

**MINUTES OF THE TOWN COUNCIL/PARKING
AUTHORITY/REDEVELOPMENT AGENCY
OCTOBER 6, 2008**

The Town Council of the Town of Los Gatos conducted a Regular Meeting on Monday, October 6, 2008 at 7:00 P.M.

TOWN COUNCIL/PARKING AUTHORITY/REDEVELOPMENT AGENCY

MEETING CALLED TO ORDER

ROLL CALL

Present: Mayor Barbara Spector, Vice Mayor Mike Wasserman, Council Member Steve Glickman, Council Member Diane McNutt, and Council Member Joe Pirzynski.

Absent: None.

PLEDGE OF ALLEGIANCE - LED BY FUTURE LEADER

Jennifer Miller, Ally Weinstock, and Katie Sims, Girl Scout Troop 61270 led the Pledge of Allegiance. The audience was invited to participate.

CLOSED SESSION REPORT

CONFERENCE WITH LABOR NEGOTIATOR

(Government Code Section 54957.6)

Town Negotiator (Lead): Greg Larson

Town Manager Employee Organization: Management Compensation Group

Mr. Korb, Town Attorney stated that direction was given and no action was taken.

PRESENTATIONS

Proclamation "No Drugs Down the Drain"

Mayor Barbara Spector proclaimed the week of October 6, 2008 as "No Drugs Down the Drain" week.

Commendation

Kendra Burch, Historic Preservation Committee

Mayor Barbara Spector presented a commendation to **Kendra Burch** for her service on the Historic Preservation Committee.

Ms. Burch thanked Council, staff, and the community.

TOWN COUNCIL

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. **Ratify Appointments of members and alternates to the Los Gatos Youth Commission and Parks Commission as recommended by the Ad Hoc Council Sub-Committee.**
2. **Adopt resolution granting an appeal of and reversing 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-2 1/2:PD. APN 537-29-007 & 008. Architecture and Site Application S-08-55 Property Location: Kennedy Road @ Forrester Road Applicant/Appellant: Rob DeSantis. Property Owner: Acorn Trust. RESOLUTION 2008-107**

Consent Items – Continued

3. **PPW Job No. 05-17 - Highway 9 Safety Improvements Project 411-812-0101.**
 - a. **Adopt resolution authorizing Town Manager to execute an amendment to the construction agreement with HSR, Inc., from \$665,720 to \$772,579. RESOLUTION 2008-108**
 - b. **Adopt resolution authorizing Town Manager to execute an amendment to the construction management agreement with CSG Consultants from \$119,000 to \$129,000. RESOLUTION 2008-109**
 - c. **Adopt resolution accepting work of HSR, Inc., and authorizing the Town Manager to execute Certificate of Acceptance and Notice of Completion for recording by the Clerk Administrator. RESOLUTION 2008-110**

TOWN COUNCIL/REDEVELOPMENT AGENCY

4. **Approve Council/Agency minutes of September 15, 2008.**
5. **PPW Job No. 07-20 - University Avenue Street Repaving Project (from Mullen Avenue to Main Street) Project 911-812-0105 Adopt resolution accepting work of Joseph J. Albanese, Inc. and authorizing the Town Manager/Executive Director to execute Certificate of acceptance and Notice of Completion for recording by the Clerk Administrator/Secretary of the Redevelopment Agency. RESOLUTION 2008-111**
6. **Accept Fiscal Year 2007-08 Annual Report.**

Mr. Davis pulled consent Items #2 and #4.

Mayor Barbara Spector stated that the pulled consent Items would be heard after Other Business.

MOTION: **Motion by Vice Mayor Mike Wasserman** to approve Consent Items #1, #3, #5, and #6.
Seconded by Council Member Joe Pirzynski.

VOTE: **Motion passed unanimously.**

Consent Items – Continued

Mayor Barbara Spector acknowledged the appointment of **Jessica Jolley**, **Audefeh Sajjadi**, and **Alex Guyton** to the Youth Commission.

