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May 28, 2019

City of Los Altos City Council Members
City Attorney Christopher Diaz
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022

Submitted @ Los Altos City Council Meeting
May 28, 2019
DATE

Re: Application for Two-Lot Subdivision at 831 Arroyo Road, Los Altos, CA

Dear City Council Members and City Attorney Diaz:

Our firm represents Goldsilverisland Homes, LLC, which submitted application 18-DL-01 ("Application"), a proposed two-lot subdivision at 831 Arroyo Road, Los Altos, CA ("Property"). Specifically, the Application proposes to subdivide an existing 23,433 square foot lot into two parcels: Parcel 1 would be 10,029 square feet and Parcel 2 would be 13,404 square feet, both in compliance with the applicable R1-10 zoning site area requirements. (LAMC § 14.06.040)

This letter responds to the City Council's discussion of the Application on March 26, 2019, April 23, 2019 and May 14, 2019, and to Draft Resolution 2019-07 denying the Application included in the City Council's May 28, 2019 agenda packet ("Draft Resolution"). We appreciate the City Council's consideration of the Application, and for the reasons outlined below, we urge the City Council to approve the Application with Conditions of Approval, including setback requirements and a one-story height limit, voluntarily agreed to by the Applicant on the condition that the City approves the Application.

A. The Applicant Has Volunteered to Accept Compromise Conditions of Approval.

The record reflects that the Applicant has been working with the City to negotiate conditions of approval above and beyond any applicable legal requirements in order to address concerns of neighbors and City Council. Throughout the Planning Commission and City Council's consideration of the Application, the Applicant has been working in good faith to compromise with the City to enable approval of the Application.

As reflected in the most recent May 14, 2019 City Council Staff Report, the Applicant at that time had voluntarily agreed to a condition requiring the newly created corner lot (Parcel 2) to

adhere to requirements including a setback of at least 25 feet from the exterior side property line adjacent to Arroyo Road. This is consistent with Planning Commission's recommendation to approve the Application on February 7, 2019, and reflects a compromise above and beyond the R1-10 zoning requirement for a 20-foot side setback. (LAMC § 14.06.080)

After the City Council voted 3-2 on May 14, 2019 to direct Staff to draft a resolution denying subdivision application 18-DL-01 (831 Arroyo Road), the Applicant continued working on compromise solutions that would provide a pathway for City approval of the Application. On May 17, 2019, the Applicant emailed the Mayor and City Council to offer that on the condition the City Council agrees to reconsider and approve the Application, the Applicant is willing to voluntarily agree to a condition of approval that would limit future residential buildings on the Property to a single story. This requirement is also a compromise above and beyond the R1-10 maximum height of two stories or 27 feet from the natural grade (except for flag lots and lot coverage above 30%, where the maximum height is 20 feet). (LAMC § 14.06.090)

Further, on May 23, 2019, the Applicant emailed the Mayor to communicate that on the condition the City Council reconsiders and approves the Application, the Applicant is willing to voluntarily agree to the following conditions:

- 1) Limit building height to one story for both Parcel 1 and Parcel 2;
- 2) Comply with neighborhood CC&R 40 foot setbacks from the street line for both Parcel 1 and Parcel 2; and
- 3) The new home at parcel 2 will face Arroyo Road.

The Applicant also stated he further agrees to a recorded deed restriction documenting the above requirements for both Parcel 1 and Parcel 2. These requirements are all above and beyond any requirements included in the City's General Plan, Subdivision Code, or Zoning Code, and are intended to address concerns regarding neighborhood compatibility expressed by neighbors and City Council members.

B. The Draft Resolution's Rationale for Denial of the Application is Inconsistent with the Record and is Factually Inaccurate.

The Draft Resolution includes Findings that purport to justify denial of the Application because "[t]he Application is inconsistent with the existing pattern or orderly development achieved in the surrounding Montebello Acres neighborhood and would fail to retain the very distinctive character of this long-established neighborhood." The Findings further state "the Application would create lots that are substantially smaller than, and out of character with, the surrounding Montebello Acres neighborhood..." and "the Application's proposed corner lot [] is substantially smaller than the interior lots in the surrounding neighborhood." These statements are inconsistent with the record and factually inaccurate.

