



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 09/23/2020

ITEM NO: 2

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**DATE:** September 18, 2020  
**TO:** Planning Commission  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider 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 (Market Hall) in the North 40 Specific Plan Area. Located at 14225 Walker Street. APN 424-56-017. Architecture and Site Application S-20-012. Property Owner/Applicant: Summerhill N40, LLC. Project Planner: Jocelyn Shoopman.

**REMARKS:**

On August 26, 2020, the Planning Commission continued this item to allow Commissioners to complete a site visit and to allow for additional public comments to be provided.

On September 9, 2020, the Planning Commission continued this item to allow the Commissioners and public additional time to review the project's compliance with the Town's objective standards pursuant to the Housing Accountability Act.

Attachment 12 includes the applicant's response regarding the project's compliance with the parking requirements in the Specific Plan. Attachment 13 includes a memorandum from the Town Attorney and Attachment 14 contains public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020.

**EXHIBITS:**

**Previously received with August 26, 2020 Staff Report:**

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Project Description
5. Letter of Justification
6. Development Plans, received May 18, 2020

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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PAGE 2 OF 2

SUBJECT: 14225 Walker Street/S-20-012

DATE: September 18, 2020

EXHIBITS (continued):

7. Public comments received by 11:00 a.m., Friday, August 21, 2020

Previously received with August 26, 2020 Addendum Report:

8. Public comments received between 11:01 a.m., Friday, August 21, 2020 and 11:00 a.m., Tuesday, August 25, 2020.

Previously received with August 26, 2020 Desk Item Report:

9. Public comments received between 11:01 a.m., Tuesday, August 25, 2020 and 11:00 a.m., Wednesday, August 26, 2020.

Previously received with September 9, 2020 Staff Report:

10. Public comments received between 11:01 a.m., Wednesday August 26, 2020 and 11:00 a.m., Friday, September 4, 2020

Previously received with September 9, 2020 Desk Item Report:

11. Public comments received between 11:01 a.m., Friday, September 4, 2020 and 11:00 a.m., Wednesday, September 9, 2020

Received with this Staff Report:

12. Applicant's response to the project's compliance with the parking requirements in the Specific Plan

13. Town Attorney Memorandum

14. Public comments received between 11:01 a.m., Wednesday, September 9, 2020 and 11:00 a.m., Friday, September 18, 2020

VIA E-MAIL

September 17, 2020

Jocelyn Shoopman  
Associate Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Los Gatos North Forty; Request for Modification (S-20-012) to an Existing  
Architecture and Site Application Approval (S-13-090)

Dear Ms. Shoopman:

At the Planning Commission hearing on September 9, 2020 there were a number of questions about the calculations used for determining the required and proposed parking for the Market Hall and the Transition District as a whole. In our A&S Amendment we provided documentation on the parking change associated with the Market Hall located on Lot 27. Sheet A.11 in the plans focused on the changes to the Market Hall. The table that it was based on was Sheet 3.22 of the approved A&S plans. The required parking shown on Sheet 3.22 reflected the parking that would be required based on a mix of uses that could be allowed by the specific plan. In order to clarify what the required parking is today based on the current Town Code we have prepared Exhibit A attached to this letter. This table takes the square footage proposed for Market Hall and combines it with the Gross Square Footage identified on Sheet 3.22 of the approved A&S for the remainder of the Transition District. The result of this analysis shows that the Transition District would be required to provide 273 parking spaces and is currently estimated to provide 319 spaces. This is a surplus of 46 parking spaces.

In addition, at Staffs request we have provided a summary of the residential square footage totals for the project, a table of the parking proposed and required for the residential portion of Phase I within the Lark District and Transition District D, and a site plan with a count of all of the surface parking currently proposed for Phase I.

Lastly, we have prepared a line by line response to the letter provided by Barbara Dodson questioning the accuracy of the parking requirements. Exhibit A is a complete summary of the required parking for the Transitional District and helps explain most of the questions in the letter.

SUMMERHILL HOMES<sup>SM</sup>

COMMUNITIES OF DISTINCTION

As can be seen in Exhibit A, the Market Hall meets the Towns parking requirements and based on the Gross Square footage from the approved A&S the Transition District as a whole will have a surplus of 46 parking spaces.

Please let us know if you need any additional information.

Very Truly Yours,

SummerHill Homes



Michael Keaney

CC: Joel Paulson

## Exhibit A

Transition District Parking Summary											
	Commercial SF	Residential Units			Required Parking					Proposed Parking Provided	
	Square Footage	Affordable	1-Bedroom	2-Bedroom	Gross Commercial Required Parking 1:300	Gross Community Room Square Footage 1:590	Residential Required Parking 0.5 per unit + 0.5 per unit (guest)	1-Bedroom Required Parking 1 per Unit + 0.5 per unit (guest)	Required Parking 1 per Unit + 0.5 per unit (guest)		Subtotal
<b>Commercial Transition District</b>											
<b>Market Hall</b>											
Gross Commercial SF	20,760				69					69	176
Gross Community Room SF	2,772					5				5	
Affordable Residential		50					50			50	
Subtotal										124	
<b>Building A1</b>											
Gross Commercial SF	11,438				38					38	
1 Bedroom Residential			6					9		9	
2 Bedroom Residential				4					10	10	
Subtotal										57	
<b>Building A2</b>											
Gross Commercial SF	11,198				37					37	
<b>Building B2</b>											
Gross Commercial SF	5,745				19					19	
<b>Building C1</b>											
Gross Commercial SF	10,644				35					35	
<b>Subtotal: Building A1, A2, B2, C1</b>	<b>39,025</b>				<b>130</b>					<b>149</b>	<b>143</b>
<b>Transition District Total</b>	<b>62,557</b>	<b>50</b>	<b>6</b>	<b>4</b>	<b>199</b>	<b>5</b>	<b>50</b>	<b>9</b>	<b>10</b>	<b>273</b>	<b>319</b>
									<b>Surplus</b>		<b>46</b>

Square Footage Based on approved Building Permit and Minor Revisions Estimated with the Elimination of the Basement

Gross Commercial Square Footage Based on Column 18 on Sheet 3.22 of A&S Approved Plans

Unit Count Based on Column 1 on Sheet 3.22 of A&S Approved Plans

**Notes:**

- The total in the Gross Commercial Required Parking column has one more parking space than required when adding up the column because when the decimals are aggregated and rounded off, it results in one more parking space being required than there would be if each parcel is considered separately.

