



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

**MINUTES OF THE PLANNING COMMISSION MEETING
OCTOBER 25, 2023**

The Planning Commission of the Town of Los Gatos conducted a Regular Meeting on Wednesday, October 25, 2023, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:00 PM

ROLL CALL

Present: Chair Jeffrey Barnett, Vice Chair Steve Raspe, Commissioner Susan Burnett, Commissioner Melanie Hanssen, and Commissioner Kathryn Janoff

Absent: Commissioner Emily Thomas

PLEDGE OF ALLEGIANCE

VERBAL COMMUNICATIONS

Joseph Enns

- I'm representing Friends of Los Gatos Creek, working with Marico Sayoc, trying to keep the waterways clean. Jamie is doing great, and I really love the Police Department. I don't know if any of you know Superior Court, Julie, she said the Town needs a lot of help. I know a lot of these homeless people, and I'm a disaster awareness response team person.

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

1. Approval of Minutes – September 13, 2023

MOTION: **Motion by Vice Chair Raspe** to approve adoption of the Consent Calendar. **Seconded by Commissioner Hanssen.**

VOTE: **Motion passed unanimously.**

PUBLIC HEARINGS

2. 17200 Los Robles Way

Lot Line Adjustment Application M-23-001

APNs 532-36-075, -076, and -077.

Applicant: Tony Jeans

Appellant: Alison Steer

Property Owners: Daran Goodell, Trustee and Mark Von Kaenel

Project Planner: Ryan Safty

Consider an Appeal of a Development Review Committee Decision to Approve a Lot Line Adjustment Application in Accordance with California Government Code Section 66412(d) for Three Adjoining Lots on Property Zoned R-1:20. Statutorily Exempt from CEQA as a Ministerial Approval in Accordance with Public Resources Code Section 21080(b)(1) (CEQA Statute) and CEQA Guidelines Section 15268. Application is Only for Ministerial Approval of a Lot Line Adjustment Pursuant to Section 66412(d) of the Subdivision Map Act.

Ryan Safty, Associate Planner, presented the staff report.

Opened Public Comment.

Babak Naficy, Appellant's Attorney

- I represent the appellant in this appeal, as well as the ongoing case between the parties. As has been said, the lot line adjustment before you has been the subject of litigation. The only purpose for this lot line adjustment is to turn a currently substandard and unbuildable lot into one that can accommodate a residence. Staff and the applicant insist the project is not subject to CEQA review because it is a ministerial approval, and also because the project doesn't include any plans for a building. As I will explain, your decision tonight will have substantial impact on how these lots will be developed; is subject to CEQA; is not ministerial in the sense that it requires discretionary judgment; and it will potentially impact the environment. Staff previously on this same project concluded that the same lot line adjustment was discretionary but subject to a specific CEQA exemption, but now staff says the opposite is true. One of the findings staff is putting before the Planning Commission is the finding that the intensity of the new development is consistent with the surrounding development and with the Town at large. You have to look at the intensity of this project, look at the surrounding neighborhood, and make a decision, and that decision requires exercise of judgment, which makes it discretionary. The main point is one of the requirements to ensure the project is consistent with all applicable regulations is to change the access point to give Lots 2 and 3 frontage. Staff says this would be through an offer of dedication of an easement for a future cul-de-sac that would provide both access and frontage for Lots 2 and 3. But for the cul-de-sac to be able to serve as frontage for these lots, it has to be a street. For it to be a street, it has to provide primary access to these lots.

Therefore by accepting the line drawn on the map for the cul-de-sac, you are essentially approving a new street that must be built; otherwise you can't make a finding that the lot line adjustment does comply with the frontage requirement. Even if you buy the argument that the lot line adjustment approval is itself exempt, approving this street that is a cul-de-sac and that has potential impacts is not exempt because it is capable of significant environmental impacts.

