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

Los Gatos Planning Commissioners:
Melanie Hanssen, Chair
Kathryn Janoff, Vice Chair
Mary Badame
Jeffrey Barnett
Matthew Hudes
Reza Tavana

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 HANSSEN: So then we will move on to Item 2 on the agenda, which is considering approval of a request for modification to an existing Architecture and Site Application S-13-090 to remove underground parking for construction of a commercial building known as the Market Hall in the North 40 Specific Plan Area. APN 424-56-017. Architecture and Site Application S-20-12. The property owner/applicant is Summer Hill North 40, LLC.

This item was continued for a second time from our last meeting on September 9th to allow Commissioners and the public to review our Town Attorney's comments regarding the Housing Accountability Act and this application. It was also necessary to continue this from our scheduled meeting on September 23rd due to issues with Zoom and public access.

With that being said, I want to ask if we have any additional disclosures since our last meeting by Commissioners for this application? Commissioner Burch.

COMMISSIONER BURCH: I don't know if I have to disclose this again, but I will be recusing myself due to my residence's proximity to the project, so I will be listening in as a resident and neighbor.

1 CHAIR HANSSEN: Thank you very much, Commissioner
2 Burch, and we'll see you back for Item 3, I assume.

3 COMMISSIONER BURCH: Okay.

4 CHAIR HANSSEN: All right, so I understand Ms.
5 Shoopman will be giving the Staff Report for this item,
6 however we've also asked our Town Attorney to recap the
7 information in his letter that was distributed with the
8 agenda for this meeting, and so Ms. Shoopman, do you have
9 any additional comments about the application before our
10 Town Attorney speaks?
11

12 ASSOC. PLANNER SHOOPMAN: I don't have any
13 additional comments. It was just to remind the Commission
14 that there are two separate Desk Items for the meeting:
15 one, a letter from the Applicant and two; additional public
16 comments that have been received.

17 CHAIR HANSSEN: Okay. Thank you very much. And I
18 assume all the Commissioners have received those items.
19 Okay, so I will ask now for the Town Attorney to give us a
20 recap of the information he had in his letter for the
21 benefit of the public and any Commissioners that wanted
22 additional information.
23

24 TOWN ATTORNEY SCHULTZ: Good evening, Chair and
25 Commissioners. The Planning Commission at its meeting
requested further analysis of the applicability of the

1 Housing Accountability Act for this project and I have
2 provided that to you in a memorandum that addresses not
3 only the Housing Accountability Act but also it addresses
4 our Housing Element and the role of the Planning Commission
5 in general as to all land use decisions.

6 By way of background, the approved North 40 phase
7 one project includes 260 residential condominiums and
8 rowhouses, ten rental apartments, 49 affordable senior
9 housing units, one unit for a moderate-income manager, the
10 senior units, approximately 62 square feet of commercial
11 space, and a four-story parking garage with 303 parking
12 spaces. The approved parking garage consists of three
13 above-level and one below-grade level of parking.

14 As you review my memorandum it's important to
15 understand that prior to the approval of the original
16 project the Planning Commission and the City Council denied
17 the project. Thereafter the Applicants filed a lawsuit
18 against the Town asserting that the Town had violated the
19 Town's Housing Element, that the Town had violated the
20 state's Housing Accountability Act, and the Town had
21 violated the state's density bonus laws.

22 On June 9, 2017 the Santa Clara County Superior
23 Court issued a decision against the Town. The decision
24 determined that the findings adopted by the Town Council
25

1 were made under subjective policies instead of under
2 objective policies that is required by the Housing
3 Accountability Act.

4 On September 10, 2017 the Town Council rescinded
5 its denial of the proposed phase 1 project pursuant to the
6 court order and approved the project, as I mentioned above
7 describing the project as approved.

8 The Applicant is now requesting a modification to
9 the phase one project to remove the underground level of
10 the parking for the Market Hall. My legal analysis is that
11 the Housing Accountability Act is applicable to the
12 modification of the approved project. The court decision
13 related to the project required the Town consider the
14 project under the provisions of the Housing Accountability
15 Act. The Housing Accountability Act is often referred to as
16 "California Anti-NIMBY," NIMBY standing for, "Not in My
17 Backyard."

18 The intent of the law was to address problems
19 that the state was having where local governments were
20 adopting housing standards and policy and then failing to
21 comply with their own policies when specific housing
22 projects were at stake. The Housing Accountability Act
23 requires local governments to approve certain housing
24
25

1 development projects if they comply with objective general
2 plan and zoning standards and criteria.

3 Just an interesting note is that because the Town
4 denied this project the first time around state legislators
5 actually amended the Housing Accountability Act and
6 strengthened it further to require that if a public agency
7 doesn't comply with the Housing Accountability Act it's
8 subject to fines and attorney fees are mandatory to the
9 applicant.

10
11 Since the decision required the Town to consider
12 the phase one project under the Housing Accountability Act
13 it is my legal opinion that it would to any modifications
14 of that exact same project. My legal analysis also
15 concludes that our Housing Element and by-right development
16 is also applicable to the modification of the approved
17 project.

18 State Housing Element law requires the Town to
19 demonstrate how it plans to accommodate its fair share of
20 reasonable housing need. To do so the Town must establish
21 an inventory of sites designated for new housing that is
22 sufficient to accommodate its fair share of housing. The
23 Town's Housing Element designates the North 40 for new
24 housing and establishes by-right development for housing
25 units on the North 40. By-right development means that if

1 the project meets objective criteria, then the project must
2 be approved.

3 Based on my review, both the Housing
4 Accountability Act and the by-right development restrict
5 the Planning Commission from using subjective criteria for
6 findings to condition or deny the project. However, it is
7 important for me to point out that you do not have to or
8 are required to follow my legal analysis, but if you do not
9 you should have to find and develop and make findings as to
10 the reasons that the Housing Accountability Act and our
11 Housing Elements do not apply to this application.

12 The other issue I address in my memorandum is the
13 role of the Planning Commission as it relates not only to
14 this land use decision but to all land use decisions. Your
15 role for all land use decisions is in a quasi-judicial
16 role, which literally means that you're acting as a court
17 and require land use proceedings to be similar to those
18 followed in the court proceedings. This requires you to act
19 like a court for all land use decisions and apply the
20 Town's local land use regulations just as court requires a
21 law to be put forth to a specific set of facts of that
22 case. The law requires you to evaluate the facts and
23 information and then deliberate and determine how the
24 Town's applicable standards, ordinance, and laws apply to
25

1 those facts and information you have been provided. You
2 must then adopt findings of how you progressed from those
3 facts to our established standards, laws, rules, and
4 regulations to make that decision.

5 The legal requirement to make findings linking
6 the facts to our Town standards is required whether or not
7 the Housing Accountability Act or the by-right development
8 is applicable or not. The only difference is if the Housing
9 Accountability Act and the by-right development is
10 applicable you must only use objective standards. If it's
11 not applicable then you can use both objective and
12 subjective standards that are in our rules, regulations,
13 and laws, but you simply just cannot ignore and have no
14 linkage between the facts and our standards, and this is
15 why I pointed out to you in your last meeting or the
16 meeting before that that standards such as we need the
17 parking, or that the cost savings and profit is a strategy
18 of the developer; or that they stand to make millions of
19 dollars; or we need to uphold their agreement; or this is a
20 bait and switch; or it will force visitors, shoppers, and
21 residents to find other parking.

22 All of those statements are inadequate and
23 improper facts and statements to make findings upon.

24 Although all these statements may be true, they just do not

1 provide legal findings that will stand up in a court as
2 they do not link those facts to anywhere in our standards,
3 rules, and regulations.

4 And with that, I'm available for any questions or
5 comments that you have regarding my memorandum and any
6 other clarification that you need.

7 CHAIR HANSSEN: Thank you very much to our Town
8 Attorney, and it looks like you have a question from
9 Commissioner Hudes.

10 COMMISSIONER HUDES: Thank you. Based on the
11 opinion that you gave us about the Housing Accountability
12 Act, the requirement for two-thirds residential, is that
13 based on strictly the Market Hall building or is that based
14 on the scope of the phase one application?
15

16 TOWN ATTORNEY SCHULTZ: That's based on the
17 project as a whole because that's where it's being
18 modified. That's just my personal opinion; you won't find
19 that in case law. There's very little case law that
20 interprets that. Certainly if you just base it on the
21 Market Hall I don't believe they make it, or just under it,
22 but for any project in town that seeks a modification you
23 don't separate out, you don't piecemeal out a part of it
24 and say it's only coming in for a height modification. It's
25 a modification to the entire project, the entire Conditions

1 of Approval, and that's why I based my decision on that
2 it's applicable to the entire project.

3 In fact, the density bonus is related to the
4 entire project, so if you're only looking at the Market
5 Hall it wouldn't take into account all the other
6 availability of state laws. And also because the Housing
7 Accountability Act is interpreted by courts very widespread
8 because of the intent to prevent anti-NIMBYism; that's why
9 I reached that conclusion. If the position of the Planning
10 Commission is that it does not apply because of the fact
11 that the Market Hall and that component of this project
12 doesn't meet, then those are the findings that you can
13 make.
14

15 CHAIR HANSSEN: Commissioner Hudes had a follow
16 up question.

17 COMMISSIONER HUDES: As a follow up to that, does
18 that have any bearing on whether the parking requirements
19 are looked at only for the Market Hall building or for the
20 project as a whole, as you said?

21 TOWN ATTORNEY SCHULTZ: My opinion is you have to
22 look at it as a whole. You don't get to use the Housing
23 Accountability Act to your advantage and then say the
24 parking only applies to the Market Hall.
25

COMMISSIONER HUDES: Thank you.

1 CHAIR HANSSEN: Do any other Commissioners have
2 any questions of the Town Attorney? And you also have an
3 opportunity to ask questions of Staff. I don't see any
4 hands raised at the moment.

5 I do have one question for the Town Attorney that
6 I wanted to ask. We did go over this in our last meeting
7 but for the benefit of people that might be tuning in for
8 the first time, we've gotten so many letters from people,
9 and really heartfelt letters from people in town, talking
10 about how the developer is reneging on their commitment,
11 and because there were proposals made in previous
12 iterations even at the time the application was filed and
13 approved, where the total amount of parking that was
14 supposed to be delivered or was intended to be delivered
15 was more than what they're talking about right now. So, my
16 question to the Town Attorney is is there any validity to
17 they're not holding up to their agreement?
18

19 TOWN ATTORNEY SCHULTZ: No, there is no
20 agreement, and in fact our code and the Specific Plan
21 specifically mention how you ask for a modification and
22 that's what they've done in this case. The procedure and
23 process for seeking a modification is available at any time
24 to any application on any project.
25

1 The only time you have an agreement is if you've
2 entered into a development agreement with the applicant or
3 with the developer. Then you're taking it outside of our
4 standards, our laws, our rules, our regulations, and you
5 enter into what is called a development agreement, then
6 that agreement is binding and can prevent an Applicant from
7 coming back in for a modification.

8 The other way to look at this project is just to
9 look at it as if there was no modification, there was no
10 original project approved, and the project is coming forth
11 before you without an underground garage, and the question
12 is without that underground garage do they meet our parking
13 regulations? Do they have enough parking onsite? The reason
14 I say that is at least I have not found anything in our
15 code, in our Specific Plan, or our General Plan that states
16 that an Applicant will build an underground garage. So,
17 that's really your only issue tonight is have they met our
18 parking standards with regard to parking in our Specific
19 Plan, General Plan, and zoning?

21 CHAIR HANSSEN: Thank you very much. Vice Chair
22 Janoff has a question.

23 VICE CHAIR JANOFF: I have two questions. Just to
24 follow up on what you just were talking about regarding a
25 development agreement, can you confirm whether or not there

1 is a development agreement in existence for this
2 development?

3 TOWN ATTORNEY SCHULTZ: There is not. There is
4 not. Town Council during.. When we went through the
5 moratorium on the second phase I think there was a majority
6 that wants us to pursue that type of an agreement on the
7 second phase, but for the first phase right now there's no
8 development agreement whatsoever.

9
10 VICE CHAIR JANOFF: So there is no notion that
11 previously established estimates are numbers that the
12 developer must be held to?

