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

Los Gatos Planning Commissioners:
Kathryn Janoff, Chair
Kendra Burch, Vice Chair
Jeffrey Barnett
Melanie Hanssen
Jeffrey Suzuki
Reza Tavana
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

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

CHAIR JANOFF: Now we'll move on to the public hearing, Agenda Item 2, which is to consider an appeal of a Development Review Committee decision approving a lot line adjustment between three adjacent lots on property zoned R-1:20 located at 17200 Los Robles Way. APNs are 532-36-075, -076, and -077. Lot Line Adjustment Application M-20-012. Property owner is Daran Goodsell, Trustee and Mark Von Kaenel. Applicant, Tony Jeans; and Appellants Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo; and project planner is Ryan Safty.

Are there any disclosures related to this item? I don't see any hands raised. I understand, Mr. Safty, you'll be giving the Staff Report tonight.

RYAN SAFTY: Thank you. Good evening, Planning Commissioners. Before you is an appeal of a Development Review Committee decision approving a lot line adjustment between three existing legal parcels at 17200 Los Robles Way zoned R-1:20.

No construction is proposed at this time. The future driveway and building footprints shown in the

1 project plans are conceptual and are not being reviewed
2 with the Lot Line Adjustment Application. A future
3 Architecture and Site Application will be required for the
4 construction and grading work.

5 There is an existing residence on Parcel 1, which
6 would remain. Parcels 2 and 3 are vacant. Parcels 1 and 3
7 take access off Los Robles Way and Parcel 2 is landlocked.

8 There are four existing nonconformities
9 associated with the three parcels, including setback of the
10 existing residence, minimum lot size of Parcel 2, and
11 minimum frontage requirements for both Parcels 1 and 2.

12 The proposed lot line adjustment would have
13 Parcels 2 and 3 take access off of Worcester Lane while
14 Parcel 1 would continue to access off of Los Robles Way.
15 All existing nonconformities would be resolved except that
16 Parcel 1 frontage on Los Robles Way will continue to be
17 nonconforming.

18 The DRC approval was appealed for a variety of
19 reasons, which are summarized in the Staff Report. The
20 whole 90-page appeal packet is included as Exhibit 11 and
21 the Applicant has responded to the Appellant's concerns,
22 included as Exhibit 12.

23 Staff recommends that the Planning Commission
24 deny the appeal, uphold the decision of the Development
25

1 Review Committee, and approve the Lot Line Adjustment
2 Application.

3 A Desk Item was prepared and distributed today
4 amending the Parks and Public Works Conditions of Approval
5 to insure the consent from all holders of deeds of trust on
6 the parcels I provided prior to recordation of the map.

7 This concludes Staff's presentation. Planning
8 Staff, Parks and Public Works Staff, and the Town Attorney
9 are available for questions. Thank you.

10 CHAIR JANOFF: All right, thank you for your
11 report, Mr. Safty. Do any commissioners have questions for
12 Mr. Safty or other members of Staff at this time?

13 Commissioner Hanssen.

14 COMMISSIONER HANSSSEN: I have two questions if I
15 may, Chair?

16 My first one is one of the things we're asked to
17 look at is the compliance with the provisions of the
18 General Plan, so I'm asking Staff what aspects of the
19 General Plan should we be considering relative to this
20 specific application? And then I have a second question.

21 JOEL PAULSON: I can jump in. Most projects you
22 have to consider the General Plan. With this becoming more
23 conforming for the most part except for, as Mr. Safty
24 mentioned, the one nonconforming frontage that's going to
25

1 continue, they'll continue to have a nonconforming frontage
2 for one of the lots.

3 Right now this is simply putting parcel lines on
4 the paper, so there's no development. That development
5 would be in line with provisions in the General Plan such
6 as looking for ensuring that we're minimizing grading and
7 tree removal and things like that, so this project really
8 doesn't affect any of that, but ultimately the future
9 projects as Architecture and Site Applications and/or
10 associated Grading Permits come forward, then we'd be
11 looking at specific items related to development.
12

13 COMMISSIONER HANSSEN: Just to summarize what I
14 thought I heard is that the real issue that's on the table
15 today is a zoning code, not a general plan, and that when
16 the Architecture and Site Application comes in, then we'll
17 be considering aspects of the General Plan, is that
18 correct?

19 JOEL PAULSON: That's correct.

20 COMMISSIONER HANSSEN: Okay. So, my follow up
21 question is on the findings in Exhibit 2, and it's about
22 this Subdivision Map Application and it talks about in C
23 and D that the site is physically suitable for the type of
24 development and that the site is physically suitable for
25 the proposed density of developments, so my question is

1 since there is no Architecture and Site Application how do
2 we weigh that into this decision that is about the lot line
3 adjustment without considering the broader implications of
4 this, which is that there will be development at least on
5 Lot 1, if not on the others?