Tony Jeans, Applicant

- I wonder why we are here. The DRC approved this a year or so ago. You as the Commission denied the appeal. The Council then denied the second appeal. Council's denial was litigated and during the litigation it was determined that an incorrect approval process had been used, so we went back to DRC using Section 66412(d) of the Subdivision Map Act, which is how all lot line adjustments are meant to be addressed. The DRC approved this a second time a month or so ago, and it has now been appealed to you. According to 66412(d) this is a ministerial process. When we designed the three-lot layout we abided by all the rules of Section 66412(d): the lot line adjustment is less than four lots; there is no increase in the number of parcels; and the lots are legal, because they were ratified by a Certificate of Compliance by the Town before the lot line adjustment started. The Appellant did not appeal this process, so they are three legal lots and will remain as three legal lots after the lot line adjustment. Is the proposed use consistent with the General Plan? Yes, it is low-density residential and will remain so with no new construction proposed with this application. Is the proposal consistent with the district zoning? Yes, and staff analysis shows each lot meets the requirements for an R-1:20 zoning lot. We chose to offer the dedication in order to make our lots work, and if approved we will be asked to make that dedication formal so that it ultimately will become a cul-de-sac, the access to Lots 2 and 3. My only conversation with the Appellant revolved around the view from their back yard and what would happen to it if a house were built there on Lot 2. They want to keep the park-like setting they have now, but that is not a reason for appealing this lot line adjustment; it is unfair to the owners, so I ask the Planning Commission to deny the appeal yet again and allow the project to proceed. We have met all the rules for the lot line adjustment.

Shannon Jones, Applicant

- I represent the applicant. The appellant is trying to frame this application or project as a development project, not as a lot line adjustment, and they are vastly different. By trying to call it a development project they are trying to wedge it into CEQA, and that is legally inaccurate. My office has provided a letter providing case law supporting the Town's position. It is interesting that the appellant's attorney's first comment was the only purpose of this project was for the construction of a substandard residence. A residence is not before you today, development is not in front of you today, and in fact he made at least five or six references to a development and a development application. This is not in front of you as a development application, it is in front of you as a lot line adjustment, and as such most if not all of the appellant's comments are inapplicable, because what is not

being applied for is a development as they want to make it; it's a lot line adjustment. It is very simple. There are three existing lots, they are asking to move the lot lines, and move the boundaries of those lots, which is exactly what Government Code Section 66412(d) is designed for. CEQA legally doesn't apply, and nothing else that has been raised is applicable either. The appellant wants to say the staff report changed; that's not true when it comes to the access point. In the first report they noted the access point and wanted to change it, and in the second report they recognized that there was an access point, so it was not a change in position, as the appellant argues, it was a further review and clarification.

Babak Naficy, Appellant's Attorney

- I have not suggested this is a development project or you are being asked to approve homes, but I am suggesting that you are being asked, as a condition of this lot line adjustment in order to ensure that it complies with your own regulation as it applies to frontage, to approve the cul-de-sac, which the applicant was very clear would be the access point to these lots, and were it not to be the access point to these lots it couldn't be used to satisfy the frontage requirement. You know precisely where that access point is going to be, and by approving this lot line adjustment, including the condition of the dedication of that easement, you are essentially fixing the entrance, a new entrance that doesn't exist now, to Lots 2 and 3, and any future development proposed for these two lots will assume and will include the access point as its entry point to the two lots, so that's going to be fixed. Your staff has not told you how many trees will need to be cut, what the slope is going to be, or how that will affect the drainage. All of that is being deferred to when the applicant will come back with plans for these houses, except that you've already decided to allow the easement, to allow the access point, and if you take away nothing else from this presentation, just please consider that by approving the easement, by approving a new cul-de-sac that will be forever the access for these two lots, you have made the discretionary decision that is capable of affecting the environment, and as such will require environmental review under CEQA. As you saw, neither the applicant's attorney nor staff had any explanation as to why the Town has changed its legal analysis and conclusions even though the project hasn't changed; that's a classic abuse of discretion.

Closed Public Comment.

Commissioners discussed the matter.

MOTION: **Motion by Commissioner Janoff** to deny the appeal and uphold the decision of the DRC and approve a Lot Line Adjustment Application for 17200 Los Robles Way. **Seconded by Commissioner Hanssen.**

VOTE: **Motion passed 4-1 with Commissioner Burnett dissenting.**

OTHER BUSINESS:

3. 110 Wood Road

Planned Development Application PD-20-001

Environmental Impact Report EIR-21-002

APN 510-47-038

Property Owner: Covia Communities

Applicant: Frank Rockwood

Project Planner: Sean Mullin

Study Session to Discuss Revisions to a Previously Considered Project Requesting Approval of a Planned Development for a Senior Living Community, Removal of Large Protected Trees, and Site Improvements Requiring a Grading Permit on Property Zoned R:PD. An Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program have been Prepared for this Project.

Jennifer Armer, Planning Manager, presented the staff report.

Opened Public Comment.

