

Councilmembers:

Thank you for your deliberation on this matter this last week. I think that a reasonable decision was made as to the final wording of the ordinance. I still have some reservations as to the 'Objective Design Restrictions', but can live with them for a while and will use the A&S proceed after an ULS where I cannot.

Now that I have gone through a few of these Urban Lot Splits in various jurisdictions, I just wanted to share with you some practical insights about a concern voiced at the hearing [and put in the motion for a 3-month review] that I think you should be aware of - specifically in the HR Zoning Districts. This might not prove to be such a concern in the long run.

Specifically, when a property is located in a VHFHZ the Fire Department looks at the projects **very carefully!** More specifically they apply a set of recently enacted state rules related to "Access". It is unlikely that they will approve a project if any of the following conditions occurs:

1. The property is on a dead-end street with no alternate egress. The length of street allowed varies by zoning district, but would not typically be over 1/4 mile.
2. The street used to access the property is less than 20 ft in width. [many roads/streets in HR are less than that].
3. There is no fire hydrant with adequate psi and flow rate within 600 ft of the rear of the residence.
4. There is no fire truck turnaround at the end of the street.

In a project in Monte Sereno in which I am involved there is a 950 ft long private dead-end street in the HR-1 zoning district [equivalent]. Based on Fire Department conditions [not the City's - as it cannot legally impose off-site improvements], the homeowner has elected to:

1. Widen the street, within the roadway easement, to satisfy fire truck access requirements.
2. Install a second fire hydrant on the street.
3. Improve the Emergency Vehicle turnaround at the end of the street.

So in the end we have a situation where - yes - a project was approved in a hillside VHFHZ. But the entire neighborhood has benefitted significantly with a widened street, a new hydrant, a new home which will have fire sprinklers, and generally-improved fire hazard security to the community. I contend that instead of finding some hyper-restrictive wording with which to justify denial of a project we let the fire department constraints dictate project feasibility. They have the true knowledge and expertise in this field and state law to back it up. Projects in "difficult to access" Hillside areas will not be feasible. This might not satisfy some homeowners in more remote areas, but it will put the brakes on indiscriminate hillside development in Fire Hazard Zones.

With that in mind, I would ask that the Planning Process should ask for a preliminary SCCFD Review for VHFHZ [or perhaps all] projects prior to asking a homeowner to invest tens of thousands of dollars to create detailed plans after Preliminary approval only to hit a 'Fire-wall' when they submit for a detailed ULS or 2UD.

Thank you for your consideration.

Tony Jeans

Tony-

I like your argument that often these projects improve the fire safety of the general neighborhood, by widening the street, adding hydrants, and adding turnarounds. Indeed I have a project that is doing exactly that in order to even be able to build. So being able to add units in fact improves fire safety in VHSFZ . We should all push this point.

Noel

Noel Cross+Architects

From: Ivy Chang
Sent: Monday, November 7, 2022 9:39 AM
To: Attorney <Attorney@losgatosca.gov>; Gabrielle Whelan <
Cc: Scott Watson <
Subject: SB9 Ordinance - 30% Slope Restriction

EXTERNAL SENDER

To: Town Attorney Ms. Whelan,

Congratulations on your appointment to Town Attorney in April. Since your service in the Town of Los Gatos is less than one year, I would like to provide some history regarding slope restriction in the Hillside Development Standards and Guideline, as well as Town Code.

The Hillside Development Standards and Guidelines was adopted by Council in January 2004.

In Chapter 2, Site Selection, page 12 - It says "LRDA - least restrictive development area. Topography, with emphasis on slopes over 30%.

In Chapter 6, Site Elements, page 53 - it says Swimming Pools and Sport Courts are prohibited on slope greater than 30 percent.

It only restricts 30% slope for swimming pool and sport courts, NOT for the development of a house. However, the Town added 30% slope restriction in the SB9 Ordinance to lessen the intensity of housing.

