



MEETING DATE: 09/15/08

ITEM NO.

16

COUNCIL AGENDA REPORT

DATE: September 11, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING THE CONSTRUCTION OF A NEW SINGLE FAMILY RESIDENCE AND ACCESSORY BUILDINGS WITHIN AN APPROVED PLANNED DEVELOPMENT ON PROPERTY ZONED HR-2½:PD. APN 537-29-007 & 008. ARCHITECTURE & SITE APPLICATION S-08-55: **KENNEDY ROAD @ FORRESTER ROAD**. APPLICANT/APPELLANT: ROB DE SANTIS. PROPERTY OWNER: ACORN TRUST.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. The Council may take either of the following actions:
 - a. Deny the appeal and uphold the Planning Commission's decision to deny Architecture & Site application S-08-55 (**motion required**).
 - b. Grant the appeal and approve Architecture & Site application S-08-55 (**motion required**).
4. Refer to the Town Attorney for the preparation of the appropriate resolution if approved or denied (**no motion required**).

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

1. The Council needs to find one or more of the following:

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

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

Revised: 9/11/08 8:41 AM

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

BACKGROUND:

On May 5, 2008 the Town Council approved a Planned Development (PD) application for a new residence, accessory buildings, pool, tennis court and pond on a 13.71 acre property. As part of that action, Council approved the Mitigated Negative Declaration and Mitigation Monitoring Plan and introduced the PD Ordinance. The PD Ordinance was adopted by Council on May 19, 2008 (see Exhibit 2 of Attachment 6). The applicant submitted the PD application in response to Planning Commission concerns voiced at a December 2004 Study Session. The Commission indicated a strong desire to have land use closure to prevent future development and ensure preservation of open space. The PD provides land use closure with respect to numerous issues raised by the Commission.

The PD as approved has extensive design detail. Typically PD's have schematic plans that are approved through the PD process as "Official Development Plans." The plans are then refined and evolved in terms of architecture, grading and site improvements during the Architecture and Site (A&S) process. In this case the applicant provided extensively detailed plans during the PD process with very refined architecture, grading and site improvements with detailed conditions to the extent that even the outdoor lighting is included on the landscape plans. These very detailed plans were approved as the "Official Development Plans." This left very little for subsequent evaluation and refinement during the A&S process.

In approving the PD, the Council approved four exceptions to the Hillside Development Standards & Guidelines (HDS&G), as allowed within the HDS&G themselves, and determined that the project

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was otherwise compliant with the HDS&G as well as with the Hillside Specific Plan. The four exceptions to the HDS&G are as follows:

- Main residence exceeds the allowable floor area
- Main residence and art studio exceed allowable height limits
- Development is allowed outside the LRDA
- Cuts and fills exceed allowable depths

On August 13, 2008, the Planning Commission considered the Architecture & Site (A&S) application for the project. The Commission continued the matter for two weeks and requested that the applicant provide additional fencing, lighting, and landscape details including hydraulic and irrigation calculations.

On August 27, 2008, the Commission considered the revised fencing, lighting and landscape plans and details. The Commission voted 4-3 to deny the A&S application based on its interpretation that elements of the project only addressed in the A&S application did not comply with the HDS&G and the landscape plan is incomplete. The applicant appealed the Commission's decision on August 28, 2008.

The Town Council is considering an appeal by the original project applicant of the Planning Commission's denial of the A&S application. Denying the appeal will leave the Commission's denial standing, requiring the applicant to return to that body for additional A&S review as directed by the Commission in order to continue the project. Granting the appeal will require meeting one or more of the criteria established by past Council policy. If the appeal is granted the A&S application will be before the Council in its entirety for Council action as it chooses. However, the A&S decision is constrained by and must be compliant with the prior Council approval of the PD.

PROJECT SUMMARY:

The applicant (appellant) is requesting approval of an Architecture and Site (A&S) application for an approved Planned Development (PD). The conceptual development plans contain a main residence with attached guest unit and garage, pool and cabana, art studio, gatehouse, pond, and a tennis court and pavilion. The PD allows for an 8,650 square foot primary residence and a total floor area of 14,700 square feet.

DISCUSSION:

Architecture & Site

Staff and the Consulting Architect reviewed the plans for consistency with the PD Ordinance and adopted development plans. The proposed project complies with the approved PD Ordinance and Official Development Plans. The Consulting Architect recommended that the column/jamb elements

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separating the windows in the circular form on the rear elevation be the same as the building wall base material or treated as decorative half-round column elements. The applicant agrees with this change and a condition has been included requiring that design detail to be refined when the construction plans are prepared. General project data is provided in Exhibit 6 of Attachment 6. Exterior materials and colors are presented in Exhibit 7 of Attachment 6.

Story poles were not installed since the size, location and building heights have been established through approval of the PD. In addition, the house is being lowered into the site and story poles would extend only a few feet higher than the existing grade.

Neighborhood Compatibility

The main residence and accessory buildings are set apart from development on surrounding properties. The development will not relate directly to other residences in the area due to large setbacks and topographic barriers. Homes sizes in the immediate area vary from 3,589 to 8,905 square feet and lot sizes from .88 to 10 acres.

Green Building/Sustainability

The applicant has committed to building a green project. Staff used the Build It Green standards (adopted by Town Council on June 2, 2008) to determine that the project can meet certification requirements. Condition #3 of the PD Ordinance requires the project to be certified as green through evaluation using the GreenPoint checklist. The checklist must be completed by a Certified Green Building Professional. The applicant completed a preliminary checklist and far exceeded the minimum number of points (50) needed to achieve certification with a score of 280 points.

Open Space Easement

As offered by the applicant and required by condition #19 of the PD, an open space easement will be granted over approximately 10 acres of the property. The easement grant must be completed before an occupancy permit is issued for the main residence. The open space easement will include the natural hillside areas not being developed and will preserve those areas in a natural state.

Landscape Plan

A landscape plan has been provided (see Attachment 5). Ornamental planting is proposed in the immediate vicinity of the developed areas, with native and low water plantings transitioning to the natural hillside areas. The Planning Commission was concerned that not enough detail was provided on proposed ornamental planting. Landscape plan details are not a required element of an Architecture and Site application for a single family residence and are not typically inclusive of a detailed planting plan at this point in the process. A planting plan will be submitted with the

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construction drawings and will be reviewed by staff and the Consulting Arborist prior to issuance of any building permits for the project.

As recommended in the Mitigated Negative Declaration, condition #9 requires evaluation of the area south of the pool and cabana to determine if additional planting is needed for screening of the rear yard and back of the main residence once these improvements have been constructed. Landscape screening and trees required as mitigation for trees that are removed will be required to be planted, prior to final inspection and issuance of an occupancy permit.

Water Usage

Commissioners expressed concern about water usage on the site. About 15% of the property will be landscaped and more than half of the plantings will be native and low water using species. The approved PD allows a well to be installed subject to issuance of a permit by the Santa Clara Valley Water District. Taking a conservative approach of a well producing at the low end of the range for the area (10-200 gallons/minute), the applicant has indicated that landscape water can be completely provided for by installation of a well. Other than the turf areas, low volume emitters will be used to irrigate landscaped areas. Condition #10 states that landscape water usage shall be minimized to the extent possible through use of low volume emitters.

Fencing

Applicable HDS&G fencing standards are as follows:

1. *Fences and walls shall not exceed a height of six feet measured from the highest side of the fence or wall and should be limited to those areas where fences and walls of this height are necessary for protection of ornamental landscaping, security, or play areas.*
2. *The use of fences and walls shall be minimized and located so that natural landforms appear to flow together and are not disconnected. The primary emphasis shall be on maintaining open views, protecting wildlife corridors, and maintaining the rural, open, and natural character of the hillsides.*
3. *Solid fencing materials shall not be used unless needed for privacy.*
4. *Deer fencing up to a maximum height of eight feet shall be limited to areas around ornamental landscaping. Larger areas shall not be enclosed unless specific reasons for keeping deer out have been demonstrated to the satisfaction of the decision making body.*
5. *Fences shall not be allowed in areas that would impede the movement of wildlife as determined by the decision making body.*

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There is existing fencing along the north, east and west property lines. The perimeter fencing is shown on the approve PD plans. New split rail fencing that allows wildlife movement will be installed along the south property line, following Kennedy Road. The fence will be set back 30 feet from the road and will blend with the existing trees and vegetation. Fencing to be installed in the interior of the property includes a wrought iron fence around the pool and a security fence that will be wrought iron where visible and vinyl coated chain link where it cannot be seen from off the site. The majority of the security fence has been located adjacent to the tree line so it will not be seen. The applicant provided a colored fencing plan that shows the areas where wildlife movement can occur (see Attachment 14). Staff believes that the proposed fencing plan complies with the HDS&G fence standards in that it is open style, is strategically located to minimize visibility and allows for wildlife movement over a large portion of the property.

Lighting

Outdoor lighting locations are shown on the Fencing and Lighting Plan (Attachment 4). All light fixtures will be down directed including the lights to be attached to trees (see Exhibit 13 of Attachment 9). The tree mounted lights are not intended to light up vegetation. These fixtures will provide soft lighting along the driveway and pathways. Lighting has been located to provide adequate pedestrian and vehicular safety and security. An arborist will review and approve the method of attaching the lights to trees.

Copper Roofing

The use of copper roofing on the art studio was also raised as a concern. As discussed recently by Council, the Town does not currently have a policy or prohibition on the use of copper; however, the Draft Residential Design Guidelines discourage the use of copper and permit the Town to require an alternative. The applicant has indicated that alternate materials will be considered or a coating may be used on the copper to seal it.

PLANNING COMMISSION ACTION:

The Planning Commission considered the application on August 13 and 27, 2008. On August 27 the Commission voted 4-3 to deny the application (Vice Chair O'Donnell and Commissioners Micciche and Jensen did not support the motion). The findings for denial were that the planting plan is inadequate and the proposed security fencing is not in compliance with the Hillside Development Standards & Guidelines. The August 13, 2008 minutes are Attachment 8. A verbatim transcript was prepared for the August 27, 2008 meeting (Attachment 12).

APPEAL:

The Planning Commission's decision was appealed by the applicant on August 28, 2008. Attachment 13 is the appeal statement and Attachment 15 is a supplemental letter submitted by the

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applicant. The applicant's letter responds to the Planning Commission concerns including landscaping, water usage, fencing and wildlife movement and use of copper.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (MND) was prepared for the Planned Development and was approved by the Town Council on May 5, 2008. The MND indicates that the following evaluations were to be completed and considered as part of the A&S review:

- **General Plan and HDS&G compliance**
The project is in compliance with applicable General Plan policies and with the HDS&G with the four exceptions made by Council. A General Plan compliance table, HDS&G checklist and GreenPoint Rated Standards checklist are contained in the project file.
- **Visual impact of retaining walls and consistency of retaining wall design**
Retaining walls will be faced with an aged limestone that is also being used on the main residence (see Exhibit 8 of Attachment 6).
- **Visibility of the pool and cabana from residences to the south**
Views from these homes already include views of residential development on nearby ridges and hillsides and addition of the project structures would not substantially degrade the visual character. This impact was determined to be less than significant and although no mitigation measure can be required a design recommendation was included for Town consideration. As discussed earlier in this report, Condition #9 was included to require further evaluation following construction of the pool and cabana. This is a more practical means of adequately assess the need for landscape screening.
- **Change in visual character of the site due to grading**
Visibility of a proposed home is not strictly defined as a significant visual impact and the Town has established a precedent for approving homes that are visible from surrounding areas, but the designs of these homes must be consistent with the HDS&G. Architectural review was completed for the project and an extensive landscape plan will be implemented to re-vegetate the site and replace trees that will be removed.
- **Stormwater runoff (compliance with National Pollution Discharge Elimination System [NPDES] permit program)**
Preparation and implementation of a Storm Water Pollution and Prevention Plan (SWPPP) and compliance with NPDES Permit Provision C.3 is required. The SWPPP is currently being prepared and will be required to be completed prior to start of rough grading. An erosion control plan has been prepared and approved by Engineering. Materials will be stockpiled on the site and perimeter erosion control improvements will be in place prior to commencement of work.

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- **Consider narrowing the driveway**

The applicant is working with staff and the Fire Department to narrow the driveway width in locations that will not compromise sight lines or emergency vehicle access in an effort to reduce grading, the height and length of retaining walls and the amount of impervious coverage on the site. Condition #23 requires the refinement of the driveway width to be completed to the satisfaction of the Town Engineer and Director of Community Development, prior to acceptance of construction plans for building plan check. The driveway will be surfaced with permeable concrete.

CONCLUSION:

This application is unusual given the level of detail regarding the project in the previously approved PD Ordinance. In approving the PD Ordinance along with the Official Development Plans, Council was required to and did make findings of compliance with the General Plan, the Hillside Specific Plan, and the Hillside Development Standards and Guidelines. The approved PD Ordinance constitutes law that Council, staff and all boards and commissions are now obligated to follow. The findings made with regard to the approved PD Ordinance are conclusive as to the matters addressed in the Ordinance.

The Architecture and Site application concerns matters not determined by the PD Ordinance. To approve the Architecture and Site Application, Council must find that the project complies with the General Plan, Hillside Specific Plan and the Hillside Development Standards and Guidelines. Regarding the extensive and detailed architectural and site improvements already approved in the PD Ordinance, a motion to approve the current application may incorporate by reference the findings made in support of the introduction of the PD Ordinance, and then additionally find that the limited items discussed by the Planning Commission and any others identified by Council not addressed in the PD Ordinance also comply as evidenced by the analysis contained in the Staff Report dated September 11, 2008, along with any other evidence in the record Council may find relevant.

If the Council decides that the A&S plans are consistent with the Planned Development and that the A&S application should be approved, the following actions should be taken:

1. Find that the project is consistent with Planned Development Ordinance 2162
2. Find that the project is consistent with the Hillside Specific Plan and the Hillside Development Standards & Guidelines;
3. Find that the project is consistent with the considerations for approval of Architecture and Site applications (Attachment 1); and
4. Approve Architecture and Site application S-08-55 subject the conditions in Exhibit 2 and as shown in the development plans (Attachment 3) and fencing, lighting and landscape plans (Attachments 4 and 5).

FISCAL IMPACT: None

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Attachments:

1. Required Findings & Considerations (four pages)
2. Recommended Conditions of Approval (eight pages)
8. August 13, 2008 Planning Commission Minutes (seven pages)
12. August 27, 2008 Planning Commission Minutes (74 transcribed pages)
15. Applicant's letter (three pages), received September 9, 2008

Previously received under separate cover:

3. Development Plans (22 sheets), received August 7, 2008
4. Fencing and Lighting plan (one sheet), received August 19, 2008
5. Landscape Plan (two sheets), received August 22, 2008
6. August 13, 2008 Planning Commission report with Exhibits 1 through 8
7. August 13, 2008 Planning Commission Desk Item
9. August 27, 2008 Planning Commission report with Exhibits 10 through 14
10. August 27, 2008 Planning Commission Addendum Exhibits 15 & 16
11. August 27, 2008 Planning Commission Desk Item with Exhibits 16 through 19
13. Appeal statement (two pages), received August 28, 2008
14. Fence and Wildlife diagram (one page), received September 4, 2008

Distribution:

Rob & Ranae DeSantis, 200 Forrester Road, Los Gatos, CA 95032

Richard Landry, Landry Design Group, 11333 Iowa Avenue, Los Angeles, CA 90025

Andy Faber, Berliner Cohen, 10 Almaden Blvd., 11th floor, San Jose, CA 95113-2233

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TOWN COUNCIL – SEPTEMBER 15, 2008
REQUIRED FINDINGS & CONSIDERATIONS FOR:

Kennedy Road @ Forrester Road
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

FINDINGS:

Required compliance with Hillside Development Standards & Guidelines:

- That the project is in compliance with the Hillside Development Standards & Guidelines.

Required compliance with Hillside Specific Plan:

- That the project is in compliance with the Hillside Specific Plan.

CONSIDERATIONS:

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

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

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.
 - a. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
 1. The ability of critical roadways and major intersections to accommodate existing traffic;
 2. Increased traffic estimated for approved developments not yet occupied; and
 3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.

b. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

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

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

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

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.

- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

TOWN COUNCIL – SEPTEMBER 15, 2008
CONDITIONS OF APPROVAL

Kennedy Road @ Forrester Road
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

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 August 27, 2008 and noted as received by the Town on August 7 & 19, 2008. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. **EXPIRATION OF APPROVAL:** The Architecture and Site application will expire two years from the date of the approval pursuant to Section 29.20.335 of the Town Code, unless the approval is used prior to expiration.
3. **TOWN INDEMNITY.** Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.
4. **PLANNED DEVELOPMENT.** All conditions included in Planned Development Ordinance 2162 shall be complied with unless modified by the conditions contained herein.
5. **EXTERIOR COLOR.** The exterior color of the house shall not exceed a light reflectivity value of 30 and shall blend with the natural vegetation.
6. **DEED RESTRICTION.** Prior to the issuance of a building permit, a deed restriction shall be recorded by the applicant with the Santa Clara County Recorder's Office that requires all exterior paint colors to be maintained in conformance with the Town's Hillside Development Standards.
7. **ARCHITECTURE.** The final detailing for the windows on the circular element on the rear elevation shall be reviewed and approved by staff with input from the Consulting Architect, prior to issuance of a building permit.
8. **OUTDOOR LIGHTING.** House exterior and landscape lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. 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.

9. LANDSCAPE PLAN. Any non-native species and/or ornamental planting shall be located within 30 feet of the perimeter of the area formed by the main house, pool and cabana, and within 30 feet of other structures on the property. A planting plan shall be included with the construction plans and shall be reviewed for HDS&G compliance during the building plan check process.
10. IRRIGATION. Water usage for landscaping shall be minimized to the extent possible through use of low volume emitters.

Building Division

11. APPLICABLE CODES. The project shall conform to the 2007 California Building, Fire, Mechanical, Electrical, and Plumbing Codes. The CC's are based on model codes; 2006 International Building Code and Fire Code and 2006 Uniform Plumbing and Mechanical Codes and the 2005 National Electrical Code.
12. SIZE OF PLANS: Four sets of construction plans shall be provided with the building permits submittal (maximum size 24" x 36").
13. 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 (inclusive of the PD Ordinance) will be addressed.
14. 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. The report shall be prepared by a licensed civil engineer specializing in soils mechanics (California Building Chapter 18).
15. SHORING. Shoring plans and calculations will be required for all excavations that exceed four (4) feet in depth or that remove lateral support from any existing building, adjacent property or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to Cal/OSHA regulations.
16. 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
 - d. Retaining Walls
17. BACKWATER VALVE. The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12-inches above the elevation of the next upstream manhole.
18. WILDLAND URBAN INTERFACE. This project is in a Wildlife Urban Interface Fire Area and must comply with Chapter 7A of the 2007 California Building Code.

19. DEFENSIBLE SPACE. A Defensible Space/Fire Break Landscape plan prepared by a California licensed architect shall be provided. The plan shall be in conformance with the California Public Resources Code 4291 and California Government Code Section 51182.
20. LANDSCAPE CERTIFICATION. A letter shall be provided from a California licensed architect certifying that landscaping and vegetation clearance requirements have been completed in compliance with California Public Resources Code 4291 and California Government Code Section 51182, prior to final inspection.
21. 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.
22. 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 permit issuance.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS

Engineering Division

23. DRIVEWAY WIDTH. The applicant shall reduce the driveway width to the satisfaction of the Town Engineer and the Director of Community Development prior to submittal of plans for building plan check. Width reductions shall be made strategically to reduce retaining wall height and length, tree impacts, grading volumes and impervious area while still satisfying Engineering and Santa Clara County Fire Department standards.
24. DRIVEWAY APPROACH. The developer shall install a Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
25. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
26. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
27. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.

28. **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.
29. **UTILITY SETBACKS.** House foundations shall be set back a sufficient distance from utility lines to allow excavation without undermining the foundation. The Town Engineer shall determine the appropriate setbacks based on the depth of the utility line, input from the solids engineer and the type of foundation.
30. **COSTRUCTION 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).
31. **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 street will not be allowed unless a special permit is issued by the Engineering Division.
32. **TRAFFIC CONTROL PLAN.** The project sponsor shall work with the Engineering Division of the Parks and Public Works Department and coordinate with the Police Department, Santa Clara County Fire Department, School District(s), and any public transportation agencies that share the same route(s) as construction traffic for the project to develop a Traffic Control Plan. The Plan shall be incorporated into the bid documents (specifications) and shall include, but is not limited to, the following measures:
 - a. Construction activities shall be strategically timed and coordinated to minimize traffic disruption for schools, residents, businesses and special events. The schools located on the haul route shall be contacted to help with coordination of the trucking operation.
 - b. All construction traffic shall not exceed a speed of 15 MPH.
33. **NEW TREES.** All newly planted trees are required to be double staked to Town Standards.
34. **GENERAL.** All existing trees being retained and replacement trees are specific subjects of approval of this plan and must remain on the site.
35. **PERMIT ISSUANCE.** Permits for each phase (reclamation, grading and landscaping) shall be issued simultaneously.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

36. **REQUIRED FIRE FLOW.** Required fire flow is 1,750 GPM at 20 psi. residual pressure.
37. **WILDLAND URBAN INTERFACE.** A State of California licensed (C-16) Fire Protection contractor shall submit plans, calculations, a completed permit application and appropriate fees to the Fire Department for review and approval prior to beginning work.
38. **AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED.** An approved automatic fire sprinkler system is required for the new residence, guest quarters, garage, and all accessory structures 500 square feet or greater. The sprinkler system shall be 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 & Specifications W-1/SP-6.

39. PUBLIC FIRE HYDRANT(S) REQUIRED. Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 600 feet, with a minimum single hydrant flow of 1,500 GPM at 20 psi residual. If area fire hydrants exist, reflect their location on the civil drawings included with the building permit submittal.
40. FIRE HYDRANT LOCATION IDENTIFIER. Prior to final inspection the general contractor shall ensure that an approved "Blue Dot" fire hydrant location identifier has been placed in the roadway as directed by the Fire Department.
41. FIRE APPARATUS (ENGINE) ACCESS DRIVEWAY REQUIRED. An access driveway with a paved all weather surface, minimum unobstructed width of 12 feet, vertical clearance of 13 feet six inches. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
42. FIRE APPARATUS (ENGINE) DRIVEWAY TURNAROUND REQUIRED. Provide an approved Fire Department engine driveway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform to Fire Department Standard Details and Specifications D-1.
43. EMERGENCY GATE/ACCESS REQUIREMENTS. Gate installations shall conform to Fire Department Standard Details and Specification G-1 and shall not obstruct and portion of the required width for emergency access roadways or driveways when open. Locks, if provided, shall be approved by the Fire Department prior to installation.
44. PREMISE IDENTIFICATION. Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Kennedy Road. Numbers shall be a minimum of four inches high and shall contrast with their background.

~~Motion carried 6-1 with Commissioner Marcia Jensen dissenting.~~

Chair D. Michael Kane called for a break at 8:55 p.m. and reconvened the meeting at 9:05 p.m.

3. **Kennedy Road @ Forrester Road.** Architecture & Site Application S-08-55. Requesting Architecture and Site approval for a new residence, pool, tennis court and accessory structures within an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008. PROPERTY OWNER: Acorn Trust. APPLICANT: Rob DeSantis

Associate Planner Suzanne Davis presented the staff report.

Town Attorney Orry Korb commented on the Planning Commission's purview in considering this application, which is limited to the Architecture and Site Application and not the Planned Development that was previously approved by Town Council.

Commissioner Philip Micciche inquired about the desk item which is a letter from an attorney regarding a possible conflict of interest. **Town Attorney Orry Korb** commented that the letter expressed concern that members of the Commission may have pre-decided this issue by attending a meeting and holding discussions. He said in speaking with the Commissioners, there does not appear to be an issue.

Commissioner John Bourgeois inquired about the Commission's purview in finding that the project is compliant with the Hillside Design Standards and Guidelines (HDSG) apart from the four exceptions that Town Council approved.

Town Attorney Orry Korb explained that the Commission must defer to the decision of the Town Council that the project is compliant with the HDSG with exceptions. Was interrupted by a disruption from the audience.

Chair D. Michael Kane asked for the cooperation of the audience in this matter. Commented that the only items before the Commission tonight are Architecture and Site issues and HDSG issues apart from what was already approved by Town Council.

Town Attorney Orry Korb further commented the Town Council directed that this Architecture and Site Application be considered by the Planning Commission rather than Development Review Committee, and that the Commission's purview is limited to the proposed architecture of the structures. The Commission is still required to make general findings on standards and guidelines other than those already approved under the Planned Development.

In answer to a question by **Chair D. Michael Kane**, **Town Attorney Orry Korb** commented the Commissioners are not required to recuse themselves from involvement in an application if they are not biased. The Commission's decision on the Planned Development does not constitute bias.

Chair D. Michael Kane opened the public hearing.

Rob DeSantis, applicant, commented on the history of the project. Commented that the Architecture and Site Application is consistent with the Planned Development and is a national model for green building. Also commented Friends of the Hillside have filed a CEQA lawsuit against him and the Town. Commented that it has come to his attention that some Planning Commissioners may have spoken to members of the public or the opposition, attended Friends of the Hillside meetings, and possibly contributed financially to the CEQA lawsuit. Asked that each Commissioner make a public statement as to who they talked with about his project or the lawsuit, if they had attended any meetings about the project, and/or contributed funds to the Friends of the Hillside or lawsuit. If so, he asked that those Commissioners recuse themselves.

Chair D. Michael Kane asked **Mr. DeSantis** if he was concerned about any of the Commissioners being biased. **Mr. DeSantis** said he was not concerned. **Chair D. Michael Kane** then asked if any of the Planning Commissioners felt they should recuse themselves or if they had contributed funds. The Commissioners indicated there was not a need to recuse themselves and that none had contributed funds.

Commissioner Joanne Talesfore suggested that an alternate material be used in place of the copper roof, gutters, vents and flashings since the Town discourages the use of copper due to environmental consequences.

Dick Konrad commented that a hydrology study and environmental assessment be conducted prior to the installation of a well to determine the potential effects of a well on the area's water table, and that water efficient landscaping and irrigation be incorporated. Also commented this project represents conspicuous consumption rather than sustainability.

David Weissman commented on the need for wildlife permeable fences or to eliminate fences altogether since much of the project is in open space. Suggested that any fences added after construction and not shown on the plans be required to be animal friendly. Suggested that the Town's landscape standards be incorporated into the official conditions of approval and documented as complete before an occupancy permit is issued.

David Greene commented that this is not a green project due to 140 trees being removed.

Youwanda Dreger commented in opposition due to concerns with landslides, drainage and fire when land mass is changed. Showed a picture of 30 acres being subdivided into 12 lots and commented on how it will change the Town.

Bernadette Chadwick commented on the importance of story poles and felt they should have been required for this project. Objected to the amount of grading. Commented this project is getting special permission while other projects have had to downsize.

Steve Imrie commented on concern with the amount of dirt that will be removed and its impact on the whole community.

Richard Whitaker commented on concern with development that has already occurred on the hillside.

Sandy Decker commented in opposition to the project due to 22 of the 29 Hillside Guidelines not being met; the square footage of the house; the amount of cut, fill and off haul of dirt; and that the project is still being changed. Urged the Commission to deny the project.

Rosemary Greene commented on concerns with the trend of the Town granting projects with exceptions to the HDSG. Urged the Commission to adhere to the Town's guidelines to protect the Town and hillsides.

Jack Faraone, neighbor across the street, commented in support of the project in that it is thoughtfully sited, it is not the biggest house in the neighborhood, and it will be a green project.

Peter Donnelly spoke in opposition and asked that the Planning Commission enforce the HDSG. Also commented that past decisions on house sizes should not be a precedent for new decisions.

Anil Singh commented in support of the project in that the house matches the neighborhood, it is being built green, they are setting aside acreage for open space, the hillside has been worked before, and that if this house is not allowed, they may end up with several houses on this parcel instead of only one.

Florence Smith commented on concern with setting a precedent of not following the HDSG.

Leonard Pacheco urged the Commission to condition the application to require a major redesign of the structure to lessen the environmental impact on the hills and the landscape.

Paul Quintana asked the Chair to poll the Commissioners if any of them had positive or negative biases, and if so, that they recuse themselves. **Chair D. Michael Kane** commented he would not poll the Commissioners. **Mr. Quintana** then commented that the applicant indicated he could have complied with the HDSG if he had wanted to, and that the project is not green due to its extreme abuse of the environment. Commented that he has lost faith with the Planning Department and the Department Director in that their interest lies with the applicant and not the Town.

Lee Quintana commented on deficiencies in the Initial Study. Asked that the Commission find that the project is not consistent with the HDSG.

Commissioner Philip Micciche inquired about the statement that the project does not meet 22 out of the 29 HDSG. **Town Attorney Orry Korb** commented Town Council addressed all of the issues concerning parts of the development that may not have been in compliance with the guidelines as written through the exceptions they were allowed to make, and was not aware that any of the guidelines were not complied with.

Chair D. Michael Kane called on **Rick Ardizzone** who was not present.

Ray Davis made a remark to the applicant and was given a warning by **Chair D. Michael Kane**. **Mr. Davis** commented that State land use laws designate that the Planning

Commission is independent from Town Council and that planning is its only charge. Also commented that in reviewing Architecture and Site Applications, the Commission shall consider all relevant matter, such as the development policy for infill projects which was left out of the public discourse. Quoted from the Infill Policy, noting that in-fill development should blend with its surroundings.

Alrie Middlebrook commented that the amount of cubic yards being removed negates this project from being green. Also commented on concerns with displacement of water, drainage issues and watershed protection.

Christine Currie commented on inaccuracies with the Assessor's Parcel Number on several documents. Asked for clarification of where Mr. DeSantis has been living for the last 20 years. Commented that much of the environmental information was incomplete and asked that the Commission wait until the documents are in hand before making a decision.

Associate Planner Suzanne Davis commented the APN was incorrect on the title sheet of the staff report due to a typo and that it is correct on the other documents.

Rob DeSantis rebutted statements that were made and commented that the project is consistent with the approved Planned Development.

Commissioner Marico Sayoc inquired about the landscape plan and fencing, which is not shown on the plan. **Rob DeSantis** commented that he does not plan to change anything on the current landscape plan aside from any unforeseen issues that may arise. Also commented that the fence will be a wildlife permeable fence.

Commissioner Marico Sayoc inquired about the driveway width. **Rob DeSantis** commented he will be working with the Town to minimize the width of the 20 foot driveway where possible.

Commissioner Joanne Talesfore inquired about the gate house, since it was not included in the plans. **Associate Planner Suzanne Davis** commented the gate house structure was shown in the Planned Development plans and has not changed.

Commissioner Joanne Talesfore inquired about the retaining wall and pathway material. **Rob DeSantis** commented they will have no retaining walls in excess of five feet high. The majority of the walls are three feet high or less and the materials will be consistent with the house. The pathway will be a permeable surface.

Commissioner Marico Sayoc inquired about hydrology tests and whether water well and irrigation was part of the review. **Rob DeSantis** commented they should assume they will not use a well for irrigation because they have not done all the studies to make sure it makes financial sense.

In answer to a question by **Commissioner Philip Micciche**, **Mr. DeSantis** described plans to reduce the export to be off hauled. **Associate Civil Engineer Fletcher Parsons** described the truck route for the off haul.

There being no further testimony, **Chair D. Michael Kane** closed the public hearing.

Commissioner Joanne Talesfore commented that the design was not the rural character they were looking for in the hillsides.

Commissioner Philip Micciche commented that there could have been two 6,000 square foot homes on the property rather than one 9,000 square foot home. Inquired how many other 8,000 square foot homes were in the area. **Associate Planner Suzanne Davis** commented the largest is 8,900 square feet and that many are in the 5,000-6,000 square foot range.

Commissioner Marico Sayoc commented one of the principle tenants of sustainability is to lighten the footprint on the environment which needs to be weighed when considering projects. Further commented that she is not in favor of approving plans that are incomplete, noting the landscape plans for the project. Should the project move forward, Commissioner Sayoc suggested the following be added as conditions of approval:

- The standards on page 51 of HDSG regarding water efficiency should be conditions of approval because of the large parcel and the water conditions in the area.
- Ensure that ornamentation and landscaping are not the priority over the best use of the water conditions.
- Alternate material be used instead of copper.
- A fencing plan with illustrations be submitted for approval, using standards listed in the HDSG.
- The amount of trucks off hauling dirt is a significant public health and safety issue and should be enforced.

Commissioner Marcia Jensen inquired about the status of the litigation and if there were a restraining order and how it will affect their action tonight. **Town Attorney Orry Korb** commented there has not been a request for restraining order that he was aware of.

Vice Chair Thomas O'Donnell commented on the limited scope of the Planning Commission's purview on this item. Commented that within the parameters of the Town Council approval he was prepared to approve the application with conditions mentioned tonight.

Commissioner John Bourgeois commented he could not make the finding that the project is compliant with the HDSG, regardless of Town Council action. Commented that an example is on page 48, Standards for Accessory Buildings, swimming pools and sport courts are prohibited on slopes greater than 30 percent.

