

Date: January 4, 2008
For Agenda Of: January 9, 2008
Agenda Item: 1

REPORT TO: The Planning Commission

FROM: Director of Community Development

LOCATION: 16330 Englewood Ave.
Architecture and Site Application S-07-182

Appeal of the decision by the Development Review Committee approving the demolition of an existing residence and developing a new residence on property zoned R-1:20. APN 532-05-025
PROPERTY OWNER/APPLICANT: C. Patrick Munnerlyn
APPELLANT: Gil & Tamar Perez

DEEMED COMPLETE: September 26, 2007

FINAL DATE TO TAKE ACTION: final action was taken by the Development Review Committee on October 9, 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 Section 29.10.09030(e) of the Town Code for the demolition of a single family residence.
 - As required for compliance with the Residential Development Standards.

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

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

- EXHIBITS:
- A.-N. Previously received
 - O. Required findings (one page)
 - P. Conditions of approval (six pages)
 - Q. Letter from Tamar & Gil Perez and Ned Finkle (one page), received December 21, 2008
 - R. Email from Gil Perez (one page), received January 2, 2008
 - S. Letter from Gil & Tamar Perez and Ned Finkle (one page with five page attachment), received January 2, 2008
 - T. Letter from Patrick Munnerlyn (seven pages), received January 3, 2008
 - U. House size comparison (one page)

- V. Landscape screening plan (two sheets), received December 20, 2007

A. BACKGROUND:

On December 12, 2007 the Planning Commission considered an appeal of the Development Review Committee's decision to approve demolition of an existing residence and construction of a new residence. The issue is provision of landscape screening for two residences fronting on Shannon Road. The Commission continued the matter to this agenda to allow the parties a reasonable time to reach a compromise and to report back to the Commission what they did and how they reached the compromise so that if they are unable to reach an agreement, the Planning Commission can judge the good faith efforts.

The story poles on the applicant's property have been modified to show the modified roofline for the house as agreed on by Englewood Avenue neighbors and approved by the DRC.

B. REMARKS:

The applicant and neighbors met on December 16, 2007 at the project site. Based on their discussion the applicant developed a revised screening plan (see Exhibit V). The intent of the plan is to screen the rear of the house to provide the desired privacy for the Perez & Finkle residences while preserving the views from the Casaccia property. The appellant provided a letter on January 2, 2008 describing the proposed solutions and indicating that the new proposal that was discussed on December 16 was the optimal solution (see Exhibit S). However, the appellant has not agreed to a final resolution.

Prior to the December 12, 2007 Planning Commission meeting the applicant made the following proposals to the appellant and adjacent neighbor on Shannon Road:

- Plant four new trees in the rear yard to screen the new residence.
- Plant landscaping on the Perez property
- Plant landscaping on the Casaccia property (the Casaccia's have consented)
- Fill-in the gap in the hedge along the north property line and plant trees in the rear yard.
- Hire an independent landscape architect to evaluate and provide recommendations on appropriate screening.

The applicant's letter provides a detailed explanation of the December 16 meeting and the steps that have been taken in an effort to resolve the concerns of the Shannon Road neighbors (Perez and Finkle) while not impacting the adjacent neighbors (see Exhibit T).

House Size

One of the options cited by the appellant is that the house be redesigned. This was not discussed when the applicant and neighbors met. Until the time the appellant's letter was submitted, the focus and stated goal has been to preserve privacy in the rear yards of the two homes on Shannon Road and to develop an appropriate landscape plan to soften and screen the new residence while preserving as much of neighbors' views as possible.

Staff prepared a house size comparison for the neighborhood (see Exhibit U). Although the applicant's FAR would be one of the higher for the immediate neighborhood, it is within the range for existing homes on Englewood Avenue. There are currently eight two story homes on Englewood Avenue between Shannon and Topping Way.

C. RECOMMENDATION:

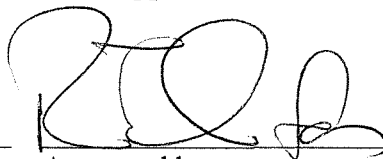
If the Planning Commission is satisfied with the project and proposed landscape screening, it should take the following actions:

1. Uphold the Development Review Committee's decision and deny the appeal;
2. Make the required findings in Exhibit O; and
3. Approve the Architecture and Site application subject to the conditions in Exhibit P and as shown in the development plans (Exhibit K to December 12, 2007 staff report) and landscape screening plan (Exhibit V).

The Commission may add or modify conditions of approval if further changes are desired.



Prepared by:
Suzanne Davis, Associate Planner



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

BNL:SD

cc: Patrick Munnerlyn, 228 Bella Vista Ave., Los Gatos, CA 95030
Gregg Kawahara Architect, 5822 Dresslar Circle, Livermore, CA 94550
Gil & Tamar Perez, 16590 Shannon Road, Los Gatos, CA 95032
Ned Finkle, 16608 Shannon Road, Los Gatos, CA 95032

REQUIRED FINDINGS & CONSIDERATIONS FOR:

16330 Englewood Avenue

Architecture and Site Application S-07-182

Requesting approval to demolish a single family residence and to construct a new residence on property zoned R-1:20. APN 532-05-025

PROPERTY OWNER: C. Patrick Munnerlyn

FINDINGS:

Required finding for CEQA:

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

Required finding for the demolition of a single family residence:

As required by Section 29.10.09030(e) of the Town Code for the demolition of a single family residence:

1. The Town's housing stock will be maintained as the house will be replaced.
2. The existing structure has no architectural or historical significance, and is in poor condition.
3. The property owner does not desire to maintain the structure as it exists; and
4. The economic utility of the structure is such that it is not viable to remodel and expand the existing house.

Required Compliance with Residential Development Standards:

The project is in compliance with the Residential Development Standards for single-family homes not in hillside residential zones.

CONSIDERATIONS:

Required considerations in review of applications:

As required by Section 29.20.150 of the Town Code, the considerations in review of an architecture and site application were all made in reviewing this project.

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PLANNING COMMISSION – January 9, 2008
CONDITIONS OF APPROVAL

16330 Englewood Ave

Architecture and Site Application S-07-182

Requesting approval to demolish a single family residence and to construct a new residence on property zoned R-1:20. APN 532-05-025

PROPERTY OWNER/APPLICANT: C. Patrick Munnerlyn

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved on January 9, 2008 and noted as received by the Town on June 18 and December 21, 2007. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. EXPIRATION OF APPROVAL: The Architecture and Site application (S-07-182) will expire two years from the date of the approval pursuant to Section 29.20.335 of the Town Code, unless the approval is used prior to expiration.
3. ROOF MODIFICATION. The highest ridge of the house shall be modified from a gable to a hip roof. Revised plans shall be reviewed and approved prior to acceptance of plans for building plan check.
4. STORY POLES. The story poles on the project site shall be removed within 30 days of approval of the Architecture & Site application.
5. RECYCLING. All wood, metal, glass and aluminum materials generated from the demolished structure shall be deposited to a company which will recycle the materials. Receipts from the company(s) accepting these materials, noting type and weight of material, shall be submitted to the Town prior to the Towns demolition inspection.
6. OUTDOOR LIGHTING. Exterior house 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. 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.
8. TREE REMOVAL PERMIT. A Tree Removal Permit shall be obtained for trees to be removed, prior to the issuance of the demolition permit.
9. REPLACEMENT TREES. Replacement trees shall be planted for trees being 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.
10. TREE STAKING. All newly planted trees shall be double-staked using rubber tree ties.

11. 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 September 21, 2007 for details. Tree protection specifications shall be printed on the construction plans.
12. 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.

Building Division

13. PERMITS REQUIRED: A building permit shall be required for the construction of the pool and cabana. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
16. DEMOLITION REQUIREMENTS: Obtain a Building Department Demolition Application and a Bay Area Air Quality Management Application from the Building Department Service Counter. Once the demolition form has been completed, all signatures obtained, and written verification from PG&E that all utilities have been disconnected, return the completed form to the Building Department Service Counter with the J# Certificate, PG&E verification, and three (3) sets of site plans to include all existing structures, existing utility service lines such as water, sewer, and PG&E. No demolition work shall be done without first obtaining a permit from the Town.
17. 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).
18. SHORING. Shoring plans and calculations will be required for all excavations that exceed four (4) feet in depth or remove later support from any existing building, adjacent property or the public right-of-way. Shoring plans shall be prepared by a California licensed engineer and shall conform to Cal/OSHA regulations.
19. 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

20. RESIDENTIAL TOWN ACCESSIBILITY REQUIREMENTS. The residence shall be designed with adaptability features for single family residences per Town Resolution 1994-61:
 - a. Wooded 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 a 36-inch wide door including a 5'x5' 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.
21. TITLE 24 ENERGY COMPLIANCE: California Title 24 Energy Compliance forms CF-1R, MF-1R, and WS-5R must be blue-lined on the plans.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to building permit issuance.
 - f. Bay Area Air Quality Management District: (415)771-6000

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS

Engineering Division

27. 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.
28. DESIGN CHANGES. The Applicant's registered Engineer shall notify the Town Engineer, in writing, at least 72 hours in advance of all differences between the proposed work and the design indicated on the plans. Any proposed changes shall be subject to the approval of the Town before altered work is started. Any approved changes shall be incorporated into the final "as-built" drawings.
29. 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.
30. 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.
31. 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.
32. 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.

33. 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).
34. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
35. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
36. 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.
37. 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.
38. 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.
39. FENCING. Any fencing proposed within 200-feet of an intersection shall comply with Town Code Section §23.10.080.
40. 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.
41. 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.
42. 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.

43. **GOOD HOUSEKEEPING.** Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the sidewalk and/or the street will not be allowed unless a special permit is issued by the Engineering Division.
44. **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.
45. **UTILITY SETBACKS.** House foundations shall be set back from utility lines a sufficient distance to allow excavation of the utility without undermining the house foundation. The Town Engineer shall determine the appropriate setback based on the depth of the utility, input from the project soils engineer, and the type of foundation.
46. **UTILITY EASEMENTS.** Deed restrictions shall be placed on lots containing utility easements. The deed restrictions shall specify that no trees, fences, or hardscape are allowed within the easement boundaries, and that maintenance access must be provided. The Town will prepare the deed language and the Applicant's surveyor shall prepare the legal description and plat. The Applicant shall pay any recordation costs.
47. **PERMIT ISSUANCE:** Permits for each phase; reclamation, landscape, and grading, shall be issued simultaneously.
48. **COVERED TRUCKS:** All trucks transporting materials to and from the site shall be covered.
49. **PUBLIC WORKS INSPECTOR.** The applicant shall fund a full time public works inspector for the duration of the demolition and grading operations. The applicant will be charged on a time and materials basis. A deposit for the full amount, to be estimated by the Town based on the Contractor's approved schedule, shall be paid prior to issuance of the demolition permit.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

50. **REQUIRED FIRE FLOW.** Required fire flow is 2,000 GPM at 20 psi residual pressure.
51. **REQUIRED ACCESS TO WATER SUPPLY (HYDRANTS).** Provide an onsite fire hydrant or an approved fire sprinkler system, hydraulically designed per National Fire Protection Association (NFPA) Standard #13D and local ordinances. The fire sprinkler system supply valving shall be installed per Fire Department Standard Detail and Specifications W-1/SP-6.
52. **PREMISE IDENTIFICATION.** Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Englewood Avenue. Numbers shall be a minimum of four inches high and shall contrast with their background.

December 21, 2007

Dear City Planning Staff , Planning Commission Members

We would like to thank you again for granting us the continuance and giving everyone the opportunity to resolve our differences.

All parties meet last Sunday and we were able to resume the dialogue and come up with a new proposal which we did not contemplate or consider before.

In addition to openness and willingness by all to find a solution, the other key reason for progress was everyone's ability to visit the properties (backyards) and jointly to view/discuss and iterate on the proposals in real time while understanding the implication on all involved.

As we all acknowledge this appeal was discussed in length on the last committee session and that the committee members should have all the information presented to them before our next committee meeting (scheduled for Jan 9th). As such, we believe that all involved (committee members and city planners) should visit the properties to review in person the proposed solution(s). We strongly feel that only a visit to the properties will enable the decision makers to fully appreciate and understand the proposals at hand and the compromises that are demanded from the involved parties.

As such we would like to offer the below dates a possible dates for a visit. Please let us know of your availability to visit on one of the below dates:

- Dec 27th or 28th after 10 am
- Dec 29th or 30th or 31st

Alternatively if the above dates are not acceptable please let us know of alternative dates

Sincerely

Tamar, Gil & Ned

Suzanne Davis - RE: Your Letter of December 21, 2007

From: "Gil Perez" <gil.perez@arcadiannetworks.com>
To: "Arlene Holmboe" <AHolmboe@losgatosca.gov>
Date: 01/02/2008 5:01 AM
Subject: RE: Your Letter of December 21, 2007
CC: "Bud Lortz" <BLORTZ@losgatosca.gov>, "Randal Tsuda" <RTsuda@losgatosca.gov>, "Suzanne Davis" <SDavis@losgatosca.gov>, "Ned Finkle" <NFinkle@nvidia.com>, <kent@atwoodlaw.com>, "Tamar Perez" <tamarperez@comcast.net>

Hi Arlene

Happy New Year.

Until I read your email I was unaware that the town was awaiting to receive from us a written description of a proposed solution.

Below you will find a outline of the proposals which were rejected (1 & 2) and proposals (3 & 4) which I believe should be discussed in the planning commission meeting on the 9th.

Proposals

1. Planting plants/trees along the 16330 property line; Lisa, the adjacent neighbor opposed this proposed solution; Lisa believes this solution will obstruct her views of the hills/mountains and she is not willing to consider it in any format.
2. Planting plants/trees on Lisa's property adjacent to my lot; We opposed this solution due to (a) This will solution will enclose my property and significantly impact our backyard. In addition this solution will cast a shadow on our pool as well as be a pool maintenance nightmare due to leaves dropping into the pool
3. A new proposal which we jointly defined (Ned, Pat, Lisa and us) on our last face to face meeting post the lase planning commission meeting (details of the proposals were circulated by Pat to all including Suzanne). I believe this is the optimal solution taking all constraints into consideration and assuming they can not be changed.
4. Reconsider the structure/planning of the house and modify the design so a more amiable structure which is not so over whelming and out of character with the neighborhood is submitted for approval

Visit by Planning Commission Members

Regarding availability of the Planning Commission to come and visit the properties, as I wrote to Suzanne and in a letter which I provided to you and asked to forward to the committee members, I can not over emphasize the importance of such a visit. I truly believe that such a visit is key for the committee members to be able to make decision that takes into account all perspectives and dimensions of proposed solutions. I hope that they will be able accommodate a site visit the properties before the Jan 9th commission meeting before (Lisa's, Ned's, 16330 Englewood and my house). Please let me know if there is anything that we need to do to accommodate such a visit

Sincerely

EXHIBIT R

Hi Suzanne,

I would greatly appreciate if you can forward the below and attached files to the Commissioners in the packets you will be sending to them tomorrow.

- The attached file is a petition which included:
 1. The complete Town of Los Gatos Residential Development Standards – also attached
 2. Excerpts from the Town of Los Gatos Residential Development Standards that we believe are relevant to this hearing
 3. The sq. ft of over 30 houses on Englewood and W. La Chiquita and some basic analysis on the data
 4. We collected 20 Los Gatos residents who signed this petition including:
 - 3 adjacent neighbors
 - 3 neighbors who live the other side of the Englewood
 - 5 neighbors who are one lot removed from 16330 Englewood drive

As we shared with you earlier today in an email, we believe that the commission should review two possible solutions/proposals during the hearing

1. Review the proposed solution which we discussed on our last meeting with Patrick and Lisa – assuming we can not alter the basic constraints and limitations.
 2. Reconsider the structure/planning of the house and modify the design so a more amiable structure which is not so over whelming and out of character with the neighborhood is submitted for approval
- We have contacted a property assessor to provide an objective 3rd party opinion and quantify the financial impact the new proposed house will have. The property assessor is scheduled to visit the property by Friday of this week. We plan to present his findings to the Commissioners during the hearing. We will share his findings as soon as they are made available to us.

