MINUTES OF THE PLANNING COMMISSION MEETING NOVEMBER 21, 2022

The Planning Commission of the Town of Los Gatos conducted a Regular Meeting on Wednesday, November 21, 2022, at 7:00 p.m.

This meeting was conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, all planning commissioners and staff participated from remote locations and all voting was conducted via roll call vote.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Chair Melanie Hanssen, Vice Chair Jeffrey Barnett, Commissioner Kylie Clark, Commissioner Kathryn Janoff, Commissioner Steve Raspe, Commissioner Reza Tavana, and Commissioner Emily Thomas.
Absent: None.

VERBAL COMMUNICATIONS

None.

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

None.

PUBLIC HEARINGS

1. **17121 Crescent Avenue**
   Architecture and Site Application S-21-021
   APN 532-21-007
   Property Owner/Applicants: Eric and Lee Ann Wade
   Project Planner: Sean Mullin

   Requesting approval for construction of a new single-family residence and site improvements requiring a grading permit and an appeal of a Santa Clara County Fire Department decision denying a request for an Exception to the State Minimum Fire Safe Regulations on property zoned HR-1.

Commissioner Raspe announced that he lives within 1,000 feet of the subject site and would recuse himself from participating in the public hearing for 17121 Crescent Avenue.

Sean Mullin, Senior Planner, presented the staff report.

Opened Public Comment.

Eric Wade, Owner/Applicant

- We are not requesting to build anything different than any other home in the hills above Los Gatos. We have been sensitive in complying with the Hillside Design Standards and Guidelines and to our neighbors' wishes, and spoke to our neighbors one-on-one to ensure the design was acceptable. Our application requests two exceptions: 1) A fill depth exception due to an unnatural road cut on the lowest point of the home's footprint; and 2) Request for a deck post height exception to provide a moderately sized deck to provide living space adjacent to the second floor living room. We need clarification on conditions of approval.
    - Line Items 103 and 110, the road width, and Item 109, the hammerhead turnaround: Both have previously been certified and approved by the Santa Clara County Fire Department under our ADU application and could be incorporated into this application. Is this acceptable?
    - Item 116: To what standards does the bridle path need to be upgraded to satisfy Santa Clara County Fire Department? Would previously offered signage to aid in the identification of the Emergency Safe Civilian Corridor be sufficient?
- Santa Clara County Planning Department has for the most part removed requirements in PRC 4290 sections concerning lots on dead end roads and roads too narrow, because they do not apply to existing roads or properties.

Matthew Swenson

- As a 20-year real estate agent in Los Gatos, hearing this story makes me concerned about the values of homes and properties if their usage is restricted based on a County scenario. I am confused on why you're allowed to do an ADU and increase the population on the street, but not allowed to increase the size of your home or improve fire hardening, like the defensible space and fire sprinklers on the roof. Why are the County and State limiting the Town? The Town of Los Gatos should have more influence than the state over what is going on and how things are done. The neighbors have been able to do improvements over the years, and suddenly just now it has become unacceptable for the subject property.

Jeff Williams

- I am a Los Gatos homeowner. A lot has changed in building and fire safety standards since the subject home was built in 1955, making it a tinderbox that endangers the houses and community around it. I would like to see them build a new home to modern fire safety standards.

David Hutchison

- I am a real estate agent and Los Gatos homeowner and concerned that the bridle path question is a distraction, because: 1) Other jurisdictions as well as Santa Clara County are not enforcing PRC 4290 on existing roads, 4290 is supposed to apply to new roads only, so the bridle path question is moot; 2) It is a ridiculous solution. The bridle path is convenient for civilian egress, but it is not appropriate for vehicular egress and to make it so would be at a great cost. To require this of one landowner and not of all the others at the magnitude we are discussing is plain and simple, a taking. Who is responsible for improving public roads?; and 3) Rather than get hung up on ambiguous wording in a law never intended to apply to existing roads, look at it from a fire safety perspective and how the applicants plan to replace a decades old tinderbox with no sprinklers and replace it with a new house with modern fire prevention measures. It concerns me that Santa Clara County Fire Department is more interested in enforcing what they interpret as the letter of the law than allowing projects that improve fire safety.