13 TOWN ATTORNEY SCHULTZ: That is correct.

14 VICE CHAIR JANOFF: Okay, so my second question,
15 if I may, Chair?

16 CHAIR HANSSEN: Please, go ahead.

17 VICE CHAIR JANOFF: The fact that we have
18 estimated and/or changing numbers with regard to the number
19 of parking spaces is not an objective standard on which the
20 Planning Commission could deny the Applicant's request?

21 TOWN ATTORNEY SCHULTZ: I'm not sure I understand
22 your question. Yes, it's a clean slate and you have to look
23 at with this modification will it meet our parking
24 regulations? And all of our parking regulations, I believe
25 at least, are objective standards. They say exactly how

1 many parking spaces you need per square foot, per use, per
2 what's being proposed out there. Yes, what they provided in
3 the past, what was in their first application, is not
4 relevant. What you look at is what is the required parking
5 under our standards, and I don't believe there's any... There
6 might be some parking standards that could be considered
7 subjective within our policies, but for the most part
8 they're calculated as objective standards.

9
10 VICE CHAIR JANOFF: Just to follow up, if I may?
11 The question was one of the letters received from the
12 public indicated that because the numbers of parking
13 provided by the Applicant changed from Exhibit A.11 to
14 Exhibit 4 and to Exhibit A the assertion from that member
15 of the public was that because those estimated parking
16 numbers changed, that that is an objective standard, that
17 they're not consistent is an objective standard on which we
18 could deny the proposal, and what I understand you to be
19 saying is that is not an objective standard?

20 TOWN ATTORNEY SCHULTZ: That's correct. It is not
21 what they proposed or what was approved, the question is
22 what do our rules, regulations, and standards require of
23 the Applicant?

24 VICE CHAIR JANOFF: One more question, if I
25 might? Probably is best for Staff.

1 CHAIR HANSSEN: Okay, yeah.

2 VICE CHAIR JANOFF: Staff, is it fair to say that
3 the estimated number of parking spaces could remain in flux
4 until the Specific Plan for the commercial buildout of the
5 plans in phase one are presented to the Town for review and
6 approval of the permits, is that correct?

7 DIRECTOR PAULSON: Ms. Shoopman, you're on mute,
8 but if you'd rather I speak I'd be more than happy. Go
9 ahead.
10

11 ASSOC. PLANNER SHOOPMAN: Thanks. That's true, we
12 don't have any proposals for those other commercial
13 buildings at this time. What we have is the proposal for
14 the Market Hall. Any other use that came in for those other
15 commercial components would have to show that they meet the
16 requirement for that.

17 VICE CHAIR JANOFF: And even on the Market Hall
18 we don't have the specific commercial buildout at this time
19 to know precisely the number of leasable square footage
20 upon which the parking ratio would be determined, is that
21 correct?

22 ASSOC. PLANNER SHOOPMAN: We have estimates of
23 the uses in the Market Hall from the Applicant. They've
24 shown a community room, they've shown the bakery
25 potentially, and they've shown the residential units above.

1 VICE CHAIR JANOFF: And could the commercial
2 numbers change based on a smaller footprint of leasable
3 commercial space?

4 ASSOC. PLANNER SHOOPMAN: I believe there's a
5 possibility of that, and the Director can confirm that.

6 DIRECTOR PAULSON: Thank you. Through the Chair,
7 Joel Paulson, Community Development Director.

8 The footprint for the Market Hall building hasn't
9 changed. The other pad buildings have changed slightly.
10 Given our current parking requirements, and these are tied
11 back to the downtown, if they had some small offices or
12 something that they proposed in part of either the Market
13 Hall or one of the other tenant buildings that, again, as
14 Ms. Shoopman mentioned, they would need to show that they'd
15 meet the requirements, because for example, parking for
16 office is parked at a different ratio than the one per 300,
17 which is most of the other uses that are anticipated for
18 the phase one of the North 40.

19 VICE CHAIR JANOFF: Thank you.

20 CHAIR HANSSEN: Commissioner Hudes.

21 COMMISSIONER HUDES: I understand that the
22 original application had certain requests and now we're
23 looking at an application for the Market Hall. My question
24 is about the modification to the Market Hall application
25

1 that we're considering now. There was information that was
2 presented to us on 8/26 which is inconsistent with later
3 documents. Are we to consider all the information that's
4 been presented in this application?

5 DIRECTOR PAULSON: I'm not sure what specifically
6 information you're looking at. Right now, I think the
7 latest information is Exhibit A, which has a table for the
8 Transition District in Market Hall, but I look to Ms.
9 Shoopman to confirm that.

10 ASSOC. PLANNER SHOOPMAN: Yes, the most recent is
11 Exhibit A that was provided by the Applicant from their
12 letter dated September 21st.

13 COMMISSIONER HUDES: I understand. This is really
14 a question I think for the Town Attorney. If we've been
15 presented with documents as part of this application for
16 modification along the course of the three or four meetings
17 that we've had, are we to consider all of that information?

18 TOWN ATTORNEY SCHULTZ: Yes, you are. That's all
19 part of the record and you should consider it all, and if
20 there are discrepancies between documents you should try to
21 resolve those, and if you can't that could be the basis for
22 your decision for either denial or approval. So yes, all
23 documents that have been submitted for the modification are
24 part of the record and should be taken into consideration.
25

1 COMMISSIONER HUDES: Thank you, Mr. Schultz.

2 CHAIR HANSSEN: If any other Commissioners have
3 questions—I don't see any at the moment—but I did want to
4 ask a question of Staff. We discussed it at a previous
5 meeting, but again I want to make sure we're all on the
6 same page.

7 The objective standard for parking for this
8 application, which we're holding onto, is defined where and
9 can you summarize what it is?
10

11 ASSOC. PLANNER SHOOPMAN: It's defined in the
12 Specific Plan on we're looking at 2.518, Parking
13 Requirements, and that references the number the off-street
14 spaces required and references the Zoning Code for that.

15 CHAIR HANSSEN: So that is the standard for which
16 you did your analysis when you determined that the
17 Applicant's proposal to remove the parking garage continued
18 to meet the parking requirements, because those were the
19 ones that were set forth in the North 40 Specific Plan,
20 correct?

21 ASSOC. PLANNER SHOOPMAN: Correct.

22 CHAIR HANSSEN: Okay.

23 DIRECTOR PAULSON: I believe you asked for some
24 specificity. For the commercial, under what's currently
25 before you we're looking at the majority of the space at

1 the one per 300 square feet, and then the community room at
2 the one per 590 square feet parking requirement for that
3 community room. And then the residential parking is laid
4 out in Table 2-4 in the Parking Requirements, which is half
5 a space for each senior unit and half a guest space for
6 each senior unit, and then one space for a one bedroom unit
7 plus half a guest space, and for two bedrooms or more it's
8 two spaces plus half a guest space.

9
10 CHAIR HANSSSEN: Thank you very much. And to
11 follow up on that, supposing that the concerns of residents
12 become realized and it turns out that there isn't enough
13 parking at the end, what can we do to improve the situation
14 going forward should we decide that we need more stringent
15 parking standards for further expansion? What can we do?

16 DIRECTOR PAULSON: I think there are a couple
17 options there. The first one would be as part of whatever
18 decision you render that ultimately future direction would
19 be provided to the Town Council to reconsider the parking
20 in the Specific Plan so that you could look at the
21 potential of modifying the parking requirements for later
22 phases, so that's an option.

23
24 I know there's been a lot of comments about
25 spilling over into adjacent residential areas. We obviously
have parking methods that we can use, whether it's permit

1 parking or some other mechanism that could be looked at,
2 and ultimately I think when we get there, if that does come
3 to light, then hopefully well before that the Town Council
4 has decided to take a relook at the Specific Plan and
5 determine whether or not those parking standards should be
6 adjusted and go through that Specific Plan amendment
7 process.

8 CHAIR HANSSEN: Thank you very much. Commissioner
9 Tavana has his hand up.

10 COMMISSIONER TAVANA: Yeah, quick question here.
11 This is really the Specific Plan, since we're talking about
12 that. In Section 3.3.2, part D, it says, "Below-grade
13 parking is encouraged with entries placed at the rear or
14 sides of the structures whenever possible." I'm wondering
15 if that could be used as a reason to leave the underground
16 parking structure and if it's about removing parking and
17 they want to reduce parking maybe from the third or fourth
18 level? Could that be used as a subjective standard?

19 DIRECTOR PAULSON: It cannot. That was actually
20 brought up at not the last meeting but I think the meeting
21 before that, by Commissioner Hudes, and that is
22 specifically in the residential section and that is not an
23 objective standard. Encouraging something is not an
24 objective standard.
25

1 CHAIR HANSSEN: I did have one more question on
2 the parking. It did come to my attention that the way we
3 look at this thing is based on what the parking code is at
4 the time that they go for their Building Permit, so I'm
5 asking Staff, I understand there was a change in how we do
6 restaurant parking and how that flows through to this
7 application, so I was wondering if you could just go
8 through that?

9
10 ASSOC. PLANNER SHOOPMAN: The Town Code was
11 amended for how we deal with required parking for
12 restaurants. It used to be based on the number of seats in
13 a restaurant or bar; that's no longer the case. It's based
14 on the parking requirements just like any other commercial
15 use; it's one space per 300 square feet and that's the
16 gross floor area.

17 CHAIR HANSSEN: So the way this flows through to
18 the North 40 Specific Plan is... I don't have the plan in
19 front of me, but my understanding is it refers to whatever
20 the downtown parking code is that's in place or something
21 like that, not the number of seats per restaurant. It's
22 based on whatever the downtown parking code is, or did I
23 not get that right?

24 DIRECTOR PAULSON: That's correct.
25

1 CHAIR HANSSEN: Okay. So if it turned out they
2 needed a few less spots on account of that standard... I
3 don't know if that's the case, but if they did, that's the
4 standard we'd be holding them to because we're referring to
5 the North 40 Specific Plan that refers to the parking code
6 that we're using downtown. Okay, and I think Commissioner
7 Badame had her hand up. Go ahead.

8 COMMISSIONER BADAME: Thank you, Chair. My
9 question is can we use land use policies within a specific
10 plan as objective findings?
11

12 DIRECTOR PAULSON: I'll start and see what the
13 Town Attorney has to add, if anything, but ultimately it
14 would depend on which policy or standard you're using and
15 what it says. We would have to evaluate that on a case-by-
16 case basis. If you have a specific one in mind, let us know
17 and we'll take a look at that.

18 TOWN ATTORNEY SCHULTZ: Within your General Plan
19 and Specific Plan there are both many objective and
20 subjective standards. Most in the Zoning Code are almost
21 always objective, but you'll find even some subjective
22 standards within your Zoning Code, so they all have a
23 mixed... And the issue is whether when you look at that
24 specific language whether they're objective or subjective.
25

COMMISSIONER BADAME: Thank you.

1 CHAIR HANSSEN: Commissioner Tavana.

2 COMMISSIONER TAVANA: I have a question, yeah,
3 about the Traffic Impact Analysis. How many parking spaces
4 were accounted for in the Traffic Impact Analysis for phase
5 one?

6 DIRECTOR PAULSON: Two things to that point. The
7 parking is not looked at in a traffic impact analysis, and
8 parking is also no longer a CEQA issue that needs to be
9 addressed.
10

11 COMMISSIONER TAVANA: To follow up that, so the
12 thorough review of parking access circulation and supply,
13 it says here at least a TIA should be conducted when
14 parcel-level development proposals are submitted. Was that
15 conducted or is that not a requirement, you're saying?

16 DIRECTOR PAULSON: A Traffic Impact Analysis was
17 done. I don't have the Traffic Impact Analysis in front of
18 me but they look at all of those things, but now parking is
19 no longer a CEQA issue, and to further that we no longer
20 also use LOS or CEQA perspective, it's now vehicle miles
21 traveled, which the Town is still trying to go through even
22 though that is in place as of July 1st of this year.

23 COMMISSIONER TAVANA: Okay.

24 CHAIR HANSSEN: Do any other Commissioners have
25 questions of Staff? Commissioner Barnett.

1 COMMISSIONER BARNETT: Concerning the question of
2 whether a land use provision in the General Plan is
3 subjective or objective, I'd like to suggest LU-13.4, which
4 states that, "New development on Los Gatos Boulevard shall
5 be designed to minimize adverse impacts on adjacent
6 residential areas." Would you consider that subjective or
7 objective?

8 DIRECTOR PAULSON: I'd defer to the Town
9 Attorney, but with the original approval that policy has
10 been reviewed and determined to be inappropriate, but I'm
11 not sure if the Town Attorney has any additional input on
12 that.

