
3 also picked up their model trailer and parking lot permit.

4 COMMISSIONER HUDES: So, of the Building Permits  
5 that have been issued that are relevant to this building,  
6 did they include permits for underground parking?

7 DIRECTOR PAULSON: One second, I'm just trying to  
8 go back through an email here real quick, because I think  
9 they did get issued the permit, and I want to say it was in  
10 June maybe. That one actually has been issued and I believe  
11 it's been paid for, and that one does include the  
12 underground parking. So, what's approved now, if they  
13 ultimately get approval to remove the underground parking,  
14 then they will have to come back and submit a revision to  
15 the Building Permits and go through that process to make  
16 those modifications.

18 COMMISSIONER HUDES: Thank you.

19 CHAIR HANSSEN: Do any other Commissioners have  
20 questions for Staff or comments on the application?  
21 Commissioner Barnett.

22 COMMISSIONER BARNETT: For Mr. Schultz. Do you  
23 have a comment on the point that was raised about the  
24 Housing Accountability Act not applying because additional  
25

1 parking is being requested? In other words, the comment was  
2 that this would actually facilitate housing.

3 TOWN ATTORNEY SCHULTZ: No, I don't. I'm looking  
4 directly at the Housing Accountability Act that just talks  
5 about mixed-use projects and housing projects and that you  
6 have to apply objective standards, and in this case it's  
7 parking, and so you apply your objective standards to it.

8  
9 You can't then take a subjective standard that  
10 you want more parking than what's in your Specific Plan or  
11 your Parking Zoning Ordinance and say you want more even  
12 though you've already agreed to what the parking  
13 requirements were. So, although yes, the more parking the  
14 better, I think no one disagrees with that, the problem is  
15 why the Housing Accountability Act was formed, so that  
16 towns and cities cannot change in the middle of a project  
17 coming in when people object to it to deny that project.

18 In this case you need to concentrate on the  
19 parking regulations and whether they meet those or not.  
20 That's what I would suggest as opposed to a subjective  
21 standard as to whether more parking is better and will be  
22 better for this project.

23 CHAIR HANSSEN: Do Commissioners have additional  
24 questions of Staff or would you like to make comments on  
25

1 the application? Commissioner Hudes and then Commissioner  
2 Badame.

3           COMMISSIONER HUDES: I have some lengthy comments  
4 and some analysis that I've done, and don't have no more  
5 questions of Staff though, so perhaps Commissioner Badame  
6 should go first.

7           CHAIR HANSSEN: Okay, so I will give the floor to  
8 Commissioner Badame.

9           COMMISSIONER BADAME: All right, I was just going  
10 to make my comments. The Specific Plan was meant to be an  
11 integrated project. It's supposed to be integrated with  
12 roads, water, PG&E, and residential and business flow.  
13 Right now, we've got a modification in parking, but we also  
14 have a modification that we weren't aware of, a reduction  
15 in the access point for ingress and egress to the  
16 Commercial District, so that kind of closes that off and  
17 isolates it.

18           To me, I'm concerned with circulation, because  
19 now you're going to overburden the residential and  
20 Transition District; you're going to have business traffic  
21 that goes out through the residential neighborhood and goes  
22 out to Los Gatos Boulevard.

23           Again, I've got concerns about circulation and  
24 linkage with the rest of the other districts within the  
25

1 project. Some of this violates our objective findings that  
2 I can make actually, and that is to provide linkage with  
3 vehicular circulation, minimize traffic impacts through the  
4 site design and access, and the park once design. Those are  
5 my comments for now.

6 CHAIR HANSSEN: Thank you, Commissioner Badame.  
7 Commissioner Hudes, did you want to make your comments? You  
8 said you also had something you wanted to share with the  
9 Commission?

10 COMMISSIONER HUDES: Yes, and I think Ms. Armer  
11 has a copy of a PDF of it. I believe I'm not permitted to  
12 share my screen. Before I even get into this I want to just  
13 make it clear that I don't believe that the project meets  
14 the objective standards for the parking requirements. The  
15 North 40 Specific Plan, as far as I can tell when I read  
16 it, requires 392 parking spaces for the submitted  
17 application. Eliminating the underground parking will  
18 eliminate 127 of those spaces, leaving 319, which is 73  
19 spaces less than what is required by the Specific Plan,  
20 therefore the application doesn't meet the requirements of  
21 the Specific Plan, and I believe these are all objective  
22 standards.  
23

24 Before I get to explaining the spreadsheet I also  
25 want to distinguish clearly between required parking and

1 provided parking. The Applicant has been clear on one thing  
2 through their correspondence on this modification and that  
3 is the number of spaces that they would like to provide or  
4 eliminate, and that is they'd like to provide 176 in the  
5 garage. However, the application from the 8/26 hearing  
6 through today is inconsistent on a number of other matters  
7 which are necessary to evaluate whether the request meets  
8 objective standards.

9  
10           Number one, the number of spaces that will be  
11 provided outside the parking structure is different. In  
12 different documents the Applicant has represented 155  
13 spaces and a 143 spaces. I looked at the plans that were  
14 submitted and I counted 150, so there are discrepancies in  
15 terms of how many parking spaces are provided outside of  
16 the garage.

17           Number two, the number of spaces required in  
18 order to meet the uses in the Market Hall and how many  
19 spaces are required to meet the uses in other buildings in  
20 the Lark and Transition Districts as set forth by the North  
21 40 Specific Plan, these requirements form the basis of the  
22 objective standards by which the application must be  
23 evaluated.

24           So, due to these inconsistencies I created a  
25 spreadsheet to try to summarize the required and provided

1 parking. Unfortunately, I can't zoom in, but Ms. Armer,  
2 maybe you could make it a little bit bigger in terms of  
3 that top portion. Yeah, thank you, that's great.

4           When I read the application that was deemed  
5 complete when it was approved by the Council on 8/1/2017  
6 they appeared to be 104 spaces over the requirement.  
7 However, there were some errors in that when I checked it  
8 against consistency with the application itself and with  
9 the Specific Plan.

10           Primarily the 285 that were required was based on  
11 net leasable space, not on gross square footage. The  
12 ordinance clearly states that gross square footage is the  
13 requirement in downtown. That's the ordinance that has  
14 changed, but it's been consistent. It's Code of Ordinances  
15 29.10.150(b). The correct number, as I'm looking at it, is  
16 345 required.

17           The other thing that I believe was incorrect is  
18 that there were 47 spaces provided for affordable senior  
19 including guest, and those, again, came from counting the  
20 spaces on the rooftop parking. There are three additional  
21 spaces but they are on a different level and therefore they  
22 can't be gated and regulated for senior parking, and the  
23 Applicant has represented in previous testimony that the  
24 senior parking will be gated, so I made a small adjustment  
25

1 that is to deduct three provided affordable senior and add  
2 them to the commercial number in blue, the 387. In this  
3 case when you use the gross versus the net you come up  
4 actually as 39 spaces under.

5           So, that was the application that we reviewed..  
6 Actually, the Planning Commission didn't review this, but  
7 the Council did, and approved it on 8/1.

8           Then we have varying versions of what we've seen  
9 on this application. Ms. Dodson provided an analysis in  
10 test form that I translated into this spreadsheet that  
11 shows required provided and over/under and I came up with  
12 23 under in that analysis.

13           The Applicant has now modified their application  
14 with an Exhibit A, which is inconsistent with other  
15 materials that they provided, and if you could maybe zoom  
16 out a little bit so we can see the green boxed area, I  
17 believe the correct number—and that's what I stated in my  
18 opening—is that when you look at the requirement, the  
19 requirement is 323, and that puts the total required at 392  
20 and an underage of 73.

21           I want to explain that, but I also just want to  
22 comment that if you slide over a little more on the  
23 spreadsheet you can see that even if the 285 were used,  
24 which I don't think is correct but they were both in the  
25



1 application that was submitted so they're inconsistent with  
2 each other, they would still be 35 under in total.

3           So, now maybe you could go to the bottom of the  
4 spreadsheet, the numbers that are there. Actually, just go  
5 down a little bit more. I want to just describe one other  
6 thing I did. I tried to do a sanity check, and if you look  
7 right in the middle in the red boxes it shows that between  
8 the approved A&S on 8/1 and the modification on 9/23 the  
9 square footage of what was requested decreased a bit. I  
10 believe they are not providing some of the restaurant or  
11 there's been a reconfiguration of the Market Hall, and so  
12 there was a change of about 8-percent, but the required  
13 parking in the application that they presented on 8/26 they  
14 said required 285 and then they reduced it on 9/23 to 204,  
15 and so that's a 28-percent increase and that's the sanity  
16 check that I looked at and I said this isn't just about not  
17 providing spaces that they might have wanted to for some  
18 future use, this is about a drastic reduction in what they  
19 are saying is required between the application they  
20 submitted, that we reviewed, on 8/26/2020 that had that 285  
21 number in it, and what we reviewed on 9/23/2020.

22  
23           Now, if you could go to the bottom of the  
24 spreadsheet. Keep going to the next page, please. Okay,  
25 that's good. Just go up slightly. I just want to be able

1 to... Yeah, okay. So, this is an analysis of the requirements  
2 as I read them.

3           The application that was submitted and deemed  
4 complete on 8/1/2917 by a group of applicants said that  
5 they've now reduced it slightly to 20,760 square feet for  
6 the Market Hall and 2,772 square feet for the community  
7 room, and those are based on current downtown requirements  
8 that would yield 70 spaces for the Market Hall and 5 spaces  
9 for the community room.  
10

11           However, the retail restaurant and bar tavern  
12 that are part of the what is approved, that is what was  
13 deemed complete and approved is for 24,611, 12,591, and  
14 2,916 square feet for other commercial outside of the  
15 Market Hall and that results in 83, 126, and 39 spaces for  
16 a total of 248, and so when you add 75 in the Market Hall  
17 and 248 outside you come up with 323. That's the basis that  
18 I've used for calculating what's in the upper spreadsheet  
19 that I marked as correct.

20           There are a number of other issues and  
21 inconsistencies in the material that we've been presented  
22 with, but I wanted to maybe just pause here and see whether  
23 there were questions of this part of it.  
24

25           CHAIR HANSSEN: Commissioner Hudes, I thank you  
for all the analysis you've done. I can't speak for the

1 rest of the Commission but I know for me personally, for me  
2 to be able to absorb all this information I would need a  
3 lot more time than the five minutes that we've been given  
4 to get it, and I also think we would need to give Staff a  
5 fair opportunity to respond, because they're saying that  
6 they are in compliance, and so in order for me to make a  
7 finding that your logic is correct I would want to hear  
8 from Staff after they have had a chance to review the  
9 material.  
10

11           So that's my feedback, but I do see that you've  
12 put a lot of time and effort into this, but again, I  
13 couldn't possibly really do this without spending quite a  
14 bit of time looking through the numbers and seeing if that  
15 made sense, and I would also want Staff to do the same  
16 thing. So, I don't know if other Commissioners have  
17 questions.

18           VICE CHAIR JANOFF: I do. I have my hand raised.

19           CHAIR HANSSEN: Vice Chair Janoff.

20           VICE CHAIR JANOFF: Thank you. Commissioner  
21 Hudes, question for you. I'm looking at the spreadsheet and  
22 I see that under Restaurant and Bar Tavern on both examples  
23 you're still using the one to 100 parking ratio or the one  
24 to 75 parking ratio, so it's counting seats, not the  
25 current code which is one to 300, and if you take that into

1 consideration, that 126 anyway under the restaurant would  
2 be reduced by two-thirds, which significantly reduces the  
3 323. Can you comment on why your spreadsheet doesn't use  
4 the current requirement, which is what Staff has said is  
5 applicable at this time?

6           COMMISSIONER HUDES: Sure. The simple reason is  
7 that we're not looking at a modification on that part of  
8 the application, we're looking at a modification to the  
9 Market Hall, and so if you look at the one that has the  
10 blue, 20760, that's what complies with current. There's no  
11 conceivable reason why the restaurant of the application  
12 that was deemed complete and approved would not use the  
13 code that existed at the time when it was deemed complete.  
14 If there were a modification request or if there were an  
15 application for those things, they could be considered.  
16 Perhaps the code might be different at that time.

17           VICE CHAIR JANOFF: It's my understanding that  
18 the restaurant, which is approximately 13,000 square feet,  
19 is in the Market Hall, so the one to 300 ratio for the  
20 project before us should apply, should it not?  
21

22           COMMISSIONER HUDES: I believe that there is an  
23 elimination of the restaurant and that the Market Hall...  
24 There was, I believe, restaurant in the Market Hall and  
25 restaurant outside, and the large part of it is outside the

1 13,000 square feet in buildings A, B-2, and C, buildings  
2 that are not in the Market Hall. There was, I believe,  
3 about a 2,000 square foot area of restaurant in the Market  
4 Hall itself.

5 VICE CHAIR JANOFF: But even so, if we're  
6 adhering to current code, whether it's in the Market Hall...  
7 I mean, these numbers don't reflect only the Market Hall,  
8 you're talking about the whole commercial area, so we, I  
9 believe, should be using the one to 300. I am not clear on  
10 the rationale for using what is not currently code or what  
11 wouldn't be... Presumably the code won't change between now  
12 and when permits are issued.

14 The way I see it is these numbers are overstated,  
15 which is consistent with the initial sheet A.11, and the  
16 subsequent clarifications were provided with the current  
17 code of one to 300. From my understanding, I don't believe  
18 this information that we're looking at right now is  
19 accurate.

20 COMMISSIONER HUDES: Well, again, I would say  
21 that we're not looking at a modification for any other  
22 buildings. The only application in front of us now is for  
23 one building, and I think that you can decide whether you  
24 should apply current code or code at the time when the  
25 application was approved for that, but even if you do there

1 is no application, there is no correspondence that says  
2 that the restaurants won't be built and that they have to  
3 be modified from the parking that was required from them  
4 and made part of this application only three weeks ago.

5 VICE CHAIR JANOFF: I'm still confused, because  
6 my understanding from everything Staff has said is that the  
7 requirement for parking will be calculated based on the  
8 plans under review for permit, not based on a proposal from  
9 before, so how would we hold... You know, if I'm building a  
10 house and I decide to change the square footage, why would  
11 I be held to something that was previously agreed to when  
12 my plans are changing?

14 COMMISSIONER HUDES: To be clear...

15 VICE CHAIR JANOFF: Because this (inaudible)  
16 permanent yet.

17 COMMISSIONER HUDES: ...we are only looking at an  
18 application for the Market Hall, so the balance of it must  
19 be consistent with the approved application for it, and the  
20 approved application for it says that they're going to need  
21 a total of 248 spaces for that. The Applicant themselves  
22 said that they don't know exactly what's going to be put  
23 there, but they put forth 3.22 in their application on 8/26  
24 representing that that was what was required. I don't  
25 believe they have any way that they can represent those

1 buildings, because their application is not for those  
2 buildings. There was an approval of an A&S for those  
3 buildings.

4 CHAIR HANSSEN: Commissioner Hudes, I can't see  
5 the whole screen right now because I have part of Zoom up  
6 and everything and I was trying to move it around a little  
7 bit, but I want to take one thing at a time. Are you saying  
8 that the Applicant doesn't have enough parking for the  
9 Market Hall?

10  
11 COMMISSIONER HUDES: I'm saying that when we  
12 evaluate the Market Hall, as the Town Attorney said, we  
13 have to evaluate it in the context of the parking for the  
14 phase one, but as a standalone.