Benjamin Adams

- I echo what other speakers have said regarding the inconsistent nature of what is suggested by the Santa Clara County Fire Department. The applicants would be at much less risk in a new, modern, fire safe home. I am concerned regarding the Planning Commission's and the Town's potential liability from a regulatory taking standpoint if we start devaluing people's property and doing it in a manner inconsistent with the rest of the State and other towns in Santa Clara County.

Jim Gannon

- One of the foundational guiding principles behind the applicant's decision to live in Los Gatos was because it was a place where they could preserve and improve the value of their property over time, but in listening to the comments tonight I struggle to understand why remodeling an existing property, making it safer, and potentially adding value to the community isn't widely supported.

Steve Wade

- I live in the Los Gatos area, and the applicants are my brother and sister-in-law. It makes no sense that if the applicants significantly remodel the current home, as opposed to building a new one, that that home would not be subject to these fire safe regulations. If there is an opportunity to replace an existing home with a newer home that is state of the art in its fire safe measures, the Town should jump at the opportunity. The term "same practical effect" doesn't hold water when the net effect is making an existing property safer than it was before, regardless of any existing conditions. This application is totally reasonable and the exceptions should be granted.

Lee Quintana

- The issue of taking should not be taken lightly, and because it is so important and would affect future developments, the item should be continued for the applicant and the Fire Department to continue discussions, the conditions of approval to be made consistent with the interpretation of that law, and time given for the Town to consult with the State Attorney General's Office on this issue with taking. The area where the road does not comply is mainly around the front and sides of this particular parcel. Fire safety affects the

whole town, even if we don't live near the subject site, and making a particular house safer does not make for safer evacuation in the event of a fire, which should be the primary issue. I have no problem with the two minor exceptions to the Hillside Standards, but I am very, very concerned about approving this without it coming back to the Planning Commission.

Tony Jeans

- I have gone through a similar situation in the City of Monte Sereno where we were preparing to tear down an old house and planning to build a new house. We were confronted with a similar set of comments from Fire, which we responded to, as did Mr. Wade, with petitioning for an exception for alternative means and methods, and we ended up agreeing to widen the street up to the property, about 950 feet, and installing an additional hydrant, and then having the house meet all of the very high-fire hazard severity zone protections, including fire sprinklers. I think it was an undue burden on my client to be required to widen the street and put in the fire hydrant, to the benefit of everyone in terms of fire safety. A house built now is way safer and vastly superior over anything in existence already and being demolished. The fire standards have also improved, and I cannot understand any reason why an existing house should not be upgraded to current standards.

Anna Natasha Sinapi, Attorney

- I urge the Commission to approve this application and remove Santa Clara County's conditions. Santa Clara County's interpretation of the code is wrong, it should only apply to new roads and was only ever intended to apply to old roads. It is important to note that no other counties interpret this the same way. It's a 1991 law that was never interpreted in this way, and this sudden change did not have any legislative justification, it was purely the whim of Santa Clara County. Even more important from a legal standpoint is the constitutional interpretation. It is disturbing that the Planning Department has ruled that enforcement of this regulation on these applicants would be unconstitutional, yet they think that the applicants have the duty to continue to work with Santa Clara County to find a constitutional interpretation. That's not how our constitution works. It's not the applicants' responsibility to find a legal way for Santa Clara County to enforce this rule, it's Santa Clara County's responsibility and duty to prove that the rule is constitutional and proportional. The term "same practical effect" is a minor point; however, all the other speakers have spoken to how important it is to build new houses to current fire standards, and an overall same practical effect should not be interpreted so narrowly as to require simultaneously civilian egress and fire suppression ingress.

