



MEETING DATE: 6/1/09

ITEM NO: 11

COUNCIL AGENDA REPORT

DATE: May 26, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER *GL*

SUBJECT: CONSIDER A REQUEST FOR A ZONE CHANGE FROM CH TO CH:PD FOR A TWO STORY COMMERCIAL BUILDING WITH UNDERGROUND PARKING. NO SIGNIFICANT ENVIRONMENTAL IMPACTS HAVE BEEN IDENTIFIED AS A RESULT OF THIS PROJECT AND A MITIGATED NEGATIVE DECLARATION IS RECOMMENDED. APN 424-15-045. PROPERTY LOCATION: **15400 LOS GATOS BOULEVARD**. PROPERTY OWNER: SHP NEWARK, LLC. APPLICANT: KENNETH RODRIGUES & PARTNERS. FILE #PD-07-146 & ND-08-06.

RECOMMENDATION:

1. Hold the public hearing and receive public testimony;
2. Close the public hearing;
3. Make the following motions:

Not accept the Planning Commission's recommendation and approve Option "A" Planned Development Application. If the Council decides to approve the proposed project, the following actions are recommended:

a. **Environmental**

- Make the Mitigated Negative Declaration (Attachment 7) (**motion required**);
- Adopt the Mitigation Monitoring Plan (Exhibit 13 of Attachment 3) (**motion required**).

b. **Approve the zone change**

- Make the required findings for the zone change (Attachment 8) and approve the application subject to the conditions included in the Planned Development Ordinance (Attachment 9) (**motion required**);
- Move to waive the reading of the zone change Ordinance (**motion required**);

PREPARED BY: *WR* WENDIE R. ROONEY
DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: *BS* Assistant Town Manager *DL* Town Attorney
____ Clerk Administrator ____ Finance ☒ Community Development

- Direct the Clerk to read the title of the zone change Ordinance **(no motion required)**;
 - Move to introduce the Ordinance to effectuate the zone change **(motion required)**.
- c. **Alternatives**
- Continue the project to a date certain with specific direction **(motion required)**; or
 - Remand the project to the Planning Commission with specific direction **(motion required)**.
 - Move to deny the zone change **(motion required)**.
4. Refer to the Town Attorney for preparation of the appropriate resolution **(no motion required)**.

BACKGROUND:

The existing 2.03 acre site is located on the southeast corner of the intersection of Los Gatos Boulevard and Gateway Drive. The site was most recently occupied by Swanson Ford and Hertz Rental Car. Prior to that, the site was occupied by McHugh Lincoln Mercury.

On May 14, 2008, the Planning Commission held a Study Session regarding the applicant's original proposal. Minutes from the Study Session are included as Exhibit 3 of Attachment 3. At that time, the applicant was requesting approval of the following:

- A zone change from CH to CH:PD; and
- Construction of a 55,000 square foot, two story commercial building with two levels of underground parking.

Following the Study Session, the applicant revised their proposal to address the Commission and neighborhood input. The applicant also provided a response to the Study Session comments (Exhibit 4 of Attachment 3).

On March 25, 2009, the Planning Commission considered the applicant's revised plans requesting the following:

- A zone change from CH to CH:PD; and
- Construction of a 40,000 square foot, two story commercial building with one level of underground parking.

The applicant provided two elevation options (Exhibit 17 and Exhibit 18 of Attachment 3) for the Commission's consideration. Details of the applicant's proposal are included in Attachment 3. During the public testimony and Commission discussion, concerns were raised regarding the proposed project. As a result, the Commission continued the matter with the following direction:

- Redesign the proposed project to reduce the mass and scale. One option to consider would be moving the single story element of the proposed building to the southern edge of the property, however, other options may be acceptable; and
- Consider alternative or additional Community Benefit.

Following the Planning Commission meeting on March 25, 2009, the applicant revised their proposal to address the Commission's direction.

On May 13, 2009, the Planning Commission considered the applicant's revised plans. The applicant provided two additional elevation options (Exhibit 25 of Attachment 5) for the Commission's consideration. Details of the applicant's proposal are included in Attachment 5. During the public testimony and Commission discussion, concerns were raised regarding the proposed project. As a result, the Commission ultimately recommended denial of the proposed project following several motions that failed due to a lack of majority votes. These motions included a recommendation to approve the project with the Option "A" Site Development Plan and a motion to forward the project to the Town Council without a Planning Commission recommendation.

During their deliberation on the project, the Planning Commission discussed their concerns regarding potential cumulative traffic and neighborhood impacts from the redevelopment of Los Gatos Boulevard. Commissioners questioned whether decisions on the larger projects on Los Gatos Boulevard, such as this one, should be delayed until the General Plan update is completed and more thorough cumulative regional traffic circulation analysis is prepared. A number of Commissioners commented that they were uncomfortable with approving the project without knowing the future vision of Los Gatos Boulevard. The Commission discussed whether a moratorium for larger development on Los Gatos Boulevard should be imposed until the General Plan update was completed.

The Commission and staff discussed the Town Council's recent review and the resulting affirmation of the Los Gatos Boulevard Plan with some minor changes. However, the Commission did not feel that they had enough direction to make an affirmative decision on the project and ultimately recommended denial. The Planning Commission also requested the Town Council hold a special Study Session with the Planning Commission on the Los Gatos Boulevard Plan and consider imposing a moratorium for larger developments along Los Gatos Boulevard until the General Plan update is completed.

