



MEETING DATE: 4/16/07

ITEM NO. | |

COUNCIL AGENDA REPORT

DATE: April 12, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER


SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING A REQUEST TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE ON PROPERTY ZONED R-1:20. APN 529-31-041. ARCHITECTURE & SITE APPLICATION S-07-21. PROPERTY LOCATION: **RESERVOIR ROAD, LOT 3** PROPERTY OWNER: MARK VON KAENEL & DIANNA ROBINSON; APPLICANT/APPELLANT: TONY JEANS, T.H.I.S. DESIGN

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. The Council may take any of the following actions on Architecture & Site (A&S) application S-07-21 (**motion required**):
 - a. Uphold the Planning Commission's decision to deny the A&S application.
 - b. Grant the appeal and approve the A&S application, subject to the required findings (Attachment 1) and conditions (Attachments 2).
 - c. Grant the appeal and approve the A&S application with modified conditions.
 - d. Remand the application to staff for modifications.
4. Refer to the Town Attorney for the preparation of the appropriate resolution if approved or denied (**no motion required**).

If the Town Council determines that the Planning Commission's decision should be reversed or modified relative to the appeal:

PREPARED BY:  Bud N. Lortz, Director of Community Development

Reviewed by:  Assistant Town Manager _____ Town Attorney _____ Clerk _____ Finance
_____ Community Development

Revised: 4/12/07 1:13 PM

Reformatted: 5/30/02

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1. The Council needs to find one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission;
or
 - (2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
 - (3) 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.
2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. If the appeal is approved, use the findings and consideration of the Architecture and Site applications (Attachment 1), and modify the conditions in Attachment 2 as appropriate.
4. Refer to the Town Attorney for preparation of the appropriate resolution(s).

BACKGROUND:

The subject property is the former San Jose Water Company reservoir site and is located on the west side of Reservoir Road, south of Kimble Avenue. The undeveloped parcel was created as part of a four-lot subdivision (Sienna Oaks) approved by the Town in 2003. The reservoir was filled in and site grading was completed in Summer 2004. The subdivision identified approximate building envelopes and trees to be removed (see Exhibit S of Attachment 9).

The property is within the Hillside Area; although it is zoned R-1, the project must adhere to the Hillside Development Standards & Guidelines (HDS&G).

On January 24, 2007 the Planning Commission considered the application for a new residence and pool on Lot 3 of the Sienna Oaks subdivision. The Commission accepted public testimony and, following discussion, continued the matter to February 28, 2007 due to concerns about allowing the house to extend beyond the building envelope shown on the approved tentative map, proposed tree removals, and preservation of historic rock walls on the site. The Commission also felt it was important to listen to two key Town Council discussions on the subdivision before taking action on the application. Planning Commissioners were provided with recordings of the December 15, 2003 and January 5, 2004 Town Council meetings.

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On February 28, 2007 the Planning Commission considered the application and voted 5-1 to deny it based on a concern that the house and pool extend outside the building envelope shown on the approved tentative map.

PROJECT SUMMARY:

The applicant is requesting approval to construct a new single family home with an attached three-car garage and a swimming pool. Exhibit E includes general project data. The original report to the Planning Commission (Attachment 12) discussed a concern with the maximum floor area. That issue was resolved and the project is in compliance with the allowable floor area dictated by the HDS&G. The project includes a 3,959 square foot house and 715 square foot garage (4,674 square feet total). A 1,093 square foot cellar is exempt from the FAR because it is a below grade element.

The driveway to lot 2 bisects the southwest corner of the property. Portions of the driveway are graded out and part of the driveway to the new home site is graded and/or paved. The applicant is proposing a shared driveway approach over a small section of the existing driveway (see sheet C1 of the development plans, Attachment 3). There is an easement already in place for the portion of the lot 2 driveway that crosses the applicant's lot.

DISCUSSION:

The applicant consulted with surrounding neighbors prior to submitting the application to the Town. The applicant has proposed this particular design and site layout based on discussion and input from the neighbors. The house has been sited and set into the slope to minimize its visual impact from the street and to hide the garage entry. The two-story element is to the rear, stepping with the terrain. A number of existing trees will be relocated rather than being removed to minimize the impact to the site and provide adequate screening of the development. The driveway is being cut into the site and to lower the garage entry. The outdoor area steps down from the rear of the house to minimize wall heights and grading. A total of 375 cubic yards of soil will be exported from the site.

A condition of approval for the subdivision requires preservation of the existing dry stack stone rock walls on the property. One of these walls is located on lot 3, and runs parallel to Reservoir Road before heading northerly where it bisects the building envelope. The applicant is proposing to remove the wall and to reuse the stone to face the new walls to be constructed with the project. The applicant has indicated a willingness to reuse rock that has been stockpiled from the demolition of other stone walls within the subdivision.

Architectural Review

The Town's Consulting Architect, Larry Cannon of Cannon Design Group, reviewed the plans and visited the site. The architect's report states that the house is well designed with good proportions,

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visual balance and details. Given the one-story profile facing Reservoir Road, it will have a low profile from the street. The northerly proportion of the house has a two-story façade and could have a visual impact on the home to be constructed on lot 4. The recommendations of the Consulting Architect have been incorporated into the plans.

Building Envelope

The Tentative Map exhibits show approximate building envelopes for the new homes to be built within the Sienna Oaks subdivision (Exhibit S to Attachment 9). The applicant's proposed building footprint is largely within the footprint shown. Part of the porch and bedroom 2 extend beyond the footprint at the front (southeast end) of the house, and a game room with covered balcony extends beyond it at the rear (northwest end) of the house. The pool and decking is also outside the building envelope.

Exhibit R to Attachment 9 is the Town Council resolution approving the Sienna Oaks subdivision. Sub-section 2.A. on page 3 of the resolution states:

Attachment 44 of the report dated December 1, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes.

The referenced Attachment 44 is Exhibit S to Attachment 9. The Council discussed the option of adopting the building envelopes and tree removals shown on Attachment 44 as definitive requirements, but decided that it should be used as a "guiding light". The intent of the Council decision was to allow some flexibility, and the building envelopes were not adopted as a definitive requirement for the new lots.

Least Restrictive Development Area (LRDA)

The pool and portions of the house that extend beyond the delineated building footprint are within the LRDA for the site (areas with slopes not exceeding 30% and not encumbered by trees).

Driveway

The preliminary site plan showed a different driveway approach than what is proposed under this project. The applicant modified the driveway in response to comments from neighbors who prefer not to see the garage entry, and to avoid having the garage facing the street as encouraged by the HDS&G. There is also a large specimen oak (tree #30) located near the street that was intended to be saved at the time of subdivision approval. The applicant has kept development around this tree to a minimum so it is not adversely impacted.

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The new driveway will extend off the existing driveway leading to lot 2. The applicant is also proposing a parking area between the garage and the street. The parking bay is five feet from the property line and eight feet from the street at the narrowest point. Staff suggested that the parking bay be reduced in size to allow for additional landscape screening. The applicant did not elect to make this change. If the Council believes that more area is needed for planting, a condition can be added requiring the parking bay to be modified or reduced in size.

The driveway design needs some minor modifications to pull it further from several trees that are in close proximity to areas that will be paved and/or have retaining walls. Trees #4 and #5 are located near the curve where the driveway moves away from the street toward the garage. The Consulting Arborist has indicated that tree #5 is not in good condition and would not likely survive if grading occurs within its canopy. Tree #16 may also be impacted by construction, although the applicant intends to save both this tree and tree #5. Staff will work with the applicant to refine the driveway design to work around the trees in question.

Tree Impacts

Six trees are proposed for removal, five due to conflicts with the proposed construction, and one because it is crowding an oak tree. In addition, seven trees are proposed to be relocated on the site. The tentative map preliminary site plan shows removal of five trees within the building footprint and two outside it.

The Town's Consulting Arborist, Arbor Resources, reviewed the plans and visited the site and prepared an arborist report for the project. The Consulting Arborist found that the proposed removals and relocations comply with the Town's Tree Protection Ordinance. Two of the trees proposed for relocation are questionable due to their location and/or asymmetrical canopy. Trees to be removed and any relocated trees that do not survive will be required to be replaced in accordance with the Town's canopy replacement criteria. Conditions of approval have been included to require all recommendations of the Consulting Arborist to be implemented and complied with throughout all phases of construction.

Grading

Grading cut and fill depths exceed the criteria specified in the HDS&G for a small area of the driveway near the garage. The applicant is proposing to cut more than the recommended depth of four feet in order to lower the house and garage entry so it is not visible to neighbors across Reservoir Road or from the street. The cut is also needed to make the transition from the existing graded driveway to the garage. Staff does not have any concerns about the grading given the site characteristics and the need to design the driveway with a maximum slope of 15%. The Council may grant an exception to the maximum allowed cut depth for the driveway pursuant to Chapter IX, section F. of the Hillside Development Standards & Guidelines. Any deviation shall include the

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rationale and evidence to support the granting of an exception. The Council should discuss this request and make a decision on based on the merits of the project and the information and justification provided by the applicant. Other than the grading exception, the project is in conformance with the HDS&G.

Rock Walls

The applicant is proposing to use the rock from the existing historic wall on the site to surface the new retaining walls that will be constructed along the driveway and around the entry to the garage. The applicant is also willing to reuse rocks that have already been salvaged from elsewhere in the subdivision. The condition attached to the tentative map reads as follows:

The rock walls and stairways shall be preserved for possible incorporation into future residential development. Where the walls are in disrepair the remnants shall be incorporated into future landscaping or be made into an element for an entryway into the subdivision.

The Planning Commission did not feel the condition provides clear direction on whether the walls were to be preserved in their existing locations or if the rock can be taken from the walls and reused on the site. For this particular lot, it is not practical to save the entire wall as it bisects the building envelope. A portion of the wall could be preserved along the driveway, although it would be difficult to achieve continuity between a new wall and the existing rock wall.

PLANNING COMMISSION ACTION:

The Planning Commission considered the application on January 24 and February 28, 2007. The Commission voted 5-1 to deny the application (Commissioner O'Donnell dissented and Commissioner Sayoc recused herself from this item). The Commission referred the matter to the Council for an interpretation on the extension of the house and pool beyond the building footprint shown on the approved tentative map. Attachments 7 and 10 are the verbatim minutes of the two Planning Commission discussions.

APPEAL:

The applicant appealed the Planning Commission's decision based on his belief that the Planning Commission erred in its determination that the building envelope must contain the entire house and that the footprint cannot encroach outside the envelope. The applicant's appeal statement includes discussion on the main points already covered in this report, driveway, building envelope, tree impacts, rock wall and grading (see Attachment 4).

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ENVIRONMENTAL REVIEW:

Environmental review was completed for the site as part of the subdivision review and approval. The A&S application for the new home is categorically exempt pursuant to Section 15303 of the California Environmental Quality Act (CEQA) guidelines.

CONCLUSION:

If the Council determines that the proposed project is consistent with the subdivision approval and decides to grant the appeal, the following actions should be taken:

1. Find that the proposed project is categorically exempt, pursuant to Section 15303 of the California Environmental Quality Act as adopted by the Town (Attachment 1);
2. Grant the exception to the grading standard and determine that the project is otherwise in substantial compliance with the HDS&G (Attachment 1);
3. Determine that the project is in conformance with the considerations for Architecture and Site applications as set forth in Section 29.20.150 of the Zoning Ordinance (Attachment 1);
4. Approve the Architecture and Site application subject to the conditions in Attachment 2 and as shown in the development plans (Attachment 3).

If the Council decides that revisions are needed to bring the project into compliance with the subdivision approval and/or the HDS&G, conditions can be added and staff will work with the applicant to achieve the desired plan changes. The matter may be referred back to the Planning Commission if significant resign is required.

FISCAL IMPACT: None

Attachments:

1. Required Findings & Considerations (four pages)
2. Recommended Conditions of Approval (eight pages)
3. Development plans (nine sheets), received March 12, 2007
4. Applicant's Appeal Statement (two pages)
5. Applicant's letter (two pages), received March 12, 2007
6. Exhibit presented at February 28, 2007 Planning Commission meeting (one page)
7. February 28, 2007 Planning Commission minutes (30 pages)
8. February 28, 2007 Planning Commission Desk Item with Exhibits V & W
9. February 28, 2007 Planning Commission report with Exhibits N-U
10. January 24, 2007 Planning Commission Minutes (24 pages)
11. January 24, 2007 Planning Commission Desk Item with Exhibits L & M
12. January 24, 2007 Planning Commission report with Exhibits A-K

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13. Letter from Arthur & Dorothea Bonner, Dennis McEvoy & Kim Worsencroft, Cal & Lillian Gordon, Gary & Susan Kankel and James Soderberg (two pages), received March 29, 2007
14. Letter from Gary G. Gillmor (two pages), received April 12, 2007
15. Letter from Lee Quintana (two pages with one page attachment), received April 12, 2007

Distribution:

Tony Jeans, T.H.I.S. Design, P. O. Box, Los Gatos, CA 95031

Mark Von Kaenel & Dianna Robinson, 245 Carlton Court, Los Gatos, CA 95032

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TOWN COUNCIL – APRIL 2, 2007
REQUIRED FINDINGS & CONSIDERATIONS FOR:

Reservoir Road (Lot 3)
Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.
PROPERTY OWNER: Tony Jeans, T.H.I.S. Design
APPLICANT: Mark Von Kaenel & Dianna Robinson

FINDINGS:

Required finding for CEQA:

The project is Categorically Exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

Exception to the Hillside Development Standards & Guidelines:

The project includes a maximum cut depth of eight feet for a small area of the driveway. The Planning Commission may grant an exception to the maximum allowed cut of four feet pursuant to Chapter IX, section F. of the Hillside Development Standards & Guidelines. Any deviation shall include the rationale and evidence to support the granting of an exception.

Required compliance with Hillside Development Standards & Guidelines:

Other than the exception to grading criteria for the driveway, the project is in compliance with the Hillside Development Standards & Guidelines.

CONSIDERATIONS:

Section 29.20.150, Required considerations in review of Architecture & Site applications:

The deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.

- a. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
 - 1. The ability of critical roadways and major intersections to accommodate existing traffic;
 - 2. Increased traffic estimated for approved developments not yet occupied; and
 - 3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.
- b. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:
 - 1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
 - 2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and

Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.

- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility

requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.

- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

TOWN COUNCIL –APRIL 16, 2007
CONDITIONS OF APPROVAL

Reservoir Road (Lot 3)

Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.
PROPERTY OWNER: Tony Jeans, T.H.I.S. Design
APPLICANT: Mark Von Kaenel & Dianna Robinson

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 noted as received by the Town on March 12, 2007 and approved by the Town Council on April 2, 2007. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Architecture & Site application will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **ARCHITECTURAL CHANGES.** The recommendations of the Consulting Architect shall be incorporated into the plans prior to submittal of plans for building plan check.
4. **EXTERIOR COLOR.** The exterior color of the house shall not exceed a light reflectivity value of 30 and shall blend with the natural vegetation.
5. **DEED RESTRICTION:** Prior to issuance of a building permit, a deed restriction shall be recorded by the applicant with the Santa Clara County Recorder's Office that requires all exterior paint colors to be maintained in conformance with the Town's Hillside Development Standards. Final exterior colors shall be approved by the Director of Community Development prior to application.
6. **OUTDOOR LIGHTING.** House exterior and landscape lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. No flood lights shall be used unless first approved by the Planning Division. The outdoor lighting plan can be reviewed during building plan check. Any changes to the lighting plan shall be approved by the Planning Division prior to installation.
7. **TREE REMOVAL PERMIT.** A Tree Removal Permit shall be obtained for the trees to be removed, prior to the issuance of the demolition permit.
8. **REPLACEMENT TREES.** Replacement trees shall be planted for all trees that are removed. The number and size of new trees shall be determined using the canopy replacement table in the Town's Tree Protection Ordinance. Required trees shall be planted prior to final inspection.
9. **TREE PRESERVATION.** All recommendations of the Town's Consulting Arborist shall be followed throughout all phases of construction. Refer to the report prepared by Arbor Resources dated December 8, 2006 for details. Tree protection specifications shall be printed on the construction plans.

10. TREE FENCING. Protective tree fencing shall be placed at the drip line of existing trees prior to issuance of demolition and building permits and shall remain through all phases of construction. Fencing shall be six foot high cyclone attached to two-inch diameter steel posts drive 18 inches into the ground and spaced no further than 10 feet apart. Include a tree protection fencing plan with the construction plans.
11. 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.
12. DOUBLE STAKING. All newly planted trees are required to be double staked to Town standards.
13. IRRIGATION SYSTEM. All newly planted landscaping shall be irrigated by an in-ground irrigation system. Special care shall be taken to avoid irrigation which will endanger existing native trees and vegetation.
14. LANDSCAPE SCREENING. Landscaping shall be planted along the property frontage to screen the new residence from the road. The parking area shall be shifted or reduced in size to provide a minimum of 10 feet for a landscape buffer between the parking bay and the road. A comprehensive landscape plan shall be approved by the Director of Community Development prior to issuance of a building permit.
15. ROCK WALL. The stones from the rock wall on the site shall be preserved and shall be incorporated into the new driveway walls to be constructed as part of the project.
16. STORY POLES. The story poles on the project site shall be removed within 30 days of approval of the Architecture & Site application.

Building Division

17. PERMITS REQUIRED: A building permit shall be required for the construction of the new single family residence. Separate permits are required for site retaining walls, water tanks, and swimming pools; separate permits are required for electrical, mechanical, and plumbing work as necessary.
18. 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.
19. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
20. STREET NAMES & HOUSE NUMBERS: Submit requests for new street names and/or house numbers/suite numbers to the Building Division prior to submitting for the building permit application process.
21. 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. ALTERNATE: design the foundation for an allowable soils 1,000 psf design pressure (Uniform Building Code Volume 2 - Section 1805).
22. SHORING: Shoring plans and calculations will be required for all excavations which exceed four (4) 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 with Cal/OSHA regulations.

