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CA LIC. #442850

December 28, 2021

TO: RYAN SAFTY
Associate Planner
Community Development Department
Planning Division

FROM: Robert O. Hughes

SUBJECT: ARCHITECTURAL AND SITE APPLICATION – S-21-004 and S-21-023

This Memorandum is written in response to your Second Review Comments dated October 20, 2021, under General Comments, Item #2 relating to an effort to speak with our neighbors regarding the proposed project.

As you know this pending project has been a contentious project with some of our neighbors, and more directly with the neighbor to the north of the pending project, the Cosentino family. I last spoke and/or communicated with the neighbors in May 2021, and more specifically on May 3, 2021 via e-mail. A copy of that communication is attached to refresh your memory of my stance at that time. Subsequent to that date, I received additional contact information for more of the concerned neighbors from a list provided by Paul Cosentino. The letter was again sent to include this new contact information.

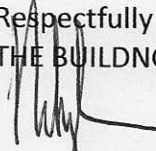
In the interim of the May communication, no further communication to or from any of the neighbors on the subject of this pending project has taken place. It has been my preference that I communicate again with them once I have Staff Approval of the pending project and am given permission to erect Story Poles on the subject sites. That is, I want to communicate with them once I have something firm to bring to them for discussion.

It is to be understood that I am not ignoring them or underestimating their concerns with the project, but more to the fact I prefer to have something final and specific for those discussions, hoping that minds can be changed once the close reality of the project is at hand. I also understand that as discussed in my e-mail to them that they have the right to several appeals and/or litigation of an initial approval of the pending project.

It is to be noted that no effort was made to contact me during the process of the balloon placement on the subject lots, and those balloons stayed in place for five (5) days.

Thanks for your continued courtesy, cooperation, and assistance in processing this project through your Department over the past several months.

Respectfully Submitted
THE BUILDING WORKS

A handwritten signature in black ink, appearing to read 'R. Hughes', with a horizontal line extending to the right.

Robert O. Hughes
President

ROH/bs

From: bldngworks@aol.com,

To: pcosentino@msn.com, davidthegrocerydude@gmail.com,

Cc: terry@tscivil.com, rsafty@losgatosca.gov, szarnowitz@losgatosca.gov, jpaulson@losgatosca.gov, mweisz@losgatosca.gov, wbc@clayton-mcevoy.com, mzolli@gmail.com,

Subject: SURMONT SUBDIVISION - 400 Surmont Drive- Access Road Alternative Alignment

Date: Mon, May 3, 2021 10:05 am

Attachments: 400 Surmont Entrance rev 4.29.2021 .jpg (4745K), 6240-01 Parcel Map.pdf (998K)

Hi Paul and David

I am writing this e-mail to you in response to your recent objections to my development of the proposed two (2) single family homes at the end of Surmont Drive.

In early January 2021, I received a letter from William Clayton, Esquire stating you had retained his services regarding this proposed development in an effort to seek some resolution to issues concerning your family. It states in part that your family "is resigned to loss of privacy at this point but wish to mitigate it through planting of vegetation to shield the back of their home." The letter goes on to state, that as a result of my survey it has been determined the southwest corner of your property lands in the middle of the existing dirt road. The letter further states that with that realization the access road to the proposed development design changes had been discussed to move the access road toward the waterway to avoid the encroachment on your property. Lastly it states "The Cosentinos have discussed a solution which could included the use that corner of the property allowing the trajectory to be straightened over alternative approaches. They would, however like to assure the continued access to their own property and the existing fence if they agree to allow the proposed development to cross their property". He offers a meeting to discuss this potential resolution and other issues pertaining to the proposed development.

Understanding this was a seemingly amicable approach to resolving the issues, in early January 2021, I contacted Mr. Clayton via e-mail and received no response. I called his office and left messages on his voice mail, and received no response. These efforts at contacting Mr. Clayton continued for the remainder of January 2021 and through February 2021, all with no response. I was aware of your on-going discussions with Ryan Safty in the Town's Planning Department, and your letter dated March 8, 2021, addressed to several staff members of the Town's Planning Department. I again reached out to Mr. Clayton to arrange for a meeting. Subsequently a meeting was arranged for March 19th at the site.