Last but not least, I would like again to extend an invitation to the Commissioners to visit the properties. We hope that they will be able to come and view situation in person

Please do not hesitate to contact Ned, Kent or myself if you have any questions or would like to receive any additional information

Sincerely

Gil, Tamar and Ned

Petition Regarding New Home Construction on
16330 Englewood Ave, Los Gatos CA

A. The Town of Los Gatos residential Development Standards state the following:

A. General

1. *The Planning Commission/Planning Director shall assess the project's overall effect and compatibility with the surrounding neighborhood. Does the size, height, style or color conflict with other structures in the neighborhood? **The appearance of the residence should blend with the character of the neighborhood and conform with the existing streetscape.***
....
4. ***The project should not impair** – directly or by the possible total effect of several new residences – the use, enjoyment, and value of neighboring public and private property.*
...
7. ***The design of a proposed addition shall complement the existing residence.***

B. Site Planning

1. Site Design

*A project should be **designed to fit a site's natural conditions, rather than alter the site to accommodate a stock building plan.** Existing topography should be preserved. The site layout should **take into consideration the project's effect on adjacent properties and neighborhoods** (e.g., views, privacy, setbacks, etc.).*

Residential Development Standards – Section II: Building Design

A. Harmony/Compatibility

***The proposed project must have a harmonious and compatible relationship with the surrounding neighborhood.** The factors which contribute to the relationship include, but are not limited to, the following:*

1. *An appropriate design theme;*
2. ***An appropriate sense of scale;***
3. *A compatible roof line;*
4. *Colors, exterior materials and details;*
5. *Lot coverage/setbacks which complement adjacent structures and uses.*

B. Scale and Mass

1. Second Story Additions and Two-Story Dwellings

The Town has identified a trend towards the development of two-story houses and second-story additions in the Los Gatos residential community. One of the unique traits of Los Gatos is the variety of house sizes, shapes, and designs especially in the R-1 and R-1:D zones.

*While there are many creative second-story designs, the Town is concerned that property owners and developers are restricting their design alternatives to only second story. **A continuation of this trend could jeopardize the character of our neighborhoods.***

*To maintain a proportionate distribution of single-story and two-story housing stock in Los Gatos, property owners and designers are encouraged to strongly consider single-story designs as viable development alternatives. **If a second-story design is chosen, the applicants shall be required to explain why a single-story design does not work.***

2. Demolitions, Replacement Structures, and Significant Remodels

Significant remodeling of homes that will change the character of the neighborhood, result in a dramatically altered streetscape, or bear no reflection on the original home will require extra scrutiny of design.

When a house is demolished pursuant to Section 29.10.020 of the Town Code, the replacement structure shall be judged for compatibility with the surrounding neighborhood based upon the following criteria:

- a. Predominant architectural style of the street/neighborhood*
- b. Lot size*
- c. Size of homes on the street on which the subject property is located*
- d. Neighborhood in transition*
- e. Impact on site characteristics and surrounding homes, i.e., privacy, shadowing effect and existing vegetation*

B. The Surrounding Homes

#	Number	Street	Sqft
1	16608	Shannon road	2,747
2	16560	Shannon road	1,290
3	16590	Shannon road	2,712
4	16321	W La Chiquita	1,280
5	16335	W La Chiquita	1,925
6	16345	W La Chiquita	1,587
7	16355	W La Chiquita	1,056
8	16365	W La Chiquita	2,106
9	16375	W La Chiquita	1,043
10	16385	W La Chiquita	2,862
11	16395	W La Chiquita	1,056
12	16400	Englewood Ave	2,591
13	16428	Englewood Ave	1,082
14	16442	Englewood Ave	1,536
15	16456	Englewood Ave	2,899
16	16470	Englewood Ave	2,792
17	16490	Englewood Ave	1,772
18	16390	Englewood Ave	2,845
19	16372	Englewood Ave	4,384
20	16358	Englewood Ave	4,024
21	16344	Englewood Ave	2,712
22	16330	Englewood Ave	1,252
23	16316	Englewood Ave	1,410
24	16302	Englewood Ave	1,699
25	16301	Englewood Ave	2,139
26	16317	Englewood Ave	3,203

27	16331	Englewood Ave	1,914
28	16345	Englewood Ave	1,982
29	16359	Englewood Ave	2,404
30	16373	Englewood Ave	3,890
31	16387	Englewood Ave	2,480
32	16401	Englewood Ave	1,738
33	16415	Englewood Ave	1,261

Source: Zillow.com

Key Statistics		Comments
Avg sqft	2,172	
Over 4500	0%	
Over 4000	6%	2 lots
Over 3500	9%	3 lots

C. The New Construction

- The new proposed construction intends to completely demolish the existing structure (one story house) and construct a new 2 story house which will be over 350% increase in size compared to the existing structure (new proposed house will be the largest house on Englewood and adjacent street)
- The new house is being built by a group of investors who bought this lot with the intentions of selling it upon completion of the new construction

D. Summary

The below undersigned urge the Planning commission to review the decision to approve the proposed construction on 16330 Englewood Ave and ensure it conforms and adheres to the town of Los Gatos Residential Development Standards .

Name	Address
Gil & Tamar Perez	16190 Shannon rd.
Nile Agassi	209 Hollywood ave
Katherine Wiggan	16560 Shannon Rd.
Jim Patrick	16345 W. LaChiquita Ave
Ed Heyl	16385 W La Chiquita Ave
Glenn Patrick	16345 W. La Chiquita Av.
Heather Johnstone	16335 W. La Chiquita
NED + NATALIE FINKLE	16608 SHANNON Road
DAVID PUTNAM	16623 SHANNON ROAD
Mike Nyland	16302 Englewood Ave.
Dan and Pat Wiles	16359 Englewood Ave.
Kelly Coffey	16344 ENGLEWOOD AVE.
Pazit Kugel	152 Oak Hill Way
John + Shi Sunn	16725 Marchmont Dr.
Karen & Mo Aidi	16734 Marchmont Dr.
Malcolm Mal	16600 Englewood Ave Ave
Yvette BONNET	16301 Englewood Avenue
Cynthia Clark	16326 West La Chiquita Ave
Laurie Hammond	16347 Lilac Lane
DAVE Hammond	
CHRIS JINKIN	856 LILAC WY, LOS GATOS.

January 3, 2008

228 Bella Vista Ave.
Los Gatos, CA 95030

Suzanne Davis
110 E. Main Street
Los Gatos, CA 95030

Ms. Davis,

As requested by the Planning Commission at the December 12th hearing concerning my new home project at 16330 Englewood I am reporting on the progress that was made to come to an agreeable landscape screening solution with my neighbors.

- On December 16th a meeting was held with myself and the affected neighbors (Mr. and Mrs. Perez, Mr. Finkle, and Mrs. Cassicia) to discuss possible solutions to the privacy/screening concerns. During the meeting we visited each homeowner's property to view both the impact of the new house along with the constraints that we would need to work with in order to provide the desired screening. Many solutions such as screening hedges along the property line (mine or the Cassicia's) or providing screening trees in other people's yards were discussed and rejected due to concerns about loss of views and or sunlight access. We were able to work together to come up with one solution that everybody agreed would provide the privacy and screening that was desired while still working within the identified constraints. I agreed to develop the proposal further and provide a drawing so that all of the parties could visualize the solution.
- After refining the solution, I e-mailed everyone on December 18th a plan showing the tree types, locations, and the mature canopy sizes that were discussed at our previous meeting. This solution provided the screening for privacy that the Perez's and Mr. Finkle desired while maintaining the view from Mrs. Cassicia's kitchen window. The drawing also included pictures of each tree type so that everyone would have a good idea about what the trees would look like. The solution consisted of me providing three (3) 24" box and two (2) 36" box size trees. All of the trees were to be located on my property. I also offered to purchase the trees prior to issuance of the building permit and store them onsite, so they would mature throughout the building process to insure large specimens at the time of installation. In the e-mail, I requested that my neighbors reply back to me with questions or comments on the proposed plan.
- After a few days I had not received a response from any of the neighbors, so I called Mrs. Perez on December 20 to see what she thought of the solution. She said that she was not clear as to the actual size of the proposed trees because the mature spread of the tree was shown as a range and she did not know if the circle that was drawn represented the maximum or the minimum

spread. I agreed to clarify the drawing and then send it out to everyone for review. I followed up and sent the revised drawing out that afternoon.

- On December 20th I received an e-mail from Mr. Perez praising the progress that we made during our meeting on December 16th but also requesting that the planning staff and commissioners visit the properties to review the proposed solution(s). Since the Planning Commission had specifically voted to continue this matter to allow additional time for the parties involved to come to an agreement amongst themselves, it was unclear to me what Mr. Perez's motives were to try and contact the Planning Commission while we were still trying to negotiate a screening solution between the affected parties.
- On December 21st I generated one more drawing that Mr. Perez had requested showing the elevations of my house and how the proposed trees would screen it from both the Finkle's and the Perez's properties. I sent this out to all parties involved and requested that they respond back to me if they found the solution agreeable or if they had any ideas to improve the design. I also informed everyone that I was going to be out of town during the holidays, returning on January 1st, but could be reached by e-mail or cell phone.
- Mrs. Cassica e-mailed me back on December 21st agreeing to the solution and suggested that there was no real reason to meet again. She did ask if I knew of a location in town where she could see examples of the proposed trees. I responded that day and offered a few locations to her.
- Also on December 21st I was copied on an e-mail that Mr. Perez sent to Town Planning Staff and Planning Commission Members again requesting that the commissioners visit the properties to "...fully appreciate and understand the proposals at hand and the compromises that are demanded from the involved parties".
- Since I was going to be out of town during the time suggested by Mr. Perez for the commissioners to go and view the properties, I felt the need to revise the storey poles to reflect the approved DRC design that incorporated a hipped roof design. I did not want the project to be misrepresented, so on December 24th I had the storey poles revised.
- As of January 2nd, I had still not heard back from either Mr. Perez or Mr. Finkle. I e-mailed them on January 2nd to inquire if we were going to be able to go to the January 9th Planning Commission meeting with this matter resolved. Mr. Perez e-mailed me back with a copy on an e-mail that he had sent Town staff that outlined their position. In this e-mail he informed staff about possible solutions to provide screening, including the proposed solution that we came up with at our meeting on December 16th, which he called "...the optimal solution taking all constraints into consideration and assuming they can not be changed". He then raised another solution that would be to "Reconsider the structure/planning of the house and modify the design so a more amiable structure which is not so over whelming and out of character

with the neighborhood is submitted for approval". It should be noted that neither Mrs. Perez, Mr. Finkle, nor their attorney, Mr. Westerberg raised this as a key concern at the December 12th Planning Commission meeting. Their concerns at the meeting only centered on privacy and screening and coming up with a landscape solution to mitigate those concerns. From this e-mail I could only infer that Mr. Perez was not prepared to resolve this matter between us and that he was instead preferred that we continue the discussion at the Planning Commission meeting scheduled for January 9th. I e-mailed him back to confirm my understanding of this and did not receive a response.

- To date, January 3rd, I have yet to receive a response from Mr. Finkle.

As you can see from the above series of events, I have followed through with the Planning Commission's request to spend this incremental time that the continuance gave us to try and work out a solution between the affected parties. I met with all of the parties involved and worked closely with them to come up with a solution that best met all of our needs while still addressing the constraints that we had to deal with on each other's property. The solution that we came up with located all of the screening trees on my property and provided larger and more trees than even what Town Staff had recommended in their staff report for the December 12th Planning Commission meeting. I also offered to pre-purchase the trees and maintain them to insure that they would be large specimens when time came to plant them. I believe that all of this combined shows that I took the Planning Commission's request to resolve this among the affected parties seriously and in good faith. Unfortunately, Mr. Perez feels the need to go back to the Planning Commission to try and find relief, and Mr. Finkle's silence does nobody good in the negotiation.

Finally, I received an e-mail from Mr. Perez last night (January 2nd) that contained a petition that he has collected signatures to "urge the Planning Commission to review the decision to approve the proposed construction on 16330 Englewood Ave and ensure it conforms and adheres to the town of Los Gatos Residential Development Standards". Once again, this came as a surprise, since the design of the house has never been raised as an issue and was not brought up by Mrs. Perez, Mr. Finkle, or their attorney Mr. Westerberg at the December 12th Planning Commission meeting. After reading the petition, I feel the need to address the many misrepresentations and falsehoods that it contains.

- **The appearance of the residence should blend with the character of the neighborhood and conform with the existing streetscape.**
Response: Englewood Ave. is a neighborhood in transition containing both 1940's/50's era single story home along with recent remodels. The two homes just two and three lots to the South of my property are recent projects that are similar in size and scope of my proposed house. Also, I am using a craftsman style for the home so that it will blend in with not only the character of the neighborhood but also the character of Los Gatos

- **The project should not impair – directly or by the possible total effect of several new residences – the use, enjoyment, and value of neighboring public and private property.**

Response: The proposed home maintains all of the required setbacks to property lines and is situated on the lot similar to other two story homes located on the street. The original design had the house pushed back, and it was then relocated based on comments from the Town's consulting Architect. There were no requests for variances or special considerations in the design of the house

- **The design of a proposed addition shall complement the existing residence.**

Response: The proposed home is not an addition, so this section of the development standards does not apply.

- **A project should be designed to fit a site's natural conditions, rather than alter the site to accommodate a stock building plan.**

Response: The site is flat with barely a 1% slope so therefore there is no alteration of the site planned. I have hired an Architect to develop my design and am not using a stock building plan.

- **The site layout should take into consideration the project's effect on adjacent properties and neighborhoods (e.g., views, privacy, setbacks, etc.).**

Response: Once again, the house is situated on the site the same as similar two-story homes that are located on the street. Also, my adjacent neighbors were in attendance at the DRC meeting where their concerns were voiced and addressed.

- **The proposed project must have a harmonious and compatible relationship with the surrounding neighborhood. An appropriate sense of scale.**

Response: The house is similar to scale and scope of other recent new homes that are located on the street. The revised roof design brings the design into even more compliance with the scale of the neighborhood.

- **Second Story Additions and Two-Story Dwellings: A continuation of this trend could jeopardize the character of our neighborhoods.**

Response: Englewood Ave. is a neighborhood in transition that contains both older one-story and newer two-story homes. Currently there are seven two-story homes located on my block of Englewood and none of them appear to be the original houses that sat on the site. The Town Residential Development Standards specifically refers to limiting two-story development on lots that are smaller than 5000 square feet. The lots on Englewood are 20,000 square feet.

- **If a second-story design is chosen, the applicants shall be required to explain why a single-story design does not work.**

Response: I chose a two-story home to minimize the footprint of the house on the lot and to maximize the yard. By utilizing a two-story design it minimizes the impermeable surface on the site to help facilitate percolation of storm water into the ground. Also, it is my preference to build and live in a two-story home.

- **Significant remodeling of homes that will change the character of the neighborhood, result in a dramatically altered streetscape, or bear no reflection on the original home will require extra scrutiny of design.**

Response: The Town's consulting Architect along with the DRC and now the Planning Commission have all scrutinized the design of my proposed house. Specifically, the Town's consulting Architect has reviewed the house twice, and is satisfied that the design fits in with the neighborhood.

- **The Surrounding Homes**

Response: Mr. Perez tried to show how out of scale my proposed home is compared to the surrounding homes in the area, but the information that he used to do so is flawed.

First, all of the homes he has listed on W. La Chiquita and Shannon Road are located in a different zone from my property. These homes are located in R-1:8 while my property is R-1:20, therefore they have much smaller lots and much smaller homes. Also, I believe that many of these homes, including Mr. Perez's and Mr. Finkle's, are located within the County and do not fall within the stricter Town development guidelines.

Second, the information that Mr. Perez used for house square footages seems to be off. His source, Zillow.com, lists my property as a 1,252s.f. 2 Bedroom 1 Bath home, but it does not take into account the 900s.f. +/- cottage that contains an office, bedroom, and bathroom or the detached three car garage. If the information is incorrect for my property, how many other properties are incorrect?

Third, Mr. Perez left off 16471 Englewood Ave from his chart. According to Mr. Perez's source, this lot contains a 4342s.f. house which is a fairly new two-story home that is similar in scope and scale as my proposed house. In fact, all of the other large homes that Gil highlighted on his chart are all two story new homes that are similar to size and scope as my project and they were all approved by the Town.

If Mr. Perez's chart was modified to remove the homes that are not within the same zone, eliminate the lots that were significantly smaller than mine, only focused on homes that were under the Town's design guidelines, and included the second largest home on the street, I believe that it would demonstrate that the discrepancy between the size of my proposed home

and the others on the street is not as great as Mr. Perez would lead you to believe.

- **The new proposed construction intends to completely demolish the existing structure (one story house) and construct a new 2 story house which will be over 350% increase in size compared to the existing structure (new proposed house will be the largest house on Englewood and adjacent street)**

Response: Yes, I intend to demolish the existing house and construct a new two-story home. This is what the Town's development guidelines allow me to do and it is what I based my decision to purchase the property on. I do not know what the percentage increase in size of the existing 1950's era home will be, but it is within the allowable FAR for my property.

