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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 Kendra Burch Matthew Hudes
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Robert Schultz
Transcribed by:	Vicki L. Blandin (619) 541-3405

ATTACHMENT 5

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P R O C E E D I N G S :

CHAIR HANSSEN: We will move on to the next item on the agenda, which is our public hearing, and that is Agenda Item #2 which is forwarding a recommendation to the Town Council for approval of amendments to Chapter 29, which is Zoning Regulations, of the Town Code regarding the Below Market Price, otherwise known as BMP, program. This applicability is town wide. The Town Code Application is A-20-004, and the Applicant is the Town of Los Gatos.

And I see Ms. Shoopman is our Staff person, so would you like to make a Staff Report?

JOCELYN SHOOPMAN: Good evening. On January 28<sup>th</sup> of this year the Policy Committee recommended amendments to Chapter 29 of the Town Code regarding BMP regulations as well as modification to the Town's BMP Housing Program guidelines with the intent to increase the number of BMP units by decreasing the opportunities to pay in lieu fees, resulting in the construction of more onsite BMP units for development projects.

The amendments as recommended by the Policy Committee also include modifications proposed by the Town's administrator of the BMP Housing Program, Hello Housing,

1 who manages the daily operations of the program in  
2 partnership with the Town.

3           There is also a Desk Item for this evening that  
4 includes comments made by a Planning Commissioner.

5           Otherwise, this completes Staff's report and we  
6 are available for any questions.

7           CHAIR HANSSEN: Thank you, Ms. Shoopman, and it  
8 looks like Commissioner Hudes has a question for you. If  
9 any other Commissioners have questions you can use the  
10 raised hand feature or raise your hand and I will have you  
11 speak. So, Commissioner Hudes.

12           COMMISSIONER HUDES: I just wanted to get a  
13 little better understanding of how this fits with  
14 affordable housing and the Town, and I think this might be  
15 helpful not just to me but maybe to the public as well.

16           How does the BMP program relate to state housing  
17 requirements, RHNA requirements, and if there's a state  
18 program why do we have this? And what does it cost the  
19 Town? The Town has, I believe, 174 units that have been  
20 produced. Just some overall framing so we understand what  
21 this BMP is about. Thank you.

22           JOEL PAULSON: Well, I'll give that a shot and  
23 then if the Town Attorney or Ms. Shoopman has any  
24 additional input.  
25

1                   Backing up to the state, our Housing Element  
2 cycle gives each area or region a regional housing needs  
3 allocation. From that there is a body—currently right now  
4 there is a Housing Methodology Committee body—who is going  
5 to determine how those numbers will be split up among the  
6 jurisdictions in the Bay Area. The numbers that come from  
7 that are in numerous categories, so there are above-  
8 moderate units, which is normal market rate units; there  
9 are moderate units, which is below market rate; and there  
10 are also low; very-low; and extremely-low categories. Those  
11 numbers, when they are provided to the Town, are also  
12 designated as a specific affordability level.  
13

14                   So, that is the number of units in each of those  
15 categories the Town is expected to plan for over the eight-  
16 year housing (inaudible) cycles, so that's how that is  
17 generally handled.

18                   Cost-wise, our Hello Housing contracts, I believe  
19 the base is \$70,000 approximately, and then it also has  
20 additional fees that come in if they do work above and  
21 beyond what's in the contract, including the resale of BMP  
22 units; they handle that process as well. If you have any  
23 other specific questions, I'd be happy to answer them as  
24 well.  
25

1 CHAIR HANSSEN: So, Commissioner Hudes has more  
2 questions.

3 COMMISSIONER HUDES: Just a follow up. We have  
4 174 units that have come about in this program, I believe  
5 some for sale and some rental, and this is a result of the  
6 Town having this program and encouraging developers to  
7 develop under it. What does it cost the Town in order to  
8 get affordable housing in town?

9  
10 JOEL PAULSON: I'm not sure I can quite follow  
11 the question. The Town has had this ordinance in place, I  
12 believe, since 1979, so when development that meets the  
13 thresholds as they've evolved over the years, whether  
14 that's a planned development or some other mechanism, once  
15 they get over a certain number of units then they have to  
16 provide Below Market Price units based on our ordinance.

17 A couple of other pieces of information.  
18 Typically the for-sale units—I'll just give a hypothetical—  
19 if you were required to do four BMP for-sale units then two  
20 them would become moderate and two of them would become low  
21 pursuant to our guidelines.

22 And in four rentals all the rentals are based on  
23 the moderate-income level, so that's how the rental price  
24 is set and every year the federal government provides those  
25 rental rates for Santa Clara County.

1 COMMISSIONER HUDES: Just if I could follow up.  
2 So, to get this program basically the Town provides some  
3 administration and there are some costs associated with  
4 that, but the bulk of what it costs, almost all of it,  
5 comes from developers, is that correct?

6 JOEL PAULSON: That's correct.

7 COMMISSIONER HUDES: Okay, thank you.

8 CHAIR HANSSEN: Do any other Commissioners have  
9 questions for Staff?  
10

11 TOWN ATTORNEY SCHULTZ: If I might?

12 CHAIR HANSSEN: Go ahead. The Town Attorney has a  
13 comment.

14 TOWN ATTORNEY SCHULTZ: Let me just add that  
15 while I think it is true that, yes, today almost all of it  
16 comes from the development of projects that meet the  
17 requirements to provide below market price housing, but if  
18 you go through the historic of how we got to this issue of  
19 providing for below market price housing a lot of that came  
20 through the redevelopment agencies, and the money we got  
21 through redevelopment, because a component of all the money  
22 that we collected had to go towards affordable housing.

23 I'm not sure how much we have in that fund right  
24 now but it's really still left over from the redevelopment  
25 agency and it enabled us to buy certain properties like the

1 Dittos Lane that's right now going through a BMP program.  
2 So, before we actually went and purchased property or do  
3 public/private partnerships with different housing  
4 advocates, that's kind of dried up because we don't have  
5 that redevelopment money.

6           So, now we do primarily rely on it. That's how it  
7 came back, if you go way back to the redevelopment  
8 agencies.