The record clearly identifies prior subdivisions that have resulted in parcels of similar size. For example, the April 23, 2019 City Council Agenda Report Summary contains a different draft

version of Resolution 2019-17 approving the Application, with Findings stating that the Application “maintain[s] a similar layout to two previously approved subdivisions along Mountain View Avenue to the north and maintain[s] a compatible and orderly development to the Montebello Acres subdivision.” Further, the April 23, 2019 Agenda Report Summary explains:

Residential properties on the eastern end of Arroyo Avenue and along Mountain View Avenue are diverse in their sizes and shapes, with lots ranging from 10,101 to 38,061 square feet in size. The subdivision is proposing a similar layout to two previously approved subdivisions along Mountain View Avenue to the north. The two-lot subdivision at the corner of Raymundo Avenue and Mountain View Avenue occurred in April 1962, and it created an interior lot of 10,454 square feet and a corner lot of 19,819 square feet. The two-lot subdivision at the corner of Vista Grande Avenue and Mountain View Avenue occurred in June 1981, and it created an interior lot of 10,101 square feet and a corner lot of 13,253 square feet. Therefore, the project complies with all applicable R1-10 District site development standards and conforms to the Housing Element policy related to subdivisions maintaining an orderly and compatible development pattern.

(April 23, 2019 Agenda Report Summary, p. 4)

Our research confirms that a third parcel located within Montebello Acres (although in Mountain View) at the corner of Mountain View Avenue and Vista Grand Avenue was split in circa 1979/1980 to create two parcels: Parcel “A” at 9,166 square feet, and Parcel “B” at 8,154 square feet. (See [Attachment 1](#)).

As documented in the summary, the Planning Commission recommended adoption of a resolution approving the Application as recommended by the Planning Commission, with no identified disadvantages and identified advantages including “The subdivision would create two new parcels that meet all applicable site standards for the R1-10 District and maintain an orderly and compatible development pattern on Mountain View Avenue and Arroyo Road.”

Our research also confirms that the Draft Resolution’s Findings are factually inaccurate, and in fact, corner lots in the Montebello Acres subdivision are not consistently larger than neighboring and interior lots. The attached Assessor’s Parcel Map for Montebello Acres shows that except for three lots (#20, 80, and 96), corner lots are consistently the same size as other parcels within the subdivision. (See [Attachment 2](#))

The Draft Resolution’s Findings assert that the Application “departs from the recognized City planning practice for the area for corner lots in a neighborhood to comprise a substantially larger area than interior lots,” noting that “the Los Altos Zoning Code provisions for the subject zoning [] establish[] a greater minimum lot size for corner lots, than for interior lots (See Los Altos Municipal Code Section 14.06.040).” To clarify, the referenced section of the Zoning Ordinance states in full:

The minimum site area shall be ten thousand (10,000) square feet, except that on corner lots the minimum site area shall be eleven thousand (11,000) square feet and on flag lots the minimum site area shall be fifteen thousand (15,000) square feet.

As noted above, the Application proposes that Parcel 1 would be 10,029 square feet and Parcel 2, the corner lot, would be 13,404 square feet. This means that the corner lot exceeds the minimum lot size by more than 2,000 square feet or 22%, and that Parcel 2 is 118% of the required lot size for a corner lot under the R1-10 zoning requirements. Clearly, the Application complies with – and even meaningfully exceeds – the City policy regarding corner lot size, as codified in the Zoning Ordinance.

Because the Application is in fact consistent with all applicable City General Plan, Zoning Ordinance, and Subdivision Ordinance requirements, as thoroughly documented in the record, the Draft Resolution's Findings are not supported by substantial evidence and we respectfully request that the City Council adopt a resolution approving the Project with conditions as outlined above.

C. The Record Lacks Evidence to Support Findings Required by the Housing Accountability Act.

Finally, we urge the City Council to approve the Application because the record does not contain evidence to support findings required to deny the Application under California's Housing Accountability Act ("HAA"). (Gov. Code § 65589.5) The HAA mandates the development of housing to meet the regional housing needs of all segments of the population. The HAA provides that where a residential housing development is consistent with a local agency's zoning ordinance and planning documents, a local agency cannot deny the application. The City would only have two legal bases to deny the Application under the HAA:

1. The Application would have a specific, adverse impact upon public health or safety, based on substantial evidence in the record unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
2. There is no feasible method to mitigate or avoid this impact satisfactorily other than denying the project or approval of the project upon the condition that it be developed at a lower density.