- **The new house is being built by a group of investors who bought this lot with the intentions of selling it upon completion of the new construction**

Response: This statement is completely and totally false. There is no group of investors. I purchased this property and am financing the construction completely by myself. I am a current resident of Los Gatos and with a growing family was looking into my options for a larger house. I initially looked into expanding my current residence, but found out that it is at its maximum FAR. My intent is to construct this house and then make a determination to sell either my current home or this one depending on my life/family situation. I am building this house to my specifications with the intent of living there.

I apologize for the long response, but after receiving Mr. Perez's petition yesterday evening, I felt that it needed to be addressed.

At the Planning Commission Meeting on December 12th a motion was passed to continue this matter in order for the affected parties to use the incremental time period in an attempt to reach a settlement concerning landscape screening. The parties were then told to report back to the Planning Commission on how they went about this and what they did, so that if the parties were unable to reach an agreement the Planning Commission could judge the good faith of the parties. I spent the extra month meeting with my neighbors to come up with a solution that exceeded the Staff recommendations and would benefit all parties. I generated multiple exhibits, did research on appropriate trees, revised the storey poles at my house, and followed up every step of the way by asking for feedback and opinions even when others were silent. Mrs. Cassicia agreed to the solution. Mr. Finkle stayed quiet on the matter. Mr. Perez combed the neighborhood collecting signatures on a petition full of misrepresentations, twisted statistics, and outright lies, to gain favor for himself and to disparage my project and me.

I respectfully request the Planning Commission take not only the events of the past month into consideration, but also the multiple offers (6 prior) that I have made to Mr. Perez to resolve this matter, and approve the solution that all of the neighbors worked together to develop at our meeting on December 16th.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'C. Patrick Munnerlyn', with a large, stylized flourish at the end.

C. Patrick Munnerlyn

16330 Englewood

address	floor area	site	FAR
16301 Englewood	2619	13680	0.19
16317 Englewood	3995	19,500	0.20
16331 Englewood	1969	22,800	0.09
16345 Englewood	2502	22800	0.11
16359 Englewood	2804	22800	0.12
16373 Englewood	5286	22800	0.23
16302 Englewood	2179	19264	0.11
16608 Shannon	3259	14792	0.22
16530 Shannon	3192	15136	0.21
16316 Englewood	1830	21120	0.09
16344 Englewood	3792	21344	0.18
16358 Englewood	4270	21076	0.20
16387 Englewood	3230	22800	0.14
16372 Englewood	5156	32280	0.16
16390 Englewood	2845	21344	0.13
16400 Englewood	2981	10890	0.27
16330 Englewood	5550	20974	0.26

FAR range: .09 - .27

floor area range: 1969 - 5286

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

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

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 337-1558

LOS GATOS PLANNING COMMISSION 12/12/2007
Item #5, 16330 Englewood Avenue

1

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

CHAIR TALESFORE: We are here for Item #5. It's
16330 Englewood Avenue, and we do have a Desk Item on it,
Commissioners, if you would take the time, or maybe you
have read it. Thank you.

Anyway, this is Architecture and Site Application
S-07-182. It's appeal of the decision by the Development
Review Committee approving the demolition of an existing
residence and developing a new residence on property zoned
R-1:20. APN #532-05-025. Property owner/applicant is C.
Patrick Munnerlyn, and appellant is Gil Perez, who will be
represented by Mr. Kent Westerberg. Mr. Tsuda, do you have
anything you'd like to add to this?

RANDY TSUDA: Ms. Davis will be here in one
second, but let me just go ahead and get started with a
brief introduction.

The applicant is requesting approval to demolish
an existing single-family home and to construct a 4,652
square foot two-story home and an 898 square foot three-car
garage. And here's Ms. Davis.

LOS GATOS PLANNING COMMISSION 12/12/2007
Item #5, 16330 Englewood Avenue

2

1 CHAIR TALESFORE: Okay. Suzanne, ready when you
2 are.

3 SUZANNE DAVIS: The applicant is requesting
4 approval to demolish the existing home and construct a new
5 residence with a three-car garage behind it. The story poles
6 on the property have been there since early September, and
7 we didn't make one change to them. During the DRC process we
8 worked with the two adjacent neighbors and one directly
9 across the street. We did make some changes to the roofline
10 in the design of the house to bring the height down and open
11 up some of the views, and so we did not require the
12 applicant to make that change to the poles.

13 So what you're seeing out there is a little bit
14 higher than what the plans on the wall behind you and the
15 plans you received in your packet reflect. The plans were
16 corrected to show the roofline changes. And we didn't
17 actually lower the height overall; we took it from a gable
18 end to hip element, so that rather than having a ridge
19 coming all the way across, it will come down like this to
20 open up views on the sides through.

21 Prior to the DRC meeting in October the applicant
22 worked with Staff and the Town's consulting architect to
23 revise the site layout. We originally had a three-car garage
24 proposed in front. We requested that they put that behind
25 the house or reduce the size of the garage so that it wasn't
such a dominant element. The applicant chose to put the

1 garage behind the house, and so that was a fairly major
2 design change to the plans to start us off, and then as I
3 already said, we worked with some neighbors. Through the DRC
4 process we held two DRC meetings and worked with three of
5 the immediate neighbors in making those design changes to
6 the roof.

7 The DRC did take action on October 9th and approve
8 the project. Following that meeting we had a neighbor on
9 Shannon come in to look at the plans. They'd seen the poles
10 and were interested and so we went through the plans with
11 them. They expressed some concerns about visual impact and
12 privacy and asked to have some landscaping done. So we put
13 the applicant in touch with them and they met and had some
14 conversations and tried to come to an agreement and were
15 unable to do that. There were two neighbors that became
16 involved, so we met with those neighbors and the applicant.
17 We were just not able to reach a compromise that everybody
18 could agree on, so the item was forwarded to the Commission.
19 It was appealed, excuse me.

20 So the applicant has made numerous suggestions on
21 how to alleviate the problem; he is a landscape architect,
22 so he does understand trees and what's appropriate to put in
23 and what isn't. We've had a lot of conversations about what
24 types of plants and where to put them, and two different
25 sets of poles have been placed on that site showing possible
locations for trees. We just haven't been able to quite get

1 there, so the appellant chose to not withdraw the appeal and
2 it came forward to the Planning Commission. So we're
3 available if you have any questions.

4 CHAIR TALESFORE: I have a question about the 24"
5 box species. If I understand it correctly, that's what we
6 usually require?

7 SUZANNE DAVIS: Yes, that's our ordinance
8 requirement. You can occasionally plant a larger tree to
9 offset... If you're requiring replacement trees, we do have
10 two options in the tree replacement table that will give you
11 the option of planting, for example, two to three 24" box
12 trees, but sometimes if you plant 36" or larger trees you
13 can plant fewer. There is that option. We chose not to go
14 with larger trees primarily because of the logistics and
15 difficulty of getting them in here. You need a crane to put
16 in 48" and 60" trees, that's pretty difficult on a small
single-family lot.

17 The other thing is that within a couple of years
18 the growth on the smaller trees catches up to the bigger
19 trees. If you put a box tree in that's larger and it's going
20 to be a little bit larger in initial planting size, within a
21 couple of years the smaller trees tend to get established
22 faster and grow at a faster rate and they'll come up and
23 they'll be a similar size within a couple of years, so we
24 felt it was appropriate to put 24" box in this case.
25

1 CHAIR TALESFORE: Okay. Thank you. Do we have any
2 other questions? And we do from Commissioner Rice.

3 COMMISSIONER RICE: Ms. Davis, from the
4 conversations that occurred between Staff and the neighbors,
5 was it solely around landscape screening or were there any
6 issues at that time discussed about the architecture or the
7 house itself?

8 SUZANNE DAVIS: We had issues with the house at
9 the DRC level, and that's why we made those changes to the
10 roofline, because we had a neighbor across the street that
11 was concerned about trying to retain some view through
12 there, and for visual impact. We talked about shifting the
13 house, but the two neighbors on either side didn't want it
14 moved, because then it would impinge more on their rear
15 yards. So I think those neighbors at that time worked
16 together and kind of reached that compromise to try to bring
17 some of the height down on the residence and the bulk of the
18 roof and not shift the house so that the two adjacent
19 neighbors who were the most impacted still had some privacy
in their yards.

20 COMMISSIONER RICE: Thank you.

21 CHAIR TALESFORE: Commissioner Bourgeois.

22 COMMISSIONER BOURGEOIS: Thank you, Ms. Davis. I
23 have a couple of kind of very specific questions and then I
24 want to kind of get to the gist of where you think the
25 stalemate was at those meetings. But the straight boards

1 that are in the yard with the orange tops, those were tree
2 locations?

3 SUZANNE DAVIS: Yes.

4 COMMISSIONER BOURGEOIS: Okay. And another thing I
5 noticed when I was out there, I'm glad you clarified about
6 the story poles and the revised design, because the story
7 poles, from the street it was a very... I was surprised after
8 going through the plans at how big the house looked, so I
9 appreciate you clarifying that.

10 On the plans, I mean it says there's a 35' front
11 setback. Is that correct? And the reason I ask that is
12 because on Site Plan #A-1, that 35' setback line is at an
13 angle from the street and it doesn't seem to point to the
14 front of the house. That was a little confusing.

15 SUZANNE DAVIS: We're showing the setback to the
16 closest point of the porch.

17 COMMISSIONER BOURGEOIS: Oh, that's the porch.
18 Okay.

19 SUZANNE DAVIS: Yeah, those little boxes, those
20 are columns.

21 COMMISSIONER BOURGEOIS: Okay.

22 SUZANNE DAVIS: So that porch extends out and that
23 corner of the porch...

24 COMMISSIONER BOURGEOIS: So that dash line is...

25 SUZANNE DAVIS: Yes, that dash line is the setback
line, and the corner of the porch is right on that.

1 CHAIR TALESFORE: Okay. Got it.

2 SUZANNE DAVIS: But the bulk of the house is
3 further behind that.

4 COMMISSIONER BOURGEOIS: Okay. So I guess thanks
5 for clearing up those details for me, but my bigger question
6 is in your opinion where was the stalemate? I mean some of
7 the proposals that I saw for landscape screening seemed
8 pretty reasonable and a little creative by using landscaping
9 in different neighbors' yards. From Staff's perspective,
10 where was the hang up between the parties? Like where did
11 that fall out?

12 SUZANNE DAVIS: We just couldn't come up with
13 something that the neighbor found acceptable.

14 COMMISSIONER BOURGEOIS: They just didn't think it
15 screened it enough?

16 SUZANNE DAVIS: Well we had one neighbor that
17 seemed to be more concerned about having some view towards
18 the hills, and then the adjacent neighbor also expressed
19 that same desire, whereas one of the other neighbors on
20 Shannon was more interested in hiding the house as much as
possible and retaining privacy in the rear yard.

21 COMMISSIONER BOURGEOIS: So it was in the tradeoff
22 between the different neighbors?

23 SUZANNE DAVIS: I think we had a little bit of a
24 conflicting desire on the part of several different people.

25 COMMISSIONER BOURGEOIS: Okay, got it. Thank you.

1 CHAIR TALESFORE: So the first neighbor you talked
2 about, where is that neighbor located?

3 SUZANNE DAVIS: The neighbor that filed the appeal
4 lives on Shannon Road.

5 CHAIR TALESFORE: I understand that, but I mean
6 you just said there was one neighbor that had a problem with
7 the view.

8 SUZANNE DAVIS: Well we had several people
9 concerned about view. We had a neighbor across the street on
10 Englewood. We also had facing the property the neighbor to
11 the left wanting to still have some view of the hills and
12 have light in their yard, so they were concerned about not
13 planting something that was too large and overwhelming and
14 having their yard shaded too much. And then one of the
15 neighbors on Shannon seemed more interested in retaining
16 some view, but just getting some things in there to block,
17 sort of screen the house, but not have it obliterated from
18 view.

19 CHAIR TALESFORE: Is the neighbor from Shannon
20 that had the concern about the view the appellant or was
21 that another neighbor?

22 SUZANNE DAVIS: It's the other neighbor.

23 CHAIR TALESFORE: It's another neighbor? And the
24 adjacent neighbor who had the concern about the shade in the
25 yard, were they concerned about the shadows over their home
as well that would occur?

1 SUZANNE DAVIS: Yes, and they also indicated that
2 they plan to put a pool in and they'd like to have some
3 sunlight still in their yard, because we had some
4 conversation about planting redwoods, which can be very
5 large and overwhelming, and quickly got onto some other
6 species that we didn't think would be outgrowing the site
7 and being too big.

8 CHAIR TALESFORE: All right. Commissioner Sayoc.

9 COMMISSIONER SAYOC: Ms. Davis, in the applicant's
10 letter to us he proposes one other option as a compromise,
11 and that includes putting some landscaping on an adjoining
12 neighbor's lot. Has this option been presented to the
13 appellant, or is this new?

14 SUZANNE DAVIS: I believe the applicant offered to
15 plant things on the appellant's property, which wasn't
16 desirable from their perspective. Then the adjacent neighbor
17 to the left said they could possibly plants some things on
18 their property; if it was over in the corner they thought it
19 might be more effective. I don't believe that was discussed
20 with the appellant. I think we felt that that was a little
21 bit hard to enforce. They could certainly plant over there,
22 but then it's on someone else's property and becomes their
23 maintenance problem, not the person that lives in this
24 house.

25 CHAIR TALESFORE: Thank you. I don't see any more
questions at this time and I'll call up the appellant, Mr.

1 Kent Westerberg. I'm sure you'll be here in case we have
2 other questions of you later. Thank you very much. Mr.
3 Westerberg, you'll have five minutes to present your case,
4 and then please stay at the podium so we can ask you
5 questions.

6 KENT WESTERBERG: Again, thank you. Once again for
7 the record, my name is Kent Westerberg. I live at 107 Sharon
8 Court in Los Gatos. I am a real estate attorney and I do
9 represent Gil and Tamar Perez in this matter.

10 Just to refresh the Commissioners, my clients live
11 at 16590 Shannon. The cross street is Englewood. There is
12 one property behind them that is between them and the
13 subject property, and so basically their property is looking
14 towards the subject residence and their backyard.

15 As I think has been made clear by Staff, the only
16 aspect of the decision of the Development Review Committee
17 to allow the applicant to demolish and construct a new
18 residence at 16330 Englewood Avenue being challenged is the
19 inadequate tree and shrub screening that's being proposed by
20 the applicant along the northern property line. Sufficient
21 screening is necessary to preserve my client's privacy
22 rights, which are being infringed upon, simply because of
23 the fact the applicant is constructing a two-story
24 residence, and if it's left unscreened that residence can
25 have direct views into not only my client's yard but into
their living room.

1 As I see it the dispute really boils down to this
2 and it's not a complicated one, but the applicant is either
3 unwilling or as stated, is simply unable, to install
4 anything more than two 24" box trees and 15 15-gallon
5 scrubs, and we believe that this is insufficient and we are
6 not convinced that that's all that can be done.

7 This dispute really concerns the height and the
8 maturity of the types of trees and shrubs to be installed.
9 We believe that the trees and shrubs that will mature to at
10 least a 25' minimum are necessary to protect our client's
11 privacy rights and that such trees and shrubs can be planted
12 now with such maturity that by the time the home is
13 constructed in about a year's time, when someone is actually
14 living in the house, the trees and shrubs will be tall
15 enough to sufficiently screen the house and protect our
16 client's privacy rights.

17 Now the applicant admits in their paperwork that
18 what he is proposing will take at least three to four years
19 for the trees and shrubs to mature, and that means that
20 during that three to four year period my client is going to
21 have no screening and will have an infringement upon their
22 privacy rights until these trees and shrubs can grow to a
23 sufficient height. And they're also acknowledging that what
24 they're proposing to put in will only mature to
25 approximately 15' to 20' and we think that's insufficient.

1 I haven't had an opportunity myself yet to confer
2 with the landscape architect—I think Tamar Perez may have
3 some comments about that—but I am trying to confer with the
4 landscape architect, but I believe that trees such as an
5 Italian cypress or other shrubs can be easily planted in the
6 areas in question and that there is sufficient room for
7 requisite trees and shrubs that will grow to a sufficient
8 height to provide the sufficient screening we need.

9 Now we recognize that the applicant has worked
10 with Town and has worked with other neighbors to accommodate
11 their concerns. He's agreed to move the garage to the rear
12 of the property. He's agreed to reconfigure the roof. And
13 we're only asking that he work with my clients—and we should
14 be able to work this out—to put in trees and shrubs that
15 satisfy him. As I understand it too, the applicant is not
16 going to be living on this property; he's going to construct
17 it and sell it to someone else. My client has been living on
18 this property for some time and they're going to have to
19 deal with this down the road.

20 And today the planning commissioners, Ms.
21 Talesfore and Mr. Kane, came out to the property and they
22 were able to see I think firsthand the staging poles and how
23 without sufficient screening there's a direct wide open view
24 from the second story of the proposed residence, not only
25 right into the backyard of my client's property where their

1 children play and they have a pool, but it also goes
2 directly into their living room.