9           CHAIR HANSSSEN: Okay. Thank you so much. I was  
10 going to ask, it's sort of a question and a comment  
11 combined. I had been involved on the Housing Element along  
12 with a number of other Commissioners, the current Housing  
13 Element is going from 2015 to 2023, and the issue with the  
14 Housing Element has been that you plan for density in  
15 certain locations in Town but it's incumbent upon  
16 developers to make a proposal to build those units, and so  
17 to me—and this is where my question comes in—it seems to me  
18 that the Below Market Price Program is really the only way  
19 we can be assured via our Town Code that when developers  
20 come in that we can get at least a couple of affordable  
21 units because they can offset their costs of the market  
22 price units with the below market price units. Is that a  
23 correct statement?  
24  
25

1 JOCELYN SHOOPMAN: I would say that it's correct  
2 in that this program relies on private developers who  
3 propose applications to the Town, that propose a certain  
4 amount of housing units, where then now these regulations  
5 we can put in place and we can ask for the below market  
6 rate units.

7 CHAIR HANSSEN: So, it seems like it's been  
8 successful from the Town's perspective.

9 JOCELYN SHOOPMAN: I'll let Joel answer that, but  
10 I would think yes.

11 CHAIR HANSSEN: All right, so that being the case  
12 is there anyone else that has questions of Staff? Did I see  
13 Commissioner Burch put her hand up? No. All right, well  
14 then we will now invite comments from members of the  
15 public. Do we have any members of the public that would  
16 like to speak on this item?

17 JOEL PAULSON: For the member of the public we  
18 now have two, and I see Heidi Owens' hand raised so I'm  
19 going to allow her to speak.

20 CHAIR HANSSEN: Okay, Ms. Owens.

21 HEIDI OWENS: Hi, my question is if we can and why  
22 we don't align the Below Market Price Program with those  
23 different categories that you spoke about from the RHNA  
24  
25



1 numbers? Why don't we have an extremely-low-income  
2 requirement, et cetera?

3 CHAIR HANSSEN: Staff, you're probably the best  
4 to be able to comment on this from the history perspective.

5 JOEL PAULSON: Thank you, and thank you for the  
6 question. So, it is challenging enough for us to exact  
7 moderate and low units out of developers to make that work.  
8 Where you typically see the very-low and extremely-low  
9 units, those are generally done in either partnerships, as  
10 the Town Attorney mentioned before, public/private  
11 partnerships, or by specifically affordable housing  
12 developers who are looking to get tax credits for their  
13 projects and that helps fund that as well.  
14

15 It is very rare to see a just standard developer  
16 come with either very-low or extremely-low units unless  
17 you're talking about very extremely high-density projects  
18 where there is a significant number of units which wouldn't  
19 be probably viable in the Town, and then again with either  
20 funds of a jurisdiction or the nonprofits who that's really  
21 their business to create affordable housing and to be  
22 competitive for those tax credits, they generally have to  
23 get down into that very-low, extremely-low level to be  
24 competitive with other projects vying for those credits as  
25 well.

1           And I'm not sure if the Town Attorney has any  
2 additional thoughts on that. Yeah, it looks like he  
3 doesn't.

4           CHAIR HANSSEN: I will jump in and say one thing  
5 from the perspective of having sat on the Housing Element  
6 Advisory Board. I remember very clearly that when we were  
7 going through and trying to process our last RHNA that one  
8 of the difficulties we had is I think it would have been a  
9 desire of everyone to mandate more very, very low income,  
10 but the feedback we got from the state, what I recall is  
11 that we can't put a lot of restrictions on where they fall  
12 in those buckets because the state views that as an  
13 impediment to getting more housing built.

14           And, Mr. Paulson, if I'm incorrect let me know  
15 but I remember that was kind of a big deal because we were  
16 going through and saying why can't we force the issue a  
17 little bit more but the answer was that's an impediment to  
18 housing production, which is something the state doesn't  
19 want.  
20

21           JOEL PAULSON: Chair Hanssen, that's correct.  
22 Again, they're always looking for jurisdictions to remove  
23 barriers or impediments to housing production, so if we had  
24 a program of that nature that looked at very-low or  
25

1 extremely-low as requirements of some percentage, then that  
2 would be challenging.

3 I would say just one more kind of historical  
4 point that I'm trying to think, and there are probably very  
5 few instances where it actually came to fruition. The Town  
6 used to have a requirement for a community benefit, and so  
7 what some projects would do is, even if they were only  
8 required to do a moderate unit they might make that a low  
9 unit as an additional community benefit or make it the  
10 price point at a level lower than what would be required by  
11 our code, so just a little additional information.

12  
13 CHAIR HANSSEN: Are there any other questions  
14 from the public?

15 JOEL PAULSON: I do not see any other hands  
16 raised. Give it a couple of seconds here. Seeing none, I  
17 think we're ready to move on in discussion.

18 CHAIR HANSSEN: All right, so thank you, Ms.  
19 Owens, for your question and we will now close the public  
20 portion of the hearing and ask if Commissioners have any  
21 additional questions of Staff, wish to comment on the code  
22 amendments, or introduce a motion for consideration by the  
23 Commission?

24  
25 It looks like we have a few hands up. I saw Vice  
Chair Janoff and I saw Commissioner Hudes.

1 VICE CHAIR JANOFF: Thank you. Just a quick  
2 clarification of the process. I've got four comments. Did  
3 you want them at once? Well, three of them are questions,  
4 one is a comment. You want them all at once or one at a  
5 time, or how would you like to handle that?

6 CHAIR HANSSEN: I think it's fine to go ahead and  
7 make all your comments at one time because we want to make  
8 sure that every commissioner has a chance to talk about any  
9 questions or comments that they have, and then hopefully we  
10 move forward to a motion.

11 VICE CHAIR JANOFF: Okay, great. So, just real  
12 quickly then, as a matter of format there are a whole bunch  
13 of lists of bulleted items or numbered items. The  
14 penultimate item as the term "and" afterward, which to me  
15 is an all-inclusive rather than these are items on a list,  
16 so some of them are not appropriate, some of them might be  
17 appropriate.

