



MEETING DATE: 8/6/07  
ITEM NO: 9  
DESK ITEM

## COUNCIL AGENDA REPORT

DATE: AUGUST 6, 2007  
TO: MAYOR AND TOWN COUNCIL  
FROM: ORRY P. KORB, TOWN ATTORNEY *OK*  
SUBJECT: ADOPT RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING MODIFICATION OF AN APPROVED ARCHITECTURE & SITE APPLICATION RELATING TO GRADING AND LANDSCAPE IMPROVEMENTS ON PROPERTY ZONED HR-2 ½. ARCHITECTURE AND SITE APPLICATION S-06-066. APN 537-24-013  
PROPERTY LOCATION: 15350 SUVIEW DRIVE PROPERTY  
OWNER/APPLICANT/APPELLANT: CHARLES HACKETT

A typographical error in subparagraph iii. of paragraph I. is corrected in the attached proposed resolution to read as follows: "The opposition of Alex Gorovitz, the neighbor residing at 15335 Kennedy Road, is not convincing."

Also attached are the conditions of approval (Exhibit A to proposed resolution) which were inadvertently omitted.

### Attachments:

1. Corrected proposed resolution
2. Conditions of approval (Exhibit A)

PREPARED BY: **ORRY P. KORB**  
Town Attorney

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Reviewed by: \_\_\_\_\_ Assistant Town Manager *PS* Town Manager  
\_\_\_\_\_ Clerk Administrator \_\_\_\_\_ Finance \_\_\_\_\_ Community Development

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**RESOLUTION**

**RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION  
DENYING MODIFICATION OF AN APPROVED ARCHITECTURE & SITE  
APPLICATION RELATING TO GRADING AND LANDSCAPE IMPROVEMENTS ON  
PROPERTY ZONED HR-2 ½**

**APN: 537-24-013**

**ARCHITECTURE AND SITE APPLICATION: S-06-066**

**PROPERTY LOCATION: 15350 SUVIEW DRIVE**

**PROPERTY OWNER/APPLICANT/APPELLANT: CHARLES HACKETT**

**WHEREAS:**

A. This matter came before the Town Council for public hearing on June 18, 2007, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant/appellant and all interested persons who wished to testify or submit documents. 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 dated June 14, 2007, along with subsequent reports and materials prepared concerning this application.

C. The applicant/appellant is requesting an appeal of a Planning Commission decision to deny a request for modifications to an approved Architecture and Site application related to grading and landscape improvements on property zoned HR-2 ½.

D. On August 22, 2001, the applicant/appellant originally secured approval for a new hillside home and pool on the subject property; however, construction did not commence before the architecture and site approval expired on August 22, 2003. The Planning Commission approved a new Architecture & Site application for the same construction on May 26, 2004, and construction began in July 2004. Since that time, applicant/appellant has made certain improvements on the property without prior planning approvals, for which the applicant/appellant now seeks approval.

E. The application was considered and denied by the Planning Commission on September 13, 2006. The applicant/appellant appealed this decision on September 22, 2006. On October 16, 2006, the Town Council considered the appeal, and continued the matter to allow the applicant additional time to address the Planning Commission's concerns. On January 16, 2007, the Town Council granted the applicant/appellant's appeal and remanded the Architecture and Site application to the Planning Commission for review. The remand was based on the introduction of new information that was not available to the Commission at the time the application was denied. The Council also stated that the Commission did not support its decision to deny the application with clearly articulated findings.

F. On March 28, 2007, the Planning Commission considered the information submitted by the applicant and asked questions of the applicant/appellant and staff before continuing the application to April 11, 2007. On April 11, 2007, the Commission received public testimony and discussed each of the applicant/appellant's requested items. The Commission granted a partial approval, remanded one item for further analysis, and denied the remainder of the requested modifications. The applicant/appellant appealed the Commission's decision on April 20, 2007.

G. The applicant/appellant claims that the Planning Commission erred or abused its discretion in that there was insufficient evidence to support its findings, and that the Commission added introduced new items without prior notice to the applicant/appellant.

H. The decision of the Planning Commission with regard to the pergola, entry wall B and the terraced retaining walls is reversed.