13 TOWN ATTORNEY SCHULTZ: It's for you to
14 deliberate. If you remember and reviewed the tapes from two
15 years ago, I'm really not going to decide whether a policy
16 is objective or subjective, that's for the Planning
17 Commission to decide. I'm providing you the law. I will
18 provide the definition of objective and then maybe you can
19 debate whether that policy is subjective or objective.
20 Objective means involving no personal or subjective
21 judgment by a public official and being uniformly
22 verifiable by reference to an external and uniform
23 benchmark or criterion available and knowledgeable by both
24
25

1 the development applicant and the proponent and the public
2 official.

3 COMMISSIONER BARNETT: Okay.

4 TOWN ATTORNEY SCHULTZ: I know that's a lot of
5 legalize in there, but the big one is it involves no
6 personal subjective judgment, and if you read that policy
7 at least you could certainly reach the conclusion that two
8 people could have a different opinion as to whether there
9 would be an impact to neighboring neighborhoods and
10 therefore it would be subject to a personal judgment.
11

12 CHAIR HANSSEN: Did that answer your question,
13 Commissioner Barnett? And Commissioner Hudes has his hand
14 up.

15 COMMISSIONER HUDES: Thank you for the
16 information about the parking. On the Applicant's chart in
17 the original modification application they have a version
18 of 3.22 and it refers to parking for non-commercial...well,
19 for other commercial uses such as restaurant and bar as 100
20 square feet other than 300 feet. How did those numbers get
21 arrived at and were they reviewed by Staff?

22 DIRECTOR PAULSON: Those were assumptions made by
23 the developer based on the requirements at the time, which
24 was seats. What I envision they did was they imagined we're
25 going to have X square footage of restaurant and assume

1 we're going to have X square footage of bar. Based on that
2 square footage and other operations here's a reasonable
3 metric to use for that so that they were accounting for
4 that, knowing that the one per 300 may not work in all
5 those instances, and so they looked at that and made that
6 assumption. We were aware of that assumption, but
7 ultimately it was just that, an assumption.

8 COMMISSIONER HUDES: Okay, thank you.

9
10 CHAIR HANSEN: Do any other Commissioners have
11 questions of Staff before we go to hear from the Applicant?
12 Okay. Go ahead, Commissioner Barnett. And for the
13 Commission, we will have another chance to ask questions of
14 Staff when we make our deliberations, but I think it's good
15 to get as many questions out as we can now. So,
16 Commissioner Barnett.

17 COMMISSIONER BARNETT: I think this has been
18 touched on, but it's not clear in my mind which law would
19 apply, the Town Code relating to downtown parking at the
20 time the original application was made, and now that the
21 modification is applied for.

22 DIRECTOR PAULSON: I believe the Town Attorney
23 answered that previously and it's what the current
24 regulations are, but I would look to him to confirm that.
25

1 COMMISSIONER BARNETT: That was my question,
2 thank you.

3 TOWN ATTORNEY SCHULTZ: That is correct. the time
4 of the modification application was filed would be the time
5 that...the laws that they have to comply with, just as if we
6 had strengthened and changed the parking or any other
7 regulation. If they come in for a modification they would
8 have to comply with it.

9 DIRECTOR PAULSON: And just for the Commission's
10 information, that modification was made in 2018, so well
11 before this application was submitted.

12 CHAIR HANSSEN: I had just one more follow up
13 question about the other commercial pads. Right now—I think
14 this was touched on a little bit earlier—the other pads are
15 not purchased by a developer or under contract by a
16 developer, so at the moment my understanding is that the
17 information that's coming from the Applicant in terms of
18 parking is estimated numbers only based on what the
19 possible maximum square footage could be, is that correct?
20 And we won't know until those developers come in and make a
21 specific proposal what parking requirements they'll have
22 specifically? So, that's my question. Is that right?
23

24 DIRECTOR PAULSON: I believe the numbers are
25 biggest on the pads that were in the original Architecture

1 and Site, but the Applicant could probably provide
2 additional information on that. When those additional pads
3 come in we're going to check them against the parking
4 requirements and make sure that they still meet that, and
5 if there is any significant expansion of footprint, for
6 example, then that's probably something that may generate
7 the need for a modification.

8 CHAIR HANSSEN: Thank you very much. That answers
9 my question. Are there any other questions from
10 Commissioners before I go to the Applicant? Seeing none, we
11 will open up the public hearing and first give the
12 Applicant an opportunity to address the Commission for up
13 to five minutes, and I think I saw Mr. Keeney in the
14 attendee's list for Summer Hill.

15 DIRECTOR PAULSON: Yes, I have allowed Mr. Keeney
16 to speak, so he can just unmute himself and he will have
17 five minutes.

18 MICHAEL KEENEY: Yes, I'm here. Can you guys hear
19 me?
20

21 CHAIR HANSSEN: Yes.

22 DIRECTOR PAULSON: Yes.

23 MICHAEL KEENEY: Great. Good evening,
24 Commissioner Hanssen, members of the Planning Commission,
25 and Staff. My name is Michael Keeney and I am the

1 Development Manager for Summer Hill Homes on the North 40
2 project.

3 As we explained at the hearing on September 9th,
4 the proposed modification for Market Hall is consistent
5 with the North 40 Specific Plan and the Town Code. Per the
6 Town Code, Market Hall is required to provide 76 commercial
7 parking spaces and 50 residential spaces for a total of 124
8 required spaces. With the proposed amendment Market Hall
9 will provide 126 commercial spaces and 50 residential
10 spaces. This is a surplus of 52 commercial spaces, or 70-
11 percent more than is required.
12

13 At our last Planning Commission meeting there
14 were a number of questions and public comments about the
15 parking calculations for Market Hall and the Commercial
16 Transition District as a whole. To help clarify these
17 questions for the Commission and the community we've
18 prepared the Transition District Parking Summary, which is
19 Exhibit A that I think Staff can put up on your screen and
20 is included in your packet. It was in the Desk Item that we
21 provided and it was also in our response letter prior to
22 the hearing. There it is.
23

24 This table provides a complete summary of the
25 parking requirements for the Transition District. Market
Hall is shaded in blue and includes the gross square

1 footage based on our proposed design. The items in orange
2 are the gross square footages for each building based on
3 what was proposed in the approved A&S plans as shown on
4 sheet 3.22 of that plan set. The green are the remaining
5 residential units from the same sheet 3.22. Staff has
6 reviewed this table and concurs that it accurately reflects
7 the information included in the A&S approved plans and is
8 in compliance with the requirements of the Specific Plan.
9

10 As you can see from the table, the total required
11 parking for the Transition District is 273 parking spaces
12 and as currently proposed there would be a total of 319
13 parking spaces, a surplus of 46 spaces for the District as
14 a whole.

15 There's no obligation in the conditions or the
16 Specific Plan for Market Hall to provide parking for future
17 phases. You can see from the Transition District Parking
18 Summary, with the proposed modification we have provided
19 more parking than is required by the Town Code and the
20 Staff Report is found in conformance with the Specific
21 Plan.

22 This is the third hearing that the Planning
23 Commission has held for the proposed modification to Market
24 Hall. We appreciate the Commission's desire to ensure
25 public participation and we believe that the Commission and

1 the public have had a full opportunity to review and
2 comment thoroughly on the plans. We respectfully request
3 that the Commission find that the proposed amendment is
4 consistent with the Specific Plan and the Zoning Code and
5 approve this modification tonight.

6 We are available to answer any questions that you
7 may have. Thank you.

8 CHAIR HANSSEN: Thank you, Mr. Keeney. We do have
9 questions from Commissioners. Commissioner Badame.

10 COMMISSIONER BADAME: Mr. Keeney, thank you. I'm
11 looking at sheet A-3 and I just want to ask you, are there
12 any other modifications to the plans other than removal of
13 the underground parking?
14

15 MICHAEL KEENEY: So, sheet A-3 of our plan set
16 application, correct?

17 COMMISSIONER BADAME: Correct.

18 MICHAEL KEENEY: That's the third floor plan, and
19 to answer your question there are no other modifications to
20 the appearance of the building from the outside. There are
21 some minor modifications internal to the garage to
22 accommodate mechanical equipment rooms and things like that
23 that may have been in the basement and are now in areas
24 where like the ramp used to allow access to the basement,
25 so there are a few kind of backup house rooms that are

1 shifting around, but nothing that's visible from the
2 exterior.

3 COMMISSIONER BADAME: Is there an entrance or an
4 exit on the northwest side that's been removed that
5 provides ingress/egress to the commercial area, the
6 Commercial District?

7 MICHAEL KEENEY: What you're seeing in the as-
8 proposed drawing...

9 COMMISSIONER BADAME: Yes.

10 MICHAEL KEENEY: ...is eventually what was approved
11 in the Building Permit. So, during the Building Permit
12 process that access point was eliminated.

13 COMMISSIONER BADAME: So, the only access, the
14 only ingress/egress is on the east side of the garage?

15 MICHAEL KEENEY: That's correct, yes.

16 COMMISSIONER BADAME: And this was previously
17 approved? If Staff could confirm that.

18 DIRECTOR PAULSON: This was approved as the
19 potential for modifications for the garage, that's correct.

20 COMMISSIONER BADAME: So that's part of this
21 application, removing that ingress/egress point? That's
22 what I understand.

23 DIRECTOR PAULSON: I don't have the Building
24 Permit plans in front of me and I'm not sure... I'm trying to
25

1 scroll through the plans to see which sheet A-3 you're
2 looking at, and so I'll look at that, but without the
3 underground there would be only one ingress/egress point if
4 the underground is not approved. I'll have to go back and
5 see if I can dig up the Building Permit plans from when
6 this was done as part of the original plan check.

7
8 COMMISSIONER BADAME: That would be important to
9 me, because we may have a circulation issue. Thank you.

10 CHAIR HANSSSEN: Do other Commissioners have
11 questions for the Applicant? While I'm waiting to see if
12 anyone else has any questions I did have a question for the
13 Applicant.

14 In your projections for the entire Transition
15 District you talked about a surplus of 46 spaces of which
16 52 are from the parking garage with the Market Hall and
17 then there would be six spaces that would be needed by the
18 remainder of the commercial pads. Now, I'm completely
19 familiar with the fact that we don't actually have
20 proposals for those pads, but supposing that they did turn
21 out to be exactly what you had suggested and had estimated
22 there would be a shortage of six spaces, my question to the
23 Applicant is how would that work out for those developers?
24 Yes, we know they'd have to be able to deal with the code
25 that's in place at the time, but if they really are short

1 six spaces would they be able to share space with the
2 parking garage which does have overages, and how would that
3 work?

4 MICHAEL KEENEY: I think, if I understand, you're
5 saying that with the potential shortfall in the Commercial
6 District how would we accommodate allowing for some of that
7 overflow parking within the Market Hall? I think that's
8 what you're getting at?

9 CHAIR HANSSEN: That is my question, yes, thank
10 you.

11 MICHAEL KEENEY: The Market Hall isn't obligated
12 to do that, but we're hoping that the developer of the
13 commercial space in Market Hall will also be the developer
14 of the commercial pads. The goal is for it all to be
15 developed concurrently with one developer and then
16 ultimately one manager of the commercial property that
17 manages the whole district. So, it's in our interest and in
18 that master developer/commercial developer's interest to
19 have some shared parking agreements to make all of that
20 work. Our expectation would be that we would work something
21 out with them to accommodate their parking needs.

22 CHAIR HANSSEN: That makes sense. I mean, I think
23 it's in everyone's best interest for it to be successful,
24 so I think that what you're saying is that we can't count
25

1 on it but we can assume that that would be the case. Okay,
2 thank you.

3 MICHAEL KEENEY: It's certainly in our interest
4 to accommodate (inaudible).

5 CHAIR HANSSEN: Absolutely. Do any other
6 Commissioners have questions for the Applicant before I go
7 to public comments? All right, seeing none we will now move
8 to the public comments portion of the hearing, and I see we
9 have quite a number of people in the attendees, but I don't
10 know who wants to speak, so this would be the time to speak
11 on this item. I ask anyone that would like to speak to
12 limit your comments to three minutes, and as I said
13 earlier, for any oral comments during the meeting you may
14 choose to state your name and address or speak anonymously
15 and do understand that the meeting is being recorded for
16 the public record. So, Mr. Paulson, can you let me know if
17 there are members of the public that would like to speak?