3 Unless sufficient screening is put in place there
4 is an outside concern of my clients that if the day ever
5 comes that they need to sell the property that there might
6 be a diminution in value, and nobody wants to be in a house,
7 I think we can all appreciate, where the neighbors can look
8 into your backyard where you're entertaining and playing in
9 the pool, or looking into your living room.

10 So having said all of that, we respectfully
11 request that the appeal be sustained so that we can work
12 with the applicant. I simply think that we should be able to
13 work something out with him that will accommodate
14 everybody's concerns. So those are my comments and I'd be
15 happy to answer any questions.

16 CHAIR TALESFORE: Thank you very much. Do we have
17 any questions? Commissioner Bourgeois, and then Commissioner
18 Sayoc.

19 COMMISSIONER BOURGEOIS: Thank you for your
20 presentation and for being here tonight in the absence of
21 Mr. Perez. I'm trying to get what you think the solution is
22 from the Perez perspective, and it sounds like what you're
23 suggesting is trees that go to greater height than what's
24 being proposed, perhaps some more trees, perhaps larger tree
25 size at installation, and if those conditions are met, are
you satisfied?

1 KENT WESTERBERG: Yes, Commissioner, I think the
2 issue really boils down to heights of trees. As I understand
3 what the applicant is proposing are trees and shrubs that
4 will only grow to 15' to 20'-now we're going to hear from
5 him I'm sure-and we believe we need something a little
6 higher, because of the height of the house.

7 And also the other concern is what they're
8 proposing, and I'm not a landscape architect and certainly
9 not an expert in the area, but the other concern is what we
10 put in now. Is it going to be high enough so that when it
11 grows and someone's actually finally living in the property,
12 is it going to be high enough? It's my understanding that
13 what's being proposed now, it's going to take years for it
14 to grow to be high enough, so there will years where my
15 client will be subject to having problems with views from
16 this other property.

17 So it's height and maturity of trees, and I think
18 we're going to hear from the applicant too, because of this
19 driveway he's installed, and he has offered to reconfigure
20 the driveway, to put in about a 36" space, and I think we're
21 going to hear from the applicant that he believes he can
22 only put in 24" box trees. That's not my understanding.

23 Obviously I don't think a redwood is going to fit
24 in that area, but again I'm not an expert. I know that
25 evergreens have been proposed. But Italian cypress I know.
Those are not a wide tree. Those can grow very tall. That's

1 just something out there. And in fact, I was at the property
2 today for the first time and I noticed I believe the
3 adjacent property owner has about 25' to 30' Italian cypress
4 trees. I mean obviously we need a tree that doesn't drop its
5 foliage in the winter or we'd lose the privacy in the off-
6 season. So it's trees of that nature. Evergreens might work.
7 Italian cypress. But I do think there's sufficient room
8 there.

9 And the driveway is only a concern in one area. If
10 you look at Map L-2, he's kind of marked out where... And I do
11 believe that the staging is in the right area, where the
12 commissioners were out today, and we're not objecting to the
13 location, we're not necessarily objecting to the number. I
14 mean it depends on the tree and the type of shrub that's
15 going to be put in there. But there is room back behind the
16 driveway as you move towards the backyard. That's where
17 there's also some screening needed, because my client's
18 house is I guess to the east a little bit, so they're
19 looking kind of diagonally back, and that's why I think
20 there is sufficient room back there, but I'm sure we'll hear
21 from the applicant about that as well.

22 CHAIR TALESFORE: Do you have a follow-up,
23 Commissioner Bourgeois?

24 COMMISSIONER BOURGEOIS: Just one quick follow-up.
25 And so your client is not willing to have the applicant
plant trees in his yard?

1 KENT WESTERBERG: No, he's trying to... We fully
2 understand he's able to construct his house and he's
3 certainly entitled to put up trees. We're just asking. This
4 Town, I've lived here a number of years, and I know this
5 Planning Commission and the Town take seriously the concerns
6 of everybody that lives here, and it's a privacy concern for
7 my client.

8 And the other thing that he was concerned about,
9 and I know he doesn't live right next door to the applicant,
10 but he just feels he didn't get notice, really didn't know
11 what was going on until the property got staked, so he kind
12 of felt like he got in at the late stage and didn't have
13 opportunity to come in at maybe an earlier stage to voice
14 his concerns about what was being proposed with landscaping.

14 CHAIR TALESFORE: Thank you. Commissioner Sayoc.

15 COMMISSIONER SAYOC: Real quickly, I don't think I
16 understood your response to Commissioner Bourgeois'
17 question. Is the appellant willing to allow the applicant to
18 plant trees in their yard as a compromise?

19 KENT WESTERBERG: Oh, maybe I misunderstood the
20 commissioner. You mean on their own property? I did
21 misunderstand. Thanks for clarifying that. I think what was
22 proposed is that the neighbor that lives behind, it's kind
23 of the gap neighbor between the applicant and my clients, I
24 think what was discussed was the possibility of putting
25

1 screening on their property, not my client's property. I
2 don't know that that was discussed.

3 COMMISSIONER SAYOC: That has been proposed in the
4 letter that the applicant has provided to us, but I think
5 sometime today, unless I misunderstood, I also heard that
6 one other option was that the applicant place landscaping in
7 your client's yard.

8 KENT WESTERBERG: Yeah, and I don't know that
9 that's something that's something that was discussed at
10 length, and maybe Mrs. Perez can address those concerns. I
11 know when I spoke with the applicant the other day in trying
12 to work out some solution, he did tell me that the neighbor
13 right behind at some point had talked about putting up
14 screening on their property, but it turns out they would
15 only put up that screening if it was along my client's
16 property line, the north property line, and the discussions
17 before that my client was willing to entertain is if they
18 were going to be put up along the boundary line of where the
19 applicant is.

19 CHAIR TALESFORE: Commissioner Rice.

20 COMMISSIONER RICE: Please don't take this the
21 wrong way; I'm trying to figure out where the crux of this
22 problem is. When I look at the second floor the room, so to
23 speak, that's closest to potentially having an impact of
24 being able to see into your client's yard is a closet with
25 no windows. Then there's one bedroom with one window on that

1 entire side. There's no other windows on that side. I'm not
2 sure I understand what they're expecting a house that's two
3 lots away to be able to see, because even from that bedroom,
4 and I grant I could be missing something here, but they'd
5 have to look over the roof of the house next door to be able
6 to see, and it would probably be into the Perez's next door
7 neighbor's yard, not the Perez's yard. I understand what
8 you're saying from the story poles and the like, because I
9 can see that, but I also have to look at where the windows
10 are placed in the plans and there's nothing that faces that
11 direction.

12 KENT WESTERBERG: Respectfully, Commissioner,
13 that's not my understanding. There are going to be rooms in
14 the second story. I was out at the property today, as were
15 two other commissioners, and you can see the entire house
16 from their backyard, certainly from their living room. And I
17 would assume that the entire top floor is not just going to
18 be a closet, there's going to be bedrooms.

19 COMMISSIONER RICE: Have you looked at the plans?

20 KENT WESTERBERG: Yes.

21 COMMISSIONER RICE: Okay, so going across that
22 wall there is a closet with no windows; bedroom four, which
23 has a window; a bathroom, which may have it looks like a
24 small window above the water closet; and then a solid wall
25 all the way to the front.

1 KENT WESTERBERG: But I'm saying, Commissioner, I
2 was at the property today. It's not a situation where they
3 would have to look over another house; that's not the case.
4 There is a direct view from their living room to the entire
5 house.

6 COMMISSIONER RICE: Okay. Thank you.

7 KENT WESTERBERG: You're welcome.

8 CHAIR TALESFORE: I have a question, and I don't
9 know if you can answer this, but did the Perezes have any
10 other concerns about this house, aside from the landscaping?

11 KENT WESTERBERG: I don't believe so.

12 CHAIR TALESFORE: So if you were to summarize,
13 would you tell the Commission the three concerns, or four,
14 or whatever it is? Can you do that?

15 KENT WESTERBERG: The concerns are getting
16 sufficiently high screening to protect the viewing from the
17 applicant's residence, and screening, shrubbery, trees that
18 will mature soon enough, so that they don't have to wait
19 five to ten years for it to grow to be of sufficient height.
20 Those are really the two concerns.

21 CHAIR TALESFORE: Thank you.

22 KENT WESTERBERG: You're welcome.

23 CHAIR TALESFORE: All right, I don't see any other
24 questions, but we'll call you back up. So I do have speaker
25 cards, and the first one is Tamar Brand-Perez. And would you
please tell us your name and your address?

1 TAMAR BRAND-PEREZ: My name is Tamar Brand-Perez.
2 I live on 16590 Shannon Road.

3 CHAIR TALESFORE: Oh, okay. Thank you very much.
4 I'm just going to clarify something. You do live in the
5 house that...

6 TAMAR BRAND-PEREZ: I live in the house that Kent
7 is representing.

8 CHAIR TALESFORE: Yes. Thank you.

9 TAMAR BRAND-PEREZ: And I really feel that we need
10 just a little bit more time to be able to solve this not
11 very big of an issue, and I believe it could be solved, and
12 I think that a lot of it is just because we did not have
13 sufficient time to go through the motions with Patrick. We
14 did make quite a bit of progress. We have spoken to Patrick
15 a few times and I believe that a couple more meetings would
16 probably take care of it. We just didn't have that time, and
17 that's the reason that it came up to here.

18 This issue is very important to us; it is our
19 home. I've lived in this house for eight years and I would
20 like to live here for a lot longer. The reason I bought the
21 house was because of this beautiful view and privacy that I
22 had, and I will be giving all this up.

23 I'm willing to compromise, I don't have a problem
24 with it, and I understand that things change, but I want to
25 reach an agreement that is acceptable on both sides. I would
like to have beautiful trees that when I'm sitting in my

1 living room or in my backyard I'll be able to look into
2 these beautiful trees instead of at a big house that is very
3 big compared to other homes in that area, and I think it's
4 possible to find a solution.

5 CHAIR TALESFORE: Thank you very much. Stay here,
6 Ms. Perez. Thank you. Do we have any questions,
7 Commissioners? Commissioner O'Donnell.

8 COMMISSIONER O'DONNELL: Thank you. We asked a
9 question before of your attorney, so now is a good
10 opportunity for you too. So far what I at least understand
11 is were an adequate screen of planting put in, that's your
12 problem, is that correct?

13 TAMAR BRAND-PEREZ: Yes, that's my only problem.

14 COMMISSIONER O'DONNELL: And that's it. Okay. And
15 there was also some suggestion, I think there was a
16 question, obviously your southern property line could have
17 plants on it, but you're not interested in putting a screen
18 there, is that correct?

19 TAMAR BRAND-PEREZ: Right. You know, it's a less
20 than ideal situation for us, because we do have a pool there
21 that is functioning and not just a plan for a potential pool
22 sometime in the future, and that would compromise the pool
23 with leaves and shade and all kind of stuff, so we would
24 much rather not have to put that in.

25 COMMISSIONER O'DONNELL: When we go over to the
neighbor's property of whom you're complaining, you're

1 concerned primarily about your view of that home or its view
2 of your backyard?

3 TAMAR BRAND-PEREZ: You know, it's everything
4 together. It's not one. It's the fact that when I'm sitting
5 I'm looking at a house instead of at a mountain, and
6 actually our whole house was remodeled a few years back to
7 have all these windows that are looking into this view, and
8 so now it's going to be looking into this house.

9 COMMISSIONER O'DONNELL: You would prefer to look
10 into trees and still be blocked from the hills?

11 TAMAR BRAND-PEREZ: Yes, because I'm compromising,
12 because I understand that this house is going to have to be
13 built.

14 COMMISSIONER O'DONNELL: And so the screening of
15 the house, you're just asking then for the screening only of
16 the house?

17 TAMAR BRAND-PEREZ: Right.

18 COMMISSIONER O'DONNELL: Okay. Thank you very
19 much.

20 TAMAR BRAND-PEREZ: Sure.

21 CHAIR TALESFORE: Commissioner Rice.

22 COMMISSIONER RICE: Forgive me, because when I was
23 looking at the property I didn't think to go around the
24 corner. Is your house one store or two?

25 TAMAR BRAND-PEREZ: One.

COMMISSIONER RICE: One. Thank you.

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1 CHAIR TALESFORE: I don't see any other questions,
2 so we appreciate you coming before us. I'm calling up C.
3 Patrick Munnerlyn.

4 PATRICK MUNNERLYN: Hi, I'm Patrick Munnerlyn. I'm
5 the applicant and I also live in Los Gatos at 228 Bella
6 Vista Avenue.

7 Before I closed escrow on this property I went to
8 the planning counter to find out exactly what I could build,
9 and I researched the Development Guidelines and found out
10 what I wanted. I hired an architect that has worked for the
11 City before and I instructed him to design the house
12 completely within the code, so there are no variances,
13 there's no nothing.

14 I understand getting something through planning;
15 there are a lot of compromises that one has to make.
16 Originally the garage was in the front yard and Larry
17 Cannon, the consulting architect, requested we put it in the
18 back. By doing so it created the driveway on my north
19 property line, and that's kind of what limits the amount of
20 screening that I can put there.

21 Also another issue that I have is that I had two
22 DRC meetings where I had three neighbors attend, and the
23 main concern was the vertical mass along the property line
24 of the house, and as you can see from Sheet A-2 we changed
25 the roofline from a gabled roof to the hip roof specifically
to lower the mass along the property line.

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1 Now the Perezes were not at my DRC meetings and
2 they claim it was because they weren't notified, because
3 they weren't, because they were too far away, but my story
4 poles had been up for 28 days prior. It took Mr. Perez 28
5 days to make a phone call to find out what was going on on
6 the property.

7 Mrs. Perez and Mr. Perez keep saying it's about
8 time, I'm sure we can work this out, I'm sure we can work
9 this out. Well it's been eight weeks since he made his
10 initial appeal. I've met with Mr. Perez three times. I met
11 with Mrs. Perez once. I met with Mr. Perez and Mr. Finkle
12 once. And I met with Planning Staff and Mr. Perez and Mr.
13 Finkle. In all of those meetings I offered compromises. I
14 think in the Planning Staff memo it lists when I met with
15 them, but it didn't really list what I offered.

16 My first meeting was on the 19th, the day of the
17 end of the appeal period, and Mr. Perez was in New York. He
18 had called me two days before the appeal ended and told me
19 he was in New York and he couldn't meet with me. So I met
20 with Mrs. Perez, and at that time I was kind of desperate to
21 come to an agreement prior to the appeal period ending, so I
22 offered to plant four 24" box redwood trees, and I offered
23 to erect story poles to show where they were. They went
24 ahead with the appeal. Then I met with Gil at his house on
25 the 22nd, two days later, and he wanted me to plant...

(Timer sounds.)

1 CHAIR TALESFORE: I'd like to hear the rest of
2 your sentence, and also your thoughts. Thank you.

3 PATRICK MUNNERLYN: Okay.

4 CHAIR TALESFORE: So please continue.

5 PATRICK MUNNERLYN: I didn't know I had a time
6 limit.

7 CHAIR TALESFORE: You did. It's three minutes.

8 PATRICK MUNNERLYN: Okay. Anyway, I've met with
9 them plenty of times and I've met with them with Planning
10 Staff, and we cannot come to an agreement on this matter,
11 and that's why I'm here at the Planning Commission, and
12 fortunately I'm glad Lisa's here to talk about her property.

13 CHAIR TALESFORE: Do you mind staying there in
14 case we have other questions?

15 PATRICK MUNNERLYN: Okay.

16 CHAIR TALESFORE: Commissioner O'Donnell.

17 COMMISSIONER O'DONNELL: Perhaps you were going to
18 get to this and didn't have time, but could you describe to
19 me what you would consider your last, best offer, so to
20 speak, on screening to address the problem we've heard
21 tonight?

22 PATRICK MUNNERLYN: At my meeting with Planning
23 Staff, Mr. Finkle, and Mr. Perez, I offered to plant 15 15-
24 gallon (inaudible) and they grow to a height of 25'. And
25 then I offered two arbutus marina, which is an evergreen
broad leaf tree that grows to a height of 30'. Mr. Finkle

1 agreed to the solution, Mr. Perez turned it down. During
2 that meeting I also agreed to pre-purchase that plant
3 material and store it on my property during construction so
4 that it could grow to a mature height.

5 Now, I made that offer because I was trying to get
6 it approved, but I'm concerned about the impact that it has
7 on my next door neighbors, the Casaccias, because they were
8 at the DRC meeting and I made the agreement to lower the
9 roofline for them, and now I'm turning around and putting in
10 a 25' tall hedge. So it seems like in order to do that I
11 have to throw out the agreement that I made with my next-
12 door neighbors.

