



MEETING DATE: 05-19-08

DESK ITEM: 5

## COUNCIL AGENDA REPORT

DATE: MAY 19, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY *OK*

SUBJECT: KENNEDY ROAD @ FORRESTER ROAD (APNS: 537-29-007 & 008)  
(OWNER: ACORN TRUST. APPLICANT: ROB DESANTIS)

- A. ADOPT RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS MAKING FINDINGS REGARDING APPROVAL OF A REQUEST TO APPROVE A PLANNED DEVELOPMENT TO CONSTRUCT A NEW RESIDENCE, POOL, TENNIS COURT AND ACCESSORY STRUCTURES ON PROPERTY ZONED HR-2 ½
- B. ADOPT PLANNED DEVELOPMENT ORDINANCE TO CONSTRUCT A NEW RESIDENCE, POOL, TENNIS COURT AND ACCESSORY STRUCTURES ON PROPERTY ZONED HR-2 ½

The version of the ordinance attached to the staff report dated May 15, 2008 (Attachment 1) does not reflect Council's prior action to introduce the ordinance with a modification of the first condition of approval making the Planning Commission the deciding body for any subsequent architecture and site application. Attached is a substitute page 2 of the ordinance with the corrected first condition of approval. A motion to adopt the ordinance should incorporate the substitute page 2 attached to this desk item.

Attached is additional correspondence received on this item. Although the correspondence was sent to Town staff on May 14, 2008 via e-mail, Town staff was unable to retrieve it due to the unconventional electronic format of the file. Staff assumed a subsequent e-mail message with another document that was attached to the May 15, 2008 staff report (Attachment 4) was the same as the one attached to the initial e-mail message.

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/vp [N:\ATY\Reports\Desk Item Kennedy @ Forrester (DeSantis).wpd]

Reviewed by: *OK* Town Manager *PSJ* Assistant Town Manager \_\_\_\_\_ Clerk  
\_\_\_\_\_ Finance \_\_\_\_\_ Community Development

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PAGE 2  
MAYOR AND TOWN COUNCIL  
SUBJECT: Kennedy Road @ Forrester Road (DeSantis)  
May 15, 2008

Attachments:

1. Substitute page 2 of Introduced Ordinance
2. Correspondence from Christine Curry and Lee Quintana dated May 14, 2008

### SECTION III

#### COMPLIANCE WITH OTHER DEVELOPMENT STANDARDS

All provisions of the Town Code apply, except when the Official Development Plan specifically shows otherwise.

### SECTION IV

A recorded parcel merger and Architecture and Site Approval are required before construction work for the dwelling units is performed, whether or not a permit is required for the work and before any permit for construction is issued. Construction permits shall only be in a manner complying with Section 29.80.130 of the Town Code.

### SECTION V

The attached Exhibit A (Map), and Exhibit B (Official Development Plans), are part of the Official Development Plan. The following conditions must be complied with before issuance of any grading, or construction permits:

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

#### *Planning Division*

1. ARCHITECTURE AND SITE APPROVAL REQUIRED. A separate Architecture and Site application and approval is required for the new single family home and accessory structures. The Planning Commission shall be the deciding body for the Architecture and Site application provided it is in compliance with the Official Development Plans and the provisions of this Planned Development Ordinance.
2. OFFICIAL DEVELOPMENT PLANS. The Official Development Plans provided are conceptual in nature. Final building footprints and building designs shall be determined during the architecture and site approval process.
3. GREEN BUILDING. The house shall be designed to achieve compliance with GreenPoint Rated Standards for green building certification. The GreenPoint checklist shall be completed by a Certified Green Building Professional.

May 14,2008

Dear Mayor Spector and Town Council,

After careful consideration of the Town of Los Gatos Hillside Development Standards and Guidelines, we submit the following in depth analysis of the Desantis property development for your consideration. Please include this document as part of the public record.

We request a reconsideration of the Desantis decision, in light of new evidence not discussed at the May 5, 2008 Town Council meeting.

Specifically: Changes to the planned use of an Art Studio for potential use as a Stable. No discussion was made to this change nor any staff feedback recorded within the town summary. We request that these proposed changes be adequately discussed, and Presented in a public hearing along with the Google earth video that was prepared by Christine Currie.