DISCUSSION:

A. Project Summary

The applicant is requesting approval of the following:

- A zone change from CH to CH:PD;
- Construction of a 40,000 square foot, two story commercial building with one level of underground parking.

The applicant has provided two site plans and corresponding elevations (Option A and Option B, Exhibit 25 of Attachment 5). It should be noted that the applicant's preferred option is Option A. Further details regarding the applicant's current proposal are provided in Attachment 5.

B. Location and Surrounding Neighborhood

The existing site is located on the southeast corner of the intersection of Los Gatos Boulevard and Gateway Drive. The site has frontage on Los Gatos Boulevard, Gateway Drive and Carlton Avenue. Abutting properties with frontage on Gateway Drive and Los Gatos Boulevard are developed with commercial uses. Abutting properties with frontage on Carlton Avenue are developed with multi-family residential uses. There are a variety of architectural styles and a mix of one and two story structures surrounding the site. Exhibit 14 of Attachment 3 includes photos of existing structures on the surrounding properties.

C. Planned Development Application

A Planned Development (PD) application has been filed because the General Plan encourages projects on sites larger than 40,000 square feet to be processed as a PD. In addition, the Town Council indicated that a change of land use from an auto dealer to another use should go through the PD process.

The purpose of a PD overlay zone is to provide for alternative uses and developments more consistent with site characteristics than are allowed in other zones, to create optimum quantity and use of open space, and to encourage good design. A PD is required to include only conceptual development plans. Detailed architectural plans have been provided as part of this PD application. The applicant has presented well developed plans to demonstrate excellence in architecture and the quality of the project being proposed. The PD Ordinance indicates that the DRC may approve the Architecture and Site application for the project.

D. Zoning Compliance

Option A and Option B (Exhibit 25 of Attachment 5) comply with all Zoning Code requirements.

E. Mass and Scale / Building Placement

The Los Gatos Boulevard Plan (LGBP) and the Commercial Design Guidelines (CDG) are both applicable to this site. These documents provide direction for development and improvements along Los Gatos Boulevard relating to mass and scale and building placement. The documents provide the following general direction:

- Locate buildings adjacent to the street (so that buildings, not parking lots, are seen along Los Gatos Boulevard) and locate parking in the rear.
- Stagger buildings along the Los Gatos Boulevard frontage to avoid a tunnel effect.
- Articulate facades to minimize building mass.
- Frame rather than block scenic views.
- Views to the surrounding hills should be maintained, especially at signalized intersections.

Given these policies, proposed projects fronting on Los Gatos Boulevard need to carefully balance the requirement to locate buildings adjacent to the street frontage with the necessity to be compatible with the surrounding area, minimize mass and scale of structures, and protect views of the hillsides to the maximum extent possible.

F. Neighborhood Compatibility

Staff has provided the following information regarding commercial parcels in the immediate area for the Council's consideration of neighborhood compatibility:

Address	Building	Lot Size	Stories	FAR*
15466 Los Gatos Boulevard	47,182 sq ft	3.77 acres	2	.29
15380 Los Gatos Boulevard	1,008 sq ft	.33 acres	1	.07
15330 Los Gatos Boulevard	3,150 sq ft	.3 acres	1	.24
15300 Los Gatos Boulevard	16,675 sq ft	1.59 acres	1	.24
15299 Los Gatos Boulevard	1,006 sq ft	.24 acres	1	.10
15367 Los Gatos Boulevard	5,820 sq ft	1.2 acres	1	.11
15349 Los Gatos Boulevard	4,000 sq ft	.34 acres	1	.27
15475 Los Gatos Boulevard	4,648 sq ft	1.33 acres	1	.08
15425 Los Gatos Boulevard	15,492 sq ft	1.11 acres	1	.32
15445 Los Gatos Boulevard	27,732 sq ft	1.54 acres	2	.41
15405 Los Gatos Boulevard	15,816 sq ft	1.33 acres	2	.27
15400 Los Gatos Boulevard	40,000 sq ft	2.03 acres	2	.45

*FAR is based on lot size and building size from Metroscan.

While the FAR will be the largest in the immediate area, it should be noted that the FAR has been reduced by 17 percent when compared to the proposal that was considered by the Commission at their Study Session in May 2008. Additionally, most of the existing buildings in the immediate area are older buildings that have at grade parking. As a result, development potential of the sites in the immediate area is significantly restricted because of the large areas of required surface parking.

G. Architecture

The Town's Consulting Architect has reviewed the plans (Option A and Option B, Exhibit 25 of Attachment 5). The Consulting Architect's comments for Option A were:

- The two story focal point element on the Gateway Drive elevation will be much more prominent with the one story roof elements on each side; and
- The reduction in the width of the recessed area on the Gateway Drive elevation has a more awkward relationship to the second floor above.

The Consulting Architect stated that these issues are significant from an architectural design standpoint, but perhaps not critical to the public's perception of the building. He also recommends that additional tree landscaping could be added to filter views to the building in this area.