6 JOEL PAULSON: Those are related to the
7 Subdivision Map Act findings. This is technically a
8 Subdivision Application for the Town, but they're not
9 creating any new lots, so I wouldn't take that very much
10 into consideration. We do, as Mr. Safty mentioned, ask them
11 to put conceptual access and conceptual building areas on
12 there, but ultimately all of those details will be dealt
13 with moving forward.

14 Again, this is a little unique; it's not an
15 actual subdivision. If this was one parcel and they were
16 subdividing into three lots, then I think a lot of that
17 stuff would come into play similarly with the General Plan,
18 because it is simply lot line adjustment for three existing
19 parcels that were legalized and certified with a
20 Certificate of Compliance.

21 COMMISSIONER HANSSEN: So, what you're saying is
22 that we shouldn't give a lot of weight to the Subdivision
23 Application findings relative to this hearing?
24
25

1 JOEL PAULSON: From Staff's perspective none of
2 those findings for denial can be made, so we look at them
3 as whether they're applicable or not. None of those from
4 Staff's perspective can be made.

5 COMMISSIONER HANSSEN: Okay, thank you.

6 CHAIR JANOFF: Other questions for Staff? I do
7 have one.

8 Staff, I'd like to ask you to confirm—perhaps
9 this is for the Town Attorney—but I wanted to draw
10 attention to the last sentence of the Staff Report, page 8.
11 This is the Town Attorney's Office comment and I quote from
12 that. It says, "The Town must confine its approval of a lot
13 line adjustment on its conformance to the local General
14 Plan, any Specific Plan, any applicable coastal plan, and
15 zoning and building ordinances resulting from the lot line
16 adjustment."
17

18 So this is a pretty narrow scope for the Planning
19 Commission. Could the Staff or the Town Attorney speak a
20 moment to the narrowness of our task tonight?

21 ROBERT SCHULTZ: I think exactly what you said is
22 exactly your task, to look how the lot line adjustment will
23 comply with our General Plan and zoning. The reason for
24 this statement and the law that cited it is that the
25 Appellants are trying to state that you can't do a lot line

1 adjustment if it currently is nonconforming to make it
2 conforming, and that simply isn't how state law in cases
3 are. You don't look at what currently exists, it's what is
4 it going to be when the lot line is completed and how does
5 that comply with your General Plan and ordinances. So,
6 that's why that statement and that law were explained to
7 you. It's they're trying to say because it currently these
8 lots are nonconforming you can't change them and that's
9 simply not what the law states.

10
11 CHAIR JANOFF: So, that clarifies that. Any other
12 questions for Staff? I don't see any hands raised.

13 Now we will open the public hearing, and we'll
14 start with the Appellants who will receive five minutes to
15 address the Commission. There are a number of parties
16 speaking on behalf of the Appellants, so we're looking for
17 primary speakers to summarize your appeal.

18 JOEL PAULSON: Thank you, Chair. The Appellant,
19 Ms. Steer, will be allowed to talk. And again, Ms. Steer,
20 you and your group have up to five minutes.

21 ALISON STEER: Okay, thank you. Just a minute, I'm
22 going to start my clock.

23 All right, so good evening and thank you very
24 much for your time this evening. I'm speaking on behalf of
25 the Appellants.

1 First of all I'd just like to speak to that
2 discussion you just had regarding the Subdivision Map Act.
3 The Town Attorney cites the Subdivision Map Act Section
4 66412, shown here, but I respectfully contest this
5 interpretation of the government code to be overly broad.
6 The Subdivision Map Act is silent on when lot line
7 adjustment procedures can be used, whereas the ordinance is
8 explicit that it cannot be used under these circumstances
9 and therefore takes precedence.
10

11 The Subdivision Map Act in fact allows
12 jurisdictions to decide how they regulate lot line
13 adjustment procedure and loosely provides the minimum
14 requirements that need to be met, so I would just contest
15 exactly what was just said prior to us being able to speak.
16 I would encourage the Planning Commission to read this
17 Subdivision Map Act section and draw its own conclusions.

18 Again, if you read it really carefully the
19 Subdivision Map Act states that, "If the lot line
20 adjustment is approved by the local agency, then the local
21 agency shall limit its review to whether or not the parcels
22 resulting from the lot line adjustment will conform to the
23 local general plan and that no conditions shall be
24 imposed." Again, I encourage you all to read it carefully
25 for your own conclusion before you make a decision.

1 Taking a non-buildable site and making it
2 buildable is not allowed in Los Gatos, and I've found
3 examples of other counties that do the same. I also have
4 found this with the land use (inaudible).

5 We contend that this ordinance is not in any way
6 inconsistent with the Subdivision Map Act and is in fact
7 enforceable. The Town's Zoning Ordinance 2910-070 exists
8 specifically to prevent developers and property owners from
9 taking a non-buildable parcel and turning it into a
10 buildable parcel using lot line adjustment procedure. The
11 Town ordinance includes the requirement of a Certificate of
12 Compliance but also lays out seven other requirements
13 before lot line adjustment procedure can be used.