Mayor Barbara Spector thanked Parks and Public Works for the efficient paving of University Avenue.

VERBAL COMMUNICATIONS

Ms. Johnson

- Questioned if the Town was assisting the Nail Works with finding a new location.

Mr. Davis

- Questioned why the candidate Forum was not televised.
- Commented on supporting **Barbara Spector** and **Michael Kane** for Town Council.
- Commented about the **Sara Cole** case and that the dirt area in front of Blossom Hill Park is an attractive nuisance.

Mr. Larson, Town Manager

- Commented that the candidate forum was sponsored by the League of Women Voters, not the Town.
- Commented that KCAT plans to broadcast the event this week, and that the forum is available for review on the Town's website.
- Commented that the Town Planning staff is working with the Nail Works on a location in the downtown area.

Closed Verbal Communications

TOWN COUNCIL

PUBLIC HEARINGS

7. **Consider a request for approval to modify an existing Conditional Use Permit to allow full liquor service with modified hours of operation on property zoned C-2. Conditional Use Permit U-08-010. Property location: 330 N. Santa Cruz Avenue. Property owner: Meldimar LLC. Applicant: Richard Cole/M.S.D. Restaurant Co. LLC.**

Staff report made by **Joel Paulson**, Associate Planner.

Council Comments

- Questioned if there is a requirement for the kitchen to remain open during hours of operation.
- Questioned if there is a requirement for the applicant to meet with the neighbors.

Mr. Korb, Town Attorney

- Clarified that the Conditional Use Permit requires that the applicant meet with the neighbors.
- Suggested that the applicant keep a record of complaints and provide a complaint hotline phone number.

Open Public Hearing

Mr. Kay, Applicant

- Commented about the applicant's desire for later hours of operation and alcohol service with meals.
- Commented on the background of the new business and the owner's affiliation with the community.
- Commented that alcohol will be served with dinner.
- Commented that the applicant will work with the neighborhood to resolve noise issues and other complaints.

Council Comments

- Questioned the hours of operation approved by the Planning Commission verses the hours of operation requested by the applicant.
- Questioned if the restaurant has an open air area which could be used as a bar.

Public Hearing Item #7 – Continued

Mr. Kay

- Clarified that the Planning Commission's recommended action required that alcohol service stop one hour prior to closing.
- Clarified that the area is not referred to as an open air bar and that alcohol would not be served without a meal.
- Commented that the restaurant fully complies with the ABC regulations.

Mr. Silva

- Commented on supporting the Chicago Steak and Fish restaurant.
- Commented that the outdoor speakers can barely be heard from the sidewalk.
- Commented that the establishment does not have a bar, but a service area where a customer can wait to be seated or eat dinner.

Mr. Knowles

- Commented on supporting Chicago Steak and Fish restaurant.
- Commented that he has seen people eating dinner at the waiting area and that it is not perceived as a bar.

Council Comments

- Questioned if **Mr. Knowles** thought it would be detrimental to the restaurant if it closed at midnight.

Mr. Knowles

- Stated that if the restaurant was allowed to serve alcohol with meals until closing that the midnight closing time would not be detrimental to the restaurant.

Ms. Campbell

- Commented on supporting Chicago Steak and Fish Restaurant.

Mr. Hossehlopp

- Commented on supporting Chicago Steak and Fish Restaurant.

Mr. Miller

- Commented on supporting Chicago Steak and Fish Restaurant.

Mr. Carter

- Commented on supporting Chicago Steak and Fish Restaurant.
- Commented on the affordable menu at the establishment.
- Commented on the owner's community support.

Public Hearing Item #7 – Continued

Council Comments

- Questioned the hours of operation for other dining establishments in Town.

Ms. Southard

- Commented that parking has been impacted on Almendra Avenue since the restaurant opened.
- Commented that she opposes the late hours of operation.

Council Comments

- Commented about the permit parking program on Almendra Avenue and questioned if the Town enforces parking during the evening.

Mr. Larson

- Commented that the Town has hired two Parking Control Officers which will help enforce parking in the neighborhoods.