15 CHAIR HANSSEN: I asked a question, are you  
16 suggesting that the Market Hall is not in compliance, and  
17 then I'll take the other (inaudible).

18 COMMISSIONER HUDES: Yes, Market Hall is not in  
19 compliance when you look at the total requirements for the  
20 phase one application.

21 CHAIR HANSSEN: So, I think we're going to end up  
22 having to go back and talk to Staff about this, but my  
23 understanding was that the Market Hall itself was in  
24 compliance and then everything else is an estimate that we  
25 don't really know yet, because they don't have developers

1 for those other commercial pads, and there is an estimate  
2 based on because they are building the pads for them, but  
3 until a commercial developer comes in we're not really to  
4 know.

5           Then I would also echo Vice Chair Janoff's  
6 comments that if we're going to try and go down this path  
7 of looking at the whole thing holistically it should be  
8 accurately reflecting the standard that they're going to be  
9 held to for restaurants, which was changed a couple of  
10 years ago.

11           So, I guess that's where I would stand on the  
12 thing is that I'm not 100-percent certain that the  
13 direction we got from Staff was that we should look at the  
14 whole thing, because we don't have proposals for the rest  
15 of the commercial yet, but maybe we can ask that of Staff.  
16 But let me see if any other Commissioners have questions on  
17 what you've presented so far.

18           VICE CHAIR JANOFF: Could I just ask that perhaps  
19 we go back to gallery view and take this spreadsheet off so  
20 we can see everyone? I can't see most of you. Thank you.

21           CHAIR HANSEN: Do other Commissioners have  
22 questions of the analysis that Commissioner Hudes provided?  
23 If no, I'm going to ask Staff if they could comment on how  
24 we should look at this, because if I'm interpreting this  
25



1 correctly the issue that is on the table is that if we look  
2 at our best guess right now, according Commissioner Hudes'  
3 analysis they will be short on parking holistically for the  
4 Transition District even though they might not be for the  
5 Market Hall itself. So, if we could prove that, that there  
6 would be an objective standard that says what that parking  
7 would be, I'm trying to understand from Staff's  
8 perspective. So, Commissioner Hudes, before you talk I just  
9 wanted to hear from Staff.

10  
11 DIRECTOR PAULSON: Though ultimately I think the  
12 Town Attorney mentioned earlier, I think where Commissioner  
13 Hudes' analysis is going is that he's looking at the Market  
14 Hall parcel individually, so that would be only the Market  
15 Hall, the community room, and the senior affordable. I  
16 don't see his table, but I believe it's 74 for Market Hall  
17 when you're looking up the community space and Market Hall,  
18 and another 50 for the residential, which is 124, and the  
19 parking garage provides 176. But I know there was a lot  
20 more analysis that Commissioner Hudes did, I'm just taking  
21 it down to that specific question.

22 CHAIR HANSSEN: Thank you, and I know you weren't  
23 finished, so ahead, Commissioner Hudes.

24 COMMISSIONER HUDES: I just wanted to clarify.  
25 I'm not suggesting that we look at the Market Hall by

1 itself. I cannot. The Market Hall must comply with the  
2 parking requirements with the entire Specific Plan, and  
3 actually the Market Hall is in the Transition District and  
4 it... The application is for a single building. The  
5 application has to be in compliance with the Specific Plan,  
6 and the Specific Plan is for the entire 44 acres. It is  
7 broken into districts and modifications to the Market Hall  
8 must be in compliance with the Transition District, which  
9 is where it is, and there are other buildings in the  
10 Transition District, so we have to look at the requirements  
11 for the Market Hall in the context of the Transition  
12 District. I hope that clarifies.

14 DIRECTOR PAULSON: It definitely clarifies. I  
15 think from my standpoint it's once you look at the entire  
16 Transition District, that's where Staff comes up with their  
17 numbers, because we used the one per 300. We no longer use  
18 the one per 100 or one per 75.

19 I'm not sure if the Town Attorney has any  
20 additional input on that component, but I think he'll also  
21 say that if the Commission disagrees with that, that's  
22 perfectly fine, you can make that part of your findings and  
23 we can move forward from there.

25 TOWN ATTORNEY SCHULTZ: I think that's correct.  
You guys are doing exactly what you're supposed to be

1 doing, you're deliberating, and these are objective  
2 standards and how you implement those.

3 My only concern is, as I said earlier, if you  
4 look at the graph that's been provided you do base your...  
5 You say based on 8/1/2017 requirements, and you do need to  
6 base it on your current regulations that apply to this  
7 modification. It's the same as if you came in with your  
8 home was built five years ago and you want to do a remodel  
9 for it, we would not apply the modifications that were in  
10 effect five years ago; we would look at the new  
11 regulations, whether that was setbacks, whether that was  
12 your garage driveway.

14 In some instances, and let's say instead of this  
15 going where you're using the 100, let's say we took retail  
16 down to 100, so it was not to the benefit... In this case  
17 when we redid our parking a few years ago, it is to the  
18 benefit of the Applicant in this case, but if it had been  
19 the other way and had been not to the detriment of the  
20 Applicant and it was requiring more parking, the Applicant  
21 wouldn't be able to sit here and say I want to apply the  
22 old standards. So, that's the issue I'm having is you need  
23 to apply the parking universally as it now exists and not  
24 as half as it exists and half as it doesn't.

25

1 CHAIR HANSSEN: So Commissioner Hudes, Vice Chair  
2 Janoff had her hand up before you did, so I was going to  
3 just see if she had a comment, and then I'll go back to  
4 you.

5 VICE CHAIR JANOFF: Yeah, thanks. I think the  
6 Town Attorney is describing the issue I have with  
7 Commissioner Hudes' calculations. I can see that the  
8 current matter before us, just Market Hall parcel, is  
9 consistent with providing a surplus of parking, and if we  
10 take the entire district into consideration then we must  
11 apply the current standards to that even though the numbers  
12 that the Applicant provided were a different standard.  
13

14 We can't have it both ways. We either consider  
15 the Market Hall on its own to today's standards and per  
16 Staff and per the calculations we see that they meet and  
17 exceed the parking requirements. If we're going to broaden  
18 it to include the other parcels, we have to apply the same  
19 criteria, otherwise we have an consistent basis upon which  
20 we're making this conclusion.

21 CHAIR HANSSEN: Thank you, Vice Chair Janoff.  
22 Commissioner Hudes.

23 COMMISSIONER HUDES: I believe I asked the  
24 question before, that this is an application for a  
25 modification to the Market Hall, and that there is an

1 approved application that was approved on 8/1/2017 for  
2 those other buildings, and that's why I'm using the numbers  
3 for those other buildings that were approved. If there were  
4 applications for modification to those other buildings I  
5 would say we might find that there are other numbers that  
6 might apply, but that's not before us. What's before us is  
7 the Market Hall. It has to fit with the requirements of the  
8 Specific Plan and there is an existing A&S application  
9 that's been approved that is not being requested to be  
10 modified, and that's for those other buildings.

11  
12 CHAIR HANSSEN: Vice Chair Janoff.

13 VICE CHAIR JANOFF: I don't want to monopolize  
14 the Commissioners' time if there are other questions, but  
15 again, my understanding is that the numbers are estimates  
16 only and once those applications come forward to Planning..  
17 There's an approved Architecture and Site Application, but  
18 the actual Building Permits haven't been approved, and when  
19 they are considered those Building Permits will be  
20 considered under current code. It may change in the future  
21 when those are considered, but if we're applying today's  
22 standards then we have to consider that that number, that  
23 the one to 300 ratio must be for the entire district. I  
24 think we're really running down a very inconsistent and not  
25 a well rational... It doesn't make sense for me to consider

1 one one way and another another way when you want to  
2 combine them but you want to keep them separate. I think  
3 that's not consistent.

4 CHAIR HANSSEN: Thank you for your comments, and  
5 I agree. Commissioner Hudes.

6 COMMISSIONER HUDES: I would like to move on, but  
7 I would not characterize anyone's comments as well thought  
8 out or not. I'm simply trying to apply what has been  
9 approved and what is being asked to be modified. I have  
10 some other issues with the application that I'd like to  
11 mention.  
12

13 The Exhibit A table doesn't distinguish between  
14 residential and commercial parking for provided parking.  
15 It's not clear whether the needs for residential and  
16 commercial will be met. While the application on Exhibit A  
17 represents gross square footage, the other table that was  
18 provided and used represents net square footage, and that  
19 does not meet the Code of Ordinances. I'm not referring to  
20 the Market Hall, I'm referring to the buildings.  
21

22 The other inconsistency is that the parking  
23 requirements that were noted on 3.22, which is part of this  
24 application still, these (inaudible) haven't been  
25 reconciled. It does not round up the parking spaces as is  
required by the Code of Ordinances. So, the 29.10.150(b)

1 requires rounding up to the next whole number for each of  
2 the uses.

3           The other information is that 322 is inconsistent  
4 with Exhibit A, and they have to be consistent. If the  
5 Applicant wants to move forward with the parking proposed  
6 on Exhibit A, then the application for the rest of phase  
7 one has to be revised so that they are consistent.  
8 Otherwise, a new application is required.

9  
10           And with the Applicant offering different numbers  
11 on this application for modification between August 26<sup>th</sup> and  
12 then, they also submitted a letter dated 3/13/2020 as part  
13 of this application with inconsistent numbers and  
14 information. It includes a bakery and different square  
15 footage for the commercial use. These things are  
16 inconsistent with each other, and in light of that I find  
17 that I can't evaluate whether these are consistent with our  
18 objective standards. I've never seen an application where  
19 the Applicant puts in new numbers and then doesn't  
20 reconcile or explain why the old numbers don't apply. We  
21 are still left with exhibits from 8/26 that are  
22 inconsistent.

23           There are ways to resolve this. We could try to  
24 make a decision on the fly. Perhaps Staff could develop a  
25 chart, but since Staff has not provided a chart of their

1 own, they've simply forwarded the Applicant's chart to us  
2 when discrepancies were pointed out by the public, then I  
3 would suggest another alternative would be to have an  
4 independent auditor look and count these spaces. There's  
5 been no reconciliation about whether there are 155 external  
6 spaces or 143. I counted 150. There are many  
7 inconsistencies with what's in front of us, and I can't see  
8 how we can make a finding that this is consistent with the  
9 objective standards with the number of inconsistencies in  
10 the material that's been put in front of us. These  
11 inconsistencies, by the way, have been pointed out by the  
12 public, and they're obvious, they're staring at us, and  
13 that's why I spent so much time trying to reconcile things,  
14 but there are still inconsistencies in the documents that  
15 we're being asked to decide on.

17 CHAIR HANSSEN: Commissioner Badame. Yeah, go  
18 ahead.

19 COMMISSIONER BADAME: I actually like the idea of  
20 an independent auditor doing a study. I'm looking at the  
21 original Conditions of Approval for this project, and under  
22 Condition 162 it talks about future studies and it says,  
23 "Any post-project traffic parking counts, air quality  
24 studies, or other studies imposed by Planning Commission or  
25 Town Council, shall be funded by the Applicant." So, I



1 would go for A, an independent study if a motion passes by  
2 the majority of the Planning Commission to order such one.

3 CHAIR HANSSEN: Thank you for your comments.

4 Thank you for Ms. Dodson for writing up a very detailed...in  
5 a couple of different letters with a lot of analysis and  
6 everything. It was in our addendum or the Desk Item that  
7 the Applicant has responded to address what the perceived  
8 inconsistencies were between that (inaudible). The  
9 Applicant hasn't had a chance to look at your document,  
10 Commissioner Hudes, to be able to respond to that, and I  
11 think that there is enough disagreement about whether or  
12 not we should be adjusting this thing to the current code,  
13 which we are using restaurants based on the 300 square  
14 footage, so I'm kind of in a situation where I mean I see  
15 that the Commissioners are torn on where to go with this  
16 thing, so I think we're going to have to do something, but  
17 I would like to hear from the other Commissioners.

18 Commissioner Tavana.

19  
20 COMMISSIONER TAVANA: I'd have to agree

21 (inaudible) with a lot of what Commissioner Hudes said and  
22 with the recommendation by Commissioner Badame about  
23 implementing an independent study of sorts.

24 I'm of the opinion parking standards are a  
25 baseline and should be considered on a case-by-case basis,

1 even more so with a large development project. I have  
2 serious concerns about traffic flow and circulation as a  
3 result of this project in general, but especially with the  
4 reduction of even more parking, so I think an independent  
5 study stating the reduced parking will not have an impact  
6 on the health and safety of the residents and showing that  
7 there is enough parking for this particular project, even  
8 though we do meet current standards with the parking  
9 requirements.

10  
11 DIRECTOR PAULSON: I'd just offer that you  
12 probably want to think about reopening it for the  
13 Applicant. I can't imagine we're going to do an independent  
14 study. If we were sitting here talking about 45 spaces  
15 differential and they still met the requirements, I think  
16 we'd be having the same conversation. Ultimately, we can't  
17 keep continuing the item. It sounds like there are concerns  
18 of the Commission, that's pretty clear, so I think it's  
19 important that we take the comments into consideration and  
20 decide whether or not there's enough evidence from your  
21 standpoint to take an action. Then I'd defer to the Town  
22 Attorney if he has any additional input on that component.

23  
24 TOWN ATTORNEY SCHULTZ: I agree in that we've  
25 continued this three times and the Applicant is entitled to  
a decision. You could open up the public hearing for the

1 sole purpose to see if the Applicant would want a  
2 continuance to do an independent review of the parking. It  
3 would not be as to whether the circulation or whether  
4 there's a public health and safety issue or the issues  
5 raised by Commissioners, it would only be, again, of  
6 whether they meet our parking regulations. That's really  
7 what the objective standard is. It's not a minimum that you  
8 can apply on a case-by-case basis, that's not the way land  
9 use decisions work. But if you wanted to do that you could  
10 open it for that.  
11

12           Otherwise, I believe there's evidence in the  
13 record for either a motion to approve or a motion to deny  
14 based on the parking regulations that have been provided to  
15 you through Ms. Dodson and through Commissioner Hudes, if  
16 that's the will of the Commission.

17           CHAIR HANSSEN: I do think that the Applicant has  
18 done a lot of address the questions of Ms. Dodson, and like  
19 I said , he hasn't had a chance to look at the documents  
20 from Commissioner Hudes, nor have we. I think it would be  
21 prudent to bring the Applicant back, and I concur with the  
22 Town Attorney's comment that we're not in a position to go  
23 back and reopen this thing and say is this thing going to  
24 have an impact? We're not doing an Environmental Impact  
25 Report basically is what was suggested, and this has to be

1 only whether or not they're in compliance with... If we go  
2 down this road it can only be about whether their numbers  
3 add up in terms of what our standards are today. Vice Chair  
4 Janoff.

5 VICE CHAIR JANOFF: Thank you. I, too, developed  
6 my own spreadsheet, Commissioner Hudes, with the purpose of  
7 not trying to track the logic and numbers that Ms. Dodson  
8 provided, which we all agree is an exhaustive and  
9 interesting study. I went back to the numbers on A.11, I  
10 pulled the actual square footage, ran it through a couple  
11 of different scenarios to come up with what seems to be the  
12 required square footage. I'm convinced that any way we look  
13 at these numbers, whether we have an independent auditor  
14 come in or we have Staff go back and confirm numbers on the  
15 entire district with the Applicant, based on my  
16 calculations, using the one to 300 current code, they made  
17 it.  
18

19 In one scenario they proposed 300 and provide  
20 331. In another they proposed 198 and they're still at 331.  
21 In the one, Exhibit A, they're required 272 and they're  
22 proposing 319. Any way I look at it... And mind you, I really  
23 want as much parking as we can possibly get. I'm trying to  
24 be super conservative and say listen, according to the  
25 numbers that they're providing for the gross square

1 footage, they're still over the District, they're over the  
2 required number of parking spaces.