14 In Napa County, for example, they also reference
15 compliance with the section of the Subdivision Map Act, but
16 they specifically state that a non-buildable parcel will
17 not be made buildable by lot line adjustment procedure and
18 then go into what they determine as a building site, which
19 it has to be free of geotechnical hazards and also has
20 reasonable access, which this land does not; it's a
21 landlocked parcel.
22

23 And the same goes for Santa Cruz County where it
24 states that the lot must be buildable before a lot line
25 adjustment can be approved. A lot that is not buildable for

1 whatever reason, for example, lack of access or an unstable
2 slope, it cannot be make buildable by means of a lot line
3 adjustment. Essentially Santa Cruz says that the lot line
4 adjustment between parcels cannot result in more buildable
5 parcels than before, which is what this developer is trying
6 to do. We only have two buildable parcels on this lot and
7 you are turning it into three buildable parcels.

8
9 We have provided incontestable evidence to the
10 signed Harding Avenue quit claim deeds that no legal access
11 exists today for APN 532-36-077 and therefore this land
12 fails to meet the criteria and the Town's Zoning Ordinance
13 for a lawful parcel of land. This alone is sufficient
14 grounds for the Planning Commission to grant this appeal
15 and deny the lot line adjustment.

16 Staff has made a recommendation to deny our
17 appeal, but for the Town to blatantly disregard their own
18 Town ordinance would set the stage for legal challenges and
19 set a precedent for future illegal use of the lot line
20 adjustment procedure to establish a conforming parcel. We
21 are specifically focusing on Bullet 5, which requires there
22 to be legal and adequate access of vehicles and safety
23 equipment, while I would also call into question Bullet 4,
24 the Slope Stability Standards. Here this lot has slopes in
25 excess of 30-percent. I would ask why the Town has not

1 required the developer to provide evidence of slope
2 stability on this hillside before utilizing the lot line
3 adjustment procedure, and why would this ordinance even
4 exist?

5 The developer has contested that it would not in
6 fact be required to build within the LRDA but the Los Gatos
7 Hillside Development Standards says otherwise. The Hillside
8 Standard also applies to R-1 zones with hillside
9 sensitivity. There is no suitable place (inaudible)
10 emergency vehicle turnaround on this parcel with the
11 consideration to the LRDA, and we have already proved there
12 is no legal access.
13

14 So, hypothetically if a right-of-way existed the
15 driveway to exit this property would be greater than 150
16 feet and would need an over 70-foot turnaround implemented,
17 not exceeding 5-percent grade in any one direction. Where
18 and how would this be implemented on the existing parcel?
19 You must clearly show you meet all eight criteria in the
20 Town ordinance before you can use LRDA procedure.
21

22 Next slide please, which I'm probably not going
23 to get to because of the time limit, but thank you very
24 much for your time tonight and I hope that your decision
25 was already made before you came that you would take

1 careful consideration of the interpretation of the
2 Subdivision Map Act section that was referenced earlier.

3 CHAIR JANOFF: All right, thank you for your
4 presentation, and I have a question for the Town Attorney
5 at this time.

6 Based on the presentation by Ms. Steer can you
7 please comment on whether the points she's asking us to
8 reconsider are valid or not? We do trust our Town Attorney
9 also, and so for the Planning Commission to do a legal
10 interpretation of material just presented, we'll call on
11 you to guide us.
12

13 ROBERT SCHULTZ: I've given my legal opinion in
14 that the changes, the lot merge language, is inapplicable
15 and unenforceable by the Subdivision Map Act and we'll show
16 the lot line adjustment language that she quotes. If you
17 read the next sentence it says exactly your narrow scope is
18 to look at the lots when they're completed and not as they
19 currently exist.

20 CHAIR JANOFF: And so just to clarify, is it fair
21 to say that the establishing criteria that this is
22 developable property is at this time theoretical in the
23 sense that we don't have plans for development, and should
24 the development plans come forward and it's determined by
25 engineering review or experts that it is not a buildable

1 site, that it is unstable, then it would practically not be
2 possible to build, is that correct? Question for Staff.

3 ROBERT SCHULTZ: It is possible at the end of the
4 day to find out there's no buildable space. We've had many
5 projects where there might be slope stability or grading
6 issues and other things where the building pad is very
7 limited. I'm thinking of Bella Vista, how many changes we
8 went through that to limit the development of that that
9 went through a lot line and certification and so we could
10 have that same situation. When you're said and done it
11 could be a very limited building envelope at the end of the
12 day, but that's what will occur during the Architecture and
13 Site review.
14

15 CHAIR JANOFF: All right. Thank you for that
16 clarification, and again just to confirm, that discussion
17 about buildability is not really the purview of the
18 Planning Commission's task this evening, is that correct?

19 ROBERT SCHULTZ: That's correct.

20 CHAIR JANOFF: All right, thank you. Any other
21 Commissioners have questions for the speaker or for Staff?
22 Commissioner Suzuki.

23 COMMISSIONER SUZUKI: Because this is very
24 important I'd like to ask the Town Attorney to repeat his
25

1 opinion on the presentation. I'm just taking pretty close
2 notes right now. Specifically on what is disputed.