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

<b>Lark District &amp; Transition District Area D</b>				
	Number of Units	Required Parking Per Unit	Total Required	Total Provided
<b>Covered Parking Stalls</b>				
1 Bedroom	69	1	69	69
2 Bedroom and 2+ bedroom	191	2	382	382
Subtotal			451	451
<b>Guest Parking Stalls</b>				
1 Bedroom	71	0.5	35.50	
2 Bedroom and 2+ Bedroom	189	0.5	94.50	
Subtotal			130	130
<b>Total</b>	<b>260</b>		<b>581</b>	<b>581</b>

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

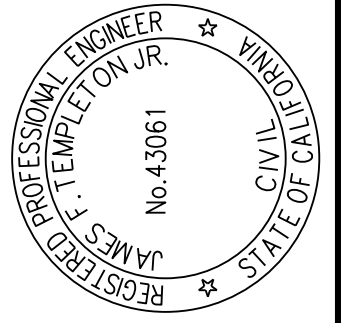
<b>Total Residential SF Lark District and Transition District D</b>	
	<b>Total SF</b>
<b>Bellaterra Approved Building Permit</b>	
Rowhomes	169,458
Garden Clusters	113,466
Condo Clusters	122,440
<b>Subtotal</b>	<b>405,364</b>
<b>Hirschman Parcel</b>	
Garden Cluster	11,112
<b>Parcel A Loft Units*</b>	12,195
<b>Affordable Housing</b>	44,966
<b>Total</b>	<b>473,637</b>

\* SF from Sheet 3.22 of Approved A&S Plans

Prepared By: Michael Keaney, SummerHill Homes

Date: September 14, 2020

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING THE PERFORMANCE OF WORK ON THIS PROJECT.