3           We can go back and run the numbers again and  
4 again. I don't believe they're going to come up with any  
5 different answer. I'm not in favor of an independent  
6 analysis. I think we've got the information in front of us  
7 if we choose to think of it according to the current code.  
8 I would be prepared to make a motion, but we haven't heard  
9 from all the Commissioners yet.

10  
11           CHAIR HANSSEN: All right, thank you, Vice Chair  
12 Janoff. Commissioner Barnett.

13           COMMISSIONER BARNETT: I spent a tremendous  
14 amount of time looking at the numbers. Like Commissioner  
15 Hudes, I'm confused, I don't think I can make a decision on  
16 a matter of this importance without having a reconciliation  
17 by an independent auditor or CPA.

18           CHAIR HANSSEN: Okay, I guess I have an issue  
19 that is bothering me. I have confidence in our Staff to  
20 look at the numbers, and to me the issue that we have is  
21 what standard we're applying when and whether or not we  
22 hold them accountable for the entire...including the  
23 estimated parking of the Transition District, because I  
24 haven't heard anything that said that they aren't going to  
25 meet the numbers for the Market Hall.

1           As far as the rest of it, again, it's estimates,  
2 and so I think I don't mind having another look at this,  
3 although I'm conscious of not dragging this out for the  
4 Applicant, but I think we have to think about... An  
5 independent auditor seems like a bit much. I have  
6 confidence in our Staff to look at this, if it's the will  
7 of the Commission, to have one more look at the numbers,  
8 but I think it's a lot to ask.

9  
10           Having said that, I don't have a problem with  
11 reopening the hearing to hear from the Applicant and then  
12 we maybe can go from there. I don't think anyone on the  
13 Commission hasn't commented at this point, so is Mr. Keeney  
14 still here?

15           DIRECTOR PAULSON: I will look to see if they're  
16 interested in speaking. Hold on one second. He does have  
17 his hand up. I'll allow him to talk.

18           CHAIR HANSSEN: Okay, Mr. Keeney.

19           MICHAEL KEENEY: Thank you, Chair Hanssen and  
20 members of the Commission. We appreciate you taking the  
21 time to consider this.

22           This is our fourth hearing now and we're ready to  
23 start construction on this building. We really don't see  
24 the need for additional delays. The application was  
25 originally (inaudible) contemplated based on coordination

1 with Staff for Market Hall alone. If you look at our Letter  
2 of Justification, which is the original application, those  
3 numbers have not changed. It's 124 parking spaces required,  
4 176 provided. That hasn't changed throughout the entire  
5 process. As the process evolved it's accurate to say that  
6 we were asked to start to look at some of the other  
7 properties in the District, and we've done what we could to  
8 clarify that. I realize it's confusing, but Exhibit A is  
9 something that we've prepared in coordination with Staff  
10 and with their help. I think that they will tell you that  
11 it's an accurate reflection if you make the assumption that  
12 the gross square footage for Buildings A-1, A-2, B-2, and  
13 C-1 are based on sheet 3.22 from the Architecture and Site  
14 approval.  
15

16           And we don't know exactly what those square  
17 footage will be, so to Commissioner Janoff's point, those  
18 might shift a little bit and they'll have to comply with  
19 the code when they're submitted, but those are as accurate  
20 as we could get at this time based on the information  
21 available and using the current code requirement for the  
22 parking ratio of one per 300.

23           So, I don't see the need for an audit. While  
24 there are a lot of numbers, once you get it distilled down  
25 and clearly identify the sources of these pieces of

1 information I think all the data is there and I think  
2 Staff, as Chair Hanssen said, is more than capable of  
3 analyzing that. We would prefer a decision this evening and  
4 would not like a continuance if it can be (inaudible).

5 CHAIR HANSSEN: Based on what I heard, and feel  
6 free to add in comments from... The rest of the Commission  
7 can make additional comments.

8 My assessment of where the Commission stands  
9 right now is that I believe Vice Chair Janoff and I both  
10 are comfortable with the numbers more than the rest of the  
11 Commission is, and I heard concerns from every other  
12 Commissioner beside us, so we could try to make a motion  
13 and see if given the comments that have been made by Staff  
14 and the Applicant that the rest of the Commission could get  
15 comfortable.  
16

17 We could also have somebody, a Commissioner, if  
18 they feel like they are comfortable making the findings for  
19 a denial with an objective standard, that's certainly an  
20 option that we could put forth.

21 Or the third option is we could continue it with  
22 a motion to do some kind of follow up based on the numbers  
23 that Commissioner Hudes provided.

24 So, I'm going to put those out there as options,  
25 and I don't know if anybody has a strong feeling about it,



1 but I was hoping we could get to some kind of decision  
2 tonight. Okay, Commissioner Hudes.

3 COMMISSIONER HUDES: If there's further  
4 discussion, I'll wait, but otherwise I'm prepared to make a  
5 motion.

6 CHAIR HANSSEN: Well, I think Vice Chair Janoff  
7 was also prepared to make a motion, but we can go ahead.  
8 Vice Chair Janoff, you had said first that you were going  
9 to make a motion, and so do you want to have Commissioner  
10 Hudes make his motion or do you want to go ahead with  
11 yours?  
12

13 VICE CHAIR JANOFF: Thank you. My motion would be  
14 a motion to approve this project based on comments I've  
15 already made. I don't believe that motion would pass given  
16 the concerns of the other Commissioners, and so I will  
17 defer my motion to one the Commissioner Hudes would make.

18 CHAIR HANSSEN: Okay. I think that's fine. So,  
19 Commissioner Hudes, if you'd like to make a motion, go  
20 ahead.

21 COMMISSIONER HUDES: Thank you. I have no idea  
22 where this is going to go, but I want to make sure all of  
23 the points are on the record.

24 I would move to deny Architecture and Site  
25 Application, the application to modify Application S-13-

1 090, because I cannot make the required finding that the  
2 project complies with the North 40 Specific Plan Exhibit 2,  
3 and I and cannot find that the project meets considerations  
4 as required by Section 29.20.150 of the Town Code for  
5 granting approval of an Architecture and Site Application,  
6 and the reason for that is that the North 40 Specific Plan  
7 for the Transition District requires 392 spaces for the  
8 submitted application and eliminating the underground  
9 parking will eliminate 127 spaces, leaving 319, which is 73  
10 spaces less than what is required by the Specific Plan,  
11 therefore the application does not meet the requirements of  
12 the Specific Plan, and I believe these are all objective  
13 standards.  
14

15 In addition, there are other reasons why it  
16 doesn't meet the North 40 Specific Plan and General Plan.

17 First of all, the application in front of us is  
18 inconsistent with itself, and the numbers that have been  
19 provided have inconsistencies and cannot be evaluated on  
20 that basis. The inconsistencies that I would point out are  
21 the provided outside parking spaces, the use of documents  
22 that contain net leasable area versus gross square footage,  
23 the failure to round up the numbers as required by law.  
24

25 I would also say—I've already covered that  
they're inconsistent—that three of the senior affordable

1 spaces are not secured, although the Applicant has stated  
2 that they will be secured and that security is required in  
3 order to meet the requirements of the plan.

4 I would also comment in support of that the  
5 application has to be evaluated in the context of the  
6 Specific Plan and in the context of the A&S application of  
7 August 1, 2017 that's approved, and that the Housing  
8 Accountability Act, if it in fact applies, because to reach  
9 the two-thirds housing criteria then the entire District  
10 needs to be used for the parking evaluation.

11  
12 There's also another question that I have that's  
13 not part of the findings but that is something that I think  
14 would need to be looked at, and that is whether the EIR is  
15 applicable and whether the project meets CEQA requirements  
16 as the TIA portion of the EIR, which does talk about  
17 parking, was analyzed with the 2017 Parking Ordinance, not  
18 with the current ordinance, so we don't know whether the  
19 EIR is being met with the application for that portion that  
20 would follow current law. So, that's my motion.

21 CHAIR HANSSEN: All right, is there a second?

22 COMMISSIONER BARNETT: Second the motion.

23 CHAIR HANSSEN: So, Commissioner Barnett has  
24 seconded the motion. Are there any comments by  
25 Commissioners before we vote on the motion?

1 I'm going to comment that I'm not comfortable  
2 with the denial. I think that we're talking about apples  
3 and oranges in some cases with the numbers and I don't  
4 agree with having to look at the EIR. I agree with Vice  
5 Chair Janoff that any scenario we look at, that if you're  
6 using the current code with the restaurant parking, which  
7 is what we would hold them or any other Applicant to, they  
8 would still meet the parking requirements.

9  
10 Having said that, I'm not opposed to having  
11 another look at the numbers, but I'm not comfortable with  
12 there's evidence to deny it, so I will be voting against  
13 the motion. Vice Chair Janoff.

14 VICE CHAIR JANOFF: Thank you. And I echo the  
15 comments of the Chair. I'm comfortable having run through  
16 the numbers. I think it was the intent of the Applicant to  
17 be clear in the exhibits that were put forward. They were  
18 also reviewed by Staff. I agree with the apples to oranges  
19 comment, but I think the apples to oranges comment that  
20 we're struggling with has to do with the ratio and parking  
21 requirements being inconsistent, and I think that when it  
22 comes down to the actual application, once it gets in front  
23 of the permitting body in the future they will see that  
24 there's sufficient parking being provided, so I will not be  
25 supporting the motion.

1 CHAIR HANSSEN: Are there any other comments  
2 before we take a vote? Seeing none, I will do a roll call  
3 vote, and I will start with Commissioner Badame.

4 COMMISSIONER BADAME: Yes.

5 CHAIR HANSSEN: And Commissioner Barnett.

6 COMMISSIONER BARNETT: Yes.

7 CHAIR HANSSEN: Commissioner Tavana.

8 COMMISSIONER TAVANA: Yes.

9 CHAIR HANSSEN: Commissioner Hudes.  
10

11 COMMISSIONER HUDES: Yes.

12 CHAIR HANSSEN: Vice Chair Janoff.

13 VICE CHAIR JANOFF: No.

14 CHAIR HANSSEN: And I vote no as well, so the  
15 motion passes 4-2. Director Paulson, are there appeal  
16 rights for this motion?

17 DIRECTOR PAULSON: Thank you, Chair. There are  
18 appeal rights. Anyone who is not satisfied with the  
19 decision of the Planning Commission can appeal the decision  
20 to the Town Council. Forms are available online. The appeal  
21 must be filed within ten days and there is a fee for filing  
22 the appeal.

23 CHAIR HANSSEN: Okay, thank you. Thank you,  
24 Commissioners, and thank you to everyone in the public for  
25 testifying and providing their comments.

**FILING FEES**  
**\$438.00 (PLAPPEAL) Residential**  
**\$1,763.00 (PLAPPEAL), per**  
**Commercial, Multi-family, or**  
**Tentative Map Appeal**  
**TRANSCRIPTION \$500 (PLTRANS)**

**Town of Los Gatos**  
**Office of the Town Clerk**  
**110 E. Main St., Los Gatos CA 95030**

**APPEAL OF PLANNING COMMISSION DECISION**

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)  
 DATE OF PLANNING COMMISSION DECISION 9/28/2020

PROJECT / APPLICATION NO: S-20-012

ADDRESS LOCATION: 14225 Walker Street

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

Interested person means:

1. *Residential projects.* Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
2. *Non-residential and mixed-use projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

Section 29.20.275 The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record.

1. There was an error or abuse of discretion by the Planning Commission:

See Attachment

; OR

2. The Planning Commission's decision is not supported by substantial evidence in the record:

See Attachment

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

**IMPORTANT:**

1. **Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.**
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10<sup>th</sup> day following the decision. If the 10<sup>th</sup> day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10<sup>th</sup> day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).
4. Once filed, the appeal will be heard by the Town Council.
5. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

PRINT NAME: Michael Keane

SIGNATURE: [Signature]

DATE: 9/29/20

ADDRESS: 777 S. California Ave, Palo Alto, CA

PHONE: 650-842-2421

EMAIL: mkeane@shhomes.com

94304

**\*\*\* OFFICIAL USE ONLY \*\*\***

DATE OF PUBLIC HEARING: \_\_\_\_\_

**Pending Planning Department Confirmation**

CONFIRMATION LETTER SENT: Date: \_\_\_\_\_

TO APPLICANT & APPELLANT BY: \_\_\_\_\_

DATE TO SEND PUBLICATION: \_\_\_\_\_

DATE OF PUBLICATION: \_\_\_\_\_

Attachment to Appeal of Planning Commission Decision

Date of decision: Sept. 28, 2020

File/Application No. S-13-090

The Denial of the requested Modification by the Planning Commission was in error and was an abuse of discretion, and their decision is not supported by substantial evidence in the record. The Planning Commission was properly advised by the City Attorney and by Staff but ignored this advice in denying the requested Modification. They were advised that the application had to be evaluated in accordance with objective standards of review, the definition of which was read to them, and that their discretion was circumscribed by State laws, including the Housing Accountability Act and the Housing Element Law. They were further advised that the Modification complied with all objective parking and other standards of the Town. The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by one Commissioner. It was not based on the applicable City Zoning Code or any other applicable objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record. Additional reasons for denial were stated that are irrelevant to the scope of permissible analysis by the Planning Commission. Thus, the Planning Commission erred, abused its discretion, and failed to base its decision upon substantial evidence in the record. Its denial was an arbitrary and capricious act, lacking in legal or factual support and should be overturned by the City Council.