Town Attorney Orry Korb commented Town Council made the determination that subject to four exceptions, the project is in compliance with the HDSG.

Commissioner Joanne Talesfore commented there was no lighting plan for them to evaluate. Also commented that it is a grand house, but is not rural and could not picture it in the hillside. The argument is not with the Planned Development, but with the architecture.

Chair D. Michael Kane commented there are missing pieces and suggested that the item be continued for 2-4 weeks for further study.

Motion by Vice Chair Thomas O'Donnell and seconded by **Commissioner Philip Micciche** to approve Architecture and Site Application S-08-55. The required findings were made as noted in Exhibit 4 of staff report dated August 13, 2008, and the application incorporated conditions as noted in Exhibit 5 of staff report dated August 13, 2008, including conditions added by **Commissioner Marico Sayoc**.

Chair D. Michael Kane inquired about continuing the application for two weeks to include the missing items. **Associate Planner Suzanne Davis** said that fencing and lighting details could be provided by then. **Chair D. Michael Kane** commented he would not support the motion in order to have time to consider the missing items.

Motion failed 2-5 with **Chair D. Michael Kane, Commissioner John Bourgeois, Commissioner Marcia Jensen, Commissioner Marico Sayoc and Commissioner Joanne Talesfore** dissenting.

Motion by Chair D. Michael Kane to continue Architecture and Site Application S-08-55 for two weeks for further consideration and to have all the facts.

Commissioner Marcia Jensen seconded the motion if the discussion were limited to fencing, landscape plan, and lighting plan so there is not a second generalized discussion. Maker of the motion commented it should be limited to the Architecture and Site Application, of which those were components, otherwise they would be deciding the rest of the Architecture and Site Application tonight. **Commissioner Marcia Jensen** withdrew her second.

Motion died for lack of second.

Motion by Commissioner John Bourgeois and seconded by **Commissioner Joanne Talesfore** to deny Architecture and Site Application S-08-55 based on not being able to make the finding that the project is consistent with the HDSG, evidenced by: Page 9, Objectives #7 and #9; page 18, Site Planning Standards #3; page 36, Bulk and Mass Standards #2; page 48, Accessory Building Standards #3; page 51, Landscape Design Standards #3, #4, #5 and #7; page 53, Plant Material Standards #4.

Commissioner Marcia Jensen commented she could not support the motion because the Commission is bound by Town Council Resolution 2008-056 which makes findings regarding approval of the Planned Development for the project.

Motion failed 3-4 with **Chair D. Michael Kane, Vice Chair Thomas O'Donnell, Commissioner Marcia Jensen and Commissioner Philip Micciche** dissenting.

Motion by Vice Chair Thomas O'Donnell and seconded by **Commissioner Philip Micciche** to approve Architecture and Site Application S-08-55 except to grant a two week continuance to

consider landscaping, lighting, and fencing design plans so that final approval of the whole Architecture and Site Application will be dependent upon approval of those plans.

Town Attorney Orry Korb suggested that the motion would be as worded but also to continue the public hearing for the limited purpose of receiving evidence concerning landscaping, fencing and lighting plan and receiving testimony from staff, the applicant and the public regarding those three plans only.

Commissioner Marico Sayoc commented she would not support a bifurcated motion and would prefer to see one package.

Town Attorney Orry Korb clarified the motion is to continue the public hearing for the limited purpose to receive final landscaping, fencing and lighting plans and receive testimony from staff, applicant and public solely with regard to those plans. No other action will be taken on the application.

Vice Chair Thomas O'Donnell commented this does not mean that anyone is committed to voting in favor of the project notwithstanding what those submittals are. So the rest of the Architecture and Site Application is not approved.

Commissioner John Bourgeois asked if irrigation calculations could be added to the landscape plans. Maker and seconder of the motion agreed.

Commissioner Marico Sayoc requested more hydrology numbers. Maker and seconder of the motion agreed.

Motion carried 5-2 with **Commissioner John Bourgeois** and **Commissioner Joanne Talesfore** dissenting.

Town Attorney Orry Korb commented the application is continued to August 27, 2008, and there will be no further notice of the public hearing.

Chair D. Michael Kane excused **Commissioner Philip Micciche** who had to leave the meeting.

~~4. **15344 National Avenue (Lots 1, 2 & 3):** Architecture & Site Applications S-07-165 through S-07-167. Requesting approval to construct three new single family residences within an approved subdivision on property zoned R-1:8. APN 421-13-032. PROPERTY OWNER: Norcal District Church of the Nazarene. APPLICANT: Citypoint Group LLC/Joe Colonna~~

Chair D. Michael Kane suggested that this item be continued for two weeks due to the lateness of the hour. The applicant indicated August 27 would be acceptable.

Motion by Vice Chair Thomas O'Donnell and seconded by **Commissioner Joanne Talesfore** to continue Architecture and Site Applications S-07-165 through S-07-167 to the meeting of August 27, 2008, due to the lateness of the hour.

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

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

Director of Community
Development: Bud Lortz

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

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

LOS GATOS PLANNING COMMISSION 8/27/2008
Item #2, Kennedy Road at Forrester Road

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

CHAIR KANE: Our second public hearing tonight is
Item #2 on the agenda, Kennedy Road at Forrester Road,
Architecture and Site Application S-08-55, requesting
Architecture and Site approval for a new residence, pool,
tennis court and accessory structures within an approved PD
on property zoned HR-2½ PD. These are APNs 537-29-007 &
008. The property owner is Acorn Trust. The Applicant is
Rob DeSantis. This item was continued from August 13, and
Mr. Lortz, do we have a Staff Report?

DIRECTOR LORTZ: Thank you, Chair and ladies and
gentlemen. This application was considered at the prior
meeting and was continued to tonight's meeting. The Planning
Commission limited its discussion for this meeting in terms
of testimony and focus of the discussion on three areas: One
was the landscape plan, the other was the fencing, and the
third was the lighting. There was discussion at the last
meeting about the well.

I'd like to point out that this particular
application as it evolved its way through the process has
been highly evolved, which is unusual for a PD. PDs are
typically schematic and conceptual. The Planning Commission
wanted a lot more detail than is typical of a PD, and in
terms of the PD section of the Code, typically schematic
architectural elevations are provided. In this particular

LOS GATOS PLANNING COMMISSION 8/27/2008
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1 case the Planning Commission wanted much more detail, and so
2 consequently more detail on the front end of a PD leaves
3 less flexibility through the Architecture and Site approval,
4 so the architectural style was set through the PD, the size
5 of the home was set through the PD, the height of the home
6 was set through the PD, landscaping was set through the PD,
7 fencing locations was set through the PD, and in fact
8 uplighting was shown in the PD, so there was a lot more
9 detail than is typical of a Planned Development and that's
10 why the discussion of the Planning Commission has been so
11 focused.

12 The Planning Commission appropriately asked for
13 details on the fencing, and those are provided in the Staff
14 Report, not only reiteration of the fencing location, which
15 is shown on the PD, but also the style of fencing, and then
16 also the lighting, the detail of the types of light
17 fixtures, and then the landscape plan has been reviewed for
18 compliance with the PD document.

19 So essentially in the PD process the Council
20 adopted law. It is what we followed, just like we followed
21 the Zoning Ordinance, and so with that comes less
22 flexibility on the Architecture and Site approval process.
23 So with that, we conclude our Staff Report, but are here to
24 answer any questions you may have.

25 CHAIR KANE: Thank you. Questions for Staff?
Commissioner O'Donnell.

1 COMMISSIONER O'DONNELL: What you said this
2 evening is I think a refinement of what we heard last time.
3 I still find myself somewhat confused however. You've told
4 us what we apparently cannot consider. It is not clear to me
5 what is left. So does Staff or our Attorney have any
6 opinions on what's left?

7 DIRECTOR LORTZ: Well, because like I said, the
8 uplighting is actually shown in the PD, what is available to
9 you is the lighting types, and those are in the plans that
10 are in front of you; the style of lighting; those types of
11 things. The type of fencing is certainly at the Commission's
12 discretion, as is the landscape species, but the landscape
13 plans that were provided in the PD actually showed where
14 lawn was going to be, actually showed where ornamental
15 landscaping was located, so it got very, very specific,
16 which is highly unusual.

17 CHAIR KANE: Commissioner O'Donnell.

18 COMMISSIONER O'DONNELL: Thank you, I appreciate
19 that. What I'm concerned about is that at our last meeting
20 one of the questions was we are required to make certain
21 findings, and if I understand the answer, we're required to
22 make findings but we really can't take evidence on what it
23 is which would support findings. So it is one thing to say
24 this has already been decided and you have no jurisdiction;
25 it is another thing to say and oh, by the way, we make the
findings necessary to support that. So I'd like some

1 clarification on how we make findings on what we can't
2 consider.

3 RAY DAVIS: Here.

4 CHAIR KANE: Citizen Ray, don't call out from the
5 audience, please. It's going to be a long hearing and I
6 won't to keep it copasetic.

7 RAY DAVIS: (Inaudible).

8 COMMISSIONER O'DONNELL: Did you hear the
9 question?

10 ORRY KORB: Yeah, I assume that's a question to
11 me?

12 COMMISSIONER O'DONNELL: Yes, please.

13 ORRY KORB: Well first, you had testimony
14 previously concerning issues related to the landscaping and
15 fencing and other related issues in the A&S. You had
16 questions related to that and you continued the public
17 hearing, and when I say you I mean the entire Commission,
18 continued the public hearing for very specific purposes. I'm
19 not saying that you can't consider any other testimony that
20 has been given to date, or I should say in this hearing
21 regard this A&S application, in making your determination,
22 but I am saying that the issues that went to the Council in
23 the PD and that are laid out in whatever detail they were
24 laid out in in the PD ordinance, in the maps, other official
25 plans that were incorporated very specifically in that

1 ordinance, are covered by the findings that Council made
2 with regard to all of those.

3 If there are, and I'm not saying that there are,
4 I'm just saying if there are any related landscaping, fence
5 design or other Architecture and Site issues that were not
6 covered by the PD, either specifically or not, but not
7 covered by the PD, then you have to decide those issues and
8 you have make the findings required by the Hillside
9 Standards and Guidelines related to those issues.

10 But if there are no other issues, then you're
11 simply incorporating by reference the findings that have
12 already been made by Council, and just again to reiterate a
13 point that I made previously, you're required by law to make
14 findings with regard to all of the land use applications
15 that you review, and those findings are related to the
16 governing documents that effectively guide every decision
17 that you're required to make. However, if this is an unusual
18 situation where Council's prior decision effectively covered
19 most, perhaps all, but most of the issues that relate to
20 this project, and they made the findings already, so at this
21 point in time you're obligated to follow those findings to
22 the extent that those decisions have already been made, and
23 unless there is any, again, other detailed issue that has
24 not been covered by the PD and the decision made previously
25 by Council, then your findings are essentially to
incorporate the findings previously made, like them or not.

1 COMMISSIONER O'DONNELL: Thank you.

2 CHAIR KANE: Commissioner Micciche, welcome. You
3 missed Mr. Lortz' opening remarks, so Mr. Lortz, I'm going
4 to ask you to summarize how you framed the issue for
5 Commissioner Micciche so that I don't have to excuse him.
6 Bring him up to date with the rest of us.

7 DIRECTOR LORTZ: What I was mentioning in my
8 opening remarks was that the Planning Commission continued
9 this from the last meeting at which you were in attendance.
10 The Planning Commission focused its discussion for tonight's
11 meeting on three areas: landscape plan, the fencing and the
12 lighting. The wall, which is included in a discussion item
13 in the packet, was approved by the Council, so it's an
14 approved item, which actually is now beyond this
15 jurisdiction and is subject to approval by the Santa Clara
16 Valley Water District. And then finally I was just
17 reiterating as was the Town Attorney the specificity of the
18 PD was unusual in this case in that it was very, very
19 specific. Landscape plans were provided, architectural
20 drawings were provided; very, very detailed plans, which is
21 unusual of a PD.

22 CHAIR KANE: Thank you. Commissioner Bourgeois.

23 COMMISSIONER BOURGEOIS: I have two questions of
24 Staff if I may. Mr. Lortz, you said one thing we do have
25 some jurisdiction over is the plant species pallet. Did we
receive a plant species list, because I could not find one?

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1 DIRECTOR LORTZ: The detail of this level of
2 planting is a pallet of species and either within the packet
3 or whatever the Applicant is going to provide tonight in
4 terms of discussion items, but ornamental landscaping in
5 terms of whether it's a petunia or a geranium has not been
6 something that the Planning Commission has gotten into
7 before. Perhaps you want to get into that level of detail in
8 the future, but what the Applicant has provided is that same
9 kind of level of detail as was provided in other
10 applications where ornamental landscaping is identified and
11 then more native species are identified, and that has been
12 the areas where the Planning Commission has wanted to get
13 into detail. Now the interesting thing about this PD is
14 ornamental landscaping was actually shown on the PD and
15 we've made sure that the landscape plan that's provided this
evening matches the PD drawings.

16 CHAIR KANE: Other questions for Staff?
17 Commissioner Bourgeois.

18 COMMISSIONER BOURGEOIS: If I could have my second
19 question. Another thing we have limited jurisdiction over
20 tonight is if there were changes from the PD, is that
21 correct? Because my recollection is that when we asked about
22 the fencing plan he said the wildlife-friendly fence that
23 parallels Kennedy and a fence around the pool, and that's
24 it, and now we have a much bigger security fence on the
25 fencing plan.

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1 DIRECTOR LORTZ: The ornamental landscaping is
2 typical a location of the more security type of fence,
3 because they're trying to keep wildlife out, because of the
4 ornamental nature of the landscaping. So what we did was
5 match the ornamental landscaping with the plan that has been
6 shown for the security fencing. Now the wildlife corridor
7 fencing is a split-rail fence, allows for wildlife to
8 migrate through. If the Planning Commission has a concern
9 about the design split-rail fence with some other type of
10 design fence, that's certainly within your prerogative. If
11 you want to do something else in terms of the location of
12 the security fence, you can do that, but the only thing is
13 is our concern was that it divides up into specific areas
14 and creates some problems in terms of the security that he's
15 trying to provide for his children, something you might want
16 to discuss with the Applicant.

17 CHAIR KANE: Other questions for Staff?
18 Commissioner Sayoc.

19 COMMISSIONER SAYOC: Mr. Lortz, if you could just
20 clarify a few things for me. I understood what you said. The
21 first clarification is if you could explain how this PD
22 differs from the other PDs that we've seen, because we have
23 had PDs come before us, at least in my one-and-a-half years,
24 that provided detailed information, and we have been told
25 consistently throughout that PD that if there was public
comments those public comments could be addressed through

1 Architecture and Site. So if you can clarify that, and then
2 I have other questions.

3 DIRECTOR LORTZ: This PD is more evolved than the
4 ones that you've probably seen previously. We've been trying
5 to allow for flexibility of the footprint so the footprint
6 can slide slightly during Architecture and Site approval, so
7 if you wanted to shift it 3' back or forth. I know the
8 Planning Commission has been frustrated in the past about
9 making some minor adjustments in the footprint of the home
10 or the commercial building through the Architecture and Site
11 approval process, so that flexibility is available to you,
12 but the design of the home was very specific on PD drawings,
13 and what we did through this latest iteration as the Council
14 reduced the size of the home is tried to make sure that we
15 tested the proportions to make sure that the proportions of
16 the architectural elements are appropriate as the home was
17 reduced in size. We ran that back through the consulting
18 architect and confirmed that the proportions are
19 appropriate. So this is a bit different than probably what
20 you've seen before in terms of specificity, not only in the
21 plans but also in the language of the text.

22 COMMISSIONER SAYOC: I still don't quite
23 understand it, but I think perhaps we should as a follow-up
24 ask that the Council explain how one project is more evolved
25 than the other so that future direction could be further
explained.

1 But I do have in front of me Ordinance 2162, very
2 specific to this, and I studied this very carefully, and
3 under pages two and three, #2 and #6, it says "The official
4 development plans provided are conceptual in nature. Final
5 building footprints and building design shall be determined
6 during Architecture and Site approval process." And then #6,
7 "A landscape plan shall be reviewed and approved with the
8 Architecture and Site application." So isn't that telling us
9 that we still need to review this?

10 DIRECTOR LORTZ: The specificity of that language
11 is exactly as I mentioned earlier. The language says they're
12 conceptual in nature. The footprint locations can be
13 adjusted during Architecture and Site approval.

14 COMMISSIONER SAYOC: But it also includes building
15 design.

16 DIRECTOR LORTZ: There are two sentences there.
17 They evolve in specificity, and what we're saying is the
18 footprint can be shifted but the architecture is very set.