23. **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, the building pad elevation, on-site retaining wall locations and elevations are prepared according to 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
24. **RESIDENTIAL TOWN ACCESSIBILITY STANDARDS:** The residence shall be designed with adaptability features for single family residences per Town Resolution 1994-61:
 - a. Wooden backing (2" x 8" minimum) shall be provided in all bathroom walls, at water closets, showers and bathtubs located 34 inches from the floor to the center of the backing, suitable for the installation of grab bars.
 - b. All passage doors shall be at least 32 inches wide on the accessible floor.
 - c. Primary entrance shall have a 36-inch wide door including a 5' x 5' level landing, no more than 1 inch out of plane with the immediate interior floor level with an 18-inch clearance.
 - d. Door buzzer, bell or chime shall be hard wired at primary entrance.
25. **TITLE 24 ENERGY COMPLIANCE:** California Title 24 Energy Compliance forms CF-1R, MF-1R, and WS-5R must be blue-lined on the plans
26. **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 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.
27. **TOWN FIREPLACE STANDARDS:** New wood burning fireplaces shall be an EPA Phase II approved appliance as per Town Ordinance 1905. Tree limbs shall be cut within 10-feet of chimneys.
28. **HAZARDOUS FIRE ZONE:** The project requires a Class A assembly.
29. **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.
30. **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.

31. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
- a. Community Development - Planning Division: Suzanne Davis at 354-6875
 - b. Engineering/Parks & Public Works Department: Fletcher Parsons at 395-3460
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Local School District: (Contact the Town Building Service Counter for the appropriate school district and to obtain the school form.)
 - f. Bay Area Air Quality Management District: (415) 771-6000
 - g. Environmental Health Department: (408) 885-4200
 - h. Santa Clara Valley Water District: (408) 265-2600
 - i. Department of Fish and Game: (831) 475-9065

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS

Engineering Division

32. GRADING PERMIT. A grading permit is required for site grading and drainage. The grading permit application (with grading plans) shall be made to the Engineering Division of the Parks & Public Works Department located at 41 Miles Avenue. The grading plans shall include final grading, drainage, retaining wall location, driveway, utilities and interim erosion control. Grading plans shall list earthwork quantities and a table of existing and proposed impervious areas. Unless specifically allowed by the Director of Parks and Public Works, the grading permit will be issued concurrently with the building permit. The grading permit is for work outside the building footprint(s). A separate building permit, issued by the Building Department on E. Main Street is needed for grading within the building footprint.
33. DRIVEWAY DESIGN. The applicant shall work with staff and the Consulting Arborist to modify the driveway design as needed to save trees #5 and #16. The driveway shall remain in compliance with all Fire Department criteria specified in condition 61.
34. PAD CERTIFICATION. A letter from a licensed land surveyor shall be provided stating that the building foundation was constructed in accordance with the approved plans shall be provided subsequent to foundation construction and prior to construction on the structure. The pad certification shall address both vertical and horizontal foundation placement.
35. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:
- a. Along with the project applicant, attend a pre-construction meeting with the Town Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b. Acknowledge in writing that they have read and understand the project conditions of approval, and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.
36. RETAINING WALLS. A building permit, issued by the Building Department at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.

37. TREE REMOVAL. Copies of all necessary tree removal permits shall be provided prior to issuance of a grading permit.
38. SOILS REPORT. One copy of the soils report shall be submitted with the grading permit application. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design and erosion control. The reports shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.
39. SOILS REVIEW. Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations and the peer review comments. The applicant's soils engineer's approval shall then be conveyed to the Town either by letter or by signing the plans.
40. SOILS ENGINEER CONSTRUCTION OBSERVATION. During construction, all excavations and grading shall be inspected by the applicant's soils engineer prior to placement of concrete and/or backfill so they can verify that the actual conditions are as anticipated in the design-level geotechnical report, and recommend appropriate changes in the recommendations contained in the report, if necessary. The results of the construction observation and testing should be documented in an "as-built" letter/report prepared by the applicants soils engineer and submitted to the Town before final release of any occupancy permit is granted.
41. TRAFFIC IMPACT MITIGATION FEE. The developer shall pay a proportional the project's share of transportation improvements needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit is issued. The fee shall be paid before issuance of a building permit. The traffic impact mitigation fee for this project using the current fee schedule is \$5,742. The final fee shall be calculated from the final plans using the rate schedule in effect at the time the building permit is issued.
42. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
43. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
44. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
45. SURVEYING CONTROLS. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer qualified to practice land surveying, for the following items:
 - a. Retaining wall--top of wall elevations and locations
 - b. Toe and top of cut and fill slopes

46. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
47. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit.
48. DUST CONTROL. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.
49. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
50. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
51. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
52. UTILITIES. The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.

53. DRIVEWAY APPROACH. The developer shall install one (1) Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
54. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
55. AS-BUILT PLANS. An AutoCAD disk of the approved "as-built" plans shall be provided to the Town prior to issuance of a Certificate of Occupancy. The AutoCAD file shall include only the following information and shall conform to the layer naming convention: a) Building Outline, Layer: BLDG-OUTLINE; b) Driveway, Layer: DRIVEWAY; c) Retaining Wall, Layer: RETAINING WALL; d) Swimming Pool, Layer: SWIMMING-POOL; e) Tennis Court, Layer: TENNIS-COURT; f) Property Line, Layer: PROPERTY-LINE; g) Contours, Layer: NEWCONTOUR. All as-built digital files must be on the same coordinate basis as the Town's survey control network and shall be submitted in AutoCAD version 2000 or higher.
56. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
57. HAULING OF SOIL. Hauling of soil on or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.). Prior to the issuance of a building permit, the developer shall work with the Town Building and Engineering Department Engineering Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the developer/owner to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Cover all trucks hauling soil, sand, and other loose debris or require all trucks to maintain at least two feet of freeboard.
58. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

59. AUTOMATIC FIRE SPRINKLER SYSTEM. An approved automatic fire sprinkler system is required, hydraulically designed per National Fire Protection Association (NFPA) Standard #13. A State of California (C-16) licensed fire protection contractor shall submit plans, calculations a completed permit application and appropriate fees to the Fire Department for review and approval, prior to beginning work.
60. REQUIRED FIRE FLOW. Required fire flow is 2,000 GPM at 20 psi. residual pressure.
61. FIRE APPARATUS (ENGINE) ACCESS DRIVEWAY REQUIRED. Provide an access driveway with a paved all weather surface, a minimum unobstructed width of 12 feet, vertical clearance of 13 feet 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
62. DRIVEWAY EASEMENT. Provide a copy of a recorded easement for the common driveway approach.
63. EMERGENCY GATE/ACCESS GATE. 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. A minimum of 12 feet of clearance shall be provided when the gate is in an open position.
64. PREMISE IDENTIFICATION. Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Reservoir Road. Numbers shall be a minimum of four inches high and shall contrast with their background.

Meeting Date: 4/16/07

Subject: Appeal for Reservoir Road, Lot 3; File #S-07-21

ATTACHMENT 3

Development Plans
are available for review in the Clerk Department

FILING FEES
\$277.00 Residential
\$1,111.00 per Commercial, Multi-
family or Tentative Map Appeal

Office of the Town Clerk
110 E. Main St., Los Gatos CA 95030

MAR 05 2007

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: 2/28/07

PROJECT / APPLICATION NO:

ADDRESS LOCATION:

100 RESERVOIR RD [LOT #3]

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Council members. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because PLANNING COMMISSION WAS DIVIDED IN THEIR INTERPRETATION OF DIRECTION/WORDING OF COUNCIL RESOLUTION APPROVING SUBDIVISION IN DEC 2003. THEY WERE UNABLE TO ACT AND AGREED TO DEFER TO TOWN COUNCIL FOR RULING. OR
2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is

(please attach the new information if possible): OR
3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: A DIVIDED PLANNING COMMISSION FELT THAT THEY DID NOT HAVE DISCRETION TO INTERPRET DIRECTION/WORDING OF COUNCIL RESOLUTIONS APPROVING THE SUBDIVISION SUFFICIENTLY BROADLY TO APPROVE THE PROJECT.

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 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th 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. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: TONY JEANS
DATE: 3/1/07
PHONE: (408) 354-1833

SIGNATURE: [Signature]
ADDRESS: 170 STACIA ST
LOS GATOS

*** OFFICIAL USE ONLY ***

DATE OF PUBLIC HEARING: 4/2/07

CONFIRMATION LETTER SENT: Date: _____

Pending Planning Department Confirmation

TO APPLICANT & APPELLANT BY:

DATE TO SEND PUBLICATION: 3-11-07

DATE OF PUBLICATION: _____

N:\DEV\FORMS\Planning\Planning Commission Appeal.wpd

ATTACHMENT 4

100 Reservoir Rd [Lot #3].
A&S Application S-07-21
Appeal of Planning Commission Decision
Clarifying Discussion

At the first Planning Commission hearing in January, the commissioners had not listened to the 2003 tapes of the subdivision hearings and agreed to continue the hearing to Feb 28th.

At the second hearing on Feb 28th, the Planning Commission after 2 hours of testimony and deliberation tried 2 motions:

Denial [failed 2-4]

Approval with conditions [failed 3-3]

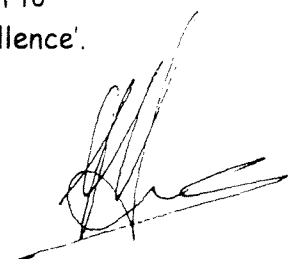
They finally agreed to deny the project so that the Town Council could break the impasse [passed 5-1].

In the testimony it was seen that all the neighbors supported the project as submitted and did not want to see changes. They liked it.

In the deliberation it became clear that the commissioners generally felt that this project as submitted was appropriate for the site. The problem arose in the interpretation of the Town Council's December 2003's direction in the resolution of the subdivision. In directing the MAP [Attachment 44] to be used as A GUIDE, how much latitude was being given? Additionally, in suggesting that the 6½ hours of tapes be listened to, how much consideration was to be given?

Either: the Planning Commission erred in treating the word GUIDE to mean ABSOLUTE/SACROSANCT

Or: the Planning Commission was correct in treating the word GUIDE to mean ABSOLUTE/SACROSANCT they did not have the discretion to approve the project. In which case the referral to the Town Council is appropriate to allow them to approve the project in the light of 'neighborhood support' and 'design excellence'.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be written with a pen or marker.

T.H.I.S.
DESIGN & DEVELOPMENT
Box 1518, Los Gatos, CA 95031
Fax: 408.354.1823 Tel: 408.354.1863

110 E. Main Street
Los Gatos, CA 95032
Attn: Town Council

March 12th, 2007

RECEIVED

MAR 12 2007

TOWN OF LOS GATOS
PLANNING DIVISION

100 Reservoir Rd [Lot #3].
A&S Application S-07-21

Dear Council Members:

The design goals for this project are straightforward.

1. Abide by Town Council direction for A&S development from subdivision.
 - Minimize tree impact
 - Minimize grading
 - Minimize building footprint
 - Save/Reuse stone wall as much as possible
2. Comply with Hillside Guidelines
3. Talk to neighbors and listen to their concerns.

We believe that we have designed the best possible house which complies with the letter and spirit of these design goals. Statements made at the Planning Commission hearing would seem to agree with this. More specifically the neighbors, who have a great deal of time and energy invested in this project, and are knowledgeable as to both the specifics and the intent of the subdivision resolution fully support it.

The following points should be noted and discussed:

Driveway: The neighbors asked us to relocate the driveway 'further along Reservoir Rd' for both safety and aesthetic reasons. The Hillside Guidelines encourages shared driveways - so we have combined the driveway approach with that of Lot#2. The downside is that we cannot save the small portion of rock wall between the building envelope and Prospect Ave.

Envelope: We have built the house partially outside the suggested building envelope in order to save a tree that the owner and neighbors would like to save. To build entirely within this envelope we would have a 1½ - 2 story elevation from Reservoir Rd which would concern the neighbors.

- Trees: The project is 'tree neutral' when compared to the building envelope identified in the tentative map. Three additional trees are proposed for removal [1 doug fir and 2 small redwoods], but 3 trees will now be saved that would otherwise have been removed. Additionally a 23" blue oak is being saved that the suggested building envelope would have impacted. 2 newly planted live oaks are also being relocated.
- Rock Wall: We negotiated to use the salvaged rock material already saved when the reservoir was demolished, and are proposing to incorporate it into the driveway and site retaining walls. It has been stockpiled on Lot #1. We believe that this complies with Town Council directives.
- Grading: For a hillside project this house causes little grading. 375 yards of export is proposed. The driveway cut exceeds the recommended hillside guidelines so that the garage can be buried under the house to reduce mass. Some dirt is to remain on site so as to reduce trucking on Reservoir Road.

We are not certain whether the Planning Commission erred in not acting - using the discretion that the Town Council had given them in the subdivision resolution in 2003; or whether they were correct in believing that they did not have sufficient discretion to approve the project without clarification from the Town Council.

That inability to act has placed us in the position of needing to ask what the Town Council had intended in 2003. It is our belief that we have satisfied the underlying objectives of designing a home that is compatible with the site, meets the hillside guidelines and has the support of the neighbors.

What more can you ask?

Yours truly,

A. T. Jeans
Cc Von Kaenel

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11/2/06	
11/11/06	
12/29/06 DRG. CHANGE	

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T.H.I.S.
DESIGN AND DEVELOPMENT

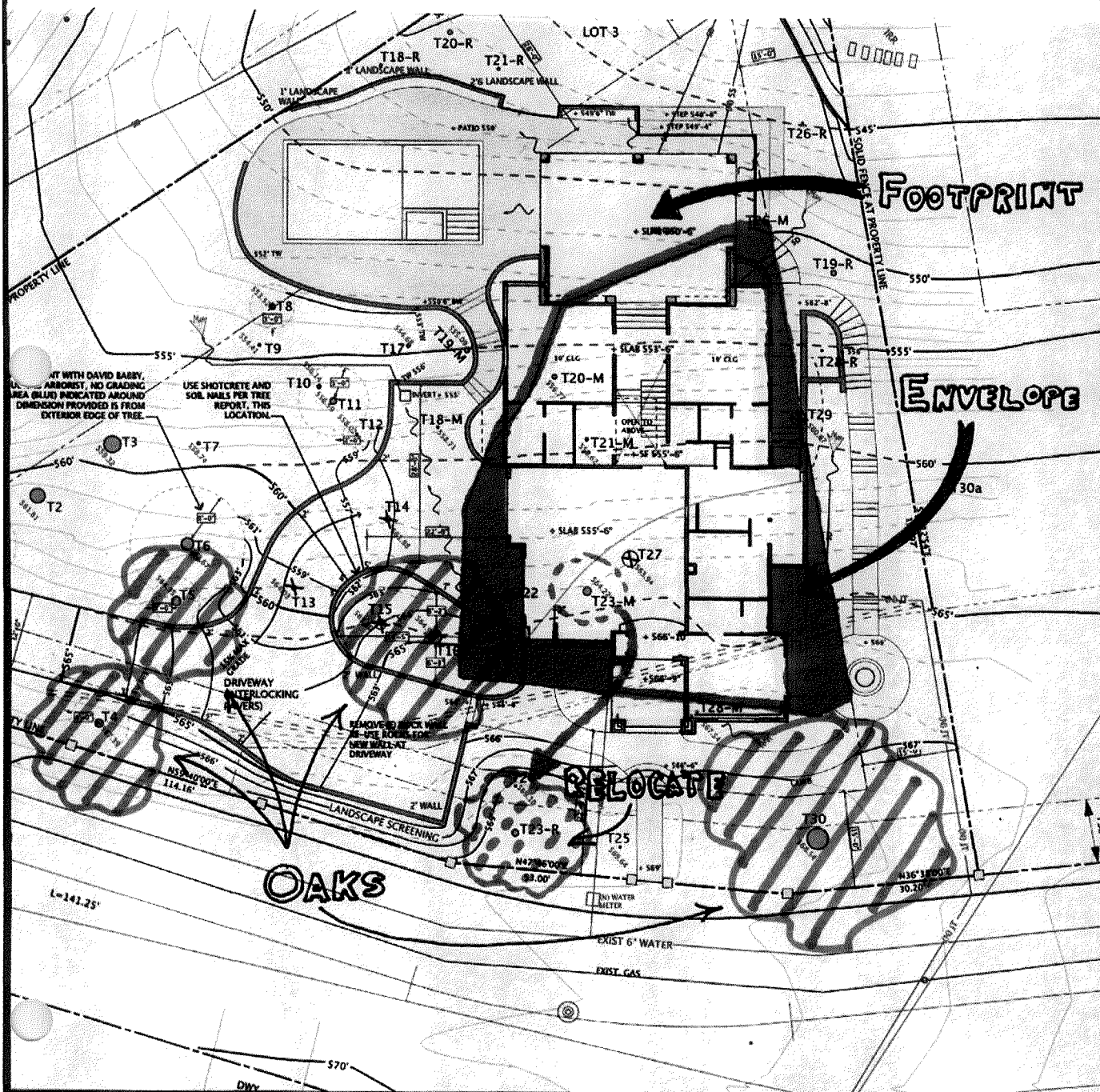
P.O. BOX 1515, LOS GATOS, CA 95030
408/354 1833

PROPOSED GRADING PLAN

VON KAENEL RESIDENCE
LOT 3, SIENNA OAKS
RESERVOIR ROAD
LOS GATOS, CA 95032

DATE	10/1/06
DRAWN	Brad
CHECKED	Tony
SCALE	see drawings

C1
-OF-
9



Attachment 6

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

Los Gatos Planning
Commissioners: Joanne Talesfore, Chair
John Bourgeois
Michael Kane
Phil Micciche
Tom O'Donnell
Steve Rice
Marico Sayoc

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 526-6049

LOS GATOS PLANNING COMMISSION 2/28/2007
Item #1, Reservoir Road (Lot 3)

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

CHAIR TALESFORE: I'm going to be calling up Item
#1 on the agenda, and that is Reservoir Road, Lot #3,
Architecture and Site Application S-07-21, requesting
approval to construct a new residence on property zoned R-
1:20, APN 529-31-041.

Before I do that though, because there was
direction from Town Council to have the tapes of their
meetings accompany any architecture and site proposal, as
well as summary minutes, I'd like to ask my commissioners if
they have had a chance to review those? If you would just
please raise your hands, we can see that. Okay. Thank you.