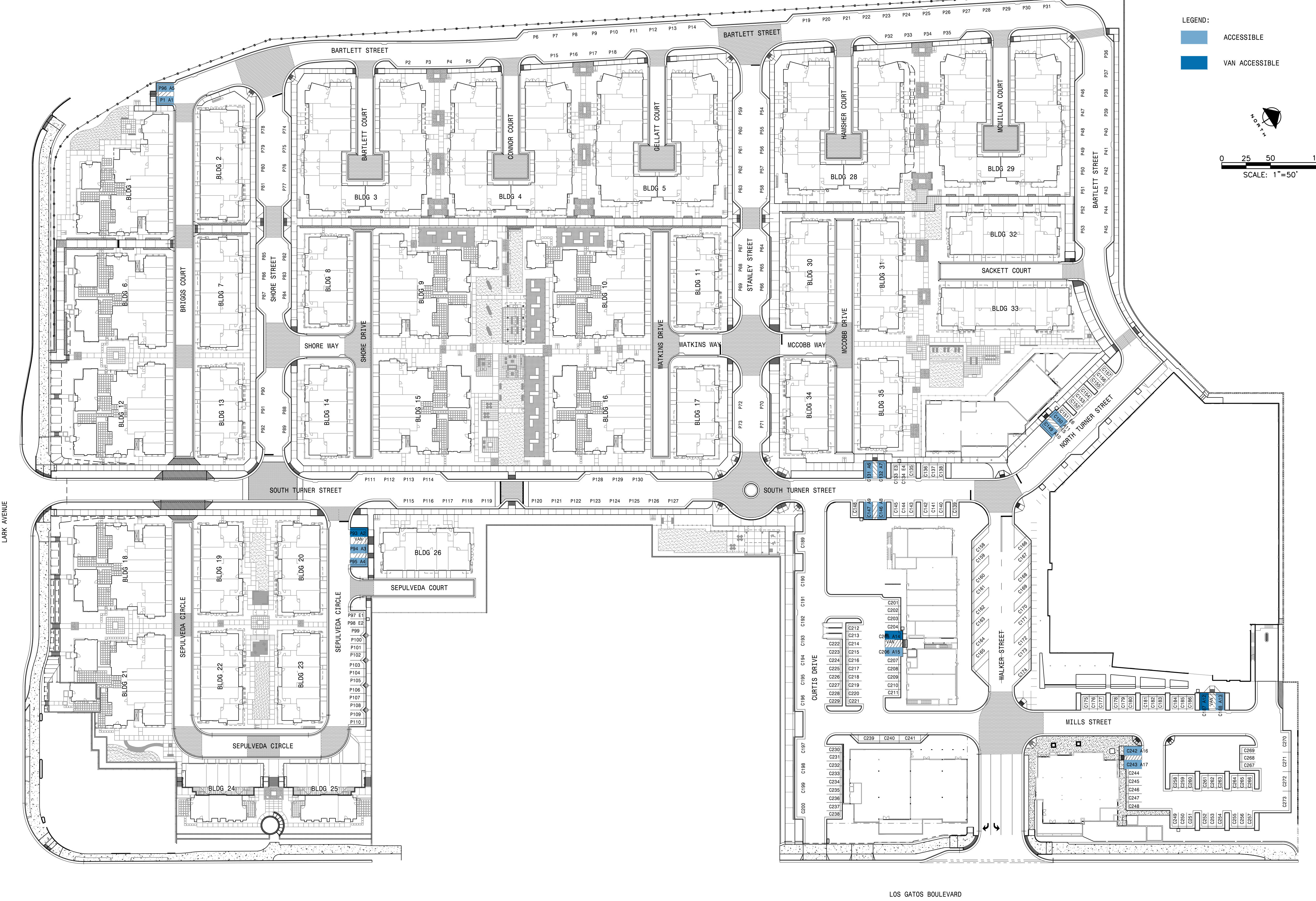


DATE: APRIL 4, 2020  
 SCALE: AS SHOWN ON PLAN  
 DESIGN: JDB  
 DRAWN: FR  
 CHECK: CTR  
 ENCR: NB  
 PROJECT NO.: 19890-011

PLAN FOR THE IMPROVEMENT OF  
**LOS GATOS NORTH 40 - PHASE 1**  
**COMMERCIAL**  
**PARKING SPACES**

**MACKAY & SOMPS**  
 ENGINEERS PLANNERS SURVEYORS  
 51426 FRANKLIN DR., PLEASANTON, CA 94588  
 (925) 225-0690

REVISIONS	BY	DATE





SummerHill Responses to Letter from Barbara Dodson:  
Responses Provided in Red Text

Barbara Dodson

Los Gatos, CA 95032

September 3, 2020

Dear Members of the Planning Commission:

**SUBJECT: ELIMINATION OF THE UNDERGROUND GARAGE IN THE NORTH FORTY**

I oppose the elimination of the underground parking garage. I think it will result in an insufficient amount of parking, and while looking at the SummerHill proposal I think I've come across the fact that SummerHill's provision of parking for the Transition District A, B, & C, with the elimination of the garage, will be below the Town's required number of parking stalls.

I think that SummerHill's proposal has focused on parking for the Market Hall and argued that without the underground garage SummerHill would still be fulfilling the Town's requirements for parking. However, the Market Hall parking in the garage is just one component of the parking for the entire Transition District A, B & C. With the elimination of the parking garage, SummerHill will not meet the Town's requirements for the Transition District A, B & C.

According to Sheet A.11 in SummerHill's proposal, the Town's requirement for parking stalls in the Transition District A, B, & C is 354. With the elimination of the underground garage, SummerHill will be providing only 330 parking spots.

Response: Sheet A.11 in the A&S Amendment Application was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Sheet 3.22 was an attempt to estimate parking requirements that could be anticipated with a hypothetical set of land uses and the code requirements in place at that time. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

The bottom line for me is that we can't approve the SummerHill proposal because it provides 24 fewer parking spots than required by the Town.

Response: If the A&S amendment is approved the Market Hall will provide 176 parking spaces, and there will be 143 parking spaces in the transition district. This is a total of 319 parking spaces. Based on the SF proposed in the A&S approval for the transition district this is a surplus of 46 parking spaces. Exhibit A has a summary of the required and proposed parking for the transition district.

I hope I have my numbers correct in the explanatory material below.

Just as a note: SummerHill has provided inconsistent numbers, making it confusing to figure out exactly what is being proposed. In some places, SummerHill says it's providing 330 spaces for the Transition District A, B, & C; in other places it says it's providing 331.

**Response:** The 330 required parking spaces was consistent with the concept described above to calculate the required parking based only on the change to the Market Hall building on Lot 27 and not analyze the full district based on the parking required by the Town code. The correct parking requirement per the Town code for the transition district is shown on the attached Exhibit A.

As another example, in the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Community Room as 5, but in A.11 the required number of parking spaces for the Community Room is listed as 4. In the table titled "Market Hall-Parking Requirements," SummerHill gives the required number of parking spaces for the Market Hall as 62 as 5, but in A.11 the required number of parking spaces for the "Specialty Market" is listed as 55.

**Response:** The required parking for the community room increased because the square footage increased. Exhibit A has a complete summary of the required parking for the transition district, including the Community Room.

1. SUMMERHILL'S NUMBERS SHOW THAT IT IS NOT PROVIDING THE AMOUNT OF HOUSING THAT THE TOWN REQUIRES FOR THE TRANSITION DISTRICT (Areas A, B, C).

In the adopted Developer's Phase 1 Plan from 2016: Based on the table titled Transition District Area A, B & C Building Area and Parking Tabulations (Table 3.22, page 58), the required number of parking stalls was 354 for the Transition District Area A, B & C (69 residential stalls/residential guest stalls + 285 commercial stalls). The original developer committed to providing more than that: 458 (389 commercial stalls (total for the specialty market, retail, restaurant/café, bar/tavern, and community room); and 69 residential/residential guest stalls.

**Response:** The required parking table on sheet 3.22 was not based on what is required by the code for parking. Exhibit A summarizes what is required by the code.

TOTAL ADOPTED IN 2016 FOR THE TRANSITION DISTRICT Area A, B & C:

458 PARKING STALLS

- The SummerHill proposal provides for only 330 parking spaces for the Transition District A, B & C. (See A.11: Transition District Building Area and Parking Tabulations on page 62 in the Agenda Packet. This is SummerHill's revised version of Table 6.22.)

**Response:** Exhibit A more accurately shows the required and provided parking for Market Hall and the transition district. 273 parking spaces are required and 319 are being provided.