Staff believes that the increased prominence of this element is appropriate because the proposed one story roof elements will reduce the visible mass at the corner of the Gateway Drive/Carlton Avenue intersection while framing this key intersection. The additional tree landscaping, as recommended by the Consulting Architect, will also help mitigate visual concerns. Staff will add a performance standard to the PD Ordinance to require additional tree landscaping should the Commission recommend approval of Option A. The applicant will be available to provide additional information and further clarification of these issues at the public hearing.

The Town's Consulting Architect also reviewed the elevations for Option B. The Consulting Architect stated that Option B was the old way of designing auto-oriented commercial development along major streets. The Consulting Architect pointed out the negative features of Option B as follows:

- A large parking lot dominates the street frontage;
- Setting the building back to the rear of the site does not create a defining edge to Los Gatos Boulevard;
- The angled portion of the building does little to strengthen the visual edge of Los Gatos Boulevard;
- Pedestrians must pass through the large field of parking to reach the building from the Los Gatos Boulevard/Gateway Drive intersection and pass between the garage ramp and the loading area to reach the entry of the two story portion of the project. Residents on foot from the adjacent neighborhood would be accessing the retail from this direction;
- The intersection corner at Los Gatos Boulevard and Gateway Drive is very weak and is out of keeping with Commercial Design Guideline 5.A.2.6 which calls for major design features at intersection corners; and
- Tenants arriving at the building by car must pass through all of the surface parking lot to get to the ramp serving the below grade parking. This vehicular traffic would be in conflict with shoppers walking from their cars to the retail shops on the first floor of the project.

The Consulting Architect also stated that most communities today are designing their major circulation corridors to be more pedestrian oriented and pedestrian friendly by focusing development and visual interest close to the street. The Consulting Architect discourages the use of Option B. Staff concurs with the Consulting Architect's comments and believes that

Option B does not address the goals of the Los Gatos Boulevard Plan and urban design principles as well as Option A. The applicant will be available to provide additional information and further clarification of these issues at the public hearing.

H. Uses

The applicant is currently considering a mix of the following potential uses: office (medical and/or professional); retail; and up to 10,000 square feet for restaurant. However, the applicant does not want to be limited to specific uses. All of these uses are permitted by Town Code with the exception of restaurant uses which would require a Conditional Use Permit. The CDAC provided input suggesting a variety of potential uses (Exhibit 5 of Attachment 3) which the Council should review.

I. Circulation, Parking and Conditions on Carlton Avenue

Circulation

The existing site currently has two access driveways on the Los Gatos Boulevard frontage. The applicant is proposing one access driveway from Los Gatos Boulevard that will be used for both ingress and egress. This issue was considered in the traffic study conducted by TJKM who determined that the storage capacity for right turn movements from the site is adequate. No concerns were raised regarding ingress to the site.

The circulation for Option B relocates the proposed access driveway approximately 75 feet closer to the Los Gatos Boulevard/Gateway Drive intersection when compared to Option A. This issue was considered by TJKM in the most recent traffic study (Exhibit 24 of Attachment 5). TJKM determined that the proposed access driveway is adequate. Additionally, in Option B the access to the below grade parking will be relocated to the northern end of the site. This will create circulation challenges because users will need to navigate through more of the proposed parking lot to gain entry. The revised below grade parking access will also necessitate passing through pedestrian access points from Los Gatos Boulevard and Gateway Drive which may create additional conflicts.

There is an existing sidewalk on the South, West, and North frontages of the site that could be utilized for pedestrian access. At the Study Session and March 25, 2009, Commission meeting, neighbors expressed concerns regarding direct access from the adjacent neighborhood. Option B includes pedestrian access from Los Gatos Boulevard and Gateway Drive, while Option A only includes pedestrian access from Los Gatos Boulevard. Staff believes that pedestrian access to and from Carlton Avenue and the existing site to the south would be beneficial and help connect the neighborhood and adjacent businesses to the south to businesses in the proposed development.

Parking

Adequate parking must be provided on site. The following table outlines the required parking for commercial uses:

<u>USE</u>	<u>AREA/ # OF SEATS</u>	<u>RATIO</u>	<u>PARKING REQUIRED</u>
Medical Office	30,000 sq ft	1/250 sq ft	120
General Office	30,000 sq ft	1/235 sq ft	128
Retail	30,000 sq ft	1/235 sq ft	128
Restaurant	10,000 sq ft (127 Seats)	1/3 seats	43

Proposed Parking

	<u>Option A</u>	<u>Option B</u>
On Grade	76	61
Below Grade	121	139
Loading	1	1
Total Parking	197	200
Required Parking	163 to 171 depending on mix of uses	

Based on the required parking for the potential uses outlined above Option A and Option B will provide adequate parking pursuant to Town Code requirements.

Conditions on Carlton Avenue

Two other issues relating to existing conditions on Carlton Avenue were also reviewed by TJKM in the most recent traffic study (Exhibit 24 of Attachment 5). The first issue was on street parking conditions behind the existing development to the south (Village Square). TJKM's study concluded:

- That on street parking conditions are relatively higher on a weekend midday peak than on a weekday p.m. peak period; and
- That adequate parking is available during the peak period.

