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Via E-mail (council@losaltosca.gov) and personal delivery

Los Altos City Council
1 North San Antonio Road
Los Altos, California 94022

Re: 40 Main Street Appeal

Dear Mayor Lee Eng, Vice Mayor Pepper, and Councilmembers Bruins, Enander and Fligor:

I. Background on SB 35, the Application, and the Appeal

We represent 40 Main Street Offices, LLC (the "Applicant") in connection with the application submitted November 8, 2018 ("Application") for a streamlined ministerial permit for the 40 Main Street Project ("Project") located at 40 Main Street ("Property"), pursuant to Senate Bill 35 of 2017, Ch. 366, Stats. 2017 ("SB 35").

The Applicant has been trying for more than five years to obtain discretionary permits from the City of Los Altos ("City") to build a three-story building on the Property. The Property is a prime infill location which the City's plans have long identified as appropriate for commercial, housing and mixed-used projects of the scale and density proposed. The Applicant has not sought any change to the General Plan, nor any zoning changes, to build anything other than the permissible scale and density that the City's plans call for at this location. And yet, for years, the efforts to build a three-story building have been stalled and rejected. First, Staff for years characterized the application as "incomplete," and only after several years of effort to achieve a "completeness" determination, the prior application was then subjected the project to further delays and required to undergo additional reviews and standards before it could proceed to be considered on its merits. After finally meeting the daunting standards to be allowed to be considered on its merits, the City's Planning and Transportation Commission then repeatedly rejected the proposed three-story

building on the basis of aesthetic and subjective preferences about the building's design, materials and paint colors.[1]

It was only after years of efforts to use the City's discretionary procedures that the Applicant invoked its right to proceed under the ministerial permit process now required by State law for qualifying housing and mixed-use projects. This is exactly the type of situation for which SB 35 is intended.

There is a growing realization among legal scholars that local governments' excessive discretionary review of development projects is a key cause of California's housing supply crisis.[2] In 2017, after finding that the state's "housing supply and affordability crisis" had reached "historic proportions . . . hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives," the State Legislature enacted a package of legislation intended to "meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects."[3] As one land use scholar puts it, State law now "advances an important principle: that local governments' prerogative to use cumbersome, discretionary development procedures is conditional on their producing the amount of new housing—including market-rate housing—that the state expects of them."[4] For these reasons, in cities such as Los Altos which have failed for many years to meet their state-mandated housing targets, applicants for qualifying mixed-use and residential projects can elect to invoke the streamlined ministerial process provided by SB 35.

The price applicants pay for an SB 35 process is high. Applicants are required to commit to pay prevailing wages to construction workers, include low-income affordable housing units in their

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[1] A fuller description of the Applicant's previous efforts to obtain approval for a three-story building, and related correspondence, are described in Part I of our February 19, 2019 Letter and in Exhibit 6 thereto.

[2] *See, e.g.*, Jennifer Hernandez *et al.*, In the Name of the Environment (2015); Jennifer Hernandez, *et al.*, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 HASTING ENVTL. L.J. 21, 21-22 (2018); Moira O'Neill, *et al.*, Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process (Berkeley Law Center for Law, Energy & the Environment; Berkeley Institute of Urban & Regional Development, Columbia Graduate School of Architecture, Planning & Preservation, February 2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf (in major jurisdictions, "even if . . . developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit," which "triggers CEQA review of these projects"; "Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects"); Moira O'Neill *et al.*, Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates, 25 HASTING ENVTL. L. J. 1, 73-77 (2019); Elmendorf, Christopher S., Beyond the Double Veto: Land Use Plans As Preemptive Intergovernmental Contracts (February 9, 2019). Available at SSRN: https://ssrn.com/abstract=3256857, at pp. 33-37 (noting that especially before 2017, local jurisdictions were largely free to ignore their own plans for meeting regional housing goals, and could always use CEQA to kill housing approvals). These and other referenced materials are included as Exhibit 9 to our February 19, 2019 Letter.

[3] Gov. Code § 65589.5(a)(2).