Commissioner Sayoc, yes. Thank you. Commissioner
Sayoc will be recusing herself tonight.

ORRY KORB: Yes, Commissioner Sayoc previously
stated on the record that she was recusing herself, not
because she had a financial conflict, but rather because she
has a relationship with one of the applicants and felt that
it was appropriate not to be involved in the discussion of
the application.

LOS GATOS PLANNING COMMISSION 2/28/2007
Item #1, Reservoir Road (Lot 3)

1 CHAIR TALESFORE: Correct. Thank you. Commissioner
2 Rice, did you have a question or a comment? Okay. With that
3 I will call up the property owner, Tony Jeans.

4 TONY JEANS: Tony Jeans, 170 Stacia Street, Los
5 Gatos. I'm actually not the owner; I'm the applicant. The
6 owner is here if you have questions for the owner.

7 CHAIR TALESFORE: You know what? We'll have to
8 reverse that.

9 TONY JEANS: Also, there is a desk item that I
10 would like you to look at. I don't know when you'll do that,
11 but it's something that I think should be looked at.

12 I presented this last month, so I'm not going to
13 reiterate everything that I said. I'm going to focus on I
14 think two or three key issues.

15 I once again went through the documentation,
16 reviewed the resolution this time and Attachment #44, and I
17 believe that the approach that we are taking is within the
18 guidelines of the resolution. Specifically there were two or
19 three areas that the resolution asked us to address, and it
20 said to use the building envelope as a guide, or use
21 basically Attachment #44 as a guide, which has a building
22 envelope and some trees to be removed. I think those are the
23 two things that need to be focused on in terms of my
24 presentation tonight.

25 Firstly, let's talk about the building envelope. I
did mention at the last meeting that we were outside the

1 building envelope in the lower portion, in an area that did
2 not impact grading or trees. The reason we did that was so
3 that we did not have to have a house that neighbors objected
4 to. We originally designed a house within the building
5 envelope, and we can go back to that, but the neighbors
6 would not like it. It's a one-and-a-half-story from the
7 front of Reservoir, and it had the garage facing the street.

8 If you read the Kankel's letter from 2003, they
9 specifically asked that the driveway be moved down towards
10 Prospect. So we designed a house that accommodated that, put
11 the garage underneath, and presented a one-story profile
12 from Reservoir Road. In doing that, we had to extend a
13 little bit out of the building envelope. If you were to look
14 at your Sheet C-2 I believe you can't really see this, but
15 this represents a portion of your C-2—we are outside the
16 building envelope in the yellow area up here. That is 550
17 square feet. We're outside the building envelope at the
18 porch at the front, which is about 50 square feet. We are
19 inside the building envelope on the left-hand side in order
20 to preserve a tree that is very important both to my owner
21 and the neighbors. This tree, we felt we had to stay back
22 from the allowed building envelope per Attachment #44, a
23 significant distance, because the tree is leaning, and if we
24 had gone up to the building envelope the tree would have
25 died; it would have been one for removal.

1 So we have not built in this area here. That's
2 about 450 square feet. Additionally we haven't built over on
3 this side here for aesthetic reasons and balance for the
4 house; that's another 400 feet. So we're outside of the
5 building envelope by about 600 feet, and we're not using 850
6 square feet of the building envelope. If anyone has any
7 questions about that, I'll answer them later.

8 The other area I'd like to address is trees, and
9 maybe I'll put this back on again. There was some confusion
10 in the submission that we made last time--well, there's no
11 confusion on our standpoint. We'd had discussions with the
12 neighbors and there were a number of oaks that they wanted
13 us to preserve, and we're preserving them. In our original
14 submission we were preserving them. The Town arborist felt
15 that they could be impacted and suggested that they be
16 removed.

17 There are two of them specifically. One is the
18 tree that I'd mentioned, we've discussed earlier, tree #16 I
19 believe, on my plan, and tree #5. Both of these are nice oak
20 trees. Because the arborist had suggested that they be
21 removed, the handout that was given had them for removal. We
22 are saving them, and we always have saved them, and we want
23 to save them. We believe that that is very important.

24 If you have questions, please ask away.

25 CHAIR TALESFORE: Thank you. Commissioners, do we
have any questions at this time? Commissioner Micciche.

1 COMMISSIONER MICCICHE: I have a question of Staff
2 first, if I may?

3 CHAIR TALESFORE: Okay, sure.

4 COMMISSIONER MICCICHE: Is it ten cubic yards that
5 typically a truck can remove, a single truckload?

6 RANDY TSUDA: Yes.

7 COMMISSIONER MICCICHE: The report indicates that
8 there's going to be 375 cubic feet of export?

9 TONY JEANS: Yards.

10 COMMISSIONER MICCICHE: Yards, I'm sorry. I meant
11 yards.

12 TONY JEANS: Right.

13 COMMISSIONER MICCICHE: That's probably going to
14 mean somewhere around 75 truck trips back and forth.

15 TONY JEANS: About six or seven yards in a truck.

16 COMMISSIONER MICCICHE: Oh, so even more then? So
there will be even more truck trips?

17 TONY JEANS: No.

18 COMMISSIONER MICCICHE: You're going to go back
19 and come back, right? They've got go up and down, right?

20 TONY JEANS: Yes.

21 COMMISSIONER MICCICHE: If I multiply by two.

22 TONY JEANS: Yes, okay.

23 COMMISSIONER MICCICHE: When we first approved the
24 reservoir site with the Water Department, we requested

1 safeguards be put in, because what route do you plan to have
2 the trucks take?

3 TONY JEANS: I would expect them to go up and down
4 Reservoir on the short route before the road is repaved.

5 COMMISSIONER MICCICHE: I think they put
6 safeguards into the conditions when they were doing that,
7 and I would like to add those same conditions if there's
8 going to be that many trips. Have you planned that out? Is
9 it going to be one truck doing it, or a number of trucks for
10 a certain amount of days?

11 TONY JEANS: Typically that is determined by the
12 grading contractor depending on where he is trucking to. It
13 would typically on a job like this take about four days to
14 do the grading.

15 COMMISSIONER MICCICHE: So 36 roundtrips is going
16 to amount to what, six a day or so, ten a day or so?

17 TONY JEANS: Yeah.

18 COMMISSIONER MICCICHE: I don't have the wording
19 of that.

20 TONY JEANS: There were times of day that we could
21 not use that.

22 COMMISSIONER MICCICHE: Yeah, I remember. We had
23 certain conditions that were very good at the time.

24 TONY JEANS: I have no problem abiding by that.

1 COMMISSIONER MICCICHE: I think we can leave it
2 that we'll have similar conditions to what we had in the
3 original approval of the site?

4 COMMISSIONER KANE: If it's approved.

5 COMMISSIONER MICCICHE: If approved, yeah.
6 Naturally. That goes without saying.

7 CHAIR TALESFORE: Any other questions?

8 COMMISSIONER MICCICHE: That's the only one I had
9 right now.

10 CHAIR TALESFORE: I have one on some cut, but I'll
11 wait. Go ahead, Commissioner Kane.

12 COMMISSIONER KANE: Mr. Jeans, when we were last
13 together, and the reason we're together tonight, is solely
14 because we didn't have the tapes at the time, and I had
15 thought that maybe we should listen to them. I had thought
16 that maybe we should listen to them, and we discussed that
17 point with you and you said you had listened to them.

18 TONY JEANS: Mmm-hmm.

19 COMMISSIONER KANE: And I think you gave it a
20 nonpluss, that they wouldn't be very helpful; perhaps we
21 could go ahead, whatever. And in any event, we did get to
22 the tapes, and so I'm asking you again, did you listen to
23 them? I have no life; I had six hours to take notes and
24 listen to these tapes. Did you listen to all of the tapes?

25 TONY JEANS: Not since the last meeting when I did
the original design. This time I went through the

1 documentation, and yes, I do believe it's important that you
2 listen to the tapes. I think you get a feeling as to more
3 than just the result, but the sentiment of the neighborhood
4 and a lot of the key issues that were discussed. The final
5 ones made it into the resolution and Attachment #44.

6 COMMISSIONER KANE: How long ago was that that you
7 listened to them? A year? Two years?

8 TONY JEANS: No, no, six months.

9 COMMISSIONER KANE: My take on the tapes was
10 practically mind-blowing, that they are compelling, and that
11 the Council people made speeches about the sanctity of that
12 bowl, that there would be a demolition and a reclamation and
13 then the land would be restored. I'm going to go into detail
14 on it later, but I'm concerned that we give an en passant to
15 the tapes, when in fact in listening to the tapes, the
16 Council said we must have those tapes in order to make A&S
17 decisions. It was not elected. It was not an en passant, it
18 was we had to have them.

19 I have to ask a question. Was it not fortunate
20 that we didn't make a decision two weeks ago when we didn't
21 have the tapes, and on that fine point we continued the
22 meeting until listening to those tapes? Those tapes are
23 critical evidence, and I'm sharing with you that they've
24 given me entirely different point of view, and I'll go into
25 detail on them later.

1 TONY JEANS: I'm very surprised that you did not
2 listen to them before the last meeting.

3 COMMISSIONER KANE: I didn't know they existed,
4 and they weren't provided.

5 CHAIR TALESFORE: Thank you. All right.

6 TONY JEANS: I was answering the question I
7 thought.

8 CHAIR TALESFORE: You did. I don't think it was a
9 question, and I think we'll move on to a question.

10 TONY JEANS: All right.

11 CHAIR TALESFORE: Commissioner Bourgeois.

12 COMMISSIONER BOURGEOIS: I just have a very
13 specific question about tree removal. So if I count on the
14 map, I count six removals and eight relocations, is that
15 correct?

16 TONY JEANS: There was a corrected summary that I
17 sent out that you should have.

18 COMMISSIONER BOURGEOIS: Is that the one in green?

19 TONY JEANS: The one with colors on was the
20 erroneous one last time that was handed out at the meeting,
21 that I did not read, it was just handed out at the meeting
22 as a desk item, as a clarification. It was wrong, and it
23 upset a lot of the neighbors, and they were very depressed.
24 I still hadn't read it. I assumed it was a summary of what
25 we were actually presenting. It wasn't; it was a summary of

1 what we were presenting with some arborist recommendations,
2 which included the removal of two significant oak trees.
3 COMMISSIONER BOURGEOIS: Right, so what I'm trying
4 to get at is what is the correct number of removals and
5 relocations? The graphic you just had up previously had a
6 table on the other side that I counted six and eight.
7 TONY JEANS: Six removals and eight relocations,
8 and if you look at my chart that says Accurate Reservoir
9 Road, Lot #3 Tree Summary, we are saving one tree over and
10 above what was originally approved on Attachment #44.
11 CHAIR TALESFORE: Well I see Attachment #44 has
12 five removals and two relocations, and so one of the
13 specific trees might be saved, but the numbers in Attachment
14 #44 are five and two, and yours are six and eight. I just
15 want to clarify that.
16 TONY JEANS: It is six and eight, but one of the
17 things you have to understand is that new trees were planted
18 immediately adjacent to the building envelopes, which have
19 to be relocated.
20 COMMISSIONER BOURGEOIS: No, I know, and I
21 actually asked those questions at the last meeting, why
22 those were planted in the footprint of the development?
23 CHAIR TALESFORE: Thank you. I have a question,
24 and it was actually referring to some cut or export totals,
25 and that would be, if I referred to C-1 of your original
Exhibit J?

1 TONY JEANS: Yes.
2 CHAIR TALESFORE: Maybe you can help me out with
3 this. It says at the top, "Location cut fill net," and it
4 says, "Garage, cellar, house living," and it's 375 yards
5 export, is that correct?
6 TONY JEANS: Yes.
7 CHAIR TALESFORE: Underneath it, the driveway
8 export is 225, and then I see for the pool-patio, 150 yards,
9 100 yards, and then fill is 50 yards. Are there some numbers
10 missing here that didn't get added into the total of the 375
11 yards export?
12 TONY JEANS: No.
13 CHAIR TALESFORE: How is that figured? Because I
14 thought the Town considered cut and fill the total of the
15 cut.
16 TONY JEANS: The driveway and pool dirt is being
17 proposed to remain onsite so as not to have trucking up and
18 down the hill, again at the request of the neighbors.
19 CHAIR TALESFORE: The driveway and pool?
20 TONY JEANS: The driveway area and the pool area
21 total 325 yards of cut, and in the pool area there's also 50
22 yards of fill, in the lower yard there's 275 yards proposed
23 of fill. The 275 is a total column that is in the wrong
24 place.
25 CHAIR TALESFORE: All right.

1 TONY JEANS: So basically we're trying to not take
2 out an additional 30 roundtrip truckloads.

3 CHAIR TALESFORE: Exactly. That's what I was
4 thinking.

5 TONY JEANS: And that's what we were trying to do.
6 I think you'll find if you compare this with most hillside
7 sites that it's remarkably low in terms of export.

8 CHAIR TALESFORE: Can you also just tell me what
9 the foundation form for this design is?

10 TONY JEANS: Yes, it is a mat slab, because that
11 minimizes grading. The alternatives that you would have in
12 this area are pier and grade beam or mat slab. If you go
13 with a pier and grade beam you have to have a crawlspace;
14 that takes out two additional feet of cut, and we were
15 trying to minimize cut. It's also all in existing native
16 material. None of it is in the fill area from the reservoir,
17 so the soils engineer felt it was very appropriate to do
18 that there. It's basically to minimize cut.

19 CHAIR TALESFORE: Fine. Thank you. I wanted to
20 clarify that. That's all the questions I have. Anyone else?
21 Fine. Thank you. We'll call you back up. At the moment I
22 have just two speaker cards, and the first one is Jim
23 Soderberg.

24 JIM SODERBERG: My name is Jim Soderberg; I live
25 at 111 Reservoir Road, across the street from this project,
and I would like to speak in support of their plan. I

1 believe that it's most respectful of the trees that are on
2 the site, and I'm also happy with the driveway alignment
3 that they've proposed, and I believe it will fit in with the
4 neighborhood well.

5 CHAIR TALESFORE: Does anyone have any questions?
6 Seeing none, thank you, Jim. Next speaker card is Dennis
7 McElvoy.

8 DENNIS McELVOY: Dennis McElvoy; 81 Reservoir
9 Road. I also would like to speak in support of the plan that
10 they've submitted. My wife and I had originally sent in a
11 letter objecting to the plan because we thought that they
12 were removing more trees from the property than were
13 originally in the Attachment #44. I believe there is in fact
14 one more tree being removed, but it's a Douglas fir that is
15 in very weak condition and is not a very attractive tree and
16 probably should be removed.

17 I also think that they've done a design that fits
18 extremely well with the neighborhood with a one-story façade
19 towards Reservoir Road and no visible garage and no visible
20 driveway, so it's a design that fits very well on a piece of
21 property that frankly, three years ago I was really
22 concerned that someone could fit a house on there and make
23 it a respectful size house and fit it into the neighborhood,
24 so I think Mr. Jeans has done an excellent job with the
25 owners, and my wife and I very much support the proposed
design and the saving of those two very nice oak trees.

1 CHAIR TALESFORE: Thank you. I don't see any
2 questions. Citizen Ray.

3 RAY DAVIS: Forgive me for being out of uniform
4 tonight; you may not recognize me. I spoke in favor of this
5 application at the last meeting, because I thought the
6 architecture was quite exceptional, and here we are two
7 weeks after that meeting, and at that meeting we had this
8 beautiful mountain chalet up on Foster Road that you
9 approved, and what a gorgeous home. Fulfilled all the
10 requirements of the Hillside Design Guidelines. Truly a
11 magnificent mountain chalet. So I'm still in the glow of
12 that, and I look at the home here, and as I said last time,
13 it goes up and down the mountain beautifully. It steps up
14 and down as required, the number one requirement of a large
15 hillside home. Lovely.

16 The only complaints that I had for Mr. Von Kaenel
17 and his family was the design of the foundation. You know,
18 I've been doing this off and on for 40 years, reading
19 engineering reports, soil reports, and so forth in all the
20 mountain communities that I've lived in, and I have never
21 seen a home of this type that flows up and down the mountain
22 where a cut pad slab foundation is proposed. Never. And
23 there is one outstanding benefit of a cut pad slab
24 foundation and that is cost. Cost with a capital C. Cost.

25 And I listened to the mayor and the Town talk
about the Loma Prieta earthquake, 16 seconds of terror. And

1 I want to tell the Von Kaenels, you build this house, I
2 would put in the best foundation you can possibly put in,
3 because when the next big one comes, and it is coming
4 according the experts, when everything starts to shake and
5 you're in your new home, you want to feel good about your
6 foundation, believe me. And I'm talking nitty-gritty. I
7 don't want to go any further, because your children are
8 here, but I hope I make my point. And there will be a home
9 below this one, and if this home is built with this cut pad
10 foundation and it slides off that hill, the home down below
11 will pay the price. Pay the price. So I'm going to leave it
12 to your consideration. When you get it approved you can
13 always change the foundation anytime, and you should.

14 One last thing. The overlook on the outdoor patio
15 I think is too much for the house that will be built down
16 below. It will be looming; it will take away the privacy of
17 the home down below's backyard. I think you should cut back
18 on that roof over the outdoor patio, just the roof; take it
19 off and then you'll have a gorgeous home in my opinion. Just
an opinion is all it is.

20 CHAIR TALESFORE: Thank you, Citizen Ray.

21 RAY DAVIS: You bet. Anytime.

22 CHAIR TALESFORE: One more card. Lee Quintana.

23 LEE QUINTANA: Lee Quintana; 5 Palm Avenue. I had
24 the pleasure of listening to the five tapes, and I would
25 just like to say that I was quoted by Mr. Mationi, and I

1 think his quote were accurate, and I would just like to
2 comment tonight on one of the areas of my concern, because I
3 think the other areas have been addressed previously or
4 addressed by others, and that is the retaining walls.