I. Council finds as follows:

i. Pursuant to Town Code section 29.20.300 that the appeal raises an issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision; to wit, the interpretation of the Hillside Development Guidelines regarding granting exceptions, grading and constructing retaining walls.

ii. Evidence presented by the applicant/appellant in writing and testimony, and additional evidence through the testimony of the Ian Felix, the neighbor at 15333 Kennedy Road and Lynn Olson, the neighbor at 15300 Suvie Drive, along with the direct observations of the members of Council, demonstrates that the modifications made without permits provide reasonable solutions to a number of privacy issues. The pergola provides a privacy barrier between the applicant/appellant's property and the neighboring property at 15333 Kennedy Road without blocking views of the Town from the neighboring property. The entry walls, which will be faced in stone and landscaped, will block disruptive light from headlights and fully define the driveway. The existing retaining walls compliment the development such that their replacement with walls as originally approved would not justify the resulting disruption, grading, truck trips and soil compaction concerns.

iii. The opposition of Alex Gorovitz, the neighbor residing at 15335 Kennedy Road, is not convincing. Mr. Gorovitz fails to demonstrate that views of the Town from his property are significantly impacted by the pergola. The staff report and the testimony of Lynn Olson, on the other hand, demonstrate that the pergola is visible only from the property located at 15300 Suvie Drive. Mr. Gorovitz's concerns about the use of stucco walls as opposed to wood fences is countered by the conditions of approval requiring natural surface treatment and landscaping of the walls. Testimony of the applicant/appellant's landscape architect demonstrates that stucco walls are more appropriate to the site given high wind conditions during the winter.

iv. The Hillside Guidelines allow exceptions and the integrity of the Guidelines is not compromised by granting exceptions where warranted. The modifications to the project were not originally permitted. Consequently, the applicant/appellant ran the risk that some or all of the modifications would not be approved, requiring their removal. The applicant/appellant's subsequent application for the necessary permits must be considered on its merits as land use matter rather than as punitive proceeding. The record demonstrates that the subject property presents a number of

unique and difficult issues resulting in seven public hearings before the Town Council and Planning Commission. The modifications improve the project from what was originally approved.

**RESOLVED:**

1. The appeal of the decision of the Planning Commission denying Architecture and Site Applications S-06-066 is granted, subject to the conditions of approval attached hereto and incorporated herein as Exhibit "A."

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 on the \_\_\_\_\_ day of July 2007, by the following vote.

COUNCIL MEMBERS:

AYES: Steve Glickman, Mike Wasserman, Diane McNutt,  
Mayor Joe Pirzynski

NAYS:

ABSENT:

ABSTAIN: Barbara Spector

SIGNED: \_\_\_\_\_

MAYOR OF THE TOWN OF LOS GATOS

LOS GATOS, CALIFORNIA

ATTEST:

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CLERK ADMINISTRATOR

TOWN OF LOS GATOS, CALIFORNIA

**TOWN COUNCIL - JUNE 4, 2007**  
**CONDITIONS OF APPROVAL**

15350 Suview Drive  
Architecture and Site Application S-06-66

Requesting approval of modifications to an approved Architecture and Site application related to grading and landscape improvements on property zoned HR-22. APN 537-24-010.  
PROPERTY OWNER/APPLICANT: Charles Hackett

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 listed below and in substantial compliance with the plans approved and noted as received by the Town on March 6, 2006 and approved by the Planning Commission on March 28, 2007. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. EXPIRATION OF APPROVAL. The Architecture and Site application will expire two years from the date of approval unless the approval is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. PRIOR CONDITIONS. All conditions of approval from Architecture & Site application S-04-44 shall be complied with unless modified by the conditions contained herein.
4. ENTRY & RETAINING WALLS. The driveway entry and retaining walls shall be faced with stone or other natural material, to the satisfaction of the Director of Community Development.

*Building Division*

5. PERMITS REQUIRED: Revised building plans shall be submitted for the alterations of existing site and retaining walls.
6. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the revised plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how each condition will be addressed.
7. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, 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, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at [www.losgatosca.gov](http://www.losgatosca.gov).
8. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
9. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program 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 San Jose Blue Print.

10. APPROVALS REQUIRED: The project requires the following agencies approval before issuing a building permit:
  - a. Community Development: Suzanne Davis at 354-6875
  - b. Engineering Department: Fletcher Parsons at 395-3460

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

*Engineering Division*

11. PROPERTY LINE WALL. Unauthorized fill shall be removed to the lines and grades reflected on the topography of Architecture and Site Application S-04-44. The wall shall be modified to provide a maximum six foot height as measured from the downhill side, and the wall drainage system shall be completed to the satisfaction of the Town Engineer.