19 COMMISSIONER SAYOC: Okay, then I'd like to hear
20 about the landscape plan.

21 DIRECTOR LORTZ: Like I say, even uplighting was
22 shown on the landscape plan. Now if you want to take an
23 ornamental landscape area and evolve it slightly just like
24 the footprint of the home and slide it just like you would
25 do on a footprint of the home, you can do that.

1 I think you've hit on a really important issue
2 though, and this is an offline police question. The more
3 specificity the Planning Commission and Council gets into on
4 a PD, the more you're bound by it through the Architecture
5 and Site approval process. When you look at the code about
6 PDs, the code says that basically under a PD the basic plans
7 that are supposed to be provided are tentative site plans
8 illustrating natural design features, sidewalks, parking
9 areas and schematic architectural drawings, and we have
10 evolved that considerably through the process, and the more
11 specificity you ask for on the front end the less
12 flexibility you have on the Architecture and Site approval.

13 CHAIR KANE: Mr. Korb.

14 ORRY KORB: I want to go a little further into
15 depth regard something that Mr. Lortz said earlier and
16 language that Commission Sayoc was referring to. The
17 language concerning the conceptual nature of footprints in
18 the PD was placed there very specifically, as Mr. Lortz was
19 saying previously, to deal with an issue that we had run
20 into with PDs where once the detailed Architecture and Site
21 work came after the PD, which was normally the process, it
22 turned out that the very specific footprints in a PD were
23 not necessarily practical, that sometimes they had to move a
24 few feet in one direction or the other to accommodate the
25 architecture that was being proposed or that was appropriate
for the site, and the question then arose how do you deal

1 with a PD ordinance—it's an ordinance, it's law—that has
2 very specific lines? Can you move those lines? And the
3 question generally is how do you move those lines without
4 amending the ordinance? So the language was inserted to
5 create some flexibility for the Commission and for Staff in
6 making those final adjustments necessary in order to
7 incorporate architecture into what has previously been
8 approved as a PD. It is not intended to allow for wholesale
9 adjustments to the footprints that are already approved for
10 the site, so if that's where your question is going, I just
11 wanted to make it clear that that's not the intent of that
12 language; it was to provide some flexibility for reasonable
13 adjustments, but not for wholesale changes. I'll leave it at
14 that.

15 CHAIR KANE: Well Commission Sayoc, I read the
16 language the same way you did. Is that helpful to you?

17 COMMISSIONER SAYOC: To be quite honest, no. But
18 there's a lot of information here. There's still information
19 that I had requested, specifically the hydrology. I'm hoping
20 that as the course of the hearing progresses, maybe
21 something will be clearer.

22 CHAIR KANE: I'm thinking the Applicant is going
23 to address your hydrology request. Other questions for
24 Staff? Commission Talesfore.

25 COMMISSIONER TALESFORE: This is for Mr. Korb.
Getting back to the architecture discussion that we can have

1 after the public hearing is closed, because we're not going
2 to hear from the public regarding architecture, but the
3 Commission still has the ability to discuss the
4 architecture, and those are architectural elements?

5 ORRY KORB: Well first, the Commission's decision
6 to continue the hearing—this is a public hearing, so this is
7 just the additional evidence that can be brought into the
8 record at this continued proceeding—concerned issues about
9 landscaping, hydrology and fencing if I remember correctly;
10 I may have missed something. But those are Architecture and
11 Site issues and they can be addressed by anybody in
12 testimony, but once the public hearing is closed, the
13 Commission is free to discuss all of the Architecture and
14 Site issues, not just hydrology, landscaping, et cetera.

15 COMMISSIONER TALESFORE: So architectural
16 elements?

17 ORRY KORB: Correct.

18 COMMISSIONER TALESFORE: Thank you.

19 CHAIR KANE: Other questions for Staff? Seeing
20 none, I'm going to open the public hearing, and we'll
21 shortly call the Applicant who will have up to five minutes
22 to speak. After any other public members speak the Applicant
23 will then have three minutes for rebuttal. If there are
24 members of the public who wish to speak on this matter after
25 the Applicant, please turn in a speaker card. May I have a
show of hands as to potential speakers on this matter? I

1 have 15 cards; I just wondered if any additional were coming
2 in. I think we're going to do two minutes for the public
3 speaking portion. I now call the Applicant, Mr. DeSantis.

4 ROB DeSANTIS: Good evening Chair and Commission
5 Members. I would like to start by thanking you for all of
6 your input and comments you made at our last meeting. Your
7 comments and questions were thoughtful and I was happy to
8 provide the information requested and appropriate for this
9 stage of the project. The continuance you requested was for
10 further review of three items: landscape, landscape lighting
11 and fencing. All three items were submitted and I can
12 address any questions you may have when appropriate.

13 There was also some discussion regarding the use
14 of copper; I very much appreciated the comments about the
15 materials. At this point however it is premature for us to
16 eliminate copper, but there may be opportunities to seal it.
17 We are looking at the overall crew point rated system that
18 the Town and the County adopted and I believe that
19 maximizing the rating while balancing the architecture is
20 the best way to go. I'm confident that we will substantially
21 meet the requirements considered to be green.

22 I was also asked about water usage, so we studied
23 and considered ways in which to do that. Two things quickly
24 became obvious. There was no way at this stage to do a
25 precise hydrological water balance calculation, but there is
a good way to share our plan, and that is what I'll do now.

1 The first thing is to understand the water sources
2 available for consideration, and there are three: rainwater
3 collection; an onsite well, which was approved in the PD and
4 will be permitted through the Water District; and municipal
5 water. In looking at the annual rainfall, collection
6 potential and local well flow rates we were able to
7 understand approximate water resources.

8 The second item was then to break the site up into
9 different areas of landscape, non-landscape and structure.
10 Then, based on irrigation needs we could estimate water
11 requirements. So we did that, and here are the findings.
12 First, of the 13.7 acres only 10-15% will be landscaped. Of
13 that, over half will be native and low water transitional
14 plants. With that above data we then looked at the water
15 requirements and this is what we found. Rain collection
16 potential could handle 150% with annual irrigation needs
17 alone. Well water, at the minimum flow rate of the different
18 flow rates in the area, which are ten to 200 gallons per
19 minute, would produce 120-180 times the annual irrigation
20 needs. San Jose water could be used if it's ever needed, but
21 as it stands we would consume much less municipal water than
22 most landscapes in town. With this water strategy we feel
23 that we have the ability to achieve a balanced watering
24 design based on the variables we uncovered during the
25 project, such as flow rates, storage costs and the like.

1 All of the submittals that have been done have
2 been consistent with the PD plan thus approved under the
3 Conditions of Approval so that they are also fully
4 consistent with the Hillside Standards and Guidelines as
5 approved by Council. Unfortunately this afternoon you
6 received the typical eleventh-hour document from the same
7 few who always do this to try and confuse and delay my home
8 and it's nothing new. It has been four years. At this point
9 we cannot further delay my home and dreams and need to bring
10 closure to this process. We have been responsive, thoughtful
11 and collaborative in our approach and therefore request that
12 you take action this evening.

13 CHAIR KANE: Thank you. Questions for the speaker?
14 Commissioner Bourgeois.

15 COMMISSIONER BOURGEOIS: Thank you, Mr. DeSantis.
16 I have questions about the security fence, as I'm sure you
17 probably gathered. Did I miss that in the PD? That seems to
18 be a new element to me and I'm just curious as to why you
19 selected that location. I'm sure there was some thought that
20 went into it; I'd like to understand the thought behind the
21 location of that fence, and then with that fence is the
22 fence that parallels Kennedy Road necessary? It seems a
23 little redundant to have the two layers of fencing, because
24 I thought it was just going to be the wildlife-friendly
25 fence and then the pool fence, so if you could talk me
through that it would be great.

1 ROB DeSANTIS: Sure. Two great questions. The
2 first question about the security fencing and how we came up
3 with the location of the security fencing, and this actually
4 came from the questions that were asked last week of the
5 thoughtful process, because as it says, we can use the
6 fencing around the ornamental landscaping and the pool
7 fence, and then in looking at that we saw that we were going
8 to have these spots of fencing all around that wouldn't
9 necessarily be that attractive, but more importantly I've
10 been living by that property for the past several years and
11 there are a pack of coyotes, we've seen mountain lions there
12 as well as deer and all different types of wildlife, and I
13 have young children, I have small dogs, and we have a fenced
14 in area right now that's approximately two acres, and
15 several times over the past couple of years that fence has
16 in some way, shape or form protected my children, my dogs,
17 and obviously the planting materials. So we took a look and
18 said well what's the best location and how do we achieve the
19 safety for my family and the pets and the plants? We took a
20 look at where the contours were. Two of the four sides of my
21 property already have fences on them; all of the neighbors
22 along Forrester Road as well as my property right now, and
23 so we said well then rather than putting the security
24 fencing just around the pool area, because that would be the
25 most visible area of see that, we said lets go ahead and put
a security fence along the line of the contours such that it

1 can't be seen by the neighbors above on the southwest side
2 of the hill and can't be seen by us; it's the safest
3 location and it covers a whole different activity, so that's
4 how we came up with that.

5 With respect to the rail fence, you're right.
6 Taking this on to the next evolution based on the
7 discussions that we had last week and realizing this fence,
8 if we said hey, let's do up the rail fence along the rest of
9 the property, I'd be okay with that, and as it turns out the
10 majority of the habitat that we see on that property-I'm an
11 avid mountain bike rider as well-is all along the slope
12 along Kennedy Road where there's the 600 trees providing the
13 coverage and the protection for them and not in the open
14 space.

15 CHAIR KANE: Commissioner Bourgeois.

16 COMMISSIONER BOURGEOIS: If I could just follow-
17 up. So I just want to make sure I heard you correctly in
18 that the purpose of the fence is to keep wildlife out and
19 keep your family and vegetation, plantings, safe, and the
20 location was to reduce the visual impact. Did I get the gist
21 of it correct?

22 ROB DeSANTIS: Yes, I would say the location was
23 to minimize the visual impact and take a look at the natural
24 contours of where that seemed to make exact sense.

25 COMMISSIONER BOURGEOIS: Okay, and one final
question, if I may. Do you have a plant pallet picked out

1 for your planting plan? I mean I saw the planting zones and
2 the type of vegetation, but do you have an actual species
3 list?

4 ROB DeSANTIS: We do not have a species list. At
5 one point in the process we did and I think if you go back
6 to even maybe first Planning Commission meeting notes you'll
7 find a sampling of the pallet. But if you'll notice in the
8 Conditions of Approval for both A&S, I believe, and in the
9 PD, is that the plants used, that's one of the conditions in
10 there that we would be following the low transition plants
11 that's allowed for in the Hillside Guidelines and we would
12 be following all the rules, so at this stage to figure out,
13 no offense to Staff, to figure out whether it's petunias or
14 geraniums, with the complexity of this project we haven't
15 gone there for the ornamental, but we have said, and it's
16 conditioned in the approval, both in the PD and should you
17 approve it tonight, that we would live within those
18 guidelines.

19 CHAIR KANE: Mr. DeSantis, in your opening
20 remarks, did you say you had the permit from the Santa Clara
21 Valley Water District or you were applying for it for the
22 well?

23 ROB DeSANTIS: No, I believe my exact words were,
24 "which was approved by the PD and will be permitted through
25 the Water District."

CHAIR KANE: Will be?

1 ROB DeSANTIS: Yeah, will be. Will be.

2 CHAIR KANE: Thank you. Other questions for the
3 speaker? Commissioner Sayoc.

4 COMMISSIONER SAYOC: Hello, Mr. DeSantis. I'm just
5 going to start off by saying that we're in difficult
6 positions this evening. You're trying to build your dream
7 home and it's a very complicated project we have before us.
8 I think I made it clear I'm still unclear on the exact
9 nature of our scope, but I'm trying to make a decision as
10 one person that is not arbitrary nor capricious, so with all
11 that information in front of me I'm trying to get a better
12 understanding of your decision, so I appreciate your walking
13 me through it.

14 The first you mentioned is the copper. The Bay
15 Area does not meet its water quality standards in toxic
16 chemicals; copper is included in that list. When the
17 decision was made to include copper on your roofs as well as
18 your gutters and all those areas, because of the size of
19 your house, were the calculations done so that the storm
20 water discharges, accommodating the copper? Do you have
21 total maximum daily loads so that those calculations are
22 then calculated into the discharge that's going into the
23 copper load in the Bay Area? These are very specific
24 questions, I understand that, and I ask this not only of
25 you, but of your team. I know I'm the "copper lady,"
everyone calls me that, but this is a huge issue and to me

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1 aesthetic cannot be trumped by water quality, better health,
2 and copper is a significant area that I've been studying,
3 and so I definitely want to see those calculations.

4 ROB DeSANTIS: Can I respond?

5 COMMISSIONER SAYOC: Sure.

6 ROB DeSANTIS: I understand exactly what you're
7 talking about, because we went and researched it, and I
8 think that there are a couple of different answers.

9 One, we would never do anything surrounding this
10 architecture that was either against the law or against a
11 rule. If the Town Council or the Town of Los Gatos has put
12 an ordinance saying no copper roofs, then we wouldn't do it.
13 We did the research and didn't find that. They sell copper
14 gutters going in today and a plumber that I was watching on
15 TV here today said, "Call up and ask about the plumbing." My
16 goal is not to be argumentative.

17 The great thing about this is when we do do those
18 calculations, if we do come up with an issue, we can coat
19 it, seal it, wrap it in a bag such that it doesn't do that,
20 if we want to do that as an option. We have potential to do
21 other options as well and during the detailed design process
22 of the construction drawings, that's when we would do those
23 calculations.

24 I empathize with where you are in trying to handle
25 this complex project, being on the Planning Commission for
only the past year-and-a-half. I've been working on this for

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1 four-and-a-half years. I've spent hundreds of thousands of
2 dollars doing many, many different analyses and the ones
3 that were prioritized to us, many, many, many around
4 grading, I've been able to figure out ways in which to keep
5 all the dirt on site, to take away all the dirt, and we did
6 all these different studies on many different angles.

7 I'm not prepared at this stage to spend any more
8 money doing any more analyses until I get into the
9 construction phase and it makes sense. So if you need to
10 make a decision based on that, I totally respect your need
11 to make a decision, but assume that there will be no further
12 analysis on the copper done prior to that.

13 COMMISSIONER SAYOC: Commissioner Sayoc, did you
14 want to follow-up?

15 COMMISSIONER SAYOC: Yes, I do have a follow-up.
16 I'm not asking for more information, I just want that clear.
17 That information should be readily available. Decisions
18 should be made on research already done and not the other
19 way around. So I was hoping that that was something that
20 could be provided ahead of time. But I don't want to get
21 argumentative either, so let's move on.

22 The second issue, the landscaping plan. See, once
23 again we're in a quandary, because you have some preliminary
24 water information, but yet we're being told that we have a
25 final landscape plan, so I don't understand how you can make
a final landscape plan when you don't even have the water

1 data to support it, and so when you were creating this
2 pallet of ornamentals versus turf versus so on, give me the
3 thinking and the rationale behind it and at least the
4 guidelines that you guys were using.

5 ROB DeSANTIS: I will, perfectly. Thank you for
6 allowing me to.

7 So first of all when we came to the Planning
8 Commission and the first round of the Town Council I brought
9 what I thought is a really neat thing about collecting rain
10 water and the use of water and potentially using it in a
11 well, and if you go back and check the meeting minutes
12 you'll find from one of those two meetings that I was told,
13 "Water isn't in our jurisdiction. It's a nice thing, but
14 that's not what we're here talking about," so that was one
15 of the reasons why I hadn't done some of that work ahead of
16 time. I have looked and had my team look to try and
17 understand how many applicants are asked to do a hydrology
18 analysis just so I could see how they did it, and
19 unfortunately we failed to really find too many hydrology
20 analyses. So this project has been very consistent in that
21 I've been asked to do many, many things from caluvium
22 analysis to you name it.

23 The thought process though in this project and the
24 theories are pretty simple. The amount of landscaping we
25 have in our plan is pretty easy to break up, because when I
first heard it I was like how are we going to do this, and

1 then I got my team and several minds and talked to some
2 consultants and I said well you kind of attack it this way,
3 but they said it's plus or minus, and that's one of the
4 reasons why I gave ranges, and I gave conservative ranges,
5 because the actual landscape plans that you have in front of
6 you show really less than 10% being landscaped of the
7 property, and I said 10-15%, and the reason why I did that
8 in doing the hydrology analysis I wanted to be conservative,
9 because I've followed the philosophy all along in this
10 project to be very open, take every comment to heart and to
11 work on it, and then not give you an answer that I think
12 we're going to get away with, but to be very conservative,
13 because this is my town and I never wanted to believe that
14 this was going to be an enemy.