18 I'll just point out on page 33 there's a  
19 disconnect between the list at the top of the page and the  
20 list that follows subsequently; there is or isn't an "and".  
21 And then I'll just refer to pages 42, 43, 49, 50, and 51 as  
22 having similar lists that may be confusing or overly  
23 restrictive.  
24  
25

1 My second comment is on page 47 there's an  
2 example calculation regarding how to calculate the 80-  
3 percent or 120-percent. We don't know what the assumed MFI  
4 is and I think it would be clarifying for that number to be  
5 included if it's just an example, so we know how the full  
6 calculation is made.

7 Page 56, Item 3 says it requires the unit to  
8 remain affordable for 30 years. I wasn't sure what that  
9 restriction is. Is it a restriction on the loan or on the  
10 rent? There's something confusing about that restriction.

11 Then finally page 55, Item 5, "Tenant rents and  
12 incomes will be monitored annually." What happens if their  
13 income goes up? To what end are they monitoring annually?

14 So just a question. I'm not sure if these need  
15 discussion but just clarification, perhaps in the text.

16 CHAIR HANSSEN: So, how do you want to handle  
17 questions? And I know Commissioner Barnett had quite a  
18 number of comments that were in the same vein about making  
19 things more clear, and he actually had proposed new  
20 language, so how does Staff want to handle that? Because at  
21 the end of the day the action by the Commission will be  
22 either a recommendation to forward this to Town Council, it  
23 could have changes along with it, or we could say that it's  
24 not ready for that, but usually in the past when we've done  
25

1 this we pass along all the comments of the Commissioners  
2 unless somebody disagrees. So, maybe Staff could help.

3           JOEL PAULSON: A couple of things. One is thank  
4 you for the comments, Vice Chair; we'll take a look at  
5 those and/or's.

6           To answer your last question, the guidelines  
7 specifically talk about if you are in a rental unit and  
8 your income goes up and you no longer qualify for the BMP  
9 program, then what happens is you now have to pay full  
10 market rate rental, and then the next unit that comes up  
11 available for rent in that complex becomes a BMP for the  
12 next person so that we always maintain the number.

13           And what I'll say is that it's not the same as  
14 for-sale. So, you get into the program and you meet the  
15 requirements and are successful in being selected and then  
16 purchasing the BMP, your income can go up infinitely and we  
17 don't obviously evict folks or make them sell the unit if  
18 their income increases for for-sale.

19           VICE CHAIR JANOFF: Thank you for that.

20           CHAIR HANSSEN: Just to jump in as a follow up,  
21 and Commissioner Hudes had a question. But when they sell  
22 the unit it says in the code that they're going to sell the  
23 unit at a below market price.

24           JOEL PAULSON: That's true.

1 CHAIR HANSSEN: Even if they're affordability of  
2 paying their mortgage and stuff during the time they owned  
3 it has changed, they still are bound to sell it as an  
4 affordable unit, and it's got to be that unit that they're  
5 in, right?

6 JOEL PAULSON: Correct.

7 CHAIR HANSSEN: All right, so Commissioner Hudes,  
8 go ahead.

9 COMMISSIONER HUDES: Thank you. First of all, I  
10 think that the comments by Commissioner Barnett should be  
11 part of whatever motion that we get to and so rather than  
12 repeat them I'm going to go to some other questions. I was  
13 kind of stumbling over the same things he carefully put  
14 into his item. I did have a couple of questions that it  
15 would be good to get a response on.

16  
17 The first one is on page 8 in the last paragraph  
18 where it talks about the employees working in town that  
19 would be entitled to the program. We have very few  
20 permanent employees these days at moderate- to low-income.  
21 Many employers are keeping the hours of employees below 35  
22 to avoid paying for healthcare. I had a couple of questions  
23 about this because I think we're looking at a little bit of  
24 a different workforce today. Are part-time workers who  
25 might be working more than one job included? And I notice

1 that in the definitions there a definition of self-  
2 employed, but I wonder in this section whether self-  
3 employed and sort of gig economy workers would be included  
4 as well? That's the first question I had.

5           JOEL PAULSON: Well, those are great questions.  
6 Most of these modifications for processing those things is  
7 really handled by Hello Housing, so what we'll do is we  
8 will get that information and get it back to you. But we  
9 also raised that issue as depending on the action of the  
10 Planning Commission tonight and we can figure out how they  
11 exactly define that and whether or not people who are part-  
12 time maybe in Los Gatos and San Jose and Campbell or in  
13 multiple jurisdictions, then how is that handled? As well  
14 as the gig economy workers who may do work in town but they  
15 do work all over the place. So, those are good questions  
16 and we definitely can get an answer to that from Hello  
17 Housing.

18  
19           COMMISSIONER HUDES: Great, thank you. I had a  
20 couple others. Should I keep going, Chair?

21           CHAIR HANSSEN: Go ahead, because I don't see any  
22 other Commissioners that had their hands up at the moment.

23           COMMISSIONER HUDES: Okay. So, this one is  
24 probably the bigger thing I wanted to sort of get my head  
25 around and that is we're raising the limit so I assume that



1 that will get more people into the pool, and I'm a bit  
2 concerned about how do we protect the ability of the really  
3 low-income folks to participate in this program if we're  
4 pulling in a lot more folks? One of the ways, it seems, is  
5 the point program. So, my first question on this is that  
6 Item C on page 10, is that the only way that we  
7 differentiate between the income of everyone who is jumping  
8 into this pool, the 60-percent gets an extra point?  
9

10 JOEL PAULSON: I believe so, and I would just  
11 look to Ms. Shoopman to confirm that.

12 JOCELYN SHOOPMAN: Yes, that's the only bullet  
13 that is going to differentiate.

14 COMMISSIONER HUDES: So, I guess the question I  
15 raise, which I think is kind of a big question, is by  
16 increasing the 120-percent of median doesn't that cause us  
17 to have less of a preference for people who previously may  
18 have been available in the low- and very-low-income and  
19 decrease their chances of getting affordable housing? My  
20 question is should we allocate more points equitably based  
21 on income, for instance, six points for very-low, four  
22 points for low, to allow these folks to compete with the  
23 larger number of people in the pool. It's not a technical  
24 question; it's more sort of a policy question that I'm  
25 raising here. Does that make sense though?

