

February 25, 2020

VIA E-MAIL AND HAND DELIVERY

Jan Pepper, Mayor
and Members of the City Council
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

Re: 831 Arroyo Drive: Vesting Tentative Map to subdivide a property into two lots in the R1-10 Zone District; February 25, 2020 City Council Hearing, Agenda Item No. 6.

Dear Mayor Pepper and Members of the City Council:

We write on behalf of our client, Goldsilverisland Homes, LLC, in regard to the above-referenced minor lot split (the “Subdivision”). We urge the City Council to approve the Subdivision in accordance with Staff’s recommendation, subject to a few minor modifications discussed below. Any other action, including a continuance of the hearing or imposition of conditions to restrict future building heights or add increased setbacks, would subject the City to further legal liability and damages.

The Subdivision proposes to divide 831 Arroyo Road into two conforming parcels—an interior lot of 10,029 square feet and a corner lot of 13,116 square feet. As Staff correctly notes, “[t]he project conforms with all applicable goals, policies and programs in the Los Altos General Plan and the new lots meet the R1-10 Zone District’s minimum lot size requirements of 10,000 square feet for an interior lot and 11,000 square feet for a corner lot.” (Staff Report, p. 5.) Staff also correctly notes that there are no disadvantages to approving the Subdivision and no advantages to denying it. (*Id.*)

The Subdivision is a residential project on residentially designated land within the density range specified for the site by the General Plan. It is consistent with the General Plan and any purported findings to the contrary would not be supported by substantial evidence. Because the Subdivision comports with all objective planning, zoning, and subdivision standards that apply to the Subdivision (*e.g.*, lot size, depth, width, etc.), the State Housing Accountability Act (“HAA”), also known as the Anti-NIMBY Law, requires the City Council to approve the Subdivision. (Gov. Code § 65589.5.)

When it denied the Subdivision on May 28, 2019, the City Council violated the HAA. The lawsuit filed by Goldsilver in August 2019 challenges the City’s action on this ground as well as

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the City's failure to recognize that the Subdivision has been approved as a matter of law under the Subdivision Map Act and/or the Permit Streamlining Act due to the City Council's failure to timely act on it. (*Goldsilverisland Homes, LLC v. City of Los Altos*, Santa Clara County Superior Court Case No. 19CV352667 [the "Litigation"].)

In response to the February 24, 2020 letter from Bill Parkin on behalf of members of the Montebello Acres Neighborhood, we write to note that Parcel 2 conforms with the minimum lot depth and width requirements, as previously confirmed by City Staff on multiple occasions. On a corner lot, the front lot line is "the shortest dimension of the lot fronting the street." (Los Altos Municipal Code ["LAMC"] § 14.02.070.) The dimension of Parcel 2 along Mountain View Avenue is 95.51 feet prior to the street dedication; the dimension of Parcel 2 along Arroyo Road is 164.71 feet. Thus, the legal frontage of Parcel 2 is Mountain View Avenue.

In his letter, Mr. Parkin alleges that the width of Parcel 2 does not meet the minimum 90 foot site width required by the City Code. He claims that the lot width is approximately 60 feet, after eliminating the 288 square foot triangular portion of Parcel 2 that Goldsilver agreed to dedicate to the City for traffic and pedestrian safety purposes. Mr. Parkin is incorrect. LAMC Section 14.02.070 plainly defines "site width" as "the horizontal distance between side lot lines, measured at right angles to the site depth *at a point midway between the front and rear lot lines.*" (Emphasis added.) When measured at the correct, Code-specified point, the lot width is 90 feet as correctly noted by Staff in its February 7, 2019 Staff Report.

In addition to measuring lot width in a manner that does not comport with local law, Mr. Mr. Parkin purports to measure lot width in a manner that does not comport with State law either. Under the HAA, the City must determine whether the Subdivision conforms with lot width, depth, and other objective standards at the time the application is complete. (Gov. Code § 65589.5(j)(2).) The Subdivision application was deemed complete on December 21, 2018. Goldsilver offered to dedicate a portion of its land to the City in response to concerns raised at the March 26, 2019 City Council meeting, months after the application was deemed complete. Thus, legally the dedicated land cannot be used as a basis to state that the Subdivision does not conform with objective lot width standards.¹

On February 11, 2020, the City and Goldsilver entered into a Settlement Agreement (the "Agreement") whereby the City Council agreed to conduct another noticed public hearing (its fifth to date) on the Subdivision. Per the terms of the Agreement, if the Subdivision is approved based on the Staff-recommended conditions and findings, Goldsilver agrees to dismiss the Litigation. (Agreement, Section II.A.) If the City Council takes any other action, the Agreement is null and

¹ Parcel 2 also conforms with the minimum lot depth requirements. The required minimum lot depth is 100 feet. (LAMC § 14.06.050.) The depth of Parcel 2, measured at the midpoint of the front lot line to the midpoint of the rear lot line, is 148.93 feet. (LAMC § 14.02.070.)