Also to be addressed, the following points for Hillside Development Standards and Guidelines.

## **Consistency with HDSG, HSP and GP to visual, rural open space**

### **PLANNED DEVELOPMENT ZONING AND SUBSEQUENT CONSTRUCTION ALLOWED UNDER THE ZONING IS NOT CONSISTENT WITH THE INTENT AND OBJECTIVES OF THE HDSG OR IN CONFORMANCE WITH THE STANDARDS AND APPLICABLE GUIDELINES OF THE HDSG:**

**Over View** of project: The project it is tightly constrained by steep slopes, tree covered areas, visual openness to the surrounding hillsides. Given the location of the building site, the site plan and the scope of the proposed development the project will require extensive grading, (22,000 cy cut, 14,000 cy fill, and 8,000 cy of off-haul) including lowering the ridge in the area of the building site by 26', maximum cuts and fill of approximately 20 feet, disturbing 3.46 acres of land, potentially impacting 73 tree (mostly at the interface between the oak groves and the grasslands), and locating a large portion of the development area slopes greater than

It does not appear that the applicant carefully considered the advice contained in the Forward including the following

“The HDSG establish a framework for appropriate design, standards and minimum and/or maximum requirements. However, stricter standards may be required to avoid potential impacts and to achieve the goals and objectives of the HDSG. “ Footnote 1 adds that designs that are bulky and massive may be difficult to get approved.

“Not every site can be developed at the maximum density or intensity allowed by the Zoning Ordinance.” This statement is also repeated in various forms in numerous other sections of the HDSG.

“It is beneficial to inventory the site’s natural, physical properties (such as slope distribution and geology). A site plan and design program should be developed only after the Least Restrictive Development Area (LRDA) has been identified based on a site-specific constraints analysis. This approach will assist in designing projects that avoid or fit in with the site’s natural constraints.

The following is a discussion, by section, of project consistency with the HDSG.

## **Section I. Introduction**

- A. Vision Statement: The proposed project does not conform to bullets 2,3, and 5 may it only partially complies with bullets 1 and 4.
- B. Goal: The proposed project is not consistent with the goal of the HDSG: While the architectural achieves excellent in design, the resources required to build and operate and maintain, and physical changes to the site necessitated by the size and scope and proposed building locations to not support the conclusions hat the project as proposed is sustainable, preserves the natural environment or achieves excellence in site design.
- E. Objectives of the Hillside Development Standards and Guidelines:

The proposed project is not consistent with Objective 2,4,5,6,7,8,9,10 and 12. It is only partially consistent with Objectives 3,5, and 11.

Section I. E, Makes it clear that for a project to be considered consistent with the General Plan and in compliance with the HDSG it must first meets the goals and objectives of the HDSG.

- F. Standards versus Guidelines:

The first, second and fourth paragraphs of this section state:

“The HDSG contain both standards and guideline. Standards are mandatory nondiscretionary regulations that must be followed. “Guidelines are discretionary. They are statements that present good ideas or recommendations on how to achieve the objectives established by these Hillside Development Standards and Guidelines....

**”Development plans must demonstrate full compliance with**

**All standards, and substantial compliance with applicable guidelines whenever site conditions require and there is not a substantial reason why the guideline should not be followed.** The degree to which a guideline is addressed and the method used to comply is flexible. If the applicant believes a standard or guideline does not apply to their project the burden is on the applicant to demonstrate why and to suggest or provide a creative solution that still meets the intent of the goal or objectives of the HDSG.

“When a conflict arises between the implementation of two standards or two guidelines, a design solution will be sought that balances the objectives of the two standards or guidelines. However, when a conflict arises between a standard and a guideline that standard shall take precedence.”

A design solution to balance two conflicting Standards does not insure there is no environmental impact nor does not absolve the project from meeting the requirements of CEQA. (Guidelines 15021)

## II. CONSTRAINTS ANALYSIS AND SITE SELECTION

Site Constraints Analysis (determination of the Least Restrictive Development Area) (Chapter II.A.1)

Section IIA.1 of HDSG identifies numerous factors to be considered in the determination of LRDA. In addition, since the DeSantis property is located outside sub-area 2 of the Hillside Specific Plan it is also subject to the standards for LRDA listed in VIII.C.1-4.