1 JOCELYN SHOOPMAN: It does, and I will say to  
2 give some context when the Policy Committee considered this  
3 in their November meeting part of that meeting included  
4 input from the Applicant for 20 Dittos Lane who was  
5 proposing the teacher housing, and part of her conversation  
6 in that meeting was that many of these teachers were in the  
7 80- to 120-percent median family income range, and so based  
8 on our current guidelines they go up to 100. Those  
9 teachers, janitorial workers, office administration  
10 wouldn't be able to meet the program, and so that was part  
11 of the conversation of raising it to 120. Also, that would  
12 be in line with the RHNA numbers for the California  
13 Department of Housing.  
14

15 JOEL PAULSON: So, I just offer a little bit more  
16 on that, Commissioner Hudes. The predominant majority of  
17 the state as well as how they designate different income  
18 categories goes up to 120. The Town's was 100. At 100 you  
19 actually have a pool that is pretty limited, but on the  
20 for-sale units they also have to qualify. The reality is  
21 that if someone is in the 60-percent and this was a  
22 moderate unit, they're not going to qualify just from an  
23 income to mortgage ratio standpoint. I don't know that it's  
24 taking away from those folks' opportunities. What really  
25 would be necessary is for us to have some private

1 developers, some of the nonprofits, come in and have units  
2 designated specifically for those categories, because then  
3 what that does is that gets rid of everybody else who is  
4 above and so that pool is on equal footing, because that's  
5 what they're doing.

6           The Town Attorney has probably looked at this  
7 more recently than I, but just as an example the 50 below  
8 market rate units in the North Forty project, 49 of those  
9 are either very-low or extremely-low, and I can't remember  
10 if it's very-low and extremely or it's low and very-low,  
11 and I think there's one moderate unit for the manager who  
12 will be onsite. It allows more people to qualify up to the  
13 120, and it really does, as Ms. Shoopman mentioned, kind of  
14 gets us in alignment with how the state defines those  
15 income categories.

17           CHAIR HANSSEN: Go ahead, Commissioner Hudes.

18           COMMISSIONER HUDES: I just am raising this  
19 because we think we're doing a good thing by opening the  
20 pool to more people but since we have very few units that  
21 actually come up we may be having the unintended  
22 consequence of limiting the opportunities for the lowest  
23 income people, and as you point out the issue isn't I don't  
24 think so much with the purchase units but the predominance  
25 is on the rental units. So, I don't know whether what I've

1 suggested would make sense or not, we could save that for  
2 discussion, but I just am concerned about an unintended  
3 consequence of opening the pool.

4 I had one more sort of real quick technical  
5 point.

6 CHAIR HANSSEN: Okay, go ahead.

7 COMMISSIONER HUDES: And that's on page 11, the  
8 first paragraph, that sentence, it seems it might be more  
9 straightforward to just say, "If an applicant twice refuses  
10 to purchase an available unit they will be removed from the  
11 current applicant pool." The way it's worded, especially as  
12 it's been revised, is not so clear.

13  
14 JOEL PAULSON: Okay, we can look at simplifying  
15 that language.

16 COMMISSIONER HUDES: And that's all I had. Thank  
17 you.

18 CHAIR HANSSEN: If no other Commissioners had  
19 questions, I had a couple questions. Let me just check; one  
20 second.

21 First of all, I wanted to say after I ask my  
22 other two questions I want to get some feedback from other  
23 Commissioners on the issues that Commissioner Hudes raised,  
24 which is is this the most equitable way of allocating those  
25 below market price units and is it negatively affecting the

1 lower income people by raising the limit? So, I'm hoping  
2 that some other Commissioners will have some comments on  
3 that but I had two kind of quick questions.

4 I might not be interpreting this correctly but  
5 whereas in the hillsides we might not have forced a below  
6 market price unit, if I'm understanding this correctly like  
7 the next time we see one of these eight-unit development  
8 proposals in the hillsides that they're going to be  
9 required to do at least one below market price unit, right?  
10

11 JOCELYN SHOOPMAN: The previous language stated  
12 that hillside projects shall only pay in lieu fees. That  
13 language was struck out. It still leaves the possibility  
14 for them to pay an in lieu fee if they can provide  
15 justification that a BMP unit in that development would not  
16 be viable.

17 CHAIR HANSSEN: Okay. My next question was going  
18 to kind of go along that vein. Generally when we've seen  
19 these five- to eight-unit developments that we're talking  
20 about \$3 and \$4 million houses, so I wasn't knowing how the  
21 math would ever work when you have these \$3 and \$4 million  
22 dollar houses to make it affordable for someone that's  
23 making even 120-percent of the market income. So, I think I  
24 understand the thing behind it.  
25

1           But so the other thing that I noted is that the  
2 in lieu fees, generally this proposed language is going to  
3 make it more restrictive towards making a BMP versus having  
4 the option of opting out based on paying in lieu fees, but  
5 if you read the code, it's fine, but if you read the  
6 document it sort of seemed like oh, well if you have any  
7 problems regardless of whether you're in the hillsides or  
8 not that you can get Town Council approval to do the in  
9 lieu fees, and I just wondered if that was a good thing if  
10 we're trying to make it tighter and get more BMPs versus  
11 having people pay into in lieu fees? Is that going to be  
12 tight enough?  
13

14           JOCELYN SHOOPMAN: I'm sorry, so were you  
15 referring to the language in the Town Code as not being in  
16 line with the guidelines?

17           CHAIR HANSSEN: Well, I might have interpreted it  
18 incorrectly but the Town Code was pretty clear that that  
19 was only for the hillsides where they could potentially do  
20 in lieu fees, and as I was reading the guidelines it  
21 sounded more open to me, so maybe I misinterpreted it. Let  
22 me ask the clarifying question though. The intent is the  
23 only people that can ask for in lieu fees are going to be  
24 people that are developing in the hillsides, is that  
25 correct?