That meeting was held as scheduled and attended by my Civil Engineer, Terry Szewczyk, Mr. Clayton, David, you, and I. We discussed the the majority of the concerns cited in your March 8th letter to the Planning Department, but much of the conversation centered on the access road to the proposed development. You expressed your desire to move the headwall of the storm drain south a few feet to allow the access road to the development to take a different approach, and further away from the/your juniper bushes that are growing in the Town's Right of Way. After discussion back and forth, I instructed Terry to make contact with the Planning Department to determine the Town's position on this effort to appease your desire to relocate the access road to the proposed development. Mr. Clayton, David, and you all received a copy of Terry's e-mail communication to Ryan Safty.

In April, we received a response to Terry's letter, which is inserted in this e-mail below for your review. The response by Ryan basically points out that if we change the proposed access to the

development to appease your concerns we would have to update our NOE and associated technical reports. The response went on to cite several parts of the various reports that support our efforts to avoid any work to or on the ephemeral drainage feature.

Tues. 30 March, 2021

Good afternoon,

If the proposed project changes, the NOE and associated technical reports may need to be updated. The NOE and associated reports concluded that the previously proposed project would not have a significant impact on the environment, specifically referencing the location of the driveway and retaining wall outside of the top of bank.

Please see specific references below.

Page 4 of the NOE CEQA Memorandum states the following, *"As noted in Attachment A, the proposed driveway would be located adjacent to an ephemeral drainage feature, which is potentially a jurisdictional drainage feature. Portions of the proposed driveway would be located within the required 20-foot slope stability protection area for the ephemeral drainage feature on the site (Santa Clara Valley Water District's Guidelines and Standards for Land Use Near Streams). To prevent indirect impacts on water quality within the drainage and in the downslope watershed, the project will construct a two-foot tall retaining wall in between the driveway and the drainage feature for the 30-foot portion of the driveway closest to the drainage feature. The retaining wall will be constructed just above the top of bank to protect the bank and avoid any erosion from the construction of the driveway into the ephemeral drainage feature. No project work will be inside the bed and bank of the ephemeral drainage feature. A slope stability analysis was also conducted and peer reviewed for the for the proposed site work encroaching into the slope stability protection area (Attachment C). However, as detailed in Attachment A, with implementation of the Town's standard conditions of approval for water quality, the project would not have a significant effect on any jurisdictional waters or on water quality."*

Page 16 of the NOE packet, page 4 of HT Harvey & Associates Bio Report, states the following, *"It is our understanding that the project will maintain a 20-foot setback from the ephemeral drainage feature for avoidance purposes, with the exception of a driveway that will be constructed adjacent to the drainage. As a result, the project will not result in direct impacts on jurisdictional wetlands or waters."*

Page 17 of the NOE packet, page 5 of HT Harvey & Associates Bio Report, states the following, *"All project work will be outside the bed and bank of ephemeral drainage feature on the project site, though the proposed driveway will be directly adjacent and immediately outside the top of bank at its downslope end. The project proposed a 30-foot long by 2-foot tall retaining wall to be constructed just above the top of bank to protect the bank and avoid any erosion from construction of the driveway into the ephemeral drainage. In addition, the project will implement the following conditions to minimize impacts on water quality within the ephemeral drainage.*

- *All construction activities in the ephemeral drainage shall be avoided. Within the Slope Stability Protection, grading will be minimized to the extent necessary and existing contours and slopes shall be maintained."*

Page 35 of the NOE packet, page 23 of HT Harvey & Associates Bio Report, states the following, *"The ephemeral drainage that is located along the boundary of the project site has potential to be considered a jurisdictional drainage by the USACE and/or RWQCB based on the fact that it is a channel with a bed and bank morphology (and therefore containing an ordinary high water mark), and at least seasonal flow, and is hydrologically connected via the storm drain system north of the project site to Ross Creek approximately 1 mile to the north.*

In summary, the only sensitive or regulated habitat on the project site is the ephemeral drainage located along the site boundary."