3 ROBERT SCHULTZ: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur—but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
8 adjustment—and the Subdivision Map Act is very clear in
9 what your scope is and it's limited to the effect of after
10 the lot line is completed.

11 I've been doing this 32 years and the argument
12 has never been that if there are unbuildable lots you
13 cannot do a lot line adjustment, and I'm trying to look up
14 Napa County's to see where they have, but I do know that's
15 a county, there might be different rules with counties, but
16 I have not found any city that has the same language that
17 we have that requires you to apply the lot line beforehand,
18 and all I can assume is the ordinance is very old, around
19 the time the Subdivision Map Act was applied, and we do
20 need to go back and change the merger language and the lot
21 line language so it confirms the Subdivision Map Act. The
22 Subdivision Map Act language is very clear that you apply
23 what the lots will be afterwards and not before.

1 CHAIR JANOFF: And just to clarify, the
2 Subdivision Map Act takes precedent over our local
3 ordinance?

4 JOEL PAULSON: Yes.

5 ROBERT SCHULTZ: State and case law will always
6 take precedence over (inaudible).

7 CHAIR JANOFF: All right, thank you. Any other
8 questions at this time? Commissioner Barnett.

9 COMMISSIONER BARNETT: For Mr. Schultz. Is it
10 correct that the lot line adjustment if approved would
11 obviate the need for a subdivision map?
12

13 ROBERT SCHULTZ: Yes, it does. I mean, you don't
14 need a subdivision map because they already have three
15 legal lots there, so they're just doing a lot line
16 adjustment.

17 COMMISSIONER BARNETT: Thank you.

18 CHAIR JANOFF: Now we will move on and give the
19 Applicant up to five minutes to address the Commission.

20 JOEL PAULSON: Thank you, Chair. Looks like the
21 Applicant, Mr. Jeans, we'll now allow him to speak and you
22 have up to five minutes.

23 TONY JEANS: Yes, could you put my first slide up
24 so that we can start when that is up? Thank you.
25

1 All right, well, as we've heard these are already
2 three legal lots recognized by the Town of Los Gatos. A
3 Certificate of Compliance has been recorded.

4 Parcels 1 and 2 can be accessed from Los Robles
5 Way but also have access from Worcester Lane; it's just
6 never been used. Parcel 2 was created with Harding access
7 and never used; it's now accessed from Los Robles Way.
8 Parcel 1 and Parcel 2 have common ownership and the owner
9 can decide how to access that and where to put the
10 emergency turnaround.

11
12 A portion of Parcel 2 is buildable. The LRDA, one
13 main configuration there is just showing that there are
14 trees, so we tried to avoid trees when showing the LRDA,
15 but that it is buildable.

16 So this is the current configuration. This is how
17 we want it to be. You can see that it's a much more
18 appropriate use of the space. Parcel 1 would continue to
19 have the house on it and it would no longer have
20 nonconforming setbacks. Parcel 2 and Parcel 3 would be
21 accessed from Worcester Lane and the current dead end of
22 Worcester Lane, which terminates at a fence, would be
23 improved by a cul de sac, again not part of this
24 application but when Parcels 2 and 3 would be developed
25

1 this would be the configuration that would provide
2 conforming access to Parcel 2 and Parcel 3.

3 So if you look at what the land is all about you
4 can see the three parcels, 1, 2, and 3 and you can see how
5 close the property is to the lot line between 3 and 1,
6 which is why we want to reconfigure the lot lines. Also,
7 you can see a good amount of space that is available
8 reasonably for building without dramatically impacting
9 trees. There's an area on Parcel 1 where the house is.
10 There's a further area on Parcel 1 towards Worcester Lane,
11 and an area on Parcel 3, which is fully accessible from
12 Worcester Lane and could be built on.

14 So if you look at how the configurations move on
15 the next slide you can see that Parcel 1 retains better use
16 of the land for the existing house, Parcel 3 would have
17 good access for a buildable area right in the center, and
18 Parcel 2 would have a very nice almost one-acre area. Even
19 though it's R-1:20 and the adjacent areas R-1:8 it would
20 have plenty of room to get separation from any existing
21 homes on the adjacent lots, which has been one of the
22 primary concerns that people have had. Using access as a
23 means to shoot this down really just belies the fact that
24 what they don't want is a couple of additional houses next
25 to them.

1 If you have questions about this the details are
2 on the plans and I have put rebuttals in for each of the
3 points that have been brought up by the Appellant. I think
4 that this is a reasonable reconfiguration of the three lots
5 which as has been determined are currently legal, and the
6 Subdivision Map Act and the Town of Los Gatos rules really
7 don't give you a lot of room to disallow this
8 configuration, so I ask you to ratify the unanimous
9 decision of the approval of the Development Review
10 Committee, which found no reasons, and deny the appeal.
11 Thank you very much.

13 CHAIR JANOFF: All right, thank you, Mr. Jeans.
14 Do members of the Commission have any questions for the
15 Applicant? Commissioner Barnett.