[4] Elmendorf, *supra* at note 2, at p. 46.

projects, and meet numerous other qualifying criteria. In exchange, applicants do not get access to any greater density, height, or scale than they are otherwise entitled to under applicable state and local laws. But qualifying SB 35 projects are entitled to several important deviations from the typical discretionary process. For one thing, instead of rejecting applications on the basis of subjective considerations, cities now can only require SB 35 projects to comply with *objective* standards, specifically "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 or proponent and the public official before submittal."[5] Second, in the words of the Appeal Staff Report[6], the law "establishes strict deadlines for project evaluation and approval."[7] A city must, within 60 days of submittal, provide "written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard."[8] *If a city does not do so, "the development shall be deemed to satisfy the objective planning standards."*[9] Third, as with most ministerial applications, review occurs at the staff level, with any design review or public oversight by the city council permitted only within 90 days of application submittal.[10] Even then, any review by the council is limited to "objective" considerations, and must be "strictly focused on assessing compliance with criteria required for streamlined projects," with the council prohibited from taking any action to "inhibit, chill, or preclude the ministerial approval provided by" State law.[11]

As set forth below, there is no legitimate question about whether the City validly denied the Application within the applicable timeline. The City was required to identify, in writing, at least *one*, specifically named, *objective* standard with which the Project conflicts, and an explanation of why the Project conflicts with that standard, within 60 days of submittal. The only written correspondence the Applicant received from the City within this timeline is a letter dated December 7 ("December 7 Determination" or "Determination"). The Determination does not come close to meeting the statutory requirement, and the Appeal Staff Report does not make any serious argument that it did. In addition, the Appeal Staff Report does not even disclose that the California Department of Housing & Community Development ("HCD"), the state entity delegated with the legal authority to interpret SB 35's requirements,[12] has issued a memorandum in which it specifically concludes that the determinations the City made in the December 7 Determination do *not* meet SB 35's requirements. See Exhibit 1 hereto. This is the beginning and the end of the legal issue before the Council. The Appeal should be granted for this reason alone.

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[5] Gov. Code § 65913.4(a)(5).
[6] 40 Main Street Appeal Agenda Report Summary, available at: https://los-altos.granicus.com/MetaViewer.php?view_id=7&event_id=343&meta_id=58566, last accessed April 4, 2019.
[7] *Id.*, at p. 4.
[8] Gov. Code § 65913.4(b)(1)(A); *see also* HCD Streamlined Ministerial Approval Process Guidelines ("Guidelines"), § 301(a)(3). A different timeline applies to projects with more than 150 residential units.
[9] Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).
[10] *Id.*
[11] Gov. Code § 65913.4(c).
[12] Gov. Code § 65913.4(j).

To date, staff's action on the Application strongly suggest that the City may be using this Council process to evade the requirements of State law. To begin with, the City has insisted that the Applicant must appeal the City's Determination to the Council, despite the fact that the City's own municipal code states that there is no appeal from ministerial acts,[13] and despite the fact that the Application is for a project that is "ministerial" as a matter of state law.[14] Even when the City's appeal process *does* apply, the municipal code states that "no public hearing shall be required unless the determination or decision was made in connection with a proceeding which required a public hearing."[15] Here, the City staff's Determination to deny the SB 35 application was not made in connection with a proceeding which required a public hearing, and yet the City has required a public hearing before the Council regardless. (We asked the City's counsel why the City was requiring a public hearing in contradiction to the City's own municipal code, and counsel's response does not respond to this issue. See Exhibit 2 hereto.) Finally, rather than defending the Determination Staff actually made on December 7, the Staff Report attempts to provide *new reasons*, none of which were validly raised within 60 days of application submittal, why the *Council* could deny the Project long after the statutory deadline to do so has passed.