13 COMMISSIONER O'DONNELL: Let me just follow up a
14 little bit on that. I understand your having worked out a
15 deal with your next-door neighbor and not wanting to violate
16 that. Forgetting for the moment the kinds of screening, is
17 there no way you could erect a screen which would not
18 infringe on your agreement with your immediate neighbor and
19 yet block, as I understand it, the two-way view between
20 Perez and your lot?

21 PATRICK MUNNERLYN: We lowered the height of the
22 roof on the property line from 28' down to about 20'.
23 They're asking me to put in a 25' hedge, so I don't think
24 what they're wanting is compatible.
25

1 COMMISSIONER O'DONNELL: Okay, but lets forget
2 what their exact... We're here today to try to see something
3 reasonable. You're saying your roof height is 20'?

4 PATRICK MUNNERLYN: No, it's roughly... It lowered..
5 My architect... What?

6 GREGG KAWAHARA: (From audience.) At the eve.

7 PATRICK MUNNERLYN: At the eve. Sorry, this is my
8 architect. The vertical height along the property line is...

9 GREG KAWAHARA: (Inaudible from the audience.)

10 PATRICK MUNNERLYN: I'm sorry.

11 CHAIR TALESFORE: You know what? He has a speaker
12 card.

13 PATRICK MUNNERLYN: He has a speaker card.

14 CHAIR TALESFORE: Excuse me, you do have a speaker
15 card, and why don't you come down? I'll give you a couple of
16 extra minutes. I think, Mr. Tsuda, I want to make sure of
17 this, but as a planning commission looking at this
18 application, we can ask questions that are outside of what
19 the issue is as far as the appellant?

20 RANDY TSUDA: That's correct.

21 CHAIR TALESFORE: That's correct? So we can ask
22 the architect building questions, et cetera, the whole
23 thing?

24 RANDY TSUDA: That's right.
25

1 CHAIR TALESFORE: Okay. So just for you to know
2 that, Commissioners, that you're allowed to go beyond the...
3 Go ahead.

4 GREGG KAWAHARA: My name is Greg Kawahara. My
5 address is 5822 Dresser Circle. I'm the architect for the
6 project. To help clarify what Patrick was referring to,
7 refer to Sheet A-6 of the drawings. On the bottom it has the
8 initial left elevation, and that side of the house initially
9 was a gabled elevation, and that's the 28' that Patrick was
10 referring to.

11 CHAIR TALESFORE: What are we looking at?

12 GREGG KAWAHARA: The upper elevations, the
13 approved left elevation, shows that side of the house, which
14 is hipped, so basically the height of the two-story wall on
15 that side of the property, which is the north side, lowered
16 from 28' to 20', because we ran the eave with the rafter
17 tails across that side, eliminating the triangular gabled
18 roof and the wall height as well.

19 COMMISSIONER O'DONNELL: You might as well both
20 stay there; it makes it easier I think.

21 CHAIR TALESFORE: Yeah, I was going to say. Thank
22 you.

23 COMMISSIONER O'DONNELL: I'm just trying to
24 visualize again a screen that is not overpowering for the
25 immediate neighbor, and yet also shields the Perez lot. Do
you have an opinion as to how high that would be to

1 effectively screen the Perez view of the house and the
2 occupants of the houses view of the Perezes, and yet not be
3 overwhelming for the immediate neighbor?

4 PATRICK MUNNERLYN: For a privacy concern it would
5 have to go up to the second story window height. For a
6 screening concern, in discussions with Mr. Perez, he wanted
7 it as tall as the house.

8 COMMISSIONER O'DONNELL: What's the top elevation
9 of the window?

10 PATRICK MUNNERLYN: Let's see.

11 SUZANNE DAVIS: Eighteen.

12 GREG KAWAHARA: About 18'; that's a good number.

13 COMMISSIONER O'DONNELL: All right, thank you very
14 much.

15 CHAIR TALESFORE: Who else has questions?
16 Commissioner Sayoc.

17 COMMISSIONER SAYOC: So if I understand correctly
18 then, the planting of the trees that you've offered and the
19 size of trees that the Perezes would like, the reason why
20 those cannot be planted is because of the amount of width
21 necessary along your driveway?

22 PATRICK MUNNERLYN: That's correct.

23 COMMISSIONER SAYOC: Or is it because of just...

24 PATRICK MUNNERLYN: No, it's because of the width
25 of the driveway. On Sheet L-2—it's the last sheet in the
set—you can see where I propose to angle the driveway after

1 it went past the chimney in order to create a large enough
2 area to plant anything. Currently on the site there's no
3 fence, there's currently a hedge, so I'd be planting a hedge
4 adjacent to a hedge.

5 COMMISSIONER SAYOC: But taking a page out of
6 Commissioner Rice's book of trying to be creative tonight,
7 are your site setbacks on both sides of the house the same
8 so that you can just put the driveway on the other side and
9 flip the garage to the other side?

10 GREG KAWAHARA: They are, but I know that's
11 something that we...

12 PATRICK MUNNERLYN: We've looked at.

13 GREG KAWAHARA: ...we did look at and the concerns
14 of the adjacent neighbors. I think the Casaccias liked the
15 orientation of the house as proposed and approved as well as
16 the adjacent neighbor, which I don't see here anymore, he
17 had to leave. He was satisfied with the garage being on his
18 side of the property, and the Casaccias did not want the
19 garage adjacent to their side of the property.

20 COMMISSIONER SAYOC: Okay, thank you.

21 CHAIR TALESFORE: I have a question. This is
22 concerning the chimney of the house. Can you tell me why
23 it's so high above the roofline?

24 GREG KAWAHARA: Well, that's interesting, because
25 we did lower that. You go back to Sheet A-6 for the initial
left elevation, that chimney was basically to meet the

1 requirements of the Uniform Building Code. There's what's
2 called a ten and two requirement where you go 10'
3 horizontally. You can go 3' above that 10' radius from the
4 roof and that's how high the chimney needs to be. When we
5 converted the house to a hip elevation that did lower
6 accordingly, and that's what it needs to be for the code
7 requirements.

8 CHAIR TALESFORE: Thank you. Commissioner Kane.

9 COMMISSIONER KANE: Just to clarify, you're saying
10 that on Page A-6 the top of the chimney is also the top of
11 the house? It's not starkly above that anymore?

12 GREG KAWAHARA: Yeah, that's a good way of wording
13 it.

14 CHAIR TALESFORE: Okay, thank you. Commissioners,
15 do we have any other questions? Commissioner Bourgeois.

16 COMMISSIONER BOURGEOIS: I saw a lot of head
17 shaking no when they were talking about Italian Cypress. I
18 personally like the choice of the arbutus, I think it's a
19 good selection, but while you're up here I wanted to get
20 your thoughts on that suggestion.

21 PATRICK MUNNERLYN: Well, I guess Mr. Westerberg
22 isn't aware of Cypress canker that is killing the Italian
23 Cypresses in the area. They also are susceptible to dust
24 mites that make them wilt. If you've seen them wilting, the
25 dust mites make that happen. So they're not the cleanest
species to be used, and I personally would not use it on any

1 of my clients' projects, and I'm definitely not going to use
2 it on my project.

3 CHAIR TALESFORE: Let's see, I have questions of
4 the architect, so Mr. Munnerlyn, I think you probably could
5 sit down.

6 PATRICK MUNNERLYN: Thank you very much.

7 CHAIR TALESFORE: Thank you.

8 PATRICK MUNNERLYN: And I hope we come to a
9 solution tonight.

10 CHAIR TALESFORE: Thank you. Does Mr. Munnerlyn
11 have an opportunity to come back up for rebuttal? Would that
12 be something we should think about doing?

13 RANDY TSUDA: Council has typically allowed both
14 appellant and applicant to close.

15 CHAIR TALESFORE: To come back up. Thank you. Yes,
16 Commissioner O'Donnell?

17 COMMISSIONER O'DONNELL: Just so we understand,
18 somebody gets the last word and that is normally the
19 appellant, right?

20 CHAIR TALESFORE: The appellant, yes.

21 COMMISSIONER O'DONNELL: Thank you.

22 CHAIR TALESFORE: So what I would have to ask you
23 is on A-6 of the plans, traditionally in new construction
24 like this, I mean that is a rather large plane of house on
25 that side, and we like to do 360-degree architecture, so
what I'm wondering is I see to the back of the house that

1 there are rafters under what looks like an eve, and often to
2 break up this mass we have done something like belly bands
3 or maybe continuing an eve look.

4 The reason I'm asking this question is that
5 visually this house presents itself rather large, and what
6 this has to do with the appeal is that it is in front of us
7 and I'm allowed to notice some of these design features and
8 this one pops out at me. So my question to you is, is that
9 something that you would be able to address in a design?
10 It's a refinement.

11 GREG KAWAHARA: Certainly a bellyband could be
12 something that could be very easily accommodated. I just
13 figured it would be (inaudible) have to pay personal
14 attention to how it gets wrapped around towards the front of
15 the house.

16 CHAIR TALESFORE: Right.

17 GREG KAWAHARA: But (inaudible) the chimney, that
18 might be adequate on how it wraps around the front
19 elevation, it may not necessarily work very well.

20 CHAIR TALESFORE: I would like for that to be
21 looked at if that's possible.

22 GREG KAWAHARA: Okay.

23 CHAIR TALESFORE: Thank you. Commissioners, does
24 anyone else have a question of the architect? Seeing none,
25 thank you.

GREG KAWAHARA: I did submit a speaker card.

1 CHAIR TALESFORE: Do you have something else to
2 add?

3 GREG KAWAHARA: Yeah, because I did want to add
4 one more thing. It had to do with what Commissioner Rice was
5 referring to. If you look at Sheet L-2, he was bringing up
6 the issue of the privacy, of what rooms look down to the
7 Perez's property. I just wanted to point out that the window
8 in bedroom #4 is really in line with the property at 16302
9 Englewood Avenue, so it's basically two lots over from the
10 Perez's property. Thank you.

11 CHAIR TALESFORE: Thank you. The next speaker is
12 Lisa Casaccia.

13 LISA CASACCIA: I'm Lisa Casaccia and I live at
14 16316 Englewood. If you're looking at the Munnerlyn's home
15 we are to the left, directly impacted.

16 I want to clarify one thing, that it was said that
17 we were mostly concerned with shade, and that's not the
18 case. It is the view of the hills. If in fact trees are
19 planted in between our two homes we will not be able to see
20 the hills at all. We have a clear view at this point and it
21 is just a hedge that separates the two properties.

22 Also we are putting a pool in. Should there be
23 trees in there, it's going to be an issue for us and our
24 pool.

25 The other thing is we also have children. The home
and the way that the windows are situated does not impact

1 our backyard, so we don't have an issue with them looking in
2 our backyard.

3 Let's see what else here I wanted to say. I know
4 they've been going around and round, as we all have. We're
5 trying to get a resolution to it. What we have proposed as
6 the neighbor is we will allow plants and trees to be planted
7 on our side, so it would be between us and the Perezes, on
8 our yard. Granted, some that do not shed a lot, some that
9 you could see through whatever would be clear but would help
10 them to block that, but I do not want trees on our side.

11 CHAIR TALESFORE: Do we have questions? I think we
12 do. Commissioner Bourgeois. Commissioner Sayoc, did I see
13 your hand up? Okay, and then Commissioner O'Donnell. Would
14 you please stay at the mike? Thank you. Commissioner
Bourgeois.

15 COMMISSIONER BOURGEOIS: Thank you for taking your
16 time to be here and for your input. So the proposed house
17 you don't have a problem with?

18 LISA CASACCIA: No, not at all.

19 COMMISSIONER BOURGEOIS: The trees that you're
20 opposed to, have you seen this proposed Sheet L-2 where they
21 have two 24" trees? They're beyond the edge of your corner
22 of your house. Have you seen this?

23 LISA CASACCIA: I've not seen that drawing, but I
24 look at the story poles everyday.
25

1 COMMISSIONER BOURGEOIS: I don't think the story
2 poles reflect this.
3 PATRICK MUNNERLYN: Yeah, they do.
4 COMMISSIONER BOURGEOIS: They do? Okay. And so the
5 location of those trees, you're not happy with that?
6 LISA CASACCIA: Not at all.
7 COMMISSIONER BOURGEOIS: Okay.
8 LISA CASACCIA: Not at all.
9 COMMISSIONER BOURGEOIS: Thank you.
10 CHAIR TALESFORE: Okay, Commissioner O'Donnell.
11 COMMISSIONER O'DONNELL: Let me understand what I
12 have understood is your offer here.
13 LISA CASACCIA: Sure.
14 COMMISSIONER O'DONNELL: When you plant whatever
15 you're talking about planting along, and maybe my map is
16 wrong here, but it looks like the northerly property line.
17 LISA CASACCIA: Mmm-hmm.
18 COMMISSIONER O'DONNELL: I see where the Perez's
19 property, it's really their easterly, although I guess on
20 this map it seems to be, yes, their easterly property line,
21 and then... Let me make it easier. How long a stretch of a
22 planting are you talking about? I mean how do you visualize
23 this?
24 LISA CASACCIA: Right, right. When you look at the
25 back of our yard on the left-hand side, we have trees that
are planted that go all the way up to, I don't know, maybe

1 it's the beginning of the Perez's yard, or halfway or a
2 quarter, I don't know, and then there's a gap. We're willing
3 to go all the way. That's fine.
4 COMMISSIONER O'DONNELL: It seems that now we've
5 just heard that they can see the house, but you're telling
6 me you already have trees.
7 LISA CASACCIA: No, no, where they are, if they
8 look out they can see the house, yes, so what we're saying
9 is we'll plant trees on our side, on the left side, so that
10 they'll see trees. No plants or trees over here, so we can
11 still see the hills.
12 COMMISSIONER O'DONNELL: And how tall are the
13 trees that you now have?
14 LISA CASACCIA: Oh, they're very tall. I don't
15 know.
16 COMMISSIONER O'DONNELL: Higher than 25'?
17 MALE: Yeah.
18 LISA CASACCIA: You've seen them. Probably, yeah.
19 COMMISSIONER O'DONNELL: Okay, I think I
20 understand. Thank you very much.
21 LISA CASACCIA: Can I say one more thing?
22 CHAIR TALESFORE: I wanted to ask you a question
23 about the hedges or shrubs you said are between your
24 property and the subject house? What's the height of them
25 right now?
LISA CASACCIA: That's separates us and Patrick?

1 CHAIR TALESFORE: Yes?
2 LISA CASACCIA: They're tall. I don't know.
3 They're tall.
4 CHAIR TALESFORE: I was out there today, but I
5 cannot...
6 LISA CASACCIA: It's very thick. They didn't have
7 fences back then, so it's a very thick hedge, very tall. We
8 can't see.
9 CHAIR TALESFORE: Is there a fence now? I can't
10 remember.
11 LISA CASACCIA: No, no, we have like a wire fence,
12 which you don't see.
13 CHAIR TALESFORE: That's fine. Okay, great.
14 LISA CASACCIA: I just want to say one thing. What
15 I don't quite understand about this whole thing is we're
16 right next to Patrick. We're trying to help. I don't think
17 it's fair that we have trees right here that we look at from
18 our kitchen, from our living room, from our backyard, that
19 all of a sudden we have to plant trees in here that ruins
20 our view to block their view over here when we're saying
21 we'll take the trees. We understand that you don't want to
22 look at the house; I get that, so we'll take those trees.
23 Rather than here, put them over here and we'll put them in
24 our yard. You don't have to maintain them. We'll help you
25 out; we're trying to make it work, but don't block our view
because you're over here. That's not fair to us.

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1 CHAIR TALESFORE: Commissioner Kane and then
2 Commissioner Bourgeois.
3 COMMISSIONER KANE: What I'm not understanding is
4 what happened to your proposal. Is it on the table? Is it
5 being discussed? Did they reject it?
6 LISA CASACCIA: They turned it down. They didn't
7 want it.
8 COMMISSIONER KANE: Do you know why they did?
9 LISA CASACCIA: I do not know. I did not have
10 direct communication with them.
11 COMMISSIONER KANE: Thank you.
12 CHAIR TALESFORE: Commissioner Bourgeois.
13 COMMISSIONER BOURGEOIS: My question was answered.
14 CHAIR TALESFORE: Okay. Thank you very much. I
15 don't think we have any other questions at this time.
16 Appreciate you coming out. My last speaker card before I
17 call up the applicant and the appellant is Ned Finkle. Thank
18 you very much for waiting.
19 NED FINKLE: Thanks for hearing me. I live next to
20 the Perezes and I've lived there about 13 years now, quite a
21 bit of time. I grew up here in Los Gatos, so I had a lot of
22 passion for the property. I have a family of five and look
23 out at the proposed new structure.
24 I think the simple issue from my perspective is an
25 attempt to get some privacy and some screening from this new
property, and I appreciate the way you guys are narrowing

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1 down on that. We have lost in any sense a good section of
2 our view. We've kind of been moving past that in the month
3 since we've seen the story poles go up.