Council Comments

- Questioned staff's capability to monitor noise levels.

Mr. Larson

- Commented on the importance of an auditable log to track complaints.

Ms. Lee

- Commented against the request for extended hours of operation for the restaurant.
- Commented that the late night hours would lower the value of their homes.
- Questioned how the Conditions of Approval would be enforced.

Council Comments

- Requested clarification as to the location of the businesses who signed the petition.
- Commented that residents along Tait Avenue also signed the petition.
- Expressed concern about noise levels on Almendra Avenue.

Public Hearing Item #7 – Continued

Mr. Melzig

- Commented on supporting Chicago Steak and Fish restaurant.

Mr. Kay, Applicant

- Commented about monitoring the noise levels and that it is unfair to blame the establishment for increased noise along Almendra Avenue.
- Commented that the restaurant owners are willing to work with the neighbors and that a complaint log is acceptable.

Council Comments

- Questioned if the 12:00 a.m. closing time would be acceptable to the applicant if alcohol was served with meals until closing.
- Questioned if applicant has concerns about shutting the outdoor speakers down at 9:00 p.m.
- Questioned if the applicant has concerns about maintaining a complaint log.

Mr. Kay

- Commented that his main concerns are the hours of operation and alcohol service with meals during those hours of operation.

Mr. Korb

- Suggested that the restaurant maintain a complaint number with a recorded message that would be checked daily.

Council Comments

- Questioned the success of the restaurant if wine and beer were sold.

Mr. Kay

- Clarified that the full liquor permit would help make the restaurant more successful.
- Commented that the existence of Chicago Steak and Fish does not influence the number and behavior of patrons who may travel on Almendra Avenue.

Council Comments

- Questioned if the applicant is agreeable to the hours of operation as recommended by the Planning Commission.
- Questioned if the applicant is agreeable to alcohol service stopping one hour prior to closing the restaurant.
- Questioned if the applicant would be agreeable to a 9:00 p.m. turn-off time for the outdoor speakers.
- Questioned if the applicant is agreeable to the review process and interface with the neighbors.

Public Hearing Item #7 – Continued

Mr. Kay

- Commented that he is agreeable to the recommended hours of operation, but not if the alcohol service stopped one hour prior to closing.
- Commented that he is agreeable to the outdoor speaker regulation.
- Commented that he is agreeable to the review process and interface with the neighbors and suggested that complaints be filed in written form so they can track them.

Closed Public Hearing

Council Discussion

- Commented that the application should not include the outdoor speakers.
- Commented that the alcohol policy is geared towards stand alone bars and provides solutions for restaurants to serve alcohol with food service.
- Commented that noise could be heard along Almendra Avenue, and was less noticeable as you walked towards Tait Avenue.
- Commented that the noises levels on Saturday evening were not as loud as the sound of cars driving by on N. Santa Cruz Avenue.
- Suggested that parking enforcement be maintained in the residential parking zones.

MOTION:

Motion by Council Member Joe Pirzynski to make the required findings as stated in Attachment 1 of the staff report and to approve the recommended Conditions of Approval as stated in Attachment 2 with exceptions to:

Amend Condition #7 to strike out "Alcohol service shall end one hour before closing."

Remove Condition #8.

Seconded by Vice Mayor Mike Wasserman.

Public Hearing Item #7 – Continued

Council Discussion

- Commented that the word "Neighborhood" uses under Item #13 of the Conditions of Approval is vague.
- Asked the **maker of the motion** if item #13 could be modified to define the neighborhood and if there is a change of ownership, the new owners would be required to meet with staff to review the Conditional Use Permit.
- The **maker of the motion** agreed to the modification.
- Commented that since 2003 Council has not approved any stand alone bars.
- Questioned the process to revoke a Conditional Use Permit.
- Expressed concerns about observing patrons hanging around the open bar area and that the area may be perceived as a bar.