- By eliminating the underground garage, SummerHill would provide 24 fewer parking spaces than required by the Town for the Transition District A, B & C. (354-330=24)

**Response:** Per Exhibit A there are currently 46 more spaces provided in the transition district than are required.

• Both Table 6.22 in the Developer’s proposal and Table A.11 in SummerHill’s proposal show that the Town requirement for commercial stalls is 285. Table A.11 shows that under SummerHill’s proposal, SummerHill would provide only 261 commercial parking stalls.

Response: Exhibit A includes commercial and residential parking that is required. Currently there are 69 residential parking spaces required and 204 commercial spaces required.

• Under its proposal, SummerHill would provide 24 fewer than the required number of commercial parking stalls ( $285-261=24$ ) for the Transition District A, B & C.

Response: Per Exhibit A there is a surplus of 46 spaces in the transition district.

THE MATH using numbers from Sheet A.11

Town required number of parking spaces for the Transition District A, B & C: 354

285 required commercial spaces + 39 required residential stalls +

30 required residential guest stalls = 354 required parking spaces

Number of total spaces proposed by SummerHill: 330

261 commercial spaces + 39 residential stalls +

30 residential guest stalls = 330 provided parking spaces

Response: As mentioned in an earlier response sheet A.11 was an attempt to only show the changes related to the Market Hall and Lot 27. It was based on clouding revisions to Sheet 3.22 from the approved A&S plan set. Sheet 3.22 from the approved plan set did not calculate parking based on what is required by the current Town code. Exhibit A accurately reflects the parking required by the code and what is currently being provided.

OTHER MATH using numbers from Table 6.22 on page 58 of the Developer’s Proposal, which is the proposal adopted by the Town

Parking spaces in the adopted plan in 2016: 458

Parking spaces SummerHill wants to eliminate: 127

Number of total spaces proposed by SummerHill

for the Transition District A, B, & C: 331

The Summerhill proposal drops the number of total parking spaces for the Transition District A, B & C below the Town’s requirement of 354. SummerHill is shortchanging the Town by 24 (or 23, depending on which Table you use) parking spaces.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code.

2. SUMMERHILL SAYS IT IS PROVIDING EXCESS PARKING. HOW DID SUMMERHILL COME UP WITH ITS (I believe, incorrect) NUMBERS? SUMMERHILL APPEARS TO HAVE CONFUSED THE REQUIRED NUMBER OF

COMMERCIAL PARKING SPACES WITH THE REQUIRED NUMBER OF TOTAL PARKING SPACES. (See the notes in red in A.11 on the right -- p. 62 in the Agenda Packet.)

- In the red notes next to the section outlined in red called Retail, SummerHill implies that it will provide a TOTAL OF 330 parking spaces for retail.
- SummerHill does its math to reach 330 commercial stalls by including 39 residential stalls and 30 residential guest stalls.
- SummerHill has a deficit of 24 parking stalls below the requirement of 285 commercial stalls. It does not have 45 extra commercial stalls as is claimed.

Also note on Sheet A.11 that in the column headed "Total. Required Number of Commercial Stalls." SummerHill lists 285. Then, just 2 columns to the right, under "Provided Commercial Stalls," it lists 261. In its own chart, SummerHill clearly shows that there is a deficit of 24 commercial parking stalls.

Response: The numbers referenced above are based on the parking table on sheet 3.22 of the approved A&S plan, but these numbers are not reflective of what is required by the Town code. Exhibit A summarized the required and proposed parking for the transitional district.

3. THE PARKING GARAGE ALREADY HAD AN INSUFFICIENT NUMBER OF PARKING SPACES. The developer wants to drop the number of parking spaces in the garage from 303 to 176. But there was already a lack of parking in the garage in the adopted plan. Specifically, the parking for the 50-unit senior complex wasn't realistic. The allotment was 1 space per senior unit for a total of 50 spaces--½ space for each resident and ½ space for guests. The developer said most of the seniors wouldn't be able to afford cars. It also assumed each senior unit would have just one resident.

In fact it's possible that each senior unit will have two or even more residents. There may be one or more cars connected to each unit for a possible total of more than 50 cars. This uses up all the unit spaces and then some without accounting for guests.

Response: Eden has thirty-six properties containing two thousand seven hundred and four units. Four of those properties are in Santa Clara County and contain three hundred and five units. All of the suburban properties are parked at a ratio of 0.5 spaces per units. Urban properties in their portfolio have fewer spaces per unit. Eden's lease agreement limits the number of occupants in a 1-bedroom unit to two occupants.

Suppose the residents of the 50 senior units use their 50 parking spots. 126 spaces remain for the Market Hall, Bakery, and Community Room. Let's say 10 seniors and their guests use 30 additional spaces. We're down to 96 spaces.

Response: The senior parking is on the 3<sup>rd</sup> floor and is gated.

How about employees at the Market Hall and bakery? Let's say they use 20 spaces. We're down to 76 spaces for shoppers and people using the community room. Is this enough???

Response: The Town codes required parking for this land use is intended to accommodate parking for customers and employees.

How about overflow parking from other areas? There will be 71 one-bedroom units with one garage each. Suppose two people live in these units and each person has a car. We now have 71 more cars that will be seeking parking. The garage would be a logical space for these residents to use.

**Response: The residential portion of the project meets its parking requirement. The garage is private property. It will have a gate that will be closed after hours.**

4. WE NEED AN EXPLANATION FOR WHY THE DEVELOPER THINKS THE NEW PARKING ALLOCATIONS ARE ADEQUATE. The developer claims to be justifying the new lowered parking allocations using city code and the specific plan. Logic and common sense have clearly not been applied here. For example, the 2,032 square foot bakery has 7 spaces. Is this for employees as well as patrons? Will there be seating within the bakery? If yes, 7 parking spaces are hardly enough. How about the community room? It gets 4 parking spaces for its 2,772 square feet. Obviously more than 5 people can easily attend a meeting in such a space. Where are they supposed to park?