**RESOLUTION 2020-**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS**

**DENYING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION DENYING A REQUEST FOR A MODIFICATION TO AN EXISTING ARCHITECTURE AND SITE APPLICATION (S-13-090) TO REMOVE UNDERGROUND PARKING FOR CONSTRUCTION OF A COMMERCIAL BUILDING (MARKET HALL) IN THE NORTH 40 SPECIFIC PLAN AREA (S-20-012) ON A PROPERTY ZONED NORTH 40 SPECIFIC PLAN.**

**APN 424-07-114**

**ARCHITECTURE AND SITE APPLICATION: S-20-012**

**PROPERTY LOCATION: 14225 WALKER STREET**

**APPELLANT/APPLICANT/PROPERTY OWNER: SUMMERHILL N40, LLC**

**WHEREAS**, on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020, the Planning Commission held public hearings and considered a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan. The Planning Commission denied the Architecture and Site application on September 28, 2020; and

**WHEREAS**, on October 1, 2020, the appellant filed an appeal of the decision of the Planning Commission denying the request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan; and

**WHEREAS**, this matter came before the Town Council for public hearing on October 20, 2020, and was regularly noticed in conformance with State and Town law; and

**WHEREAS**, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on October 20, 2020, along with any and all subsequent reports and materials prepared concerning this application; and



**WHEREAS**, the Town Council finds as follows:

- A. The Town Council could not make one or more of the following, in accordance with Town Code section 29.20.275:
1. There was error or abuse of discretion on the part of the Planning Commission;
  - or
  2. The Planning Commission's decision is not supported by substantial evidence in the record.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The appeal of the decision of the Planning Commission denying a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan is denied and the application is denied; and
2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20<sup>th</sup> day of October 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

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**RESOLUTION 2020-\_\_**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS  
GRANTING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION DENYING A  
REQUEST FOR A MODIFICATION TO AN EXISTING ARCHITECTURE AND SITE  
APPLICATION (S-13-090) TO REMOVE UNDERGROUND PARKING FOR  
CONSTRUCTION OF A COMMERCIAL BUILDING (MARKET HALL) IN THE NORTH 40  
SPECIFIC PLAN AREA (S-20-012) ON A PROPERTY ZONED NORTH 40 SPECIFIC PLAN  
AND REMANDING THE MATTER TO THE PLANNING COMMISSION FOR  
FURTHER CONSIDERATION.**

**APN 424-07-114  
ARCHITECTURE AND SITE APPLICATION: S-20-012  
PROPERTY LOCATION: 14225 WALKER STREET  
APPELLANT/APPLICANT/PROPERTY OWNER: SUMMERHILL N40, LLC**

**WHEREAS**, on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020, the Planning Commission held public hearings and considered a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan. The Planning Commission denied the Architecture and Site application on September 28, 2020; and

**WHEREAS**, on October 1, 2020, the appellant filed an appeal of the decision of the Planning Commission denying the request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan; and

**WHEREAS**, this matter came before the Town Council for public hearing on October 20, 2020, and was regularly noticed in conformance with State and Town law; and

**WHEREAS**, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for

their meeting on October 20, 2020, along with any and all subsequent reports and materials prepared concerning this application.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The appeal of the decision of the Planning Commission denying a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan is granted and the application is remanded to the Planning Commission for further consideration; and

2. The decision does not constitute a final administrative decision and the application will be returned to Planning Commission for further consideration.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20<sup>th</sup> day of October, 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

**RESOLUTION 2020-**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS  
GRANTING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION  
APPROVING A REQUEST FOR A MODIFICATION TO AN EXISTING ARCHITECTURE AND  
SITE APPLICATION (S-13-090) TO REMOVE UNDERGROUND PARKING FOR  
CONSTRUCTION OF A COMMERCIAL BUILDING (MARKET HALL) IN THE NORTH 40  
SPECIFIC PLAN AREA (S-20-012) ON A PROPERTY ZONED NORTH 40 SPECIFIC PLAN.**

**APN 424-07-114  
ARCHITECTURE AND SITE APPLICATION: S-20-012  
PROPERTY LOCATION: 14225 WALKER STREET  
APPELLANT/APPLICANT/PROPERTY OWNER: SUMMERHILL N40, LLC**

**WHEREAS**, on August 26, 2020, September 9, 2020, September 23, 2020, and September 28, 2020, the Planning Commission held public hearings and considered a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan. The Planning Commission denied the Architecture and Site application on September 28, 2020; and

**WHEREAS**, on October 1, 2020, the appellant filed an appeal of the decision of the Planning Commission denying the request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area (S-20-012) on a property zoned North 40 Specific Plan; and

**WHEREAS**, this matter came before the Town Council for public hearing on October 20, 2020, and was regularly noticed in conformance with State and Town law; and

**WHEREAS**, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on October 20, 2020, along with any and all subsequent reports and materials prepared concerning this application; and

**WHEREAS**, the Town Council finds as follows:

A. In accordance with Town Code section 29.20.275:

1. There was error or abuse of discretion on the part of the Planning Commission;  
or
2. The Planning Commission's decision is not supported by substantial evidence in the record.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The appeal of the decision of the Planning Commission denying a request for a modification to an existing Architecture and Site application (S-13-090) to remove underground parking for construction of a commercial building (Market Hall) in the North 40 Specific Plan Area on a property zoned North 40 Specific Plan is granted and Architecture and Site application S-20-012 is approved; and

2. The Town Council hereby adopts all findings, considerations, and conditions of approval set forth in the documents attached as Exhibits A and B; and

3. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20<sup>th</sup> day of October 2020, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_



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**TOWN COUNCIL – October 20, 2020**  
**REQUIRED FINDINGS & CONSIDERATIONS FOR:**

**14225 Walker Street**  
**Architecture and Site Application S-20-012**

**Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. APN 424-07-114.**

**PROPERTY OWNER/APPLICANT: Summerhill N40, LLC**

**FINDINGS**

**Required findings for CEQA:**

- An Environmental Impact Report (EIR) was prepared and certified for the North 40 Specific Plan on January 5, 2015. No further environmental analysis is required.

**Compliance with the North 40 Specific Plan:**

- The project is in compliance with the North 40 Specific Plan.

**CONSIDERATIONS:**

**Considerations in review of Architecture & Site applications:**

- As required by Section 29.20.150 of the Town Code, the considerations in review of an Architecture and Site application were all made in reviewing this project.

EXHIBIT A

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**TOWN COUNCIL – October 20, 2020**  
**CONDITIONS OF APPROVAL**

**14225 Walker Street**  
**Architecture and Site Application S-20-012**

**Consider Approval of a Request for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area.**

**APN 424-07-114.**

**PROPERTY OWNER/APPLICANT: Summerhill N40, LLC**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC or the Planning Commission depending on the scope of the changes.
2. EXPIRATION: The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. OUTDOOR LIGHTING: Outdoor lighting shall comply with Town Code and Building Code regulations.
4. OPEN SPACE: The required open space shall be maintained in accordance with the requirements of the North 40 Specific Plan.
5. TANDEM GARAGES: Tandem garages are permitted for the required parking within the residential units. Tandem garages shall maintain a minimum interior clearance of 11 feet by 38 feet.
6. NOISE: The applicant shall comply with all recommendations provided by Charles M. Salter within the report dated January 20, 2016. The letter and/or recommendations shall be printed on the building permit plan set for all affected buildings.
7. PARKING GARAGE GATE(S): Prior to issuance of a building permit for the multi-story parking garage, the applicant shall retain a parking consultant and coordinate with the Los Gatos Monte Sereno Police Department regarding number and location of gated access points to the parking garage.
8. MITIGATION MONITORING AND REPORTING PLAN: The applicant shall comply with all relevant mitigation measures included in the adopted mitigation monitoring and reporting plan prepared with the certified EIR.
9. GENERAL: All existing trees shown on the plan and trees required to remain or to be planted are specific subjects of approval of this plan, and must remain on the site.
10. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify,

EXHIBIT B

and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval and may be secured to the satisfaction of the Town Attorney.

11. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building plans detailing how the Conditions of Approval will be addressed.

*Building Division*

12. PERMITS REQUIRED: A separate Building Permit shall be required for each new commercial building and a separate Building Permit will be required for the residential portion.
13. APPLICABLE CODES: The current codes, as amended and adopted by the Town of Los Gatos as of January 1, 2017, are the 2016 California Building Standards Code, California Code of Regulations Title 24, Parts 1-12.
14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. BUILDING AND SUITE NUMBERS: Submit requests for new building addresses to the Building Division prior to submitting for the building permit application process.
16. SIZE OF PLANS: Submit four sets of construction plans, minimum size 24" x 36", maximum size 30" x 42".
17. AIR QUALITY: To limit the project's construction-related dust and criteria pollutant emissions, the following the Bay Area Air Quality Management District (BAAQMD)-recommended basic construction measures shall be included in the project's grading plan, building plans, and contract specifications:
  - a. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes. Clear signage shall be provided for construction workers at all access points.
  - b. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. All non-road diesel construction equipment shall at a minimum meet Tier 3 emission standards listed in the Code of Federal Regulations Title 40, Part 89, Subpart B, §89.112.
  - c. Developer shall designate an on-site field supervisor to provide written notification of construction schedule to adjacent residential property owners and tenants at least one week prior to commencement of demolition and one week prior to commencement of grading with a request that all windows remain closed during demolition, site grading, excavation, and building construction activities in order to minimize exposure to NOx and PM10. The on-site field supervisor shall monitor construction emission levels within five feet of the property line of the adjacent residences for NOx and PM10 using the appropriate air quality and/or particulate monitor.
18. SOILS REPORT: A Soils Report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with

the Building Permit Application. This report shall be prepared by a licensed Civil Engineer specializing in soils mechanics.

19. SHORING: Shoring plans and calculations will be required for all excavations which exceed five (5) feet in depth or which remove lateral support from any existing building, adjacent property, or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to the Cal/OSHA regulations.
20. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project Building Inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the Soils Report, and that the building pad elevations and on-site retaining wall locations and elevations have been prepared according to the approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered Civil Engineer for the following items:
  - a. Building pad elevation
  - b. Finish floor elevation
  - c. Foundation corner locations
  - d. Retaining wall(s) locations and elevations
21. TITLE 24 ENERGY COMPLIANCE: All required California Title 24 Energy Compliance Forms must be blue-lined (sticky-backed), i.e. directly printed, onto a plan sheet.
22. SITE ACCESSIBILITY: At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones and public streets or sidewalks to the accessible building entrance that they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public. At least one accessible route shall connect all accessible buildings, facilities, elements and spaces that are on the same site.
23. ACCESSIBLE PARKING: The parking lots, as well as the parking structure, where parking is provided for the public as clients, guests or employees, shall provide handicap accessible parking. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.
24. BACKWATER VALVE: The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12 inches above the elevation of the next upstream manhole.
25. HAZARDOUS FIRE ZONE: All projects in the Town of Los Gatos require Class A roof assemblies.
26. SPECIAL INSPECTIONS: When a special inspection is required by CBC Section 1704, the Architect or Engineer of Record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the Building Permit. The Town Special Inspection form must be completely filled-out and signed by all requested parties

prior to permit issuance. Special Inspection forms are available from the Building Division Service Counter or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building).

27. BLUE PRINT FOR A CLEAN BAY SHEET: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program Sheet (page size same as submitted drawings) shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at ARC Blue Print for a fee or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building).
28. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development – Planning Division: (408) 354-6874
  - b. Engineering/Parks & Public Works Department: (408) 399-5771
  - c. Santa Clara County Fire Department: (408) 378-4010
  - d. West Valley Sanitation District: (408) 378-2407
  - e. Santa Clara County Environmental Health Department: (408) 918-3479
  - f. Bay Area Air Quality Management District
  - g. Local School District: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

*Engineering Division*

29. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
30. PRIOR APPROVALS: All conditions per prior approvals (including Resolution 2017-045, etc.) shall be deemed in full force and affect for this approval.
31. DESIGN CHANGES: Any proposed changes to the approved plans shall be subject to the approval of the Town prior to the commencement of any and all altered work. The Owner, Applicant and/or Developer's project engineer shall notify, in writing, the Town Engineer at least seventy-two (72) hours in advance of all the proposed changes. Any approved changes shall be incorporated into the final "as-built" plans.
32. PLANS AND STUDIES: All required plans and studies shall be prepared by a Registered Professional Engineer in the State of California and submitted to the Town Engineer for review and approval. Additionally, any studies imposed by the Planning Commission or Town Council shall be funded by the Owner, Applicant and/or Developer.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

33. REQUIRED FIRE DEPARTMENT ACCESS: Compliance with the following is required; CFC Sec. 503, 504, 506, 509 and Santa Clara County Fire Department Standard Detail and Specification A-1. Minimum required roadway width is 20 feet. Note specifically the requirements for a minimum 26-foot wide roadway serving buildings more than 30 feet in height from the lowest level of Fire Department Access. No parking is allowed within these

minimum required widths. Minimum vertical clearance is 13'6". REVISION 11/18/2015 Plans provided to this office show access as required.

34. FIRE SPRINKLERS REQUIRED: System requirements will vary depending upon the occupancy classification and projected use of each structure. It appears that the largest single structure will be a commercial multistory structure of 18,000 square feet. Applicants are advised to consult with the San Jose Water Company to determine what existing and proposed infrastructure will be required to meet the anticipated demand. CFC Chapter 9 and CRC Section 313 as adopted and amended by LGTC.
35. WATER SUPPLY REQUIREMENTS: Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7
36. PUBLIC FIRE HYDRANT(S) REQUIRED: Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be determined by the currently adopted edition of the California Fire Code, with a minimum single hydrant flow of 1,500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Section 507, and Appendix B, Table B 105.1 and Appendix C.
37. HOSE VALVES/STANDPIPES REQUIRED: Hose valves/standpipes shall be installed as per the 2010 CFC Section 905, or where emergency access has been deemed minimal, shall be equipped with standpipes designed per NFPA Standard #14 and be equipped with 2-1/2" inch hose valves, located within the stair enclosure(s). Note specifically, within parking structure(s) at stairwells and on any proposed podium within certain courtyard areas.
38. FIRE APPARATUS (LADDER TRUCK) ACCESS ROADS REQUIRED: Provide access roadways with a paved all weather surface and a minimum unobstructed width of a minimum 26 feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of 60 feet outside and 31 feet inside, a maximum slope of 10 percent and vehicle loading of 75,000 pounds. CFC Section 503 and SCCFC SD&S A-1.
39. PARKING ALONG ROADWAYS: The required width of fire access roadways shall not be obstructed in any manner and, parking shall not be allowed along roadways less than 28 feet in width. Parking may be permitted along one side of roadways 28-35 feet in width. For roadways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured curb face to curb face, with parking space based on an 8-foot width. CFC Section 503.
40. GROUND LADDER ACCESS: Ground-ladder rescue from second and third floor sleeping rooms shall be made possible for fire department operations. With the climbing angle of seventy-five degrees maintained, an approximate walkway width along either side of the



building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Section 503 and 1029 NFPA 1932 Section 5.1.8. through 5.1.9.2.

41. **REQUIRED BUILDING ACCESS:** Exterior doors and openings required by this code or the International Building Code shall be maintained readily accessible for emergency access by the fire department. An approved access walkway leading from fire apparatus access roads to exterior openings shall be provided when required by the fire code official. CFC Section 504.
42. **KEY BOXES WHERE REQUIRED:** Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for lifesaving or firefighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official. Locks. An approved lock shall be installed on gates or similar barriers when required by the fire code official. Key box maintenance. The operator of the building shall immediately notify the fire code official and provide the new key when a lock is changed or rekeyed. The key to such lock shall be secured in the key box CFC Section 506.
43. **TIMING OF INSTALLATION:** When fire apparatus roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternating methods of protection are provided. Temporary street signs shall be installed at each intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Section 501.
44. **EMERGENCY GATE/ACCESS GATE REQUIREMENTS:** Gate installations shall conform with Fire Department Standard Details and Specification G-1 and when open shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be fire department approved prior to installation. Gates across the emergency access roadways shall be equipped with an approved access device. If the gates are operated electronically, an approved Knox key switch shall be installed, if they are operated manually, then an approved Knox padlock shall be installed. Gates providing access from a road to a driveway or other roadway shall be at least 30 feet from the road being exited. CFC Section 503 and 506.
45. **CONSTRUCTION SITE FIRE SAFETY:** All construction sites must comply with applicable provisions of the CFC Chapter 14 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. Plan pages specifically dedicated to safety plans, including proposed temporary access and water supply for each phase will be required CFC Chapter 14.
46. **PREMISES IDENTIFICATION:** Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background CFC Section 505.