The second issue was traffic conditions for Carlton Avenue. TJKM collected and analyzed Average Daily Trip volumes, speed survey data for two locations on Carlton Avenue, and the accident history. TJKM's study concluded that no unusual traffic conditions have been identified. However, one section of Carlton Avenue showed an 85th percentile speed of 30.8 mph which is above the 25mph posted speed limit. As a result of this finding, TJKM suggests that Town staff consider traffic speed enforcement and/or traffic calming measures. This information will be relayed to the Los Gatos Monte Sereno Police Department. Additionally, the neighborhood can contact Parks and Public Works to discuss a traffic calming program for the neighborhood.

J. Traffic

The Town's Traffic Impact Policy (Resolution 1991-174) requires preparation of a traffic study for any project with the potential to generate 20 or more additional AM or PM peak hour trips. When traffic generated by the previous use is taken into account, the proposed

project would result in a net increase in traffic. The proposed project would generate a net increase of approximately 1,933 average daily trips, 164 AM peak hour trips and 187 PM peak hour trips.

A traffic impact study was prepared by TJKM Transportation Consultants in September 2008. The consultant evaluated project related traffic impacts, trip generation, traffic safety and site access. TJKM concluded that the project is not expected to have any significant impacts on the nearby Los Gatos street network or the freeway study segments. However, they did recommend that the south bound left turn lane at Los Gatos Boulevard/Village Square intersection be extended from 170 feet to a minimum of 200 feet. This recommendation has been included in the PD Ordinance (Performance Standard #35 of Attachment 9). An additional mitigation measure, Performance Standard #36 of Attachment 9 was also included requiring the applicant to contribute to the addition of a second eastbound left-turn lane at the Los Gatos Boulevard/Blossom Hill Road intersection for its incremental share of impact as determined by the Town Engineer.

K. Community Benefit

Pursuant to the Traffic Impact Policy, community benefit is required when the peak hour trips will increase by greater than five trips. The applicant is proposing to provide the following community benefit to offset the potential traffic impacts:

1. Improve and enhance the landscaping in the median on Gateway Drive adjacent to their proposed project. The applicant estimates that it will cost approximately \$62,500 to design and complete this work;
2. Create a new park strip adjacent to Gateway Drive and relocate the existing sidewalk;
3. Construct a new six foot sound wall approximately 100 feet in length on the southern property line up to the proposed trash enclosure (Option A only); and
4. Provide a new traffic calming cross walk at the Carlton Avenue/Gateway Drive intersection leading to the park.

Staff has also included a performance standard (Performance Standard #6 of Attachment 9) to ensure the property owner's participation in a Benefit Assessment District for improvements on Los Gatos Boulevard should one be created.

The Council should consider the applicant's proposed community benefit and determine if it outweighs the traffic impact, as required by the Traffic Impact Policy.

L. Trees / Landscaping

The Town's Consulting Arborist, Arbor Resources, completed a tree inventory and report in March 2008 (Exhibit 9 of Attachment 3). The arborist report identifies a total of twenty trees on the project site and one additional tree on an adjacent property that may be impacted by the proposed development. Of these trees, eight are exempt by Town Code (six are fruit- or nut-bearing trees with trunks less than eighteen inches in diameter and two are trees with trunks less than four inches in diameter) and thirteen are protected by the tree ordinance. Nine trees are proposed for removal because they conflict with proposed development. They

consist of six palm trees (#11-16) and three crape myrtles (#18-20). The Consulting Arborist determined that the proposed tree removals are appropriate and provided recommendations to ensure the viability of the existing trees to remain.

The applicant has also prepared Preliminary Landscape Plans (Development Plans, Sheets L-1.1 – L-7 of Attachment 9). Council concerns or comments regarding future landscaping will be addressed and further reviewed when an Architecture and Site application is submitted, if the PD is approved.

M. Grading

The proposed project (Option A) will require approximately 11,990 cubic yards of cut and 500 cubic yards of fill. 11,490 cubic yards of this material will be exported from the site. It should be noted that the proposed cut is a result of the construction of the proposed underground garage. Option B would require approximately 13,500 cubic yards of cut and 500 cubic yards of fill. 13,000 cubic yards of this material will be exported from the site. It should be noted that the proposed cut is a result of the construction of the proposed underground garage.

PLANNING COMMISSION:

On May 14, 2008, the Planning Commission held a Study Session regarding the applicant's original proposal. Minutes from the Study Session are included as Exhibit 3 of Attachment 3. At that time, the applicant was requesting approval of the following:

- A zone change from CH to CH:PD; and
- Construction of a 55,000 square foot, two story commercial building with two levels of underground parking.

Following the Study Session, the applicant revised their proposal to address the Commission and neighborhood input. The applicant also provided a response to the Study Session comments (Exhibit 4 of Attachment 3).

On March 25, 2009, the Planning Commission considered the application. Verbatim minutes of this meeting are provided in Attachment 1. During the public testimony and Commission discussion, concerns were raised regarding the proposed project. As a result, the Commission continued the matter with the following direction:

- Redesign the proposed project to reduce the mass and scale. One option to consider would be moving the single story element of the proposed building to the southern edge of the property, however, other options may be acceptable; and
- Consider alternative or additional Community Benefit.

Following the March 25, 2009 Commission meeting, the applicant provided two additional options to address the Commission's direction.