**Response: Per Exhibit A, the parking in the transition district will exceed what is required.**

5. PARKING WILL STILL BE NEEDED FOR FUTURE DEVELOPMENT. The SummerHill proposal states that "The Market Hall was originally designed with a basement level by Grosvenor, with the intent to use the excess parking for future development in Phase II of North 40. With Grosvenor no longer involved in Phase I of the project, SummerHill has no need for parking beyond what is required by Town Code and the specific plan."

But the need for parking for future development has not changed. There will still be future development and thus still a need for parking.

**Response: Future phases of the project will be required to meet their parking requirements on their portion of the project.**

Sincerely,

Barbara Dodson

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**TOWN OF LOS GATOS**  
**OFFICE OF THE TOWN ATTORNEY**

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**MEMORANDUM**

**To:** Planning Commission  
**From:** Robert Schultz, Town Attorney  
**Date:** September 18, 2020  
**Subject:** The Role of the Planning Commission and the Applicability of the Housing Accountability Act and By Right Development to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area.

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The Planning Commission at their last meeting requested further analysis of the applicability of the Housing Accountability Act to the Application for Modification to an Existing Architecture and Site Application (S-13-090) to Remove Underground Parking for Construction of a Commercial Building (Market Hall) in the North 40 Specific Plan Area (Phase 1 Modification Application). This memorandum addresses the Role of the Planning Commission in addition to the applicability of the Housing Accountability Act and the Town's Housing Element/ By Right Development to the Phase 1 Modification Application.

**Role of the Planning Commission**

Based upon the questions and comments put forth by the Planning Commissioners at the last meeting, I thought it would be important to first review the role of the Planning Commission as it relates to all land use decisions.

The Planning Commission acts on behalf of the Town Council in deciding on and recommending land use activities and related matters. The Planning Commission derives its authority and duties through California Government Code Section 65101. That authority is further detailed in the Los Gatos Town Code defining the composition and duties of the Planning Commission. One of the duties of the Planning Commission is to review individual projects for consistency with the General Plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations. The Planning Commission is required to evaluate the facts and information and then deliberate and determine how the applicable ordinance or law applies to the information provided.

Pursuant to the landmark case of *Topanga Assn. For A Scenic Community v. County of Los Angeles* (1974), the Planning Commission must explain land use decisions through the adoption of findings. Topanga defined findings as legally relevant sub-conclusions which expose the agency's

mode of analysis of facts, regulations, and policies, and bridge the analytical gap between raw data and ultimate decision. Therefore, the findings of the Planning Commission must be relevant to adopted, applicable criteria in statutes, ordinances or policies. In a way, The Planning Commission operates as a court in that the Planning Commission must apply the Town's local land use regulations to a specific application just as a court applies the law to a specific set of facts. Basically, the findings of the Planning Commission are an explanation of how they progressed from the facts through established fixed rule, standard, law, or policies to the decision.

Based upon the forgoing, and as I explained in our last meeting, findings such as the proposed modification is a "cost saving/profit increasing strategy" or that "they stand to make millions of dollars" or that the developers must "stick with their commitment" or "uphold the agreement" or that this is a "bait and switch" or "will force visitors, shoppers & residents to find parking elsewhere" or that the developers "are bullies and are ruining our town" are inadequate and improper findings pursuant to *Topanga Assn. For A Scenic Community v. County of Los Angeles (1974)*. Although all of these statements may not lack evidentiary support, they lack legal relevance and even if they are assumed to be correct, those findings simply do not meet the legal requirements set forth in code and case law.

### **Background of North 40 Phase 1 Project**

The approved North 40 Phase 1 Project includes: 260 residential condominiums/rowhomes, 10 rental apartments (including two live-work units), 49 affordable senior rental units, one additional unit to be reserved for a moderate-income manager of the senior units, and approximately 62,000 square feet of commercial floor area and a four-story parking garage with 303 parking spaces. The approved parking garage consisted of three above grade levels and one below grade level. The approved project subdivides the 20.7-acre Phase 1 project area into 113 lots to provide for 320 residential units and commercial space. (Phase 1 Project).

Prior to the approval, the Town Council denied the Phase 1 Project based on the Project's inconsistencies with the Town's General Plan, Housing Element, and Specific Plan. Thereafter, the applicants filed a lawsuit against the Town asserting that: (1) the Town of Los Gatos violated the Town's Housing Element; (2) the Town violated the State's Housing Accountability Act; and (3) the Town violated the State Density Bonus Law. The lawsuit requested the Court to direct "the Town to comply with its clear, mandatory, and ministerial duty to approve the project in compliance with the Town's Housing Element, the Housing Accountability Act, and the Density Bonus Law."

On June 9, 2017, the Santa Clara County Superior Court issued a Decision and Judgment against the Town. The Decision and Judgment determined that the findings adopted by the Town Council were discretionary determinations made under subjective policies in the Specific Plan, instead of under objective policies as required by the Housing Accountability Act.



On September 10, 2017, the Town Council rescinded its denial of the Phase 1 Project pursuant to the court order and approved the project as set forth above. The Applicants are now requesting a modification to the Phase 1 Project, (an existing and approved Architecture and Site Application), to remove the underground parking for the Market Hall. The removal of the below grade level would eliminate 127 parking spaces. No exterior modifications to the existing Market Hall building are proposed (Phase 1 Modification Application).