4 The discussion of the offer of the neighbor
5 between us, Steve and Lisa, I hadn't seen it until I saw
6 that in the letter on the third, so that hasn't been vetted
7 on worked on, and so we haven't really given that kind of a
8 tryout. I'm a little uncomfortable with it because I have a
9 good neighbor relation with them; I don't want to stress
10 that. I kind of thought we could resolve that with the new
11 people building the new home, so that was my preference.

12 I think that's probably the bulk of my thoughts. I
13 mean I've lived there for a long time. All these views are
14 affected now. We're looking at windows that look into our
15 home, so it's a privacy issue, even if I set aside the view.

16 CHAIR TALESFORE: I was wanting a sidebar with Mr.
17 Tsuda, so would you please tell me where your house is on
18 this map? Okay, thank you. Commissioner Bourgeois.

19 COMMISSIONER BOURGEOIS: Thank you, Mr. Finkle. So
20 your relationship with our neighbor aside, I mean what's
21 your gut reaction to the proposal of having the trees or
22 vegetation planted along basically what amounts to your back
23 fence?

24 NED FINKLE: Yeah, I think it's a good idea. My
25 challenge is I've got a pool right up against the lot line
also, so I've got to think about what are we talking about,

1 the species selection and all that, and I'm sensitive to
2 that. I wasn't proposing in this hedge line. I wasn't a fan
3 of anything too big either, so I'm sensitive to that. We
4 just haven't vetted that out. We haven't seen on a piece of
5 paper what works or what doesn't, so I think it's an
6 interesting proposal.

7 COMMISSIONER BOURGEOIS: Thank you.

8 CHAIR TALESFORE: Any other questions of this
9 speaker? I don't have any. Thank you very much. I'm going to
10 call back up Patrick Munnerlyn, the applicant, for any last
11 comments.

12 PATRICK MUNNERLYN: I think one thing that hasn't
13 been touched upon is the size of the plants in the ground. I
14 worked with City Staff. I had said, "What size shrubs do you
15 typically propose? What size trees do you typically
16 propose?" I was told 24" box, 15-gallon shrubs; that's what
17 I proposed. I did research. I read the Town Code, I've read
18 the Development Guidelines, and there's really no guidance
19 in Los Gatos. My professional opinion as a landscape
20 architect, I feel that what I offered will provide the
21 screening.

22 The city of Cupertino actually does layout what is
23 required: size, species, everything, and it has a list of
24 species. I know it doesn't apply here, but I think it
25 validates what my offer was, because the species that I

1 offered was on the list, the size was on the list,
2 everything.

3 So I think that it's one hurdle. I think we all
4 agree there has to be some screening, but I think the major
5 hurdle here is the expectations of what that is. I'm
6 suggesting 24" box trees. Mr. Perez was suggesting 48" and
7 60" box trees. So that's what we need resolved, I think.

8 CHAIR TALESFORE: Any questions? Commissioner
9 O'Donnell, and then Commissioner Bourgeois.

10 COMMISSIONER O'DONNELL: Your selection may be
11 different than mine. You've put a dichotomy of two things
12 and I heard a third thing tonight. I heard your neighbor
13 suggest that she was willing to put some plants along her
14 property line.

15 PATRICK MUNNERLYN: Yes.

16 COMMISSIONER O'DONNELL: Which seems to perhaps
17 solve the problem we're dealing with. Now, you didn't offer
18 that in the statement you just made, but I assume you
19 wouldn't oppose that?

20 PATRICK MUNNERLYN: I offered it to Mr. Perez and
21 Mr. Finkle on our October 28th meeting.

22 COMMISSIONER O'DONNELL: So it would be fine with
23 you?

24 PATRICK MUNNERLYN: Yes. And in my response I laid
25 it out that I've actually met my neighbors and developed a
really good relationship with them because of this matter,

1 and they're willing to do it and I really appreciate them
2 stepping in and helping out on this matter, because like I
3 said, I worked with them to minimize the height on the
4 property line, and then out of the blue I get appealed by
5 someone who says, "You know all that stuff you said at the
6 DRC meeting? Forget about it. I've appealed you and now
7 you've got to put in a 25-foot hedge."

8 COMMISSIONER O'DONNELL: I understand. I just
9 needed that one question answered. Thank you.

10 CHAIR TALESFORE: Commissioner Bourgeois.

11 COMMISSIONER BOURGEOIS: That was the first part
12 of my question. The second part is that existing screening
13 veg along the Perez's back property; I'm assuming the
14 neighbor here would want some continuity in their
15 landscaping. Do you know what species it is in height?

16 PATRICK MUNNERLYN: I don't know. I think it's
17 Ligustrum, a Glossy Privet.

18 CHAIR TALESFORE: Mr. Munnerlyn, I'm going to take
19 a different tact with this question, and the reason is
20 because it sounds to me like we're are trying to disguise
21 your house with planting, and it seems to be an issue. So my
22 question to you is would you consider lowering your roof?

23 PATRICK MUNNERLYN: I believe I've already done
24 that.

25 CHAIR TALESFORE: No, I mean more than you have?

PATRICK MUNNERLYN: No.

1 CHAIR TALESFORE: At the moment it's at the height
2 which you can go is up to 30' and yours is at 29'3", which
3 is 9" below the maximum height.

4 PATRICK MUNNERLYN: Mmm-hmm.

5 CHAIR TALESFORE: I'm just wondering if that might
6 accommodate some of the hedges you could choose, the shadows
7 that anything gigantic would cause in other peoples' yards,
8 some viewscape that we try to preserve in new buildings. And
9 so I'm just wondering how could you compromise with us?

10 PATRICK MUNNERLYN: I think that by moving the
11 garage, by changing the roof, I've already compromised a
12 lot, and I think that the consulting architect thought the
13 design was fine, and I don't think I'm willing to lower the
14 roof on the house. I believe that I already have.

15 CHAIR TALESFORE: Okay, thank you. That's my
16 answer. Any other commissioners have a question?

17 PATRICK MUNNERLYN: I mean how low are you
18 suggesting? I mean one foot, is that really going to make a
19 difference?

20 CHAIR TALESFORE: I don't know, it could be up to
21 2'-3', I have no idea. I mean we'd have to work that out
22 with everybody. I don't know what that would change; I'm not
23 a designer, I'm not an engineer, but it's what we do.

24 GREG KAWAHARA: It wouldn't change.

1 CHAIR TALESFORE: Excuse me. I don't know what he
2 said. We could call him back up. Can any of the Staff
3 comment on that?

4 SUZANNE DAVIS: I think you may want to ask the
5 project architect. I do think it will compromise the design
6 of the house. You can't just squish the roof down. But the
7 architect may be able to give you a better answer on how he
8 might accomplish a height reduction.

9 CHAIR TALESFORE: Mr. Tsuda.

10 CHAIR TALESFORE: I do think it would be difficult
11 to achieve any substantial reduction in the height,
12 especially in the range of 3' as I heard Commissioner Kane
13 threw out there. It looks like the plate height on the first
14 floor is around 9'6". The upper floor is around 8'6". You
15 can maybe squeeze another foot out of this if the roof is
16 already at 4/12, which is typically the minimum slope that
17 we would approve, so you maybe get another foot out of the
18 structure, but nothing on the order of 3'.

19 CHAIR TALESFORE: Would it be different if he went
20 from a gable to a hip or a hip to a gable, which one?

21 RANDY TSUDA: We already required that.

22 CHAIR TALESFORE: So that lowered it somewhat
23 to...okay.

24 RANDY TSUDA: What that does is it reduces the
25 wall plane, so it puts the highest point of the roof in the

1 middle of the house rather than exposing it at the outer
2 wall.

3 CHAIR TALESFORE: Right. Need to get creative
4 here. I don't have any other questions. Does anyone else?
5 No. Thank you very much.

6 PATRICK MUNNERLYN: As far as landscape-wise I'm
7 willing to follow whatever the recommendations of the
8 Planning Commission are. Thank you.

9 CHAIR TALESFORE: Thank you for being here. Mr.
10 Westerberg.

11 KENT WESTERBERG: Thank you. It's getting late.
12 Well, it is after 10:00 o'clock, so I'll keep my comments
13 brief.

14 One of the things I did not hear from the
15 applicant—we did hear that they've met extensively with my
16 clients and other neighbors, but I didn't hear that a
17 resolution is not possible. I didn't hear that what we're
18 proposing is not possible, and that's really putting in more
19 mature trees than they're proposing, and that's something
20 more along the lines of 10' to 12' to 15' when they're
21 planted. Mrs. Perez does tell me that at no time were the
22 Perezes ever suggesting 48" or 60" box trees.

23 I also have heard that a number of offers have
24 been made, and now at this point I'm almost getting a little
25 confused at where we're at and what the applicant was
proposing, because I've seen emails where some things were

1 proposed and I've seen what's been in other documents, and
2 I'm not clear and I don't think it's unreasonable to sustain
3 the appeal, let the parties get together so that they can
4 work something out.

5 And I think I also did hear confirmation from the
6 architect that the house at the very peak is at 29'. That
7 seems to legitimize my client's concerns for at least 25'
8 high screening.

9 And then finally, the Casaccia's concerns, I
10 really wasn't aware of those. As I think I indicated, I
11 first met with Mr. Perez Sunday night, and after he met with
12 me in my office he literally went to the airport and got on
13 a plane and our conversations have been limited, but I
14 wasn't aware of the concerns that they had.

15 It was my understanding that what was initially
16 proposed in terms of putting screening on the Casaccia's
17 property was that it would go along the boundary line of the
18 applicant's property, not my client's property, and those
19 were just discussed. My client kind of whispered to me that
20 the concept wasn't turned down, but it wasn't something that
21 was really discussed. The focus has been on the applicant's
22 property, because they're the ones building the house,
23 they're the ones that we're looking to to put up the
24 screening. So those are my comments.

25 CHAIR TALESFORE: Okay, thank you. Do we have any
questions? Commissioner Kane.

1 COMMISSIONER KANE: Is that something you will
2 consider? I'm going to take another tact when the public
3 hearing is closed, but specific to bushes, the lady has made
4 an offer that no one has objected to yet, including you.

5 KENT WESTERBERG: You know, part of the problem,
6 one of the reasons I sought a continuance, is Mr. Perez is
7 not here. I don't know his full opinion on this. I don't
8 think that's my client's first option. They're willing, as
9 Mrs. Perez indicated, to sit down and talk with everybody. I
10 mean these people are neighbors; they've got to live
11 together. And everybody's got concerns here, and I think
12 they can be resolved in the right forum. But my clients,
13 their concern has been dealing with the applicant. It's the
14 applicant that's building the house, it's the applicant
15 that's proposed landscaping and screening, and that's what
16 we're objecting to.

17 And just to again reiterate, I wasn't aware of
18 that proposal. My understanding with the proposal that was
19 discussed was that the landscaping would go along the
20 applicant's property line, not my client's property line
21 with the Casaccias.

22 COMMISSIONER KANE: I'm not telling you how to do
23 your job, but when the public hearing is closed and we start
24 conferring, you may want to try to get him on the phone,
25 because you've got to leave with something tonight. I don't
know what you're going to leave with, but if this is

1 acceptable to the parties, get him on the phone. Excuse me.
2 It just seems like a way out, Counselor.

3 CHAIR TALESFORE: Okay, thank you. Do we have any
4 other questions? I don't see any other questions. Thank you
5 very much for being here.

6 KENT WESTERBERG: You're welcome.

7 CHAIR TALESFORE: Do we have something going on
8 that I need to know over here? Excuse me. Ms. Davis, is
9 there a question? Why don't you please come up to the
10 microphone and identify yourself and tell us the question.

11 LISA CASACCIA: Lisa Casaccia. I asked you,
12 because you kind of pointed to her to ask, so I don't know
13 what your protocol is here, but anyway, again I don't...

14 CHAIR TALESFORE: We're looking for information.

15 LISA CASACCIA: Pardon me?

16 CHAIR TALESFORE: For information that you have
17 for us.

18 LISA CASACCIA: I realize that. The point that I
19 want to make is I don't see why this is so difficult. We can
20 put trees, keep the continuity, put them on our yard we're
21 offering. Why should he have to stop the building of his
22 home for landscaping purposes? I don't want trees dividing
23 our two properties and blocking all of our view. I really
24 don't think that's fair. That is any place in our house we
25 look out we're going to be blocked, because of trees to

1 accommodate a neighbor away. We're willing to put them on
2 our yard. So that's all I have to say. Thank you.

3 CHAIR TALESFORE: Thank you. The appellant has the
4 final say, but I would like to hear what you say. All right,
5 fine. I'm closing the public hearing after this. This is
6 quite unusual. Okay.

7 TAMAR BRAND-PEREZ: We do have a problem with
8 putting the screening between us and our next-door neighbor,
9 and the reason is that for us the issue is not between
10 beautiful mountains and trees, but for us the issue is
11 between a huge house and the trees. If we put the trees,
12 it's going to compromise an existing pool that we're using
13 now, not something that we might have in the future, and
14 it's going to make our backyard look smaller, and so we feel
15 that it's too much of a compromise.

16 CHAIR TALESFORE: I think we understood that.
17 Thank you very much. I'm closing the public hearing and
18 turning this over to the Commission for discussion, a
19 motion, or more questions of Staff. Commissioner Kane, I saw
20 your hand up, and Commissioner O'Donnell.

21 COMMISSIONER KANE: Mr. Tsuda, earlier something I
22 said didn't come out right. I meant the process of the
23 Planning Department in reaching whatever decision they did
24 on the other case. I wasn't impugning or accusing or any of
25 that. I think we misunderstood each other. But on this one I
think you will understand me.

1 I drove up and down Shannon and I drove up and
2 down the subject street, and we're changing neighborhoods.
3 We are changing neighborhoods, and I'm not sure we're
4 supposed to be doing that. We have a lot of language in here
5 about preserving, protecting, and enhancing; passionate
6 words in the General Plan. I don't want to make another
7 speech, but this is serious. That whole neighborhood is
8 changing. They have one-story houses; they're going to two.
9 I think this house is huge. I would have loved for this
10 house to come to the Planning Commission as a natural matter
11 of course. We could have given guidance prior to this.

12 "Avoid demolitions. If allowed, the replacement
13 house should be similar in size and scale as the original
14 and maintain the neighbor character." Everything in here
15 says maintain the neighbor character. There's even a
16 provision that says, "Preserve and protect the natural
17 states surrounding hillsides by, among other things,
18 discouraging development that blocks the views of the
19 hillsides."

20 It's in black and white and we're not talking
21 about it. We're talking about bushes. I don't want to talk
22 about the mico-issue; I want to talk about the macro. I'm
23 not happy with what I saw today with respect to my
24 responsibilities as a planning commissioner. We're allowing
25 neighborhoods to change and I don't think we're supposed to
be doing that.

1 The demo says don't demo unless, and then gives
2 conditions. But if you have to, if you really have to, the
3 house should be similar in size and scale. The subject house
4 is twice the size of the existing house; that's not similar.
5 And it's two stories. The one existing is one-story. That's
6 not similar in size and scale. I don't understand what's
7 happening to our neighborhoods on some of the recent
8 projects that seem to be in conflict with this language, and
9 I need some help with that. I'm not going to quote the other
10 chapters and versus, because there's a lot of language in
11 here about preserve, preserve, preserve the neighborhood. We
12 have a lot of new houses in that neighborhood that don't
13 look like anything that was there before.

14 CHAIR TALESFORE: Were you asking a question of
15 Mr. Tsuda?

16 COMMISSIONER KANE: I'm getting to the macro-issue
17 here, not the bushes.

18 CHAIR TALESFORE: Okay, that's fine, and my
19 question to you is were you asking a question?

20 COMMISSIONER KANE: Why is the house blocking the
21 view? Why is the house not conforming with the demo
22 language? Why is the house huge and out of context seeming
23 with neighborhood compatibility?

24 CHAIR TALESFORE: Mr. Tsuda, I believe Mr. Kane
25 was addressing the questions to you, and then we'll get to
the rest of the commission. I'm sorry, Mr. Rice.

1 RANDY TSUDA: When compatibility issues have gone
2 to the Council, the way Staff has explained our process to
3 the Council is we look at compatibility two ways: one is a
4 qualitative analysis and the other is a quantitative
5 analysis.

6 We look at the numbers, we look at the floor area
7 ratios, we look at are there other two-story homes in this
8 neighborhood, and there are.