(Gov. Code § 65589.5(j))

According to the State Legislature, this policy was established because the lack of housing "is a critical problem that threatens the economic, environmental, and social quality of life in California," and "[t]he excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of

housing.” (Gov. Code § 65589.5(a); *Sequoyah Hills Homeowners Ass’n v. City of Oakland* (1993) 23 Cal.App.4th 704, 715-16)

Notably, the HAA applies not only to affordable housing projects, but also to market-rate residential developments including this Application. *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1072-78 (concluding that denial of 8-lot subdivision map application violated HAA). Under the HAA, applicants may bring legal actions to enforce its requirements. *Id.*, see also, Second Amended Petition for Writ of Administrative Mandamus, *Trauss v. City of Lafayette* (Sup. Ct. Contra Costa Cnty, Case No. MSN15-2077) (March 15, 2016). The HAA “imposes ‘a substantial limitation’ on the government’s discretion to deny a permit.” *N. Pacific, LLC v. City of Pacifica* (N.D. Cal. 2002) 234 F. Supp. 2d 1053, 1059, aff’d sub nom. *N. Pacific LLC v. City of Pacifica* (9th Cir. 2008) 526 F.3d 478 (quoting *Wedges/Ledges of Calif., Inc. v. City of Phoenix, Ariz.* (1994) 24 F.3d 56, 63).

The record of the City’s consideration of the Application lacks substantial evidence to support the heavy burden to make the public health and safety findings required by the HAA if the City Council denies the Application. This is especially true because the Application is entirely consistent with applicable General Plan and R1-10 Zoning requirements, as detailed at length in previous Planning Commission and City Council Agenda Reports. Most notably, the February 7, 2019 Planning Commission Agenda Report contains an extensive discussion of General Plan and Zoning Compliance, stating “The subdivision conforms with all applicable goals, policies and programs in the Los Altos General Plan and complies with all applicable requirements in the City’s Zoning Ordinance.” (See Attachment 3, pp 2 - 4).

Likewise, the April 23, 2019 City Council Agenda Report Summary contains a different draft version of Resolution 2019-17 approving the Application, with Findings expressly stating that “[t]he Project conforms with all applicable goals, policies and programs in the Los Altos General Plan... The new lots also meet all applicable site standards for the R1-10 District...” The same Agenda Report Summary specifically states that a disadvantage of denying the application is that “[t]he City would lose the potential to subdivide into two conforming lots and create two new single family dwelling units.” As such, the Application clearly provides an opportunity for the City to facilitate development of an additional unit, a critically important outcome in the midst of California’s housing crisis.

The Draft Resolution’s Findings that purport to support denial of the Application are not related to unavoidable adverse impacts to public health or safety nor are they based on any inconsistency with applicable plans. Record evidence directly contradicts the broad statements made in the Draft Resolution’s Findings. As such, the record does not contain substantial evidence to support findings that would be required by the HAA to deny the Application.

As detailed above, the Applicant has been and remains committed to working with the City to support approval of the Application. However, we note that the Applicant will also take actions necessary to ensure compliance with State law, including litigation, if necessary, and will seek an award of damages, attorney’s fees, and costs to which the Applicant would be entitled under

applicable law, including recovery of the amount that the Applicant has paid the City to date for costs associated with processing of the Application. We further note that any indemnity provisions would not apply to the City's denial of the Application, and therefore the City would not be reimbursed for any of its legal costs in the event of litigation. The Applicant may also pursue potential violations of additional laws, such as the U.S. and California constitutions, California's Housing Element Law, the State Planning and Zoning Law, the Ralph M. Brown Act, and a regulatory takings claim.

* * *

In conclusion, in light of the information outlined above, we urge the City Council to approve the Application with the conditions outlined in this letter. As you know, the Applicant has worked diligently with City staff and officials on processing of the Application, and has offered to comply with conditions of approval to address community concerns while also being able to develop residential parcels that help the City meet California's critical need for new housing. Our client looks forward to continuing to work constructively with the City following approval of the Application.

Thank you for taking time to read this letter. Please note that we reserve the right to comment further on the City Council's consideration of the Application. If you have any questions or need additional information, please feel free to contact me or Mr. Ying-Min Li, President of Goldsilverisland Homes, LLC, at (408) 896-3369 or yingminli@hotmail.com.

Very truly yours,

MONCHAMP MELDRUM LLP

Paula C. Kirlin

Paula C. Kirlin, Partner

CC: Ying-Min Li, President, Goldsilverisland Homes, LLC

OWNER'S CERTIFICATE

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID PROPERTY AND WE CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE BLUE BORDER LINE.