18 DIRECTOR PAULSON: There are. The first speaker
19 will be Mark Miller. I'm going to allow him to talk. Can
20 you unmute yourself, Mr. Miller?

21 MARK MILLER: Yeah. Can you hear me?

22 DIRECTOR PAULSON: Yes.

23 MARK MILLER: Great. Thank you for the
24 opportunity, by the way, to speak. I think I understand the
25

1 Town's needs to comply with the Housing Accountability Act
2 and the by-right development. But if you'll excuse my
3 subjective comment for a moment, my neighbors and I already
4 deal with employees of the carwash overflow and overflow
5 from PAMF. I can only imagine the overflow, what that would
6 look like, if insufficient parking existed at the North 40,
7 and that would be just incredible. And that doesn't even
8 count the short-cutters that race through the neighborhood
9 trying to find a way around Park Avenue and Los Gatos
10 Boulevard.

11
12 It's difficult to look at this any other way than
13 how it's going to affect myself and my neighbors, and my
14 family obviously. The first question that came to my mind
15 when I heard the opening comments, I understand there's no
16 development agreement. Well, why not? Isn't that something
17 that would protect us? I mean, I would think that there
18 would be measure in place to protect the residents.

19 Another thing that comes to mind that... I don't
20 know where I am on three minutes here, but some comments
21 were made. I think Mr. Keeney said that there is full
22 opportunity to review. I'd like to know where I'd review
23 that, because I'm not aware of it. I didn't see that. I'd
24 like somebody to tell me where that is. I'm sure it's in
25 full view somewhere, but I didn't even know about this

1 meeting until I was told from some of my neighbors, and so
2 I have some concerns about transparency here and I want
3 some assurances that the Town is operating in the best
4 interests of its residents. That's my comment. Thank you.

5 CHAIR HANSSEN: Thank you so much for your
6 comments. And for the benefit of the commenter as well as
7 other commenters, we're not able to address questions
8 directly, however we may be able to during our
9 deliberations talk about the issues that you bring up. With
10 that, do any Commissioners have any questions for the
11 speaker? Seeing none, is there someone else that would like
12 to speak on this item?
13

14 DIRECTOR PAULSON: There is. The next person I'm
15 going to let speak is Mr. Lockridge.

16 JEFF LOCKRIDGE: Okay, hi, my name is Jeff
17 Lockridge and I live at the north end of Los Gatos near the
18 North 40.

19 I personally have worked hard to get the North 40
20 to be the best that it can be for the Town, and it's my
21 understanding that Summer Hill Homes who are currently
22 building on the North 40 are requesting now, after the
23 fact, the elimination of underground parking for the
24 portion under the Market Hall.
25

1 The Market Hall plan included that four-story
2 parking garage, three above-grade levels and one below-
3 grade level, and this was approved years ago and designed
4 to accommodate parking at the North 40. As a resident of
5 Los Gatos I don't look at the North 40 in phases. It's one
6 North 40 project. That's why it's called 40. If it was less
7 than that it might be 20 or 18. Utilizing the current
8 parking requirements for only the phase one portion of the
9 North 40 would be irresponsible for the Town to consider
10 since we know for a fact phase two will require additional
11 parking.
12

13 Summer Hill knew what the project was and what it
14 included before they signed on and agreed to build it. They
15 knew it included underground parking. So, just how much
16 money will they save eliminating what they already agreed
17 to build? And you can't claim anti-NIMBYism, because we
18 want it built there, we want *more* parking built there, not
19 less parking. Not in my back yard is... It's in my back yard.
20 Built it in my back yard. So, that doesn't even apply.
21

22 Does Summer Hill have to abide by a subjective
23 versus objective reasoning for any of these changes to
24 modifications, minimums versus maximums? If you ask me,
25 maximums should be in place in all cases, because that's
what might be required objectively.

1 I realize that senior housing parking
2 requirements are just one-half space per unit. I also know
3 through personal experience the consequences that just one-
4 half parking space creates. It does not represent the
5 reality of the real parking requirements for senior
6 housing. I have personal experience of dealing in another
7 senior development in Los Gatos and struggle on a daily
8 basis to deal with those irresponsible and unrealistic
9 parking requirements. I would support pursuing a
10 development agreement as a Town of Los Gatos application
11 modification. I think we should apply for a modification
12 and it should include a development agreement. I'd like to
13 know if that's subjective or objective.
14

15 I think that the modification should be denied.
16 Thank you.

17 CHAIR HANSSEN: Thank you very much for your
18 comments. Do any Commissioners have questions? Vice Chair
19 Janoff.

20 VICE CHAIR JANOFF: Thank you. In consideration
21 of Mr. Lockridge's comments and question for the Town
22 Attorney, is it possible to enter into a development
23 agreement after the fact?
24

25 TOWN ATTORNEY SCHULTZ: I have never done one
before, but at any time an agreement can be reached. I've

1 done many development agreements, but I've never done one
2 after a project has been approved, but certainly if the
3 Applicant wanted a development agreement at this point in
4 time I believe one could be entered into.

5 A previous speaker asked why a development
6 agreement wasn't done for phase one? The Council at that
7 time did not want to enter into a development agreement,
8 but as I mentioned when we were going through making
9 changes to phase two they have specifically added language
10 about a development agreement and the intent is to do a
11 development agreement on phase two.

12 VICE CHAIR JANOFF: Thank you.

13 CHAIR HANSSEN: Do any other Commissioners have
14 questions of the speaker? Then we will move on and see if
15 there are any other speakers. I see someone with their hand
16 up.

17 DIRECTOR PAULSON: Yes, thank you. I'm going to
18 allow Barbara Dodson to speak.

19 CHAIR HANSSEN: Okay, go ahead.

20 BARBARA DODSON: Can you hear me? Oh, okay. Good
21 evening.

22 Obviously it's hard for members of the community
23 to keep up with Summer Hill's ever-changing story. Summer
24 Hill submitted an application in which it said it would be
25

1 providing either 330 or 331 parking spaces in the
2 Transition District. Now in its new Exhibit A it says it
3 will be providing 319 spaces. Previously Summer Hill
4 claimed excess of 52 spaces; now the excess is 46. Can
5 approval really be based on an addendum that contradicts
6 the original proposal?

7 I also think it's important to remember that
8 Summer Hill was party to the original 2016 proposal along
9 with Grosvenor and Eden Housing. It didn't take over a
10 proposal that was agreed to by another party, Summer Hill
11 was party to the original proposal. If it didn't want to
12 build the garage it should have said so in 2016. Approval
13 with the three applicants, Grosvenor, Summer Hill, and
14 Eden, was based on a commitment to include an underground
15 garage. It's not acceptable now to say well, we really
16 don't want to do that after all. The notion that there was
17 no agreement is, I think, debatable, hence the underground
18 garage was a Condition of Approval and was the subject of
19 considerable discussion.

21 Another point, since we don't know how much
22 commercial space there will be it seems a bad idea to
23 reduce parking. Parking continues to rely only on
24 assumptions. Thank you.
25

1 CHAIR HANSSEN: Thank you so much for your
2 comments and thank you also for all of your written
3 comments as well. With the amount of research that you've
4 done we truly appreciate it. I want to know if any
5 Commissioners have any questions for the speaker? I don't
6 see anyone with their hand up, so is there anyone else that
7 would like to speak on this matter? Director Paulson is on
8 mute and he's talking.

9
10 DIRECTOR PAULSON: Thank you for that. I see that
11 Mr. Miller has his hand up again. We only allow folks to
12 speak once, however we may have another family member, so
13 I'm going to allow him to speak just to find out if it's
14 another family member on the same computer.

15 MARK MILLER: That is correct.

16 LISA MILLER: That is correct. This is Lisa,
17 Mark's wife, and I just had a couple of questions that came
18 up.

19 If Commissioner Badame hadn't commented about the
20 changes being made with no review beyond Staff, how would
21 anyone know about them? And how many other changes have
22 been made from the approved set of documents, the
23 construction documents being used to build the project?
24 This has been going on for a long time. I don't know, where
25 is his transparency?

1 CHAIR HANSSEN: Thank you very much for your
2 comments. As I said, we can't directly answer your
3 question, but we could during our deliberations address
4 some of the questions with Staff. Are there any questions
5 for the speaker from the other Commissioners? I don't see
6 anyone with their hands up. Is there anyone else that would
7 like to speak on this item?

8 DIRECTOR PAULSON: Yes, we do have another person
9 with their hand up. It's looks like Maria Ristow. I'm going
10 to allow her to talk.

11 CHAIR HANSSEN: Okay.

12 MARIA RISTOW: Hi, Maria Ristow. I'm just
13 concerned that this is even continued from the beginning. I
14 mean, it seemed like at the first meeting when this came up
15 there was plenty of residential opposition to allowing this
16 change, and now as the continuations have occurred there's
17 more and more data coming up about why we can't just say
18 build the parking. When we created the Specific Plan, I
19 think Jeff Lockridge put it really well, this is for the
20 whole North 40, and so the parking should be considered for
21 the entire scope of the project.

22 Going into it, the first developer to go in had
23 to do all of the traffic mitigation, \$12 million for the
24 entire buildout. I don't understand why when there was a
25

1 plan to build the underground parking that may or may not
2 be excessive for this part, knowing that cars will be
3 involved in phase two, knowing that we'll need more
4 parking, knowing that underground parking is superior to
5 street parking in terms of aesthetics, why we can't hold
6 them to this agreement and Summer Hill can figure it out
7 with the next project. I know whoever—it was probably
8 Summer Hill—did all of the initial infrastructure, that
9 they will be able to hold other developers to reimburse
10 them for what they've done, why can't they figure that out
11 with the parking garage if they've built excessive parking?
12

13 I don't understand why this is even an issue
14 right now, but I think we need the underground parking.
15 We'll never be able to go back to an existing parking
16 garage and dig underground parking again, and I would like
17 to see this move forward. Thank you.

18 CHAIR HANSEN: Thank you for your comments. Do
19 any Commissioners have questions for Ms. Ristow? Vice Chair
20 Janoff.

21 VICE CHAIR JANOFF: Thank you. Not a question for
22 Ms. Ristow but for either the Town Attorney or Staff. A
23 couple of people tonight have talked about why Summer Hill
24 shouldn't be held to the general proposal for the entire
25 North 40, not just phase one. Would someone please comment

1 on that? And maybe this goes back to the Applicant. I don't
2 fully understand the transfer of the project from Grosvenor
3 to Summer Hill in its scope, but if someone from Staff
4 could please comment on why the phase two portion, which is
5 largely commercial that the phase one underground parking
6 was to support, why that is not under consideration by the
7 Planning Commission at this time?

8 DIRECTOR PAULSON: I'll start, and then if the
9 Town Attorney has any additional information, but
10 ultimately our Town Council requires the parking to be
11 provided on the site or with the project that is before
12 you. So, they may or may not have overparked it with
13 anticipation of wanting to build less parking on the phase
14 two. Whether it's phase 2, 3, 4, 7, whatever number it is,
15 when any future project comes in they will have to show how
16 they're meeting the parking requirements for their specific
17 property. That will be done with every subsequent project
18 that comes to the Town for review. And then I'd defer to
19 the Town Attorney as well.

20 TOWN ATTORNEY SCHULTZ: In very layman's terms,
21 each project that comes in front of you is analyzed on its
22 own merits, and with this or any other project there can be
23 many other parcels around it, but let's say for the North
24 40 there are other parcels that are much smaller, and if

1 they came in with a proposal they need to meet their
2 parking regulations. We wouldn't say to that proposed even
3 if it's three or four acres, because there are some parcels
4 out there that are smaller than this proposed, and if they
5 came in and proposed a project we wouldn't be able to tell
6 them you need to do an underground project because there
7 may be some other future projects. That's just not the way
8 land use law works. You have to meet the regulations for
9 your proposed project and not for other ones around there.
10

11 Now, the way this was supposed to be proposed and
12 it was going to supposedly work would be as yes, they were
13 overparked and they were going to be providing parking for
14 phase two, and what would have happened is when phase two
15 would have been developed they would have been able to use—
16 let's just assume numbers, I'm just throwing out numbers—
17 there were 400 parking spaces required because of the
18 parking on phase two. They would have been able to use and
19 get a parking agreement with phase one and, let's say,
20 provide only 300 spaces because they had 100 spaces in a
21 shared parking agreement. That no longer will be available,
22 so phase two now will have to develop their own parking to
23 meet all the regulations and they won't be able to do a
24 shared parking agreement with phase one.
25

1 But if the comments are that this overparking was
2 going to be used by phase two and phase two was still going
3 to have to meet all of its parking regulations, that's not
4 the way it was going to happen. They would have used a
5 shared agreement to use these parking spaces.