Page 39 of the NOE packet, page 26 of HT Harvey & Associates Bio Report, states the following, *"To prevent indirect impacts on water quality within the drainage and in the downslope watershed, the project will construct a 30-foot-long by 2-foot-tall retaining wall in between the driveway and the drainage. The retaining wall will be constructed just above the top of bank to protect the bank and avoid any erosion from construction of the driveway into the ephemeral drainage. In addition, the project will implement the conditions to minimize impacts on water quality within the ephemeral drainage as described in Section 1.2.4. With the use of the proposed setback, the retaining wall, and the avoidance and minimization measures that will be part of the project, the project will not result in direct impacts on jurisdictional wetlands or waters."*

Page 44 of the NOE packet, page 2 of the Live Oak Associates 2/13/20 report, states the following, *"In this case, the wall is proposed to be built outside of the bed and bank of the ephemeral swale feature and therefore will result in no impacts to waters regulated by USACE, CDFW or RWQCB."*

Condition of Approval #9 for the subdivision application M-19-003 states the following, *"The project will implement the following conditions to minimize impacts on water quality within the ephemeral drainage (...).*

- *All construction activities in the ephemeral drainage shall be avoided. Within the Slope Stability Protection Area, grading will be minimized to the extent necessary and existing contours and slopes shall be maintained."*

Respectfully,

Ryan Safty • Associate Planner

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On March 31, 2021, you arranged a meeting with Matt of West Valley Collection and Recycling to address your concern about where the Owners of the new homes would place their trash cans, an issues raised in your May 8th letter. This meeting was attended by Jacob Dreyband, Ed Laveroni, Chris Tamimoto, James Zellinger, the two of you, and myself. You had noted that with the new homes the potential trash can placement on Surmont Drive would be overwhelming. Matt advised us that the new homeowners could place their trash cans on the required Fire Department Turn Around on the project site, and West Valley Collection and Recycling would pick up the trash at that location. As a result, the proposed development would not result in any impact on Surmont Drive on trash day.

To address other concerns noted in your letter of March 8, 2021, along with others discussed at our

site meeting on March 31, 2021, see my comments below:

- Letter of March 8, 2021, Page 1:
 - *The mouth of the proposed driveway would be an encroachment in front of our property* - Terry recently approached the Fire Department about decreasing the size of the driveway to the proposed development to 12' for a distance at least past the Town's Right a Way and the corner of your property before it widens again. That proposal was approved by Rob Campbell, Sr. Fire Protection Engineer with the Santa Clara County Fire Department; see that communication inserted below. Basically this moves the driveway approach away from the junipers bushes planted in the Town's Right a Way and further away from your property corner.

Terry,

Thank you for the follow up. As we discussed the 12 foot width is acceptable for access to no more than 2 single family dwellings. It is understood that the third access of the south end of the hammerhead turnaround is secondary, maintenance access to a parcel with primary access direct from Surmont Road. Should that become required access to a third dwelling, additional width will be required to the first turnaround.

Thank you,

Rob.

Robert L. Campbell, PE

Sr. Fire Protection Engineer

Santa Clara County Fire Department

rob.campbell@sccfd.org

- *As it is designed now, the proposed driveway would cause a considerable amount of congestion, creating unsafe driving conditions at the top of Surmont Drive* - The "safe-stopping-site" distances are exactly similar to the current driveways that serves the Bates property and the Anderson property. There has never been congestion on Surmont Drive as a result of this configuration even when the homes on the Bates property were occupied.
- *There will be two (and according to the proposed drawings, potentially three) additional homes sharing this tight space* - The proposed development is for two (2) homes. The third home you are referring to is the current existing Anderson residence that has its own driveway. No further development can be achieved on the total property. Only two homes will be sharing this proposed driveway.
- *When asked about the driveway's dangerous proximity to the existing storm drain during the virtual call, we were told that a 2' wide retaining will be built* - Your father built the storm drain in the late 70's, and to my knowledge and research no one has driven into or through the barricade that was erected around the storm drain despite its close proximity to the Anderson driveway. I am proposing to construct a 2' (1' exposed) retaining wall around the entire storm drain and construct a wood barricade on top of that wall. This retaining wall will actually make the existing driveway to the Anderson residence and the new driveway to the proposed new homes safer than it is now.