### **Applicability of Housing Accountability Act**

The Court Decision and Judgment directed the Town to reconsider the Project under the provisions of Government Code §65589.5(j) of the Housing Accountability Act (HAA). The HAA was originally enacted in 1982 and is often referred to as California’s “Anti NIMBY law.” The intent of the legislation was to address the “problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created.”

The HAA requires local governments to approve any “housing development project,” including specified mixed use projects, if they comply with “applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete...” The Court Decision and Judgment determined that the Applicant’s “project is within the statutes definition of a housing development project.” Subdivision (j) of Section 65589.5 reads:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

- (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

The HAA defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(8).

Since the Decision and Judgment required the Town to consider the Phase 1 Project under the HAA, the HAA would certainly apply to any modifications to the Phase 1 Project. Therefore, in order to deny the Phase 1 Modification Application, the Planning Commission must cite to specific written objective identified Town Standards and Policies and cannot deny the Phase 1 Modification Application for subjective criteria. As explained in *Honchariw v. County of Stanislaus*, the HAA was intended to “take away an agency’s ability to use what might be called a ‘subjective’ development ‘policy’.

### **Applicability of Housing Element/By Right Development**

In addition to complying with the HAA, the Town must comply with Housing Element Law. Housing Element Law requires the Town to demonstrate how the community plans to accommodate its “fair share” of its regional housing needs. To do so, the Town must establish an inventory of sites designated for new housing that is sufficient to accommodate its fair share. The Town must also identify regulatory barriers to housing development and propose strategies to reduce or eliminate those barriers.

The Town’s Housing Element required adoption of the North 40 Specific Plan with certain development assumptions in order to meet existing and projected housing needs in the Town and to obtain certification of the Housing Element from the State. The Town’s Housing Element (Action HOU 1.7) required the Town to rezone 13.5 acres within the North 40 Specific Plan Area to comply with a minimum density of 20 units per acre and establish “by-right” development for these units. More specifically, the Town’s Housing Element states:

Additional opportunities for affordable housing are being facilitated through the consideration of the North 40 Specific Plan and associated rezoning of 13.5 acres with a minimum density of 20 units per acre to yield 270 units. The Specific Plan would provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through “by right development” in the consideration of Architecture and Site applications. This process involves site and architectural review and if a proposal meets the objective criteria in the Design Guidelines, then the project is approved. Therefore, the Planning application process and review is not an undue burden or constraint on the production of affordable housing.

Based upon the Town’s Housing Element, the approval of the Phase 1 Project and now this Phase 1 Modification Application are entitled to “by right” development. This means that pursuant to our Housing Element, the Planning Commission must only apply objective standards in its review, analysis, and determination on whether to approve or deny the Phase 1 Modification Application.

These are the same legal principles that are set forth under the HAA and are adopted in the Court's Decision and Judgment and restrict the Planning Commission from using subjective criteria and findings to condition or deny this Phase 1 Modification Application.

**Conclusion**

Under the Housing Accountability Act and Housing Element Law, the Phase 1 Modification Application may only be reviewed for conformance with objective Town standards and policies and the Planning Commission must apply those policies to facilitate the proposed housing development and must not use subjective standards or policies to deny the Phase 1 Modification Application.

**RWS**

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From: [REDACTED]  
Sent: Wednesday, September 9, 2020 11:37 AM  
To: Sally Zarnowitz <[SZarnowitz@losgatosca.gov](mailto:SZarnowitz@losgatosca.gov)>  
Subject: New Voicemail Message from 408-XXX-XXXX

Hello, I'm calling regarding the underground parking garage. It is extremely important that it be kept underground and promises be kept. It is extremely important. Thank you.

Barbara Dodson

Los Gatos, CA 95032  
September 16, 2020

Dear Members of the Planning Commission:

**SUBJECT: THE SUMMERHILL PLAN WOULD CREATE A PARKING SHORTAGE IN THE TRANSITION AREA A, B & C IN THE NORTH FORTY**

Since our Town lawyer is now claiming that we need “objective” criteria for denying SummerHill’s proposal, here’s my personal list of **objective** reasons to reject SummerHill’s proposal.

1. The SummerHill proposal would create a parking shortage in the Transition District A, B & C. The Market Hall and garage cannot be considered in isolation. The application inappropriately focuses on the Market Hall and garage without admitting its impact on the total amount of parking needed for commercial uses in the Transition District A, B and C. This wider impact is that parking in the Transition District A, B and C would be reduced by between 4 and 24 spaces. . *(Note: There is 11,438 sq ft of commercial area in Building A1; 11,198 in Building A2; and restaurant/retail of 10,644 sq ft marked for Area C. The proposal deals only with parking in area B.)*

SummerHill doesn’t provide consistent numbers, although their numbers always show that their proposal would create a shortage, not an excess, of parking spaces for the Transition District. Here are two ways in which the SummerHill numbers show parking shortages.

A SHORTAGE OF 24 SPACES. This is shown just using numbers in A.11. The **required** number of commercial spaces is 285 (column 36). The **provided** number of commercial spaces is 261 (column 39). There is a shortage of 24 spaces

A SHORTAGE OF 4 SPACES. This uses Sheet A.11 and Exhibit 4. The required number of commercial stalls in the Transition District is 285 (A.11). In Exhibit 4, Market Hall commercial stalls are given as 126 (176 – 50 resident-related stalls). Also in Exhibit 4, additional Transition District Parking is given as 155. Thus the total commercial parking SummerHill would provide would be 126 + 155, which equals 281. There is no excess parking. In this way of looking at it, there is a clear shortage of 4 spaces for the district (285 required – 281 provided).