1 JOEL PAULSON: I think you're looking at the Town  
2 Code section which specifically talks about HR, and then on  
3 pages 2 and 3 of the guidelines—and that's the number of  
4 page, not the page in the PDF—they talk about HR only, or  
5 residential projects conversion, and all developments with  
6 five to nine units with an underlying of HR as well. So, it  
7 looks like that's covered both on the code and the  
8 guidelines. but we'll take another look at it as well prior  
9 to getting it to Council just to confirm.  
10

11 CHAIR HANSSEN: Perfect. Okay. Now, Commissioner  
12 Burch had her hand up.

13 COMMISSIONER BURCH: Thank you. I have a couple  
14 of questions, if that's okay.

15 One item had to do with the section concerning  
16 the resale of a below market home and my question was if  
17 the property owners did some work on the house, an addition  
18 or something that actually increased the value of the home,  
19 before that is sold does the Town do an updated assessment  
20 and then set the allowable resell value?

21 JOEL PAULSON: I'll jump in unless Ms. Shoopman  
22 has something to say first, but generally what happens is  
23 Hello Housing, there are specific calculations that are  
24 used for upgrades, whether that's upgrading appliances,  
25 upgrading finishes, things like that, adding air

1 conditioning if there wasn't air conditioning. And then  
2 there is also a depreciation scale that they use, and so  
3 they determine what if any value is still left depending on  
4 how long ago those were installed and the cost of those  
5 installations.

6 I am trying to recall, but I don't recall ever  
7 having seeing an addition to a BMP. Typically what we get  
8 is they replaced their carpet with hardwood, or they put in  
9 air conditioning where they didn't have it, things like  
10 that. But yes, there is some flexibility there and a  
11 process to handle that increase in value that would not  
12 otherwise be (inaudible).

14 COMMISSIONER BURCH: Chair, do you mind if I ask  
15 just a couple more?

16 CHAIR HANSSEN: Go ahead.

17 COMMISSIONER BURCH: All right. On page 38 in  
18 discussion with the in lieu fee, how was 6-percent  
19 determined to be the correct percentage?

20 JOEL PAULSON: That I don't know. That's what  
21 it's been ever since I've been here, 20-plus years, but I  
22 do not know the origins unfortunately of that number.

23 COMMISSIONER BURCH: I thought that might be the  
24 answer. Historically does that feel appropriate?  
25



1 JOEL PAULSON: We think it's appropriate, and  
2 that in combination with the fact that we are now making it  
3 extremely hard and only in the hillsides to allow in lieu  
4 fees. And that was the Policy Committee's (inaudible) as  
5 well is we really want the units produced, we don't have a  
6 whole lot of large development in town in the first place  
7 to get BMPs, and so I think we have somewhere in the  
8 neighborhood of \$3.5 million in our BMP in lieu fee fund,  
9 and so the reality is if the Town...

11 And we do have documents and there will probably  
12 continue to be conversations of how to use that money. I  
13 think some of it is being used for the Dittos Lane  
14 projects, so that's generally what we use it for, and then  
15 we use it for the administration of the BMP Program, which  
16 currently there is an RFP out because every five years  
17 approximately we go out and see if the current provider  
18 still is kind of the appropriate provider for those  
19 services, so we're going through that process currently as  
20 well.

21 But it doesn't accrue much money. There's still a  
22 handful. I think we have probably five more in the hillside  
23 PD, and then I think the in lieu fees were also allowed for  
24 Greenwich Terrace, which is eight lots, so other than that,  
25 unless we get subdivisions in the hillside we're going to

1 be asking for the units, and the only opportunity for the  
2 in lieu fees is in the hillsides and that's going to be  
3 even more limited for a number of reasons, not to mention  
4 fire and our own regulations, so we still think that that's  
5 viable. Our provider hasn't (inaudible) is low or high, so  
6 I think we're comfortable at this point moving forward with  
7 that number and we'll reach out to them again to see if  
8 there are any newer thoughts.

9  
10 COMMISSIONER BURCH: So then I would wonder if  
11 there's not a way to put some language around maybe  
12 evaluation periods on that 6-percent. We do know how  
13 property value goes around here and ensuring that if you  
14 are getting this from developers, and I get that it's in a  
15 very limited scope, but just ensuring that what you get  
16 really does match the current financial conditions of the  
17 real estate market so that it can be put to good use. I'm  
18 not saying it needs to be changed, I just wondered if  
19 there's a way we could put some kind of language around an  
20 annual or every five year reevaluation of that percentage  
21 and its applicability to the current market?

22  
23 JOEL PAULSON: We could do that. What I will say  
24 is that every time you want to reevaluate it we have to do  
25 a brand new nexus study, which means hiring a consultant,  
having them go through that and provide information, so

1 it's not something we can just change or have Staff ability  
2 to modify or do that work on our own.

3 COMMISSIONER BURCH: Right.

4 JOEL PAULSON: The other thing I can offer is  
5 that it depends on the development, but hillside  
6 developments specifically is where the majority of those  
7 funds come from historically, and it's actually most of  
8 those folks. They'll get the planned development and  
9 they'll get the subdivision, they sell the individual lots,  
10 then the homeowner pays those fees because they're the one  
11 who comes forward with the house, so it's not the developer  
12 paying that up front.  
13

14 Now, there is some negotiation with price, with  
15 that factored in, so they may that conversation when  
16 they're selling those lots to potential homeowners. I'm not  
17 sure, I'm assuming there is because otherwise every time  
18 someone had to pay that fee I'm sure we'd hear a lot more  
19 than we currently hear regarding that issue.

20 CHAIR HANSSEN: To follow up on what Commissioner  
21 Burch was asking, I mean you said it wasn't a problem, so  
22 in your opinion and Staff this 6-percent has been enough of  
23 a deterrent that do we typically get the people to... I mean,  
24 from what I've seen on Planning Commission we typically get  
25 them to do the BMP, so we haven't seen that many people do

1 the in lieu fees that are not in the hillsides in like the  
2 last five years?