9 We also looked at this qualitatively. Along with
10 the advice of the Town's consulting architect, who made
11 various suggestions, including moving the garage to the rear
12 and changes in detailing, we rely on input from the public
13 process, through a public hearing process. We heard that
14 input at DRC. We responded to that input and the applicant
15 was willing to make changes in the architecture.

16 It's a balancing act. You have that particular
17 policy that Commissioner Kane was relying on. You also have
18 the numerous policy to respond to the fact that one of the
19 driving goals of the General Plan is to achieve neighborhood
20 compatibility.

21 The Council's direction on this issue is that that
22 goal in the General Plan is not to be held in absolute; it's
23 to be read in context, and that's what we (inaudible) did
24 here.
25

1 CHAIR TALESFORE: Thank you. I'm going to go to
2 Commissioner O'Donnell in line, and then Commissioner Rice,
3 and whatever it is, we want to hear it, every one of those.

4 COMMISSIONER O'DONNELL: I'm not going to speak to
5 demolition; I'm going to speak to the so-called micro-issue.
6 I think we have a solution here. One question was if you
7 have the trees or plants or whatever they are planted on the
8 neighbor's property we have no enforcement tools, because
9 it's not part of a condition, because it's not imposed upon
10 the party over whom we have jurisdiction, and I think that's
11 correct, except that the way around that of course is...

12 When we talk about a privacy right, I'm not aware
13 of the privacy right that we're talking about. I find
14 nothing in our ordinances to give someone this absolute
15 right that is being discussed. All of us who live in this
16 town at one time or another notice a house or another
17 improvement go up and there's always a compromise being
18 made. So there is no absolute privacy right. Second, if
19 there were a privacy right, this house is far enough removed
20 from the other house that it would be hard to find the
21 invasion of that privacy right.

22 But the solution is here. The appellant can plant
23 trees on their own property if they're worried about the
24 enforcement on the neighbor's property, but we have an offer
25 from the neighbor to plant here, and I think the neighbor,
as I understand it, would within reason plant plants that we

1 think are the kind they should have and that are reasonable.
2 So that problem I think would be solved, and I do think it's
3 a bit unfair to ask the neighbor who has gone through the
4 process, who has been cooperative, to allow trees to block
5 her view.

6 What I understand the appellant is interested in
7 is unfortunately perhaps can't protect the view but doesn't
8 want to see the house, and doesn't want the house to see
9 them. I think we have a good solution on the table, which is
10 the screening on the neighbor's property, or if the
11 appellant is concerned about the enforceability of that, all
12 else failing they can put it on their own property and then
13 they have no enforcement problem.

14 I don't think we're at a point now where this
15 appeal ought to be getting into the redesign of the house,
16 and so I personally would not go there. Thank you.

17 CHAIR TALESFORE: Commissioner Rice.

18 COMMISSIONER RICE: First of all I want to go back
19 to Commissioner Kane's macro-issue of the neighborhood,
20 because I share the concern. However I would also note for
21 the public that may not recognize it, but the vast majority
22 of the properties in that particular neighborhood are not in
23 the Town, and that we actually do not have purview over a
24 great percentage of what has happened out there. And we know
25 that, but they may not.

1 The second thing, with regard to this specific
2 appeal, if I have to look at what an immediate neighbor is
3 comfortable with versus what a neighbor a couple of hundred
4 feet away, their concerns, I'm going to be much more
5 sympathetic to the immediate neighbor. I think that what
6 Commissioner O'Donnell just stated is correct, that the
7 neighbor has been incredibly agreeable to planting something
8 on their property, which we don't have enforcement powers
9 over, and I'm ready to make a motion unless somebody else
10 has some comments.

11 CHAIR TALESFORE: Does anyone else have any
12 comments? I have a comment, and I'm just concerned that in a
13 case like this the Planning Commission doesn't have the
14 opportunity to review some of these applications, especially
15 when there is a demolition involved and a proposed
16 replacement, and you're seeing sort of the result of that
17 with privacy and all these other view issues, and also
18 issues that I picked up in the design of the property.
19 Anyway, that being said I will entertain a motion, yes.
20 Commissioner Bourgeois.

21 COMMISSIONER BOURGEOIS: I actually will add my
22 two cents, because I'm really struggling with one. I think
23 we have a solution for the screening, and I think it's a
24 pretty good solution. But I too, neighborhood compatibility
25 is what jumped out at me when I visited the site and I look
at the plans. So yeah, I just don't know where to go with

1 that. It's something that really jumps out at me and it was
2 really a concern, so I just want to echo that concern of
3 Commissioner Kane.

4 CHAIR TALESFORE: Okay, thank you. Commissioner
5 O'Donnell.

6 COMMISSIONER O'DONNELL: Let me say this, because
7 tonight it's been fairly obvious now on two occasions that
8 there seems to be some deep uneasiness in this commission
9 and its relationship with, for example, DRC. Council has set
10 up that procedure, and as far as I know the Staff is simply
11 following what the Council has told them to do. I have heard
12 expressed tonight some real unease with that because this
13 commission, or at least some of the commissioners, and
14 perhaps the whole commission, might disagree with that
15 committee upon occasion. There is some feeling that we don't
16 get that occasion, and I think there's a feeling that is
17 being expressed tonight, and I think that's fine. That's
18 very fair game and perhaps that should be addressed.

19 But what I find somewhat unfair however is to a
20 particular applicant in front of you, whether an appellant
21 or appellee, I don't think that it's fair to them to say we
22 don't like the system and therefore we're going to do
23 something about it to you, and I think that the strongly
24 held and bona fide opinions should produce something, but I
25 for one would feel that we were being very unfair to this
particular builder if we used this unease and

1 dissatisfaction to throw something in that doesn't change
2 the system.

3 The Council has adopted what is being done, and we
4 can do this on a case-by-case basis, in other words throw a
5 monkey wrench in it on a case-by-case basis, but I think
6 that that would not be very fair to the people before us. It
7 isn't a quick question now of the neighbors saying we
8 protest and had you done it the other way this would never
9 have happened. We have most of the neighbors are satisfied,
10 we have a solution now that I think any reasonable person
11 would find satisfactory, and the only objection I've heard
12 that is a serious and perhaps good one is we don't like the
13 process. I guess I'm troubled if we should take that out on
14 the appellee.

15 CHAIR TALESFORE: I don't think any of our
16 comments were to take it out on the appellee, and I believe
17 that my comments mostly were aimed at... Not that I don't
18 agree with having the Development Review Committee in place,
19 I think they serve a very important role, but I'm just
20 thinking that perhaps some of these maybe... I don't know what
21 the criteria is and that's going to be one of our trainings,
22 I think. We can discuss this at another time. But I think I
23 just needed to express that right now as many of you did.
24 And I had Commissioner Kane's hand up and then Commissioner
25 Rice, and I want to hear from both of you, in that order,
that's what I saw.

1 COMMISSIONER KANE: I agree with Commissioner
2 O'Donnell, but I've got a big macro-issue here and I need
3 guidance on it, but not to micro-wise drive the applicant
4 crazy. I don't mean to do that.

5 But Mr. Tsuda, under Commission matters or
6 something we need to chat, or I need to be educated. If
7 that's what Council wants, fine, that's what we're here for.
8 It's not just the process; it's the words, Tom. It's the
9 words. I'm not faulting the process; I'm asking that we deal
10 with our words before we lose them. And if demo says what it
11 says, and if view says what it says, and neighborhood
12 compatibility, and we have new residential guidelines coming
13 out that talk about 2-2-5, very simple. You face the house,
14 the two houses to the left, the two houses to the right, the
15 five houses behind you, and I looked at that today and I
16 went what are we doing? Because we're not complying with our
17 own... Seemingly there may be an issue of compliance with our
18 values on how we read these words.

19 CHAIR TALESFORE: Thank you, Commissioner Kane.
20 Commissioner Rice, and then we need a motion.

21 COMMISSIONER RICE: I'm going to make a motion.

22 CHAIR TALESFORE: Oh, there you go. Okay.

23 COMMISSIONER RICE: With regard to Application S-
24 07-182, 16330 Englewood Avenue, we move to uphold the
25 Development Review Committee's decision and deny the appeal.
I can make the findings that the project is categorically

1 exempt with regard to CEQA; and as required by Section
2 29.10.09030E of the Town Code for the demolition of a
3 single-family residence that the Town's housing stock will
4 be maintained, because the house will be replaced; the
5 existing structure has no architectural or historical
6 significance; the property owner doesn't desire to maintain
7 the structure as it exists; and the economic utility of the
8 structure is such that it is not viable to remodel and
9 expand the existing house. And I would reference the
10 conditions in Exhibit C and Exhibit K.

11 CHAIR TALESFORE: Okay, thank you. Do I have a
12 second on that?

13 COMMISSIONER O'DONNELL: Can I ask the maker of
14 the motion a question?

15 CHAIR TALESFORE: Yes.

16 COMMISSIONER O'DONNELL: We had discussed
17 essentially accepting an offer. Would you consider, perhaps
18 misnamed, but in the conditions that the offer of the
19 neighbor to plant these, what shall I call them, screen, and
20 perhaps John can help us with the description of the
21 planting that it should be, essentially is accepted, and we
22 accept that offer. Would you accept that suggestion?

23 COMMISSIONER RICE: I would, except I heard the
24 appellant say that was not acceptable to her.

25 COMMISSIONER O'DONNELL: I understand that, but
we're trying to accommodate the best we can what her goal

1 is, and I don't want to say well if you can't have
2 everything you don't get anything. It is true that after
3 today if she wants to go to the neighbor say forget it, I
4 wouldn't be surprised if the neighbor might forget it.

5 COMMISSIONER BOURGEOIS: Let me ask this.

6 COMMISSIONER KANE: She also appeal us.

7 CHAIR TALESFORE: Okay, Commissioner Rice has the
8 floor.

9 COMMISSIONER RICE: If I can clarify it maybe, I
10 would be willing to add a condition that subject to the
11 immediate neighbor on the north side's willingness to plant
12 appropriate plant material, that the applicant must pay for
13 that material, is that what you're kind of getting at?

14 COMMISSIONER O'DONNELL: I really wasn't, but I
15 mean that may be a good way to go; I didn't hear that offer.
16 All I was saying was that we have this very strange thing.
17 It is not a condition, because we can't impose that
18 condition.

19 COMMISSIONER RICE: That's what I was getting at.

20 COMMISSIONER O'DONNELL: I would just like to
21 include in those recitations that we have received this
22 offer, insofar as we are able we have accepted that offer.
23 I'm looking for John to perhaps give us some language on the
24 kind of planting it ought to be, because we're not trying to
25 hurt the pool of the neighbor or anything else.

1 COMMISSIONER RICE: I have absolutely no problem
2 with that being out.

3 COMMISSIONER O'DONNELL: And I will grant you that
4 it may be transparent, but I happen to trust the good faith
5 nature of this offer, and I'd just like to make sure the
6 record reflected that we took it very seriously.

7 COMMISSIONER RICE: I have no problem with that
8 whatsoever.

9 COMMISSIONER O'DONNELL: I'll second it on that
10 basis.

11 CHAIR TALESFORE: Okay, and I have a comment from
12 Commissioner Sayoc and then Commissioner Bourgeois has got
13 his hand up.

14 COMMISSIONER BOURGEOIS: I was just going to
15 respond to Commissioner O'Donnell's direct request.

16 CHAIR TALESFORE: Okay, would you like to do that
17 about anything specific?

18 COMMISSIONER BOURGEOIS: I don't think I should
19 make design suggestions. I would just make it to the
20 approval of the director of community development.

21 CHAIR TALESFORE: All right, thank you.
22 Commissioner Sayoc.

23 COMMISSIONER SAYOC: It sounds like we are so
24 close to a possible compromise. It sounds like the neighbor
25 has offered permission usage of their land. It sounds like
maybe with more time the appellant, particularly since one

1 of the appellants is not in town, but there could be further
2 discussion and that some resolution could be reached. And so
3 I'm concerned that if we deny this appeal that we lose the
4 momentum for that negotiation to continue.

5 CHAIR TALESFORE: So do you suggest perhaps that a
6 continuance, Commissioner Sayoc?

7 COMMISSIONER SAYOC: That would be my inclination.
8 I'd be interested to hear how others feel.

9 CHAIR TALESFORE: Commissioner Kane, and then
10 Commissioner O'Donnell.

11 COMMISSIONER KANE: I will not be supporting the
12 motion. I just think we're ignoring our book. I don't know
13 what we're doing. You know, it's right here, black and
14 white. "Residential neighborhoods in Los Gatos are
15 attractive and well maintained." It says they're already
16 fine, and preservation and protection is the most important
17 purpose of the Town's General Plan. It goes on to maintain
18 the character, neighbor compatibility, and I cannot agree
19 with Commissioner Rice that this thing is in compliance with
20 the demolition language. Steve, it just flat out isn't.
21 Don't demolish, but if you do, do this, that, and that, and
22 restore, renovate, repair, we're forgetting all of our
23 historical training. It says if allowed, the house should be
24 similar in size and scale, and it isn't. It's over twice the
25 size. It's two stories. The other was one story. If we had
adhered to that in the first place we wouldn't be here.

1 I was in the appellant's backyard, I sat on the
2 appellant's couch, and the hillside was gone. It's just a
3 giant ol' house in its way. This thing should have had more
4 due process and a different kind of a design. The hillsides
5 were gone, and that violates all kinds of language we have
6 in the book. I like the mico-solution, I do appreciate that,
7 but I cannot support what you said, that this complies with
8 the General Plan.

9 CHAIR TALESFORE: Commissioner Rice.

10 COMMISSIONER RICE: I was just going to comment
11 with regard to continuing this that the Commission made a
12 decision that we wanted to hear this tonight because we felt
13 we had enough information to make a decision. At least for
14 me, and I voted to continue to, I feel like I've got enough
15 to make that decision now. I'm not sure that you're going to
16 come up with anything that's going to satisfy all the
17 parties, and that being said, my primary concern would be to
18 the closer neighbor as opposed to the further neighbor. I
19 think that what Commissioner O'Donnell and what the
20 immediate neighbor have offered is a great compromise and to
21 continue it just to have somebody say no, or yes, if they
22 say no, where are we going to go from there? I don't think
23 you're going to get anywhere else. So I throw that out for
24 thought.

25 CHAIR TALESFORE: Commissioner O'Donnell.

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1 COMMISSIONER O'DONNELL: Obviously your concern is
2 a valid one and one that I have given some thought to and am
3 giving thought to. My problem is however that what we've
4 heard tonight indicates to me that solutions, other than
5 Michael's solution, which is to build a one-story building,
6 are all laid out. I don't think we're going to hear anything
7 new and different. The parties are all here. There have been
8 four or five variations on the table. There is no
9 acceptance. Now yes, a person is in New York, but that
10 person apparently is repeatedly in New York. He has an
11 excellent counsel here. He has his wife here. The neighbor
12 seems quite agreeable to this.

13 So yes, we could continue it, but I think
14 personally that we have no evidence at all to make us
15 believe that the parties will become any closer, having
16 heard everything we've heard, and to simply delay,
17 personally I think would be an unfair situation for the
18 builder. But I'm very respectful of you, and I also think,
19 listening to the conversation around here, your vote is
20 going to be particularly important. And so you may get
21 whatever you want anyway. So anyway, that's what I wanted to
22 plead to you.

23 CHAIR TALESFORE: Before we go on, Ms. Davis has
24 something to add.

25 SUZANNE DAVIS: Condition #13 is very specific
about planting four 24" box trees and planting the hedge

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1 material on the applicant's property, so we may want to
2 modify that condition.

3 CHAIR TALESFORE: Commissioner Rice, did you hear
4 that?

5 COMMISSIONER RICE: Yeah, I'd like to remove that
6 condition. Thank you for pointing that out.

7 CHAIR TALESFORE: And how about the seconder?

8 COMMISSIONER O'DONNELL: I agree.

9 CHAIR TALESFORE: And that's agreed upon. Okay,
10 thank you. So we're going to come to a vote and I'm trying
11 to figure out what I'm going to do. This is a very difficult
12 situation and I certainly don't mean to be punitive with my
13 feeling on this, and I really wish if the only thing I saw
14 was a few plantings here that would really solve the
15 problem, that could be it, but what I'm concerned about is
16 that sometimes through the streamlining process things slip
17 through, and for me the overall design I think could have
18 been refined a bit to somehow accomplish preserving some
19 views and also not having to worry about 48" and 60" kinds
20 of trees to be planted. And so for that I probably will not
21 support the motion, although I certainly hope that they work
22 it out and plant trees wherever they can do the best if this
23 is the design we're going to end up with.

24 COMMISSIONER O'DONNELL: Excuse me. What you just
25 said was it doesn't make any difference in what plants they
put in, because if you don't approve the project as...