While some of the above studies required to complete a full constraints analysis have been done a full constraints map has not been completed prior to the determination of the LRDA. The HDSG at the bottom of p. 12 states, “The accurate determination of the LRDA early in the planning process could avoid delays once an application has been submitted.” Rather than taking all factors into consideration the *LRDA, as shown on the site development plan, is based only on the 30% slope break*. This conclusion is supported by the project architect’s statement at the February 5, 2007 Town Council Public Hearing:

“Following site studies with the LRDA and taking into consideration visibility, access, vegetation and other natural constraints we have established that the proposed house location well nestled between the oak trees and below the uppermost pad, would have the least impact.”

It is probable that if all the factors and standards were considered in determining the LRDA the project’s encroachment beyond the “LRDA” would be even greater than is currently calculated or shown Approximately .63 acres of development *will be outside the LRDA*

View Analysis Viewing platforms. (Chapter II.B.2)

I.E.4. Maintain the natural appearance of the hillsides from *all vantage points* including the valley floor

I.E.9 Ensure that development does not dominate, but rather visually blends and achieves harmony between the natural and built environment: The size of the main structure, the long ridgeline, the flat pads created and the large areas of formal landscaping which could also be fences all indicate that the project does not achieve harmony.

II.B.1. Potential to be visible if trees or large shrubs are removed.

II.B.1. Visual aids such as photo simulations or a three dimensional illustrations and/or a scale model may be required when it is deemed necessary to fully understand the impacts of a proposed project.

This is such a large project and “will set a model” for future estate homes. This project needs a video simulation as suggested by staff, but was never supplied.

Selecting a Building Site: (See Chapter II.C.)

Of the eight Standards listed, the proposed project is not in conformance with Standards 1, 2 and 5.

- Standard 1: Development is located within the LRDA – does not conform
- Standard 2: Buildings are not located in the least visible areas of the LRDA.

- Standard 5: Given the proposed building site, in order for the driveway to meet the County of Santa Clara Fire Department requirements requires the ridge to be lowered 26' to enable the main structure to meet the grade of the proposed driveway. This is not consistent with Standard 5.
- Standards 3, 6 and 8.: Insufficient data or analysis to determine conformance
- Standard 7 is not applicable.

Of the 3 applicable guidelines, the project is not consistent with Guideline 2 and 3.

#### **SITE PLANNING** (See Chapter III)

The first sentence of Chapter III states:

The intent of the site planning section is to insure that new development fits into the topography with minimal impact to the site physically and visually.

The proposed project does not meet this intent and is not consistent with Standards and applicable Guidelines for grading (A), Drainage (B), Driveways (C), and Safety (D)

#### **Grading:** (Chapter III.A)

The proposed project is not consistent with Standard 1 and 3, or applicable Guideline 1.

Standard 1. The proposed project is not consistent with Standard 1. Standard 1 states:

“The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours. Cuts and fill in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. It then follows that a project that does not meet this standards is not consistent with the General Plan.

The +1600 linear feet of retaining wall, and the creation of large flat pad proposed by the project also supports the conclusion that the proposed project does not retain the existing landforms or contours of the site.

Standard 3. The project is not consistent with Standard 3. It is not located in a manner that minimizes the need for grading (tennis court, spread over 3.46 acres, reduces ridge up to 21'. In addition there have been no site-specific wildlife surveys done, however, a mountain lion and coyotes and numerous deer have been observed on the site. Also see Selecting a Building Site, Standard 5 above.

Standard 4. And 5 the project is not consistent since grading extends far beyond the areas and the site will not be restored to its original (existing) topography.

Guideline 1. This is an applicable guideline. This guideline, to avoid creation of permanent flat pads, except for the house foot print and area needed or access, parking and turnaround is a suggestion of how to meet the grading standards. While the project is not required to following it, they must still comply with the grading standards.

#### **Drainage** (Chapter III.B)

Standard 1. Not clear if project meets this standard. MND states that run off stays on site (no data to support) but it also indicates that the natural drainage patterns will be changed and will require the construction of both above and below grade drainage facilities.

Standard 4. There is insufficient information to determine how manmade drainage channels will be treated.