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void, and the parties proceed with a previously agreed-upon March 26, 2020 hearing date before the court on the pending Litigation. (Agreement, Section III.D.)

We also wish to point out that any attempt to impose conditions on the Subdivision related to future building heights and/or increased building setbacks would be unlawful. In response to neighbors' concerns, Goldsilver has already agreed that the new house on Parcel 2 will face Arroyo Road and be setback five feet more than is required by the LAMC. (*Compare* Condition 2.b [new house on Parcel 2 shall have a setback of 25 feet from the exterior side property line] with LAMC § 14.06.080.A [requiring a setback of 20 feet from the exterior side property line].) Moreover, the proposed subdivision of land is before the Council, not the design of the future homes. The City Code delegates design review approval authority to the Planning Director or the Design Review Commission, depending on the nature of the proposed development. (Los Altos Municipal Code ["LAMC"] §§ 14.76.030, 14.76.040.) The City Council would be violating its own Code by purporting to impose design review conditions on the Subdivision.

Further, the City can only lawfully impose a condition if there is a reasonable relationship (or nexus) to the impacts of the Subdivision. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825 [condition requiring easement for beach access overturned for lacking a logical link to alleged visual impacts of the project]; *accord, Surfside Colony, Ltd. v. California Coastal Commission* (1991) 226 Cal.App.3d 1260.) Conditions related to building heights and setbacks lack a nexus to the impacts of the Subdivision and thus would be void on that basis. (*See also* LAMC § 13.12.050 [conditions must be tied to established standards related to subdivisions].)

By restricting future homes to a single-story or requiring added setbacks contrary to the applicable zoning standards, the City Council would also be liable for discriminatory spot zoning. (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954.) This is especially true given that prior subdivisions were approved for almost every parcel of land in the neighborhood except for the subject property, including for multiple similarly-sized corner lots along Mountain View Avenue. Such action would expose the City to damages and attorneys' fees for violating Goldsilver's equal protection and due process rights as well as for an unlawful taking of the property. Imposing such conditions on the Subdivision would also violate the uniformity provision of the State Planning & Zoning Law as well as the City's own Code provisions related to the establishment of a single-story overlay district. (Gov. Code § 65852; LAMC, Chapter 14.13.)

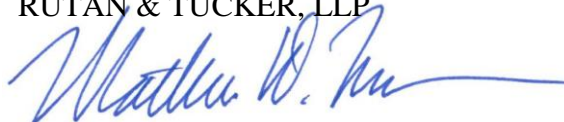
In closing, we urge the City Council to approve the Subdivision in accordance with the Staff-recommended findings and conditions, subject to two modifications. First, in accordance with Government Code Section 66473.5, the City Council should adopt the May 14, 2019 Findings attached as Exhibit B to the Agreement. Second, it should amend Condition 1 to reference the February 2020 version of the map, which replaces the April 2019 version currently referenced in the condition.

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Thank you for your consideration of our client's views on this matter. Representatives of Goldsilver, including the undersigned, will be in attendance at your hearing tonight on this matter. In the meantime, please do not hesitate to contact me with any questions regarding this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

MDF:cm

cc: Ying-Min Li
Dennis Hawkins, City Clerk
Jolie Houston, City Attorney

February 24, 2020

VIA EMAIL

The Honorable Jan Pepper
Los Altos City Council
Los Altos City Hall
1 North San Antonio Road,
Los Altos, CA 94022
council@losaltosca.gov

Re: February 25, 2020 Agenda; Item #6
831 Arroyo Road; Vesting Tentative Map for two lots

Dear Mayor Pepper and Members of the Council:

This law firm has just been retained by members of the Montebello Acres Neighborhood with respect to the above referenced matter. We have reviewed all the Staff Reports to the Planning Commission and the Council, the letter from the applicant's counsel, Monchamp Meldrum LLP, and the proposed resolution that is before you for consideration. We have concluded that despite the litigation that has been filed, and the settlement agreement the City has entered into with the applicant, that the Council still cannot approve the subdivision because of the project's inconsistency with the Los Altos Municipal Code.

Monchamp Meldrum's letter of May 28, 2019 asserts, in part, that the Council cannot deny the subdivision because the record lacks evidence to support findings required by the Housing Accountability Act ("HAA"). (Government Code § 65589.5.) The basis of the applicant's argument is that "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." This might be true if the subdivision complied with the Los Altos Municipal Coder's requirements for new lots in the R1-10 Zoning District. However, the proposed lots do not meet all of the applicable site standards.

The R1-10 Zoning district requires the following site dimensions:

The minimum site *frontage and width shall be eighty (80) feet* and the *minimum site depth shall be one hundred (100) feet*, except that the *minimum site width for a corner lot shall be ninety (90) feet* and the minimum site frontage on a cul-de-sac turnaround shall be sixty (60) feet. (LAMC § 14.06.050, subd. A (emphasis added).)