3 JOEL PAULSON: No, absolutely not.

4 CHAIR HANSSEN: Okay, so at the moment it seems  
5 like the 6-percent is enough of a deterrent that they're  
6 better off financially doing the BMP than they are...because  
7 they're going to make whatever decision is the least amount  
8 of money to them, right?

9 JOEL PAULSON: Well, so that's probably a  
10 stretch. Using your analysis of let's just say a \$2 million  
11 house, they're going to pay the BMP fee for that because  
12 they would have to subsidize that home if they constructed  
13 it significantly. Probably the most recent example is the  
14 homes that went up off of Knowles, the old county  
15 courthouse site. Those were not small homes, they're not  
16 hillside homes by any means, but I think the moderate units  
17 there were like they had to sell them for \$448,000,  
18 somewhere in that neighborhood. That probably barely, even  
19 in a flatland project, covered their construction costs.

20 But in a hillside there are a number of other  
21 factors as well. Typically our hillside lots are larger  
22 lots, typically larger homes. If someone was going to build  
23 those in the hillside I imagine they would come in asking  
24 for a smaller lot and a smaller home, just because the  
25

1 other is if you're going in and you qualify for the Below  
2 Market Price Program you're not going to have the extra  
3 money to have a gardener or landscaper take care of that  
4 big property and then utilities and other things that go  
5 into it just sheerly based on the size of the home, those  
6 would be burdens to our below market price folks to try to  
7 be able to even maintain that.

8           They're private roads, there could be common  
9 area/open space that would have HOA fees that would be very  
10 high, so those are all some of the challenges that we have,  
11 but I think we're going to see less and less of this and  
12 they're going to ultimately probably have to go all the way  
13 to the Council if they want to try to pay the in lieu fee  
14 even for an HR (inaudible).

16           CHAIR HANSSEN: Just one quick question. The  
17 housing that's going up on Union Avenue across from  
18 Safeway, I know we heard about that. I'm trying to  
19 remember. It was under the Housing Accountability Act, but  
20 because it was nine units do they have to do a BMP?

21           JOCELYN SHOOPMAN: They do, so they are doing a  
22 BMP above the mixed-use building.

23           CHAIR HANSSEN: Yeah, I thought that was the  
24 case. So, then that says that part is working, that we're  
25 getting people to do the units where it's not in the

1 hillsides, so I guess we'll have to see what happens with  
2 the hillsides, but I think Commissioner Burch had a good  
3 point worth considering. I don't know if it is financially  
4 feasible for the Town to keep looking at it, but since  
5 we're changing some of the dynamics we might need to at  
6 least keep our eye on it. Now, Commissioner Badame has her  
7 hand up.

8                   COMMISSIONER BADAME: Thank you. Mr. Paulson, you  
9 reminded me of the planned development—actually, I was on  
10 the Planning Commission at the time—for Knowles near  
11 Pollard. Can you remind me how many BMP units we got out of  
12 that planned development?  
13

14                   JOEL PAULSON: Four.

15                   COMMISSIONER BADAME: Thank you.

16                   CHAIR HANSSEN: Commissioner Burch has her hand  
17 up again.

18                   COMMISSIONER BURCH: Sorry.

19                   CHAIR HANSSEN: Don't be sorry.

20                   COMMISSIONER BURCH: Mr. Paulson just reminded me  
21 though of one of the things I wanted to ask about. On page  
22 41 there's actually a note about HOA fees. It's Item C.

23                   JOEL PAULSON: What page is that on, the  
24 document?  
25

1                   COMMISSIONER BURCH: That is on 41. It where an  
2 applicant has to demonstrate the ability to pay things  
3 based on exactly what you were just saying. Like I would  
4 assume people that are looking at BMPs, even if it was in a  
5 development that had an HOA I feel like they probably  
6 shouldn't be expected to pay an HOA fee. Does the Town have  
7 the ability to dictate that or is that a developer right?

8                   JOEL PAULSON: I'd probably defer to the Town  
9 Attorney but I don't think that's something that we can  
10 require the developer that any BMP does not have to pay HOA  
11 fees. They're still using those facilities as well, but I  
12 have not heard that that's an ability of the Town unless  
13 Mr. Schultz has some additional information.

14                   TOWN ATTORNEY SCHULTZ: I've never seen it but we  
15 can look into it. We'll put that on the list when it goes  
16 to Council. I have not seen it where that's happened. I  
17 used to have all sorts of concerns like when the roof has  
18 to be repaired if that unit hasn't provided the funds for  
19 that fix you're asking all the other neighbors that have  
20 chipped in their funds to pay for that neighbor's ability.

21                   COMMISSIONER BURCH: Or even if the HOA fee could  
22 be...

23                   JOEL PAULSON: Reduced.

24  
25

1           COMMISSIONER BURCH: ...correlated more to the  
2 value of the home for that person maybe, I'd be curious.

3           TOWN ATTORNEY SCHULTZ: The issue for ownership  
4 is really to integrate them, and so if they weren't paying  
5 anything to the homeowners association would that mean they  
6 wouldn't be able to sit on the board?

7           COMMISSIONER BURCH: Yeah, you're right.

8           TOWN ATTORNEY SCHULTZ: But we can look into it.  
9 I mean, it's an interesting concept, because ownership of  
10 BMPs is a trouble in any town and city because paying the  
11 HOAs, we've had a few where they've fallen tremendously  
12 behind on that and had to bail them out and find someone  
13 else to bail them out, and so maybe it is something we need  
14 to look at to see if there's any way we can incorporate  
15 that into some of the larger developments.

16           COMMISSIONER BURCH: Right. Thanks. And then I  
17 just had one more, Chair, and then I'll stop.

18           CHAIR HANSSEN: No, that's fine.

19           COMMISSIONER BURCH: On page 44, Item 3A, I was  
20 actually just wondering if maybe Mr. Paulson could explain  
21 that one to me. I understood pretty much everything within  
22 the point system. That one I wasn't following along, so  
23 it's like for people that lived in the Town but then moved  
24 out?  
25



1           JOEL PAULSON: That's been in our guidelines for  
2 quite a while, ten years and moved out of town, (inaudible)  
3 application.