Jill Hourani

- I'm a Los Gatos homeowner and want to echo what everyone else has said and reiterate that this is an outdated, single-family home, which will be an updated, modern single-family home. I acknowledge that a safer home does not make an evacuation safer, but it is a current single-family home, and it will still be a single-family home, so that doesn't really matter. I believe the Wades have done a good job at research and helping on this project, and I support them and ask that the Santa Clara County Fire Department and the Town help them find a solution to move forward with the application.

Susan Burnett

- Los Gatos is considered to be similar to Paradise, California that was totally destroyed by fire. I like that the Santa Clara County Fire Department has put their voice in on this, and I wonder why staff does not agree with them. It's not about the proposed home, it's about where it is. It's in an area that if there is a fire that whole hillside is in danger. More time is needed to explore other possible solutions, but we really need to think about this, because more and more people will want to develop in the hillsides. Los Gatos has very high standards regarding fire issues, and we should pay attention and think about this one before making a quick decision.

Ed Chow

- I wanted to share a precedent that Napa County has set for many years now. Napa County has the Road and Streets Standards planning document. The 2019 revision basically said, "We apply PRC 4290 to all of the SRA areas, but these standards for 4290 are not applicable retroactively to existing roads, streets, and private lanes or facilities." In 2019 the Board of Forestry certified Napa County's Streets and Roads document and concluded that the fire safety codes in the document meet or exceed those that must be addressed under PRC 4290. It is an ongoing precedent that has been in existence for many years and acknowledged by the Board of Forestry and adopted by many other counties, including Humboldt and El Dorado. There is strong precedent out there in favor of what this applicant is trying to do.

Denis Zaff

- I'm a Los Gatos homeowner and support this project. I agree with previous speakers that this would be a new house, a much safer house. Santa Clara County is unique in its handling of PRC 4290 enforcement, and I encourage you to look at Napa County's recent Town Hall meeting devoted to 4290 issues. The old 1991 4290 law has not been enforced or interpreted in a consistent manner, and a lot of County-built roads were not built to that standard after 1991, and the sudden change in enforcement and interpretation happened in December 2020. The May 2021 Santa Clara County (inaudible) report states that limiting property rights in this way can in many ways be interpreted as a taking without proper compensation under the American constitution, and very expensive to deal with. I encourage the Planning Commission to use common sense and approve the project.

Eva Fleischer

- I am Los Gatos homeowner. I agree with most speakers that the proposed new home would be much safer in terms of fire than the old one and agree with previous speakers that the Town and Planning Commission should consider safer and wider roads for the fire trucks. Having such a road that fire engines can quickly access is a reasonable request. The Town should consider the Fire Department's comments regarding making the road safer.

Eric Wade, Owner/Applicant

- I believe the Fire Department has the best interest of the local hills residents in mind, and I would think they would jump at the chance to approve projects that could incrementally improve the neighborhood home-by-home without being an undue burden as the homes are remodeled, and collectively over time it would create a safer neighborhood. My proposed home has a large turnaround, which Fire wanted, turnouts, lane widening in front of the house, and all the A1 fire safety measures: sprinklers; metal roofing; defensible space; etc., that make my property and all the properties around it safer.

Closed Public Comment.

Santa Clara County Assistant Fire Marshal Brad Fox provided a presentation.

Commissioners discussed the matter.

MOTION: **Motion** by **Commissioner Thomas** to approve an Architecture and Site application, and grant an Appeal of a Santa Clara County Fire Department decision, for 17121 Crescent Avenue. **Seconded** by **Commissioner Clark.**

Vice Chair Barnett requested the motion be amended to include language that the approval is also subject to the project plans as well as the conditions.

The maker of the motion accepted the amendment to the motion.

Commissioners discussed the matter.

VOTE: **Motion passed unanimously.**

Commissioner Raspe returned to the meeting.

2. **<u>400 Surmont Drive</u>**
   Architecture and Site Applications S-21-004 and S-21-023
   APN 527-20-003
   Applicant: Studio 3 Design
   Property Owner: Sandra K. Anderson, TTE
   Project Planner: Ryan Safty

   Requesting approval for construction of a shared driveway, two new single-family residences to exceed the maximum height for visible homes in the hillsides, and site work requiring a grading permit on vacant property zoned HR-2½.

