

July 5, 2023

Advance Copy via Email

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Chair Jeffrey Barnett and Members of the Los Gatos Planning Commission
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

**Re: Modification of Subdivision Conditions of Approval
200 Happy Acres Road; City File No. M-21-006
July 26, 2023 Planning Commission Hearing**

Dear Chairperson Barnett and Members of the Commission:

This office represents Mr. and Mrs. Toofan, the owners of 200 Happy Acres Road. They have applied to modify certain conditions imposed on the 2001 subdivision map that created their parcel, because it was discovered more recently that the location of a cul-de-sac approved in that map would interfere with a drainage channel and therefore needs to be relocated. We have worked cooperatively with City staff to modify the necessary map conditions and believe that staff supports granting the application.

The Toofans' parcel is vacant. The application before you does not permit the Toofans to build a house. Rather, it only changes the location of the cul-de-sac that will eventually serve a house. Once the City has approved the new location for the cul-de-sac, the Toofans can pursue a house on their parcel by submitting an architectural/site development application, which will be the subject of its own conditions of approval.

I am writing to object to Condition No. 5 to the map modification, which is a condition being required by the County Fire Department, not by Town planning staff. Condition No. 5 as required by the Fire Department states:

5. At time of architectural/site development application, compliance with the State Fire Safe Regulations (14 California Code of Regulations §1270), in effect at time of



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application, shall be clearly demonstrated. Any request for exception shall be processed prior to approval of the site development application.

As I know you are aware, for the last two years, property owners in much of Santa Clara County who have applied to build homes have been subjected to the attempted imposition of conditions of approval by CalFire through the Santa Clara County Fire Department requiring those owners to make extraordinarily expensive off-site improvements to public roads to widen them to State Fire Safe Regulation standards. Santa Clara County and the City of Saratoga have implemented procedures to waive those conditions where imposing them would be unconstitutional, and neither jurisdiction has found a single instance where the CalFire requirements did not need to be waived to comply with the Constitution. Los Gatos has not yet adopted a similar procedure, but in the only instance where a Los Gatos owner trying to build a home had the Fire Department attempt to impose these conditions, you struck those conditions from the approval (November 21, 2022 PC hearing for A&S Application S-21-021, 17121 Crescent Drive, Eric and Lee Ann Wade).

As stated above, the application before you is not seeking to build a house, just relocate a cul-de-sac. The problem with Condition No. 5 as required by the Fire Department is that it commits the Toofans to agree to whatever conditions the Fire Department imposes on the application the Toofans submit for their house, even though we do not even know what those conditions will be or whether they will be constitutional. That is the effect of the language "compliance with the State Fire Safe Regulations...shall be clearly demonstrated."

The Toofans cannot, and should not, be required in this map modification application moving the cul-de-sac to agree to unknown conditions that will be imposed on a future home-building application even if those conditions are unconstitutional. The solution is simple: modify the version of Condition No. 5 insisted upon by the Fire Department in this way:

5. At time of architectural/site development application, compliance with the State Fire Safe Regulations (14 California Code of Regulations §1270), in effect at time of application, shall be clearly demonstrated, to the extent an appeal and/or a waiver of those Regulations has not been upheld and/or granted by the City of Los Gatos. Any request for exception shall be processed prior to approval of the site development application.

This modified version includes all of the language insisted upon by the Fire Department, and simply adds a clause recognizing the Toofans' rights to challenge any future conditions of approval the Fire Department attempts to impose on the Toofans' home-building application that the Toofans believe violate their legal rights. The Toofans proposed this modified language to staff in mid-May, and while we believe that Town staff has no objection to it, in staff's dialogue with the Fire Department, the Fire Department would not agree to it. As a consequence, it is necessary for the Toofans to seek relief from the draft condition by making this objection to the Planning Commission.

The Toofans respectfully request that the Planning Commission approve their application to modify the subdivision map, substituting the modified version of Condition No. 5 for the version dictated by the Fire Department. We look forward to the hearing on the map application, and to answering any questions you may have at the hearing.

Very truly yours,



BARTON G. HECHTMAN

BGH:jlc

cc: Mr. and Mrs. Toofan
Jocelyn Shoopman
Gabrielle Whelan

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