4           TOWN ATTORNEY SCHULTZ: That's usually it's maybe  
5 who had lived here more than ten years and then they have  
6 maybe been gone just for a year or two. You don't have to  
7 be gone ten years but at least within the last ten years  
8 you've moved out maybe because you couldn't find rent in  
9 this area, now you want to move back in.

10           COMMISSIONER BURCH: Oh, okay.

11           TOWN ATTORNEY SCHULTZ: But you couldn't go more  
12 than ten, so if you lived here for 11 years and then were  
13 gone for 11 years, you don't get the two points, but if  
14 you've been here 11 years and you've been gone less than  
15 that ten years, then you'd get the two points.

16           JOEL PAULSON: It's really I think (inaudible)  
17 displacement, right?

18           TOWN ATTORNEY SCHULTZ: Yeah.

19           JOEL PAULSON: So if someone gets priced out of  
20 the market and has to move to an adjacent jurisdiction  
21 because they can get rent affordably, if a BMP unit comes  
22 up back in town where they've lived for quite some time you  
23 want to be able to provide them that opportunity and I  
24  
25

1 think that's probably why those points are in the  
2 guidelines.

3 COMMISSIONER BURCH: Okay, thanks. That makes  
4 more sense. Thank you.

5 CHAIR HANSSEN: Did you have any more questions  
6 at the moment?

7 COMMISSIONER BURCH: (Inaudible) I can't promise  
8 (inaudible).

9 CHAIR HANSSEN: That's fine, because we should  
10 answer all of your questions. So, do any other  
11 Commissioners have questions at the moment? It looks like  
12 Commissioner Barnett. I'm hoping to hear from some of the  
13 other Commissioners about the points that Commissioner  
14 Hudes brought up, and so let me go to Commissioner Barnett  
15 for what comments he has.

16 COMMISSIONER BARNETT: Speaking to that point, I  
17 was wondering if Staff could help out with some notion of  
18 how many of the BMP applicants for purchase or for rental  
19 are at certain income levels that we can already define?  
20

21 JOEL PAULSON: A couple of things. One is  
22 rentals. Currently you have to be at 80-percent or below  
23 the median income for Santa Clara County, and so kind of  
24 getting back to Commissioner Hudes' point is yes, this does  
25 expand that pool, but as the sheet will mention this was in

1 direct response to an issue that comes up quite often with  
2 in this instance the teacher housing that was being done at  
3 Dittos Lane.

4           For the for-sale units you have to fall into one  
5 of those categories. Right now it's moderate or low is  
6 typically what we see. If you have more than one unit then  
7 the units get split between those two categories and then  
8 you have to be in that income bracket so 100-percent of  
9 people qualify for each of the income levels that apply for  
10 that.

11  
12           CHAIR HANSSEN: Okay, so did that answer your  
13 question, Commissioner Barnett?

14           COMMISSIONER BARNETT: Yes, it does.

15           CHAIR HANSSEN: Okay. So, just to kind of do a  
16 (inaudible) on where we are right now, because we had lots  
17 of good questions and comments so far. Our objective for  
18 this hearing is that we're supposed to make a  
19 recommendation to Town Council, and in doing so if we're  
20 recommending that they move forward with this it can be  
21 with comments. We do need to make the findings that are  
22 spelled out in the Staff Report in CEQA and compliance with  
23 the General Plan.

24           So, that being the case we can take a number of  
25 directions, and when we've done these studies in the past

1 we usually forward it along even if it's positive but  
2 please consider all these things that we brought up. But we  
3 could also say it's not ready and it needs to go back to  
4 the Policy Committee and that's the most negative scenario,  
5 so I wanted to put that out there in terms of moving the  
6 discussion forward, and Commissioner Hudes has his hand up,  
7 so go ahead.

8           COMMISSIONER HUDES: I'm prepared to summarize  
9 into a motion if we're at that point, or if there are other  
10 important points that folks would like to raise I will just  
11 wait a bit.

12           CHAIR HANSSEN: Well, Commissioner Janoff has her  
13 hand up so I'm going to take her comments, but I would say  
14 that it would be a good idea to try to get a motion out  
15 there to see where the Commission is, to see if we need to  
16 modify things. So, Vice Chair Janoff.

17           VICE CHAIR JANOFF: Thank you. I just wanted to  
18 say that I thought Commissioner Hudes' concerns about the  
19 increase on the upper range is an interesting question and  
20 we really don't know the answer because it's untested, and  
21 I'm wondering whether it's possible to have a revisit with  
22 a small report of some sort that can... If we decided to go  
23 forward in supporting the larger range could we ask for a  
24 report in an appropriate period of time that says this has  
25

1 boxed a lot of people out or it's provided new  
2 opportunities for people to get in, just so we know whether  
3 this has been a constructive change or a not constructive  
4 change? I think that it's an interesting point and we don't  
5 know how to test it now; we won't know until we have some  
6 data.

7           Then generally speaking I think the comments that  
8 have been raised tonight have been very constructive and  
9 clear. I would support forwarding this to the Town with  
10 those comments to be considered.

11           CHAIR HANSSEN: Thank you very much for your  
12 comments. So, Commissioner Hudes, if you wanted to make a  
13 motion, that would be great.

14           COMMISSIONER HUDES: Yeah, actually I wanted to  
15 start with one more comment and then I'll include it in the  
16 motion, but I wanted to get it on the table first.

17           I don't think we have enough affordable housing.  
18 I think the program is very important and I think we're  
19 going to be pushed with a lot of numbers to reach and I  
20 think it's going to be important that we create affordable  
21 housing opportunities.

22           These numbers of how many units a developer has  
23 to build were developed a long time ago. The profit on  
24 development in town has gone up, we know that, and so I  
25

1 would add a question of whether it might be appropriate to  
2 look at raising the number that needs to be created, the  
3 amount of housing, by perhaps 10-percent? So, whatever  
4 formulas that we're using today, for instance a 5:19  
5 requires 10-percent; perhaps it should be 11-percent so  
6 that we actually end up getting more housing.