5 The Negative Declaration states that the Town's
6 Historic Preservation Committee of Los Gatos reviewed
7 project structures and recommended approval of proposed
8 demolition subject to mitigation measures listed in the ARM
9 report, that's the Architectural Resources Management
10 company that wrote the report, which included preserving the
11 rock walls and staircase. The Committee stated that where
12 the walls are in disrepair the remnants can be incorporated
13 into the future landscaping or made into elements of the
14 entryway of the subdivision. So therefore the mitigation
15 measures are required to reduce potential impacts on these
16 resources to a less than significant level. The Negative
17 Declaration does not indicate where the areas of the wall
18 are that are in significant disrepair.

19 My comment is that if this lot, Lot #3, if the
20 wall in this lot does not contain the areas of disrepair,
21 the Negative Declaration would require as mitigation that
22 the existing walls be preserved in place, not taken apart
23 and moved. Thank you.

24 CHAIR TALESFORE: Do we have any questions of Ms.
25 Quintana? Yes, Commissioner Bourgeois.

1 COMMISSIONER BOURGEOIS: Thank you. I did actually
2 take some notes when Mr. Mationi, representing San Jose
3 Water, was quoting you, and I believe what I heard him say
4 on the tapes was that you voiced a preference for the four
5 lot subdivision over the three lot, because it allowed for
6 the preservation of that wall. Is that correct? Did I hear
7 that correctly?

8 LEE QUINTANA: Yes, I think you got that correct.
9 Now what I'm not sure about, and this may just be my memory
10 not being totally correct of the Planning Commission minutes
11 or the Planning Commission recordings, I believe that I
12 stated that of the alternatives that we were presented with
13 that the four lot subdivision as presented would allow for
14 the preservation of the retaining wall in there, so I was in
15 favor of that, given the choices we were given.

16 COMMISSIONER BOURGEOIS: If I may, Madam Chair,
17 another question?

18 CHAIR TALESFORE: Yes, go ahead.

19 COMMISSIONER BOURGEOIS: And it was also my
20 understanding that the original denial of the Planning
21 Commission was based primarily on the inadequacy of the CEQA
22 documentation, is that correct as well? Again, that's his
23 interpretation of your decision, so I'd like to hear

24 LEE QUINTANA: You know, I honestly don't remember
25 that that was the only reason that it was not approved. I

1 did not go back and read the minutes from the Commission
2 meetings.

3 COMMISSIONER BOURGEOIS: Thank you.

4 CHAIR TALESFORE: Okay, no more questions. I don't
5 have any other speaker cards, so I'd like to call up Mr.
6 Jeans.

7 TONY JEANS: I'll put one thing quickly to rest:
8 foundation. Unfortunately the foundation is a structural mat
9 slab, not like your conventional garage slab. It is about
10 \$100,000 more than a pier and grade beam foundation. It is
11 the right way to go.

12 The rock wall: on this property there is a portion
13 of rock wall that parallels the driveway and we can retain a
14 small portion of it. Most of the rock wall goes through the
15 building envelope; we can't retain that. We are also reusing
16 the stone that has already been taken out from rock walls
17 elsewhere on the property that are not planned to be reused
18 on Lots #1 and #2, so that we can try to accommodate the
19 requirement to integrate as much of the rock onto the four
20 lot subdivision as possible. We think that Lot #4 is the one
21 that is most appropriate to keep the rock wall; that is the
22 one where the stairs and the rock wall is not anywhere near
23 the building envelope, and we're trying to I think do what
24 is appropriate.

25 Now in coming along from Prospect, we're going to
impact more of that rock wall than we would if we were

1 coming straight in, but that is what the neighbors want. So
2 if I'm balancing the neighbors' requests, trees, and the
3 rock wall, I take them in that order. The neighbors'
4 requests come first, because they have been for some
5 significant period of time asking for very specific things
6 on that property, and it was well thought out.

7 The trees that we are removing are not significant
8 trees, and where we are removing additional trees, they're
9 not particularly attractive trees. We're trying to keep all
10 the ones that we think are appropriate. We're keeping the
11 large redwood grove at the end. We're keeping all the oaks,
12 including several that the arborist has recommended be
13 removed. We think that this is the best solution for this
14 particular lot, we really do.

15 CHAIR TALESFORE: Do we have any further questions
16 about anything Mr. Jeans has said? I have one about the rock
17 wall. Could I just ask this first? Thank you.

18 Do you still have your plan that you had up
19 before? Would you show us again where the rock wall? Remind
20 us, here.

21 TONY JEANS: The rock wall at the moment comes
22 right through here.

23 CHAIR TALESFORE: And what part of the proposed
24 house...

25 TONY JEANS: We're just keeping a section here,
and then we're intending to take the section from here to

1 there and reuse the rock around here, and then the rock
2 that's from Lots #1 and #2, we're using around here and
3 here.

4 CHAIR TALESFORE: What I'd like to ask you,
5 because I remember this issue now with the Planning
6 Commission, but just tell me where that rock wall is cutting
7 through in the proposed design as it is.

8 TONY JEANS: As it is?

9 CHAIR TALESFORE: What part is it? Is it a
10 driveway? Where is it cutting through here on your proposed
11 design?

12 TONY JEANS: I'm not sure what you're asking
13 exactly. Could you rephrase that?

14 CHAIR TALESFORE: You said that the rock wall is
15 cutting through the building envelope.

16 TONY JEANS: From here to here.

17 CHAIR TALESFORE: Which part of the house design
18 is it going through? Is it going through the rooms? Tell
19 where in this proposed design.

20 TONY JEANS: It's going right through the body of
21 the house. If you approved the building envelope, you're
22 taking out half of the rock wall on this property.

23 CHAIR TALESFORE: So it's going over the proposed
24 driveway, is that correct?

25 TONY JEANS: The driveway and the house.

1 CHAIR TALESFORE: Thank you. Okay. I just wanted
2 to know how much of a major portion of the house it's going
3 through. Thank you. Follow-up question?

4 COMMISSIONER KANE: Mr. Jeans, as I'm looking at
5 the Site and Landscape Plan C-2, and they have the rock wall
6 delineated, toward the bottom, about three-quarters of the
7 way down the page, by two parallel dotted lines, and it
8 looks like the whole thing is coming down.

9 TONY JEANS: Except the first section.

10 COMMISSIONER KANE: The little thing over by the
11 driveway?

12 TONY JEANS: About 20' at the front, and then
13 we're basically turning it around the side of that parking
14 area.

15 CHAIR TALESFORE: So then are you asking for
16 permission to remove that wall?

17 TONY JEANS: I'm asking for permission to remove
18 and reuse the material as I believe one of the stipulations
19 of the--I don't know if it was part of the resolution--but one
20 of the stipulations was that the rock wall on the site
21 should be reused on the site. So we are reusing about eight
22 pallets that have already been taken out, and if you had
23 gone across to Lot #1, you would see eight pallets of rock
24 that have been retained on the site. We're reusing that rock
25 on this particular project.

1 CHAIR TALESFORE: Okay, the rock wall was taken
2 not from Lot #3, but from...
3 TONY JEANS: When the reservoir was...
4 CHAIR TALESFORE: Was taken down, right. Okay.
5 TONY JEANS: That was salvaged, and we're using
6 it.
7 CHAIR TALESFORE: But this wall, the one that's
8 running through part of this property?
9 TONY JEANS: Is the original.
10 CHAIR TALESFORE: And it's in place?
11 TONY JEANS: It's in place.
12 CHAIR TALESFORE: Thank you. Commissioner Kane.
13 COMMISSIONER KANE: Mr. Jeans, it's Condition #15,
14 and it says, "The rock wall on site shall be preserved and
15 shall be incorporated into new driveway walls to be
16 constructed as part of the project." That's Condition #15 on
17 the A&S, conditions of approval.
18 TONY JEANS: All right.
19 COMMISSIONER KANE: And it just seems to me like
20 it's all going away. I don't see where the preservation is.
21 TONY JEANS: If we brought our driveway in from
22 the front and put our garage here, we could preserve a
23 longer section of that wall. But in doing that, all the
24 neighbors would be objecting to this project, and then you
25 have the community interest against that. We are reusing the
material because our original approach to come straight in

1 off Reservoir is objectionable to the neighbors, and I think
2 rightly so.
3 CHAIR TALESFORE: Do you have another question,
4 Commissioner Kane? Commissioner Micciche. You have a
5 question of Staff?
6 COMMISSIONER MICCICHE: Well it says the rock
7 should be preserved, and then it says, "and shall be
8 incorporated into new driveway walls."
9 TONY JEANS: Yes.
10 COMMISSIONER MICCICHE: I mean you can't preserve
11 it and incorporate it into a new wall. Was the intent there
12 that the rocks be preserved, or the wall, in Condition #15?
13 SANDY BAILY: I would say the way it's worded is
14 that the rocks would be preserved, meaning you don't...
15 COMMISSIONER MICCICHE: And then reused. Not that
16 the wall itself...
17 SANDY BAILY: You don't incorporate new rock
18 material.
19 COMMISSIONER MICCICHE: So that's got to be
20 corrected then effectively.
21 COMMISSIONER KANE: Is that what the Negative
22 Declaration says?
23 CHAIR TALESFORE: Do you want to speak to the
24 microphone, Commissioner Kane?
25 COMMISSIONER KANE: The Negative Declaration is
not vague on that point. "Historical aspect to be

1 preserved." I've seen the wall; it's a lovely wall. But the
2 words are what are important to me, and if the Negative
3 Declaration says no, and if it's a historical wall, and if
4 it's to be preserved, why aren't we?

5 CHAIR TALESFORE: Yes, please clarify that. I had
6 that same question after reading this and being present at
7 those meetings. Commissioner Bourgeois, we'll get to you in
8 a minute, unless you wanted to add something to this.

9 COMMISSIONER BOURGEOIS: No, my point would be
10 that this is the condition for the A&S, and I think we need
11 to see what the condition is from the subdivision
12 application, because it may be worded a little differently,
13 and this A&S condition might be worded specifically for this
14 application.

15 SANDY BAILY: The mitigation reads that, "The rock
16 walls and stairways shall be preserved where possible
17 incorporation into future residential development. Where the
18 walls are in disrepair the remnants shall be incorporated
19 into future landscaping or be made into an element for an
20 entryway to the subdivision."

21 CHAIR TALESFORE: So does that clarify anything
22 for us? Does that work for the condition? Commissioner
23 O'Donnell and Commissioner Rice, we haven't heard from you
24 yet.

25 COMMISSIONER O'DONNELL: Are we going to hold Mr.
Jeans there or can we close this and have some discussion?

1 CHAIR TALESFORE: Well, no, what I'd like to do...

2 COMMISSIONER O'DONNELL: But I have no questions
3 at this point.

4 CHAIR TALESFORE: Okay, you have no questions, and
5 Commissioner Rice. Let's finish the questions. You have no
6 questions? Okay. Do we have any other questions?
7 Commissioner Kane.

8 COMMISSIONER KANE: Mr. Jeans, in looking at the
9 site designs, there's retaining walls in various places and
10 indications of fences, but I can't see what kind of fence
11 and where they're going to be. Is the property going to be
12 walled off, surrounded by fences?

13 TONY JEANS: The front fence on Reservoir Road I
14 think indicates a decorative column about every 20', with an
15 open fence between them, the type of fence is open, because
16 that's the H. lside Guidelines standard. The fence design
17 has not been completed, but it will be an open, see through
18 type fence.

19 COMMISSIONER KANE: Will the property be
20 surrounded by fences?

21 TONY JEANS: The other three sides, I think
22 between Lot #2 and Lot #3, a solid fence is intended, and
23 between Lot #3 and Lot #4, there will be a fence, but the
24 design has not been determined.

25 COMMISSIONER KANE: Thank you.

CHAIR TALESFORE: Commissioner Bourgeois.

1 COMMISSIONER BOURGEOIS: I just wanted to confirm
2 that the square footage of the home itself hasn't changed
3 from our last meeting. There's been no changes?

4 TONY JEANS: Nothing has changed. The only thing
5 that we did, we submitted a new Sheet C-2, which
6 incorporated the arborist's recommendations, but we do not
7 want you to approve that, we want you to approve the
8 original C-2, which preserves the two trees that are
9 important.

10 COMMISSIONER BOURGEOIS: (Inaudible).

11 TONY JEANS: Yes, absolutely.

12 COMMISSIONER BOURGEOIS: Thank you.

13 TONY JEANS: And I think as far as the rock walls
14 are concerned, you may want to ask the neighbors to come
15 back up and talk about this design versus a design that
16 comes straight in, and the preservation of the rock walls. I
17 mean this design was a compromise, and it was a compromise
18 based on the input from the neighbors, and we tried to come
19 up with the best solution. You're trying to come to grips
20 with several months work in one hour, and I understand how
21 difficult that is, but it was also a compromise with all of
22 us. We'd like to preserve as much of that as possible, but
23 in the rebuilding of that rock wall, it will be rebuilt to
24 look like the existing one; sloped back, laid back, and it
25 is something that you can't see from the street, by the way;
you can only see it when you walk on the property.

1 CHAIR TALESFORE: Thank you. Do I have any more
2 questions of the applicant, Commissioners? Seeing none, I'll
3 close the public hearing. Before we go on, did you want to
4 make another comment about that rock wall at all, after
5 reviewing?

6 SANDY BAILY: The only comment I'd like to add is
7 the Town does have actually historically designated rock
8 walls within town, and there have been occasions where
9 property owners file applications to widen driveways and
10 eliminate portions of the wall, and reuse the rocks
11 elsewhere on the site. So there have been proposals to
12 modify existing (inaudible).

13 CHAIR TALESFORE: So is that usually another
14 application, you said?

15 SANDY BAILY: Well that would be an application
16 because they have a historic landmark designation, where
17 this one does not.

18 CHAIR TALESFORE: Okay. Even though it did come
19 before the Historic Preservation Committee?

20 SANDY BAILY: What went before the Historic
21 Committee was the actual reservoir itself was historic, and
22 the discussion of the rock walls was made part of that.

23 CHAIR TALESFORE: So then that would be considered
24 historic, no?

25 SANDY BAILY: Historic due to age, but it does not
have a historic overlay zone, and the overlay zone is what

1 would trigger an actual application to be reviewed by the
2 Historic Preservation Committee.

3 CHAIR TALESFORE: Separate from the entire
4 project? I just want to be clear.

5 SANDY BAILY: Well if there was an application
6 that had another proposal to it, that would be part of it
7 too, because it's a landmark site. This is not a landmark
8 site.

9 CHAIR TALESFORE: Okay. Commissioner O'Donnell.

10 COMMISSIONER O'DONNELL: Listening to the disks of
11 the City Council does not help, and I say it doesn't help
12 because we have a couple of problems tonight.

13 One is the guiding light principle, which means
14 beauty is in the eye of the beholder, because guiding light
15 either means you can't go outside the building envelope, or
16 you can. That's what I gleaned from what the Council talked
17 about. At least one of the Council people was fairly firm
18 that the guiding light principle meant you couldn't go
19 outside the envelope, in which case guiding light doesn't
20 make any sense.

21 Secondly, this wall, which is a beautiful wall,
22 which I hate to see go down, but I will say that this
23 project has involved a lot of negotiation, and apparently
24 the neighbors, and I think with some cause, feel that house
25 as presently designed is probably the least intrusive of
what you could put there. It's a beautiful site; it's had a

1 lot of problems. There may be some minor tweaking, but we
2 have, and I know that I'd like to see accomplished what in
3 the final analysis would be good for the neighborhood and
4 the Town.

5 We just have to deal with the retaining wall
6 issue, because you can fairly read that to say there has to
7 be some awfully good reason to take the wall down, and the
8 only one that's specified is it's falling apart. So if you
9 read it that way, you're saying I'm sorry, I'm up a creek.

10 You don't have to read it that way, but that's a
11 matter of interpretation. And then nobody's talked about it,
12 but the Council made a big thing out of guiding light
13 principle and the envelope where you could build it. This is
14 outside the envelope and you don't get credit for that
15 portion of the envelope you didn't build on, which is the
16 argument I heard earlier this evening.

17 On the other hand, as I said before, unless the
18 Council really wants to handcuff us on this, I would look
19 for some flexibility within the five hours of their
20 conversation, and I'm absolutely sure one can find some
21 flexibility in the five hours.

22 Instead of making this as clear as it could be, it
23 has asked us to listen to five hours of discussion to
24 understand the resolution. That suggests to me that the
25 Council felt that the intention was not in the resolution,
and so I'm suggesting that within the five hours we have

1 some flexibility. I'm not at this moment recommending
2 anything, but I'm really looking forward to my fellow
3 Commissioners' view on this.

4 CHAIR TALESFORE: I agree with you. I think that
5 there was some room, or the Town Council at that time didn't
6 want us to have some room for flexibility in the location of
7 building envelopes and the number of trees to be removed or
8 relocated. Those were to remain the same, and the
9 flexibility would not be at the expense of any more impacts;
10 it would be to reduce impacts perhaps. In other words,
11 moving an envelope would reduce grading or tree removal, so
12 it wasn't going to increase other impacts is how I
13 interpreted the attachments.

14 I want to have this discussion, but before we do I
15 just wanted to remind you that we heard all the evidence,
16 but that we were asked to pay special attention, and thank
17 you for bringing this up, Commissioner O'Donnell, to the
18 CDs, Attachment #44, and the summary notes. And that is what
19 the Town Council has directed us to do in the case of
20 architecture and site at this Reservoir Road. So with that,
21 I think Commissioner Bourgeois had his hand up, and then
22 Commissioner Micciche.

23 COMMISSIONER BOURGEOIS: Thank you, and I agree
24 that this guiding light principle was a bit fuzzy, and what
25 I heard was them being uncomfortable with putting a deed
restriction on, but that they wanted something more than

1 just a recommendation, so somewhere in between there is kind
2 of the compromise that I got that they had intended,
3 something just short of a deed restriction on the building
4 envelopes and the tree removals.

5 But one thing I think we have to remember is that
6 this house already exceeds the allowable square footage in
7 the Hillside Standards. So we're already talking about
8 having to make an exception for the house that's proposed,
9 so I just want to remind people of that when we're having
10 this conversation, that this is something that already is
11 exceeding the Guidelines as far as square footage.