“Site depth” means the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line, or to the most distant point on any other lot line where there is no rear lot line. (LAMC § 14.02.070.)

We understand that the Planning Commission recommended that Parcel 2 be designed to face Arroyo Road to “help it tie better to the development pattern of the street.” (Staff Report, p. 4.) Therefore, for purposes of this analysis, we will give the project the benefit of the doubt and analyze the site dimensions of Parcel 2 with the lot frontage on Arroyo Road, and also with the frontage on Mountain View Avenue.

Frontage on Arroyo Road: If the frontage is considered to be Arroyo Road, the lot complies with the frontage requirement of 80 feet as it appears the frontage would be 129.30 feet. However, the depth of the lot is only 90 feet from Arroyo Road, not 100 feet as required by Los Altos Municipal Code section 14.06.050, subd. A. Therefore, if Arroyo Road is assumed to be the frontage, the project does not comply with the standards for new lots in the R1-10 Zoning District.

Frontage on Mountain View Avenue: If the frontage is on Mountain View Avenue, the lot depth exceeds 100 feet as required by the Los Altos Municipal Code. However, the lot frontage at 60.10 feet is less than 80 feet as required by section 14.06.050, subd. A. As noted by the Staff Report, the measurement along Mountain View for the driveway setback for Parcel 2 is “at least 25 feet from the edge of the 25-foot radius corner at the intersection...” (Staff Report, p. 4.) Using the same logic, the total frontage for Parcel 2 along Mountain View Avenue is 60.10 feet as shown on the Vesting Tentative Map. Therefore, if Mountain View Avenue is assumed to be the frontage, the project does not comply with the standards for new lots in the R1-10 Zoning District.

Section 14.06.050, subd. A, envisions that corner lots have a shorter frontage (80 feet) than width (90 Feet), perhaps due to the nature of corner lots. However, the angled shape of Parcel 2 leading to the corner of Mountain View Avenue and Arroyo Road, along with the dedication of that corner to the City, renders the frontage along Mountain View Avenue nonconforming.

Therefore, the City Council cannot make the findings B and C in the proposed resolution for the project because, contrary to the statements in the proposed resolution, Parcel 2 does *not* “meet all applicable site standards for the R1-10 District, including width, depth and frontage.”

For the foregoing reasons, we respectfully request that the City Council deny the proposed Vesting Tentative Map. Thank you for your consideration of these comments.

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Very truly yours,
WITTMER PARKIN LLP



William P. Parkin

Encl.

cc: City Clerk (administration@losaltosca.gov)
Community Development Department (community@losaltosca.gov)
Jolie Houston, Esq. (jolie.houston@berliner.com)
Client

From: [Chris Jordan](#)
To: [Jolie Houston](#); [Jon Biggs](#)
Subject: Fwd: Map Act
Date: Monday, February 24, 2020 10:13:28 AM

Sent from my iPhone

Begin forwarded message:

From: Roberta Phillips <[REDACTED]>
Date: February 24, 2020 at 9:57:22 AM PST
To: City Council <council@losaltosca.gov>
Subject: Fwd: Map Act

Dear Council Members

I have been looking at the Map Act for California. It looks like the subdivision at 831 Arroyo is contrary to the requirement that a greater number of parcels will be created than currently exists.

California Subdivision Map Act (Part 1) - Andy Sirkin

(d) A lot line adjustment between four or *fewer existing* adjoining parcels, where the land taken from one *parcel* is added to an adjoining *parcel*, and where a greater number of *parcels than* originally existed is not thereby *created*...

Please consider this when you discuss this item # 6 at the Council meeting on Feb. 24th 2020

Sincerely

Roberta Phillips

[REDACTED]

----- Forwarded message -----

From: Roberta Phillips <[REDACTED]>
Date: Mon, Feb 24, 2020 at 9:48 AM
Subject: Map Act

To: Roberta Phillips <[REDACTED]>

Search Results

Web results

[California Subdivision Map Act \(Part 1\) - Andy Sirkin](#)

[\(d\) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created...](#)

February 21, 2020

Project site 831 Arroyo Rd.
public meeting 2/25/20

comments from The public to Planning Division
City of Los Altos

I reside near the neighborhood defined by

Arroyo Rd., Raymundo & Vista Grande Sts.,
close enough to be located in the radius
within which the City must notify property owners
of pending land use changes. Thank you
for the opportunity to comment.

The lot sizes throughout the 3-street neighborhood
remain, I would guess, unchanged from those
as originally subdivided.

The generous lot sizes are the foundation
upon which improvements to the land - lovely
homes, separated by space - have been made,
resulting in the unique beauty and serenity
of the mini-neighborhood.

To subdivide subject property will be to
set a precedent which if, parcel by parcel,
be implemented will be to change forever
the character there.

Please don't approve the subdivision of
831 Arroyo Rd.

Respectfully submitted,
Elaine Evans
Elaine Evans

[REDACTED]
Mtn. View 94040