15 So that's the approach that I took. I think it's
16 pretty self-explanatory. You've got 13.7 acres. Right now
17 less than an acre is going to be landscaped in total, and
18 half of that is going to be in the form of this transitional
19 planting which requires, as a couple of people have told me
20 since, even for two years they don't even require water, so
21 I can cover the water issues no problem, and we've laid out
22 the area, so I don't know what else I can do for you in the
23 transitional plants. You've clearly listed out in the
24 Hillside Guidelines the list of plants I can use; I said I'm
25 going to use those, so I'm kind of at a loss for what else
to do.

1 CHAIR KANE: Commissioner Sayoc.

2 COMMISSIONER SAYOC: This will be my last comment,
3 and then I'd like to give my other commissioners a chance.
4 Unfortunately the Hillside Design Guidelines don't give us
5 percentages, they give us feet, and so when I was looking at
6 it and your plans, like a perfect example is that it says,
7 "Turf grasses are prohibited within 30' of the main house,"
8 and so with the plans I drew what 30' of your main house is,
9 and so it's pretty clear to me that the shaded pink areas
10 are areas prohibited, and like you said, you have 13.7
11 acres, and I understand that other applicants weren't
12 required to do certain hydrology tests, but given the large
13 amount of land you have, this was something that should have
14 been looked at as you were doing your environmental data. So
15 I just want to give you, these are the things that I need to
16 make a decision.

17 ROB DeSANTIS: Great, and that was looked at. I
18 mean the turf areas are less than 17,000 square feet, .37
19 acres. I currently have an acre-and-a-half of lawn where I
20 live. Many of my friends in different areas of town have
21 much more than .37 acres of grass. One of the things that I
22 would highlight is one of the things about this project was
23 to put that level of detail in over the past few years and
24 have it looked at, and have it scrutinized, and as the
25 Hillside Standards and Guidelines say, it says, "Exceptions
can be made," and it says that meet this criteria, and that

1 criteria was found to be met and those exceptions were made,
2 so if there's something that you don't like about that 30',
3 that's why we submitted it.

4 DIRECTOR LORTZ: Chair.

5 CHAIR KANE: Mr. Lortz.

6 DIRECTOR LORTZ: This may help. There is a
7 condition in the PD about ornamental landscaping and
8 basically they must comply with it. It's Condition #5. It
9 says, "All formal landscaping shall be confined to within
10 30' of the perimeter of the area formed by the main house,
11 pool, cabana, and within 30' of other structures on the
12 property." So that was shown on the PD, so they essentially
13 have complied with that condition as part of this process.
14 It's a little different than drawing a circle around each
15 structure; it's within the boundary of those structures as
16 it meandered through the property.

17 CHAIR KANE: Thank you. Commissioner Bourgeois.

18 COMMISSIONER BOURGEOIS: If I could follow-up on
19 that point with Mr. Lortz, because actually I had a question
20 about that, because I read that and it's very clear, but
21 when you look at the plans there is still an ornamental
22 landscaping area along one of the road cuts that is not
23 adjacent to any of the structures mentioned in the PD, so
24 the map isn't consistent with that language and I don't know
25 what to do with that.

1 DIRECTOR LORTZ: If you feel that there is a
2 disconnect, then ask for some change there.

3 CHAIR KANE: Other questions for the speaker?
4 Commissioner Talesfore.

5 COMMISSIONER TALESFORE: I have a question about
6 the well, for Staff I guess, or to the Applicant, I'm not
7 sure who to ask. The question is if the well is not
8 permitted and we have a drought year, then you will have to
9 depend on the municipal resources for water, correct?

10 ROB DeSANTIS: Or San Jose water. Yes.

11 DIRECTOR LORTZ: Or the cisterns.

12 COMMISSIONER TALESFORE: So what's in the PD? Does
13 it say if the well isn't in there it would be inconsistent
14 with the PD or not? Can you clear that up for me?

15 DIRECTOR LORTZ: No. The well is allowed if they
16 have to... If can't get a well from the Water District then
17 they're on municipal water.

18 COMMISSIONER TALESFORE: And that's in the PD?

19 DIRECTOR LORTZ: And the cisterns.

20 COMMISSIONER TALESFORE: Okay. And could we figure
21 out how much water we'd be using from the cisterns and the
22 municipal resources? Has that been done?

23 ROB DeSANTIS: No, and because, again, me putting
24 a well in is me trying to participate in green.

25 COMMISSIONER TALESFORE: You've answered my
question. That's fine. Thank you.

1 ROB DeSANTIS: Thank you.

2 CHAIR KANE: Other questions for the speaker?

3 Seeing none, thank you. After all the other public speakers
4 have spoken, Mr. DeSantis, you'll have three minutes for
5 rebuttal. The gentleman in the black shirt, security, could
6 you scoot to your left? Is that convenient, please? I'm
7 going to make that the hot seat, or the staging area. On
8 deck. Our first speaker is Mr. Paul Quintana followed by
9 Youwanda Dreger, and Ms. Dreger, would you take the on deck
10 seat, please?

11 PAUL QUINTANA: My name is Paul Quintana and I
12 live at 5 Palm Avenue, Los Gatos, California.

13 CHAIR KANE: I'm sorry to interrupt you. I want to
14 remind you and the timers that we're going for two minutes
15 given the volume of the speakers. We'll start your clock
16 again.

17 PAUL QUINTANA: Okay. I wanted to echo some of the
18 concerns over the incompleteness of the application as it
19 stands before you. I was concerned looking at the hydrology
20 going on and saying how much pesticides, how much
21 herbicides, how much fertilizer is used and where does that
22 run off to? Where does the water go carrying these
23 chemicals? Into what cisterns, into what water supply system
24 and where does it go? I really don't have any idea about
25 that.

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1 Also, again, the water issue I think is an
2 important issue given the fact that we are in a drought
3 cycle. There was no mention of an irrigation system that I
4 saw anywhere in the plans as to what type of irrigation was
5 going to be done. Overhead, drip? I mean nothing spoken of.

6 There was a comment by the Applicant that he has
7 seen mountain lions on the property, deer, coyotes, and it's
8 interesting that he has seen these, because there's no
9 biology report, nothing that fences interfere with animal
10 corridors or what's going to happen to the native plants
11 that are already there and given the watering system, none
12 of this is included in there.

13 I really believe that you don't have the
14 information needed to make a final vote and this should be
15 continued in spit of the terrible financial drain to him,
16 until he gets to the stage that you need to make an informed
17 decision. Thank you.

18 CHAIR KANE: Thank you. Youwanda Dreger followed
19 by Richard Konrad; come on down.

20 YOUWANDA DREGER: Hello, my name is Youwanda
21 Dreger; I live at 16200 Maya Way, Los Gatos. Thank you for
22 allowing me to stress this issue again, although I won't be
23 speaking for me, I'm speaking for 12 young people who will
24 be more impacted with your decision than I will, because
25 they'll live longer.

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1 They've drawn you a picture and they've said,
2 "Protect the hills and follow the rules," like they have to
3 follow the rules on the school ground. Don't let one person
4 be an exception. They have no reason to be an exception.
5 They must be treated the way the rest of us are treated.

6 I live up in the hills and unless Mr. DeSantis can
7 speak to the animals, let me tell you, after 30 years they
8 still use the same path across my driveway that they have
9 always used, so he should look at the trails of the animals
10 and figure out where his fences and retaining walls should
11 go, because they don't change and they won't be able to
12 understand why you've taken their homes away, but I'll tell
13 you, if it's taken away they'll migrate down just like they
14 do from my hillside down to Loma Alta, Johnson and Los Gatos
15 Boulevard. Deer are on Los Gatos Boulevard periodically when
16 we have a bobcat or mountain lion up on Aztec and Maya Way.
17 Thank you.

18 CHAIR KANE: Thank you. Richard Konrad followed by
19 Peter Donnelly.

20 RICHARD KONRAD: Should this application not be
21 approved tonight in its entirety, either through denial or
22 continuation, I then ask the following logical measures be
23 taken: Number one, put a hold on issuing any tree removal or
24 tree relocation permits until all potential studies are
25 completed and final plans are approved. Number two, put a

1 hold on the issuing of any grading permits until the final
2 A&S plans are approved.

3 To do otherwise would clearly be putting the cart
4 before the horse, taking actions that are potentially
5 irreversible will further jeopardize our hillsides. Why are
6 we even considering what seems to be this rush to judgment
7 by talking about or employing bifurcation, partial
8 approvals, et cetera, all before the final picture is
9 complete? Such hast only results in waste and mistakes. It's
10 just a personal observation on attending this meeting and
11 the prior meetings. Based on the inputs of the community and
12 the questions of the Planning Commission, I just don't
13 understand why the Staff seems to be rushing to conclusion
14 on this project. Thank you.

15 CHAIR KANE: Thank you. Peter Donnelly followed by
16 Zenon Zubrycky.

17 PETER DONNELLY: Having followed this item over
18 the past few years I empathize with you and the situation
19 you find yourselves in. It's self-evident that the majority
20 of you are asking yourselves why am I being asked to make a
21 decision on an issue that is apparently already been
22 decided. In human dynamics there is only one thing worse
23 than not being asked for your opinion, and that is to be
24 asked for it and then have that ignored or not even listened
25 to.

1 I was going to help you out here with a few items
2 from the Hillside Standards, but you guys know this; you
3 know the standards. I'm just going to highlight a couple of
4 them. Planned Developments: The rules for Planned
5 Developments are much more stringent than they are for
6 anything else. They're not less stringent; they're more
7 stringent. Exceptions from the standards in this document
8 may only be granted after carefully considering the
9 constraints of this site. When did that happen? Exceptions
10 to maximum floor area may be approved if the project meets
11 certain criteria in addition to all standards and guidelines
12 being met.

13 Anyhow, you get my point. It seems like the Town
14 Council missed a few details. The Hillside Standards and
15 Guidelines are tough rules. Some say they're too tough, but
16 they are the rules and there's a democratic process in place
17 to change the rules. The only thing that can go wrong now is
18 when those rules aren't enforced and the process isn't
19 followed.

20 My family and I followed those rules and it cost
21 us a lot, time and money. We too have children that wanted
22 to grow up in this neighborhood. The end result of our
23 project is not exactly what we planned to do, but it's going
24 to be a great addition to our neighborhood whilst respecting
25 the surrounding habitat. Why then do others get to do things
differently and not follow the rules? Is it the money, is it

1 the persistence or is it just plain politics? I don't know
2 what it is, but this group should give the answer it gave
3 when this was originally presented to you. Say no; send it
4 back to the Council with a message that this body is truly
5 independent and beyond reproach. I thank you.

6 CHAIR KANE: Thank you. Commissioners, on the last
7 few speakers I was remiss to ask if there were any questions
8 of the speaker. If you have any questions of the speakers,
9 just let me know, because I'll probably just go right
10 through the cards if you don't.

11 ZENON ZUBRYCKY: My name is Zenon Zubrycky and I
12 live on 128 Terasita Way in Los Gatos right above Mr.
13 DeSantis' property about 300' up, and everyday I'm looking
14 at this property from my bedroom, kitchen, living room and
15 the family room, same as the other 55 people in the
16 neighborhood who agreed and signed to see this beautiful
17 house that one of the commissioners mentioned. I agree, it's
18 beautiful; I'm looking forward to looking at it.

19 What bothers me is that a member of this committee
20 said that building does not belong in the hillside. Well I
21 am proposing a solution to the hillside protection crowd.
22 Buy the property on the hillsides at about \$5-10 million
23 apiece and we will not be meeting here again on hillsides
24 stretching four-and-a-half years. If this is too much for
25 you, I propose a one-time levy for all the parcels in Los

1 Gatos at about \$100,000 each and this circus will end. Thank
2 you very much. Please approve this project.

3 CHAIR KANE: Thank you.

4 RAY DAVIS: Boo. Boo.

5 CHAIR KANE: We're not going to have that after
6 each speaker. We just really aren't going to do that,
7 please. Mr. Jack Faraone followed by Dale Hill.

8 JACK FARAONE: Hi, Jack Faraone at 158 Kennedy
9 Road, directly across Kennedy from the DeSantis project.

10 What I've noticed after having attended numerous
11 Planning Commission meetings over the years is that a few
12 neighbors on adjacent properties typically object to a
13 project because their view is obstructed, a roof seems too
14 high or windows offer views into previously private
15 backyards. Curiously, that's not the case here. Here we have
16 neighbors on adjacent properties unanimously supporting the
17 project and a vocal group of activists, who I'm sure are
18 well intentioned, who don't live in the immediate
19 neighborhood, are opposing the project. They clearly have a
20 political agenda. They don't live in the immediate
21 neighborhood, yet they seek to specify what the character of
22 our neighborhood should be and demand that the Hillside
23 Development Standards and Guidelines, a document that
24 clearly allows for exceptions, be literally applied.

25 We, the immediate neighbors, much prefer the
DeSantis project, which is beautifully architected,

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1 landscaped and well-sited over two fully Hillside Guidelines
2 compliant projects that would be possible with a
3 subdivision. In fact, my fear is the DeSantis project will
4 somehow be derailed here tonight and that sometime in the
5 near future the lot will be developed and I'll be facing two
6 or perhaps even three 6,000 square foot homes, driveways,
7 garages, outdoor lighting and water usage, though it will
8 all be within the Hillside Guidelines. With the immediate
9 neighbors preferring the DeSantis PD over what is suggested
10 by the Hillside Guidelines, it seems clear to me the
11 Guidelines should be rewritten such as these kinds of
12 developments are more clearly allowed.

13 Lastly I ask that the wishes of the adjacent
14 property owners carry more weight than those speakers who do
15 not live in the immediate neighborhood.

16 CHAIR KANE: Thank you, sir.

17 JACK FARAONE: Thank you, and I can talk about
18 wildlife corridors if anybody is curious.

19 CHAIR KANE: Thank you. Dale Hill followed by
20 Kathleen Hewitt.

21 DALE HILL: Good evening. My name is Dale Hill; I
22 live at 150 Robin Way, which is just down Kennedy Road from
23 the site we're talking about, and I'll be very brief.

24 As a former member of the Planning Commission at
25 the time that this subdivision was approved I don't envy you

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1 your task tonight. It seems to me that you are truly between
2 the proverbial rock and a hard place.

3 The basic problem is that this is a flat land
4 compound set on a ridge. Where it should have been designed
5 to follow the contours of the land, it was designed as a
6 valley floor project, which is not what we're supposed to be
7 talking about.

8 I have only one comment relating to the issues
9 we're allowed to speak about tonight and that is that I do
10 not think that he should be permitted to have a well. This
11 is going to take water from other properties, and I speak as
12 someone who has had property, not in this area, and we did
13 put in a well, but if municipal water is available, I think
14 it should be required. Thank you.

15 CHAIR KANE: Thank you. Kathleen Hewitt followed
16 by Citizen Ray.

17 KATHLEEN HEWITT: My name is Kathy Hewitt and I
18 live at 18400 Overlook Road, Los Gatos. As a supporter and a
19 member of Friends of the Hillside I researched the 30 homes
20 listed on the Attachment #10 of the February 5, 2007 Town
21 Council Report of homes in Los Gatos larger than 7,000
22 square feet. This research found that all of the homes on
23 the list were built prior to the adoption of the Hillside
24 Standards.

25 CHAIR KANE: Thank you. Citizen Ray followed by
Bidgidd Moreton.

1 RAY DAVIS: Yes, indeed. Boy, what we have to go
2 through as citizens of Los Gatos in order to express
3 ourselves as Americans do, unbelievable. I sat here tonight
4 and I heard that DeSantis cat, this guy who was...

5 CHAIR KANE: Citizen Ray, we don't (inaudible).

6 RAY DAVIS: I heard him talk about his family
7 home.

8 CHAIR KANE: You address the Planning Commission
9 or I'll find you out of order. You talk to us.

10 RAY DAVIS: What do you think I'm doing? I heard
11 this man say he's talking about his family home. You read
12 the minutes from Manhattan Beach Council meeting; he says
13 the same exact words almost. His family home is in Manhattan
14 Beach.

15 CHAIR KANE: Citizen Ray, address your comments to
16 me.

17 RAY DAVIS: Then his architect down there says no,
18 he lives in Mimosa Beach. How many family homes does he
19 have? This man speaks with forked tongue. Disgusting.

20 But speaking to the issues tonight, I'm going to
21 speak about the landscaping. I did review the so-called
22 document. It's a two dimension layout of the 13.7 acres;
23 that's all it was. One plant list. I couldn't believe it.
24 More forked tongue. Then I thought how are we supposed to
25 evaluate this landscaping in regard to the property? I said
has anybody seen the property? Hell, no, only the Town

1 Council. You people are precluded from going out to the
2 property and seeing what it actually looks like. I was
3 precluded. Everybody here was precluded. I couldn't believe
4 it. That is so corrupt, and I want to tell you I am finally
5 at the point where I'm going to the FBI.