Ryan Safty, Associate Planner, presented the staff report.

Opened Public Comment.

Bess Weirsema, Studio 3 Design, Applicant

- *Exception 1*: 9-foot cut at backside of the property. It is a staggered cut, not a single 9-foot cut, and follows the HDSG. *Exception 2*: Grading at the hammerhead turnaround dictated by the Fire Department. Fire Department rules have changed, but the HDSG and their grading standards have not been adopted to be in compliance with them, causing this particular regulation to be very difficult, if not impossible, to meet. *Exception 3*: Fill associated with the driveway. Our solution is to narrow the driveway to 12 feet of paved area, not for the breadth of the driveway, but only 150 feet of 3,300 square feet, or 4.5% of this driveway. *Exception 4*: Exact situation as Exception 3, going up the private drive. Solution is to narrow the driveway, for only 120 square feet of 2,800 square feet, or 4.2% of the driveway. *Exception 5*: 5 feet of fill along the driveway. This exception only covers approximately 450 square feet of 4,200 square feet, or 1% of the overall driveway. *Exception 6*: Under floor height above grade being in excess. There is only one area not compliant with the Hillside Design Standards and Guidelines, which comprises only 4% of the total area exceeding the five feet above grade guideline. We have stepped the floor plan and building pads down the hillside to eliminate the under floor area and the overall height, and stepped the floor plan down along the grade as well. The homes sit in the middle of the immediate neighborhood in terms of FAR and would not be the largest houses in the neighborhood. The homes are not placed orthogonally or in alignment with the property lines, they are set so they stagger along the hillside to minimize grading and work with the topography. We believe we are more compliant with the guidelines with the curved driveway, stepping the building foundation with the natural slope, the home running parallel with the topography and contours, and the home cut into the hillside and staggered along the natural topography. We propose significant landscaping to screen the new driveway and the required hammerhead. The homes do not tower above the landscape, but stagger with the site. We worked with the existing trees as much as possible.

Carmen N.

- I am a resident of the Belgatos neighborhood on Westhill, directly below the proposed parcels. The proposed homes would absolutely loom over our property, impacting the skyline and the privacy from our back yard. I would be able to see these new homes from every single window in the rear of my house. A lot of the neighborhood comparisons in the staff report excluded homes on Westhill Drive and do not take into account the impact these two homes would have on my nearby neighbors and me. I agree with staff's recommendation to deny the application and request to exceed the maximum height allowance. Tree screening would help address these concerns.

Paul Cosentino

- My family has lived on the property directly adjacent to the proposed development for over 40 years. We have concerns regarding water runoff, fire safety, and road access. I encourage you to read the neighbors' letters of complaint, especially Todd Osborne's letter on page 663 where he talks about how this project does not align with the requirements, objectives, and goals of the Town of Los Gatos Hillside Design Standards and Guidelines, and also addresses wildfire danger, hillside stability, and drainage. Diane and Mike's letter on page 653 address the violation of the open space easement. My letter on page 654 encourages each Commissioner, before voting, to come to the front of my house to see and

feel how uncomfortably close this proposed 4,700 square foot house would be. These houses are far from being nestled into the hillside, as claimed by the applicants. In fact, they are on top of one another. I am also concerned with the shared driveway and would prefer a cul-de-sac with the storm drain moved further up the site to address the safety concern. The garbage can locations have still not been addressed.

Lee Quintana

- I agree with staff's conclusion that the project should be denied or have it redesigned, because even though each particular item might seem small, cumulatively it seems to have more of an impact, particularly the height. It could be designed to meet the 18-foot requirement. Parcel 2 contains a walkway around the house, but most hillside homes do not have that walkway, the topography is put back to its natural state after construction. This is an example of designing a house and then using the constraints of the property as an excuse to not meet the Hillside Design Standards and Guidelines rather than designing a house that conforms to the existing property topography and does not need exceptions.