I've reached out to the Attorney General regarding this violation of the Housing Crisis Act of 2019. Rob Bonta's office encouraged me to continue to work with local government towards a resolution. I also reached out to Compliant Review @HCD. HCD told me that they do not have enforcement authority over SB9, however they will review the potential violation of the HCA. Per my conversation with a land use attorney, adding 30% slope restriction on SB9 will reduce the intensity of use, which is clearly a violation of HCA state law. I've attached SB9 factsheet regarding HCA at page 7. (Gov. Code, § 66300, subd. (b)(1)(A).)":

In the Nov 1, 2022 Town Council meeting, there were 4 hillside residents who expressed concerns on the SB9 30% slope restriction during the public hearing. However, there was zero feedback to address the 30% slope restriction by the Town Mayor, Town Council or Town Attorney.

Town of Los Gatos has used both Hillside Development Standards and Guideline and Town Code since 2004. For each development, the LRDA is reviewed by planning commission. For at least one development in 2017, the Town approved a building site with 55% slope – far greater than the 30% guidance. I provide more details below.

I'm writing my email to try again to get resolution as suggested by Attorney General Rob Bonta. Please investigate:

1. Why there is no 30% slope restriction for house development in the Town Code?

Town Code define 8' cut restriction, which is measurable by Town's inspector. The geotechnical, and geological reports are required for building permit. If the investigation and engineers confirmed the site is buildable, even it is 31% slope on average house site, it is still buildable. I believe it is the reason there is no 30% slope restriction language in Town Code.

2. Why Town Council approved a 55% slope development site, while restricting SB9 development by code to 30% slope?

Town Staff suggested to approve the application of 55% slope development (26 Alpine Ave) in July 2017. Town Council granted approval in Dec 2017. The house is under construction today at 55% average slope of house footprint.

During the Town Council meeting, Both Town Mayer Rob Rennie and Town Attorney Robert Schultz repeated Geotechnical's comment regarding it is buildable lot. The 55% slope did not stop the project in standard development per Town Code. There is no state law to allow the Town to add 30% slope restriction ONLY on SB9 development.

3. Town Staff told me that all of the restriction will be exempted for a minimum 800 sqft SB9 development. This statement might be correct under SB9 state law, however, adding 30% slope restriction ONLY on SB9 development still violates HCA state law by reducing the intensity of land use. I expect the Town Attorney to educate Town Staff.

I respectfully request the Town REMOVES the "30% slope restriction" in SB9 Ordinance, because it is not in Town's standard development code, and hence violates HCA state law. The SB9 ordinance page 7 Cut and Fill table can well control hillside development as defined by Town Code and Hillside Development Standards and Guideline.

Please advise if you conclude that the Town can legally add a 30% slope restriction to reduce the intensity of land use by SB9 ordinance. If so, please provide the code. I have also attached two public comments which we sent regarding slope restriction to staff before Nov 1 Town Council Meeting.

Below is more detailed information regarding 55% slope development I referred:

Address: 26 Alpine Avenue

Footprint of house average slope: 55%

Average slope of lot: 41%.

Planning commission hearing on July 26, 2017, time 40:49
<https://www.youtube.com/watch?v=CC7f48FsP5M&t=12s>.

Town staff explain the chapter 2 - "LRDA including many things beyond just slopes", time 2:46:21:

Town Council hearing on Dec 19, 2017, time
1:45:55 <https://www.youtube.com/watch?v=GLCLgb4VIEM&t=6696s>

Town Attorney Robert Schultz commented "both the Geotech and it was peer-reviewed say it is a buildable lot", time 2:42:00

Town Mayor Rob Rennie commented "geotechnical consultants that it is doable and safe, so I'm more on the side of accepting the project (55% slope project)", time 2:50:48

[Item 04 - 26 Alpine Ave - Laserfiche WebLink \(losgatosca.gov\)](#) - Planning Commission July 26, 2017

[Item 19 - 26 Alpine Ave - Architecture and Site Application S-16-052 and Mitigated Negative Declaration ND-17-001 - Laserfiche WebLink \(losgatosca.gov\)](#) - Town Council, December 19, 2017

[Item 2 - 26 Alpine Ave - Time Extension - Laserfiche WebLink \(losgatosca.gov\)](#) – Planning Commission, November 13, 2019 for Time Extension

I look forward to hearing from you.

Best Regards,
Ivy Chang and Scott Watson

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