6 So yes, (inaudible) of now will on any future
7 development and there won't be that ability to do a shared
8 parking agreement with phase one because those extra spaces
9 have been eliminated for the most part.

10 VICE CHAIR JANOFF: A quick follow up, if I may?

11 CHAIR HANSSEN: Go ahead.

12 VICE CHAIR JANOFF: Given the history of the
13 North 40 when there was sort of a master plan for all 40
14 acres, under that vision there was the sharing of the
15 parking obligation as a notion. But since that larger 40
16 acres is no longer what's being developed, or we don't have
17 plans for it, we don't know at this point whether that will
18 be commercial or housing or if it's ever developed at all,
19 so we are not, practically speaking, even though the
20 promise of a lot of parking sounded pretty great to a lot
21 of residents in town, that is no longer a consideration for
22 tonight.

23 TOWN ATTORNEY SCHULTZ: That is correct. We have
24 no application in the process. We don't know if because of
25

1 the climate changes and everything happening with brick and
2 mortar, it might not even be commercial. A project could
3 come forward that states that they want to enter a
4 development agreement to supply additional housing and
5 they'd still have to meet the requirements for housing but
6 there wouldn't be any commercial parking requirements.

7 So, at this point in time we don't know, or it
8 could be that they want to do even more commercial than is
9 even allowed in our Specific Plan and then have to provide
10 additional parking, which this underground would have been
11 able to help out on that phase two, but instead might
12 require an underground parking on phase two.

13
14 CHAIR HANSSEN: Commissioner Hudes.

15 COMMISSIONER HUDES: Thank you. We don't have an
16 application for phase two, but I just want to verify we do
17 have an application for phase one that was submitted on
18 8/1/2017, is that correct?

19 DIRECTOR PAULSON: 8/1/2017?

20 COMMISSIONER HUDES: Or it was approved on
21 8/1/2017.

22 TOWN ATTORNEY SCHULTZ: It might have been.
23 That's about the time when it was approved.

24 DIRECTOR PAULSON: By the Council? The Council's
25 original approval?

1 COMMISSIONER HUDES: Correct.

2 DIRECTOR PAULSON: Yes.

3 COMMISSIONER HUDES: Okay, and that approval has
4 parking requirements noted in it, correct?

5 DIRECTOR PAULSON: The parking requirements for
6 the Specific Plan have not changed. The parking for the
7 restaurant and bars, and Ms. Shoopman mentioned earlier,
8 has changed, so there is no correlating piece for the
9 Specific Plan. So, now we're under the new modification,
10 and as the Town Attorney mentioned before, we would use the
11 parking requirements that are currently in place.
12

13 COMMISSIONER HUDES: Thank you.

14 CHAIR HANSSEN: I want to remind the Commission
15 that we're still in public comments, so we're only able to
16 ask generally questions of the people that spoke, but I
17 allowed it; it's fine. Are there any other members of the
18 public that would like to speak on this matter?

19 DIRECTOR PAULSON: Yes, Ms. Quintana has her hand
20 raised. I'm going to allow her to speak.

21 CHAIR HANSSEN: Go ahead.

22 DIRECTOR PAULSON: We have a similar issue we've
23 had with her in the past. I'm going to have to move her up
24 into the panelists and let her speak, so hold on one
25

1 second. So, Ms. Quintana, if you unmute yourself then you
2 can go ahead and speak.

3 LEE QUINTANA: I'm unmuted. I just want to add
4 one thing to the discussion and that's just to... Excuse me.
5 My recollection of the changes to the parking is they were
6 the result of the fact that downtown businesses felt that
7 there should be equity in the parking requirements between
8 downtown and the North 40 and that the North 40 was being
9 required to supply more parking than was required downtown
10 and therefore was putting downtown at... (Audio cuts out.)

11 CHAIR HANSSEN: Okay, was there anything else? I
12 see she's on mute now.

13 DIRECTOR PAULSON: Now try it.

14 CHAIR HANSSEN: Okay. Ms. Quintana, I'm assuming
15 your comments are completed, because you're on mute right
16 now.

17 DIRECTOR PAULSON: Okay, I'm going to move her
18 back to attendees. She hasn't unmuted.

19 CHAIR HANSSEN: All right, do any Commissioners
20 have questions of Ms. Quintana? All right, and then
21 Director Paulson, do we have anyone else that wanted to
22 speak in public comments?
23

24 DIRECTOR PAULSON: I don't see anyone else with a
25 hand raised. If you would like to speak on this item,

1 please use the raised hand feature. Just give it a couple
2 seconds here. I do not see anyone with their hands raised,
3 Chair.

4 CHAIR HANSSON: Okay. As the Commission knows and
5 the public knows, we've received quite a number of written
6 comments as well, but since there is no one else that has
7 raised their hand to speak in the hearing tonight I will
8 now invite back the Applicant to address the Commission for
9 up to three minutes.

10 MICHAEL KEENEY: Thank you, Chair Hansson. We
11 wanted to clarify one thing that came up. Commissioner
12 Badame was asking about the secondary access point to the
13 garage and we were able to go back and double check on the
14 history of that from our perspective. The elimination of
15 the second access point to the garage that was shown in the
16 original A&S approval was done during the schematic design
17 in coordination with Planning and the Building Department
18 in the Spring of 2018. It was done at the discretion of the
19 Director of Planning, as is consistent with the Town's
20 policy.

21
22 There's still a loading area in that location and
23 the Building Permit that we have been issued for the
24 building includes that modification. The modification to
25

1 eliminate the basement has no relationship to how that
2 access point would be implemented going forward.

3 With that, we'd like to thank Staff and the
4 Commission for taking the time to review our proposed
5 modification, and we're available to answer any questions
6 you may have.

7 CHAIR HANSSEN: Thank you very much. Are there
8 Commissioners that would like to ask the Applicant
9 questions? Commissioner Hudes.

10 COMMISSIONER HUDES: You mentioned that you have
11 a building. When was that permit issued?

12 MICHAEL KEENEY: I don't have the exact date in
13 front of me, but I believe it was in January of this year.

14 COMMISSIONER HUDES: Okay, thank you.

15 CHAIR HANSSEN: All right, do any other
16 Commissioners have questions of the Applicant? I do want to
17 remind the Commission that once I close the public hearing
18 we won't be able to ask questions of the Applicant,
19 although we can ask questions of Staff. It doesn't look
20 like anyone else has any questions for the Applicant, so
21 then I will close the public hearing and then we will move
22 to having questions from the Commission. Normally we would
23 say questions or comments from the Commission or a motion,
24 but I would prefer if we could have a discussion about the
25

1 application before we get to the stage of a motion so that
2 we can kind of see where the pulse of the Commission is.
3 That being the case, I'm going open it up to questions or
4 comments or questions of Staff from the Commission.
5 Commissioner Badame.

6 COMMISSIONER BADAME: This is probably for Staff,
7 but I'm concerned about the Building Permit that was issued
8 and that was in advance of the potential loss of this
9 parking, and now with the loss of parking should this
10 proceed we've got an ingress and egress issue that impacts
11 the rest of the development that's supposed to be a fully
12 integrated project. It concerns me with the circulation
13 patterns throughout this development that might affect
14 traffic going through the residential area and backing up
15 to Los Gatos Boulevard. Is that something that we can
16 revisit or make a finding on tonight?
17

18 DIRECTOR PAULSON: I'm not aware of any objective
19 standards related to circulation. I know we have looked at
20 it, and I'll have to try to go back through my emails. We
21 looked at other parking garage situations, whether
22 underground or otherwise. We looked to see whether or not a
23 certain number of spaces, whether there was a relationship
24 to what was appropriate for one versus two. Obviously, a
25 lot of that has to do with site configurations, as was

1 mentioned. There have been modifications from the original
2 conceptual A&S approval that was done. This was one of
3 those modifications that was permitted and understand if
4 you are aware of an objective standard relating to
5 circulation and you want to use that as a finding for
6 denial or otherwise, then that's perfectly fine, as I
7 believe the Town Attorney mentioned before.

8 COMMISSIONER BADAME: Thank you.

9 CHAIR HANSEN: Commissioner Hudes.

10 COMMISSIONER HUDES: The Building Permit that was
11 issued, did that contain underground parking?
12

13 DIRECTOR PAULSON: I'm sorry, I think Mr. Kenney
14 misspoke. The Building Permit I don't think has been issued
15 for that building. We have issued Building Permits for some
16 of the models. They have a Building Permit in currently
17 that's been in plan check, I believe it's ready to be
18 issued, and it does include the underground parking. So,
19 currently the plans that we've been reviewing include the
20 underground parking.

21 COMMISSIONER HUDES: I wasn't clear. What permits
22 have been issued?

23 DIRECTOR PAULSON: There have been a number of
24 infrastructure permits issued, grading permits issued, site
25 improvements issued, offsite improvements issued, three of

1 the models—they're basically building one of each building
2 type for the residential component—and I believe they've
3 also picked up their model trailer and parking lot permit.

4 COMMISSIONER HUDES: So, of the Building Permits
5 that have been issued that are relevant to this building,
6 did they include permits for underground parking?

7 DIRECTOR PAULSON: One second, I'm just trying to
8 go back through an email here real quick, because I think
9 they did get issued the permit, and I want to say it was in
10 June maybe. That one actually has been issued and I believe
11 it's been paid for, and that one does include the
12 underground parking. So, what's approved now, if they
13 ultimately get approval to remove the underground parking,
14 then they will have to come back and submit a revision to
15 the Building Permits and go through that process to make
16 those modifications.

17 COMMISSIONER HUDES: Thank you.

18 CHAIR HANSSEN: Do any other Commissioners have
19 questions for Staff or comments on the application?
20 Commissioner Barnett.

21 COMMISSIONER BARNETT: For Mr. Schultz. Do you
22 have a comment on the point that was raised about the
23 Housing Accountability Act not applying because additional
24
25

1 parking is being requested? In other words, the comment was
2 that this would actually facilitate housing.

3 TOWN ATTORNEY SCHULTZ: No, I don't. I'm looking
4 directly at the Housing Accountability Act that just talks
5 about mixed-use projects and housing projects and that you
6 have to apply objective standards, and in this case it's
7 parking, and so you apply your objective standards to it.

8
9 You can't then take a subjective standard that
10 you want more parking than what's in your Specific Plan or
11 your Parking Zoning Ordinance and say you want more even
12 though you've already agreed to what the parking
13 requirements were. So, although yes, the more parking the
14 better, I think no one disagrees with that, the problem is
15 why the Housing Accountability Act was formed, so that
16 towns and cities cannot change in the middle of a project
17 coming in when people object to it to deny that project.

18 In this case you need to concentrate on the
19 parking regulations and whether they meet those or not.
20 That's what I would suggest as opposed to a subjective
21 standard as to whether more parking is better and will be
22 better for this project.

23 CHAIR HANSSEN: Do Commissioners have additional
24 questions of Staff or would you like to make comments on
25

1 the application? Commissioner Hudes and then Commissioner
2 Badame.

3 COMMISSIONER HUDES: I have some lengthy comments
4 and some analysis that I've done, and don't have no more
5 questions of Staff though, so perhaps Commissioner Badame
6 should go first.

7 CHAIR HANSSEN: Okay, so I will give the floor to
8 Commissioner Badame.

9 COMMISSIONER BADAME: All right, I was just going
10 to make my comments. The Specific Plan was meant to be an
11 integrated project. It's supposed to be integrated with
12 roads, water, PG&E, and residential and business flow.
13 Right now, we've got a modification in parking, but we also
14 have a modification that we weren't aware of, a reduction
15 in the access point for ingress and egress to the
16 Commercial District, so that kind of closes that off and
17 isolates it.

18 To me, I'm concerned with circulation, because
19 now you're going to overburden the residential and
20 Transition District; you're going to have business traffic
21 that goes out through the residential neighborhood and goes
22 out to Los Gatos Boulevard.