Mr. Korb

- Suggested modifying the Condition of Approval Item #13 to define the neighborhood as a 300 foot radius as used for noticing land use applications, to require that the applicant maintain a phone number that can be accessed 24 hours a day, and a complaint log which may be referenced.
- Commented on the process for revoking a Conditional Use Permit.

Council Discussion

- Commented about the Town noise ordinance.
- Commented on the enforcement of the Town Residential Parking program and enforcement.
- Commented that Conditional Use Permits go with the land.
- Commented that it is important for the applicant to maintain the complaint log and discuss the complaints with the neighbors.
- Commended the Planning Commission on their recommendations regarding the application.
- The **seconder of the motion** agreed to the requested amendments.

Public Hearing Item #7 – Continued

MOTION: **Amended motion** by **Council Member Joe Pirzynski** to make the required findings as stated in Attachment 1 of the staff report and to approve the recommended Conditions of Approval as stated in Attachment 2 with exceptions to:
Amend Condition #7 to strike out "Alcohol service shall end one hour before closing."
Remove Condition #8.
Motion amended to include:
modifying the Condition of Approval under Item #13 to define the neighborhood as a 300 foot radius, to require that the applicant maintain a phone number that can be accessed 24 hours a day, and a complaint log which may be referenced by staff and the community.
If there is a change of ownership, the new owners would be required to meet with staff to review the Conditional Use Permit.
Seconded by Vice Mayor Mike Wasserman.

VOTE: **Motion carried 4/1. Council Member Steve Glickman voted no.**

Mayor Barbara Spector called for a recess at 9:07 p.m. Meeting resumed at 9:15 p.m.

Public Hearing Item #8

- 8. Update and merge the pre-1941 Design Guidelines and the Residential Development Standards for all single family and two family dwellings in all zones except the Resource Conservation and the Hillside Residential Zones; introduce ordinances amending zoning code consistent with design guidelines (continued from 8/4/08 and 9/15/08) Zoning Ordinance Amendment A-08-01 Historic District Designation Applications HD-08-01, HD-08-02, HD-08-03 and D-08-04. Applicant: Town of Los Gatos. RESOLUTION 2008- 112**

Staff report made by **Greg Larson**, Town Manager.

Public Hearing Item #8 – Continued

Council Comments

- Questioned the process for providing direction on the use of copper.
- Questioned the limitations on two story homes and finds the language is restrictive.
- Suggested providing more flexible language.
- Commented that the language refers to height, mass, and scale to preserve the architectural integrity of the neighborhood.

Mr. Larson

- Clarified the purpose for the recommendations on the use of copper.
- Commented that it is appropriate to raise the issue about the use of copper and to discourage the use of copper for architectural purposes.
- Recommended that the use of copper for architectural purposes should be considered during the General Plan update process.
- Commented that the guidelines provide flexibility relating to the issue of two story homes.
- Commented that the wording is such that it is not a regulatory requirement.
- Suggested that the wording could be amended to read "special consideration should be provided to neighborhoods that are evolving in style, mass, and scale."

Council Comments

- Suggested that the wording be amended to read "that the process is always respectful of the desires of the neighborhood as a whole."
- Commented that the section is about height, bulk, and scale and the issue addresses impacts relating to mass and scale.

Council Comments

- Questioned the issue of fencing and if the prior motion included the Planning Commission's recommendations.
- Requested clarification on the Desk Item.
- Requested clarification about item #5 under the section about cellars.

Public Hearing Item #8 - Continued

Mr. Larson

- Clarified that the minutes reflected the motion to approve the Planning Commission recommendations.
- Commented that staff's recommendations were to consider adding fencing requirements from the Hillside Standards and Guidelines which state "site elements for fences on property that are in areas where wildlife corridors need to be protected and or where open views in the natural character of the hillside should be maintained as determined by the deciding body."
- Clarified that staff comments included the standards and policies from the Hillside Standards and Guidelines for fences, but were not included in the Residential Design Guidelines for sloping lots since the fence standards and guidelines from the Hillside Standards and Guidelines would not be compatible in residential neighborhoods outside of the hillside areas.
- Clarified issues about new construction practices for the Residential Standards and Guidelines as referenced in the Desk Item.