Eva Fleischer

- I am a resident on Westhill Drive and agree with staff's recommendation to deny the application. My concerns are that the buildings, although neatly designed into the hillside, are overwhelming to the neighborhood, not only because of the height, but the size as well, and would totally change the character of the hillside. I am concerned that construction may disrupt the neighborhood and wildlife there with large volumes of dirt needing to be removed, and that the two homes would disrupt the wildlife in the area when built.

Chris Tanimoto

- I am the homeowner located at the corner of Surmont Drive and Westhill Drive. I do not object to the applicant's legal right to develop the two single-family residences, but I do object to approving any exceptions requested by the developer. The Town Hillside Guidelines should be strictly enforced. This project affects Paul Cosentino's property the most. I live down from the storm drain and am concerned that if there were flooding that the drain couldn't handle, it would come down and flood the homes in that area.

Terry Szewczyk, Applicant

- The amount of earthwork associated with the exceptions is approximately 37 cubic yards, not a significant amount of dirt, it's more the fact that the alignments of the driveways would be changed and tightened if we removed exceptions, and we would lose the benefit of landscaping in those areas. Regarding the existing swale that runs into the storm drain at the end of Surmont Drive, it is an ephemeral stream that must be left open and natural and stay where it is based on the biologist reports. We are obligated to control any new runoff that we create from the houses and driveways and contain it on site and disperse it appropriately into the site, so our net runoff into the watershed down the street would be extremely restricted and probably result in a net gain of no additional runoff. We are enhancing the fire safety out here. We are putting in a main extension, a new 8-inch water line coming up to the property, and a fire hydrant at the big hammerhead. Parcel 1 does not require an additional Fire Department turnaround because the construction is within

150 feet of that large hammerhead. Parcel 2 has a full Fire Department hammerhead that is the L-shaped version, so that one also enhances the fire protection along that hillside by providing access up that slope. There is a minimal impact in terms of additional fire risk provided by sprinklering the houses, the Fire Department turnarounds, and the water main extension. We missed the issue with Westhill in terms of screening, and there are some potential impacts there, but the proper solution for that would be in Exhibit 24. It's the corner where Parcel 1 is looking down on Westhill Drive residents, and we can provide additional landscape screening around that side of the house to appease those neighbors in terms of visual impacts, and also address the privacy concerns.

Bess Weirsema, Studio 3 Design, Applicant

- I agree with Terry that additional landscape screening at the far side of the property may help the Westhill neighbors, and I believe the applicant is amenable to that, and also amenable to lowering the plate 1-foot to get us down closer to the majority of the buildings sitting within the 18-foot limit.

MOTION: **Motion** by **Commissioner** Raspe to continue the public hearing for 400 Surmont Drive for an additional 30 minutes.

VOTE: **Motion passed unanimously by consensus.**

Closed Public Comment.

Commissioners discussed the matter.

MOTION: **Motion** by **Commissioner Thomas** to continue the public hearing for 400 Surmont Drive to a date certain of January 11, 2023, with direction to lower the proposed buildings, incorporate additional screening, and conduct neighborhood outreach. **Seconded** by **Commissioner Clark.**

VOTE: **Motion passed unanimously.**

OTHER BUSINESS

REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

Jennifer Armer, Planning Manager

- The Housing Element Advisory Board's November 17, 2022 meeting was canceled due to unavailability of online information. The HEAB meeting has been rescheduled to December 1, 2022.
- Town Council met November 15, 2022 to consider a number of Planning related items: 1) Second reading of the Building Code was adopted; 2) Second reading of SB 9 Ordinance was adopted; and 3) Objective Standards went to Town Council, who accepted and appreciated the Planning Commission recommendations. The Council made a few minor changes and adopted the Objective Standards.

SUBCOMMITTEE REPORTS/COMMISSION MATTERS
None.

ADJOURNMENT
The meeting adjourned at 11:41 p.m.

This is to certify that the foregoing is a true
and correct copy of the minutes of the
November 21, 2022 meeting as approved by the
Planning Commission.

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/s/ Vicki Blandin