Chris Ichien, Applicant

- I represent Front Porch for Los Gatos Meadows. We're here today to get feedback from the Planning Commission and plan to come back with an updated formal submittal. The most overwhelming feedback we have heard from our neighbors and the Planning Commission and Town Council is the visual impact of the new Meadows. Why the update is taking so long is that Covia became affiliated with Front Porch, another nonprofit organization, with that came interim executive management and that delayed the process for us. Also, increased construction and insurance costs have us reevaluating our project as well. Effective April 2023, we have a new CEO, Sean Kelly, who has jump-started this project.

Frank Rockwood, Applicant

- The concept plan we are putting forth tonight is a work in progress. We are now proposing 186 independent living units and 24 care units. The care units would take the exact same footprint of the prior proposal, so we're looking at potentially doubling up some of those spaces, or making those spaces more efficient to accommodate more residents. We have worked hard to identify where we might add scale and concluded that anything that goes off the development pad would be very detrimental in terms of additional impact on tree removals and grading, so we have stuck to the existing development pad. The tree removal and tree replacement in our proposal is not because our development pad is getting bigger; it's almost entirely due to meeting fire standards. There has been a pattern of concern about the visual impact of the front portion of the site. We are generally proposing to move massing from the front of the site to the rear of the site. We are also proposing to remove the penthouse units, reduce the average square footage of the units, and to

modestly decrease the amount of off haul. In addition, we hope to acquire 142 S. Santa Cruz next week, because we see an opportunity to do a lot of community-facing offerings in that building. It's about 4,000 square feet. We think some of our current offerings might make sense to implement in Los Gatos in this new building.

Julie Southern

- I live at 135 Wood Road and represent my neighbor Andy and myself. The Meadows have been fantastic neighbors, and we were very sad to see them close down, we are very supportive of the construction process and look forward to their return. The one item that comes up is appreciation for the understanding of height, what was proposed a year-and-a-half ago, and the majority of complaints were that you could see it from downtown. From Andy's view it is right out his front window, and from my view the story poles were just right out my window. If they go up another two stories, as proposed, it's going to block my front view.

Frank Rockwood, Applicant

- We are working against the feasibility constraint and are trying to accommodate the view impacts. We did not make any changes with the intent that it would worsen Julie and Andy's view. It is a complicated site and the story poles are difficult to read. We plan to respond by looking at how our design would affect their view lines. We're looking forward to your feedback.

Closed Public Comment.

Commissioners discussed the matter.

REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

Jennifer Armer, Planning Manager

- The Town Council considered an appeal of the Winchester assisted living project. The appeal was denied and the decision to approve that project was upheld.
- The Town Council discussed fire safe regulations process, often referred to as PRC 4290, and based on the description of the process and the work with the Santa Clara County Fire Department no changes were made to that process.
- The Town Council approved the Rezoning and General Plan Amendment for the property at 15810 Los Gatos Boulevard as recommended by the Planning Commission.
- There has been additional progress on the Town's Housing Element. The Housing Element Advisory Board met on September 28, 2023. The revised draft of the Housing Element was submitted to the HCD on October 2, 2023, and comments are expected from the State by December 1, 2023.
- The Town Council is currently reviewing the Housing Element Overlay Zone that is associated with the Housing Element and its ongoing consideration will continue at their next meeting on November 7, 2023.

- Also at its November 7, 2023, meeting the Town Council will consider the Accessory Dwelling Unit Ordinance.
- Town Council story pole discussion was started on August 1, 2023, and the discussion is scheduled to continue on December 5, 2023.
- The Town is currently open for Commission recruitments, including several positions on the Planning Commission. The deadline for submittals is 4:00 p.m. on Friday, November 10, 2023. Interviews will be December 6, 2023.

SUBCOMMITTEE REPORTS/COMMISSION MATTERS

Housing Element Advisory Board

Commissioner Hanssen

- The HEAB reviewed the latest draft of the Housing Element, which was submitted to the State for review.

General Plan Committee

Commissioner Hanssen

- The Committee met to consider a request to change a Shannon Road property's land use designation in the General Plan from Agriculture to Hillside Residential. The consensus was to not recommend approval to the other deciding bodies, because it was not clear to what extent housing would be feasible.

Historic Preservation Committee

Commissioner Burnett

- The HPC met October 25, 2023 and considered four applications.

ADJOURNMENT

The meeting adjourned at 8:52 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the October 25, 2023 meeting as approved by the Planning Commission.

/s/ Vicki Blandin