Open Public Hearing

Ms. Dallas

- Commented that the first sentence of the Residential Guidelines celebrates the diversity of architecture, yet the guidelines state that every new home in Town should be similar to the immediate neighborhood.
- Commented that the document would discourage diversity in Town.
- Suggested that the guidelines be sent back for further revisions and should be reviewed by the Architectural Standards Committee.

Mr. Davis

- Commented that the purpose of the guidelines is to serve the people and not the architects.

Closed Public Hearing

Council Discussion

- Requested that staff review the process for adopting the guidelines.

Mr. Larson

- Commented that staff's recommendation would be to move forward with the adoption of the resolution for the Residential Guidelines with four specific changes that were not included in the original draft guidelines.
- Commented that the first modifications would be to include the Historic Preservation language, the architectural copper text, the cellar text addition, and the fencing decision.

Public Hearing Item #8 – Continued

MOTION: **Motion by Council Member Diane McNutt** to approve the Historic Preservation language with the following amendment:
To eliminate the opening clause (Section 4.10, Page 54) and to add the other three revised text blocks as independent bullets.
Seconded by Council Member Steve Glickman.

VOTE: **Motion passed unanimously.**

MOTION: **Motion by Council Member Diane McNutt** to adopt the additional cellar text and additional resolution text and incorporate the text into the draft Residential Design Guidelines.
Seconded by Council Member Joe Pirzynski.

VOTE: **Motion passed unanimously.**

Council Discussion

- Commented that staff's recommendation for fencing is appropriate and that the document should remain as is.
- Suggested language to encourage alternative materials rather than copper until further studies are done.
- Suggested using language that recognizes the concern about the use of architectural copper and encourages the use of alternative materials because of its potential to pollute surface waters in San Francisco Bay.
- Commented that copper is discouraged on page 4 of the staff report.
- Commented that the Residential Guidelines are a work in progress and studies should be done before the word "discouraged" is used in the guidelines.
- Commented that there have been enough studies done to take a position and discourage the use of copper for architectural purposes.

Mr. Larson

- Suggested "that the use of architectural copper is of concern" as an alternative to the word "discouraged."
- Suggested a change at the end of the italicized sidebar which could read; "alternatives to architectural copper should be considered including" and to proceed with alternatives for the applicant.

Public Hearing Item #8 – Continued

Council Discussion

- Suggested the wording: "concerns have been raised by architectural copper and alternatives should be considered."

MOTION: **Motion by Mayor Barbara Spector** to revise the architectural copper section to be consistent with the recommendations by the Town Manager.
Seconded by Council Member Joe Pirzynski.

Council Discussion

- Suggested eliminating all of the text that refers to NPDES.
- Commented that the text should read "the use of architectural copper is of concern because of its potential to contribute pollution to surface waters in the San Francisco Bay through urban run-off."

Mr. Larson

- Clarified that the opening sentence could read: "alternatives to architectural copper should be considered including" followed by bulleted suggestions for alternatives.

Council Discussion

- The **maker of the motion** and the **seconder of the motion** agreed to the suggested text replacing the opening sentence.

MOTION: **Amended motion by Mayor Barbara Spector** to revise the architectural copper section to be consistent with the recommendations by the Town Manager and to include the suggested wording for the opening sentence:
"the use of architectural copper is of concern because of its potential to contribute pollution to surface waters in the San Francisco Bay through urban run-off."
Seconded by Council Member Joe Pirzynski.

VOTE: **Motion passed unanimously.**

Mr. Larson

- Clarified that because of the change to the sidebar, staff feels the policy statement bullet is no longer necessary.
- Commented that the copper text is advisory and not regulatory.
- Commented that there is no action on fencing clarification.