23 Again, I've got concerns about circulation and
24 linkage with the rest of the other districts within the
25

1 project. Some of this violates our objective findings that
2 I can make actually, and that is to provide linkage with
3 vehicular circulation, minimize traffic impacts through the
4 site design and access, and the park once design. Those are
5 my comments for now.

6 CHAIR HANSSEN: Thank you, Commissioner Badame.
7 Commissioner Hudes, did you want to make your comments? You
8 said you also had something you wanted to share with the
9 Commission?

10 COMMISSIONER HUDES: Yes, and I think Ms. Armer
11 has a copy of a PDF of it. I believe I'm not permitted to
12 share my screen. Before I even get into this I want to just
13 make it clear that I don't believe that the project meets
14 the objective standards for the parking requirements. The
15 North 40 Specific Plan, as far as I can tell when I read
16 it, requires 392 parking spaces for the submitted
17 application. Eliminating the underground parking will
18 eliminate 127 of those spaces, leaving 319, which is 73
19 spaces less than what is required by the Specific Plan,
20 therefore the application doesn't meet the requirements of
21 the Specific Plan, and I believe these are all objective
22 standards.
23

24 Before I get to explaining the spreadsheet I also
25 want to distinguish clearly between required parking and

1 provided parking. The Applicant has been clear on one thing
2 through their correspondence on this modification and that
3 is the number of spaces that they would like to provide or
4 eliminate, and that is they'd like to provide 176 in the
5 garage. However, the application from the 8/26 hearing
6 through today is inconsistent on a number of other matters
7 which are necessary to evaluate whether the request meets
8 objective standards.

9
10 Number one, the number of spaces that will be
11 provided outside the parking structure is different. In
12 different documents the Applicant has represented 155
13 spaces and a 143 spaces. I looked at the plans that were
14 submitted and I counted 150, so there are discrepancies in
15 terms of how many parking spaces are provided outside of
16 the garage.

17 Number two, the number of spaces required in
18 order to meet the uses in the Market Hall and how many
19 spaces are required to meet the uses in other buildings in
20 the Lark and Transition Districts as set forth by the North
21 40 Specific Plan, these requirements form the basis of the
22 objective standards by which the application must be
23 evaluated.

24 So, due to these inconsistencies I created a
25 spreadsheet to try to summarize the required and provided

1 parking. Unfortunately, I can't zoom in, but Ms. Armer,
2 maybe you could make it a little bit bigger in terms of
3 that top portion. Yeah, thank you, that's great.

4 When I read the application that was deemed
5 complete when it was approved by the Council on 8/1/2017
6 they appeared to be 104 spaces over the requirement.
7 However, there were some errors in that when I checked it
8 against consistency with the application itself and with
9 the Specific Plan.

10 Primarily the 285 that were required was based on
11 net leasable space, not on gross square footage. The
12 ordinance clearly states that gross square footage is the
13 requirement in downtown. That's the ordinance that has
14 changed, but it's been consistent. It's Code of Ordinances
15 29.10.150(b). The correct number, as I'm looking at it, is
16 345 required.

17 The other thing that I believe was incorrect is
18 that there were 47 spaces provided for affordable senior
19 including guest, and those, again, came from counting the
20 spaces on the rooftop parking. There are three additional
21 spaces but they are on a different level and therefore they
22 can't be gated and regulated for senior parking, and the
23 Applicant has represented in previous testimony that the
24 senior parking will be gated, so I made a small adjustment
25

1 that is to deduct three provided affordable senior and add
2 them to the commercial number in blue, the 387. In this
3 case when you use the gross versus the net you come up
4 actually as 39 spaces under.

5 So, that was the application that we reviewed..
6 Actually, the Planning Commission didn't review this, but
7 the Council did, and approved it on 8/1.

8 Then we have varying versions of what we've seen
9 on this application. Ms. Dodson provided an analysis in
10 test form that I translated into this spreadsheet that
11 shows required provided and over/under and I came up with
12 23 under in that analysis.

13 The Applicant has now modified their application
14 with an Exhibit A, which is inconsistent with other
15 materials that they provided, and if you could maybe zoom
16 out a little bit so we can see the green boxed area, I
17 believe the correct number—and that's what I stated in my
18 opening—is that when you look at the requirement, the
19 requirement is 323, and that puts the total required at 392
20 and an underage of 73.

21 I want to explain that, but I also just want to
22 comment that if you slide over a little more on the
23 spreadsheet you can see that even if the 285 were used,
24 which I don't think is correct but they were both in the
25

1 application that was submitted so they're inconsistent with
2 each other, they would still be 35 under in total.

3 So, now maybe you could go to the bottom of the
4 spreadsheet, the numbers that are there. Actually, just go
5 down a little bit more. I want to just describe one other
6 thing I did. I tried to do a sanity check, and if you look
7 right in the middle in the red boxes it shows that between
8 the approved A&S on 8/1 and the modification on 9/23 the
9 square footage of what was requested decreased a bit. I
10 believe they are not providing some of the restaurant or
11 there's been a reconfiguration of the Market Hall, and so
12 there was a change of about 8-percent, but the required
13 parking in the application that they presented on 8/26 they
14 said required 285 and then they reduced it on 9/23 to 204,
15 and so that's a 28-percent increase and that's the sanity
16 check that I looked at and I said this isn't just about not
17 providing spaces that they might have wanted to for some
18 future use, this is about a drastic reduction in what they
19 are saying is required between the application they
20 submitted, that we reviewed, on 8/26/2020 that had that 285
21 number in it, and what we reviewed on 9/23/2020.

22
23 Now, if you could go to the bottom of the
24 spreadsheet. Keep going to the next page, please. Okay,
25 that's good. Just go up slightly. I just want to be able

1 to... Yeah, okay. So, this is an analysis of the requirements
2 as I read them.

3 The application that was submitted and deemed
4 complete on 8/1/2917 by a group of applicants said that
5 they've now reduced it slightly to 20,760 square feet for
6 the Market Hall and 2,772 square feet for the community
7 room, and those are based on current downtown requirements
8 that would yield 70 spaces for the Market Hall and 5 spaces
9 for the community room.

10 However, the retail restaurant and bar tavern
11 that are part of the what is approved, that is what was
12 deemed complete and approved is for 24,611, 12,591, and
13 2,916 square feet for other commercial outside of the
14 Market Hall and that results in 83, 126, and 39 spaces for
15 a total of 248, and so when you add 75 in the Market Hall
16 and 248 outside you come up with 323. That's the basis that
17 I've used for calculating what's in the upper spreadsheet
18 that I marked as correct.

19 There are a number of other issues and
20 inconsistencies in the material that we've been presented
21 with, but I wanted to maybe just pause here and see whether
22 there were questions of this part of it.

23 CHAIR HANSSEN: Commissioner Hudes, I thank you
24 for all the analysis you've done. I can't speak for the
25

1 rest of the Commission but I know for me personally, for me
2 to be able to absorb all this information I would need a
3 lot more time than the five minutes that we've been given
4 to get it, and I also think we would need to give Staff a
5 fair opportunity to respond, because they're saying that
6 they are in compliance, and so in order for me to make a
7 finding that your logic is correct I would want to hear
8 from Staff after they have had a chance to review the
9 material.

10
11 So that's my feedback, but I do see that you've
12 put a lot of time and effort into this, but again, I
13 couldn't possibly really do this without spending quite a
14 bit of time looking through the numbers and seeing if that
15 made sense, and I would also want Staff to do the same
16 thing. So, I don't know if other Commissioners have
17 questions.

18 VICE CHAIR JANOFF: I do. I have my hand raised.

19 CHAIR HANSSEN: Vice Chair Janoff.

20 VICE CHAIR JANOFF: Thank you. Commissioner
21 Hudes, question for you. I'm looking at the spreadsheet and
22 I see that under Restaurant and Bar Tavern on both examples
23 you're still using the one to 100 parking ratio or the one
24 to 75 parking ratio, so it's counting seats, not the
25 current code which is one to 300, and if you take that into

1 consideration, that 126 anyway under the restaurant would
2 be reduced by two-thirds, which significantly reduces the
3 323. Can you comment on why your spreadsheet doesn't use
4 the current requirement, which is what Staff has said is
5 applicable at this time?

6 COMMISSIONER HUDES: Sure. The simple reason is
7 that we're not looking at a modification on that part of
8 the application, we're looking at a modification to the
9 Market Hall, and so if you look at the one that has the
10 blue, 20760, that's what complies with current. There's no
11 conceivable reason why the restaurant of the application
12 that was deemed complete and approved would not use the
13 code that existed at the time when it was deemed complete.
14 If there were a modification request or if there were an
15 application for those things, they could be considered.
16 Perhaps the code might be different at that time.

18 VICE CHAIR JANOFF: It's my understanding that
19 the restaurant, which is approximately 13,000 square feet,
20 is in the Market Hall, so the one to 300 ratio for the
21 project before us should apply, should it not?

22 COMMISSIONER HUDES: I believe that there is an
23 elimination of the restaurant and that the Market Hall...
24 There was, I believe, restaurant in the Market Hall and
25 restaurant outside, and the large part of it is outside the

1 13,000 square feet in buildings A, B-2, and C, buildings
2 that are not in the Market Hall. There was, I believe,
3 about a 2,000 square foot area of restaurant in the Market
4 Hall itself.

5 VICE CHAIR JANOFF: But even so, if we're
6 adhering to current code, whether it's in the Market Hall...
7 I mean, these numbers don't reflect only the Market Hall,
8 you're talking about the whole commercial area, so we, I
9 believe, should be using the one to 300. I am not clear on
10 the rationale for using what is not currently code or what
11 wouldn't be... Presumably the code won't change between now
12 and when permits are issued.

14 The way I see it is these numbers are overstated,
15 which is consistent with the initial sheet A.11, and the
16 subsequent clarifications were provided with the current
17 code of one to 300. From my understanding, I don't believe
18 this information that we're looking at right now is
19 accurate.

20 COMMISSIONER HUDES: Well, again, I would say
21 that we're not looking at a modification for any other
22 buildings. The only application in front of us now is for
23 one building, and I think that you can decide whether you
24 should apply current code or code at the time when the
25 application was approved for that, but even if you do there

1 is no application, there is no correspondence that says
2 that the restaurants won't be built and that they have to
3 be modified from the parking that was required from them
4 and made part of this application only three weeks ago.

5 VICE CHAIR JANOFF: I'm still confused, because
6 my understanding from everything Staff has said is that the
7 requirement for parking will be calculated based on the
8 plans under review for permit, not based on a proposal from
9 before, so how would we hold... You know, if I'm building a
10 house and I decide to change the square footage, why would
11 I be held to something that was previously agreed to when
12 my plans are changing?
13

14 COMMISSIONER HUDES: To be clear...

15 VICE CHAIR JANOFF: Because this (inaudible)
16 permanent yet.

17 COMMISSIONER HUDES: ...we are only looking at an
18 application for the Market Hall, so the balance of it must
19 be consistent with the approved application for it, and the
20 approved application for it says that they're going to need
21 a total of 248 spaces for that. The Applicant themselves
22 said that they don't know exactly what's going to be put
23 there, but they put forth 3.22 in their application on 8/26
24 representing that that was what was required. I don't
25 believe they have any way that they can represent those

1 buildings, because their application is not for those
2 buildings. There was an approval of an A&S for those
3 buildings.

4 CHAIR HANSSEN: Commissioner Hudes, I can't see
5 the whole screen right now because I have part of Zoom up
6 and everything and I was trying to move it around a little
7 bit, but I want to take one thing at a time. Are you saying
8 that the Applicant doesn't have enough parking for the
9 Market Hall?

10 COMMISSIONER HUDES: I'm saying that when we
11 evaluate the Market Hall, as the Town Attorney said, we
12 have to evaluate it in the context of the parking for the
13 phase one, but as a standalone.

14 CHAIR HANSSEN: I asked a question, are you
15 suggesting that the Market Hall is not in compliance, and
16 then I'll take the other (inaudible).

17 COMMISSIONER HUDES: Yes, Market Hall is not in
18 compliance when you look at the total requirements for the
19 phase one application.

20 CHAIR HANSSEN: So, I think we're going to end up
21 having to go back and talk to Staff about this, but my
22 understanding was that the Market Hall itself was in
23 compliance and then everything else is an estimate that we
24 don't really know yet, because they don't have developers
25

1 for those other commercial pads, and there is an estimate
2 based on because they are building the pads for them, but
3 until a commercial developer comes in we're not really to
4 know.