6 CHAIR KANE: Thank you.

7 RAY DAVIS: FBI for corruption.

8 CHAIR KANE: On that note, Citizen Ray, Thank you
9 very much. Brigid Moreton followed by Dr. Weissman.

10 RAY DAVIS: My pleasure, thank you. Don't think
11 I'm kidding.

12 CHAIR KANE: Ray, that's a warning.

13 BRIGID MORETON: My name is Brigid Moreton; I live
14 at 120 Cardinal Lane and this addresses the hydrology
15 problem.

16 The Planning Commission required a hydrology
17 report for this project two weeks ago. Ignoring the fact
18 that we all just got some of this information tonight and
19 have not had a chance to review it, we can still ask did the
20 Applicant do what was required?

21 To evaluate this project thoroughly and to see if
22 it's consistent with the Hillside Standards and Guidelines I
23 think you, and all of us, need to be able to answer the
24 following questions: What is the basic hydrology of the
25 area? Where would the well go and how destructive to the
environment will it be? Will the noise affect the local

1 animals? Will drawing large amounts of well water affect the
2 local water tables and impact local streams such as Ross
3 Creek?

4 And if the well is taken off the table, but only
5 collected rainwater and tap water are used for irrigation,
6 you still need to know the following answers to adequately
7 assess the project: What about graded slope stabilities in
8 drainage issues? Where will the pesticides and the
9 algaecides used in the pond drain to? What of the herbicides
10 and the fertilizers used on the extensive irrigated lawn and
11 transitional planted areas? Where will these runoff products
12 end up? In Ross Creek and in San Francisco Bay? How will
13 these drainage runoffs affect the native oaks already on the
14 property? I don't know any of the answers, because there are
15 no studies. Thank you.

16 CHAIR KANE: Thank you. Dr. Weissman followed by
17 Bernadette Chadwick.

18 DAVID WEISSMAN: Dave Weissman, Francis Oaks Way.
19 You are being given a page of the Town's codes and I ask
20 that you look at the yellow highlighted areas, which I will
21 now read into the record. Section 29.20.310, "The Planning
22 Commission on it's own motion may hold a hearing to consider
23 modifying or revoking any zoning approved that had been
24 granted pursuant to this chapter or any prior ordinance.
25 After the hearing the Planning Commission may revoke or
modify a zoning approval if it finds that one or more of the

1 following grounds exist," and I direct your attention to #3,
2 "That the use for which approval was granted is so exercised
3 as to be detrimental to the public health or safety or to be
4 a nuisance." I best believe that the Town's attorney mandate
5 to this Planning Commission that those issues of Mr.
6 DeSantis' project, already approved by the Town Council are
7 off the table is in error under the language of this
8 section.

9 While the public may have been gagged by Mr. Korb
10 two weeks ago, clearly the planning commissioners cannot be
11 gagged and are free to speak up for the concerned citizens
12 of this town. The majority of the Commission has expressed
13 continued major misgivings with this project; two weeks ago
14 some of you even talked about and said you would understand
15 voting your conscience and your mind, most notably Ms.
16 Talesfore and Mr. O'Donnell. Well, this now seems like an
17 appropriate time for such action. After all, this nation was
18 built on a foundation of free speech and one of the first
19 principles of free speech is protected conscience.

20 CHAIR KANE: Thank you. Mr. Korb, a question for
21 the speaker, or comment?

22 ORRY KORB: While I have no question for the
23 speaker I'll first say that I did not gag the Planning
24 Commission and I take offense at that remark.

25 DAVID WEISSMAN: You gagged the citizens.

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1 ORRY KORB: Excuse me; I'm speaking now. You and I
2 are all bound by decisions made by the elected officials of
3 the Town, the Town Council, again. Whether you agree with
4 those decisions or not we're bound by them, and I as a
5 member of Staff am as well, and I was asked what the scope
6 of your determination is and I advised you.

7 And secondly, Dr. Weissman's reference to Section
8 29.23.315 and 29.20.310 of the Town Code is in error. Those
9 sections are intended to deal with situations where a
10 entitlement granted by this body or by the Town Council, or
11 even by Staff if Staff is authorized to do so, is exercised
12 in a manner to violate either the terms and conditions of
13 the approval or in some other manner that violates the
14 public health, safety or welfare, then this commission can
15 hold a hearing. What Dr. Weissman is arguing is that the
16 Town Council in the mere approval of this PD project is
17 violating the public health, safety and welfare, and the
18 Town Council has made its determination that it is not doing
19 so. Again, whether you agree or not, that's their
20 determination and they're authorized to make that
21 determination and you're authorized to do nothing more than
22 to defer to that decision and to decide within the policies
23 that have been approved for you by Council. This section
24 cannot be used as a means of trying to overturn a decision
25 made by Council.

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1 CHAIR KANE: Thank you, and thank you, Dr.
2 Weissman. Bernadette Chadwick followed by Larry Arzie.

3 BERNADETTE CHADWICK: Good evening, my name is
4 Bernadette Chadwick; I live at 220 Wooded View Drive and our
5 property is directly across the valley from Mr. DeSantis'
6 property.

7 I would like to first commend the Planning
8 Commission for all the work they've done with this project
9 and others. I don't know you personally, but I know you as a
10 commitment to the community and I know this must be very
11 frustrating for what you have been going through with
12 listening to all the various viewpoints.

13 I would like to make a comment briefly about
14 saying that people who are not neighbors should not be
15 concerned about this project, and I would like to note that
16 many people are very large minded and they think of the
17 whole community and they think of the whole region, they
18 think of how everything fits together, and so to say it's
19 not our business is being small minded, so I'd like to point
20 that out.

21 We moved into the neighborhood at Wooded View
22 Drive about 22 years ago and I wanted to tell you the
23 animals that we saw, because that's what I want to talk
24 about. We saw raccoons, deer, squirrels, skunks, possums,
25 bobcats, foxes, but the native the gray fox, coyotes,
turkeys and myriad kinds of birds, and as the years have

1 gone on I have noticed that most of these have either
2 disappeared totally or they're in a very small number. The
3 coyotes have come down closer to us, the deer have almost
4 disappeared, the possums are totally gone, the skunks are
5 totally gone, the raccoons do come around a little bit,
6 foxes occasionally, and the bobcat every once in a while.
7 The reason I think this is is because as Wooded View was
8 extended and new homes were built and other homes were fixed
9 up, fences and gates were put in, so I think we need to
10 think about that part of the property a lot.

11 CHAIR KANE: Thank you very much. Larry Arzie
12 followed by Gil Decker.

13 LARRY ARZIE: Larry Arzie, Los Gatos.

14 You know, the brand new fence titled iron security
15 fence appears to follow the LRDA, the Least Restricted
16 Development Area. In the plans shown to us two weeks ago
17 this was called unencumbered open space, so that alone
18 should not be allowed. How big a security fence do we need
19 in the first place? Certainly not this big.

20 I'm going to go on to lighting since everything
21 was pretty well covered on the fence. The lighting schematic
22 shows that 36 trees have lights on them. Well, even if
23 facing downward, such lights could interfere with
24 nocturnally active animals. In any case such lights should
25 be required to have infrared motion sensors which face
horizontally and not upwards so as to be triggered by owls

1 and to stay on for no more than 30 seconds once activated.
2 Otherwise I can see the whole hillside being lit up at night
3 even if these lights face downwards. Think airport.

4 Lastly, the Planning Commission should put a deed
5 restriction on the property that no additional fences or
6 property lighting be allowed. More lights could be
7 positioned on the hillside in the future, adding to the
8 overall light position, and more fences could be added as
9 well, because we don't require permits for this once the
10 property is occupied, so think bigger airport.

11 You know, it is these potential unforeseen
12 conflicts in design that strenuously argue against approval
13 of such large projects without all the necessary
14 information, and also urge against any bifurcation of any
15 such projects.

16 CHAIR KANE: Thank you. Mr. Lortz, the speaker
17 made reference to future development of fences and lighting.
18 Is that a concern of Staff or is there a restriction? Can
19 you comment on that?

20 DIRECTOR LORTZ: A deed restriction could be
21 imposed, as suggested.

22 CHAIR KANE: Thank you. Mr. Decker.

23 GIL DECKER: I'm Gil Decker; I live at 45 Glen
24 Ridge, Los Gatos.

25 I think the specifics that have been brought up by
a number of the previous speakers are self-evident. I'd just

1 like to kind of reiterate and make sure that everybody is
2 reminded that you folks have a hell of a tough job sitting
3 up there. You reviewed this project in its current scope and
4 turned it down, because I think you did a hell of a good job
5 in analyzing it and looking at Hillside Standards, and sad
6 to say our Town Council on a 3-2 vote voted to approve it.
7 They sold out the Town. I know the Planning Director and the
8 lawyer are going to back the Council, but I'm not sure
9 they're operating in the interest of greatest number of
10 citizens.

11 If we let these hillsides go down the tubes you
12 can never recover them. I spent three years working for
13 Disney Corporation in the San Fernando Valley. These hills
14 are raped; they'll never get them back.

15 This is not an issue. They're not anti-
16 development. If you follow the Standards and Guidelines you
17 can get approval and the hillsides are protected. I've
18 talked to several people, including one gentleman not long
19 ago that has two lots up there. He went through the tortures
20 of the damned but finally met every requirement. He's got
21 two nice homes up there. He didn't fight the issue, he just
22 finally went through it and he spent a lot of money.

23 This is a monstrosity and you've got a tough job
24 to approve it or disapprove it, but take every advantage you
25 can of the A&S standards and turn this project down.

1 CHAIR KANE: Thank you. Ernest Culp followed by
2 Sandy Decker.

3 ERNEST CULP: Good evening, my name is Ernest
4 Culp. I'm here in support of Rob DeSantis and his project.

5 My parents moved here 44 years ago. Over 44 years
6 the Town has changed enormously. My wife and I live on
7 Johnson Avenue. In the short time we've lived on Johnson
8 Avenue the Town has changed enormously. The economy has
9 changed in 44 years. Different types of residents have moved
10 in. Certainly the hillsides have changed. Families have
11 changed. However, with the changing economy you have
12 different types of residents moving in, and it's a broad
13 economy here. Different family needs are being met, people
14 have different goals, different dreams, not only for
15 themselves but also for their families.

16 Mr. DeSantis has been a resident here for a number
17 of years. I've sat back and watched this process and watched
18 how intrusive it's been for him in regard to the press, not
19 only in the local paper but also in the Mercury News, and
20 I've only heard one side in all this; I've only heard those
21 against this project. Regardless if people are for or
22 against the project, I've also watched Rob come up here in a
23 very professional and articulate way, not only representing
24 himself but also the Town and the Town's requirements, as a
25 team player and attempt to have his goal met. He wants to
build a home for he and his family. He bought a parcel of

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1 land, 13.7 acres, in Los Gatos off of Kennedy Road. Not a
2 visible lot, and I've heard his ego brought up a few times.
3 It's just a dream to build a home for himself and his
4 family, to become a part of the community, which he has
5 already been a part of now. I think he's owned three homes
6 previously in town. Anyway, I'd like to see the project
7 approved.

8 CHAIR KANE: Thank you. Sandy Decker followed by
9 Lee Quintana.

10 SANDY DECKER: Sandy Decker, 45 Glen Ridge.

11 I have never in my ten years of service appointed
12 and elected in Los Gatos seen a PD used for a single
13 residential application, and I have never even thought that
14 it would ever be used as justification for Architecture and
15 Site design and impacts before Architecture and Site comes
16 to a public hearing.

17 Mr. DeSantis continues to refer to the few who are
18 trying to delay his project. I would like to ask the Friends
19 of the Hillsides that are here tonight to stand. I also have
20 400 additional signatures of other Los Gatos residents who
21 feel the rules to protect the hillsides that many of them
22 contributed to should be followed, along with conformance to
23 CEQA. Thank you.

24 CHAIR KANE: Thank you. Lee Quintana.

25 LEE QUINTANA: I had a completely different speech
to give tonight, which I set aside.

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1 I'd like to make a few comments. They're not going
2 to be jointed, they're going to be disjointed, but I'm going
3 to make them because they've just come to me as I've
4 listened.

5 First of all, Santa Clara Valley Water District is
6 the responsible agency if a well permit is issued. The last
7 time I looked, the Negative Declaration initial study was
8 not distributed to the Santa Clara Valley Water District;
9 they did not have a chance to respond.

10 Second, I believe it's Condition #27 on the
11 ordinance for special environmental design features states,
12 "Irrigation shall be provided by onsite well. If there is no
13 onsite well, the project is not in conformance." This isn't
14 to say that an onsite well is a good idea. That has never
15 been done.

16 Exceptions: In addition to the exceptions that the
17 Town Council made specifically, there are also other
18 exceptions within the ordinance. The height of the accessory
19 structure, the landscaping in the area that can be in
20 ornamental landscaping, the amount of turf, the location of
21 the fences, those are conditions that are in the ordinance
22 and some of them have been somewhat manipulated in the
23 conditions of the A&S. Council did not make finding for
24 those exceptions, and there are other exceptions. The only
25 thing I really want to get said before the thing goes off--oh

1 shit, I just looked at the time--is the environmental
2 consultant...

3 (Timer goes off.)

4 LEE QUINTANA: Please ask me a question. This is
5 really important.

6 CHAIR KANE: Any questions for the speaker?
7 Commissioner Micciche.

8 COMMISSIONER MICCICHE: What was the question that
9 was so important?

10 LEE QUINTANA: I am sorry. I had thought that I
11 was going to be able to read something from my computer that
12 was part of the comments from the Town's environmental
13 consultant regarding environmental review in response to
14 comments. They describe the project initial study as being
15 the PD and that the A&S was not covered by it. There is much
16 language in there saying that certain aspects of impacts
17 from the project, such as visual retaining walls, change of
18 topography, all of those would receive additional
19 consideration at A&S and that the Hillside Standards and
20 Designs would be further considered at A&S in more detail.
21 Obviously that hasn't happened.

22 CHAIR KANE: Thank you, Ms. Quintana. I will
23 remind you that this is a family program. I have no other
24 speaker cards. I have one more speaker card. Start the
25 clock.

1 CHRISTINE CURRIE: Good evening, my name is
2 Christine Currie and I am a Friend of Hillsides, and the
3 Friends of the Hillsides.org is now more than 350 strong. I've
4 got emails arriving each and every day and it's exciting,
5 because I look around me and I say this is my community. I'm
6 raising my kids here. These hillsides are mine, it's not a
7 proprietary thing, and lucky us to be here and be here
8 together.

9 KDSP radio gave us a beautiful mention today. New
10 faces, new people, new neighbors, didn't know them, here
11 they are. Fabulous. Thank you for coming.

12 I just want to reiterate the hillsides belong to
13 all of us, not just the adjacent neighbors, and I'm sorry,
14 I've got to apologize to each and every one of you up there.
15 The eleven or ten pages ad nauseam, point-by-point, I didn't
16 mean to drop that bomb on you today. I tried to get it in
17 earlier and I was told that I couldn't, so after doing some
18 other jumping through the hoops I was told that I could
19 indeed get it in today and I get it in literally by the hair
20 of my chinny-chin-chin, so I'm sorry about that, and if
21 there's any questions on that I'd love to answer them.

22 So again, getting back to the community that I
23 love, I just thank you all for the attendance, I thank you
24 for the emails, I thank you for the editorials, I thank you
25 for going to our Web site, Friends of the Hillsides.org,
because your checks help us, your emails help us, your

1 support of the community, you help us all and it's inspiring
2 to me as a mother of two small kids, it's inspiring to me to
3 see our local government work, and it's inspiring to me to
4 be a part of something bigger and better and I feel really
5 good about that, so thank you.

6 And like I mentioned in, I guess it wasn't ten
7 pages, I guess I did a little bit of a cull before I sent it
8 off to you, it's actually seven pages, but I don't know if
9 anyone has any questions or concerns, but I think for the
10 most part I think all of them were covered tonight.

11 CHAIR KANE: Thank you. The speaker reminds me
12 that we do have a Desk Item and there are a number of Desk
13 Items in that Desk Item; it's a total of 16 pages. Have we
14 had a chance to look at all these items or would we like
15 some time? We're okay? Mr. DeSantis, as the Applicant you
16 have three minutes for rebuttal.

17 ROB DeSANTIS: Well, first of all, for all my
18 neighbors that are watching tonight and that came to
19 previous meetings and signed their signatures, although they
20 couldn't be here in person, there are many people watching
21 and many with families that can't come here to support my
22 project.

