

From: Jeffrey Barnett

Sent: Tuesday, September 6, 2022 1:14 PM

To: Jennifer Armer <JArmer@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Attorney <Attorney@losgatosca.gov>

Subject: PC Hearing on 9.14.22 - Objective Standards

EXTERNAL SENDER

Dear Ms. Armer and Mr. Paulson,

Please include the following comments in the Staff Report for our next meeting. Thanks in advance.

I wish to amplify upon the comments made in my Desk Item dated August 23rd as well as during the Planning Commission meeting of August 24th concerning Agenda Item 3, wherein I objected to draft Standard B11.4 related to privacy for neighbors from balcony views. Five of my fellow Commissioners voted to not make the proposed standard concerning such balcony views more specific. This draft standard provides that balconies facing existing residential uses on abutting parcels are allowed "when the design is proven to prevent views to the residential use."

SB 35, creating the streamlined approval process, and SB 330, the Housing Crisis Act of 2019, require "objective, quantifiable, written development standards, conditions and policies" to retain local control of multifamily housing and, in the case of SB 330, certain mixed-use developments as well.

The Government Code changes effected by these Bills specify that the term "objective standards" means standards that involve "no personal or subjective judgment by a public official," and are "uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official before submittal of an application." See Government Code Sections § 65913.4(a)(5) (part of SB 35) and 66300(a)(7) (part of SB 330).

I submit that keeping the standards "general", as was proposed by certain Commissioners at our last hearing, is not consistent with these requirements of the Government Code. Standard B.4.11 should be made more specific, along the lines of Palo Alto Municipal Code 18.24.050(c)(2) which is cited in my prior Desk Item.

The draft standard providing that balconies facing existing residential uses on abutting parcels are allowed "when the design is proven to prevent views to the residential use." is clearly subjective. There is no way that an applicant can determine the meaning of the language without conferring with the Community Development Department. Indeed, the proposed standard imposes a burden of proof on the applicant, which is completely antithetical to the objective standard requirements in the Government Code.

Some Commissioners expressed concern that making the balcony privacy requirement more specific would call into question the adequacy of the window standards. If window views onto adjacent residential lots and homes is concerning to the Commission, objective standards should be adopted for them too.

For the above reasons, I submit that Standard B 4-11 is not enforceable, and that the Commission's prior approval of it as an objective standard should be reconsidered. I further

request that our Town Attorney provide a legal opinion concerning compliance of B 4-11 with SB 35 and 330.

Finally, I withdraw my other Desk Item, also dated August 23rd, which contained five points. My questions and comments were resolved satisfactorily through a discussion with Ms. Armer and Mr. Paulson.

Thank you.

Jeffrey Barnett