2. To put item 1 above in another way: The application is based on the false assumption that the garage was intended for use only by occupants of the Market Hall complex—senior housing, senior guests, market hall, bakery, and community room. In fact, the garage was also intended for use by customers at nearby retail

outlets, restaurants, and bars in addition to occupants of the Market Hall complex itself. (Just think about Santana Row. Are shoppers limited to parking in the garage under the hotel if they want to shop at Anthropologie, which has a different parking lot across the street?) Given this fact, the parking in the underground garage is needed to accommodate these parking requirements.

3. Building on the point in item 2 above, the applicant fails to clearly show where the parking for the retail, restaurant/café, and bar/tavern that are not inside the Market Hall would be located and whether the removal of the underground garage has an impact on the availability of parking for these commercial outlets. Exhibit 4: Transition District Parking shows that Parking Areas A, B, and C (which provide surface parking) would provide a total of 155 spaces. But based on A.11, retail, restaurant/café, and bar tavern outside of the Market Hall would require 213 spaces. Here's the math from A.11:

Retail spaces	55
Restaurant/café spaces	124
Bar/tavern spaces	34
Total:	213

There is a 58-space difference ( $213 - 155 = 58$ ). Where would these 58 spaces be located? Were they originally planned for the garage? (Following on this, Exhibit 4 in the SummerHill proposal says there would be an "excess" of 52 spaces in the parking garage. If the 58 unaccounted for spaces are considered, then there is a **shortage** of 6 spaces in the parking garage.)

4. The applicant provides conflicting numbers about how much parking it would provide in the Transition District. In some places, the applicant says that there would be 331 total spaces in the Transition District; in others the applicant uses a total of 330 spaces. Other inconsistencies are: 7 spaces for the bakery listed in Exhibit 4 versus no listing in A.11; 5 spaces for the community room in Exhibit 4 versus 4 spaces for the community room in A.11; 62 spaces listed for the Market Hall in Exhibit 4 versus 55 spaces for the "specialty market" listed in A.11.

Numbers for the amount of total commercial parking are also inconsistent. In A.11 the total of provided commercial parking is given as 261. However, using Exhibit 4, when you add the amount of commercial parking, you get a total of 281 (commercial parking of 126 in the garage + 155 in parking areas A, B). How much commercial parking will actually be provided? There's no way of knowing based on this proposal. The Commission cannot approve the application without consistent numbers and accurate data being given.

5. The applicant makes false statements and uses bogus math.

Example 1: The applicant says that removing the subterranean parking level "leaves the Market Hall project with an excess of 52 parking spaces above what is required by the zoning code to serve the **commercial interests** at North 40." (page 49,

Exhibit 5) However, A.11 under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285.” Since removing the subterranean parking level actually leaves the project with only 261 commercial spaces and a **deficit of 24 spaces**, the applicant has made a false statement.

Example 2: The computations  $39 + 30 + 261 = 330$  and  $330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$  in red to the right of A.11 creates a false impression. They imply that SummerHill would provide 45 extra commercial spaces. But to come up with the 45 Extra supposedly commercial stalls, SummerHill mixes residential stalls (the 39 and the 30) with commercial stalls (the 261). SummerHill then uses the required number of commercial stalls (the 285) to come up with its extra 45. In fact, lookin at the situation this way, SummerHill has a **shortage of 24 parking stalls** for the Transition District A, B & C.

6. If the applicant claims that the numbers in A.11 are no longer accurate or are out of date, then the entire application must be thrown out for containing inaccurate data. It is the applicant’s responsibility to provide accurate data. Commissioners cannot make their decisions without accurate data.

.....  
I’m wondering if you might ask SummerHill these questions based on Sheet A.11. I’d love to get answers.

Main Questions

- Under Commercial Required Parking Tabulations, in column 36, under the heading **REQUIRED/Number of Commercial Stalls**, we have the number 285. Is this number still accurate? If not, what is the accurate number?
- Under TOTAL PROVIDED PARKING TABULATIONS, **PROVIDED Commercial Stalls, we have 261** (column 39). **Since this number is not the total of the numbers provided in the table (the total is 285), where does this number come from and what is the explanation for this reduced number of parking stalls?**

Subquestions

Under Commercial Required Parking Tabulations, in column 27, under the heading Specialty Market/Number of Stalls, we have the number 55. Is this number still accurate? If not, what is the accurate number?

- Under Commercial Required Parking Tabulations, in column 29, under the heading Retail/Number of Stalls, we have the number 68. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 33, under the heading Bar/Tavern/Number of Stalls, we have the number 34. Is this number still accurate? If not, what is the accurate number?
- Under Commercial Required Parking Tabulations, in column 35, under the heading Community Room/Number of Stalls, we have the number 4. Is this number still accurate? If not, what is the accurate number?



- Looking at the tabulations in red to the right of A.11, what is the number 126 labeled Revised Bldg B1 Retail based on?
- What is the computation  $39 + 30 + 261 = 330$  supposed to show? *The implication of the bottom two computations in red*

$$39 + 30 + 261 = 330$$

$$330 \text{ PROVIDED} - 285 \text{ REQ'D} = 45 \text{ EXTRA}$$

*is that SummerHill is providing 45 extra commercial parking spaces. However, the numbers 39 and 30 used in the computations are the numbers for residential stalls and residential guest stalls respectively. Therefore SummerHill is making a false statement; it is NOT providing "45 Extra" if indeed it is trying to show that it is providing extra commercial stalls.*

*In fact, SummerHill has a **deficit of 24 parking stalls** for the Transition District A, B & C.*

- In the bottom computation in red, why is the number 285 being used? (*THIS APPEARS TO BE AN ADMISSION THAT 285 COMMERCIAL STALLS ARE REQUIRED AS LISTED IN COLUMN 36. HOWEVER, IN COLUMN 39 SUMMERHILL ADMITS THAT IT IS PROVIDING ONLY 261 COMMERCIAL STALLS, 24 STALLS BELOW THE REQUIREMENT.*)

Thank you for your service to the Town.