Transition District A,B,C	Applicant			Correct		
	Applicant version A&S 8/1/2017			Approved A&S 8/1/2017		
	Required	Provided	Over/(Under)	Required	Provided	Over/(Under)
Affordable/Senior (incl. Guest)	50	50	0	50	47	(3)
Residential	19	19	0	19	19	0
Commercial	285	389	104	345	387	42
Total	354	458	104	414	453	39
Garage subset		303			303	
Non-garage		155			150	

Transition District A,B,C	Dodson			Applicant			Correct			If must use 285 from erroneous A&S 3.22		
	Appl. version Modified A&S 8/26/2020			pl. version Modified Ex A A&S 9/23/20			Item #2 Modified A&S 8/26/2020			Item #2 Modified A&S 8/26/2020		
	Required	Provided	Over/(Under)	Required	Provided	Over/(Under)	Required	Provided	Over/(Under)	Required	Provided	Over/(Under)
Affordable/Senior (incl. Guest)	50	50	0	50	50	0	50	47	(3)	50	47	(3)
Residential	19	19	0	19	19	0	19	19	0	19	19	0
Commercial	285	262	(23)	204	250	46	323	253	(70)	285	253	(32)
Total	354	331	(23)	273	319	46	392	319	(73)	354	319	(35)
Garage subset		176			176			176			176	
Non-garage		155			143			143			143	

- Required** Commercial 285 Based on incorrect calculation of Net vs. Gross for Downtown parking requirements as of 8/1/2017
- Required** Commercial 323 Based on Downtown parking requirements as of 8/1/2017
- Provided** Commercial 250 Based on 9/23 Ex A
- Provided** Comm. Non-garage 150 Counted on plan
- Provided** Comm. Non-garage 143 Applicant letter 9/23 Hearing
- (3) 3 spaces of Senior/Affordable guest parking on different floor of structure—not secure
- Total Over/(Under)**

Commercial Sanify Check	Approved A&S 8/1/2017	Applicant version Modified Ex A A&S 9/23/3030	Change from Approved A&S
Comm. Gross Sq Ft.	67991	62557	8%
Required Parking	285	204	28%

Approved A&S 8/1/2017 Factor	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total
Sq Ft. Net Leasable Area	300	300	100	75	590	57522
Calc. Spaces Required	16380	22753	13685	2534	2170	304.76
Net Spaces Required	54.60	75.84	136.85	33.79	3.68	306
Spaces on 8/1/2017 A&S	55	76	137	34	4	285.00
	0.0	(8.0)	(13.0)	0.0	0.0	(21.0)

Area B Only  
Approved but contains errors even if Net is used.

Approved A&S 8/1/2017 - Downtown Pkg Factor	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total
Sq Ft. Gross Floor Area	300	300	100	75	590	66193
	20920	24611	14631	2916	3115	

Calc. Spaces Required	69.73	82.04	146.31	38.88	5.28	342.24	Area B Only
Net Spaces Required	70	83	147	39	6	345	# Approved, corrected for Gross Floor Area vs. Net
Spaces on 8/1/2017 A&S	55	68	124	34	4	285.00	
	(15.0)	(15.0)	(23.0)	(5.0)	(2.0)	(60.0)	

<b>Modified A&amp;S 8/26/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
<b>Sq Ft. Net Leasable Area</b>	18729	2032			4060	24821	Market Hall Only
Calc. Spaces Required	62.43	6.77	0.00	0.00	6.88	76.08	# Submitted by applicant 8/26/2020 based on Net
Net Spaces Required	63	7	0	0	7	77	Omits rest of area of specific plan

<b>Modified A&amp;S 8/26/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
<b>Sq Ft. II Gross Floor Area (Est.)</b>	21552	2338	0	0	4672	28563	Market Hall Only
Calc. Spaces Required	71.84	7.79	0.00	0.00	7.92	87.55	# Correct analysis of submission by applicant 8/26/2020
Net Spaces Required	72	8	0	0	8	88	Omits rest of area of specific plan

<b>Modified A&amp;S Ex. A 9/23/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
	20760	2691	0	0	2772	26223	
<b>Sq Ft. II Gross Floor Area (Est.)</b>	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	Market Hall Only
Calc. Spaces Required	69.20	8.97	0.00	0.00	4.70	82.87	# Submitted by applicant 9/23/2020
Net Spaces Required	70	9	0	0	5	84	Omits rest of area of specific plan

<b>Modified A&amp;S Ex. A 9/23/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
<b>Market Hall</b>	20760				2772	23532	
<b>Other Commercial</b>	39025						Based on 9/23/2020 requirements
<b>Total</b>	59785	0	0	0	2772	62557	All of Area A,B,C
Calc. Spaces Required	199.28	0.00	0.00	0.00	4.70	203.98	# Submitted by applicant 9/23/2020
Net Spaces Required	200	0	0	0	5	205	Includes rest of specific plan

<b>Modified A&amp;S Ex. A 9/23/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
<b>Market Hall</b>	20760				2772	23532	
<b>Other Commercial</b>		24611	12591	2916			Based on 8/1/17 requirements for Non-Market Hall and 9/23/17 requirements for Market Hall
<b>Total</b>	20760	24611	12591	2916	2772	63650	All of Area A,B,C
Calc. Spaces Required	69.20	82.04	125.91	38.88	4.70	320.72	# Submitted by applicant 9/23/2020
Net Spaces Required	70	83	126	39	5	323	Includes rest of specific plan
Market Hall	75		Non-Market Hall	248		323	

<b>Modified A&amp;S Ex. A 9/23/2020</b>	Market	Retail	Restaurant	Bar/Tavern	Comm. Room	Total	
Factor	300	300	100	75	590		
<b>Market Hall</b>	20920				2772	23692	
<b>Other Commercial</b>		24611	12591	2916			Based on 8/1/17 requirements
<b>Total</b>	20920	24611	12591	2916	2772	63810	All of Area A,B,C
Calc. Spaces Required	69.73	82.04	125.91	38.88	4.70	321.26	# Submitted by applicant 9/23/2020
Net Spaces Required	70	83	126	39	5	323	Includes rest of specific plan
Market Hall	75		Non-Market Hall	248		323	

39,025 I believe that this is a net leasable number rather than Gross Sq. Ft.  
40,118 This is the correct Gross Sq. Ft. based on 3.22  
Based on 8/1/17 requirements  
Based on 9/23/2020 requirements

15.1% Net to gross

VIA E-MAIL

October 14, 2020

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

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Jensen:

SummerHill Homes is pleased to be developing Phase I of the North Forty Project. One component of the approved project is known as the Market Hall. It includes 20,761 square feet of commercial space, 2,772 square feet of community room space and fifty affordable senior housing units. When the project was originally approved it included 179 more parking spaces than were required by the Town Zoning Code. The purpose of this parking was to serve future phases of the project, but the original developer of this building choose not to proceed with the project. There is no requirement in the specific plan or the conditions of approval for Phase I to provide surplus parking for future phases of the project. We are proposing to eliminate the basement floor of the parking structure. The Market Hall building is required to provide 74 commercial parking spaces and 50 residential parking spaces. With the proposed modification to eliminate the basement of the parking structure there will be 126 commercial parking spaces and 50 residential parking spaces. This is a surplus of 52 commercial parking spaces.

The proposed modification is in compliance with the Town Zoning Code, but several comment letters were provided to the Planning Commission questioning our summary of the required parking and staff's conclusion that the proposed modification was in compliance with the Town Code. Ms. Barbara Dodson prepared three of these letters and we have provided responses to each of them on September 17<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup>. In each of these responses we explained that the required parking shown on Sheet 3.22 of the approved Architectural and Site plan set reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan and the Town Zoning Code. In order to clarify what the required parking is today based on the current Town Zoning Code we prepared "Exhibit A" and included it in each of our responses. This table takes the square footage proposed for Market Hall and combines it with the gross square footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition

District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

At the Planning Commission Hearing on September 28, 2020 Commissioner Hudes used the same assumptions in Ms. Dodson's letters from Sheet 3.22 to conclude that the project did not meet the Towns parking requirements. We have prepared a separate letter in response to his incorrect determination that the project does not meet the Towns parking requirements. As we state in this letter and the letters that we prepared in response to Ms. Dodson, the correct assessment of the required parking for the project is shown on Exhibit A.

The Town Attorney has provided direction to the Planning Commission that the modification that we have proposed is subject to the requirements of the Housing Accountability Act and can only be denied on the basis of objective standards. The modification that we are requesting is in conformance with the Town Zoning Code, as verified by Staff, and denial of our request by the Planning Commission was not based on objective standards.

We have attached a letter responding to the parking table provided by Commissioner Hudes at the Hearing on September 28, 2020, which includes Exhibit A. Exhibit A has been review by Town Staff and correctly summarizes the parking that is required for the North Forty Transition District. With the proposed modification there will be a surplus of 52 parking spaces for the Market Hall Building on Lot 27, and 46 surplus spaces for the Commercial Transition District.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

VIA E-MAIL

October 14, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

At the Planning Commission hearing on September 28, 2020 Commissioner Hudes prepared a table of what he determined were the parking requirements for Phase I of the North Forty Project (S-13-090). This table is not correct and does not reflect the parking requirements from the Town code for the project. This table, prepared by Commissioner Hudes, that was the basis for his motion to deny the project, used the square footages and parking ratios from Sheet 3.22 of the approved plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan. SummerHill Homes and Town Staff explained at the Planning Commission hearing and in writing, that the required parking shown on Sheet 3.22, was based on a hypothetical land use program, and the 2017 code requirement for parking. The table that Commissioner Hudes prepared includes a note highlighted in yellow which states “Based on Downtown parking requirements as of 8/1/2017.” These are not the current parking requirements, so the Table is not reflective of what is required by the Town Code.

To correctly assess the parking required for any component of Phase I of the North Forty project the gross commercial square footage in the proposed building permit and the land use that is proposed need to be analyzed with the required parking per the current and applicable Town Code. In the case of the Market Hall building, on lot 27, that information was provided in our Letter of Justification on March 13, 2020. The Market Hall building is required to provide 74 commercial parking spaces and 50 residential parking spaces. With the proposed modification to eliminate the basement of the parking structure, there will be 126 commercial parking spaces and 50 residential parking spaces. This is a surplus of 52 commercial parking spaces.

Several comments were provided to the Planning Commission that questioned the parking that would be required for the commercial transition district. The modification that we have

requested does not propose any changes to the parking required for the remainder of the commercial transition district, but in an effort to help respond to these questions SummerHill Homes prepared a table that includes all of the required parking. This table, Exhibit A, was provided to the Planning Commission on September 17, 2020. It was reviewed by staff and they have confirmed that it correctly summarizes the parking required for the Transition District based on the gross square footage and uses proposed from Sheet 3.22 of the approved plans and what is required by the Town code. As shown on Exhibit A there are 273 parking spaces required and 319 provided. This is a surplus of 46 parking spaces.

Very Truly Yours,

SummerHill Homes

Michael Keaney

CC: Joel Paulson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020



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BRADLEY HEBERT

October 8, 2020

VIA E-MAIL

Marcia Jensen, Mayor  
And Members of the Town Council  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030  
[council@losgatos.ca.gov](mailto:council@losgatos.ca.gov)

Re: Los Gatos North Forty; Request for Modification to an Existing Architecture and Site Application Approval (S-13-090)  
Appeal to City Council; Agendized for October 20, 2020

Dear Mayor Jensen and Members of the Council:

This letter is written on behalf of SummerHill Homes, the Applicant for the above-entitled modification. The Planning Commission denied the application. Its denial was in error, an abuse of discretion, and was not based upon substantial evidence in the record. It also violated the Housing Accountability Act (Govt. Code Sec. 65589.5, the "HAA"). We are very familiar with this Project, as we represented the Applicant in connection with the original denial, the Litigation, and the subsequent approval of the Project.

A short summary of the error of the Planning Commission is that they were properly advised by the Town Attorney that the Application had to be evaluated in accordance with objective standards of review, the definition of which was read to them, and that their discretion was circumscribed by State laws, including the Housing Accountability Act and the Housing Element Law. They were further advised that the Modification complied with all objective parking and other standards of the Town.

Mayor Marcia Jensen  
October 8, 2020

The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by one Commissioner. It was not based on the applicable City Zoning Code or any other applicable objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record.

To explain more fully: we concur with the advice the Commission was given by the Town Attorney that the Housing Accountability Act does apply to the requested modification. There is no question that the HAA applies to the entire Phase 1 Project. In fact, in the Litigation, Judge Takaichi explicitly stated in his opinion that the Project was a “housing development project” within the scope of the HAA.

Because the Project is subject to the HAA, the Town is limited to using only objective criteria in its evaluation of Project applications. As Staff has advised the Commission in the past, Section 65589.5(j) requires that the Application can only be turned down for a violation of objective standards. A recent amendment to the HAA clarified that this requirement also applies to imposing “*any conditions that have the same effect or impact [as reducing density would have] on the ability of the project to provide housing.*” (Govt. Code Sec 65589.5(h)(7).)

That same amendment clarified the meaning of “objective” as follows:

*Until January 1, 2025, “objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Govt. Code Sec 65589.5(h)(8).)*

It is clear from the justification provided by SummerHill that they would incur millions of dollars of additional costs to build the underground parking level that is not required by Town Code. Imposing such an unnecessary expenditure would thus violate the HAA because it would have the same impact on the ability of the Project to provide housing as reducing the density of the Project would have.

Despite being advised of this clear requirement of the law by the Town Attorney, the Planning Commission seemed swayed by subjective opposition to the Application and denied the requested modification in violation of the HAA.

The maker of the motion to deny cited only one allegedly objective standard that he claimed was violated by the Application: he claimed based on his own, idiosyncratic analysis, that the Project was under-parked. However, as other Commissioners noted, and as Staff also stated, that analysis is incorrect. The Commissioner’s spreadsheet could not be relied upon by the Commission as constituting substantial evidence, as it was clearly wrong. Using it as the basis for a motion was thus arbitrary and capricious and an abuse of discretion.

Mayor Marcia Jensen  
October 8, 2020

If there is one thing that has been clear throughout this process, it is that the underground parking level is not necessary to provide the amount of parking required by the Town Code. The maker of the motion also gave several other reasons for denial, acknowledging that they were not based on objective planning standards. As such, these simply reveal subjective antagonism to the Application, and must be disregarded.

We are sure that the Town is aware that the Legislature has amended the HAA several times since this project was initially approved. These amendments have all been aimed at further reducing a city's discretion in deciding on housing development project applications. In addition, the HAA now provides significantly increased exposure for a city that violates its strictures, including additional exposure to fines, penalties, and claims for damages, not to mention attorneys' fees.

If you need additional information or clarification, please feel free to contact the undersigned. We ask that this letter be made part of the official record of proceedings.

Very Truly Yours,

BERLINER COHEN



ANDREW L. FABER

Email: [Andy.Faber@berliner.com](mailto:Andy.Faber@berliner.com)

ALF

cc: Robert Freed  
Mike Keaney  
Rob Schultz, Esq., Town Attorney  
Joel Paulson, Community Development Director  
Shelly Neis, Town Clerk

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**Dissenting opinion for the North 40 Planning Commission Decision of September 28, 2020**

**Existing Architecture and Site Application S-13-090, located at 14225 Walker Street.  
APN 424-56-017. Architecture and Site Application S-20-012**

The Planning Commission motion to deny the modification of Existing Architecture and Site Application S-13-090 to remove underground parking for the Market Hall in the North 40 Specific Plan Area passed 4-2 on September 28, 2020, with the Planning Commission Chair and Vice Chair voting against the denial.