In total, this strongly suggests that the City views this hearing and appeal not as a valid mechanism to consider the propriety of Staff's action, but rather as an opportunity to conduct public discretionary review over the Project and the Application. State law forbids this approach. Again, SB 35 provides that any public oversight over an SB 35 application must be conducted within 90 days of the application submission, and further provides that such public oversight must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and further provides that such "public oversight . . . shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section."[16] The time for any such public oversight has long since expired, and nothing in the Appeal Staff Report or the hearing notice sent to the public indicates that the scope of the Council's review will be strictly limited in the manner required by State law.

For the reasons set forth below, we respectfully ask that the Council comply with State law and grant the Applicant's appeal.

II. The City Did Not, Within 60 Days of the Submittal, Identify any Objective Planning Standards with Which the Project Conflicts, and Therefore the Project Is Deemed to Comply with all Objective Standards as a Matter of State Law.

As set forth *supra*, if a city believes that an SB 35 application conflicts with any applicable objective standards, the city is required to provide, within 60 days of application submittal,

[13] Los Altos Municipal Code ("LAMC") § 1.12.020.
[14] Gov. Code § 65913.4(a).
[15] LAMC § 1.12.060.
[16] Gov. Code § 65913.4(c).

"written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard."[17] If a city does not do so, "the development shall be deemed to satisfy the objective planning standards."[18]

The December 7 Determination is the only written response the City provided to the Applicant within the applicable 60-day statutory period. This document did not identify ***any*** objective standard with which the Project conflicts. For this reason, and this reason alone, the City's denial of the Application violated State law and the Project is now deemed to comply with the applicable objective standards. This is the central issue in this Appeal, and is the primary reason (although certainly not the only reason) that the City violated State law when it denied the Application.

It is surprising that the Appeal Staff Report essentially ignores this central issue. The Appeal Staff Report does not even try to maintain that the December 7 Determination identified any objective planning standard with which the Project conflicts, and neither does the Appeal Staff Report provide any argument that the City can permissibly reject the Project despite having failed to identify any such standard within the 60-day statutory deadline.

The December 7 Determination stated that the City had completed its "review of the Project" and concluded that the Project did not qualify for SB 35 streamlining for two, and only two, reasons: (1) because the Project supposedly did not provide the minimum required amount of affordable housing, and (2) because the Project supposedly did not meet unspecified objective standards related to parking, specifically that the Project supposedly did not provide "the required number of off-street residential and visitor parking spaces nor adequate access/egress to the proposed off-street parking." These were the only reasons for rejecting the Project that the City provided within the 60-day statutory timeline.

Since then, the City acknowledged in its February 6, 2019 letter that the first of these contentions was erroneous and that the Project does, in fact, meet the applicable SB 35 affordable housing requirement.[19] As for the required number of parking spaces, we explained in our January 10, 2019 Letter why the Project's 18 parking spaces more than satisfy the applicable numeric parking standards, and the Appeal Staff Report no longer contends to the contrary.[20]

This leaves only one remaining contention raised within the 60-day statutory timeline: the bare assertion, without citation to any code section, and without any explanation, that the Project did not provide "adequate access/egress" to parking. But the December 7 Determination does not cite

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[17] Gov. Code § 65913.4(b)(1)(A); *see* Guidelines, § 301(a)(3).
[18] Gov. Code § 65913.4(b)(2); *see also* Guidelines, § 301(b)(2)(C).
[19] *See* Part I of our January 10, 2019 Letter, and Exhibits A and B thereto; see also p. 2 of the City's February 6, 2019 Letter, acknowledging that the December 7 Determination "relied on outdated information," and "acknowled[ing] that, at the time of the Application submittal, a ten percent (10%) affordability requirement was required to be met," since the City failed to submit its annual progress report by the April 1, 2018 statutory deadline.
[20] *See* Part II-A of the January 10 Letter. Pursuant to Los Altos Municipal Code § 14.74.100, no parking spaces are required for the non-residential floor area. For the residential portion of the Project, pursuant to Gov. Code § 65913.4(d)(2), the Project's 18 parking spaces exceed the standard of one parking space per dwelling unit.

any code section governing access and egress – and certainly not any code section with objective language – with which the Project fails to comply. The Determination's reference to "adequate" access and egress is irrelevant to an SB 35 application, since determining "adequacy" is a subjective determination that does not qualify as "objective" under SB 35's definition.[21] This short phrase in the December 7 Determination falls far short of the statutory requirement to document "which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard."[22]