16 COMMISSIONER BARNETT: Although it may not be
17 technically before us, can you clarify whether you've had
18 communications with the Fire Department concerning the
19 turnaround feasibility?

20 TONY JEANS: Yes, we have, and the Fire
21 Department said either with or without the cul de sac it
22 would be workable as long as we were to put turnarounds on
23 the sites themselves, Parcel 2 and Parcel 3. Parcel 1, we
24 have not had a discussion as to how we would improve that
25 to give better access and turnaround at the end of Los

1 Robles Way, but when it is only one site involved we would
2 expect to put either a cul de sac at the end of the Los
3 Gatos Way extension or to put a fire truck turnaround there
4 in any event.

5 COMMISSIONER BARNETT: Good. Thank you for that.

6 CHAIR JANOFF: I do have a question for the
7 Applicant. Mr. Jeans, in one of your communications in our
8 report you... This won't be verbatim, but there was a comment
9 regarding whether or not you would be allowed to build
10 strictly within the LRDA or not strictly within the LRDA
11 and your comment was it's guidance and it's not something
12 that you're expected to hold fast to.
13

14 My question for you is this: Are you aware of the
15 recent decisions by this planning commission and previous
16 planning commissions and the trend of the Planning
17 Commission to restrict build within the LRDA and not allow
18 any build outside the LRDA?

19 TONY JEAN: Yes, I am, and I think that is
20 definitely the right way to go. The building sites that
21 have been shown on the map that accompanied this
22 application show that it is entirely reasonable to
23 configure the house, the turnaround, the driveway, all in
24 entirely the appropriate LRDA area.
25

1 CHAIR JANOFF: Thank you for that. I just wanted
2 to make sure that you understood what the Planning
3 Commission has been deciding recently. This is not germane
4 to tonight's conversation, but it would be germane should
5 plans come back to the Planning Commission.

6 TONY JEAN: I think it absolutely should be and I
7 am in favor of that.

8 CHAIR JANOFF: Great. All right, thank you. Do we
9 have questions? I don't see any hands raised from the
10 Commissioners, therefore we will move on to the public
11 comments. Members of the public may choose to state your
12 name and/or address or speak anonymously, however please
13 understand this meeting is being recorded for the public
14 record. We ask that you limit your comments to three
15 minutes. Director Paulson, do we have any members of the
16 public who would like to speak on this item?

17
18 JOEL PAULSON: Thank you, Chair Janoff. I do not
19 see any members of the public with their hand raised at
20 this point. Let's give it a second here. Seeing none,
21 Chair.

22 CHAIR JANOFF: All right, thank you. We will
23 close the loop back. We now give the Applicant and then the
24 Appellant each three minutes to provide concluding
25 comments. First up would be the Applicant. Mr. Jeans.

1 JOEL PAULSON: Mr. Jeans, I've allowed you to
2 speak. If other members from your team want to speak,
3 that's perfectly fine as well.

4 TONY JEANS: Sorry, is it my opportunity to
5 speak? Thank you.

6 In the absence of any comment from the public
7 other than the original Appellant I have nothing further to
8 add other than to say that I think that the direction that
9 I was given and that I just had to comply with the Town
10 zoning and rules and Subdivision Map Act are applicable
11 here, and one of the things that we have ensured is that we
12 do not a have as many of the nonconformities that exist now
13 in the new configuration, and I think that you will agree
14 that the planned proposed configuration is substantially
15 better than the one that it is now, so I ask you to approve
16 it. Thank you.

18 CHAIR JANOFF: All right, thank you for that wrap
19 up. And now at this time we'll ask the Appellant if the
20 Appellant has any further comments to add to close this
21 item?

22 JOEL PAULSON: Thank you, give me one second and
23 I will give the Appellant back the ability to speak. Ms.
24 Steer?
25

1 ALISON STEER: Thank you. At the beginning of
2 this meeting Mr. Paulson mentioned this is a subdivision.
3 I'd like to question why we're using the lot line
4 adjustment procedure for the changes that are being made
5 today?

6 I just really want to reiterate that the
7 Subdivision Map Act in fact allows jurisdictions to decide
8 how they regulate the lot line adjustment procedure. We're
9 not talking about buildability, we haven't seen what
10 they're going to build, but there is Bullet 5 that says you
11 need legal access and a turnaround and that is in the Town
12 Ordinance. It says that you have to have a parcel...parcel
13 (inaudible) as we call it does not have this today and
14 that's written in the ordinance.

15 What we're asking for is for you to basically
16 deny this lot line adjustment and grant our appeal, but
17 also ask that you maintain the existing primary access for
18 these parcels from Los Robles Way. Quoting from the
19 Hillside Standard this would, "avoid unnecessary scaring
20 and destabilization of the hillside through grading and
21 removal of trees," because if you've been to the property
22 you've seen what it looks like at the bottom of (inaudible)
23 Worcester Lane, and would, "assure a preservation of the
24 natural scenic character of the Town."
25

1 In addition, this would ensure that the two
2 remaining buildable parcels, because there are only two
3 buildable parcels on this property, share a driveway and
4 minimize the impervious surface, because we have had issues
5 with flooding from this hillside, we've had issues with
6 landslide; it's falling into people's properties. We would
7 like to keep the property access from the top of Los Robles
8 Way the way it was originally intended.