12 But when all the Council members were wrapping up,
13 I heard some very strong language, and Mr. Pirzynski even
14 said, "These restrictions are rigorous," he said that two or
15 three times, and I heard a general concurrence from at least
16 a majority of the Council.

17 So we have an applicant with some good reasons for
18 taking out a rock wall, we have some neighbors that are now
19 in support of the project, but when I listened to the tape,
20 I heard some pretty clear intent that these were going to be
21 the impacts, and you gotta have a very good reason, and I
22 heard that being superior design and avoidance of additional
23 impacts, for exceeding any of those restrictions. So that's
24 my take.

25 CHAIR TALESFORE: Commissioner Micciche.

1 COMMISSIONER MICCICHE: He raised another
2 question. When I looked at the numbers in this evening's
3 report, it said that it's a 4,954 square foot home with a
4 922 garage. Now 400 doesn't count towards the FAR, so 522
5 plus the 4,954 would, which is less than the 5,500, so I'm
6 not sure where we're saying that. I'm talking about
7 (inaudible).

8 CHAIR TALESFORE: Commissioner Bourgeois.

9 COMMISSIONER BOURGEOIS: Could Staff clarify?
10 Because we had 4,700 in the previous one.

11 SANDY BAILY: The applicant brought to my
12 attention at the last hearing that the project planner had
13 verbally corrected that information and her notes are
14 attached here, that there was additional square footage that
15 should have been calculated towards the cellar and it was
16 not, and then that would put it under the FAR. So it was a
17 verbal discussion apparently at your last hearing on this
18 matter.

19 COMMISSIONER MICCICHE: My other question is one
20 of Staff.

21 CHAIR TALESFORE: Yes, Commissioner Micciche.

22 COMMISSIONER MICCICHE: Just to clarify something
23 on the envelopes, I was part of the Commission when we
24 processed the reservoir site plan, and at that time it was
25 unusual to put building footprints on the property by
approving it, and part of the reason why we did, I believe,

1 at that time, and I think I'm just looking for recollection
2 on that, was the sole purpose was to preserve trees. We
3 looked at it as a least restrictive area that would minimize
4 the taking out of trees, and that was the intent of it, so
5 that when I look at this thing and there's been a lot of
6 work here in preserving the trees, so they have fulfilled
7 what I believe was the intent of the Planning Commission at
8 that time. I'm not sure the Council felt the same way; I'm
9 just telling you where we were coming from, because
10 typically we didn't put building drawings on this type of
11 approval, and we did it for that purpose at that time, for
12 clarification.

13 CHAIR TALESFORE: Commissioner Kane.

14 COMMISSIONER KANE: The guiding light principle
15 seems to be a guiding light for this case on questions of
16 flexibility. So I listened to it a number of times, and
17 Staff member Rohani and Councilperson McNutt went back and
18 forth on that, and one of the things I've learned is about
19 the nature of the flexibility given by Council.

20 The decision not to have a deed restriction, not
21 to have absolute negative numbers regarding cuts and trees
22 and fill and pads and footprints, et cetera, as they
23 discussed it, was that in case--and I think John Curtis from
24 Parks and Public Works also added to this concept in
25 construction and architecture--in case there were
requirements, Mr. Rohani taught Council that specific

1 language could not always be adhered to, was not always
2 wise, because if they needed a little leeway for an
3 architectural necessity, say they needed 8" and the deed
4 restriction on the resolution said 6" and they were stuck,
5 and the project would stop.

6 So the flexibility was to be given for such minor
7 requirement vis-à-vis the A&S process. Flexibility was to be
8 for as required, not for as desired, and it reminds me of
9 the intent that was discussed on fill and cut, that cutting
10 into the hillside was as required, not as desired, so that
11 the concept of required/desired, I've learned in two places
12 on the record from Council. I'd like to take a moment if I
13 can, Madam Chair, and go over some of those issues on tape.

14 CHAIR TALESFORE: Okay, a moment.

15 COMMISSIONER KANE: Just a few quotes from the
16 12/15. I don't know that everybody's had the six-and-a-half
17 hours--unfortunately I did--but the time to listen to them. I
18 don't know that everybody has been able to listen to these
19 things, but they were a doozy. On 12/15 they specified black
20 and white, Mr. Lortz did, about future tree removal. Lot #1,
21 no. Lot #2, two. Lot #3, seven, and two relocated. Lot #4
22 no.

23 Councilman Wasserman said, "Can we limit all these
24 buildings to these envelopes?" Mr. Lortz said, "Yes." Mr.
25 Pirzynski said, "Neighbor issues tonight are concerned," and
he said this, I didn't, "The great fear is that developers

1 will look at the proposal and start to cut corners, and we
2 want to make it perfectly clear that we are rehabbing the
3 contours and then we shall build to these contours. No one
4 can say later, 'I need a flat pad.' The answer is no."

5 Regarding the size of the house, he said this, I
6 didn't, "Because people wish to live on the these hillsides,
7 these are people who want to live in small houses." He then
8 said, "And specifically Lot #3, 2,700 square feet. It needs
9 to be a small house. We are giving notice up front that
10 there are rigorous requirements that we abide by these
11 limits." And then Mr. Lortz said, "So the trees shall be
12 preserved. Attachment #44 shows the envelopes, and that's
13 it," and then they went on to discuss guiding light, and the
14 corner of the phrase, Councilwoman McNutt, said, "The
15 guiding light is not an absolute, but it's close," and it
16 got back to that flexibility discussion between her and Mr.
17 Rohani.

18 Then there was this interesting discussion about
19 the tapes, and I think that's where my passion comes from
20 tonight. I'm very concerned about this, that they made
21 speeches about the bowl, the demolition of, the restoring
22 of, the land to its natural state. They had talked on 12/15
23 in these terms, and then when the resolution came to them on
24 January 5th, Councilman Wasserman and Councilman Pirzynski
25 pulled the resolution, having the concern that it was not
clear enough, that indeed it was not strong enough. So they

1 spent the rest of the evening trying to make the resolution
2 clearer and stronger, to such a degree that they said, "This
3 is a very sensitive project, and when the A&S comes to the
4 Planning Commission we will give them the tapes of this
5 meeting so they know what we said." Mr. Pirzynski said, "So
6 the Planning Commission will get the tapes, not just the
7 minutes. I want them to have the CDs." And the Planning
8 Department said, "The tapes will be given," and Mr.
9 Pirzynski said, "Good, because I know they live for this
10 stuff," as in we have no other (inaudible). This is a very
11 interesting case. I can get you copies.

12 CHAIR TALESFORE: Commissioner Kane, is there
13 more.

14 COMMISSIONER KANE: Yeah, there's more. I think it
15 needs to be explained what it is I'm concerned about. We
16 almost made a decision two weeks ago without these tapes,
17 and the tapes are passionate in responding to the neighbors
18 who said that their great fear was that in a couple of years
19 no one would adhere to what was said. We have letters and
20 letters; all the houses surrounding the property said all
21 the same thing. I would like to adhere to what was said
22 three years ago. I would like folks to know that the
23 hillsides are sacred.

24 The house is fantastic. It may not be a hillside
25 house, and it certainly may not be in compliance with the
guidance that was given a number of years ago that we would

1 not have had, had we not taken a break to listen to those
2 tapes.

3 CHAIR TALESFORE: Does anyone want to respond to
4 that? Please feel free to comment on that if that's what you
5 remember hearing. Commissioner O'Donnell.

6 COMMISSIONER O'DONNELL: I'm not responding to
7 that, but I'm thinking with you, thinking out loud. The
8 problem with legislative history, which is what we're
9 dealing with, Congress passes a law, and you can go study
10 the legislative history, and ultimately the law has to stand
11 for itself. The legislative history can help you interpret
12 that language, but the language has to stand on its own.

13 So five or six hours of listening to their
14 conversation is helpful, but it is to me not binding; the
15 language of the resolution is binding. That's my view in any
16 event and that's what I intend to be guided by.

17 Commissioner Micciche raised an interesting point,
18 which was why an envelope? The Hillside Ordinance adopted
19 envelopes for view purposes and for grading purposes, so we
20 had a view shed that we were worried about. This predates,
21 by the same day I think, the adoption of the Hillside
22 Ordinance, and yet they were talking envelopes? And why were
23 they talking envelopes? The location of this particular lot
24 I believe has no view shed impact at all, so it couldn't
25 have been that portion of the Hillside Ordinance.

1 It would have been no portion of the Hillside
2 Ordinance, because if we're talking about trees, and I think
3 perhaps we were, the envelope would be important from a tree
4 standpoint. And yet this envelope as massaged perhaps is
5 good for the trees; you could say that.

6 So I think one of the questions you have to ask,
7 and it isn't answered in the five or six hours of
8 conversation, is what is the purpose and meaning of the
9 envelope? It is not answered by the subsequent ordinance
10 they adopted.

11 So we're sitting here, and I will cede to no one
12 my love of the hills. On the other hand, one has to consider
13 what is to be built there and when. Something will be built
14 there, and the question then becomes is this a very nice
15 house that should be built there, or should we wait till
16 something else comes down the pike? Is this a house that we
17 should say should not be built there because of a stone
18 fence? Because one can read this restriction, this Condition
19 #15 I think it was, that you can't move one of those rocks,
20 and therefore everything else fails. I find great difficulty
21 with that view, and it is not a view that I would willingly
22 subscribe to, and probably will not.

23 So the only question that I will address this
24 evening for my own consideration, and it's a very tough
25 matter and part of the reason it's tough is because the
Council very properly was very concerned with this, but

1 didn't help the situation by five or six hours of
2 conversation. We have a resolution and an ordinance, and I
3 believe that under the proper circumstances we can approve
4 this project tonight without doing violence to that
5 resolution. The only question is should we?

6 When I looked at that retaining wall, I think it's
7 a beautiful retaining wall, and my reaction was don't take
8 down that retaining wall. When I listened to the reason why
9 the retaining wall has to come down, I asked myself is this
10 retaining wall more important than the outcome of what
11 they're asking to do. I listened to the neighbors and they
12 say hey, this is the right house for this place. I've looked
13 at the plans; it looks like it probably is the right house
14 for this place. It falls within the Hillside Ordinance; we
15 don't have to give them an exception to that. Commissioner
16 Bourgeois's point would have been well taken except we found
17 out there was a mistake made.

18 So as you can tell, when I came in tonight I
19 didn't have this feeling, but now I'm drifting towards
20 saying that this looks like the best choice for this lot.
21 Commissioner Kane is absolutely right to be as charged as he
22 is on this, and I think we can reasonably differ on how much
23 weight we have to give the five or six hours of important
24 conversation before adopting a resolution. I do not feel
25 bound by trying to interpret which of each councilperson's
words I should pay attention to. They are not consistent,

1 and therefore I look to the resolution and ordinance alone,
2 and I could approve this plan. That's what I have to say.

3 CHAIR TALESFORE: We have a lot to say, I'm sure.
4 Thank you, Commissioner O'Donnell. Commissioner Kane.

5 COMMISSIONER KANE: As they say on Council, with
6 all due respect. Just to respond, we may have a meritorious
7 different view of our roles, and I see my role as a judge
8 and I cannot make policy, and I cannot make legislative
9 interpretations, and litigators from the floor do all sorts
10 of things like that, but the judge is stuck with the words
11 as the are written.

12 Mayor Glickman said in conclusion on this thing,
13 "This is a very sensitive project, and the Hillside
14 Guidelines must be adhered to. Any future development will
15 not cut more trees." They said no more pads, I think they
16 said no more fill, and, "We must be crystal clear. Our
17 intention is to adhere completely to the guidelines with
18 special project," yackity yack.

19 And Commissioner O'Donnell, I don't find anything
20 vague in any of that. This is crystal clear, and the point I
21 wanted to make is that this original Planning Commission
22 Decision was overturned by Council, and I heard them say it,
23 because it was a policy issue. There are three reasons they
24 can overturn us: we erred; new evidence, in which case it
25 comes back to us; the third is we made policy. And they said
this is overturned because of a policy issue; they called it

1 a "policy disagreement." And I am saying again to my fellow
2 commissioners, we do not have the right or the power to make
3 policy. On 12/5/03 Town Council said these are the limits.
4 My interest is in protecting the words, which protect the
5 hills, not the immediate case per se. I think to ignore the
6 guidance they gave on this, and that includes all four
7 properties, is to make policy, which we cannot do.

8 CHAIR TALESFORE: Along with all of this,
9 Commissioners, in our January 24th packet of the Staff
10 Report, page five, the Planning Commission has also been
11 asked, and I want to just throw this in so in our discussion
12 we can be talking about this, "The Planning Commission
13 should carefully consider the allowable floor area, whether
14 the pool may be located outside the building envelope."
15 We're going to have to get a little specific here now, okay?
16 "The landscaping between the driveway and the street, the
17 requested exception to the HDS&G for grading," and also
18 there was a recommendation by Staff that the parking bay be
19 reduced in size to allow for additional landscape screening.

20 There's a lot of exceptions being asked for here,
21 so my comment to you, and I'd like to hear from you about
22 this, is when we are asked to okay exceptions, it seems to
23 me that what we need to see is superior type proposals. So
24 with that being said, I'd like to open this up for more
25 discussion on what I asked for, because that is the work we
have ahead of us, not just approving the project as a whole.

1 but also addressing these other issues. Commissioner
2 O'Donnell.

3 COMMISSIONER O'DONNELL: Thank you very much for
4 calling that to our attention. I think we should talk about
5 each of those.

6 I'll just respond for the moment to the pool. The
7 pool does concern me. I don't believe we've yet approved a
8 pool outside the envelope as prescribed by the Hillside
9 Ordinance, and here I think the Hillside Ordinance does
10 apply, whereas how this particular envelope was picked I'm
11 not sure/ When it was selected there was no Hillside
12 Ordinance; that was adopted that evening, so I think Mr.
13 Micciche may be right when he says it was to preserve trees.

14 But that being said, we've already had that
15 conversation. I'm just saying the pool does trouble me
16 because whereas the house I think is very, very well
17 designed and I'm very sympathetic to the location, it's hard
18 to be sympathetic to putting the pool outside the envelope.
19 I'm not against pools, but it's just harder to get wound up
20 about putting the pool outside the envelope, so I sure would
21 like to hear what my fellow commissioners have to say on not
22 only that point, but the points you've correctly raised.

23 CHAIR TALESFORE: Thank you. Okay, down at that
24 end of the dais, Mr. Micciche? Not yet? Oh, you're thinking,
25 okay. I don't want to hurry anybody. There's also, don't
forget, the suggestions by the Town Architect, who also

1 reviewed this, so we do need to give consideration to those,
2 and those were in the January 24th packet as well.
3 Commissioner Kane.

4 COMMISSIONER KANE: I'm just wondering where we're
5 going to go/ Are we going to redesign this house? Are we
6 going to come up with 20 conditions? Maybe I'll start from
7 ground zero and work back and see if it flies.

8 CHAIR TALESFORE: I can't imagine what that means.

9 COMMISSIONER KANE: Well it means I'm ready to
10 make a motion.

11 CHAIR TALESFORE: Okay, let's have it. We can
12 still discuss.

13 COMMISSIONER KANE: I make a motion we deny the
14 application and send it back for a redesign more in
15 compliance with the Hillside Guidelines.

16 When the Council met and talked to the people
17 involved, they said, "We're going to pass the Hillside
18 Guidelines tonight," and in three separate locations they
19 said, "and those guidelines shall apply to his project."
20 There were handouts of what it was going to be before they
21 voted on it and everybody knew it.

22 Let's start to see if I can get a second on deny
23 the project, send it back for redesign. We can expedite the
24 hearing and hear it again in two weeks or as soon as the
25 redesign is ready consistent with the iteration that we give
as to what our concerns are. Preservation of the wall is

1 possible, see-through fences, the roof off of the patio, the
2 pool, all of those things. That's my motion. Deny it, send
3 it back for redesign.

4 CHAIR TALESFORE: Do we have a second?

5 ORRY KORB: Madam Chair, just before you get a
6 second, let me request clarification. Is the motion to
7 remand for redesign? Not to deny, but to remand for
8 redesign?

9 CHAIR TALESFORE: Yes, thank you.

10 COMMISSIONER KANE: We have two possibilities on
11 this application, and I wondered where the third one was, so
12 I'm bringing it up. If the second one can accomplish what I
13 want to accomplish by bringing up denial, the answer is yes.

14 CHAIR TALESFORE: That's not right.

15 ORRY KORB: Well let me be clear. When you have an
16 application pending, you can deny the application, which
17 means you've made your final decision. It can be appealed to
18 the Council, or it just dies, depending on the applicant's
19 desires. Or you can remand the application with conditions,
20 or you can approve the applications.

21 COMMISSIONER KANE: The Staff Report gave us two
22 choices. The choice of denial was not there, which I found
23 curious, so I'm bringing up denial to precipitate maybe an
24 attempt at getting to where you go because I don't think the
25 way you think. What you said about remanding for redesign,
absolutely, I'd prefer that.

1 ORRY KORB: So the proposed motion would be remand
2 for redesign, and I assume that there will be conditions
3 associated with that?

4 COMMISSIONER KANE: Yes, sir.

5 CHAIR TALESFORE: All right, so we have a motion
6 on the floor to remand for redesign. Do I have a second?
7 Commissioner Bourgeois.

8 COMMISSIONER BOURGEOIS: I'll second that.

9 CHAIR TALESFORE: Okay.

10 COMMISSIONER BOURGEOIS: And I assume we can amend
11 that motion, maybe go down the line and try and get a list
12 of what those conditions would be?

13 ORRY KORB: So long as the maker of the motion and
14 the seconder agree to those conditions.

15 CHAIR TALESFORE: And so with that in mind, when
16 you hear anything that somebody wants to add, would you both
17 just respond without me asking? Commissioner O'Donnell?

18 COMMISSIONER O'DONNELL: Before we comment on what
19 we'd like to attach to that, I would suggest that we're not
20 doing the applicant any favors by remanding it and asking
21 for the conditions. Part of our difficulty here tonight is
22 notwithstanding all the overload of information we've
23 received, it isn't crystal clear I think, well it isn't to
24 me in any event, what the Town Council would do with this.
25 Were I the applicant, I'd rather get denied and bounced up
to the people who can tell us more clearly what they mean,

1 but that's obviously their choice, and I can certainly see
2 why somebody might deny this.