On May 13, 2009, the Planning Commission considered the revised proposal. Verbatim minutes of this meeting are provided in Attachment 2. During the public testimony and Commission discussion, concerns were raised regarding the proposed project. As a result, the Commission recommended denial of the proposed project for the following reasons:

- It is not consistent with the General Plan and the Los Gatos Boulevard Plan because it has significant impacts on the views to the hillside caused by the mass and scale of the proposed building.

The Commission also provided some additional comments for Council consideration which are outlined as follows:

- Concerned about viewing this project individually given the other projects that will be coming forward in the near future.
- Request for a joint study session with the Council regarding future development on Los Gatos Boulevard.
- Consider whether a moratorium is appropriate for development on Los Gatos Boulevard until a clear plan is in place to address all of these developments.
- Concerned about the cumulative impacts of projects on Los Gatos Boulevard.
- Option A is preferable to Option B.

TOWN COMMITTEE MEETINGS:

Conceptual Development Advisory Committee

The Conceptual Development Advisory Committee (CDAC) reviewed a similar proposal on November 8, 2006. The CDAC's comments are attached (Exhibit 5 of Attachment 3). The Committee expressed numerous comments about the proposal. The applicant has prepared responses to the Committee's comments (Exhibit 6 of Attachment 3).

GENERAL PLAN GOALS AND POLICIES:

Staff has prepared an exhibit outlining various General Plan Goals and Policies that should be considered when reviewing this application (Exhibit 11 of Attachment 3).

LOS GATOS BOULEVARD PLAN:

The proposed development must comply with the Los Gatos Boulevard Plan (LGBP). The LGBP provides guidelines for development and improvements along Los Gatos Boulevard with emphasis on the following:

- Location of buildings adjacent to the street (so that buildings, not parking lots, are seen along Los Gatos Boulevard) and location of parking in the rear.
- Staggering of buildings along the Los Gatos Boulevard frontage to avoid a tunnel effect.
- Articulation of facades to minimize building mass.

- Framing rather than blocking scenic views.
- Designing a development to fit a site's natural conditions.
- Provision of landscape elements in parking areas.
- Location of loading and service areas away from the street.
- Provision of defined pedestrian paths through large parking areas and pedestrian entries from the front as well as the rear sides which face the parking lot.

COMMERCIAL DESIGN GUIDELINES:

The proposed development must comply with the Commercial Design Guidelines. Basic design principles of the Commercial Design Guidelines for Los Gatos Boulevard include:

- Projects will maintain a strong landscaped setback along street edges.
- Views to the surrounding hills should be maintained, especially at signalized intersections.
- Projects shall be designed to meet their functional needs, but will be expected to adapt their design standards to the unique qualities of the Los Gatos Boulevard and the Town.
- Substantial landscaping of parking areas and project entries are expected.

CONCLUSION:

The applicant, Consulting Architect, Planning Commission, and staff find that Option A is the most appropriate proposal. The support for Option A is based on the following:

- The negative aspects of Option B that were outlined above by the Consulting Architect are significant;
- The mass and scale when viewed from Carlton Avenue and the Carlton Avenue/Gateway Drive intersection have been significantly reduced by stepping back the second story and creating additional first floor roof area;
- No exceptions to Town Code requirements are necessary;
- The proposed six foot sound wall along a portion of the southern property line will help reduce noise travel to the adjacent neighborhood; and
- Option A provides a site layout that is superior to that of Option B.

However, staff believes the Council should carefully consider the following issues:

- Mass and scale;
- Views of the hillside;
- Uses;
- Pedestrian circulation;
- Landscaping;
- Community benefit; and
- The concerns raised by the Planning Commission's as outlined above.

The Council should also carefully consider whether the preferred option, Option A, is consistent with the General Plan, Los Gatos Boulevard Plan, and Commercial Design Guidelines. Steps to make a recommendation for approval of Option A are outlined at the beginning of the staff report.

Should the Council decide that Option B is more appropriate additional environmental review in the form of an Addendum to the Mitigated Negative Declaration would need to be prepared. This review would necessitate the application being remanded to the Planning Commission for preparation of the Addendum and review by the Planning Commission along with any other direction that the Council feels is appropriate.

ENVIRONMENTAL ASSESSMENT:

An Initial Study and Mitigated Negative Declaration were prepared for this project (Attachment 7). The areas of mitigation are as follows:

- Biological
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Transportation and Traffic

All mitigation measures have been included as conditions in the PD Ordinance (Attachment 9). In addition, a Mitigation Monitoring Program has been prepared to designate the responsible department or agency, and timing of each mitigation measure (Exhibit 13 of Attachment 3).

FISCAL IMPACT: None.

Attachments:

Previously submitted to the Town Council under a separate cover:

1. Excerpt of the Planning Commission meeting minutes of March 25, 2009.
2. Excerpt of the Draft Planning Commission meeting minutes of May 13, 2009.
3. Report to the Planning Commission (With Exhibits) for the meeting of March 25, 2009.
4. Desk Item to the Planning Commission (With Exhibits) for the meeting of March 25, 2009.
5. Report to the Planning Commission (With Exhibits) for the meeting of May 13, 2009.
6. Desk Item to the Planning Commission (With Exhibits) for the meeting of March 25, 2009.
7. Initial Study and Mitigated Negative Declaration

New Submittals:

8. Required Findings.
9. Planned Development Ordinance (18 pages), Rezoning Exhibit (Exhibit A), and Official Development Plans (Exhibit B) (30 pages).
10. E-Mail from citizen, received May 18, 2009.