9
10 Again, the Subdivision Map Act is very loosely
11 worded. Actually, when you read it it's only defining what
12 would happen after the jurisdiction agrees to the Lot Line
13 Application, and the Lot Line Application does not meet the
14 requirements in the Town ordinance. I respectfully disagree
15 with the Town Attorney on this. I would ask to see if there
16 are any legal things that he can cite of court cases where
17 people have been able to overthrow lot line adjustment
18 using the Subdivision Map Act section that was specified
19 here.

20 You know, we know that Tony Jeans is talking
21 about these parcels being legal, but they're only legal in
22 terms of the Certificate of Compliance and we know that
23 that is often issued on interior parcels that lack legal
24 means of access and can't be built upon under existing
25 zoning codes. So yeah, unless you want to take the

1 ordinance off the website and tell us what other ordinances
2 aren't actually defensible in court, then I think this is a
3 valid ordinance.

4 CHAIR JANOFF: Thank you for your comments. Do
5 any Commissioners have questions for Ms. Steer at this
6 point? I do have one.

7 Ms. Steer, the Town Attorney has advised us that
8 state law takes precedence over local ordinances in this
9 instance. Do you still assert that we should be following
10 the ordinance contrary to state law? And that's just a
11 simple yes or no question, please.

12 ALISON STEER: Yes, because the state law is very
13 loose in its requirements. It's actually giving
14 jurisdiction to the local agency. There's nothing in there
15 specific to how they're to regulate the lot line adjustment
16 procedure.

17 CHAIR JANOFF: All right, thank you for your
18 answer. Any other questions from Commissioners? I don't see
19 hands raised, so at this time I will now close the public
20 hearing on this item and ask if the Commissioners have
21 questions of Staff, wish to comment on the application, or
22 introduce a motion? Commissioner Hanssen.

23 COMMISSIONER HANSSEN: I have a question for
24 staff and then a comment.
25

1 After listening to all of this here's what's
2 troubling me. We have these findings in front of us in
3 Exhibit 2 and the findings are primarily in two areas: it's
4 CEQA and the subdivision application. And if I go back to
5 what was said earlier by Staff and the Town Attorney we're
6 basically not to consider any of the actual findings for
7 denial in the Subdivision Map Application because they're
8 not relevant, but then we don't have anything else to
9 consider in terms of making findings.
10

11 And if you just consider the worthwhileness of
12 the lot line adjustment in terms of making the property
13 more usable and more buildable, that's very clear, but
14 that's not in our findings.

15 And so I remain troubled. I understand that state
16 law trumps local law, but I can look at several of the
17 findings in the Subdivision Map Application, findings that
18 we have in Exhibit 2, and say that they don't apply to this
19 project, but we're not supposed to regard those.

20 So, I'm just wondering if Staff can tell me how
21 to sort through what we have to finding findings for versus
22 what I see in front of me?

23 JOEL PAULSON: So again, this is a Subdivision
24 Application, and so what you look at is whether it's these
25 findings or we have other Town Code findings that you have

1 to make on a regular basis, and sometimes some of them
2 aren't applicable. We still include them, or we say it's
3 not applicable, and so maybe that would have been clear.

4 This one is a little bit different in that it's
5 in the reverse. Typically you make these findings to deny a
6 Subdivision Application but the reverse actually is what
7 we're looking to do here, which is make affirmative
8 findings. I think that was based on a case from not too
9 long ago regarding an actual Subdivision Application, not
10 in the Town but somewhere in the state.

11 I'm not sure if the Town Attorney has any
12 additional comments. From Staff's standpoint we have three
13 legal lots and we have done a Certificate of Compliance
14 creating legal lots. They're now looking to modify those
15 lots, the configuration of them, through a lot line
16 adjustment, and that's the path that we would go forward
17 with and that's why DRC considered it and approved it. I'm
18 trying to remember the last lot line adjustment that was
19 appealed but this is how this has been done for the last 21
20 years I've been here. I'm not sure if the Town Attorney has
21 any additional comments on that.
22

23 ROBERT SCHULTZ: I mean, my comment just goes
24 back to what the Subdivision Map Act says about lot line
25 adjustments, and even though the Appellant wants to say

1 that you have local authority under our local ordinances,
2 and it's very clear, the language in it: "A local agency
3 shall limit,"—it's a limit—"it's review and approval to a
4 determination,"—so you're going to make a determination—"of
5 whether or not the parcel's *resulting* from the lot line
6 adjustment."