7           Now, it's pretty controversial and a big thing so  
8 I'm going to hold off on the motion in case folks would  
9 like to comment on that, but it seems to me that while  
10 everything has gone up, yes, costs have gone up, prices  
11 have gone up, but profits have gone up as well and so  
12 perhaps there's an opportunity to take a look, maybe even  
13 surveying what other municipalities are doing to see if we  
14 can get more affordable housing created.

15           JOEL PAULSON: Through the Chair?

16           CHAIR HANSEN: Go ahead.

17           JOEL PAULSON: Commissioner Hudes, I think that's  
18 a great idea and recommendation. I think basically you're  
19 recommending that the percentages for the various  
20 categories be reviewed and potentially increased. We would  
21 have to perform a nexus study to do that. I know a number  
22 of other jurisdictions in Santa Clara County have done that  
23 recently; the Town did not participate in that action and  
24 that was over the last few years, but we might be able to  
25

1 use some of that base information if it's not stale to go  
2 out and do an RFP or RFQ for a nexus study for the  
3 potential to increase our BMP requirements to hopefully get  
4 more units.

5 CHAIR HANSSEN: And Vice Chair Janoff has a  
6 comment, and I do as well, so go ahead.

7 VICE CHAIR JANOFF: Just in light of those  
8 comments, Director Paulson, do you know the outcome? Do you  
9 know whether those numbers have been increased or  
10 decreased? I mean, I'm sensitive to your previous comments  
11 that we are wanting to not disincentivize the building of  
12 affordable housing, so do you have any idea or any  
13 information about what changed or didn't change with the  
14 municipalities who conducted those studies?  
15

16 JOEL PAULSON: I don't, but we can look at it. I  
17 know that there are some jurisdictions that have higher  
18 minimum requirements, 15-percent or maybe a few of them  
19 have 20-percent, that's just across the board. Ours doesn't  
20 start at 20-percent until I think you get over 100, but we  
21 can take a look at a couple of those studies before it goes  
22 to Council and move forward that information with that  
23 question from Commissioner Hudes.  
24

25 CHAIR HANSSEN: I had the same thought. I liked  
Commissioner Hudes' suggestion, but from a big picture

1 perspective I'm thinking that we ought to try to get this  
2 thing... It's going to be improved by the language changes  
3 that have already been proposed without the additional  
4 recommendations of the Planning Commission, so I think we  
5 can add onto that, but the one thing we have to balance it  
6 with is the research in the market that we're not going to  
7 deter any production of affordable housing by squeezing the  
8 developers more, but at the same time if a market supports  
9 it we should try to do that.

10  
11 I don't know at what point this is going to  
12 Council but if it's possible to do that before that I think  
13 it's worth looking at, but I don't want to stand in the... My  
14 personal feeling is I don't want to stand in the way of  
15 getting the code somewhat tighter even if there are to-dos  
16 that go along with it. So, Commissioner Hudes had a  
17 comment.

18 COMMISSIONER HUDES: I'm prepared to make a  
19 motion to incorporate that idea, if that's okay.

20 CHAIR HANSSEN: Okay, go ahead.

21 COMMISSIONER HUDES: I move that we forward a  
22 recommendation to the Town Council to approve the changes  
23 as provided by Staff with the additions of the comments of  
24 the Planning Commission, and I want to highlight several  
25 changes that I think need to be pretty explicit.



1           The comments from Commissioner Barnett, as  
2 written.

3           Commissioner Burch's comments about valuation, in  
4 particular resale considerations.

5           Director Paulson's commitment to take a look and  
6 do some research on part-time and gig workers.

7           Specifically the consideration of looking at  
8 additional points for different income levels in the  
9 formulation, and again, this is not explicit to change it  
10 but to look specifically at five points for 60-percent and  
11 three points for 80-percent as something for the  
12 consultants to look at to try to balance this and give a  
13 better opportunity for low-income residents to participate.  
14

15           Consider increasing the number of units by doing  
16 a survey of other communities to see whether it would be  
17 possible to raise the requirements by 10-percent across the  
18 board.

19           So, those are the ones that I captured that I  
20 highlighted. There might be others, maybe somebody would  
21 like to add them to the motion, but that's the motion as I  
22 have it.

23           CHAIR HANSSEN: Are you able to make the findings  
24 that are spelled out in the Staff Report?  
25

1           COMMISSIONER HUDES: Yes, I would include those  
2 findings.

3           CHAIR HANSSEN: Okay. So, let's see if there are  
4 any Commissioners that would want to second the motion and  
5 then we could always ask for modifications before we vote.  
6 Commissioner Badame.

7           COMMISSIONER BADAME: I would second the motion  
8 based upon the additions made by Commissioner Hudes.

9           CHAIR HANSSEN: Okay, so we have a motion and a  
10 second. Before we take a vote though this might be a good  
11 time to take any additional comments if there are  
12 Commissioners that thought there is anything in addition to  
13 what Commissioner Hudes had to say or if you had any  
14 additional comments that you haven't already made about  
15 this motion in general, this would be a good time to do it  
16 before we take a vote. So I wanted to see if any other  
17 Commissioners... But everyone had contributed suggestions so  
18 I think we're okay. I don't see any hands raised.

19           So, that being the case we have a motion and a  
20 second. Did I miss any? Okay, right. So then we'll do a  
21 roll call vote and I will start with Commissioner Badame.

22           COMMISSIONER BADAME: Yes.

23           CHAIR HANSSEN: And then Commissioner Burch.

24           COMMISSIONER BURCH: Yes.

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CHAIR HANSSEN: Okay, Commissioner Hudes.

COMMISSIONER HUDES: Yes.

CHAIR HANSSEN: Commissioner Barnett.

COMMISSIONER BARNETT: Yes.

CHAIR HANSSEN: Vice Chair Janoff.

VICE CHAIR JANOFF: Yes.

CHAIR HANSSEN: And then I vote yes as well, so the motion passes unanimously, and Mr. Paulson, are there any appeal rights for this decision?

JOEL PAULSON: There are not appeal rights as this is a recommendation.

CHAIR HANSSEN: Okay, thank you very much. And thank you for everyone for all your comments, because I think they were really helpful and will help shape this into a better solution for our town.

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