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MAYOR AND TOWN COUNCIL
SUBJECT: 15400 LOS GATOS BOULEVARD
May 22, 2009

Distribution:

Kenneth Rodrigues and Partners Inc., 445 Whisman Rd., Suite 200, Mountain View, CA 94043
SHP Newark LLC, 489 S. El Camino Real, San Mateo, CA 94402

WR:JP

Mayor and Town Council
Subject: 15400 Los Gatos Blvd.
May 22, 2009

Please Note:

Attachments 1-7 previously submitted to Council
and Attachment 9 (Exhibit B)
are available for review in the Clerk Department,
Library Reference Desk and the Town Website

TOWN COUNCIL – JUNE 1, 2009

REQUIRED FINDINGS FOR:

15400 Los Gatos Boulevard

Planned Development Application PD-07-146

Negative Declaration ND-08-06

Requesting approval to change the zone from CH to CH:PD for a two story commercial building with underground parking and approval to demolish the existing auto dealership. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 424-15-045.

PROPERTY OWNER: SHP Newark LLC

APPLICANT: Kenneth Rodrigues & Partners

FINDINGS:

Required consistency with the Town's General Plan, Los Gatos Boulevard Plan, and Commercial Design Guidelines:

- That the proposed Zone Change is internally consistent with the General Plan and its Elements, Los Gatos Boulevard Plan, and Commercial Design Guidelines.

As required by the Town's Traffic Policy for community benefit.

- Projects that generate additional traffic of five or more peak hour trips may only be recommended for approval if the project's benefits to the community override the traffic impacts as determined by specific sections of the General Plan and/or any Specific Plan. If a project generates additional traffic of five or more peak hour trips the burden is on the applicant to cite economic or housing benefits to the Town and/or specific sections of the General Plan and any applicable Specific Plan that demonstrate the project's benefit to the Community which outweighs the traffic impact. The deciding body must make specific findings which demonstrate that the benefit(s) of the project outweigh the impact in order to approve the project.

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**ORDINANCE OF THE TOWN OF LOS GATOS
AMENDING THE TOWN CODE EFFECTING A ZONE CHANGE
FROM CH TO CH:PD FOR PROPERTY AT
15400 LOS GATOS BOULEVARD (APN 424-15-045)**

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:

SECTION I

The Town Code of the Town of Los Gatos is hereby amended to change the zoning on property at 15400 Los Gatos Boulevard (Santa Clara County Assessor Parcel Numbers 424-15-045) as shown on the map attached hereto as Exhibit A, and is part of this Ordinance, from CH (Restricted Highway Commercial) to CH:PD (Restricted Highway Commercial, Planned Development).

SECTION II

The PD (Planned Development Overlay) zone established by this Ordinance authorizes the following:

1. Construction of a 40,000 square foot two story commercial building.
2. Landscaping, parking, and other site improvements shown and required on the Official Development Plan.
3. Uses permitted are those specified in the underlying CH (Restricted Highway Commercial) zone by Sections 29.60.420 (Permitted Uses) and 29.20.185 (Conditional Uses) of the Zoning Ordinance, as those sections exist at the time of the adoption of this Ordinance, or as they may be amended in the future, subject to any restrictions or other requirements specified elsewhere in this ordinance including, but not limited to, the Official Development Plan. However, no use listed in Section 29.20.185 is allowed unless specifically authorized by this Ordinance, or by Conditional Use Permit.

to the satisfaction of the Town Attorney.

3. **ARCHITECTURE AND SITE REQUIRED:** An Architecture and Site application and approval is required for the proposed building, parking lot improvements, and other site improvements. The Development Review Committee shall be the deciding body for the Architecture and Site application.
4. **HEIGHT:** The height of the structure shall not exceed 36 feet and the height of the architectural elements shall not exceed 39 feet.
5. **REAR SETBACK:** The rear setback along Carlton Avenue shall not be less than twenty feet.
6. **BENEFIT ASSESSMENT DISTRICT:** The property owner agrees to participate in the Benefit Assessment District for Los Gatos Boulevard should one be created by Town Council.
7. **DEMOLITION:** The demolition of the existing hazardous structures shall occur within 30 days of the adoption of this ordinance.
8. **WATER CONSERVATION ORDINANCE REQUIREMENT.** The proposed landscaping shall meet the Town of Los Gatos Water Conservation Ordinance. A review fee based on the current fee schedule adopted by the Town Council is required when working landscape and irrigation plans are submitted for review prior to the issuance of a building permit.
9. ***BIOLOGICAL RESOURCES MITIGATION MEASURE #1:** All recommendations made by Arbor Resources shall be implemented to eliminate or minimize the construction-related impacts on the trees to be retained. Refer to the report prepared by Arbor Resources dated March 20, 2008 for details.
10. ***CULTURAL RESOURCES MITIGATION MEASURE #1:** Construction personnel involved in earth moving shall be alerted to the potential for discovery of prehistoric materials and in particular, concentrations of historic artifacts. Prehistoric archaeological resources could include but not be limited to the following: darker than surrounding soils of a friable nature, concentrations of stone, bone or fresh water shellfish, artifacts of these materials, and evidence of fire (ash, charcoal, fire alerted earth or rock) and of course, burials, both human and animal.
11. ***CULTURAL RESOURCES MITIGATION MEASURE #2:** In the event that archaeological traces are encountered, all construction within a 20-foot radius of the find shall be halted, the Community Development Director shall be notified, and an archaeologist shall be retained to