7 So you're limited to your review and approval and
8 determination of whether the resulting lot line adjustment
9 will conform to your General Plan and Specific Plan—there
10 isn't in this case, we're not in a coastal plan—and zoning
11 or building ordinances. So you're limited to your review of
12 when the lots are completed. Not what's there and whether
13 they're buildable or not buildable, but when they're
14 completed, these three lots, and are there any General Plan
15 or Zoning Ordinance that it's in conflict with? And that's
16 for your review.

18 COMMISSIONER HANSEN: I think I understand it.
19 So, then if the Chair would allow me I would like to make a
20 comment.

21 My comment is this, that I totally understand
22 what is being said by Staff and the Town Attorney, and I
23 also understand what the Appellant is saying, and so aside
24 from the very narrow legal interpretation of this I feel
25 like the steps of this thing were all wrong.

1 It's already been decided that there are three
2 lots, so subdividing a single parcel into three is already
3 a done deal, and so now we're asking to reconfigure those
4 so that they appear more like buildable lots, which I
5 understand, and then we're going to be forced into this
6 situation later on where we have property that's in the
7 very-high Wildfire Interface Zone, which is very clear in
8 our upcoming Draft General Plan that we don't encourage
9 additional density, and so we're going to be forcing this
10 situation where when we get an Architecture and Site
11 Application it's going to be very difficult. It might not
12 be possible to get the access approved to Lots 2 and 3, but
13 now the lots are bigger and people will assume that they're
14 buildable and then we're going to run into Bella Vista all
15 over again.

17 So, that's my comment. I just consider the order
18 to things a bit problematic and that we're putting the cart
19 before the horse by making all these things to appear that
20 it's more buildable and sellable, and then we have to do
21 the hard stuff later. So, that's all I have to say.

22 CHAIR JANOFF: Just to follow up on your first
23 question having to do with what the findings might look
24 like, I actually was surprised to see that there isn't a
25 finding that says we can find conformance with the General

1 Plan, and it would make me feel more comfortable given the
2 guidance from the Town Attorney that we at least include
3 that as a finding should this motion go forward.

4 And I think because the current General Plan and
5 the upcoming General Plan both are asking for a residential
6 build, so you can argue that even though this is not the
7 ideal spot, this may not be where the Planning Commission
8 would approve a lot, in theory you're consistent with the
9 General Plan because the General Plan is asking for a
10 residential build, so I'm comfortable with that if that
11 makes sense to the rest of the Commission.
12

13 CHAIR JANOFF: Mr. Suzuki, did you have your hand
14 up?

15 COMMISSIONER SUZUKI: Yes, I did.

16 CHAIR JANOFF: Commissioner Suzuki.

17 COMMISSIONER SUZUKI: I have a question for
18 Staff. In the Planning Commission account, from my
19 understanding we can only account for what the completed
20 lots will look like, which leads me to my question. Can we
21 account for a reduction in nonconformities? For example,
22 from like four nonconformities to the one nonconformity
23 that exists, or is the Commission only allowed to account
24 for the one existing nonconformity? In other words, can we
25 account for this lot line adjustment fixes a bunch of

1 nonconformities, or do we just scrap the before and we only
2 look at the after? We only account for the one
3 nonconformity at the end of the day, not the reduction in
4 the nonconformities? Thank you.

5 JOEL PAULSON: Yes, I'd offer, and then if the
6 Town Attorney has any additional comments.

7 You're free to take in whatever information you
8 want to which you use to base your decision ultimately.
9 From Staff's perspective as you've mentioned, which is
10 outlined in the Staff Report, we're generally trying to
11 reduce as many nonconformities as possible; this reduces
12 three of four. We are still left with one outstanding
13 nonconformity but there currently exists a nonconformity
14 for that parcel for the frontage, and so Staff, from our
15 perspective, this is improving the situation.

16 And I would just, back to Commissioner Hanssen's
17 comments earlier, I think I mentioned earlier, if this was
18 one lot right now and they were coming in to subdivide it
19 for three lots, a lot more of this stuff would come into
20 play. It's really a distinction between an actual
21 subdivision through a parcel map versus lot line
22 adjustments of three existing legal parcels.
23
24
25

1 So, hopefully that answers your questions, Mr.
2 Suzuki, and I'm not sure if Mr. Schultz had anything
3 additional on that one.

4 CHAIR JANOFF: I see Mr. Schultz shaking his head
5 no. Commissioner Thomas, did I see your hand up?

6 COMMISSIONER THOMAS: Yes, I was trying to just
7 add on to what you were saying, Chair. My interpretation
8 maybe is that if we find that this does comply with the
9 General Plan that is because that is written into the
10 Subdivision Map Act, there's an assumption that that is
11 included as one of the findings, but I also agree with you
12 wanting to add that as a separate finding.

14 CHAIR JANOFF: All right. Any other comments or
15 concerns? Commissioner Barnett and then Vice Chair Burch.

16 COMMISSIONER BARNETT: My concern is that we have
17 a property owner in the Town of Los Gatos who has certain
18 legal rights, they've been confirmed by the Town Attorney,
19 and I think it would be inappropriate to deny the property
20 owner with these legal rights.