It is highly likely that as a matter of personal opinion, nearly all, if not all members of the Planning Commission agree with the Town residents that Summerhill Homes should build the underground parking garage as a matter of good faith and other reasons as well. However, the Commission is charged to look at the law as a quasi-judicial body for which law in this case is primarily the Town commercial parking code contained in 29.10.150(b) which is what the North 40 Specific Plan references as its standard for parking. This section of the Town code is the standard for downtown commercial parking. There are some additional issues involved in this hearing, but the issues were described in detail by the Town Attorney in a written memo before the September 28 hearing (intended for September 23). As a result of this direction by the Town Attorney, it is clear that the Commission was to only make findings based on objective standards, not based on subjective standards, personal opinions, nor based on public opinion.

As the two dissenting votes, the Planning Commission Chair and Vice Chair assert that the Planning Commission motion for denial was based on incorrect and misleading application of Town objective standards as well as confusing and incorrect analysis presented in the form of spreadsheet tables by the maker of the motion during the meeting after public discussion was closed. The Chair and Vice Chair along with staff, challenged this information, as incorrectly and inconsistently applying the Town parking standards.

The tables, which were the basis of the motion to deny, were submitted by the maker of the motion on the day of the hearing after the deadline for the desk item and were not viewed or reviewed by the Commission, staff or the applicant until after the public hearing was closed, only minutes before the motion to deny was made.

Two findings and a comment were made in the motion for denial and supported by the tables. Each is discussed and refuted below.

**PC Motion FINDING 1:** The maker of the motion found the application was not in compliance with the North 40 Specific Plan parking requirements which were based on Town Code 29.10.150 (b). Reference was also made to a lack of findings for an Architecture and Site Application approval, but this part of the motion also referred to the Town Code parking requirement 29.10.150 (b).

NOTE: 29.10.150 (b) covers the parking requirements for downtown, which is the objective standard required for commercial parking in the North 40 Specific Plan, as mentioned in the introduction of this dissent.

The table provided by the maker of the motion during the hearing, used to support the motion to deny, is reproduced below.

Table 1: Maker of the Motion’s Parking Analysis using 2017 Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	47	(3)
Residential	19	19	0
Commercial	323	253	(70)
Total	392	319	(73)

The highlighted numbers are an incorrect application of the current objective standard of Town Code Section 129.10.150 (b).

There are two inaccurate claims based on this table and therefore the related finding in the motion to deny is incorrect.

- (a) Inaccurate Claim: Affordable senior parking—50 required, 47 provided, 3 under.

Rebuttal:

The applicant is providing 50 parking spaces for 49 units (plus one manager unit for a total of 50 units). The requirement in the North 40 Specific Plan for this affordable senior housing is for ½ space for each resident and ½ guest space for each resident for a total of 50 parking spots. As an aside, there are many residents in Town who do not feel that 50 spots are enough, but the non-profit partner, Eden Housing, has continually maintained that they operate 36 similar facilities throughout the Bay Area and this amount of parking suffices for this application. However, that is not the issue for this motion.

The maker of the motion asserted that because 3 spaces of the 50 are not shown on the drawings supplied by the applicant as being on the same floor of the parking garage as the other 47, they will not be secured for the residents to use, therefore they cannot be counted.

However, this assertion was made without discussing this with the applicant or staff to determine how the parking would be managed. Therefore, it is not a valid finding as it is

not based on fact. We have no way of knowing whether or not the applicant and the manager of the affordable housing (Eden Housing) have a way to secure the other 3 spaces without submitting this question in a public hearing and asking for a response. And we have no way of knowing whether the applicant will install all 50 spaces on the gated floor of the parking structure. Therefore, it was incorrect to deduct these 3 spaces.

Further, there is no requirement in the North 40 Specific Plan to secure the parking for the affordable housing units, so it was incorrect to deduct any of the spaces provided for purposes of contributing to the motion to deny. While it is in the best interest of the applicant and their partner, Eden Housing, to ensure that those spaces are available for the residents and the residents' guests and not the general public, it is not an objective standard requirement. This could be made a condition of approval if the Council so desires during the appeal hearing.

- (b) Inaccurate claim: The North 40 specific plan standard commercial parking required is 323 vs. 285 that the applicant stated in their application of 8/26/2020.

Rebuttal:

The motion to deny claims the applicant is 70 spaces under the 323 required.

As explained by staff on multiple occasions during the meeting, each application must be evaluated on its own for parking and other code requirements against ***the building codes that are in effect at the time a building permit is filed***. Nonetheless, the maker of the motion presented the table on the next page, with now-superseded 2017 parking requirements, to calculate the number of parking spaces required.



Table 2: Applicant’s Estimated Square Footage using 2017 Parking Space Factors

Modified A&S Exhibit A 9/23	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300sf	1:300sf	1:100 *	1:75 *	1:590sf	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	125.91	38.88	4.70	320.72
Net Spaces Required	70	83	126	39	5	323
Market Hall	75		Non-market hall	248		323

NOTE (\*): The “Factor” for restaurants and bars in this table was based on the applicant’s estimate at the time (2017) of how many parking spaces would be needed converting hypothetical seats to square footage and is not something that has been used in our parking code. In other words, it was not a standard even in 2017 as the standard was based on the number of seats when the application was first approved.

All of the highlighted numbers are incorrect because the maker of the motion applied a double standard, suggesting that the Commission:

- Apply the current Town Code 29.10.150 (b) to the Market Hall
- Apply the Town Code 29.10.150 (b) from 2017 to the remainder of the commercial sites (since the applicant was not proposing a change to these commercial pads).

The maker of the motion did not find that the application for the Market Hall on a stand-alone basis did not meet the parking requirements. The applicant and staff have continued to maintain that the applicant is exceeding the requirement for the Market Hall by 52 spaces even after removal of the underground parking.

Instead, the maker of the motion said that because the Housing Accountability Act applied to this entire project as was ruled by the State in their lawsuit against the Town that the Town should look at this application for the Market Hall in conjunction with the

entire Phase I project, including the remaining commercial pads, which at this time, do not have a commercial developer in place to build them out.

What the maker of the motion chose to disregard is that the Town Code for commercial parking for restaurants and bars (Section 129.10.150(b)) was changed in 2018 from using seats as the methodology for determining parking spaces to using gross square footage as the methodology. This was done for a variety of reasons including community vitality across the Town. So as of 2018, all of these commercial spaces have an objective parking standard of 1 space for every 300 gross square feet. This is the only applicable parking standard, and it is the objective standard the applicant used in the data they presented and that staff used in their report.

This change in the parking code for restaurants and bars benefits not only Summerhill Homes for this application but all restaurant and bar owners in Town and it has been doing so for over 2 years.

Despite the assertion by the Town Attorney, the Community Development Director, and the Chair and Vice Chair of the Planning Commission that it was improper to apply two conflicting standards to the same application and that further, the applicant can only be held accountable to the standard at the time of application, the motion proceeded.

Following, we present Table 3 using the maker of the motion’s data, but correctly applying the current Town code Section 29.10.150 (b).

Table 3: Applicant’s Estimated Square Footage and Current Parking Space Factors

Modified A&S Exhibit A 9/23/2020	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300	1:300	1:300	1:300	1:590	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	41.97	9.72	4.70	
Net Spaces Required	70	83	42	10	5	210
Market Hall	75		Non-market hall	135		210

The revised number for the “Other Commercial” based on the current estimates for square footage and applying the current parking standard in 29.10.150 (b) which standard (downtown parking) is cross referenced in the North 40 Specific Plan is **113**

**spaces fewer than** what would have been required in 2017 before the code changed (total 323 in the motion but actually 210 per current code). Coincidentally, this is nearly equivalent to the 124 spaces eliminated by eliminating the underground parking garage, further underscoring the applicant’s assertion that the underground structure is not needed.

Here we restate the table supplied by the maker of the motion showing the applicant meets The Town’s parking standard using the 1 space for every 300 sq ft. for commercial space.

Table 4: Table 1 Parking Analysis Restated using Current Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	50	0
Residential	19	19	0
Commercial	210	253	43
Total	279	322	43

The applicant clearly meets the requirement for parking in the Market Hall on a standalone basis (exceeding it by 52 spaces) and as shown above meets the parking required in the overall Transition District (exceeding it by a proposed 43 spaces).

**PC Motion FINDING 2:** The maker of the motion found that the applicant’s numbers were inconsistent with previous submissions and were confusing. The four specific issues stated in the motion relative to inconsistency included:

- Use of gross vs. net square footage (the maker of the motion asserted that net square footage was used in some documents supplied by the applicant when gross square footage is required).
- Not rounding up to the next whole number (required by code).
- 3 senior spaces not secured.
- Housing Accountability Act—must use the parking standards for the entire district vs. just the Market Hall as the number of residential units is not more than 2/3 of the Market Hall. (Note: This is contrary to what staff including the Town attorney have advised.)
-

Response to the above four issues.

- Gross square footage for commercial is required by code. However, no one, not staff, the applicant, nor the Commission, was given an opportunity to address this assertion by studying the data and reaching a conclusion, but the estimated differential is approximately 15% more square footage for gross square footage vs. net. This amount translated to parking spaces required would not affect the applicant's compliance, but more important, the applicant should have had the opportunity to respond to the spreadsheet data supplied by the maker of the motion.
- Not rounding to the whole parking space is a difference of one parking space, 331 versus 330 according to the applicant's data, which was not disputed. And while the excess parking proposed proves this concern to be a non-issue, it was held up as an example of how the applicant included inconsistent or misleading information.
- The question of why secured residential parking spaces cannot be grounds for denying the application was discussed earlier.
- Staff analysis of parking required, using current code, shows that for the Market Hall independently OR for the entire Transition District, the applicant exceeds the objective standard of the number of parking spaces required.

As a final comment on "inconsistencies" and "confusion", it could be argued that when two pages of tables are presented for the first time at a point in the meeting when public comment has closed, providing the applicant no opportunity to respond, this in itself creates confusion and obfuscation. And, as was stated previously, the Planning Commission Chair and Vice Chair pointed out the did not tables did not reflect current parking code (Section 129.10.150 (b)) and were themselves misleading.

**PC Motion final COMMENT:** The maker of the motion asserted that the Environmental Impact Report (EIR) that was certified for this project may need to be revisited. This was not a finding, but rather a comment.

The question posed was that the parking might have changed enough to invalidate part of the Environmental Impact Report that was certified as part of the project approval. However, this was not a finding for denial of the application so will not be discussed further except to state that recent case law in California (2018) has ruled that "parking impacts, in and of themselves, are exempt from CEQA review". (*Residents for Responsible Development v. City of Covina*, Case No. B279590). For those that are not familiar, CEQA stands for the California Environmental Quality Act which provides a process/law for assessing and mitigating possible environmental impacts from a development project.

In conclusion, the writers of this memo assert that the Planning Commission's denial of this application was based on the incorrect application of current Town codes. Further, the last-minute submission of spreadsheet tables presented as "Correct" obscured fact by incorrectly

applying outdated Town code. Finally, it is important to add that there is no question that the concerns of residents were heard and acknowledged; there simply have not been any current objective standards identified as of this writing that would support a valid finding to deny this application, as much as we all would like Summerhill to build the underground parking for multiple reasons.

Respectfully,

Melanie Hanssen  
Chair, Planning Commission

Kathryn Janoff  
Vice Chair, Planning Commission

From: Jean Mundell  
Sent: Wednesday, October 14, 2020 10:46 AM  
To: Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
Subject: North 40

The underground parking as planned should remain as planned. The builders will start nibbling away, cutting costs and gaining concessions, as is so common commercial enterprises. Parking within that complex should serve all users, and not spill out into adjoining areas.

Jean Mundell  
Los Gatos

From: Amy Nishide  
Sent: Tuesday, October 13, 2020 10:08 PM  
To: Jocelyn Shoopman <jshoopman@losgatosca.gov>  
Subject: North 40 garage

I oppose the removal of the garage. It's already been planned and removing it is shortsighted. We need to be planning for 10-20 years in the future.

Amy Nishide  
Los Gatos resident

Sent from my iPhone

**From:** Katherine Winkelman  
**Sent:** Wednesday, September 30, 2020 11:34 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** I do not support the North 40 changes in any way

Hello and hope you and your family are well.  
We have lived in Los Gatos over 50 years and raised three sons in this town and schools. We have been and still remain very active in the community donating many hours of service and have two businesses in the Chamber. My husband belongs to the Lions Club of Los Gatos. I am a past president of CASA Los Gatos.

The North 40 passed only as a result of the pressure of the State of California on this small town that dead ends into the Santa Cruz Mountains much like Carmel dead ends into the sea. The North 40 plan barely passed and took something like 14 years. Why in God's name would anyone think it can now be changed by the developer. That is very disrespectful of those that worked so hard to come to a middle ground and may have passed on by now. Bigger is not always better and now with many buildings empty in the Silicon Valley we can turn them into low cost apartments. Now is not the time to go back on the promise regarding the parking, Keep the parking.  
Sincerely, respectfully, Kathy

Katherine Winkelman

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**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 8

ADDENDUM

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DATE: October 19, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision Denying a Request for a Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-07-114. Architecture and Site Application S-20-012. Property Owners/Applicant/Appellant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

REMARKS:

Questions received from a Council Member:

Can staff provide an analysis of the letter submitted by the Planning Commission Chair and Vice Chair with regards to the interpretation of the Town Code as it relates to this project (Attachment 24)?

Staff's Response:

As noted in the report, staff's findings concur with the letter submitted by the Planning Commission Chair and Vice Chair. Staff does not concur with the analysis that the parking requirements in place at the time of the Architecture and Site (S-13-090) approval on August 1, 2017, apply to the request for a modification to the original Architecture and Site application.

Since the approval of the original Architecture and Site application, Ordinance 2272 was adopted by the Council on April 3, 2018 to amend Section 29.10.150 of the Town Code to revise the required parking requirements for restaurants. Section 2.5.8 (a) of the North 40 Specific Plan states that the number of off-street parking spaces required for a non-residential use shall

PREPARED BY: Jocelyn Shoopman  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: October 19, 2020

REMARKS (continued):

be consistent with the parking required in the downtown as required within Division 4 of the Zoning Ordinance. Section 29.10.150 (b) (1) of Division 4 of the Zoning Ordinance requires one parking space for each 300 square feet of gross floor area for retail and commercial stores, shops, restaurants, bars, taverns, and nightclubs.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/20/2020

ITEM NO: 8

DESK ITEM

---

DATE: October 20, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision Denying a Request for a Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-07-114. Architecture and Site Application S-20-012. Property Owners/Applicant/Appellant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**REMARKS:**

Attachment 26 includes public comments received between 11:01 a.m., Monday, October 19, 2020 and 11:00 a.m., Tuesday, October 20, 2020.