disposal of these materials. For suspected hazardous materials (contaminated soil and groundwater) that may be encountered during construction, the management plan shall include contingency plans for site safety, worker protection, sampling and investigation, and disposal and remediation; these shall be based on soil and groundwater sampling and testing that have been completed to date. The management plan shall be filed with the Town of Los Gatos and all other jurisdictional agencies prior to issuance of the demolition and grading permits.

17. *HAZARDS AND HAZARDOUS MATERIALS MITIGATION MEASURE #2: If groundwater is encountered during project construction and dewatering is required, the project applicant shall undertake sampling and testing of the encountered groundwater in accordance with the contingency sampling and investigation plan as specified in Measure #15. If groundwater is found to contain contaminants that exceed regulatory action levels, it may not be discharged into the existing storm drainage system. Removal and handling of the contaminated groundwater shall be done in a manner acceptable to the RWQCB, the Town, and other jurisdictional agencies.
18. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building permit and/or final subdivision map detailing how the Conditions of Approval will be addressed.

Building Division

19. *HAZARDS AND HAZARDOUS MATERIALS MITIGATION MEASURE #3: A state certified lead-based paint professional shall be retained to perform a lead-based paint survey of the existing structures and the recommendations of the professional shall be followed for abatement of any identified lead-based paint prior to demolition of the structures.
20. PERMITS REQUIRED: A building permit shall be required for the new commercial building. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
21. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.

architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties, and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov/building.

30. NONPOINT SOURCE POLLUTION STANDARDS SHEET: The Town standard Santa Clara County Valley Nonpoint Source Pollution Control Program Sheet (or Clean Bay Sheet 24x36) 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 for a fee.

31. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)

32. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:

- a. Community Development – Planning Division: Joel Paulson at (408) 354-6879
- 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.
- f. Bay Area Air Quality Management District: (415) 771-6000

33. TITLE 24 – COMMERCIAL: The building shall comply with the latest California Title 24 Accessibility Standards.

34. TITLE 24 – RESTAURANT USE: Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:

- a. West Valley Sanitation District (WVSD): (408) 378-2408
- b. Environmental Health Department: (408) 885-4200
- c. Town Public Works Department: (408) 399-7530

39. PAD CERTIFICATION. A letter from a licensed land surveyor shall be provided stating that the building foundation was constructed in accordance with the approved plans shall be provided subsequent to foundation construction and prior to construction on the structure. The pad certification shall address both vertical and horizontal foundation placement.
40. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:
- a. Along with the project applicant, attend a pre-construction meeting with the Town Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b. Acknowledge in writing that they have read and understand the project conditions of approval, and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.
41. RETAINING WALLS. A building permit, issued by the Building Department at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.
42. SOILS REPORT. One copy of the soils and geologic report shall be submitted with the grading permit application. A geotechnical review to determine the potential for fault ground rupture is required. Geotechnical Engineer must review and submit a report on the mapped faults in the area of the project and evaluate the potential for fault ground rupture and seismically induced liquefaction. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design and erosion control. The reports shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.
43. SOILS REVIEW. Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations and the peer review comments. The applicant's soils engineer's approval shall then be conveyed to the Town either by letter or by signing the plans.

49. LARK AVENUE/LOS GATOS BOULEVARD MITIGATION FEE: Prior to issuance of a Building Permit, the developer shall pay a proportional share of the project specific intersection mitigation costs. Actual cost will be calculated at the time of building permit application.
50. IMPROVEMENTS: Install a pedestrian crosswalk on the west leg of the Gateway/Carlton intersection.
51. IMPROVEMENTS: Bicycle Parking Facilities. Install bicycle parking facilities on-site per VTA's requirement.
52. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
53. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
54. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
55. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim

60. **STORM WATER MANAGEMENT PLAN.** A storm water management shall be included with the grading permit application for all Group 1 and Group 2 projects as defined in the amended provisions C.3.d. of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit No. CAS029718. The plan shall delineate source control measures and BMP's together with the sizing calculations. The plan shall be certified by a professional pre-qualified by the Town. In the event that storm water measures proposed on the Planning approval differ significantly from those certified on the Building/Grading Permit, the Town may require a modification of the Planning approval prior to release of the Building Permit. The applicant may elect to have the Planning submittal certified to avoid this possibility.
61. **AGREEMENT FOR STORMWATER BEST MANAGEMENT PRACTICES INSPECTION AND MAINTENANCE OBLIGATIONS.** The property owner shall enter into an agreement with the Town for maintenance of the stormwater filtration devices required to be installed on this project by Town's Stormwater Discharge Permit No. CAS029718 and modified by Order No. R2-2005-0035. The agreement will specify that certain routine maintenance shall be performed by the property owner and will specify device maintenance reporting requirements. The agreement will also specify routine inspection requirements, permits and payment of fees. The agreement shall be recorded prior to release of any occupancy permits.
62. **SILT AND MUD IN PUBLIC RIGHT-OF-WAY.** It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
63. **UTILITIES.** The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.
64. **RESTORATION OF PUBLIC IMPROVEMENTS.** The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc.