- Letter of March 8, 2021, Page 2:

- *Where will the mailboxes go* - I have no choice on where the mailboxes will be located. That is the responsibility of the local Postmaster based on their specifications. From my experience with the development of new homes I would expect the mail boxes will be located adjacent to the driveways of the proposed new homes at the edge of the Fire Department Turn Around.
- *A forth private driveway at the top of the dead-end street, servicing two or potentially 3 more homes would overwhelm a street like Surmont Drive* - The proposed driveway will serve only the future two new homes. As stated elsewhere in this communication the the third home you are referring to is the Anderson property which has it own existing driveway. There can be no further development of the Anderson property.
- *Further still, and of more immediate concern is the issue of the garbage cans* - The garbage can concerned has been resolved as noted above at the meeting on March 31, 2021.

- March 31st meeting:

- *Comment made about the need to upgrade and move the existing storm drain head south a few feet from it current location* - The existing storm drain head wall functions fine and has since it was installed in the late 70's.
- *Comment made that the existing storm drain is subject to overflowing and flooding the neighborhood* - There is no evidence to support a claim of flooding at the headwall. There have been numerous 10-year intensity storm events in the 40 plus years since 1979 with no resulting flooding. Furthermore, storm drainage systems in public streets are designed to fail when a 100 year intensity storm occurs. Surmont Drive will simply become a broad drainage channel that will convey/carry surface run-off down the street to the intersection of Westhill Drive.
- *Comment was made about the negative affect leaving the storm drain in its current location and not changing the access to the new homes will have on my ability to sell the homes* - I was Vice President of Sales and Marketing for a major home builder headquartered in San Jose in the late 60's and the 70's, and during that time I learned to pay attention to all detail and never build anything one cannot sell. Since then I have successfully built and sold single family homes in the Los Gatos areas, including some subdivisions, all of which sold quickly in a variety of different market conditions because of the attention I pay to my product and its surroundings. I have no concern that not moving the storm drain and maintaining the access road at the location that has been discussed in this communication will effect my ability to market the homes, adversely effect the market value or salability of the homes, or negatively affect the market value of your home, neighboring homes, or Sandra Anderson's home and remaining property.

It is also important to note that Sandy and I live on this special property, and would do nothing to jeopardize it's rural curb appeal or safety as you approach the driveways from Westhill Drive. See attached modified photo (insertion of the new driveway) looking toward the end of Surmont Drive when approaching from Westhill Drive.

- *Comment was made questioning the survey work of TS Civil Engineering* - The full

extent of the boundary survey to determine our mutual property line and corner included going down to street monuments on Blossom Hill Road and back up the hill to the section line at the back of the Anderson property--- that line, in particular, is about a half-mile or 2644'. The Land Surveyor found good accuracy with that line versus historical maps and easily derived and set the critical point that falls within the existing dirt driveway. See draft of Parcel Map attached for survey information. Further you were advised that you had every right to retain the services of your own engineer to conduct a survey of your own to confirm or dispute the survey work completed.

I also received a letter dated March 23, 2021, from James Zellinger, which was pretty much a reiteration of your letter dated March 8th, The issues raised by James in his letter have effectively been addressed in my response to your letter. He is included as receiving a copy of this e-mail because he provided me with his e-mail address. I reached out to you for the email address for Ed, Chris, and Jacob, but I did not hear back from you. I trust you will share this response with them, so they are fully informed of these matters.

In conclusion, based on the above information provided, changes made, comments made, and consultation with other professionals in related fields, I have decided to move forward with the proposed development without moving the existing head of the storm drain from its current location. I base this decision on reading between the lines of the Ryan's response to Terry's letter wherein I interpret what is said in those reports supporting our efforts would quickly go against the project if, in fact, we submitted with a desire to move or change the ephemeral drainage feature. Things have changed environmentally since your Dad was requested to construct the existing structure in 1979. I have instructed Terry to proceed accordingly with his responses to the Tech Review comments we received, and I expect his submittal to be made soon. I understand you have the opportunity and right to appeal any approval we might receive at the DRC meeting (soon to be scheduled) to the Planning Commission, and then the Town Council, and a final effort to disrupt the project by litigation. I am hopeful that you will be accepting of my desire to develop this property and participate favorably in my efforts to achieve the goals contemplated with my submittal.

Respectfully submitted

Bob

Robert O. Hughes

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