**Attachments previously received with the October 15, 2020 Staff Report:**

1. August 26, 2020 Planning Commission Staff Report, with Exhibits 1-7
2. August 26, 2020 Planning Commission Addendum, with Exhibit 8
3. August 26, 2020 Planning Commission Desk Item, with Exhibit 9
4. August 26, 2020 Planning Commission Verbatim Minutes
5. September 9, 2020 Planning Commission Staff Report, with Exhibit 10
6. September 9, 2020 Planning Commission Desk Item, with Exhibit 11
7. September 9, 2020 Planning Commission Verbatim Minutes
8. September 23, 2020 Planning Commission Staff Report, with Exhibits 12-14
9. September 23, 2020 Planning Commission Addendum, with Exhibits 15-16
10. September 23, 2020 Planning Commission Desk Item, with Exhibit 17
11. September 23, 2020 Planning Commission Verbatim Minutes
12. September 28, 2020 Planning Commission Staff Report, with Exhibits 12-14
13. September 28, 2020 Planning Commission Addendum, with Exhibits 15-16
14. September 28, 2020 Planning Commission Desk Item, with Exhibit 17

**PREPARED BY:** Jocelyn Shoopman  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: October 20, 2020

Attachments (continued):

15. September 28, 2020 Planning Commission Desk Item B, with Exhibit 18
16. September 28, 2020 Planning Commission Verbatim Minutes
17. Appeal of Planning Commission decision, received October 1, 2020
18. Draft Resolution to Deny Appeal and Deny Project
19. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
20. Draft Resolution to Grant Appeal and Approve Project, with Exhibits A and B
21. Parking Summary Table Provided by Commissioner Hudes at the September 28, 2020 Planning Commission meeting
22. Letter from the Applicant, received October 14, 2020
23. Letter from Applicant's Attorney Dated October 8, 2020
24. Letter from the Planning Commission Chair and Vice Chair, received October 13, 2020
25. Public Comments received between 11:01 a.m., September 28, 2020 and 11:00 a.m. October 15, 2020

Attachment previously received with the October 19, 2020 Addendum Report:

None

Attachment received with this Desk Item:

26. Public comments received between 11:01 a.m., Monday, October 19, 2020 and 11:00 a.m., Tuesday, October 20, 2020

October 19, 2020

Dear Mayor Jensen, Vice Mayor Spector, and Council Members Sayoc and Rennie:

I hope that you will agree with the Planning Commission's reasons for denying the elimination of the underground garage at the North 40. I looked closely at the SummerHill proposal and was very disturbed by many things.

The most discouraging thing about accepting what SummerHill says in the proposal is the inconsistency and unreliability of its numbers. In some places we learn that there will be 330 spaces; in others, 331. In the latest iteration, we find there will be only 319 spaces. In some places, SummerHill uses gross commercial footage for its figures while in others it uses leasable square footage. In its figuring out of how many parking spaces should be provided, it fails to average up when this is what the law requires. By my reckoning, this would add 2 spaces, not the 1 space mentioned in the SummerHill lawyer's letter. By dribs and drabs, SummerHill is removing parking.

On page 763 of the agenda packet, Berliner Cohen claims that "The Commissioner's spreadsheet could not be relied upon by the Commission as constituting substantial evidence, as it was clearly wrong." This is debatable, but by the same token, approval can certainly not be based on the applicant's tables since these contradict each other and thus cannot be relied on as "constituting substantial evidence."

As I've stated elsewhere, I don't understand why the HAA applies to this application since the application does not ask for a change in the amount of housing. In regard to this, I find the following statement completely baffling and wonder if Council members might ask the applicant to clarify how having or removing an underground garage in a commercial area would in any way impact the amount of housing at the North 40. Here is the statement in question:

It is clear from the justification provided by SummerHill that they would incur millions of dollars of additional costs to build the underground parking level that is not required by Town Code. **Imposing such an unnecessary expenditure would thus violate the HAA because it would have the same impact on the ability of the Project to provide housing as reducing the density of the Project would have.**

Another problem is that the applicant fails to show real benefits to eliminating the underground garage. The claim that reduced parking will encourage bicycling or using public transportation seems dubious. Because of the dangerous crossings at Lark and Los Gatos Boulevard and at Samaritan Drive and Los Gatos Boulevard, it seems unlikely that people will want to bike to the North 40 commercial district to shop. Because of the infrequency of bus service along the Boulevard, it seems even less likely that people would use buses to go there.

Further, the so-called benefit that enough or even extra parking would "induce demand" seems inappropriate. A solid amount of parking will help demand for the commercial area—which is

ATTACHMENT 26

something I would think we would want. Lack of adequate parking will make people avoid the North 40 commercial area, almost guaranteeing that it will fail.

I urge you to deny this application. If Exhibit A provides accurate numbers, this just shows that the application itself contains numbers that are NOT accurate and statements that are false. I also urge you to deny the application based on the fact that there are no real benefits to the public to eliminating the underground garage. I hope you will recall that when you approved the North 40 proposal in 2017, what you approved included the underground garage. You recognized at the time that extra parking is a good thing and that we should avoid the parking problems we face downtown. The extra parking was not a requirement then. If you allow the developer to remove the underground garage, you are saying that a developer can offer all kinds of good things that a community wants but that may not be legally required, just in order to get approval — and then later that same developer can rely on regulations to remove the offering on which approval was based in the first place.

Sincerely,

Barbara Dodson

October 17, 2020

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

**Request for Modification to an Existing Architecture and Site Application Approval (S-13-090)**

Dear Mayor Jensen and Members of the Council:

These are my personal comments and are not meant to represent the views of the Planning Commission.

The applicant's justification for the elimination of the parking garage evolved during the course of three months during which the hearings took place over Zoom. First, the justification was that the parking was not needed because a party backed out. Then the justification was that a lesser number was required but the reason was not stated for this **drastic decrease (28%)** that cannot be explained by the minor change in building configuration (8%). It's not just that the underground parking is being removed, the concern is that with nearly 1/3 less parking, this will have a dramatic impact on the residential and commercial experience, and that is why it is inconsistent with the Specific Plan.

With invaluable input from public correspondence and testimony during the hearings, I put together some tables and discovered the factor driving the lesser number. In the final hearing, the applicant focused on a change in downtown parking requirements (which was adopted by the Town with no discussion about the effect it would have on the North 40).

I believe there is a difference of opinion about which version of downtown parking requirements applies to this application to modify. The Planning Commission voted to deny with a motion that I made which relied on the fact that the parking requirements for those non-Market Hall buildings are specified by an approved A&S. That approved application for those non-Market Hall buildings states their parking requirement at the time the application was deemed complete (8/1/2017). Those requirements are significantly greater than the current requirements.

1. **Parking Deficiency.** The application of the parking requirements specified by the relevant portions of the North 40 Specific Plan would result in a **parking deficiency of 73 spaces** if the underground parking were eliminated. **That is based on an objective standard and is one basis for Planning Commission denial.**
2. **Discrepancies.** With regard to reviewing an application with numerous discrepancies (which was one of the findings regarding objective standards in the motion), I asked this of the Town Attorney:

COMMISSIONER HUDES: I understand. This is really a question I think for the Town Attorney. If we've been presented with documents as part of this application for modification along the course of the three or four meetings that we've had, are we to consider all of that information?

TOWN ATTORNEY SCHULTZ: Yes, you are. That's all part of the record and you should consider it all, and if there are discrepancies between documents you should try to resolve those, and if you can't that could be the basis for your decision for either denial or approval. So yes, all documents that have been submitted for the modification are part of the record and should be taken into consideration.

These discrepancies are still unresolved—the applicant has never reconciled and explained the inconsistencies in their own materials, and staff has not provided its own reconciliation of the inconsistencies; hence the request for an **independent review** of the required and provided parking spaces.



With the applicant declining to allow time for that review to proceed, and staff not performing this analysis, we are left with these inconsistencies in the application that is before the Council. If approved, these inconsistencies will remain and will serve as a source of contention as the project moves forward. **That was another basis for denial based on objective standards.**

3. **Mistaken Calculations.** There were also errors in the basis for rounding up spaces as well as the incorrect use of net versus gross square footage. There are still discrepancies in the documents that are part of this application regarding the count of non-Market Hall parking: 155 in one place 143 in another, and 150 shown on the drawings. These are **objective standards** set forth in the Specific Plan and in Town Zoning Codes. The applicant does not address this in the appeal.
4. **Unsecured Senior Parking.** In addition, only 47 of the 50 required spaces for senior affordable housing are secured, according to the drawings, and the applicant has not addressed this in the appeal. **Another objective measure.**

**The motion to deny carried by a 4-2 vote** with 1 recusal. Owing to the good work of my fellow Commissioners and advice from the Town Attorney, **absolutely nothing in the motion relied on subjective measures.** The applicant does not address this in the appeal.

Finally, there was something of concern in the dissent from two Planning Commissioners (something I've not seen on any matter in twelve years that I've been participating in Town affairs). The dissent suggests that the discussion of tables, which were about the notes presented during deliberations did not provide fair process and the effect was "confusion and obfuscation." That was certainly not the intent—the intent was to clarify in the face of the discrepancies in the applicant's documents.

The additional tables were necessary because the applicant presented inconsistent and conflicting information including during the September 28, 2020 hearing. In that hearing the applicant presented Exhibit A which still does not specify Residential vs. Commercial "Proposed Parking Provided" (a requirement of the Specific Plan) in the final column, and staff did not present its own analysis of the parking numbers.

The tables were prepared in advance, provided to staff in advance of the hearing, and certain tables were selected for discussion based on the testimony received during the hearing and served as notes for deliberations. It would have been impossible to submit the correct tables prior to the hearing.

There is no deadline for notes used by Planning Commissioners in their deliberations. The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and have an independent review of the tables and numbers that were presented. The applicant declined. Any Planning Commissioner could have asked for a recess or made a motion for a continuance if they felt that they needed more time to analyze information presented during deliberations. They did not. Further, the applicant does not cite this as grounds for appeal.

I've provided more detailed responses in Attachments 23 and 24.

By the way, we've been here before. An action by the Council taken without addressing the issues, errors, and discrepancies resulted in an unhappy outcome for the Town.

I know that the Council will "do the right thing" with information that is provided to it. Thank you for your consideration.

Regards,  
Matthew Hudes



ANDREW L. FABER  
PEGGY L. SPRINGGAY  
SAMUEL L. FARB  
JAMES P. CASHMAN  
STEVEN J. CASAD  
NANCY J. JOHNSON  
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STEVEN L. HALLGRIMSON  
FRANK R. UBHAUS  
RALPH J. SWANSON

NANCY L. BRANDT  
LESLIE KALIM MCHUGH  
BRADLEY HEBERT

October 8, 2020

VIA E-MAIL

Marcia Jensen, Mayor  
And Members of the Town Council  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030  
[council@losgatos.ca.gov](mailto:council@losgatos.ca.gov)

Re: Los Gatos North Forty; Request for Modification to an Existing Architecture and Site Application Approval (S-13-090)  
Appeal to City Council; Agendized for October 20, 2020

Dear Mayor Jensen and Members of the Council:

This letter is written on behalf of SummerHill Homes, the Applicant for the above-entitled modification. The Planning Commission denied the application. Its denial was in error, an abuse of discretion, and was not based upon substantial evidence in the record. It also violated the Housing Accountability Act (Govt. Code Sec. 65589.5, the "HAA"). We are very familiar with this Project, as we represented the Applicant in connection with the original denial, the Litigation, and the subsequent approval of the Project.

A short summary of the error of the Planning Commission is that they were properly advised by the Town Attorney that the Application had to be evaluated in accordance with objective standards of review, the definition of which was read to them, and that their discretion was circumscribed by State laws, including the Housing Accountability Act and the Housing Element Law. They were further advised that the Modification complied with all objective parking and other standards of the Town.

Mayor Marcia Jensen  
October 8, 2020

The motion for denial was stated to be based upon an erroneous analysis of the parking requirements that had been prepared by one Commissioner. It was not based on the applicable City Zoning Code or any other applicable objective standards. As such the denial is not based on objective standards and is also not supported by substantial evidence in the record.

To explain more fully: we concur with the advice the Commission was given by the Town Attorney that the Housing Accountability Act does apply to the requested modification. There is no question that the HAA applies to the entire Phase 1 Project. In fact, in the Litigation, Judge Takaichi explicitly stated in his opinion that the Project was a "housing development project" within the scope of the HAA.

Because the Project is subject to the HAA, the Town is limited to using only objective criteria in its evaluation of Project applications. As Staff has advised the Commission in the past, Section 65589.5(j) requires that the Application can only be turned down for a violation of objective standards. A recent amendment to the HAA clarified that this requirement also applies to imposing "*any conditions that have the same effect or impact [as reducing density would have] on the ability of the project to provide housing.*" (Govt. Code Sec 65589.5(h)(7).)

That same amendment clarified the meaning of "objective" as follows:

*Until January 1, 2025, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Govt. Code Sec 65589.5(h)(8).)*

It is clear from the justification provided by SummerHill that they would incur millions of dollars of additional costs to build the underground parking level that is not required by Town Code. Imposing such an unnecessary expenditure would thus violate the HAA because it would have the same impact on the ability of the Project to provide housing as reducing the density of the Project would have.

RESPONSE: The costs are not "additional." They are a result of the approved project. Eliminating the parking could have the effect of reducing the cost and increasing the profit of the applicant, but the Town is not requiring the applicant to do anything to incur additional cost. Also, there is no evidence that the parking reduction is the "same impact" as reducing the density. Further, the effect of having less parking would weaken the prospects for acceptable housing: this is the opposite of the goal of the HAA.

Despite being advised of this clear requirement of the law by the Town Attorney, the Planning Commission seemed swayed by subjective opposition to the Application and denied the requested modification in violation of the HAA.

The maker of the motion to deny cited only one allegedly objective standard that he claimed was violated by the Application: he claimed based on his own, idiosyncratic analysis, that the Project was under-parked. However, as other Commissioners noted, and as Staff also stated,

Mayor Marcia Jensen

October 8, 2020

If there is one thing that has been clear throughout this process, it is that the underground parking level is not necessary to provide the amount of parking required by the Town Code. The maker of the motion also gave several other reasons for denial, acknowledging that they were not based on objective planning standards. As such, these simply reveal subjective antagonism to the Application, and must be disregarded.

**RESPONSE:** This assertion is incorrect. Nowhere in the motion were there any reasons or findings that were not based on objective standards.

We are sure that the Town is aware that the Legislature has amended the HAA several times since this project was initially approved. These amendments have all been aimed at further reducing a city's discretion in deciding on housing development project applications. In addition, the HAA now provides significantly increased exposure for a city that violates its strictures, including additional exposure to fines, penalties, and claims for damages, not to mention attorneys' fees.

If you need additional information or clarification, please feel free to contact the undersigned. We ask that this letter be made part of the official record of proceedings.

Very Truly Yours,

BERLINER COHEN



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ALF

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Joel Paulson, Community Development Director  
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**Dissenting opinion for the North 40 Planning Commission Decision of September 28, 2020**

**Existing Architecture and Site Application S-13-090, located at 14225 Walker Street.  
APN 424-56-017. Architecture and Site Application S-20-012**

The Planning Commission motion to deny the modification of Existing Architecture and Site Application S-13-090 to remove underground parking for the Market Hall in the North 40 Specific Plan Area passed 4-2 on September 28, 2020, with the Planning Commission Chair and Vice Chair voting against the denial.

It is highly likely that as a matter of personal opinion, nearly all, if not all members of the Planning Commission agree with the Town residents that Summerhill Homes should build the underground parking garage as a matter of good faith and other reasons as well. However, the Commission is charged to look at the law as a quasi-judicial body for which law in this case is primarily the Town commercial parking code contained in 29.10.150(b) which is what the North 40 Specific Plan references as its standard for parking. This section of the Town code is the standard for downtown commercial parking. There are some additional issues involved in this hearing, but the issues were described in detail by the Town Attorney in a written memo before the September 28 hearing (intended for September 23). As a result of this direction by the Town Attorney, it is clear that the Commission was to only make findings based on objective standards, not based on subjective standards, personal opinions, nor based on public opinion.

