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January 31 2022

VIA EMAIL ONLY

Mayor Rob Rennie & Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Urgency SB9 Ordinance
Council Agenda Item #5, Feb. 1, 2022

Dear Mayor Rennie & Town Councilmembers:

This letter is written on behalf of Arvin Khosravi and Firouzeh Jahanshahi, who reside at 15941 Quail Hill Road in Los Gatos, in respect to the SB 9 urgency ordinance recently adopted by the Town (the "Ordinance"). Their lot (the "Khosravi Lot") contains two dwellings: a main residence at the address above, and an Accessory Dwelling Unit that is just being completed in compliance with the Town's ADU procedures. The ADU is located several hundred feet away and downhill from the main residence and has a separate address on Shady Lane. The Lot is zoned HR-1 ("Hillside Residential") just a short distance from R-1 zoned single-family residences across Short Road.

The two dwellings on the Khosravi Lot are virtually out of sight of each other and have totally separate entrances on different streets. The Lot would be an ideal candidate for an SB 9 lot split. As stated above, it is in the least restrictive HR zone (HR-1) and already contains two residences on widely separated house pads.

However, as adopted the Ordinance would not allow them to proceed with an SB 9 lot split. The problem is that the Ordinance only allows for a lot split in the R-1 and R1-D zones.

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Although it is also a single-family zone, the Ordinance inexplicably excludes the HR zone. For the reasons stated below, the HR zone must also be included in the Ordinance.

By its own terms, binding upon all cities in the state, SB 9 applies to any “single family residential zone.” See Govt. Code §§ 65852.21(a), 66411.7(a)(3)(A). The Ordinance as adopted applies only to R-1 and R-1D zones. However, the HR zone is as much a single-family residential zone as are the R-1 and R-1D zones. This is made very clear in the Town Zoning Code.

Here are the uses allowed as a matter of right in the R-1 zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Raising of trees, vegetables and horticultural specialties, but not including commercial greenhouses, retail nurseries, or storage of landscaping equipment, products or supplies for commercial uses.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.385, emphasis added).

Here are the uses allowed as a matter of right in the R-1D zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Two-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.725, emphasis added).

And here are the uses allowed as a matter of right in the HR zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Agriculture, except dairying.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.235, emphasis added).

The words used to describe the single-family residential use in the R-1, R-1D and HR zone are absolutely identical. This use is unequivocally for single-family residences. As far as uses allowed, the only difference in the Zoning Code for the three zones relates to the second use described (agriculture for HR and R-1, duplexes for R-1D). But as to single-family residential use they are the same. The obvious conclusion is that the R-1, R-1D, and HR districts are single-family residential zones.

It is thus absolutely clear that the HR zone is a single-family residential zone. Excluding it from the Ordinance is an arbitrary and capricious decision that violates both the intent and the letter of SB 9.

Finally, although my clients have no present intention to modify either residence, a future lot owner may want to. In that regard, there are two elements of the Ordinance that we would

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ask to be modified. Both of these are arbitrary conditions that appear to be in violation not only of SB 9, but also of statutory and constitutional protections that prevent cities from enforcing regulations that would effect a taking of private property. These two conditions are (a) the 1200 square foot limitation on all new residential structures, and (b) the prohibition on grading in excess of 50 cubic yards, even though normally such grading is allowed with a grading permit.

My analysis of the 1200-square foot size limitation is contained in my letter to you of January 20, 2022, on behalf of the Wimberlys, and that letter is incorporated herein by this reference. We ask that this letter be entered into the administrative record of this action. Please contact me if you have any questions or need additional information.

Very truly yours,

BERLINER COHEN, LLP



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