PARCEL MAP

BEING A PORTION OF LOT 90 AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF SUBDIVISION OF MONTEBELLO ACRES" RECORDED IN BOOK "X" OF MAPS, AT PAGES 1, 2 AND 3, SANTA CLARA COUNTY RECORDS.

ATTACHMENT 1

CITY OF MOUNTAIN VIEW, CALIFORNIA

CONSISTING OF ONE SHEET SCALE: 1" = 30' DATE: JULY, 1976



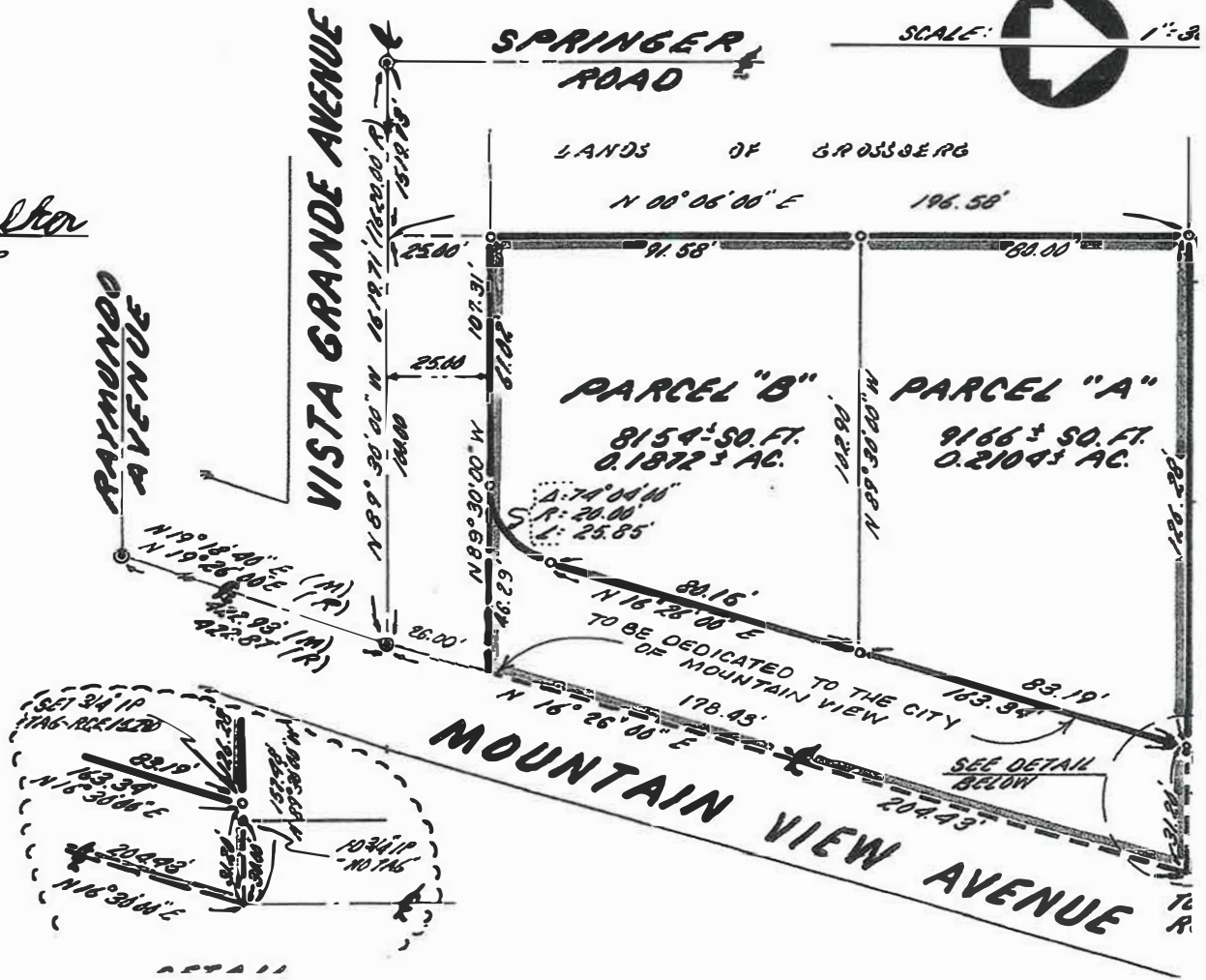
SANDIS AND ASSOCIATES
ENGINEERS, SURVEYORS AND PLANNERS
812 CASTRO STREET
MOUNTAIN VIEW, CALIFORNIA 94041
PHONE: (415) 969-6900