As the two dissenting votes, the Planning Commission Chair and Vice Chair assert that the Planning Commission motion for denial was based on incorrect and misleading application of Town objective standards as well as confusing and incorrect analysis presented in the form of spreadsheet tables by the maker of the motion during the meeting after public discussion was closed. The Chair and Vice Chair along with staff, challenged this information, as incorrectly and inconsistently applying the Town parking standards.

The tables, which were the basis of the motion to deny, were submitted by the maker of the motion on the day of the hearing after the deadline for the desk item and were not viewed or reviewed by the Commission, staff or the applicant until after the public hearing was closed, only minutes before the motion to deny was made.

RESPONSE: The additional tables were necessary because the applicant presented inconsistent and conflicting information, including during the 9/28 hearing, and staff had not prepared its own analysis of the parking numbers. The tables were prepared in advance, provided to staff in advance of the hearing, and selected based on the testimony received during the hearing and served as notes for deliberations. There is no deadline for notes used by Planning Commissioners in their deliberations.

The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and to have an independent review of the tables and numbers that were presented. The applicant declined.

NOTE: 29.10.150 (b) covers the parking requirements for downtown, which is the objective standard required for commercial parking in the North 40 Specific Plan, as mentioned in the introduction of this dissent.

The table provided by the maker of the motion during the hearing, used to support the motion to deny, is reproduced below.

Table 1: Maker of the Motion’s Parking Analysis using 2017 Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	47	(3)
Residential	19	19	0
Commercial	323	253	(70)
Total	392	319	(73)

The highlighted numbers are an incorrect application of the current objective standard of Town Code Section 129.10.150 (b).

There are two inaccurate claims based on this table and therefore the related finding in the motion to deny is incorrect.

(a) Inaccurate Claim: Affordable senior parking—50 required, 47 provided, 3 under.

Rebuttal:

The applicant is providing 50 parking spaces for 49 units (plus one manager unit for a total of 50 units). The requirement in the North 40 Specific Plan for this affordable senior housing is for ½ space for each resident and ½ guest space for each resident for a total of 50 parking spots. As an aside, there are many residents in Town who do not feel that 50 spots are enough, but the non-profit partner, Eden Housing, has continually maintained that they operate 36 similar facilities throughout the Bay Area and this amount of parking suffices for this application. However, that is not the issue for this motion.

The maker of the motion asserted that because 3 spaces of the 50 are not shown on the drawings supplied by the applicant as being on the same floor of the parking garage as the other 47, they will not be secured for the residents to use, therefore they cannot be counted.

RESPONSE: This is an incorrect characterization of motion. The motion relied on the drawings which show a gate on A.4 (p.63) that secures access to the 47 spaces on level P-3. There is not a gate or any mechanism to secure the 3 spaces on the other floor. There is no indication that those spaces will be secured. And the applicant did not address any other mechanism of securing these spaces in the appeal despite being raised in the denial.

not based on fact. We have no way of knowing whether or not the applicant and the manager of the affordable housing (Eden Housing) have a way to secure the other 3 spaces without submitting this question in a public hearing and asking for a response. And we have no way of knowing whether the applicant will install all 50 spaces on the gated floor of the parking structure. Therefore, it was incorrect to deduct these 3 spaces.

RESPONSE: We do have a way of knowing. The drawings clearly show that only 47 will be gated. There is no evidence or testimony that the spaces on other floor will be secured. There is no requirement that a question be asked, especially if the drawings are clear. Further, the applicant could have provided additional information on this matter in the appeal, and they have not. There is still no information from the applicant that all parking for senior housing will be secured, as it is required to be.

Further, there is no requirement in the North 40 Specific Plan to secure the parking for the affordable housing units, so it was incorrect to deduct any of the spaces provided for purposes of contributing to the motion to deny. While it is in the best interest of the applicant and their partner, Eden Housing, to ensure that those spaces are available

(b) Inaccurate claim: The North 40 specific plan standard commercial parking required is for the residents and the residents' guests and not the general public, it is not an objective standard requirement. This could be made a condition of approval if the Council so desires during the appeal hearing.

Rebuttal:

The motion to deny claims the applicant is 70 spaces under the 323 required.

As explained by staff on multiple occasions during the meeting, each application must be evaluated on its own for parking and other code requirements against **the building codes that are in effect at the time a building permit is filed**. Nonetheless, the maker of the motion presented the table on the next page, with now-superseded 2017 parking requirements, to calculate the number of parking spaces required.

RESPONSE: Neither a modification A&S nor a building permit have been filed for non-Market hall commercial buildings. Therefore the parking requirements for the non-Market hall commercial buildings are those that were in effect at the time their A&S application was deemed complete which was 8/1/17. And those were presented by the applicant on 8/26/2020 in A.11.

It is absolutely incorrect that this A&S modification application must be evaluated against the building codes that are in effect at the time a building permit is filed. The statement reflects a fundamental misunderstanding that an A&S follows a building permit; in fact, it is the other way around: a modification to the building permit follows a modification to the A&S. Mr. Paulson so stated (p. 55). Mr. Paulson also stated that a modified building permit has not yet been filed for the re-configured building. So the statement that this application (to modify the A&S for the Market Hall only) must be evaluated "against the building codes that are in effect **at the time a building permit is filed**" is not possible since the modified building permit has not been filed yet. It is not possible to evaluate this application for a modification A&S against code requirements of a future building permit.

Further, this application is for parking, which is a **zoning code** requirement, not a **building code** requirement; therefore the building permits and their dates are irrelevant.

Table 2: Applicant’s Estimated Square Footage using 2017 Parking Space Factors

Modified A&S Exhibit A 9/23	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300sf	1:300sf	1:100 *	1:75 *	1:590sf	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	125.91	38.88	4.70	320.72
Net Spaces Required	70	83	126	39	5	323
Market Hall	75		Non-market hall	248		323

NOTE (\*): The “Factor” for restaurants and bars in this table was based on the applicant’s estimate at the time (2017) of how many parking spaces would be needed converting hypothetical seats to square footage and is not something that has been used in our parking code. In other words, it was not a standard even in 2017 as the standard was based on the number of seats when the application was first approved.

All of the highlighted numbers are incorrect because the maker of the motion applied a double standard, suggesting that the Commission:

- Apply the current Town Code 29.10.150 (b) to the Market Hall
- Apply the Town Code 29.10.150 (b) from 2017 to the remainder of the commercial sites (since the applicant was not proposing a change to these commercial pads).

RESPONSE: Neither a modification A&S nor a building permit have been filed for non-Market hall commercial buildings. Therefore the parking requirements for the non-Market hall commercial buildings are those that were in effect at the time their A&S application was deemed complete which was 8/1/17. And those were presented by the applicant on 8/26/2020 in A.11.

The maker of the motion did not find that the application for the Market Hall on a stand-alone basis did not meet the parking requirements.

RESPONSE: The motion found that the application to modify the Market Hall A&S does not meet the parking requirements of the relevant portions of the N40 specific plan.

The applicant and staff have continued to maintain that the applicant is exceeding the requirement for the Market Hall by 52 spaces even after removal of the underground parking.

Instead, the maker of the motion said that because the Housing Accountability Act applied to this entire project as was ruled by the State in their lawsuit against the Town that the Town should look at this application for the Market Hall in conjunction with th



entire Phase I project, including the remaining commercial pads, which at this time, do not have a commercial developer in place to build them out.

What the maker of the motion chose to disregard is that the Town Code for commercial parking for restaurants and bars (Section 129.10.150(b)) was changed in 2018 from using seats as the methodology for determining parking spaces to using gross square footage as the methodology.

**RESPONSE:** This was not disregarded. The new code does not apply to the A&S application that was deemed complete on 8/1/2017.

This was done for a variety of reasons including community vitality across the Town. So as of 2018, all of these commercial spaces have an objective parking standard of 1 space for every 300 gross square feet. This is the only applicable parking standard, and it is the objective standard the applicant used in the data they presented and that staff used in their report.

**RESPONSE:** The applicant cited the 2017 parking requirements in this same application (in red ink on A.11). This is an example of the inconsistencies that still exist in this application.

This change in the parking code for restaurants and bars benefits not only Summerhill Homes for this application but all restaurant and bar owners in Town and it has been doing so for over 2 years.

Despite the assertion by the Town Attorney, the Community Development Director, and the Chair and Vice Chair of the Planning Commission that it was improper to apply two conflicting standards to the same application and that further, the applicant can only be held accountable to the standard at the time of application, the motion proceeded.

**RESPONSE:** The non-Market Hall buildings are not the subject of this application, therefore there are not "two conflicting standards." Their parking requirements are specified by their unmodified A&S application that was deemed complete in 2017.

Following, we present Table 3 using the maker of the motion’s data, but correctly applying the current Town code Section 29.10.150 (b). Table 3: Applicant’s Estimated Square Footage and Current Parking Space Factors

Modified A&S Exhibit A 9/23/2020	Market	Retail	Restaurant	Bar/Tavern	Community Room	Total
Factor	1:300	1:300	1:300	1:300	1:590	
Market Hall	20760				2772	23532
Other Commercial		24611	12591	2916		
Total	20760	24611	12591	2916		63650
Calc. Spaces Required	69.73	82.04	41.97	9.72	4.70	
Net Spaces Required	70	83	42	10	5	210
Market Hall	75		Non-market hall	135		210

The revised number for the “Other Commercial” based on the current estimates for square footage and applying the current parking standard in 29.10.150 (b) which standard (downtown parking) is cross referenced in the North 40 Specific Plan is **113**

**spaces fewer than** what would have been required in 2017 before the code changed (total 323 in the motion but actually 210 per current code). Coincidentally, this is nearly equivalent to the 124 spaces eliminated by eliminating the underground parking garage, further underscoring the applicant’s assertion that the underground structure is not needed.

Here we restate the table supplied by the maker of the motion showing the applicant meets The Town’s parking standard using the 1 space for every 300 sq ft. for commercial space.

Table 4: Table 1 Parking Analysis Restated using Current Code

Transition District A, B, C	Required	Provided	Over/(Under)
Affordable Senior (including guest)	50	50	0
Residential	19	19	0
Commercial	210	253	43
Total	279	322	43

The applicant clearly meets the requirement for parking in the Market Hall on a standalone basis (exceeding it by 52 spaces) and as shown above meets the parking required in the overall Transition District (exceeding it by a proposed 43 spaces).

**PC Motion FINDING 2:** The maker of the motion found that the applicant’s numbers were inconsistent with previous submissions and were confusing. The four specific issues stated in the motion relative to inconsistency included:

- Use of gross vs. net square footage (the maker of the motion asserted that net square footage was used in some documents supplied by the applicant when gross square footage is required).
- Not rounding up to the next whole number (required by code).
- 3 senior spaces not secured.
- Housing Accountability Act—must use the parking standards for the entire district vs. just the Market Hall as the number of residential units is not more than 2/3 of the Market Hall. (Note: This is contrary to what staff including the Town attorney have advised.)

RESPONSE: This is not contrary--the Town Attorney stated (on P. 10 of the 9/28/20 transcript) : "My opinion is you have to look at it as a whole. You don't get to use the Housing Accountability Act to your advantage and then say that the parking only applies to the Market Hall."

- Gross square footage for commercial is required by code. However, no one, not staff, the applicant, nor the Commission, was given an opportunity to address this assertion by studying the data and reaching a conclusion, but

RESPONSE: The tables were prepared in advance, provided to staff in advance of the hearing, and selected based on the testimony received during the hearing and served as notes for deliberations. There is no deadline for notes used by Planning Commissioners in their deliberations. The public portion of the hearing was re-opened and the applicant was offered the opportunity for a continuance to review the information discussed during deliberations and to have an independent review of the tables and numbers that were presented. The applicant declined. Any Planning Commissioner could have asked for a recess or made a motion for a continuance. They did not.

the estimated differential is approximately 15% more square footage for gross square footage vs. net. This amount translated to parking spaces required would not affect the applicant's compliance, but more important, the applicant should have had the opportunity to respond to the spreadsheet data supplied by the maker of the motion.

RESPONSE: The erroneous use of **net** rather than **gross** square footage was made by the applicant in A.11 and other documents that are part of this application. There was opportunity for the applicant and the public to read A.11.

- Not rounding to the whole parking space is a difference of one parking space, 331 versus 330 according to the applicant's data, which was not disputed.

RESPONSE: Just as in Downtown, rounding up is required for each separate use, that is each use in each building. Not for each parcel. "The parking requirement for various **uses** in the downtown are as follows" Sec. 29.10.150.(b)(1)

- And while the excess parking proposed proves this concern to be a non-issue, it was held up as an example of how the applicant included inconsistent or misleading information.
- The question of why secured residential parking spaces cannot be grounds for denying the application was discussed earlier.
- Staff analysis of parking required, using current code, shows that for the Market Hall independently OR for the entire Transition District, the applicant exceeds the objective standard of the number of parking spaces required.

RESPONSE: The applicant provided this analysis. Not Staff.

As a final comment on "inconsistencies" and "confusion", it could be argued that when two pages of tables are presented for the first time at a point in the meeting when public comment has closed, providing the applicant no opportunity to respond, this in itself creates confusion and obfuscation.

RESPONSE: The applicant was provided an opportunity for a continuance and declined. There is no evidence of intent to cause obfuscation or confusion. To the contrary, the application's inconsistencies required explication. In fact, Vice Chair Janoff identified several inconsistencies that she uncovered in her analysis in her remarks (p. 61 of the transcript.) And, as was stated previously, the Planning Commission Chair and Vice Chair pointed out the did not tables did not reflect current parking code (Section 129.10.150 (b)) and were themselves misleading.

**PC Motion final COMMENT:** The maker of the motion asserted that the Environmental Impact Report (EIR) that was certified for this project may need to be revisited. This was not a finding, but rather a comment.

RESPONSE: The record shows that there was no assertion, just a question that was raised by Commissioner Tavana which I re-stated and perhaps Staff would be willing to answer: "There's also another question that I have that's not part of the findings but that is something that I think would need to be looked at, and that is whether the EIR is applicable and whether the project meets CEQA requirements" (p. 88)

The question posed was that the parking might have changed enough to invalidate part of the Environmental Impact Report that was certified as part of the project approval. However, this was not a finding for denial of the application so will not be discussed further except to state that recent case law in California (2018) has ruled that "parking impacts, in and of themselves, are exempt from CEQA review". (*Residents for Responsible Development v. City of Covina*, Case No. B279590). For those that are not familiar, CEQA stands for the California Environmental Quality Act which provides a process/law for assessing and mitigating possible environmental impacts from a development project.

In conclusion, the writers of this memo assert that the Planning Commission's denial of this application was based on the incorrect application of current Town codes. Further, the last-

minute submission of spreadsheet tables presented as "correct" obscured fact by incorrectly

applying outdated Town code. Finally, it is important to add that there is no question that the concerns of residents were heard and acknowledged; there simply have not been any current objective standards identified as of this writing that would support a valid finding to deny this application, as much as we all would like Summerhill to build the underground parking for multiple reasons.

Respectfully,

Melanie Hanssen  
Chair, Planning Commission

Kathryn Janoff  
Vice Chair, Planning Commission