Guidelines 1 and 3. These guidelines may be applicable but there is insufficient detail on drainage design to determine if the project is consistent with them.

Driveways and Parking: (Chapter III.C)

Standards 2-5: The proposed project conforms with Standards 3; and Conditions of Approval address Standards 2, 4.

Standard 5 is not currently met. However, Exhibit 6, the revised grading and drainage plan indicate that the driveway slope is 16%.

Guideline 4: This guideline does not apply

Geologic Hazards Standards (Chapter III.D)

**The geotechnical report suggests that the project is only “minimally acceptable”.**

DEVELOPMENT INTENSITY (Chapter IV)

**Maximum Allowable Development** (Chapter IV.A) Maximum allowed gross floor area.

**Footnote 2, page 28: “For lots containing a net lot area of more than 32,000 square feet the maximum gross floor area shall be 6,000 unless an exception is granted by the Planning Commission in compliance with section c. (Exceptions to maximum floor area)”**

Footnote 3, page 28: Accessory structures including garages larger than 400 sq. ft. are included in the maximum floor area. Cellars are also exempt. (Chapter IV.B)

Based on the above the maximum allowed floor area for this site is 6000 sq. ft. excluding the first 400 sq. ft. of the garage and the 6000+ square foot cellar. The proposed PD would allow a floor area of 15,500 sq. ft., which is not consistent with the HDSG. This is two (2) times the allowed maximum.

### ***Exceptions to maximum floor area (Chapter IV.C)***

The Town Council or Planning Commission *may (but it is not guaranteed)* grant an exception to the maximum floor area but **only if all 9 criteria** listed in this section are met. The proposed project meets criteria 1, 5, 6, and 7; does not meet criteria 3, 4 and probably 9; and there is not sufficient information to determine if the project is consistent with criteria 2, and 7. *The proposed project does not meet the criteria for exceptions to maximum floor area.*

ARCHITECTURAL DESIGN (Chapter V.)

C. Design for sustainability



There are no Standards and the applicant states he intends to incorporate green building strategies, including solar panels into his home. However, sustainability encompasses more than using green techniques and green materials. The amount of alteration of the topography, the number of trees removed, the potential impacts to wildlife, the amount of resources, no matter how green, that will be required to build and maintain are not examples of designing for sustainability.

**E. Building height**

Standard 1. The project is not consistent. The main structure exceeds the maximum height of 25'. According to the staff report 8% of the roof exceeds 25', and 92% (or the area) of the roof is at 25'.

**F. Minimize building bulk and mass**

Standard 1: The project is not consistent. The main structure at 15,500 sq ft. is large and despite good architecture will be prominent from surrounding areas and even from a distance. Having a separate pool cabana does nothing to reduce the mass of the main structure, particularly since the main house and the cabana are attached by a wide trellis and may appear as one structure from distance.

Standard 2: The project does not conform. The proposed structures run with the contours of the newly created pad but not with the existing topography,

Guideline 1: The proposed structure is not simple, the architectural style is inherently viewed as bulky, it does not minimize square footage, it is a large building that does not minimize volume, the building does not step with the natural slope, nor does it use below grade rooms to reduce the effective bulk.

## **VI. SITE ELEMENTS:**

**B.. Driveway entries:**

Standard 1. While of natural materials the proposed entry way with two gate houses and what appears to be a solid gate is not more consistent with the Don't do illustration the Do this illustration.

Guidelines: Is not consistent with either guideline.

**C. Retaining Walls:**

Standard 1: The project is not consistent because it does use retaining walls to create large, flat yard areas

Guideline 1. The project is technically consistent with this guideline as no wall exceeds 5'. However, approximately 700 feet of retaining wall are between 4 and 5 feet and there are 11 retaining walls totaling over 1600 linear feet.

**E Accessory buildings, pools, and sports courts.**

Standards 3: The project is not consistent with this standard because a portion of the pool and a large portion of the tennis court are built on slopes over 30%

**F. Impervious surfaces (no standards)**

Guideline 1. The project is not consistent with this guideline. The site has over an acre of hardscape, Even with 25% of it as pervious surface impervious surfaces are non minimal.

## **VII. LANDSCAPING DESIGN**

### **A. *Landscape design concepts:***

Standard 1. Project is not consistent. From plans and partial landscape plans the landscaping design does not maintain the natural appearance of the hillsides.