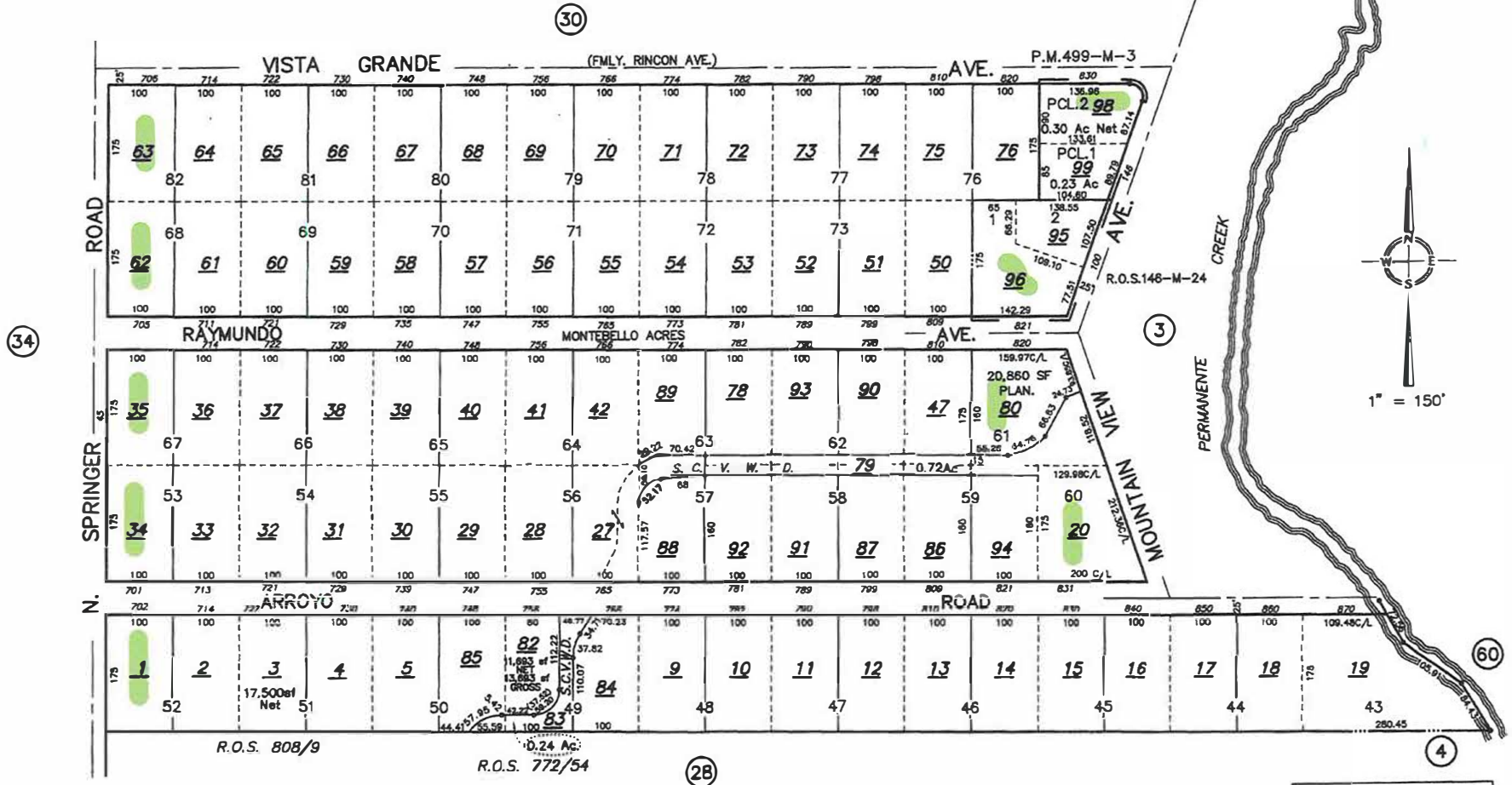
AS OWNERS:

William P. Walker
WILLIAM P. WALKER

Effie Lee Walker
EFFIE LEE WALKER



SEC.28 TP.6S. R.2W. M.D.M.



LAWRENCE E. STONE — ASSESSOR
 Cadastral map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2007-2008