23 No PD for a single-family home has ever been done.
24 Well how many people have come before you and wanted to
25 merge lots rather than subdividing? How many people have
given up their development rights to subdivide? How many

1 people have dedicated more than half of their property for
2 open space?

3 All homes build before the Standards, exceptions
4 are allowed and it's never been tested until me. Are we
5 surprised why? And the airport comment isn't worth
6 commenting on.

7 But as an ignorant 16-year resident of Los Gatos I
8 am confused why a small number of people would want to stop
9 my project. From embellished editorials in the press to
10 outright inaccuracies, I wonder why. I bought 13 acres of
11 farmed land over four-and-a-half years ago. I could have
12 sold it to a developer to subdivide, which would have
13 created a lot more grading, structure, tree loss, et cetera.
14 Instead I came to the Town with an idea that all
15 constituencies felt was a good idea, including you. Had I
16 been told no, I would have moved on, but I was not, maybe
17 because I spoke to a bunch of my neighbors before that and
18 these concepts were interesting, maybe different than what
19 Mr. O'Donnell would say. Instead the Town saw some great
20 opportunities, especially creating our model green home with
21 a committed owner while at the same time giving up
22 development rights to subdivide.

23 It's the American Dream to have a family home, a
24 basic dream of life. Having a fun, positive experience along
25 the way would also be nice. To date the collaboration has
been positive. The expense and time however has not. My home

1 has been studied by more people in more ways than anyone has
2 imagined, and it's started to take a toll on my family. My
3 daughter started kindergarten this week. She had just been
4 born when we started this. We are now looking at a three-
5 year completion project, which would mean I would miss her
6 experiences in half of her childhood life.

7 I would now like to move to the next stage so that
8 it can hopefully be family focused and enjoy creating a
9 family home. Somehow over the four-and-a-half years family
10 focus has been lost and it's time for it to return.

11 The Applicant and A&S application before you
12 tonight is consistent in every way with the approved PD.
13 Please make a decision tonight either way.

14 CHAIR KANE: Questions for the speaker?
15 Commissioner Micciche?

16 COMMISSIONER MICCICHE: Two, if I may. Would you be
17 opposed to a deed restriction on the lighting, fences and
18 grading that there would be no additional if it would be
19 added to the Conditions of Approval?

20 ROB DeSANTIS: How many? You said the grading. The
21 grading I believe there already is a restriction. And what
22 are the others?

23 COMMISSIONER MICCICHE: No, if it's subsequent to
24 building the property, after the property is built.

25 ROB DeSANTIS: Right.

1 COMMISSIONER MICCICHE: So that there would be no
2 longer any additional lighting or fences?

3 ROB DeSANTIS: Yes. Post construction, the fencing
4 and then the lighting, once we have the lighting in, then
5 yes.

6 COMMISSIONER MICCICHE: The second item, I'm not
7 known as the cooper man, so I'm not sure I know what I'm
8 talking about there, but it does sound to me like it's anti-
9 environmental at this point. Would you consider compromising
10 that and getting rid of the copper? I understand you might
11 coat it and you might do other things to it, but the fact is
12 coatings wear out, people don't upkeep things, and
13 eventually it could take it's toll.

14 ROB DeSANTIS: I'm going to back up on one comment
15 and comment on another.

16 The deed restriction on lighting, I would need to
17 consider and I would be open to say let's employ a deed
18 restriction maybe two years after completion in the event
19 that there's a design issue that warranted that, so the deed
20 restriction I'll back off on.

21 With respect to the copper, I am more than happy,
22 and am in real time, exploring the options of moving away
23 from copper. If you move away from a copper roof then you've
24 got to move away from copper gutters, because
25 architecturally it doesn't make sense.

COMMISSIONER MICCICHE: I agree.

1 ROB DeSANTIS: And so there are all these other
2 issues architecturally that go on, so am I prepared to
3 commit to no copper? I'm not.

4 COMMISSIONER MICCICHE: All right. Thank you.

5 CHAIR KANE: Commission Talesfore.

6 COMMISSIONER TALESFORE: I have a question. We
7 didn't ever touch on this, but this is in reference to your
8 motor court, and I understand that the driveway leading up
9 to your motor court is permeable material?

10 ROB DeSANTIS: Yes.

11 COMMISSIONER TALESFORE: And it's called out that
12 the motor court is cobblestone, and the reason I bring it up
13 is that when I did calculations, which I'm not the best
14 mathematician, but it's around 2,300 square feet of motor
15 court I think, and it's going to be done in cobblestone
16 material, and how exactly will that be finished off? Do you
17 know what I was asking?

18 ROB DeSANTIS: No.

19 COMMISSIONER TALESFORE: Okay. Is that going to be
20 cemented in place? Is that going to be placed in sand? In
21 other words, will that material be permeable or not?

22 ROB DeSANTIS: Cobblestone is not typically
23 cemented in, so it's typically put in with sand.

24 COMMISSIONER TALESFORE: Well I've seen it both
25 ways, so I'm asking you will it or not be permeable?

1 ROB DeSANTIS: In the spirit of me being
2 conservative, let's say the motor court will not be
3 permeable.

4 COMMISSIONER TALESFORE: Okay. Yeah, there we go.

5 ROB DeSANTIS: I'd rather be conservative.

6 CHAIR KANE: Other questions? Mr. DeSantis, if
7 Commissioner Micciche wants to talk to you about copper,
8 which he doesn't understand, he may be making you an offer
9 you should not refuse, so I want to know if you're just
10 implacable on an issue that two commissioners are talking to
11 you about, or would you work with Staff to find alternative
12 materials? It would be a shame, 14 acres on a piece of
13 copper.

14 ROB DeSANTIS: Right. So I will give you the best
15 answer I can on that, because that was a good one that I
16 wanted to ask. First of all, if the Town ever put an
17 ordinance together saying no copper roofs or gutters, I'm
18 happy oblige that. So all I want is equal treatment on that.

19 CHAIR KANE: Okay, we don't have one; that's
20 irrelevant. I want to know if you'd be willing to work with
21 them on alternative materials.

22 ROB DeSANTIS: I would be unbelievably happy to
23 work with them without making it a condition, and I would
24 ask on that the four-and-a-half years that the Town has
25 gotten to know me and know my word, I am true to my word,
and if I can do quality architecture without copper, it will

1 be done. If I can't, what I can guarantee is it will be
2 sealed or coated if it violates any type of endangered
3 aspect.

4 CHAIR KANE: Thank you. Other questions for the
5 speaker? Seeing none, I'm going to close the public hearing,
6 and I want to ask the commissioners if they would like to
7 take a short break before we begin discussion? Yes, someone
8 would. Commission Sayoc.

9 COMMISSIONER SAYOC: Actually a question of Mr.
10 Lortz through you. Do you have a copy of the Negative
11 Declaration? I didn't bring mine and there was a reference
12 made by one of the public speakers about it.

13 DIRECTOR LORTZ: We have a copy of the Negative
14 Declaration, but not in the room, so I'd have to go get it
15 for you.

16 CHAIR KANE: Then we'll take a break to do that.
17 Let's be back in seven-and-a-half minutes exactly.

18 (Intermission.)

19 CHAIR KANE: I want to thank all those who spoke
20 tonight, and having closed the public hearing I turn to the
21 commission for discussion or a motion, and first I ask the
22 Commission for a show hands for those who were able to visit
23 the site since the last hearing and ask if there are any
24 disclosures or additional evidence that needs to be put on
25 the record? Let us being then with Commission Bourgeois and
move to his left.

1 COMMISSIONER BOURGEOIS: Lucky me. There were some
2 comments tonight about speaking and voting your conscience,
3 and I really disagree with those comments. I think as a
4 planning commission we have words, we have ordinances, we
5 have guidelines, we have standards and that's how we need to
6 vote. There are those that have told me that I didn't listen
7 to the ordinance that was passed by Town Council the last
8 time I voted at the last Commission meeting, so I really
9 took that to heart and I've been looking at the evidence
10 that's in front of us, what our purview is, what the PD
11 says, and really going back to the Standards. So in that
12 context I'd like to make a few comments.

13 First of all, water is a huge issue in California
14 and I would actually like to applaud this project on its
15 concept of capturing water and reusing it. I think that we
16 should have more projects that are storing storm water
17 onsite and beneficially reusing it, and I would love to see
18 that happen more often.

19 However, I can't approve a planting plan that
20 doesn't have any plants. With all due respect to the
21 geranium versus petunia discussion, we get well-intentioned
22 people that provide us with ornamental planting plans that
23 contain invasive species; as a matter of fact we have one
24 later tonight. So I can't approve a planting plan when I
25 don't know what type of plants are going in and what type of
irrigation is going in, so that makes me think well should

1 be continue this and get more detail? I know that's probably
2 not what anyone wants, to go through this again.

3 Then I come to the fencing plan and this new
4 security fence is a new element that was not in the PD, its
5 location, its type, it's size, the whole concept. At the
6 last meeting we were told the wildlife-friendly perimeter
7 fence that parallels Kennedy and a fence around the pool and
8 that was it. So this is a new element that's not covered by
9 the PD, and to my understanding it violates three standards
10 in the Hillside Development Standards and Guidelines, and
11 those are, and I'll read them really quickly: "That the
12 primary emphasis on fencing shall be maintaining open views,
13 protecting wildlife corridors, maintaining the rural open
14 natural character of the hillsides." The whole purpose of
15 these fences, and if you could see the map, the map is an
16 oversized plan, if you see that fencing plan it actually
17 cordons off a huge segment of the parcel.

18 CHAIR KANE: Commission Bourgeois, could I ask you
19 to give us a page reference?

20 COMMISSIONER BOURGEOIS: Sorry. That is page 42,
21 section #6, standard #1.

22 CHAIR KANE: Thank you.

23 COMMISSIONER BOURGEOIS: And on page 43, standard
24 #4. "Deer fencing, or wildlife fencing, up to a maximum of
25 8' shall be limited to areas around ornamental landscaping."
This goes much further than that. And #5, "Fences shall not

1 be allowed in areas that would impede the movement of
2 wildlife as determined by the decision making body," and we
3 heard a lot of testimony from the Applicant himself, there
4 are significant wildlife resources using this parcel.

5 So for those reasons, this is something that was
6 not covered in the PD and it does not meet the Development
7 Standards and Guidelines, I'm going to go ahead and make a
8 motion for denial on those grounds.

9 CHAIR KANE: Are you in fact making the motion?

10 COMMISSIONER BOURGEOIS: Yes.

11 CHAIR KANE: Are you seeking a second?

12 COMMISSIONER BOURGEOIS: Please.

13 COMMISSIONER TALESFORE: I will go ahead and
14 second that for additional reasons.

15 CHAIR KANE: I'll take that as a second.
16 Discussion?

17 COMMISSIONER TALESFORE: Would you like to hear my
18 additional reasons?

19 CHAIR KANE: I'd love discussion.

20 COMMISSIONER TALESFORE: I'm going to just jump
21 right into this, but I'm going to address it with that the
22 Town Council when they approved the PD did send this forward
23 to the Planning Commission to look at Architecture and Site
24 requirements. Those have to be compliant with the Hillside
25 Development Standards and Guidelines, compliant with the
Hillside Specific Plan, and then alignment with the

1 considerations of Sections 29.20.150 in the review of
2 Architecture and Site applications, which includes but are
3 not limited site layout, landscaping, et cetera, but I'm
4 going to make my comments regarding the architectural
5 elements as they are talked about in chapter five of the
6 Hillside Design Guidelines and those would be, but not
7 limited to use of large windows, glass doors, use of
8 architectural features that increase visual prominence
9 should be avoided, massive tall elements such as two-story
10 entries, et cetera.

11 So if I looked at this project and even though I
12 might look at the project and take the turrets out, it's
13 still a very big, massive, bulky house and the objectives
14 and the goals of the documents I had cited before really ask
15 us to work with applicants or have the applicants address
16 those requirements that reduce that visual appearance. So
17 even if I took those out, we would still have a very large
18 house. If I even asked the Applicant to inset the hundreds
19 of windows by perhaps a foot to lessen reflectivity and the
20 light that will emanate from them at night, it's probably
21 not going to be enough. If I ask the Applicant to possibly
22 step back the side of the garage that takes up a large
23 proportion of the front façade of the house, if I asked him
24 to step that back, it still wouldn't cut down on the
25 hardscape, and tonight he said he wouldn't probably have the
motor court be permeable. We're talking a lot of alteration

1 and a lot of infill of material that our Hillside Design
2 Guidelines, if you read any page in chapter five, will tell
3 you to avoid, both Guidelines and Standards.

4 When the Town Council approved this they gave four
5 exceptions, but they didn't give the exception that the
6 Applicant could bypass Architecture and Site and that's why
7 we're here tonight, and I don't believe that the level of
8 excellence that's required for a PD that addresses and to
9 de-emphasize the volume, bulk and mass is here; I can't see
10 it. I have turned down and turned back for redesign, as the
11 rest of some of our commissioners have done over the years,
12 many other applications that came a lot closer to meeting
13 all of the requirements in our Hillside Design Guidelines,
14 and so for that reason I support the motion.

15 CHAIR KANE: Commissioner Micciche.

16 COMMISSIONER MICCICHE: I'm wouldn't support a
17 motion for denial at all, my reason being is none of the
18 reasons given I feel couldn't be handled through either a
19 continuance or at least redirection of certain conditions. I
20 believe we could come up with something for the copper, I
21 believe we could come up with something for the plants, to
22 direct the Applicant to meet those standards that we feel
23 have to be met. On the fencing issue, if it's contrary to
24 the original PD, I can understand that, but I do not see
25 enough issues here that would warrant a denial. A

1 continuation or a motion of approval with certain conditions
2 would be more to my thinking.

3 CHAIR KANE: Thank you. Commissioner Sayoc.

4 COMMISSIONER SAYOC: I'm going to support the
5 motion. The previous commissioners that are supporting the
6 motion have stated their reasons and I completely concur
7 with those. There are a couple of more things that I would
8 like to add though to the record.

9 As I mentioned earlier, one of the things that's
10 quite important is the finding that I make be supported by
11 evidence contained in the record, as I mentioned during the
12 discussion, there were several reports and studies that I
13 felt were lacking for me to make a decision. There are also
14 two more that I want to point out now after looking at the
15 Negative Declaration and I'd like to include that as well.

16 The first is with regard to the storm drainage,
17 which was something that we had discussed that relates very
18 strongly with the hydrology, the grading, and I know grading
19 is not an issue, but I'm going to focus more on the
20 hydrology and the landscaping. It says on page 15 of the
21 Negative Declaration regarding to storm drainage, "Plans do
22 not indicate the locations of catch basins and inlets. These
23 improvements will be defined as part of the storm water
24 management plan, which will be required by the Town as a
25 condition of project approval." I think this ties in very
strongly with the landscape issues, the hydrology issues,

1 and a lot of the runoff issues that we had discussed today.
2 There are still some questions that remain, and based on the
3 information I have in front of me this is a valid reason for
4 me not to vote for this project approval to move on.

5 The next thing, something that I kept talking
6 about, the water quality. I just want to put it back on the
7 record, this is documentation supporting it, new more
8 stringent water quality regulations of the Clean Water Act
9 have recently been triggered by the National Pollution
10 Discharge Elimination System Permit Program has failed to
11 protect beneficial uses of Santa Clara County's creeks and
12 the South San Francisco Bay. Evidence includes violations of
13 ambient water quality criteria, high concentrations of toxic
14 substances, and there are consumption health advisories. If
15 you go to the specific information you'll find, again,
16 copper is highly regarded as one toxic chemical that can be
17 so easily remediated; just don't use it. There's no way to
18 mitigate it.

19 So here's another portion in our official
20 documents in our Negative Declaration that gives me strong
21 reason to support the motion and not allow approval of the
22 project as it is.

23 CHAIR KANE: Thank you. Commissioner Jensen.

24 COMMISSIONER JENSEN: Since we're all making
25 speeches, I cannot support the motion, and that is not
because I disregard the Hillside Standards. In fact, ages

1 ago before many of you probably got involved in these Town
2 processes, I was on the Hillside Standards Committee and
3 participated in developing some of those standards, and
4 you've asked us to vote our conscience. My conscience
5 requires me to follow the legal process that's established
6 by the laws of California and the land, and it requires me
7 to follow the democratic process. Mr. Donnelly stood up and
8 said there's a democratic process to change rules.
9 Unfortunately that happened in this case. This project came
10 before the Planning Commission, it was denied, it was
11 appealed, it went to the Town Council, it went through a
12 democratic process to change the ordinance and develop a new
13 ordinance, which are now the rules we have to follow,
14 whether we like them or not. I'm not going to tell you
15 whether I like the rules or not, I'm just going to tell you
16 I respect the rules. I respect all of you coming here and
17 all the time and energy you've put into this, but I think
18 now the process requires a different forum, and you've gone
19 to that forum and that's the courts.