Public Hearing Item #8 – Continued

Council Discussion

- Suggested adding wording that consideration would be given if the applicant proposed a two story home and had neighborhood support.
- Commented that the wording would be added in the introduction of the guidelines.
- Suggested adding the text on Page 10 under the Neighborhood Patterns section.
- Clarified that the wording should include the text "that the input of the neighbors will be considered."

MOTION: **Motion by Council Member Steve Glickman** to add a bullet under 1.0 of the introduction to include "that the input of the neighbors will be considered."
Motion failed due to lack of second.

Council Discussion

- Commented that the wording under 1.4 of Community Expectations does reflect the wording discussed in the prior motion.

MOTION: **Motion by Council Member Diane McNutt** to add wording on the opening section, last sentence, of Page 13 under Neighborhood Patterns that reads:
"the emphasis is on neighborhood compatibility with the recognition that some change is inevitable, may be an improvement to the existing structure and the neighborhood, and may be desired by the neighborhood."
Seconded by Council Member Steve Glickman.

VOTE: **Motion passed unanimously.**

MOTION: **Motion by Council Member Diane McNutt** to adopt resolution for the Residential Design Guidelines as submitted in the staff report and modified by Council.
Seconded by Council Member Joe Pirzynski.

VOTE: **Motion passed unanimously.**

Mayor Barbara Spector directed **Jackie Rose**, Clerk Administrator to read the title of the ordinances.

Public Hearing Item #8 – Continued

MOTION: **Motion by Council Member Diane McNutt** to accept the report in the form of the meeting minutes from the Planning Commission regarding the Town Code amendment (Attachment 2), make the findings that the Town Code amendment is consistent with the General Plan, to introduce the ordinance to effectuate the Town Code amendment, and to waive the reading of all the ordinances.
Seconded by Council Member Steve Glickman.

VOTE: **Motion passed unanimously.**

Mayor Barbara Spector directed the Clerk Administrator to publish the introduction of the ordinances.

OTHER BUSINESS

There was no Other Business scheduled for this meeting.

PULLED CONSENT ITEMS

- 2. Adopt resolution granting an appeal of and reversing 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-2 1/2:PD. APN 537-29-007 & 008. Architecture and Site Application S-08-55 Property Location: Kennedy Road @ Forrester Road Applicant/Appellant: Rob DeSantis. Property Owner: Acorn Trust. RESOLUTION 2008-107**

- 4. Approve Council/Agency minutes of September 15, 2008.**

Mr. Davis

- Commented that the grading from the DeSantis project can be seen from Wooded View Drive.
- Commented that the mountain is being graded into a flat pad for the huge home.

Pulled Consent Items – Continued

MOTION: **Motion by Council Member Steve Glickman to adopt Pulled consent Items #2 and #4 as stated below:**
2. Adopt resolution granting an appeal of and reversing 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-2 1/2:PD. APN 537-29-007 & 008. Architecture and Site Application S-08-55 Property Location: Kennedy Road @ Forrester Road. Applicant/Appellant: Rob DeSantis. Property Owner: Acorn Trust.
4. Approve Council/Agency minutes of September 15, 2008.
Seconded by Council Member Joe Pirzynski.

VOTE: **Pulled Consent Item # 2 carried 3/2. Mayor Barbara Spector and Vice Mayor Mike Wasserman voted no. Pulled Consent Item #4 passed unanimously.**

COUNCIL/TOWN MANAGER REPORTS

9. Council Matters

Mayor Barbara Spector

- Commended the staff on the success of the Screen on the Green event.

Council Member Steve Glickman

- Commented that he has no plans to move to San Francisco.

Council Member Joe Pirzynski

- Commented on the League of California Cities Conference and presented Council with information on fair housing and group homes.
- Commented on information about child-friendly neighborhoods, towns, and cities.
- Commented on the statewide Water Policy Plan.
- Commented on the League of California Cities resolution results.

10. Manager Matters

Mr. Larson

- Commented on the statewide Water Policy Plan and the growing demands for water from Southern California.
- Commented on the adoption of Senate Bill 375.

ADJOURNMENT

Attest:

Jackie D. Rose, Clerk Administrator