Standard 3, 4, and 7 The project is not consistent. The project proposes (and a Condition of Approval of the PD Ordinance would allow, large areas of formal landscaping, beyond locations immediately adjacent to the house and a Condition of Approval.

### **B. *Plant Materials:***

Landscaping plans are not detailed enough to determine conformance

## **VIII. SUBDIVISION AND PLANNED DEVELOPMENT PROJECTS.**

### **A. Purpose and Intent**

The purpose of the PD overlay zone, as it relates to hillside areas, is to encourage the appropriate location of residential units in the least restrictive development areas of the site. *The intent is to significantly reduce the amount of grading, roads, and other alterations to the existing environment, to minimize the visual impact of the development, and to retain the maximum amount of continuous open space in its natural state.*

This project fails to achieve any of the intent.

### **C. *Least Restrictive development areas (LRDA:***

Standard 1. C and D The project is not consistent as development extends beyond the 30% slope line and is not located where the impact on the natural environment including vegetation, wildlife corridors, cut and fill slopes and natural watersheds is minimized.

### **E. *Development standards and guidelines.***

#### **1. Site preparation**

Standard A and C. The project is not consistent because it does not minimize grading in a way that respects significant features.

Guideline: A and B. The project is not consistent with an as grading occurs in areas where the slope is greater than 25%, and it is not consistent with C because it has large areas of pad grading.

**Visual analysis:** (See Section II.B.1.) No materials or technical demonstration is provided in the review documents of the project that supports the contention that the project will not be visible

from the viewing platforms. In addition, current **CEQA documentation finds no significant impact on views from neighboring properties, but again there are no visual analyses to support this conclusion.**

Based on our analysis, we believe there will be significant impact on views from at least properties on the hillside to the southwest and, with the fill for development of a part of the house, there may also be impacts on views from hillside properties to the north. The views to the driveway, tennis court, pool and pool house and +1400 linear feet of retaining wall may be very significant, but this can only be properly judged with story poles in place and a clear understanding of impacts on trees and other site vegetation which might be removed.

In addition, the amount and height of fencing and the area of ornamental landscaping allowed may have additional visual impacts from on and off site. **Neither of these conditions was considered in determining consistency with the HDSG or in the CEQA analysis.**

Planning staff has advised that the only view impacts of importance are in terms of the viewing platforms and that due to topography the subject site is not visible from any of these platforms. While this may be the case, the HDSG expressly call for a project to fit the hillside conditions of the property and the illustrations in the HDSG clearly show how this is to be achieved. These also demonstrate that the visual and topographic changes are to be limited.

*Note: Ch.II.E.4. (Objectives of HDSG) states "Maintain the natural appearance of hillsides from all vantage points including the valley floor" ...not only the valley floor.*

Not only does the CEQA analysis downplay the potential for any visual impacts, the peer review architectural analysis completed for the Town in October of 2005 makes no mention of the proposed project's conformity to the HDSG standards and applicable guidelines for choosing the building site, site planning or architectural design.

Neither the Initial Study or architect's review comment on the projects conformity with basic provisions and policies in the Town's General Plan nor does it address the changes to site topography or site character (physical changes), viewed from on site and off-site. While changes in the topography of the site may or may not result in potential impact to Geology and Soils the physical changes proposed by the project are not consistent with several objectives of the HDSG or with several of its Standards and applicable Guidelines. (add references) and must also be considered as part of the CEQA analysis.

**In order to permit a full architectural, visual and CEQA analysis story poles, staking and outlining of proposed development areas at the site are typically standard procedures in many hillside communities like Los Gatos,**

This is essential for a full analysis of visual impacts and is necessary to support findings for the proposed exceptions to the HDSG and to support the findings for a Negative Declaration.

**We hope that Council will reconsider these points and apply a fair argument to the Standards. In good faith, the importance of analysis, point-by-point consideration should not be over looked. As stated above the standards not met should give pause to council, and perhaps re-consider the implications of granting so many exceptions to the applicant.**

**Thank-you for your time and consideration on this important matter,**

**Lee Quintana  
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Los Gatos**

**Christine Currie  
117 Broadway  
Los Gatos**