21 CHAIR JANOFF: Thank you for that comment. Vice
22 Chair Burch.

23 VICE CHAIR BIRCH: My question is a bit more to
24 the what next? The Appellants did a good deal of research
25 and obviously they care very passionately about it. The

1 Planning Commission as a rule is rather limited to very
2 factual findings that we have to work with and then we are
3 not able to look down the road and make any decisions right
4 now based on future conditions, although I do believe that
5 Commissioner Hanssen is correct. When these come before the
6 Planning Commission there's going to probably be some
7 difficult conversations and compromises are going to need
8 to be made.

9
10 Depending on how we go here I would just like to
11 understand from the Staff, do the Appellants then have the
12 ability to appeal our decision and move on to Council, or
13 does this end with the Planning Commission?

14 JOEL PAULSON: Thank you for your question, Vice
15 Chair. Every action that the Planning Commission takes from
16 a decision standpoint is appealable either by the current
17 Appellant or by the property owner or Applicant, depending
18 on the situation. So yes, after the Planning Commission
19 takes action, whatever that might be tonight, I will be
20 reciting those appeal rights.

21 VICE CHAIR BIRCH: Chair, if I may then make a
22 comment?

23 I do very much see both sides onto this, and I do
24 appreciate on both sides the amount of research that has
25 gone into this. It's been actually a pretty enlightening

1 packet on both the history and the different ordinances and
2 different ways to view this, however, based on what we are
3 tied to as a Planning Commission for what we base our
4 decisions on I feel that we cannot grant the appeal, that
5 we will need to stay with the DRC's decision, but I would
6 be very interested in hearing what my other commissioners
7 think before I attempt a motion.

8 CHAIR JANOFF: I'll just weight in on that. I
9 think it's very clear what the limitations of the Planning
10 Commission are tonight. We could continue this matter to do
11 more research, but I'm not a lawyer, I'm not prepared to
12 interpret the case law; that's what I rely on our Town
13 Attorney to do. So, we've been advised in that capacity and
14 I think Commissioner Barnett raised a very important point.

15 And again, the only thing that we are doing is
16 approving the change in lot lines; we're not approving a
17 development. The development that was presented as
18 potential was a required threshold or step to take in order
19 to say that these lot line revisions are reasonable, so
20 what we get in front of us, we can't predict what will
21 come, if anything, before the Planning Commission, so we
22 really are constrained by this one pretty straightforward
23 question.
24
25

1 So, unless there are further comments I'd be
2 looking for a motion. Vice Chair Burch.

3 VICE CHAIR BIRCH: I'll make a motion, and if I
4 misspeak I'm sure somebody can jump in and let me know.

5 I make a motion to deny the appeal of a DRC
6 decision approving a lot line adjustment between three
7 adjacent lots on property zoned R-1:20 located at 17200 Los
8 Robles Way. I can make the findings that the project is
9 categorically exempt from CEQA, and I can make the findings
10 as required by Section 66474 of the Subdivision Map Act,
11 and the findings in I believe Exhibit 2.

12 And I do believe however, it might have been
13 Commissioner Janoff or Hanssen, I'm not sure, there was
14 something you wanted me to add with the findings about the
15 General Plan. Can you remind me?

16 CHAIR JANOFF: I was concerned that we might want
17 to make the consistency with our General Plan more
18 specific, however, Commissioner Thomas did point out that
19 that's already included in Item B of the next finding, so
20 I'm comfortable with it being there.

21 COMMISSIONER BADAME: Okay, great. Then that is
22 my motion.

23 CHAIR JANOFF: And so we want to add Exhibit 13?
24 I think that was also part of the...

1 VICE CHAIR BIRCH: My apologies. I knew I missed
2 a note. Yes, I do.

3 CHAIR JANOFF: Do we have a second for this
4 motion? Commissioner Barnett.

5 COMMISSIONER BARNETT: I second the motion.

6 CHAIR JANOFF: Thank you for that. Any further
7 comments or discussion of the motion on the table? I don't
8 see any hands raised, so I'll call the question.
9 Commissioner Suzuki.

10 COMMISSIONER SUZUKI: Yes.

11 CHAIR JANOFF: Commissioner Barnett.

12 COMMISSIONER BARNETT: Yes.

13 CHAIR JANOFF: Commissioner Hanssen.

14 COMMISSIONER HANSEN: Abstain.

15 CHAIR JANOFF: Commissioner Thomas.

16 COMMISSIONER THOMAS: Yes.

17 CHAIR JANOFF: Vice Chair Burch.

18 VICE CHAIR BIRCH: Yes.

19 CHAIR JANOFF: And I vote yes as well, so the
20 motion passes, I guess it's five with one abstention.
21

22 And Director Paulson, could you please comment on
23 the appeal rights for this item?

24 JOEL PAULSON: Yes, thank you, Chair Janoff. The
25 decision of the Planning Commission is appealable to the

1 Town Council. The forms are available online. The appeal
2 must be filed within ten days and there is a fee for filing
3 that appeal.

4 CHAIR JANOFF: All right, thank you.

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