5 Then I would also echo Vice Chair Janoff's
6 comments that if we're going to try and go down this path
7 of looking at the whole thing holistically it should be
8 accurately reflecting the standard that they're going to be
9 held to for restaurants, which was changed a couple of
10 years ago.

11 So, I guess that's where I would stand on the
12 thing is that I'm not 100-percent certain that the
13 direction we got from Staff was that we should look at the
14 whole thing, because we don't have proposals for the rest
15 of the commercial yet, but maybe we can ask that of Staff.
16 But let me see if any other Commissioners have questions on
17 what you've presented so far.

18 VICE CHAIR JANOFF: Could I just ask that perhaps
19 we go back to gallery view and take this spreadsheet off so
20 we can see everyone? I can't see most of you. Thank you.

21 CHAIR HANSEN: Do other Commissioners have
22 questions of the analysis that Commissioner Hudes provided?
23 If no, I'm going to ask Staff if they could comment on how
24 we should look at this, because if I'm interpreting this
25

1 correctly the issue that is on the table is that if we look
2 at our best guess right now, according Commissioner Hudes'
3 analysis they will be short on parking holistically for the
4 Transition District even though they might not be for the
5 Market Hall itself. So, if we could prove that, that there
6 would be an objective standard that says what that parking
7 would be, I'm trying to understand from Staff's
8 perspective. So, Commissioner Hudes, before you talk I just
9 wanted to hear from Staff.

10
11 DIRECTOR PAULSON: Though ultimately I think the
12 Town Attorney mentioned earlier, I think where Commissioner
13 Hudes' analysis is going is that he's looking at the Market
14 Hall parcel individually, so that would be only the Market
15 Hall, the community room, and the senior affordable. I
16 don't see his table, but I believe it's 74 for Market Hall
17 when you're looking up the community space and Market Hall,
18 and another 50 for the residential, which is 124, and the
19 parking garage provides 176. But I know there was a lot
20 more analysis that Commissioner Hudes did, I'm just taking
21 it down to that specific question.

22 CHAIR HANSEN: Thank you, and I know you weren't
23 finished, so ahead, Commissioner Hudes.

24 COMMISSIONER HUDES: I just wanted to clarify.
25 I'm not suggesting that we look at the Market Hall by

1 itself. I cannot. The Market Hall must comply with the
2 parking requirements with the entire Specific Plan, and
3 actually the Market Hall is in the Transition District and
4 it... The application is for a single building. The
5 application has to be in compliance with the Specific Plan,
6 and the Specific Plan is for the entire 44 acres. It is
7 broken into districts and modifications to the Market Hall
8 must be in compliance with the Transition District, which
9 is where it is, and there are other buildings in the
10 Transition District, so we have to look at the requirements
11 for the Market Hall in the context of the Transition
12 District. I hope that clarifies.

14 DIRECTOR PAULSON: It definitely clarifies. I
15 think from my standpoint it's once you look at the entire
16 Transition District, that's where Staff comes up with their
17 numbers, because we used the one per 300. We no longer use
18 the one per 100 or one per 75.

19 I'm not sure if the Town Attorney has any
20 additional input on that component, but I think he'll also
21 say that if the Commission disagrees with that, that's
22 perfectly fine, you can make that part of your findings and
23 we can move forward from there.

25 TOWN ATTORNEY SCHULTZ: I think that's correct.
You guys are doing exactly what you're supposed to be

1 doing, you're deliberating, and these are objective
2 standards and how you implement those.

3 My only concern is, as I said earlier, if you
4 look at the graph that's been provided you do base your...
5 You say based on 8/1/2017 requirements, and you do need to
6 base it on your current regulations that apply to this
7 modification. It's the same as if you came in with your
8 home was built five years ago and you want to do a remodel
9 for it, we would not apply the modifications that were in
10 effect five years ago; we would look at the new
11 regulations, whether that was setbacks, whether that was
12 your garage driveway.

14 In some instances, and let's say instead of this
15 going where you're using the 100, let's say we took retail
16 down to 100, so it was not to the benefit... In this case
17 when we redid our parking a few years ago, it is to the
18 benefit of the Applicant in this case, but if it had been
19 the other way and had been not to the detriment of the
20 Applicant and it was requiring more parking, the Applicant
21 wouldn't be able to sit here and say I want to apply the
22 old standards. So, that's the issue I'm having is you need
23 to apply the parking universally as it now exists and not
24 as half as it exists and half as it doesn't.

1 CHAIR HANSSEN: So Commissioner Hudes, Vice Chair
2 Janoff had her hand up before you did, so I was going to
3 just see if she had a comment, and then I'll go back to
4 you.

5 VICE CHAIR JANOFF: Yeah, thanks. I think the
6 Town Attorney is describing the issue I have with
7 Commissioner Hudes' calculations. I can see that the
8 current matter before us, just Market Hall parcel, is
9 consistent with providing a surplus of parking, and if we
10 take the entire district into consideration then we must
11 apply the current standards to that even though the numbers
12 that the Applicant provided were a different standard.

14 We can't have it both ways. We either consider
15 the Market Hall on its own to today's standards and per
16 Staff and per the calculations we see that they meet and
17 exceed the parking requirements. If we're going to broaden
18 it to include the other parcels, we have to apply the same
19 criteria, otherwise we have an consistent basis upon which
20 we're making this conclusion.

21 CHAIR HANSSEN: Thank you, Vice Chair Janoff.
22 Commissioner Hudes.

23 COMMISSIONER HUDES: I believe I asked the
24 question before, that this is an application for a
25 modification to the Market Hall, and that there is an

1 approved application that was approved on 8/1/2017 for
2 those other buildings, and that's why I'm using the numbers
3 for those other buildings that were approved. If there were
4 applications for modification to those other buildings I
5 would say we might find that there are other numbers that
6 might apply, but that's not before us. What's before us is
7 the Market Hall. It has to fit with the requirements of the
8 Specific Plan and there is an existing A&S application
9 that's been approved that is not being requested to be
10 modified, and that's for those other buildings.

11
12 CHAIR HANSSEN: Vice Chair Janoff.

13 VICE CHAIR JANOFF: I don't want to monopolize
14 the Commissioners' time if there are other questions, but
15 again, my understanding is that the numbers are estimates
16 only and once those applications come forward to Planning..
17 There's an approved Architecture and Site Application, but
18 the actual Building Permits haven't been approved, and when
19 they are considered those Building Permits will be
20 considered under current code. It may change in the future
21 when those are considered, but if we're applying today's
22 standards then we have to consider that that number, that
23 the one to 300 ratio must be for the entire district. I
24 think we're really running down a very inconsistent and not
25 a well rational... It doesn't make sense for me to consider

1 one one way and another another way when you want to
2 combine them but you want to keep them separate. I think
3 that's not consistent.

4 CHAIR HANSSEN: Thank you for your comments, and
5 I agree. Commissioner Hudes.

6 COMMISSIONER HUDES: I would like to move on, but
7 I would not characterize anyone's comments as well thought
8 out or not. I'm simply trying to apply what has been
9 approved and what is being asked to be modified. I have
10 some other issues with the application that I'd like to
11 mention.
12

13 The Exhibit A table doesn't distinguish between
14 residential and commercial parking for provided parking.
15 It's not clear whether the needs for residential and
16 commercial will be met. While the application on Exhibit A
17 represents gross square footage, the other table that was
18 provided and used represents net square footage, and that
19 does not meet the Code of Ordinances. I'm not referring to
20 the Market Hall, I'm referring to the buildings.
21

22 The other inconsistency is that the parking
23 requirements that were noted on 3.22, which is part of this
24 application still, these (inaudible) haven't been
25 reconciled. It does not round up the parking spaces as is
required by the Code of Ordinances. So, the 29.10.150(b)

1 requires rounding up to the next whole number for each of
2 the uses.

3 The other information is that 322 is inconsistent
4 with Exhibit A, and they have to be consistent. If the
5 Applicant wants to move forward with the parking proposed
6 on Exhibit A, then the application for the rest of phase
7 one has to be revised so that they are consistent.
8 Otherwise, a new application is required.

9 And with the Applicant offering different numbers
10 on this application for modification between August 26th and
11 then, they also submitted a letter dated 3/13/2020 as part
12 of this application with inconsistent numbers and
13 information. It includes a bakery and different square
14 footage for the commercial use. These things are
15 inconsistent with each other, and in light of that I find
16 that I can't evaluate whether these are consistent with our
17 objective standards. I've never seen an application where
18 the Applicant puts in new numbers and then doesn't
19 reconcile or explain why the old numbers don't apply. We
20 are still left with exhibits from 8/26 that are
21 inconsistent.
22

23 There are ways to resolve this. We could try to
24 make a decision on the fly. Perhaps Staff could develop a
25 chart, but since Staff has not provided a chart of their

1 own, they've simply forwarded the Applicant's chart to us
2 when discrepancies were pointed out by the public, then I
3 would suggest another alternative would be to have an
4 independent auditor look and count these spaces. There's
5 been no reconciliation about whether there are 155 external
6 spaces or 143. I counted 150. There are many
7 inconsistencies with what's in front of us, and I can't see
8 how we can make a finding that this is consistent with the
9 objective standards with the number of inconsistencies in
10 the material that's been put in front of us. These
11 inconsistencies, by the way, have been pointed out by the
12 public, and they're obvious, they're staring at us, and
13 that's why I spent so much time trying to reconcile things,
14 but there are still inconsistencies in the documents that
15 we're being asked to decide on.

17 CHAIR HANSSEN: Commissioner Badame. Yeah, go
18 ahead.

19 COMMISSIONER BADAME: I actually like the idea of
20 an independent auditor doing a study. I'm looking at the
21 original Conditions of Approval for this project, and under
22 Condition 162 it talks about future studies and it says,
23 "Any post-project traffic parking counts, air quality
24 studies, or other studies imposed by Planning Commission or
25 Town Council, shall be funded by the Applicant." So, I

1 would go for A, an independent study if a motion passes by
2 the majority of the Planning Commission to order such one.

3 CHAIR HANSSEN: Thank you for your comments.

4 Thank you for Ms. Dodson for writing up a very detailed...in
5 a couple of different letters with a lot of analysis and
6 everything. It was in our addendum or the Desk Item that
7 the Applicant has responded to address what the perceived
8 inconsistencies were between that (inaudible). The
9 Applicant hasn't had a chance to look at your document,
10 Commissioner Hudes, to be able to respond to that, and I
11 think that there is enough disagreement about whether or
12 not we should be adjusting this thing to the current code,
13 which we are using restaurants based on the 300 square
14 footage, so I'm kind of in a situation where I mean I see
15 that the Commissioners are torn on where to go with this
16 thing, so I think we're going to have to do something, but
17 I would like to hear from the other Commissioners.

18 Commissioner Tavana.

19 COMMISSIONER TAVANA: I'd have to agree

20 (inaudible) with a lot of what Commissioner Hudes said and
21 with the recommendation by Commissioner Badame about
22 implementing an independent study of sorts.

23 I'm of the opinion parking standards are a
24 baseline and should be considered on a case-by-case basis,
25

1 even more so with a large development project. I have
2 serious concerns about traffic flow and circulation as a
3 result of this project in general, but especially with the
4 reduction of even more parking, so I think an independent
5 study stating the reduced parking will not have an impact
6 on the health and safety of the residents and showing that
7 there is enough parking for this particular project, even
8 though we do meet current standards with the parking
9 requirements.

10
11 DIRECTOR PAULSON: I'd just offer that you
12 probably want to think about reopening it for the
13 Applicant. I can't imagine we're going to do an independent
14 study. If we were sitting here talking about 45 spaces
15 differential and they still met the requirements, I think
16 we'd be having the same conversation. Ultimately, we can't
17 keep continuing the item. It sounds like there are concerns
18 of the Commission, that's pretty clear, so I think it's
19 important that we take the comments into consideration and
20 decide whether or not there's enough evidence from your
21 standpoint to take an action. Then I'd defer to the Town
22 Attorney if he has any additional input on that component.