20 The Planning Commission is an appointed body,
21 which is required to follow the ordinances that are passed
22 by the Town of Los Gatos, so as a Planning Commissioner I
23 feel obligated to follow the ordinances of the Town. I do
24 that when I make decisions on other projects aside from
25 this. You've asked us to consider projects all the same. In
doing that we need to follow the ordinances set by the Town.

1 On May 19, 2008, like it or not, our Town Council passed an
2 ordinance, and that approved a Planned Development for this
3 property, and one of the things it did is say in Section 2,
4 #4, it approved a water well for irrigation subject to
5 issuance of a permit from Santa Clara Valley Water District.
6 The Town Council has taken the issue of the well off the
7 board. If people disagree, the court is the place for that
8 to be discussed. It also approved ornamental landscaping and
9 it only specifies that, "Any planting beyond those areas,
10 that being 30' of the perimeter of the area formed by the
11 main house, pool and cabana and within 30' of other
12 structures on the property," someone could consider areas
13 beyond that to be native vegetation that is drought and fire
14 resistant and planted in natural clusters; that's the only
15 direction that we have, that's the only thing we can do, I
16 don't think we have anything that indicates that's not being
17 done.

18 With respect to the fencing, the Town Council in
19 the May 19, 2008 ordinance at page 3, Section 7, says
20 specifically that fencing is allowed, "as necessary to
21 provide security on enclose ornamental landscape areas as
22 described in Condition #5 to prevent wildlife grazing." So
23 the Town Council made a decision the fencing is okay to keep
24 animals out. Again, that could be challenged in a court
25 process.

1 So I think that unfortunately what we're
2 discussing here is kind of painting and what the fence looks
3 like. The Town Council made an ordinance; it made findings
4 that there were not environmental impacts. You're
5 challenging that in court. I encourage to you keep doing
6 that; that's the proper forum. So I can't support a motion
7 that I think is in violation of the specific ordinance and
8 directives of the Town Council that we are obligated to
9 follow as a body of the Town. The democratic process
10 requires us to follow the law. That's the ordinance passed
11 May 19th, so I can't support the motion.

12 CHAIR KANE: Thank you. I'm going to follow-up on
13 that, Commission Jensen, because that's where my dilemma has
14 been. I've studied the PD and tried to define the narrow
15 corridor that remained to us on this reduced A&S scope
16 decision, and it got down to a pretty narrow corridor on the
17 three plans we asked for plus a discussion on hydrology, and
18 I came to the meeting thinking that it wasn't all out there.
19 But with the testimony tonight and listening to the
20 commissioners who understand some of these things better
21 than I do, and I trust their judgment, and I'd respectfully
22 disagree that these issues are in front of us and are not in
23 disregard for the ordinance from the Town Council, that they
24 put this before us as decision to be made and we have found
25 that there are questions and concerns in this narrow
corridor, and we found a degree of implacability in dealing

1 with this on the issues that were raised. We're very close
2 to having a deal, and in my mind I was very close to seeing
3 this project go forward, but I think in listening to the
4 discussion of the Commission and the discussion of the
5 Applicant, I've been moved to support the motion.
6 Commissioner O'Donnell.

7 COMMISSIONER O'DONNELL: Commissioner Jensen said
8 many things that I agree with. Unfortunately our original
9 decision, fortunately or unfortunately, we don't get paid to
10 make decisions; we make decisions. The Council doesn't get
11 paid, but they make the final decision, and they made a
12 final decision. I didn't agree with what it began with, but
13 I agree now those are my marching orders.

14 I think on the other hand this has been a very
15 confusing exercise. I've heard some people comment on things
16 that I don't think we have any jurisdiction to speak about,
17 but that's merely my opinion and I clearly could be wrong.

18 But it's unfortunate when we have something that
19 is so difficult, because of the way it came to us. That
20 ought not to be and I am embarrassed for the difficulty we
21 have put people through on this particular procedure. It
22 shouldn't take this long to say no or yes, and I am
23 empathetic with the Applicant who says, "Look, up, down, but
24 get it done," and I think he's absolutely right.

25 The Council made the decision that got us here. It
sounds like they're going to make the decision that will end

1 it. It's fairly clear to me that the majority of this
2 commission wants to vote no on this. I don't. I don't think
3 things should be this hard and I have a different view of
4 what the Council decided and it's unimportant whether I
5 agree with it. You cannot have a system where the ultimate
6 body that makes the decision tells you something and you
7 ignore it. When people say vote your conscience, if your
8 conscience doesn't tell you to do what the law instructs you
9 to do, then you've got a misformed conscience. So my job is
10 to take this work that I'm supposed to do and follow what I
11 believe the law requires me to do. I'm not saying I'm right,
12 because I respect my fellow commissioners who disagree with
13 this, but my view tonight is much closer to Ms. Jensen's and
14 Mr. Micciche's position than the others.

15 I'm not going to say any more, because you could
16 really go on, but I think basically we should never go
17 through this again. If the Council basically wants to do
18 what they did on this one, and they believe that we have so
19 much detail that they want to approve that detail, when it
20 comes back to us, if it comes back to us, I sure would like
21 some better guidance of what it is we're supposed to deal
22 with. If the issues tonight only concern the kind of things
23 that Commissioner Bourgeois discussed, I can understand
24 that. If we get into some of the broader areas, then I don't
25 understand it. So I'll simply say tonight I don't support
the motion and I would ask the Council if this ever occurs

1 again, please give us clearer instructions. Thank you very
2 much.

3 CHAIR KANE: Thank you. Further discussion?
4 Commissioner Bourgeois.

5 COMMISSIONER BOURGEOIS: I would just like to
6 clarify my motion, because there may be some confusion. What
7 I heard the direction from Staff about what we had
8 jurisdiction over was plant species, types and locations of
9 fence, and that's what my motion is based on, and that's
10 because I feel I got direction that those were things I had
11 jurisdiction over tonight, and the fence is a new element
12 and I can't make the finding that it's in compliance with
13 the Hillside Standards and Development Guidelines, and we
14 don't have what I consider an adequate planting plan. That's
15 what my motion is based on.

16 CHAIR KANE: Thank you. Mr. Lortz.

17 DIRECTOR LORTZ: Just a thought. If what you just
18 said is certainly the way you feel, the question would be
19 whether you could approve the project with two things: One
20 is that the ornamental landscape plan and the irrigation
21 plan return to the Planning Commission for approval, and
22 whether this ornamental and security fencing plan be
23 returned to the Planning Commission for approval.

24 COMMISSIONER BOURGEOIS: And that's why I made the
25 comment that I was thinking of a continuance, but I don't

1 think it serves the process well to do this yet again, so
2 that's why I decided to move for denial.

3 CHAIR KANE: Commissioner O'Donnell.

4 COMMISSIONER O'DONNELL: I understood Commissioner
5 Bourgeois' motion and I think it was well formed and I think
6 there was a basis for it, so I don't disagree with the
7 motion. However, when I head the support for the motion it
8 went far afield and I want to be very careful in my comments
9 to say that I believe those comments were not within our
10 purview, so when somebody says I support the motion for
11 reasons unrelated to the motion, I just want the record to
12 be clear that personally I think that's a confusion and
13 unfortunately I think it's a confusion that could have been
14 perhaps cleared up and I would just ask the Council in the
15 future to clear it up for us, because maybe I'm wrong, maybe
16 that kind of saying that I support your motion on two or
17 three grounds, on six other grounds, is...

18 CHAIR KANE: People have their reasons for
19 supporting the motion.

20 COMMISSIONER O'DONNELL: No, I'm just saying if
21 the Council would make it clear I don't think we'd have that
22 problem.

23 CHAIR KANE: Thank you. Commissioner Micciche.

24 COMMISSIONER MICCICHE: I'm only going to make one
25 more comment. When this project first started, as I recall
it was 25,000 square feet when we did a review meeting on

1 it, and it was a joke; we quickly got that down. We've seen
2 it a number of times. My logic when I supported the fact
3 that it could go forward was that if we put two 6,000 square
4 foot homes on that, would I have hydrology issues more than
5 I have now? Would I have more fencing? Would I have more of
6 all the things that we're talking about? So with the
7 exception of the copper, I prefer one 9,000 square foot home
8 over two 6,000 square foot homes, which was an option he had
9 to do, and that's why I feel that this thing could go
10 forward or be continued to cover the elements that are being
discussed tonight.

11 CHAIR KANE: Thank you. Further discussion?

12 COMMISSIONER O'DONNELL: I have a question of
13 Staff. Mr. Lortz, I didn't understand you to say to continue
14 the matter, I understood you to say that if the motion is
15 concerned about the matters cited, those matters could be
16 kept open and the balance of the project would be approved,
17 so the only thing that would come back would be those
18 essentially attention to detail on the plans and on the
19 plant specifications. So if the maker of the motion
20 otherwise feels constrained to approve the balance of the
21 project, that was your suggestion, wasn't it?

22 DIRECTOR LORTZ: Yes, it was, and that's
23 consistent with the way the Commission has handled other
24 projects where they wanted to go ahead and take action but
25 have certain items brought back to them. We did that on

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1 Reservoir Road where the landscape plan was returned to the
2 Planning Commission.

3 CHAIR KANE: Further discussion? Seeing none, I'm
4 going to call the question. There's a motion to deny the
5 application. All those in favor, say aye. All those opposed?
6 The motion succeeds 4-3. Do you need names? Commissioner
7 Bourgeois, Commissioner Talesfore, Commissioner Sayoc,
8 Commissioner Kane vote for the motion. Commissioner Jensen,
9 Commissioner Micciche, Commissioner O'Donnell vote against
the motion. Mr. Korb, are there appeal rights?

10 ORRY KORB: Yes, there are. Anyone dissatisfied
11 with the decision of the Planning Commission may appeal the
12 decision to the Town Council. An appeal must be filed with
13 ten days. It must be filed upstairs in the Clerk Department.
14 There are fees for filing an appeal.

15 CHAIR KANE: Thank you all for coming.
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LOS GATOS PLANNING COMMISSION 8/27/2008
Item #2, Kennedy Road at Forrester Road

The Honorable Barbara Spector Mayor
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95032

September 15, 2008

Dear Mayor Spector and Council Members,

This letter summarizes my thoughts to you regarding my recent Architecture and Site (A&S) application submittal. I am before you as my project was denied 4-3 at the August 27th commission meeting. The basis for the appeal is as follows:

- 1) The Planning Commission seemed to be challenged with numerous policy issues regarding this project and therefore erred or abused its discretion. The Planning Commission denied the A&S based on matters that have already been approved by the Council as part of the PD, instead substituting its own views. It also wanted to impose arbitrary and capricious requirements based on personal preferences of some of the Commissioners, not on Town codes or policies.
- 2) The Planning Commission has no discretion to modify policy set by Council. The Planning Commission did not act within the scope of the Council's PD approval. Four members disagreed with the Council approval, and took this action based on that disagreement instead of adhering to the Council approval as having set the zoning for this property.
- 3) I think an important point to note is that from our understanding working with the Town, we have submitted an A&S package that is one of the most detailed (if not the most detailed) that the Town has seen. This is partly because the PD was so detailed and we have maintained the consistency of the PD as confirmed by the Town's Consulting Architect.

The Planning Commission overstepped its authority or failed to follow council direction when denying the project for the following reasons:

1. Landscape lighting not complete enough. Our plan is consistent with the PD and as we understand has much more detail than is required for A&S approval. Any further detail would be impractical at this stage of the project and would virtually be construction level plans.
2. Ornamental landscaping is another policy issue where specifying ornamental plants that will be used is not an A&S requirement. It is premature to define a final plant palette until all field conditions such as shade, soil, water are finalized.
3. Fencing/ wildlife movement. All fencing that is proposed is allowed in PD including security fencing. From a policy perspective the Commission should not have denied the A&S because there was security fencing. The fencing plan allows wildlife movement and access throughout much of the property.
4. Copper roof on an accessory structure. Again, there is no policy, guideline or other documentation in the Town including the hillside standards stating that copper may not be used. Also, there are studies on both sides of the question around copper and in light of your recent decision and the fact that the architecture attached to the PD had copper, this is both an error and policy issue.
5. Concerns around Hydrology and water consumption. This is not an A&S requirement and there is no policy on this. Further, a well was discussed and approved in the PD.
6. House and site does not meet the Hillside Development Standards and Guidelines (HDS&G) as per the PD recently approved on my property. This is a policy issue that was already resolved by the Council and not adhered to by the Commission.

Background information:

As you know, we began developing our long term family home over 4½ years ago working collaboratively with the Town and neighbors. In May, with unprecedented detail, controls and forfeiture of future development rights, the Town Council approved the PD for my project. The architectural design for the PD was very detailed and the Town's Consulting Architect said the project was well designed.

I am now seeking approval for my A&S application. The application is designed in a manner specifically and explicitly consistent with the PD. The site layout, architectural style and design has not changed from the approved PD. The house size has been revised to specifically conform to the size in the PD. Staff and the Town's Consulting Architect have reviewed the application and found the design consistent.

Besides being environmentally sensitive to the site, we have also designed the home to be a national model for sustainability and green building. We have committed to exceeding title 24 requirements and the new "Green Point Rating System" that has been recently adopted by the Santa Clara county cities for "Build it Green" for sustainable construction. We hope when all is done that this home is one of the most green, sustainable and model homes in the country and something the town can be very proud of.

Of the six policy issues mentioned above, I have some additional explanation that I think might be helpful on four of these issues, as follows:

1. Landscape – we have submitted the landscape plan which is consistent with what was submitted with the PD. The areas with ornamental landscape, grass, transitional landscape and non landscaped areas are all shown on the plan. The transitional landscape is based on materials recommended in the HDS&G. This is an associated condition in the A&S application. The grass type and ornamental landscaping will need to be defined at the appropriate time based on field conditions such as shade, drainage, soil, etc.
2. Fencing/wildlife movement – In looking further into the fencing and security of the property, it became obvious that a security fence was needed. Based on the topography and developed area of the land, the security fencing was fairly obvious to design. Taking security, visual impact and wildlife movement into account into consideration we designed the fence location to allow open space for wildlife on over half the property. Animals will have the ability to move north, south, east and west across the property. It should also be noted that the properties to the north, west and some of the east are already fenced so there are no "migration" paths to these yards.
3. Copper – The use of copper was another item of concern. The current design calls for a copper roof on one accessory structure – the "art studio" which looks like a barn. Copper may also be used for gutters, down spouts, flashing, etc., as is typical for high end construction. The use of copper has not to-date been considered an environmentally unfriendly item. We believe the concern was around being environmentally sensitive to rain run off the copper roof. With the drainage system and water collection systems being installed, the small size of the roof and the opportunity to coat the copper if needed, we believe this is a non-issue. That said, we are exploring the use of other materials and can assure the Town that we will complete the design in an environmentally sensitive way.
4. Irrigation / Hydrology - I was also asked about water usage so we studied and considered ways in which to do that. Two things quickly became obvious:
 1. There was no way at this stage to do a precise hydrological water balance calculation
 2. There is a good way to share our plan and that is what I will now do:

The first thing is to understand the water sources available for consideration. They are: rain water collection, an on-site well (which was approved in the PD and will be permitted through the Santa Clara Valley Water District), and municipal water. In looking at annual rainfall, collection potential and local well flow rates we were able to understand approximate water resources. The second item was to then break the site up into the different areas of landscape, non-landscape, and structure. Then, based on irrigation needs we can estimate water requirements.

Here are the findings:

Of the 13.71 acres, only 10-15% will be landscaped. Of that, over half will be native and low water transitional plants. With this data we then looked at water requirements and this is what we found:

1. Rain collection potential could handle 150% of the annual irrigation needs
2. Well water at the minimum flow rate of 10g/m (range is 10-200g/m in local area) would produce 120-180 times the annual irrigation needs
3. San Jose Water could be used if needed, but as it stands we would consume much less municipal water than most landscapes in Town on SJW

With this water strategy, we feel we have the ability to achieve a balanced water design based on the variables we will uncover during the project on flow rates, storage costs, etc... The irrigation system will also be designed in such a way to use low amount of water to avoid waste. Such techniques can be accomplished by using drip irrigation and other methods.

All of the submittals have been done to be consistent with the PD plans as approved, and with the conditions of approval, so that they are also fully consistent with the HDS&G as approved by the Council.

Please do not hesitate to contact me if you have questions or need additional information. I can be reached at 348-1202. I thank you for your kind consideration of our home plans.

Sincerely,

Rob DeSantis