Sincerely,  
Barbara Dodson

**From:** Jean Mundell [REDACTED]  
**Sent:** Monday, September 14, 2020 9:43 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** north 40

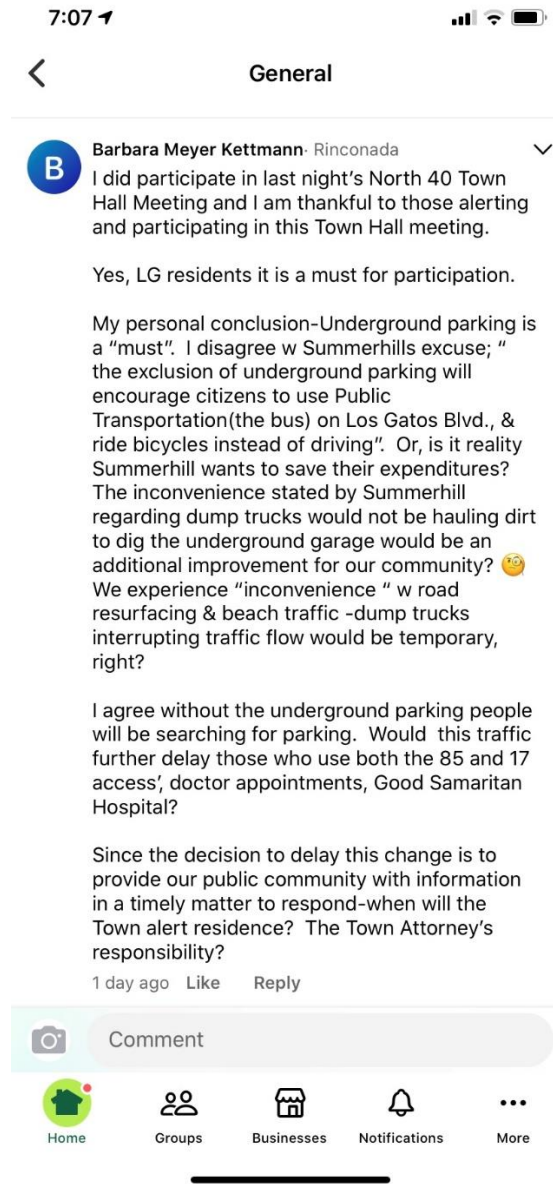
This has been a long and arduous process. Plans should be followed as agreed upon.

No backsliding.

Jean Mundell  
I live off Lark Ave. Need I say more?

**From:** Barbara Kettmann [REDACTED]  
**Sent:** Monday, September 14, 2020 7:23 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40

To the Town Council of Los Gatos



I thought I have registered w the Town. Los Gatos Home owner since 1986. Keep original plans for underground parking and please does the Town have current meeting notes posted, links for Zoom? Last week the link I was given to access was listening & viewing Council members only.

Regards,  
Barbara Kettmann  
Sent from my iPhone

**From:** Lori Day [REDACTED]  
**Sent:** Sunday, September 13, 2020 11:39:07 AM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** North 40 Changes

Dear Joel,

I am writing to you regarding the requested change to remove the underground parking in the North 40. We ask that the Planning Commission deny this request, parking is necessary in order for the North 40 to be successful and not to move penetrate the surrounding neighborhood. Let's keep the developer to task and the approved plan.

Thank you

Lori & Chris Day  
[REDACTED]  
Los Gatos 95032

**From:** Charles Wade [REDACTED]  
**Sent:** Saturday, September 12, 2020 4:12:02 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** N. 40 Garage

Mr Paulson, I think it is atrocious that the developers would even try for this change. Traffic and parking were big items in all the years this was negotiated. To change at this point makes a mockery of all the efforts expended to make this a positive addition to LG. Thanks.

From: Angela Di Berardino [REDACTED]  
Sent: Friday, September 11, 2020 3:39 PM  
To: Jocelyn Shoopman <jshoopman@losgatosca.gov>  
Subject: North 40!!!!

Underground parking is essential to combatting our parking problems!!! Everybody KNOWS that!!! Do NOT allow this to be removed!!!!!!!!!!!!

Sent from my iPhone

**From:** Babette Ito [REDACTED]  
**Sent:** Friday, September 11, 2020 8:50 AM  
**To:** Jocelyn Shoopman <jshoopman@losgatosca.gov>  
**Subject:** North 40 parking

Hi - I'm a resident of 15 years in Los Gatos. Please do not allow the developers to get away with what they agreed to in the current plan - especially the parking. The street congestion will be bad enough and will affect the hospital ambulance and other emergency vehicles. There needs to be underground parking.  
Thank you

--  
Yours,  
Babette Ito  
[REDACTED]

**From:** Jocelyn Fong <[JFong@losgatosca.gov](mailto:JFong@losgatosca.gov)>  
**Sent:** Thursday, September 10, 2020 4:57:36 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Voicemail: No name.(9/9) 11:36 AM

Someone called saying they wanted to keep the underground parking.

***Jocelyn Fong***  
CDD Administrative Assistant



**From:** r pathak

**Sent:** Wednesday, September 9, 2020 12:24:55 PM (UTC-08:00) Pacific Time (US & Canada)

**To:** Planning

**Cc:** Pathak Rahul

**Subject:** need Underground Parking

Dear Staff,

Is the the Town of Los Gatos committed to underground Parking at North 40?

Thank you,  
Sookmunny

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