3 I know that Commissioner Kane is trying to do the
4 right thing by not only the Town but also by the applicant.
5 I'm merely suggesting that I personally question whether
6 it's doing the applicant any favor. This is a tough matter,
7 because of the six hours of conversation with the Council.
8 I'd like to see what they're going to do; that would be far
9 more instructive to me than listening to six hours of their
10 conversation.

11 In any event, the final thing I would say is I
12 would oppose the motion.

13 CHAIR TALESFORE: Commissioner Micciche.

14 COMMISSIONER MICCICHE: I will oppose the motion
15 too. I'd prefer to see essentially either what Tom said or
16 that we approve it with conditions and modifications that
17 are giving clear direction to them. To leave it open like
18 this is to me not a way to go about doing it.

19 CHAIR TALESFORE: Commissioner Rice, we haven't
20 heard from you tonight.

21 COMMISSIONER RICE: I'm listening. I think I'll
22 oppose the motion as well, because I think no matter where
23 this goes or how it goes back and forth, it's going to end
24 up at Council for a policy direction.

25 My preference would either be to outright deny it
with specifics, for example I think the pool is just wrong

1 where it is, just as one example, rather than sending it
2 back for continual redesign, because I'm not sure we'll ever
3 get to someplace... I could take the Council's words and say
4 that that wall must remain, and then you're going to end up
5 with a 1,200-1,300 square foot house and I don't think
6 that's the intent.

7 So if we're now dealing with we'll call it the
8 spirit of the law as opposed to the letter of the law, then
9 I have less problem with certain aspects of it being outside
10 of the building envelope. I would pull the pool out, like I
11 said. I'm less concerned with moving the rocks to
12 incorporate them on the site; I thought that was well done.
13 I think the house is pretty well designed. So I'd rather
14 approve it with conditions or deny it outright as opposed to
15 sending it back for redo.

16 CHAIR TALESFORE: And Commissioner Kane.

17 COMMISSIONER KANE: Commissioner O'Donnell is as
18 usual compelling and persuasive. I would be inclined to
19 withdraw my motion, and based on what I perceive from the
20 applicant, to make a motion we deny the application.

21 CHAIR TALESFORE: And would that be with
22 direction?

23 COMMISSIONER KANE: No.

24 COMMISSIONER BOURGEOIS: What?

25 COMMISSIONER KANE: No, we're denying it. That's
my motion. I withdrew it.

1 CHAIR TALESFORE: He withdrew it. Okay, Commission
2 Kane withdrew his motion, and he has another one.

3 COMMISSIONER KANE: I made a motion to deny it.

4 COMMISSIONER MICCICHE: He has a new motion, to
5 deny.

6 CHAIR TALESFORE: Commissioner Kane has made his
7 second motion, which is to move to a denial, and I'm looking
8 for a second on that. Commissioner Bourgeois.

9 COMMISSIONER BOURGEOIS: I'll second it. I would
10 have trouble with the other alternative, which is approving
11 with conditions. I don't think we could get to that tonight,
12 so I'm going to second the motion.

13 CHAIR TALESFORE: Commissioner Micciche.

14 COMMISSIONER MICCICHE: I don't support that
15 motion either.

16 CHAIR TALESFORE: You don't support what?

17 COMMISSIONER MICCICHE: I think we have got enough
18 information to put conditions on this that are acceptable
19 and will be acceptable to the Council. If the Council sees
20 fit not to do it, they'll take that action. They did it
21 before; they could do it again, so I will not support the
22 motion.

23 CHAIR TALESFORE: You will not support this
24 motion. I'm disappointed in this motion. I think the house
25 and this proposal need some refinements, and I think we
could have provided those, and I would like to have tried

1 that. I listened to those tapes and I understand the spirit
2 of all of it. I was there, I was in the mix of it, along
3 with Commissioner Micciche, and so there are a few things I
4 would like to add if we could get to a motion for approval
5 with conditions and direction for some tweaking. I would
6 like to do that, so I will not be supporting this motion.

7 So let's call the question then. All those of
8 favor of denying this?

9 ORRY KORB: The motion is to deny the application,
10 which has been seconded.

11 CHAIR TALESFORE: So there it is. So, all in
12 favor, raise your hand. And opposed? It fails 2-4.
13 Commissioner O'Donnell.

14 COMMISSIONER O'DONNELL: I would move to approve
15 the application with conditions, and I'm going to ask all of
16 my commissioners who care to join in the conditions to do
17 that. So I'm making the motion. Obviously it would have to
18 have a second, but I can tell you it is my intent, before we
19 vote on this, to see if we can put enough conditions on it
20 to satisfy a majority of this commission. So that's the
21 motion; it's a bare-bones motion.

22 COMMISSIONER MICCICHE: I'll second that bare-
23 bones motion.

24 CHAIR TALESFORE: Okay, we have a motion to
25 approve with conditions, and we have a second. So that being
said, let's hear the conditions. Commissioner Micciche.

1 COMMISSIONER MICCICHE: I would like to add the
2 condition, to make a motion on the precautions to be put in
3 for the trucking of the fill that they'll be able to do.

4 CHAIR TALESFORE: Do you have that? Are you
5 helping me out? Oh good, thanks. All right, Commissioner
6 Rice.

7 COMMISSIONER RICE: I'd like to suggest that we
8 take the swimming pool out of the plans to the satisfaction
9 of the Director of Community Development.

10 COMMISSIONER O'DONNELL: Or move.

11 COMMISSIONER RICE: Hmm?

12 COMMISSIONER MICCICHE: So you're asking it be
13 removed? Are you saying yes?

14 COMMISSIONER RICE: Yes.

15 COMMISSIONER MICCICHE: The maker of the motion is
16 asking.

17 COMMISSIONER O'DONNELL: I'll accept that.

18 COMMISSIONER MICCICHE: I'll accept that as well.

19 COMMISSIONER RICE: I'd also like the direction
20 from the Town Architect to be incorporated to the
21 satisfaction of the Director of Community Development. The
22 incorporation of the recommendations of the consulting
23 architect, that's the removal of the roof over the large
24 balcony as an example, adding the trellis above the garage,
25 et cetera.

COMMISSIONER O'DONNELL: I'll accept that.

1 COMMISSIONER MICCICHE: The same.

2 COMMISSIONER RICE: And that's good for me for
3 now.

4 CHAIR TALESFORE: Commissioner O'Donnell.

5 COMMISSIONER O'DONNELL: I have just a discussion
6 point, a thought. I don't know whether it would be possible
7 to put a pool on this property and comply with the Hillside
8 Ordinance; I just haven't studied it from that standpoint,
9 but were it to be possible, I don't think this commission is
10 against swimming pools, but I guess I'd ask Staff in looking
11 at the plans, has anybody considered whether a pool could be
12 located within. I guess it would have to be within the
13 envelope. It doesn't look like it from what I see of the
14 envelope, but if you have an opinion.

15 FLETCHER PARSONS: I don't think that it's going
16 to be able to be located within the envelope, but its
17 current location does actually satisfy the Hillside
18 Guidelines for slope and for depth of cuts and fills.

19 COMMISSIONER O'DONNELL: Let me ask a further
20 question then. Maybe my recollection is wrong of the
21 Hillside Ordinance then. I thought the Hillside Ordinance
22 said you could not have a swimming pool outside of the
23 envelope, and I'm sure you're memory is better than mine,
24 but I just want to verify that.

1 FLETCHER PARSONS: The envelopes that were arrived
2 at through the subdivision process were not the same LRDA
3 that we talk about by today's Hillside Guidelines.

4 COMMISSIONER MICCICHE: So these were specific to
5 that area.

6 FLETCHER PARSONS: The area where the pool is is
7 actually straddling where the reservoir sat, so there really
8 isn't a whole lot of constraint there.

9 COMMISSIONER O'DONNELL: Thank you, that's a very
10 important point, because we're kind of mixing up envelopes
11 with envelopes. I would ask the requester of that amendment
12 to withdraw it.

13 COMMISSIONER RICE: I'm happy to. I was under the
14 other impression.

15 COMMISSIONER O'DONNELL: So we the condition on
16 the pool is being withdrawn.

17 COMMISSIONER MICCICHE: The removal of it.

18 COMMISSIONER O'DONNELL: I'm consenting to it.

19 COMMISSIONER MICCICHE: I consent too. I agree.

20 CHAIR TALESFORE: You're withdrawing the pool?

21 COMMISSIONER RICE: I'm withdrawing the removal,
22 so I would allow the pool.

23 CHAIR TALESFORE: Okay. Do we have any others?
24 Commissioner Kane.

25 COMMISSIONER KANE: I'm not going to support the
motion. You're going to go back and forth on redesigning,

1 designing, approving. There's not a lot about this
2 particular house that conforms with the guidance that was
3 given in 2003 and 2004 when the Town was trying to formulate
4 the sense of how to protect the hills. This is a 5,051
5 square foot house with an enormous cellar, and you're
6 defining what's going to happen to the rest of the
7 properties. The average house in that neighborhood is about
8 3,800 feet, I think, and this would make it the second
9 largest in the neighborhood and we're going to look at
10 another one that's going to take over second place.

11 I think we're missing the whole point of the
12 Hillside Guidelines. We sound like we're talking about
13 residential guidelines, which are fair and reasonable. These
14 guidelines are not fair and reasonable; these are protect-
15 the-hillside guidelines. They're very stringent, and we were
16 told to adhere to them, so I feel passionate about that. I
needed to say that.

17 CHAIR TALESFORE: Commissioner O'Donnell.

18 COMMISSIONER O'DONNELL: The Hillside Ordinances
19 did apply to this project, however the Hillside Ordinance
20 didn't get applied to it, because for instance I don't know
21 if we had the viewing platforms in place, nor do I know if
22 they were used in this, nor do you. The fact that the law of
23 the Hillside Ordinance went into effect doesn't mean the
24 implementation... Maybe it was, I don't know, but nobody's
25 asked tonight whether the Hillside Ordinance was applied to

1 this in its final approval. If it was, then I'd like to know
2 whether it was determined that it complied, because you are
3 fulminating against it as if it does not apply. There's no
4 evidence in the record on that point. Could I ask Staff, was
5 the Hillside Ordinance applied?

6 SANDY BAILY: Do you mean the Hillside Development
7 Standards and Guidelines?

8 COMMISSIONER O'DONNELL: I mean the Hillside
9 Ordinance as it applies to the Hillside Standards and
10 Guidelines.

11 SANDY BAILY: Well the Hillside Development
12 Standards and Guidelines, yes, they were used. If you looked
13 at your findings that you have to make, it does state where
14 it does not comply. It's in your findings.

15 CHAIR TALESFORE: Do any other commissioners have
16 anything to say?

17 COMMISSIONER O'DONNELL: (Inaudible).

18 CHAIR TALESFORE: Yes, we certainly can give you a
19 minute, and I'm going to look up something as well.

20 COMMISSIONER O'DONNELL: For the record, Ms.
21 Baily, is this correct that it's the one thing that the
22 project includes a maximum cut depth of 8' for a small area
23 of the driveway? I'm looking at the Planning Commission
24 January 24th Required Findings and Considerations exception
25 to the Hillside Development Standards and Guidelines.

1 SANDY BAILY: You need to look at the report for
2 tonight's meeting, Exhibit L.

3 COMMISSIONER O'DONNELL: It's different than the
4 one we got the last time?

5 SANDY BAILY: Correct, because that's where the
6 square footage for the FAR was incorrect.

7 FLETCHER PARSONS: (Inaudible).

8 COMMISSIONER O'DONNELL: Okay. Thank you. But it
9 says L. Is there something different besides L?

10 (Long pause.)

11 CHAIR TALESFORE: Commissioner Kane.

12 COMMISSIONER KANE: When you say pads, do you mean
13 the envelope? Because there were no pads, they were adjusted
14 to the contour.

15 COMMISSIONER O'DONNELL: The envelope.

16 COMMISSIONER KANE: Got ya. He didn't mean pads.

17 CHAIR TALESFORE: I understand he didn't mean
18 pads.

19 COMMISSIONER MICCICHE: Do you mean the envelope?

20 CHAIR TALESFORE: I thought this was going to be a
21 little easier than what it's now turning out to be, and I'm
22 not so sure this was maybe the best with the approval with
23 conditions. Yes, Commissioner Kane.

24 COMMISSIONER KANE: We have a motion before us,
25 but I mean that's the danger of laying out the conditions.
We run the risk of redesigning the whole thing and

1 applicant-I believe we can call him back up if he wishes to
2 come back up-but I believe he asked for a denial.

3 CHAIR TALESFORE: Well Commissioner Kane, I think
4 we're just going to call the question when we're finished
5 here, and then move forward from that. It will be the same
6 thing, and if it passes, Commissioner Kane, he can always
7 appeal if he wants to. Commissioner Bourgeois.

8 COMMISSIONER BOURGEOIS: I'm not going to support
9 the motion. This is what I was concerned about. I'd have
10 remanded it. I understand the applicant doesn't want to
11 remand it and that's why I voted for denial. I think that
12 based on the considerations 2920.150 about site layout and
13 some of the testimony we've heard about preserving the rock
14 wall, and I found the tapes really compelling, and I hate to
15 see a house of this size when I heard Council direction for
16 a house half this size is what they intended for Lot #3, so
17 I'm not going to support the motion.

18 CHAIR TALESFORE: And I'm not supporting this as
19 well, and the reason is because it's gotten... I understand,
20 but just listening to this and then considering rock walls,
21 the fact that we haven't even addressed fences and I'm
22 hearing solid fence and open fence, and I don't even see
23 them in front of me. I know they're not. They should be;
24 they should be part of the package I think. In the past we
25 have seen fences as part of the design, is that correct? I

1 know it says, "open fence." I know what it says, I can't see
2 it, and that's what I have to judge this on.

3 SANDY BAILY: You are correct, there are no
4 (inaudible).

5 CHAIR TALESFORE: Thank you. So I think I have
6 more questions maybe now than I had before. There are
7 questions of approvals, with approving exception after
8 exception, and variances, and you know what? We just don't
9 approve like that, I don't think. I just don't think that's
10 what we do here. There are too many exceptions. Commissioner
11 O'Donnell.

12 COMMISSIONER O'DONNELL: Before we call the
13 question, I would just like to make a suggestion we do one
14 thing or the other.

15 CHAIR TALESFORE: Yes.

16 COMMISSIONER O'DONNELL: So fine, let's call the
17 question.

18 CHAIR TALESFORE: So all in favor of approval?
19 Three. And all opposed? Three. So motion dies for failure to
20 pass. Commissioner Micciche.

21 COMMISSIONER MICCICHE: I'd like to make a motion
22 to deny the application, and send my apologies to Council
23 for passing the buck.

24 CHAIR TALESFORE: I don't know if it's passing the
25 buck.

COMMISSIONER KANE: A little bit like my motion.

1 COMMISSIONER MICCICHE: Yeah, but you didn't
2 apologize to the Council.

3 CHAIR TALESFORE: So we have a motion now in front
4 of us to deny.

5 COMMISSIONER RICE: I'll second it.

6 CHAIR TALESFORE: And it is seconded by
7 Commissioner Rice. And I'm going to call the motion right
8 now, unless someone has a burning comment they need to make.
9 Okay, fine. All those in favor raise your hand. Thank you.
10 Against? One. Okay, the motion passes 5-1. Thank you.

11 ORRY KORB: Appeal rights. Anyone dissatisfied
12 with the decision to the Planning Commission may appeal the
13 decision to the Town Council. The appeal must be filed
14 within ten days; it must be filed upstairs in the Clerk
15 Department. There is a fee for filing an appeal.
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Date: February 28, 2007
For Agenda Of: February 28, 2007
Agenda Item: 1
DESK ITEM

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: Reservoir Road (Lot 3)
Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.

PROPERTY OWNER: Tony Jeans, T.H.I.S. Design
APPLICANT: Mark Von Kaenel & Dianna Robinson

DEEMED COMPLETE: January 2, 2007
FINAL DATE TO TAKE ACTION: July 2, 2007

EXHIBITS: A.-U. Previously received
V. Letter from Susan & Gary Kankel (one page), received February 23, 2007
W. Letter from Dennis McEvoy & Kim Worsencroft (one page), received February 26, 2007

REMARKS:

Exhibit V and W are letters from neighbors that were received following distribution of the Planning Commission packet. It is the applicant's intent to save two additional trees, #5 and #16. The neighbors letters refer to these trees as #70 and #86, the numbers assigned to the trees on the subdivision plans. The trees have been renumbered on the Architecture & Site application plans, and are the ones being used in the staff report, arborist report and conditions of approval as they apply specifically to the project. Because several neighbors support the project based on the understanding that these two trees will be saved, staff suggests that the following condition be added:

DRIVEWAY DESIGN. The driveway design shall be modified as needed to preserve trees #5 and #16.

Suzanne Davis
Prepared by:
Suzanne Davis, Associate Planner

Dandy L. Bailey for
Approved by:
Bud N. Lortz, Director of Community Development

RECEIVED

FEB 23 2007

TOWN OF LOS GATOS
PLANNING DIVISION

February 24, 2007

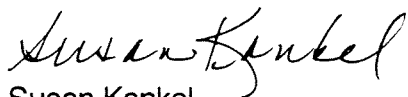
Los Gatos Planning Commission:

Re: Application S-07-21

As a result of a meeting with Tony Jeans and his subsequent letter to Suzanne Davis (February 17, 2007) which retains trees 70 and 86 and the relocates seven additional trees, we support the above application.

We also reiterate our desire for tree protection, material storage, housekeeping, and construction management conditions to be set for all four lots on this property as listed in our previous letter of February 13, 2007.