- 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.
72. **OUTDOOR TRASH ENCLOSURES.** Outdoor trash enclosures shall be covered. Provide a sanitary sewer connection to the trash enclosure if a restaurant is proposed.
73. **GREASE TRAPS.** Meet all requirements of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.
74. **CONSTRUCTION NOISE.** Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
75. **GOOD HOUSEKEEPING.** Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the sidewalk and/or the street will not be allowed unless a special permit is issued by the Engineering Division.
76. **TRAFFIC CONTROL PLAN.** The project sponsor will be required to work with the Engineering Division of the Parks and Public Works Department to develop a traffic control plan for incorporation into the construction bid documents (specifications), and this plan will include, but not be limited to, the following measures:

81. PRIVATE ON-SITE FIRE HYDRANT: Provide one on-site fire hydrant installed per NFPA Standard #24, at a location to be determined by the Fire Department. Maximum hydrant spacing shall be 250 feet, with a minimum acceptable flow of 1,875 gpm at 20 psi residual pressure. Prior to design, the civil engineer shall meet with the fire department water supply officer to jointly spot the required fire hydrant location.
82. ON-SITE PRIVATE FIRE SERVICE MAINS AND/OR HYDRANT: Installation of private fire service mains and/or fire hydrants shall conform to National Fire Protection Association Standard #24 and Fire Department Standard and Details and Specifications W-2. If the supply piping is "combined" (sprinkler system and hydrants), a U.L. approved 4-way FDC shall be provided. A separate installation permit from the fire department is required.
83. HOSE VALVES/STANDPIPES: Buildings 3 stories or more in height or where emergency access has been deemed minimal shall be equipped with standpipes designed per NFPA Standard #14 and be equipped with 2 ½" hose valves located within the stair enclosure(s), specifically within parking structures at stairwells.
84. FIRE APPARATUS ACCESS: Provide access roadways with a paved all-weather surface with a minimum unobstructed width of 20 feet, vertical clearance of 13 feet 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. For installation guidelines refer to Fire Department Standard Detail and Specifications sheet A-1. Identify all required dimensions on the site access plans.
85. FIRE LANE MARKING: Provide marking for all roadways within the project. Installations shall also conform with Local Government Standards and Fire Department Standard Details and Specifications A-6.
86. ACCESS: Gates across the emergency access roadways shall be equipped with an approved access device. If the gates are operated electrically an approved Knox key switch shall be installed; if they are operated manually then an approved Knox padlock shall be installed.
87. EMERGENCY GATE/ACCESS GATE: Gate installations shall conform with Fire Department Standard Details and Specification G-1 and when open shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be fire department approved prior to installation.



EXHIBIT A

Joel Paulson - 14500 Los Gatos Blvd. Project

From: <pfendt@sbcglobal.net>
To: Joel Paulson <jPaulson@losgatosca.gov>
Date: 05/18/2009 6:18 PM
Subject: 14500 Los Gatos Blvd. Project

Hello Joel,

Please pass this email on to the Los Gatos Town Council and Planning Commissioners.

Dear Commissioners,

Needless to say, I am very disappointed that you could not come to a consensus and recommend "option B" of the above subject address. Listed below are several reasons why "option B" best meets all vested parties needs and requirements.

1. Option "B" best represents all the requirements for this parcel. Placing the two story structure (with a single story profile similar to the adjacent buildings) parallel with Carlton Avenue and the single story structure parallel with the Southern property line will accomplish the following:
 - a. allow views of the Los Gatos Hills in the background from Los Gatos Blvd.;
 - b. block most noise generated inside of the parcel to the residences on Carlton Avenue;
 - c. allow planting of trees, shrubs, bushes, etc, along Los Gatos Blvd. and Gateway. This will give the subject parcel more of a "calming" effect rather than an overpowering "in your face" two story structure as proposed in option "A"-especially several extremely tall, gabled elements of option "A" that are overbearing being so close to the street .
2. The present traffic along Carlton Avenue is exceeding the posted speed limit, according to the Town's traffic consultant (stated in the meeting). An accident waiting to happen is in back of Trader Joe's where people park along Carlton Avenue, use the stairs, and make dangerous "U" turns after they have completed their shopping. Any new construction should be sure to have adequate parking onsite and should not be seen, nor should it overflow onto the residential street, i.e., Carlton Avenue, which is zoned Residential. Since this project requires a change in zoning, noise pollution, street parking and traffic considerations for residents in the area should be a major influence in reaching an ethical decision on the plan.
3. What is just as disappointing as not recommending option "B" was the statement from the chair "the goal is to comply with the Town's needs, not apartment dwellers and homeowners". I cannot think of a more autocratic or elitist statement, especially in light of the fact that this entire project requires a change in zoning and code -something the "homeowners and apartment dwellers" will also need to approve and live with for many years to come. The fact that "homeowners and apartment dwellers" are even willing to compromise shows they have a collaborative spirit. Meticulous planning and ethical decisions are vital components of any successful venture.

ATTACHMENT 10