23
24 TOWN ATTORNEY SCHULTZ: I agree in that we've
25 continued this three times and the Applicant is entitled to
a decision. You could open up the public hearing for the

1 sole purpose to see if the Applicant would want a
2 continuance to do an independent review of the parking. It
3 would not be as to whether the circulation or whether
4 there's a public health and safety issue or the issues
5 raised by Commissioners, it would only be, again, of
6 whether they meet our parking regulations. That's really
7 what the objective standard is. It's not a minimum that you
8 can apply on a case-by-case basis, that's not the way land
9 use decisions work. But if you wanted to do that you could
10 open it for that.
11

12 Otherwise, I believe there's evidence in the
13 record for either a motion to approve or a motion to deny
14 based on the parking regulations that have been provided to
15 you through Ms. Dodson and through Commissioner Hudes, if
16 that's the will of the Commission.

17 CHAIR HANSSEN: I do think that the Applicant has
18 done a lot of address the questions of Ms. Dodson, and like
19 I said , he hasn't had a chance to look at the documents
20 from Commissioner Hudes, nor have we. I think it would be
21 prudent to bring the Applicant back, and I concur with the
22 Town Attorney's comment that we're not in a position to go
23 back and reopen this thing and say is this thing going to
24 have an impact? We're not doing an Environmental Impact
25 Report basically is what was suggested, and this has to be

1 only whether or not they're in compliance with... If we go
2 down this road it can only be about whether their numbers
3 add up in terms of what our standards are today. Vice Chair
4 Janoff.

5 VICE CHAIR JANOFF: Thank you. I, too, developed
6 my own spreadsheet, Commissioner Hudes, with the purpose of
7 not trying to track the logic and numbers that Ms. Dodson
8 provided, which we all agree is an exhaustive and
9 interesting study. I went back to the numbers on A.11, I
10 pulled the actual square footage, ran it through a couple
11 of different scenarios to come up with what seems to be the
12 required square footage. I'm convinced that any way we look
13 at these numbers, whether we have an independent auditor
14 come in or we have Staff go back and confirm numbers on the
15 entire district with the Applicant, based on my
16 calculations, using the one to 300 current code, they made
17 it.
18

19 In one scenario they proposed 300 and provide
20 331. In another they proposed 198 and they're still at 331.
21 In the one, Exhibit A, they're required 272 and they're
22 proposing 319. Any way I look at it... And mind you, I really
23 want as much parking as we can possibly get. I'm trying to
24 be super conservative and say listen, according to the
25 numbers that they're providing for the gross square

1 footage, they're still over the District, they're over the
2 required number of parking spaces.

3 We can go back and run the numbers again and
4 again. I don't believe they're going to come up with any
5 different answer. I'm not in favor of an independent
6 analysis. I think we've got the information in front of us
7 if we choose to think of it according to the current code.
8 I would be prepared to make a motion, but we haven't heard
9 from all the Commissioners yet.

10
11 CHAIR HANSSEN: All right, thank you, Vice Chair
12 Janoff. Commissioner Barnett.

13 COMMISSIONER BARNETT: I spent a tremendous
14 amount of time looking at the numbers. Like Commissioner
15 Hudes, I'm confused, I don't think I can make a decision on
16 a matter of this importance without having a reconciliation
17 by an independent auditor or CPA.

18 CHAIR HANSSEN: Okay, I guess I have an issue
19 that is bothering me. I have confidence in our Staff to
20 look at the numbers, and to me the issue that we have is
21 what standard we're applying when and whether or not we
22 hold them accountable for the entire...including the
23 estimated parking of the Transition District, because I
24 haven't heard anything that said that they aren't going to
25 meet the numbers for the Market Hall.

1 As far as the rest of it, again, it's estimates,
2 and so I think I don't mind having another look at this,
3 although I'm conscious of not dragging this out for the
4 Applicant, but I think we have to think about... An
5 independent auditor seems like a bit much. I have
6 confidence in our Staff to look at this, if it's the will
7 of the Commission, to have one more look at the numbers,
8 but I think it's a lot to ask.

9
10 Having said that, I don't have a problem with
11 reopening the hearing to hear from the Applicant and then
12 we maybe can go from there. I don't think anyone on the
13 Commission hasn't commented at this point, so is Mr. Keeney
14 still here?

15 DIRECTOR PAULSON: I will look to see if they're
16 interested in speaking. Hold on one second. He does have
17 his hand up. I'll allow him to talk.

18 CHAIR HANSSEN: Okay, Mr. Keeney.

19 MICHAEL KEENEY: Thank you, Chair Hanssen and
20 members of the Commission. We appreciate you taking the
21 time to consider this.

22 This is our fourth hearing now and we're ready to
23 start construction on this building. We really don't see
24 the need for additional delays. The application was
25 originally (inaudible) contemplated based on coordination

1 with Staff for Market Hall alone. If you look at our Letter
2 of Justification, which is the original application, those
3 numbers have not changed. It's 124 parking spaces required,
4 176 provided. That hasn't changed throughout the entire
5 process. As the process evolved it's accurate to say that
6 we were asked to start to look at some of the other
7 properties in the District, and we've done what we could to
8 clarify that. I realize it's confusing, but Exhibit A is
9 something that we've prepared in coordination with Staff
10 and with their help. I think that they will tell you that
11 it's an accurate reflection if you make the assumption that
12 the gross square footage for Buildings A-1, A-2, B-2, and
13 C-1 are based on sheet 3.22 from the Architecture and Site
14 approval.
15

16 And we don't know exactly what those square
17 footage will be, so to Commissioner Janoff's point, those
18 might shift a little bit and they'll have to comply with
19 the code when they're submitted, but those are as accurate
20 as we could get at this time based on the information
21 available and using the current code requirement for the
22 parking ratio of one per 300.
23

24 So, I don't see the need for an audit. While
25 there are a lot of numbers, once you get it distilled down
and clearly identify the sources of these pieces of

1 information I think all the data is there and I think
2 Staff, as Chair Hanssen said, is more than capable of
3 analyzing that. We would prefer a decision this evening and
4 would not like a continuance if it can be (inaudible).

5 CHAIR HANSSEN: Based on what I heard, and feel
6 free to add in comments from... The rest of the Commission
7 can make additional comments.

8 My assessment of where the Commission stands
9 right now is that I believe Vice Chair Janoff and I both
10 are comfortable with the numbers more than the rest of the
11 Commission is, and I heard concerns from every other
12 Commissioner beside us, so we could try to make a motion
13 and see if given the comments that have been made by Staff
14 and the Applicant that the rest of the Commission could get
15 comfortable.

16 We could also have somebody, a Commissioner, if
17 they feel like they are comfortable making the findings for
18 a denial with an objective standard, that's certainly an
19 option that we could put forth.

20 Or the third option is we could continue it with
21 a motion to do some kind of follow up based on the numbers
22 that Commissioner Hudes provided.

23 So, I'm going to put those out there as options,
24 and I don't know if anybody has a strong feeling about it,
25

1 but I was hoping we could get to some kind of decision
2 tonight. Okay, Commissioner Hudes.

3 COMMISSIONER HUDES: If there's further
4 discussion, I'll wait, but otherwise I'm prepared to make a
5 motion.

6 CHAIR HANSSEN: Well, I think Vice Chair Janoff
7 was also prepared to make a motion, but we can go ahead.
8 Vice Chair Janoff, you had said first that you were going
9 to make a motion, and so do you want to have Commissioner
10 Hudes make his motion or do you want to go ahead with
11 yours?
12

13 VICE CHAIR JANOFF: Thank you. My motion would be
14 a motion to approve this project based on comments I've
15 already made. I don't believe that motion would pass given
16 the concerns of the other Commissioners, and so I will
17 defer my motion to one the Commissioner Hudes would make.

18 CHAIR HANSSEN: Okay. I think that's fine. So,
19 Commissioner Hudes, if you'd like to make a motion, go
20 ahead.

21 COMMISSIONER HUDES: Thank you. I have no idea
22 where this is going to go, but I want to make sure all of
23 the points are on the record.

24 I would move to deny Architecture and Site
25 Application, the application to modify Application S-13-

1 090, because I cannot make the required finding that the
2 project complies with the North 40 Specific Plan Exhibit 2,
3 and I and cannot find that the project meets considerations
4 as required by Section 29.20.150 of the Town Code for
5 granting approval of an Architecture and Site Application,
6 and the reason for that is that the North 40 Specific Plan
7 for the Transition District requires 392 spaces for the
8 submitted application and eliminating the underground
9 parking will eliminate 127 spaces, leaving 319, which is 73
10 spaces less than what is required by the Specific Plan,
11 therefore the application does not meet the requirements of
12 the Specific Plan, and I believe these are all objective
13 standards.
14

15 In addition, there are other reasons why it
16 doesn't meet the North 40 Specific Plan and General Plan.

17 First of all, the application in front of us is
18 inconsistent with itself, and the numbers that have been
19 provided have inconsistencies and cannot be evaluated on
20 that basis. The inconsistencies that I would point out are
21 the provided outside parking spaces, the use of documents
22 that contain net leasable area versus gross square footage,
23 the failure to round up the numbers as required by law.

24 I would also say—I've already covered that
25 they're inconsistent—that three of the senior affordable

1 spaces are not secured, although the Applicant has stated
2 that they will be secured and that security is required in
3 order to meet the requirements of the plan.

4 I would also comment in support of that the
5 application has to be evaluated in the context of the
6 Specific Plan and in the context of the A&S application of
7 August 1, 2017 that's approved, and that the Housing
8 Accountability Act, if it in fact applies, because to reach
9 the two-thirds housing criteria then the entire District
10 needs to be used for the parking evaluation.

11
12 There's also another question that I have that's
13 not part of the findings but that is something that I think
14 would need to be looked at, and that is whether the EIR is
15 applicable and whether the project meets CEQA requirements
16 as the TIA portion of the EIR, which does talk about
17 parking, was analyzed with the 2017 Parking Ordinance, not
18 with the current ordinance, so we don't know whether the
19 EIR is being met with the application for that portion that
20 would follow current law. So, that's my motion.

21 CHAIR HANSSEN: All right, is there a second?

22 COMMISSIONER BARNETT: Second the motion.

23 CHAIR HANSSEN: So, Commissioner Barnett has
24 seconded the motion. Are there any comments by
25 Commissioners before we vote on the motion?

1 I'm going to comment that I'm not comfortable
2 with the denial. I think that we're talking about apples
3 and oranges in some cases with the numbers and I don't
4 agree with having to look at the EIR. I agree with Vice
5 Chair Janoff that any scenario we look at, that if you're
6 using the current code with the restaurant parking, which
7 is what we would hold them or any other Applicant to, they
8 would still meet the parking requirements.

9
10 Having said that, I'm not opposed to having
11 another look at the numbers, but I'm not comfortable with
12 there's evidence to deny it, so I will be voting against
13 the motion. Vice Chair Janoff.

14 VICE CHAIR JANOFF: Thank you. And I echo the
15 comments of the Chair. I'm comfortable having run through
16 the numbers. I think it was the intent of the Applicant to
17 be clear in the exhibits that were put forward. They were
18 also reviewed by Staff. I agree with the apples to oranges
19 comment, but I think the apples to oranges comment that
20 we're struggling with has to do with the ratio and parking
21 requirements being inconsistent, and I think that when it
22 comes down to the actual application, once it gets in front
23 of the permitting body in the future they will see that
24 there's sufficient parking being provided, so I will not be
25 supporting the motion.

1 CHAIR HANSSEN: Are there any other comments
2 before we take a vote? Seeing none, I will do a roll call
3 vote, and I will start with Commissioner Badame.

4 COMMISSIONER BADAME: Yes.

5 CHAIR HANSSEN: And Commissioner Barnett.

6 COMMISSIONER BARNETT: Yes.

7 CHAIR HANSSEN: Commissioner Tavana.

8 COMMISSIONER TAVANA: Yes.

9 CHAIR HANSSEN: Commissioner Hudes.
10

11 COMMISSIONER HUDES: Yes.

12 CHAIR HANSSEN: Vice Chair Janoff.

13 VICE CHAIR JANOFF: No.

14 CHAIR HANSSEN: And I vote no as well, so the
15 motion passes 4-2. Director Paulson, are there appeal
16 rights for this motion?

17 DIRECTOR PAULSON: Thank you, Chair. There are
18 appeal rights. Anyone who is not satisfied with the
19 decision of the Planning Commission can appeal the decision
20 to the Town Council. Forms are available online. The appeal
21 must be filed within ten days and there is a fee for filing
22 the appeal.

23 CHAIR HANSSEN: Okay, thank you. Thank you,
24 Commissioners, and thank you to everyone in the public for
25 testifying and providing their comments.