Respectfully,


Susan Kankel


Gary Kankel

99 Reservoir Road

February 26, 2007

To: Los Gatos Planning Commissioners

cc: Mr. Bud Lortz, Director of Community Development
Mr. Joel Paulson, Planner, Community Development Department
Ms. Suzanne Davis, Associate Planner, Community Development Department

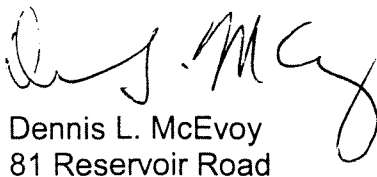
Based on new information received from the developer, we are removing our opposition to the Architecture and Site Application for 100 Reservoir Road (Lot #3), provided that the developer and homeowner be allowed to preserve the two large oak trees that are in dispute with the town arborist.

The plan the developer originally presented called for preserving tree #86, a 23.5" blue oak, and tree #70, a 16.5" black oak. However, for some reason, the town arborist has recommended the removal of these two large native trees. As a result, the tree summary that was provided by the planning department showed those trees on the remove list, and gave us the impression the developer was trying to remove more trees than originally designated in the San Jose Water subdivision approval (Attachment 44, referenced in our earlier letter). We and our neighbors support the developer's plan to preserve these two large oaks. In fact, if it was our own property, we would insist on it.

We also agree that the developer's plan to have the driveway running parallel and below Reservoir Road and the garage below the house provides the best neighborhood compatibility, even though it requires a slight enlargement of the building envelope. The one story façade presented to Reservoir Road is superior to an alternate plan that would have the driveway coming directly from Reservoir Road, the garage facing the road, and a 1 ½ story façade

We ask that the Planning Commission overrule the town arborist and approve the plan that preserves the two large oak trees.

Respectfully submitted,



Dennis L. McEvoy
81 Reservoir Road



Kim Worsencroft
81 Reservoir Road

RECEIVED
FEB 26 2007
TOWN OF LOS GATOS
BUILDING DIVISION

EXHIBIT W

Date: February 22, 2007
For Agenda Of: February 28, 2007
Agenda Item: 1

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: Reservoir Road (Lot 3)
Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.

PROPERTY OWNER: Tony Jeans, T.H.I.S. Design
APPLICANT: Mark Von Kaenel & Dianna Robinson

DEEMED COMPLETE: January 2, 2007
FINAL DATE TO TAKE ACTION: July 2, 2007

FINDINGS:

- As required by Section 15303 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.
- As required by the Hillside Development Standards & Guidelines required compliance with applicable standards and guidelines and for the granting of an exception.

CONSIDERATIONS: ■ As required by Section 29.20.150 of the Town Code for Architecture and Site applications.

RECOMMENDATION
SUMMARY: Approval, subject to conditions.

EXHIBITS:

- A.-K. Previously received
- L. Required Findings & Considerations (four pages)
- M. Recommended Conditions of Approval (eight pages)
- N. Letter from Suzanne & Clark Cochrane (one page), received February 13, 2007
- O. Letter from Susan & Gary Kankel (one page), received February 14, 2007
- P. Letter from Arthur & Dorothea Bonner (one page), received February 14, 2007
- Q. Letter from Dennis McEvoy & Kim Worsencroft (one page), received February 14, 2007

- R. Town Council Resolution 2004-4 (four pages)
- S. Attachment 44 to December 15, 2003 Town Council report
- T. Letter from Tony Jeans (two pages) with three attachments (four pages), received February 14, 2007
- U. Letter from Tony Jeans (one page) with three attachments (three pages), received February 20, 2007

A. BACKGROUND:

On January 24, 2007 the Planning Commission considered the application for a new residence and pool on Lot 3 of the Sienna Oaks subdivision. The Commission accepted public testimony and, following discussion, continued the matter to this agenda due to concerns about allowing the house to extend beyond the building envelope shown on the approved tentative map, proposed tree removals, and preservation of historic rock walls on the site. The Commission also felt it was important to listen to two key Town Council discussions on the subdivision before taking action on the application. Planning Commissioners were provided with recordings of the December 15, 2003 and January 5, 2004 Town Council meetings.

B. REMARKS:

The applicant's representative submitted a letter addressing the main issues from the January 24, 2007 Planning Commission hearing. These issues are discussed below.

Driveway

The applicant submitted a revised driveway alignment that includes the removal of trees # 5 and #16 (see Exhibit O) as recommended by the Town's Consulting Arborist. However, in meeting with neighbors to discuss their concerns about the proposed tree removals, the applicant has decided against this approach, and plans to preserve these two trees.

Building Envelope

The Town Council resolution approving the subdivision is attached as Exhibit R. Sub-section 2.A. on page 3 of the resolution states:

Attachment 44 of the report dated December 1, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes.

The referenced Attachment 44 is attached to this report as Exhibit S. The Council discussed the option of adopting the building envelopes and tree removals shown on Attachment 44 as definitive requirements, but decided that it should be used as a "guiding light". The intent of the Council decision was to allow some flexibility, and the building envelopes were not adopted as

requirements. The applicant's proposed building footprint is largely within the building footprint shown on attachment 44 (Exhibit S). Part of the porch and bedroom 2 extend beyond the footprint at the front (southeast end) of the house, and a game room with covered balcony extends beyond it at the rear (northwest end) of the house. The pool and decking is also outside the building envelope.

Grading

The intent of the subdivision approval is to limit grading associated with the construction of the four new homes within the subdivision. Grading has been minimized for the proposed project, and is limited to the driveway construction and excavation for the cellar and pool. There is a total of 375 cubic yards of export proposed. While the material could potentially be distributed on the site in an effort to balance the cut and fill, it is not desirable to fill within the canopy of existing trees.

Tree Removals

As previously mentioned, several neighbors have expressed concern about the number of trees being proposed for removal or relocation (see Exhibits N through Q). The applicant's representative met with the neighbors and has prepared a response (see Exhibit R). The applicant plans to save trees #5 and #16 as requested by neighbors. The tree summary chart attached to the applicant's letter (Exhibit U) clarifies the trees that are to be saved, relocated and removed.

Rock Walls

The applicant is proposing to use the rock from the existing historic walls to surface the new retaining walls that will be constructed along the driveway and around the entry to the garage. The applicant is also willing to reuse rocks that have already been salvaged from elsewhere in the subdivision.

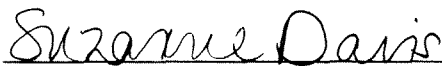
C. RECOMMENDATION:

The Planning Commission should carefully consider the development proposed outside the building envelope, the landscaping between the driveway and the street, and the requested exception to the Hillside Development Standard & Guidelines for grading. If the Planning Commission is satisfied with the project, it should take the following actions:

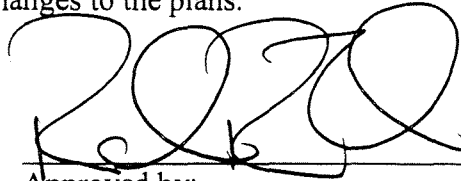
1. Find that the proposed project is categorically exempt, pursuant to Section 15303 of the California Environmental Quality Act as adopted by the Town (Exhibit L);

2. Determine that the project is in compliance with the Hillside Development Standards & Guidelines, and grant the exception to the grading standard;
3. Determine that the project is in conformance with the considerations for Architecture and site applications as set forth in Section 29.20.150 of the Zoning Ordinance (Exhibit L);
4. Approve the Architecture and Site applications subject to the conditions in Exhibit M and as shown in the development plans (Exhibit H to the January 24, 2007 Report to the Planning Commission and Exhibit P to this report).

If the Commission would like to see changes to the project that are not already specified in the recommended conditions of approval, conditions may be added or modified and staff will work with the applicant to make any necessary changes to the plans.



Prepared by:
Suzanne Davis, Associate Planner



Approved by:
Bud N. Lortz, Director of Community Development

BNL:SD

cc: Tony Jeans, T.H.I.S. Design, P. O. Box, Los Gatos, CA 95031
Mark Von Kaenel & Dianna Robinson, 245 Carlton Court, Los Gatos, CA 95032

PLANNING COMMISSION – FEBRUARY 28, 2007
REQUIRED FINDINGS & CONSIDERATIONS FOR:

Reservoir Road (Lot 3)

Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.
PROPERTY OWNER: Tony Jeans, T.H.I.S. Design
APPLICANT: Mark Von Kaenel & Dianna Robinson

FINDINGS:

Required finding for CEQA:

The project is Categorically Exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

Exception to the Hillside Development Standards & Guidelines:

The project includes a maximum cut depth of eight feet for a small area of the driveway. The Planning Commission may grant an exception to the maximum allowed cut of four feet pursuant to Chapter IX, section F. of the Hillside Development Standards & Guidelines. Any deviation shall include the rationale and evidence to support the granting of an exception.

Required compliance with Hillside Development Standards & Guidelines:

Other than the exception to grading criteria for the driveway, the project is in compliance with the Hillside Development Standards & Guidelines.

CONSIDERATIONS:

Section 29.20.150, Required considerations in review of Architecture & Site applications:

The deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.

- a. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
 1. The ability of critical roadways and major intersections to accommodate existing traffic;
 2. Increased traffic estimated for approved developments not yet occupied; and
 3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.
- b. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:
 1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
 2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and

Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.

- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility

requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.

- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

PLANNING COMMISSION –FEBRUARY 28, 2007
CONDITIONS OF APPROVAL

Reservoir Road (Lot 3)

Architecture and Site Application S-07-21

Requesting approval to construct a new residence on property zoned R-1:20. APN 529-31-041.

PROPERTY OWNER: Tony Jeans, T.H.I.S. Design

APPLICANT: Mark Von Kaenel & Dianna Robinson

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 noted as received by the Town on January 2, 2007 and approved by the Planning Commission on February 28, 2007. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. EXPIRATION OF APPROVAL: The Architecture & Site application will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. ARCHITECTURAL CHANGES. The recommendations of the Consulting Architect shall be incorporated into the plans prior to submittal of plans for building plan check.
4. EXTERIOR COLOR. The exterior color of the house shall not exceed a light reflectivity value of 30 and shall blend with the natural vegetation.
5. DEED RESTRICTION: Prior to issuance of a building permit, a deed restriction shall be recorded by the applicant with the Santa Clara County Recorder's Office that requires all exterior paint colors to be maintained in conformance with the Town's Hillside Development Standards. Final exterior colors shall be approved by the Director of Community Development prior to application.
6. OUTDOOR LIGHTING. House exterior and landscape lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. No flood lights shall be used unless first approved by the Planning Division. The outdoor lighting plan can be reviewed during building plan check. Any changes to the lighting plan shall be approved by the Planning Division prior to installation.
7. TREE REMOVAL PERMIT. A Tree Removal Permit shall be obtained for any trees to be removed, prior to the issuance of the demolition permit.
8. REPLACEMENT TREES. Replacement trees shall be planted for all tree that are removed. The number and size of new trees shall be determined using the canopy replacement table in the Town's Tree Protection Ordinance. Required trees shall be planted prior to final inspection.
9. TREE PRESERVATION. All recommendations of the Town's Consulting Arborist shall be followed throughout all phases of construction. Refer to the report prepared by Arbor Resources dated December 8, 2006 for details. Tree protection specifications shall be printed on the construction plans.

10. TREE FENCING. Protective tree fencing shall be placed at the drip line of existing trees prior to issuance of demolition and building permits and shall remain through all phases of construction. Fencing shall be six foot high cyclone attached to two-inch diameter steel posts drive 18 inches into the ground and spaced no further than 10 feet apart. Include a tree protection fencing plan with the construction plans.
11. 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.
12. DOUBLE STAKING. All newly planted trees are required to be double staked to Town standards.
13. IRRIGATION SYSTEM. All newly planted landscaping shall be irrigated by an in-ground irrigation system. Special care shall be taken to avoid irrigation which will endanger existing native trees and vegetation.
14. LANDSCAPE SCREENING. Landscaping shall be planted along the property frontage to screen the new residence from the road. The parking area shall be shifted or reduced in size to provide a minimum of 10 feet for a landscape buffer between the parking bay and the road. A comprehensive landscape plan shall be approved by the Director of Community Development prior to issuance of a building permit.
15. ROCK WALL. The rock wall on the site shall be preserved and shall be incorporated into the new driveway walls to be constructed as part of the project.
16. STORY POLES. The story poles on the project site shall be removed within 30 days of approval of the Architecture & Site application.

Building Division

17. PERMITS REQUIRED: A building permit shall be required for the construction of the new single family residence. Separate permits are required for site retaining walls, water tanks, and swimming pools; separate permits are required for electrical, mechanical, and plumbing work as necessary.
18. 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.
19. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
20. STREET NAMES & HOUSE NUMBERS: Submit requests for new street names and/or house numbers/suite numbers to the Building Division prior to submitting for the building permit application process.
21. 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. ALTERNATE: design the foundation for an allowable soils 1,000 psf design pressure (Uniform Building Code Volume 2 - Section 1805).
22. SHORING: Shoring plans and calculations will be required for all excavations which exceed four (4) 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 with Cal/OSHA regulations.

23. 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, the building pad elevation, on-site retaining wall locations and elevations are prepared according to 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
24. RESIDENTIAL TOWN ACCESSIBILITY STANDARDS: The residence shall be designed with adaptability features for single family residences per Town Resolution 1994-61:
 - a. Wooden backing (2" x 8" minimum) shall be provided in all bathroom walls, at water closets, showers and bathtubs located 34 inches from the floor to the center of the backing, suitable for the installation of grab bars.
 - b. All passage doors shall be at least 32 inches wide on the accessible floor.
 - c. Primary entrance shall have a 36-inch wide door including a 5' x 5' level landing, no more than 1 inch out of plane with the immediate interior floor level with an 18-inch clearance.
 - d. Door buzzer, bell or chime shall be hard wired at primary entrance.
25. TITLE 24 ENERGY COMPLIANCE: California Title 24 Energy Compliance forms CF-1R, MF-1R, and WS-5R must be blue-lined on the plans
26. 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 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.
27. TOWN FIREPLACE STANDARDS: New wood burning fireplaces shall be an EPA Phase II approved appliance as per Town Ordinance 1905. Tree limbs shall be cut within 10-feet of chimneys.
28. HAZARDOUS FIRE ZONE: The project requires a Class A assembly.
29. 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.
30. 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.

31. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
- a. Community Development - Planning Division: Suzanne Davis at 354-6875
 - b. Engineering/Parks & Public Works Department: Fletcher Parsons at 395-3460
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Local School District: (Contact the Town Building Service Counter for the appropriate school district and to obtain the school form.)
 - f. Bay Area Air Quality Management District: (415) 771-6000
 - g. Environmental Health Department: (408) 885-4200
 - h. Santa Clara Valley Water District: (408) 265-2600
 - i. Department of Fish and Game: (831) 475-9065

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS

Engineering Division

32. GRADING PERMIT. A grading permit is required for site grading and drainage. The grading permit application (with grading plans) shall be made to the Engineering Division of the Parks & Public Works Department located at 41 Miles Avenue. The grading plans shall include final grading, drainage, retaining wall location, driveway, utilities and interim erosion control. Grading plans shall list earthwork quantities and a table of existing and proposed impervious areas. Unless specifically allowed by the Director of Parks and Public Works, the grading permit will be issued concurrently with the building permit. The grading permit is for work outside the building footprint(s). A separate building permit, issued by the Building Department on E. Main Street is needed for grading within the building footprint.
33. DRIVEWAY MODIFICATION. The driveway design shall be modified to meet the setback criteria specified by the Town's Consulting Arborist (refer to the report prepared by Arbor Resources dated December 8, 2006) and shall conform to all Fire Department criteria specified in condition 59. Trees #5 and #16 may be removed and mitigated if necessary to preserve the other trees in the vicinity of the driveway.
34. PAD CERTIFICATION. A letter from a licensed land surveyor shall be provided stating that the building foundation was constructed in accordance with the approved plans shall be provided subsequent to foundation construction and prior to construction on the structure. The pad certification shall address both vertical and horizontal foundation placement.
35. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:
- a. Along with the project applicant, attend a pre-construction meeting with the Town Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b. Acknowledge in writing that they have read and understand the project conditions of approval, and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.

36. **RETAINING WALLS.** A building permit, issued by the Building Department at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.
37. **TREE REMOVAL.** Copies of all necessary tree removal permits shall be provided prior to issuance of a grading permit.
38. **SOILS REPORT.** One copy of the soils report shall be submitted with the grading permit application. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design and erosion control. The reports shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.
39. **SOILS REVIEW.** Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations and the peer review comments. The applicant's soils engineer's approval shall then be conveyed to the Town either by letter or by signing the plans.
40. **SOILS ENGINEER CONSTRUCTION OBSERVATION.** During construction, all excavations and grading shall be inspected by the applicant's soils engineer prior to placement of concrete and/or backfill so they can verify that the actual conditions are as anticipated in the design-level geotechnical report, and recommend appropriate changes in the recommendations contained in the report, if necessary. The results of the construction observation and testing should be documented in an "as-built" letter/report prepared by the applicants soils engineer and submitted to the Town before final release of any occupancy permit is granted.
41. **TRAFFIC IMPACT MITIGATION FEE.** The developer shall pay a proportional the project's share of transportation improvements needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit is issued. The fee shall be paid before issuance of a building permit. The traffic impact mitigation fee for this project using the current fee schedule is \$5,742. The final fee shall be calculated from the final plans using the rate schedule in effect at the time the building permit is issued.
42. **GENERAL.** All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
43. **ENCROACHMENT PERMIT.** All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
44. **PUBLIC WORKS INSPECTIONS.** The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.

45. SURVEYING CONTROLS. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer qualified to practice land surveying, for the following items:
 - a. Retaining wall--top of wall elevations and locations
 - b. Toe and top of cut and fill slopes
46. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
47. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit.
48. DUST CONTROL. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.
49. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
50. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.

51. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
52. UTILITIES. The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.
53. DRIVEWAY APPROACH. The developer shall install one (1) Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
54. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
55. AS-BUILT PLANS. An AutoCAD disk of the approved "as-built" plans shall be provided to the Town prior to issuance of a Certificate of Occupancy. The AutoCAD file shall include only the following information and shall conform to the layer naming convention: a) Building Outline, Layer: BLDG-OUTLINE; b) Driveway, Layer: DRIVEWAY; c) Retaining Wall, Layer: RETAINING WALL; d) Swimming Pool, Layer: SWIMMING-POOL; e) Tennis Court, Layer: TENNIS-COURT; f) Property Line, Layer: PROPERTY-LINE; g) Contours, Layer: NEWCONTOUR. All as-built digital files must be on the same coordinate basis as the Town's survey control network and shall be submitted in AutoCAD version 2000 or higher.
56. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
57. HAULING OF SOIL. Hauling of soil on or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.). Prior to the issuance of a building permit, the developer shall work with the Town Building and Engineering Department Engineering Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the developer/owner to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Cover all trucks hauling soil, sand, and other loose debris or require all trucks to maintain at least two feet of freeboard.

58. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

59. AUTOMATIC FIRE SPRINKLER SYSTEM. An approved automatic fire sprinkler system is required, hydraulically designed per National Fire Protection Association (NFPA) Standard #13. A State of California (C-16) licensed fire protection contractor shall submit plans, calculations a completed permit application and appropriate fees to the Fire Department for review and approval, prior to beginning work.
60. REQUIRED FIRE FLOW. Required fire flow is 2,000 GPM at 20 psi. residual pressure.
61. FIRE APPARATUS (ENGINE) ACCESS DRIVEWAY REQUIRED. Provide an access driveway with a paved all weather surface, a minimum unobstructed width of 12 feet, vertical clearance of 13 feet 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
62. DRIVEWAY EASEMENT. Provide a copy of a recorded easement for the common driveway approach.
63. EMERGENCY GATE/ACCESS GATE. 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. A minimum of 12 feet of clearance shall be provided when the gate is in an open position.
64. PREMISE IDENTIFICATION. Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Reservoir Road. Numbers shall be a minimum of four inches high and shall contrast with their background.

RECEIVED

FEB 13 2007

February 12 2007

TOWN OF LOS GATOS
PLANNING DIVISION

Dear Planning Commissioners,

I grew up at 79 Reservoir were my parents, Art and Dotty Bonner currently live. I also live in the neighborhood and want to maintain the character of the area. We need to make sure the applications for the Reservoir Road Projects are following the guidelines that were approved by the Town Council and follow the Hillside guidelines.

We are concerned with the current plans for Lot 3 of the Reservoir Road Project. There are 2 items to consider before this project should be approved. When the original lots were approved, there were specific lot guidelines for future houses. It said, "Attachment 44 of the report dated December 2, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes." We need to make sure the guidelines are followed with each of the 4 lots, especially the first application for Lot 3.

The second area of concern is the project following the Hillside Plan. The Lot 3 Architecture and Site application fall under Hillside Plan and need to abide by the plan. This should apply to the other lots as well. I know the other sites are not up for review for the Feb 23 meeting, but the current story poles are a concern.

Thanks you for you consideration of the above issues concerning the Architecture and Site application for Lot 2 of the Reservoir Road project.

Sincerely,

Suzanne and Clark Cochran
60 Rogers Road
Los Gatos, CA 95030

EXHIBIT N

RECEIVED

February 13, 2007

FEB 14 2007

Los Gatos Planning Commission,

TOWN OF LOS GATOS
PLANNING DIVISION

Re: Application S-07-21

As a result of the continuance until 1/28/07, the entire Planning Commission is now aware of the standards and resolutions which govern development of the four parcels of the Reservoir property.

Of noticeable importance, the Council Agenda Report dated 1/15/04 for the 1/20/04 Town Council meeting, page 3 of the Resolution, item 2A states:

"Attachment 44 of the report dated December 2, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes."

Of primary concern regarding lot 3's proposal is the number of trees being removed and relocated in this plan. At the December 15, 2003 Town Council meeting it was stated that 5 trees could be removed and 2 additional trees relocated for a total of 7. According to the handout prepared by the architect, Mr. Jeans, this project needs 8 trees removed and 7 additional trees relocated for a total of 15 trees. Particularly, tree #86, a mature blue oak, should be retained. The resolution written by the Town's attorney, Orry Korb, dated December 15, 2004 (which contains Attachment 44) and the town's Hillside Plan specifically prohibit these additional trees' removals. The Hillside Plan clearly states that preservation of trees is the priority; existing trees shall be preserved and protected.

While the hearing on January 28, 2007, addresses only lot 3's proposal, the property consists of four lots; there are several matters which apply not only to lot 3 but to all four which would be advantageous to settle now so that they do not have to be revisited at the other three properties' hearings. The items noted are numbered as they appear in the January 15, 2004 Resolution; items are condensed for this letter but can be read in their complete form in the Resolution:

- #6 (p. 1) Employs all 18 recommendations by town's arborist to prevent damage to trees.
- #7 (p. 2) Establishes tree protection zones.
- #10 (p. 2) Protects cultural heritage through preservation of rock walls and stairway.
- #36 (p.6) Provides for protective fencing of trees.
- #41 (p. 6) Prohibits storing of goods and materials on the street and requires the developer's representative to be onsite during working hours.
- #56 (p.9) Requires a construction management plan including site security fencing, employee parking, construction staging, and outhouse locations. Note: this is extremely important; there are three individual mailboxes on the east side of the street plus two no-parking signs at the northeast end which protect multiple mailboxes.

Throughout the three years of discussions and hearings on the Reservoir Road which preceded its development, the overriding concern of the neighborhood centered on three areas: the trees, the natural topography, and the neighborhood's unique character. These three concerns remain of primary importance; by adhering to the Hillside Plan and Attachment 44 from the Town Council, the Planning Commission can insure that these areas of concern are protected.

Respectfully submitted,


Susan Kankel


Gary Kankel

99 Reservoir Road

Lot 3

February 12, 2007

To: Town of Los Gatos Planning Commission

RECEIVED

Subject: Subject: Reservoir Road Subdivision

FEB 14 2007

Reference: Architectural and Site Application (S-07-21)

TOWN OF LOS GATOS
PLANNING DIVISION

Commissioners:

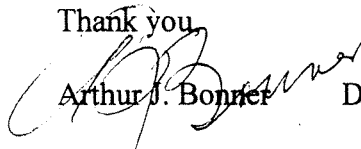
In 2003/2004 the Town Council approved a subdivision for this parcel of land If was OK'd only after many sessions and lengthy discussion. Conditions limited changes to the topography and tree removal.

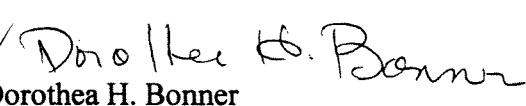
From comments made at the last meeting on the above application, one gets the impression that A&SR process is new and prior rules and agreements are guidelines subject to change to accommodate proposed plans. This not our understanding Instead, there was a specific limitation on:

1. Removal of additional trees not already marked for removal.
2. No additional cut/fill or change to the topography.

We request the commission retain the earlier conditions as set forth by the Town Council in 2003. All A&SR applications for lots in the sub-division should be required to submit plans that adhere to those conditions.

Thank you


Arthur J. Bonner


Dorothea H. Bonner

79 Reservoir Rd

February 13, 2007

RECEIVED
FEB 14 2007
TOWN OF LOS GATOS
PLANNING DIVISION

To: Los Gatos Planning Commissioners

cc: Mr. Bud Lortz, Director of Community Development
Mr. Joel Paulson, Planner, Community Development Department
Ms. Suzanne Davis, Associate Planner, Community Development Department

We are writing to you to express some concerns with the Architecture and Site Applications for Lots 2 and 3 of the Reservoir Road subdivision that was the former site of the San Jose Water Company reservoir.

As you may be aware, during the hearings for the reclamation and subdivision by San Jose Water, there was a lot of controversy about the amount of fill dirt, as well as two other issues that apply to these Architecture and Site Applications:

- 1) The number of trees being removed from the property and
- 2) The size of the building envelopes and footprints of the future homes.

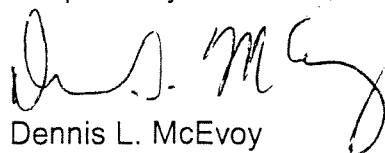
As part of the reclamation project, San Jose Water has already removed 38 of the 121 trees that were existing on the property. Furthermore, San Jose Water Identified seven additional trees to potentially be removed for future building sites. In the Council Agenda Report dated January 15, 2004, the Council made it clear about their concerns for these issues and stated on Page 3 of the Resolution in section 2.A.

"Attachment 44 of the report dated December 1, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes."

Now two applicants are before the Planning Commission for Architecture and Site Applications, and both of these applicants are planning to remove more trees than those detailed in Attachment 44, and to build homes that are larger than the building envelopes shown in Attachment 44.

This is in direct violation of the instructions of the Council. We ask that the Planning Commission deny these Architecture and Site Applications and instruct the applicants to resubmit plans that remove no more trees than those specified in Attachment 44, and confine the footprint of their proposed homes to the outlines shown in Attachment 44.

Respectfully submitted,



Dennis L. McEvoy
81 Reservoir Road



Kim Worsencroft
81 Reservoir Road

RESOLUTION 2004 - 4

RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION
DECISION TO DENY APPLICATIONS TO REMOVE THE EXISTING RESERVOIR AND
FACILITIES AND TO APPROVE A FOUR LOT SUBDIVISION ON PROPERTY ZONED R-1:20.
NO SIGNIFICANT ENVIRONMENTAL IMPACTS HAVE BEEN IDENTIFIED AS A RESULT OF
THIS PROJECT AND A MITIGATED NEGATIVE DECLARATION IS RECOMMENDED

ARCHITECTURE & SITE APPLICATION: S-01-77
SUBDIVISION APPLICATION: M-01-013
NEGATIVE DECLARATION: ND-01-11
PROPERTY LOCATION: RESERVOIR ROAD
PROPERTY OWNER / APPLICANT / APPELLANT: SAN JOSE WATER COMPANY

WHEREAS:

A. This matter came before Council for public hearing on December 15, 2003, on an appeal by San Jose Water Company (appellant) from a decision of the Planning Commission and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the 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 Reports dated August 14, 2003, August 15, 2003, November 26, 2003, December 10, 2003, Desk Items dated August 18, 2003 and December 1, 2003, and Addendum dated December 12, 2003, along with subsequent reports and materials prepared concerning this application.

C. The applicant is seeking Architecture and Site approval to remove an existing pre-1941 gunite-lined reservoir and the related facilities. The applicant is also seeking to subdivide the 2.6 acre property into four lots.

D. On August 18, 2003, the Town Council considered an appeal of the Planning Commission's decision and the matter was continued to the November 17, 2003 meeting. The matter was again continued to December 1, 2003, to allow the applicant and Town staff to complete the analysis of issues raised by the

subdivision that is consistent with all existing land use rules and policies and that minimizes grading and tree removal; land use implementation policies regarding traffic, energy, the preservation of privacy and safety of area residents and residential densities (HSP 1.4); facilities and services goals and policies regarding adequate services, especially water (HSP 2.2), which are to be constructed new ; circulation goals and policies for the design of hillside roads and driveways to be in harmony with the topography and ecology of the area (HSP 3.2, 3.3, and 3.4), all of which are to comply with Town and Fire Department standards, while also minimizing grading and tree removal; open space goals and policies for the preservation of trees (HSP 4.3 and 4.4), in that the removal of trees shall be limited by the location of building pads in the least effected area of each parcel; and safety goals and policies, specifically concerning adequate water for fire protection and suppression (HSP 5.2, 5.3, and 5.4).

RESOLVED:

1. The appeal of the decision of the Planning Commission on Architecture and Site Application S-01-77, Negative Declaration ND-01-11, Subdivision Application M-01-13 is granted.
2. Revised Conditions of Approval for the Subdivision Application and Architecture and Site Application, are attached hereto as Exhibit A and Exhibit B, and are applied to these Applications. The revised Conditions of Approval incorporate the following:
 - A. Attachment 44 of the report dated December 1, 2003 shall be used to guide the review of future Architecture and Site applications with an emphasis on preserving as many trees as possible and limiting the building envelopes and footprints of future homes.
 - B. The demolition of the reservoir and site remediation shall occur in two phases. Staff shall require the work to be phased to provide strategic delays and breaks to minimize disruption to residents and businesses. Staff will carefully identify windows of opportunity when work will create the least impace on residents and businesses.

T.H.I.S.
DESIGN & DEVELOPMENT
Box 1518, Los Gatos, CA 95031
Fax: 408.354.1823 Tel: 408.354.1863

RECEIVED

FEB 14 2007

TOWN OF LOS GATOS
PLANNING DIVISION

February 13th, 2007

110 E. Main Street
Los Gatos, CA 95032
Attn: Planning Commission

New Construction at Lot #3: 100 Sienna Oaks

Dear Planning Commissioners:

This letter responds to some of the comments and discussion items from the staff report and the planning commission meeting in January.

Driveway Placement:

Please note that discussions with the immediate neighbors formed the basis for our decision in the driveway placement. This in turn dictated much about our house design. I am attaching a copy of a December 2003 letter from Mr & Mrs Kankel which shows how we started.

Building Envelope:

We have designed the house to be as faithful to the suggested building envelope contained in "Attachment 44" as is practical. We understand that this was identified by the Town Council as a "guide" and have used it as such.

Please also see the attached letter from HMM [the engineers who originally proposed the building envelopes]. There was no rationale in their placement other than to identify feasibility.

Grading:

No additional grading results from the minor expansion of the house outside the northern portion of the suggested building envelope.

Tree Removals:

Lot #3 is the most heavily wooded lot in the subdivision. We have tried to minimize impact on the trees and have stayed faithful to the Town Council's guidelines. In order to achieve this, we have elected to relocate several of the trees that are in the suggested building envelope. We have worked with the town's consultant arborist in the driveway placement so as to minimize impact on the trees in this lot.

EXHIBIT T

As a result of the arborist's final review, and comments in the staff report for the January Planning Commission meeting, we are submitting an alternate driveway proposal which the arborist feels will be kinder to tree #4, which he wants to ensure is saved. [See sheet C2].

Stone Walls:

The rock wall on this lot passes through the suggested building envelope. We propose re-use of the rocks on this site in the proposed driveway walls. We also stated that we will re-use the rocks already salvaged from other lots in the subdivision. On lot #4 we believe the rock wall could be saved, but that is not a part of this submission.

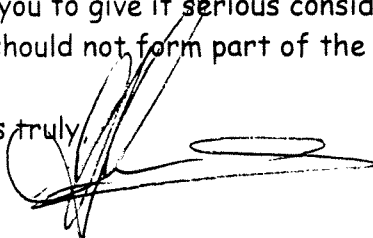
In Summary:

From the file it is clear that the original subdivision posed significant difficulties which were overcome with much work and dialogue between the developer, neighbors, the planning commission and the town council.

We have thoroughly read through this material, listened to the audio files, talked with the neighbors, followed the hillside guidelines, responded to comments of the consulting architect and worked with town staff and the consulting arborist.

We firmly believe that our proposal reflects the best possible solution for lot #3 and urge you to give it serious consideration in its own right. Neighbor concerns on other lots should not form part of the deliberation process in this application.

Yours truly,



T.H.I.S. Design & Development

per: A. T. Jeans

cc Von Kaenel.

Attachments:

1. Kankel Letter dated Dec 10th, 2003
2. HMM Engineer Letter dated Feb 6th, 2007
3. Alternative driveway proposal [kinder to tree T#4]

99 Reservoir Road
Los Gatos, CA 95030
December 10, 2003

The Honorable Steve Glickman, Mayor
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Reservoir Road Proposal

Dear Mayor Glickman and Council:

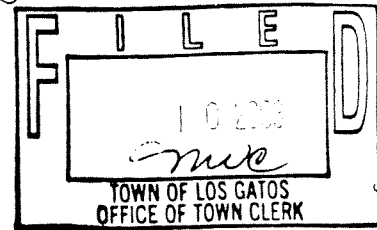
We would like to thank the Town of Los Gatos for the new retaining wall on the lower portion of our street. It has provided a safer and wider road for our use and will prevent further erosion of the remaining roadside.

We also thank the Council for granting the continuance requested on December 1, 2003, for this proposal. We now feel prepared to offer the following points for consideration:

- We support the sewer alignment through the Kidder property and request that the Council direct SJW and/or WVSD to correct the drainage run-off problem asked for by Mrs. Kidder in return for the easement through her property.
- We accept the location of the driveway serving Lots 1 and 4 but encourage setting back the existing curb at the curve one to two feet and increasing signage for speed limit and limited visibility for drivers.
- We request that fill be limited to no more than 4,000 cubic yards.
- We request that a deed of restriction to limit fill to 4,000 cubic yards be recorded by the applicant. This was agreed to by SJW for the 8,000 cubic foot alternative as noted in the staff report, page 12, Nov. 26: "This would restrict the future development of the homes from importing additional fill material and would limit future trucking impact..." This would back up the new Hillside Standards, thus assuring the limit of fill for all time.
- We request a deed of restriction on tree removal and/or relocation on the parcel; this would state that future development would not result in the removal or relocation of more than the number of trees indicated in the plan before the Council and no tree removed or relocated would be larger than those specified of the plan.
- We encourage the further investigation of an alternate location of the building envelope on Lot 3 farther away from the road; we also encourage relocation of Lot 3's driveway to a point closer to Prospect Avenue where there is an existing intersection.

COPY FROM
SUBMISSION
FILE

A.#1



cc:
Mr.
City
Plan

DEC 10 2003

DRIVEWAY
REQUEST
RATIONAL

- We would like an opportunity to view the property after the reclamation of the reservoir, with its new configuration and its loss of trees due to demolition, before making judgment on the location replacement trees; we would like trees slated for removal to be marked with tape which is visible from off the property.

The following would be acceptable to us at this time:

1. A four-lot subdivision with deed restrictions limiting tree removal/relocation and limiting fill to 4,000 cubic yards.
2. A three-lot subdivision.
3. Approval for a reclamation-only project with a continuance for subdivision.

The meetings between the neighbors and the SJW representatives have been reasonable and productive. We are confident that compromise can achieve a proposal that is acceptable to all concerned. It is hoped that these meetings can continue so this matter can be resolved. We appreciate the great amounts of time and attention the Council has expended in this matter and are confident the community's interests will be well served.

Respectfully,

Susan Kankel

Susan Kankel

Gary Kankel

Gary Kankel

} NEIGHBORS DIRECTLY
ACROSS THE
STREET FROM
LOT #3.