1 CHAIR TALESFORE: No, let me clarify.

2 COMMISSIONER O'DONNELL: Commissioner Kane is not
3 objecting about plants. As I understand him, and I think
4 it's a very principled position, he says this isn't done
5 right, this house doesn't belong there. So it's not about a
6 screen. Maybe I've misunderstood you. I thought you just
7 said you hope they work it out. Does that mean build a one-
8 story house?

9 CHAIR TALESFORE: No, I hope that they work out
10 where they're going to plant the plants. I hope they work
11 that out between them. I don't know what's going to happen
12 to this.

13 COMMISSIONER O'DONNELL: So you don't have your
14 fundamental problem you just told us you had.

15 CHAIR TALESFORE: My fundamental problem is that I
16 think that the house needed to be looked at with a different
17 approach. It didn't need to be one story. They have a right
18 to build a two-story home. It's what you can do with
19 massing, I believe, in homes, to somehow reduce the
20 perceived visual that the home is too big and perhaps if it
21 wasn't as tall, if it somehow could have been refined so it
22 was 3' lower, we wouldn't be worried about trying to plant
23 trees that were going to be 30' tall. That's what I'm
24 concerned about. So whatever. That's probably why I will not
25 support the motion.

1 With that, unless I have another comment I'm going
2 to call the question. All those in favor of supporting the
3 appeal, say aye.

4 COMMISSIONER O'DONNELL: I believe it's denying
5 it.

6 CHAIR TALESFORE: Excuse me, denying the appeal.
7 Sorry. Denying the appeal, say aye. Three. And all those
8 opposed? Three. So the motion fails three to three.

9 ORRY KORB: Motion fails.

10 CHAIR TALESFORE: Do we have appeal rights? What
11 do we do? No, that's it.

12 ORRY KORB: You can try an alternative motion if
13 you like.

14 CHAIR TALESFORE: Do we have one? Okay,
15 Commissioner Rice.

16 COMMISSIONER RICE: I think I understand what
17 Commissioner Kane's position is and basically this house
18 doesn't work for you, and I didn't hear that from you and I
19 don't know from Commissioner Sayoc. What gets us someplace
20 for the two of you, if anything?

21 CHAIR TALESFORE: Commissioner Sayoc.

22 COMMISSIONER SAYOC: I supposed I completely agree
23 with Commissioner Kane in terms of the macro-issue. If this
24 were before us I probably would not agree that this is in
25 keeping with the neighborhood. That being said, because it

1 is an appeal I do think that with an appeal I have to look
2 at it in a different light if you're overturning something.

3 I guess there are two primary concerns. One is if
4 the house weren't so large we wouldn't have to deal with
5 what type of screening is necessary to hide the house. So
6 that's the biggest issue. But because the house is large we
7 are dealing with the screening, and although it sounds like
8 many of you disagree with me, I do feel like we could come
9 up with a possible compromise if we gave the applicant and
10 the appellant a little bit more time to reach that
11 compromise. Maybe I'm wrong and maybe I'm just hopeful, and
12 that next month or whenever when this comes back it won't
13 happen, but I, myself, sitting here, cannot see a compromise
14 and I don't want to close the door for that.

15 CHAIR TALESFORE: Okay, I see two hands.
16 Commissioner Bourgeois was first, and then Commissioner
17 O'Donnell.

18 COMMISSIONER BOURGEOIS: I know you didn't ask for
19 my opinion, but I think I should give it, because I am so on
20 the fence on this, because I agree in principle with what
21 Commissioner Kane said. I think the neighborhood
22 compatibility issue is the overriding issue for me. I think
23 this screening thing can be solved pretty easily.

24 I disagree with Commissioner Sayoc. I don't think
25 the parties are going to come to any more agreement and I

1 think we need to make a decision on the screening and move
2 on.

3 The reason I voted the way I did is because of
4 something Commissioner O'Donnell said. We don't like the
5 process and we don't like how this ended up here. If it
6 hadn't been for this screening issue this wouldn't be before
7 us. It was appealed on that issue. It would have been
8 approved at the Staff level. That's the process. We don't
9 like the process, but I don't want to punish this applicant
10 for the process that I don't like. So I'm right on the
11 fence, but that's what tipped me to supporting the motion.

12 CHAIR TALESFORE: And I would be comfortable in
13 supporting this motion if we could find a way that they
14 would work it out, and I don't know how that happens, but
15 anyway. Commissioner O'Donnell.

16 COMMISSIONER O'DONNELL: Now when you tell two
17 people that if you don't work it out you will lose, you have
18 just armed one side. So you're no longer talking about
19 fairness or equity, you're saying how important is the
20 project to you and how much are you prepared to pay, no
21 matter whether the demand is reasonable or unreasonable, and
22 that's exactly what we're saying here. We have three and
23 three and I guess I've heard one very principled
24 commissioner who can't be swayed. And then I have two
25 commissioners who say well we're really talking price, all
we're talking is price. You guys go back. Keep in mind it's

1 not going to get approved unless you work it out. Now tell
2 me, if you were... Let me finish. If you were negotiating this
3 and you were the side that said your project will not go
4 through unless you satisfy the other side, how strong a case
5 did you just put the other side in? And that's fine. I just
6 wanted to tell you I'd like to be in that position were I
7 representing a client. Thank you.

8 CHAIR TALESFORE: I object to you calling it a
9 price; it makes it sound less than, but I think I know. But
10 this is a very difficult situation. It's not ideal. If we're
11 trying to work for a solution here, we're all going to have
12 to compromise something, and I would rather not, but I'm
13 really not sure I guess, Commissioner Rice, what that would
14 be for me. If I could be assured... At this point since I have
15 no vested interest in this, my vested interest is both
16 parties, or all parties, all three neighbors that are now
17 all trying to work something out, and that's what I'm
18 hearing. So where does that leave me? I don't know, except
19 what I just said, so my spirit is in the spirit of somehow
20 reaching a solution, resolution, and compromise in the form
21 of a compromise, obviously. Commissioner Rice.

22 COMMISSIONER RICE: I just want to go back to one
23 of the points that I made, and thus far the only solution
24 that the appellant has indicated is acceptable is not
25 acceptable to the immediate neighbor. And I think what the
immediate neighbor has put forth is an incredibly generous

1 offer that satisfies that immediate neighbor, satisfies the
2 applicant, and I think in my judgment should satisfy the
3 appellant. Now they've indicated that it doesn't, which
4 leads me to question what will? And so I don't know where
5 else I go.

6 CHAIR TALESFORE: I think we're all there.
7 Commissioner Bourgeois.

8 COMMISSIONER BOURGEOIS: Another way to look at
9 this is what is the alternative? The alternative is to grant
10 the appeal, which means what? Which means they go back to
11 the drawing board, and I don't think they're going to come
12 to any greater conclusion after all these meetings. We can
13 deny it and say you've got to redesign the house. They've
14 already indicated that they're not going to do that, so
15 that's going to get appealed and go to Council. You know,
16 when we look realistically at what our options are I think
17 the motion that was made is probably the most realistic
18 solution.

19 CHAIR TALESFORE: Okay, so here we sit.
20 Commissioner Rice, do you have something else?

21 COMMISSIONER BOURGEOIS: Yeah, I'll make one other
22 comment. The other option is you punt it to Council, and I
23 don't think that's the right attitude to take.

24 CHAIR TALESFORE: No.

25 COMMISSIONER KANE: We don't do that.

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1 CHAIR TALESFORE: I agree. I would not support
2 that at all, so we have to work this out.

3 COMMISSIONER BOURGEOIS: Well, if we don't have a
4 decision that's kind of what...

5 CHAIR TALESFORE: (Inaudible) going to happen, I
6 understand that. Commissioner Kane.

7 COMMISSIONER KANE: We don't put things to
8 Council. We make decisions here. And your motion said this
9 thing complied with the Residential Design Guidelines, your
10 motion said it complied with the language on demolition, and
11 I can't do that. And so if the appeal is upheld, and that
12 means DRC is overturned, there may be action beyond that on
13 the part of the applicant, and then we'll learn from Council
14 what we're supposed to be doing, but we're not legislators.
15 We're not here to give our opinion. We're not here to design
16 houses. We are in a quasi-judicial proceeding, and I cannot
17 therefore say this complies with the demo language, I cannot
18 say that this complies with residential standards and 2-2-5
19 neighborhood compatibility. What do I do? What do I do? It
20 doesn't, Tom. What do I do?

21 COMMISSIONER O'DONNELL: Your position is crystal
22 clear. Thank you.

23 CHAIR TALESFORE: Commissioner Rice.

24 COMMISSIONER RICE: If I can do it without going
25 through all the rigmarole, maybe the conversation has swayed
one or both of you for all I know. I'm going to remake the

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1 same motion and see if either one of you changes their mind.
2 Because otherwise I don't know what... Nobody else is coming
3 up with anything.

4 CHAIR TALESFORE: Can I ask the Staff, Mr. Tsuda,
5 can you offer any guidance to this? I mean you've heard us
6 and we're struggling here.

7 RANDY TSUDA: In the Commission's bylaws it does
8 state that in the case of a tie vote the motion fails, and
9 it also states that in the case where a motion fails it's
10 necessary to make a new motion.

11 CHAIR TALESFORE: Right.

12 RANDY TSUDA: You need to take some sort of action
13 tonight.

14 CHAIR TALESFORE: Right. We will be making a new
15 motion, it's just what is it going to say? Commissioner
16 O'Donnell.

17 COMMISSIONER O'DONNELL: Since we have to make a
18 motion, I'm not going to make it, but I guess what I'm
19 saying is, and perhaps I didn't state it correctly, but
20 obviously we're at three-three, which means either one
21 person has got to go one way or the other and we can get
22 something decided.

23 My difficulty is understanding. I mean I really
24 hear five-one is what I really hear, because two of the
25 people that are voting no are saying essentially, if I
understand correctly, we'd go along with this if the parties

1 would simply agree on the screening. So we're not talking
2 about screening versus Michael's reading of the statute, and
3 so if what we're really saying is the only thing that is
4 preventing two of us from joining the other three is you
5 want these other people to reach a settlement out of this,
6 then I suppose you could say tell you what, we'll continue
7 it till the next meeting and give them a fair opportunity to
8 work it out, and if they don't work it out by the next
9 meeting, then we'll bite the bullet.

10 I told you my view. When you hand too much power
11 to one of the sides in an arbitration or a mediation or any
12 other kind of dispute, it doesn't help the settlement, but
13 that's merely my view.

14 And I would just say as a footnote to Commissioner
15 Kane. I have been interpreting statutes for a long time too,
16 and I do not read the statutes the same way you do, and it
17 has been my experience that the Council doesn't either. I'm
18 not saying I'm right. I've had this conversation with the
19 Council, with you present, I mean when we've had meetings,
20 and I said to the Council, "You folks write one thing, we go
21 along with that, and we get reversed, and we listen to the
22 reversals." That's called gloss, and we then decide how to
23 interpret what they said, and as far as I'm concerned life
24 is not as crystal clear as your position. But you have a
25 wonderful position and there are no problems in that armor,
so I don't attack it, I just say I don't agree with it.

1 CHAIR TALESFORE: Okay, Commissioners, we do have
2 to come to some solution tonight, or another motion,
3 resolution, and I'm struggling.
4 COMMISSIONER O'DONNELL: I think I have a
5 resolution. I don't know if this will satisfy.
6 CHAIR TALESFORE: Okay, you might, Commissioner
7 O'Donnell. Well let's roll it out.
8 COMMISSIONER O'DONNELL: As I understand the
9 problem, it's the desire to try to have the parties reach
10 some kind of settlement, so my suggestion is we continue
11 this matter until our next meeting to allow the parties a
12 reasonable time to try to reach some kind of compromise that
13 they can bring back to us. I would hope that they will
14 report to us what they did in trying to reach that so that
15 we can judge the bona fides of it that it was good faith,
16 and if they're unable to reach that decision in whatever the
17 period of time is, we will no longer feel bound not to make
18 a decision. I'm not saying what the decision will be; you'll
19 get to vote whatever it is. So my motion would be that we
20 continue it until the next meeting with that understanding
21 as to what the purpose of the continuance. We can't force
22 people to do this, but that would be the suggestion.
23 CHAIR TALESFORE: I like the direction of that. Is
24 there maybe a second on that? Oh, Mr. Tsuda.
25 RANDY TSUDA: I think that's a good suggestion,
and one other alternative that has crept into my foggy mind

1 at this point is at the risk of upsetting the Commission, an
2 alternative is to approve the project tonight and add a
3 condition that the screening plan come back for your
4 approval prior to issuance of the building permit.
5 CHAIR TALESFORE: Say that one more time.
6 RANDY TSUDA: That you would approve the project
7 tonight with an additional condition that the screening
8 solution or plan be brought back to the Commission for its
9 approval prior to the issuance of the building permit on the
10 project, that is, prior to construction.
11 CHAIR TALESFORE: But we're not approving.
12 RANDY TSUDA: You're approving.
13 CHAIR TALESFORE: Okay, it would be approving. It
14 would be approving the appeal.
15 RANDY TSUDA: I throw that out as an alternative.
16 COMMISSIONER O'DONNELL: I have a question.
17 CHAIR TALESFORE: Commissioner O'Donnell.
18 COMMISSIONER O'DONNELL: I liked that when I first
19 heard it, but when I think about the mechanics of it I'm not
20 sure it works as well as the other one, and that is to say
21 if we say okay the project is approved but you can't get a
22 building permit till you agree, there is no time sequencing.
23 CHAIR TALESFORE: Yeah.
24 COMMISSIONER O'DONNELL: I like the idea of saying
25 okay, you want more time to work it out? Fine, you can have

1 that time. Tell us what you did, come back; hopefully you'll
2 have worked out a settlement. Everybody but Mike, I think.

3 COMMISSIONER KANE: Well no, they could come up
4 with a solution that I like.

5 COMMISSIONER O'DONNELL: Yeah, they could build a
6 one-story house. So I think it's better to have this
7 beginning and end. Your suggestion, although very
8 attractive, I don't think has an end point.

9 CHAIR TALESFORE: I would prefer Commissioner
10 O'Donnell's motion over Mr. Tsuda's suggestion just because
11 it's cleaner and it's simpler. I already asked for a second.
12 I'm going to ask again for a second to the motion.

13 COMMISSIONER SAYOC: I will second the motion.

14 CHAIR TALESFORE: Okay.

15 COMMISSIONER SAYOC: We are putting a date
16 certain, right?

17 CHAIR TALESFORE: Yes, January 9th. I think that
18 agenda could...

19 COMMISSIONER SAYOC: Room on that agenda?

20 ORRY KORB: It would be on the January 9th meeting.

21 CHAIR TALESFORE: Thank you very much. Okay, so we
22 have a motion to continue, and how will we phrase that, that
23 they would work out the...

24 COMMISSIONER O'DONNELL: They would use the month
25 period to attempt to reach a settlement on the screening and
they would report back to us on how they did and what they

1 did, so that if they are unable to reach an agreement we can
2 judge the good faith.

3 CHAIR TALESFORE: Right. Commissioner Rice.

4 COMMISSIONER RICE: I won't be supporting the
5 motion, because I think they've had time, and I just want to
6 put that on the record.

7 CHAIR TALESFORE: Commissioner Bourgeois.

8 COMMISSIONER BOURGEOIS: I'm in the same boat. I
9 don't see any point in sending them back to the drawing
10 board together.

11 CHAIR TALESFORE: Oh, dear.

12 COMMISSIONER BOURGEOIS: I hate to throw a monkey
13 wrench into the thing, but I don't see the point of
14 continuing it.

15 CHAIR TALESFORE: Commissioner Kane.

16 COMMISSIONER KANE: I'm going to support the
17 motion. I'm going to support the motion because maybe
18 they'll try to get in compliance with our language in the
19 next month, or they will realize what this process is, what
20 this commission is like, and maybe that can motivate a
21 little give and take to have to go through this again. I'd
22 give them another shot.

23 CHAIR TALESFORE: And I will be supporting the
24 motion as well.

25 COMMISSIONER O'DONNELL: Call for it.

1 CHAIR TALESFORE: So all those in favor of the
2 motion? All those against? That's two against. Four in favor
3 and two against. Commissioner Rice and Commissioner
4 Bourgeois against the motion. Thank you very much and we'll
5 see you back on January 9th.

6 COMMISSIONER KANE: I have a question for Staff.

7 CHAIR TALESFORE: Question of Staff.

8 COMMISSIONER KANE: Randy, what we just did, can
9 someone appeal that?

10 SUZANNE DAVIS: No.

11 CHAIR TALESFORE: No.

12 COMMISSIONER KANE: Okay.

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