This contention is not based on our legal analysis alone. We asked HCD whether the type of response in the City's Determination was sufficient to comply with SB 35. In Exhibit 1 hereto, HCD responded as follows:

> *1) In light of SB 35's requirement that a locality provide "the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," Government Code § 65913.4(b)(1); see also Guidelines, § 301(a)(3), can a locality deny an SB 35 application by issuing a written statement which claims that the project conflicts with an objective zoning standard, but does not cite the section or sections of the zoning ordinance containing the standard that the project supposedly violates?*
>
> No. Pursuant to Government Code § 65913.4(b)(1), if a local government determines that a proposed development conflicts with any of the objective planning standards, it must provide the development proponent written documentation of <u>which standard or standards</u> the development conflicts with. This would include a specific reference to what the specific objective standard is and a citation to where it can be found. Without this citation, the specific standard is not verifiable and thus would not meet the definition of objective standard pursuant to Government Code § 65913.4 (a)(5).
>
> *2) Can a locality deny a SB 35 application by stating, without citing any code section, that a project does not provide "adequate access/egress to the proposed off-street parking," or by referring to notes written by staff members which state that effects on parking spaces are not "acceptable" and that parking circulation is "inadequate"?*

[21] *See* Gov. Code § 65913.4(a)(5) (city can only apply "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 or proponent and the public official before submittal"); *see also* Guidelines, § 102(p) (same); *see also Honchariw v. County of Stanislaus*, 200 Cal. App. 4th 1066, 1076 (2011) ("suitability" is a "subjective" criteria that is inapplicable when state law only permits application of "objective" standards).

[22] Gov. Code § 65913.4(b)(1)(A).

> No. Pursuant to Government Code § 65913.4 (a)(5) "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Terms like "adequate", "acceptable", and "inadequate" imply a subjective determination if they are not accompanied with reference to the specific requirement not met.
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> *3) If the locality does not provide any written communication to the applicant citing any specific code section that the project violates within the. applicable 60- or 90-day timeline from the date the application is submitted, is the project deemed to satisfy the objective standards?*
>
> Yes. Pursuant to Government Code § 65913.4(b)(2), if the local government fails to provide the required documentation pursuant to Government Code § 65913.4(b)(1), the development shall be deemed to satisfy the objective planning standards.

We provided this HCD memorandum to the City's attorney on March 15, 2019 in the hopes that this might prompt the City to reconsider its position that the City had articulated a permissible basis to deny the Application (see Exhibit 3 hereto). Notably, Staff declined to include to include this March 15, 2019 HCD memorandum in the Staff Report.[23] In a more recent correspondence, HCD has again re-affirmed that the City may not, as the Staff Report suggests, identify new objective standards, and provide new explanations of why the Project conflicts with those standards, for the first time 140 days after the application was submitted (see Exhibit 5 hereto).

The HCD memorandum should end any debate about whether the City permissibly identified any objective standards within the 60-day timeline. It did not. The result is clear. The Project is now deemed to comply with all objective planning standards, and the City must issue a streamlined ministerial permit for the Project pursuant to SB 35.

The Appeal Staff Report suggests that the City's December 7 Determination requested that the Applicant provide additional information that staff considered necessary to evaluate whether the Project complied with the applicable SB 35 objective standards.[24] That is not what the City's December 7 Determination said. The December 7 Determination was accompanied by a separate "Notice of Incomplete Application," which identified application material the City requires for *discretionary applications* such as use permit applications. But the December 7 Determination stated only that this information would be required "*if* . . . [the Applicant] elect[s] to pursue *other* approval/permit avenues for the project that is the subject of its notice" (emphases added).

[23] See also Exhibit 4 hereto, which documents our correspondence with City staff and the City Attorney.
[24] Appeal Staff Report, at pp. 7-8.

Nowhere does the Determination Letter state that any of this material is required in order to facilitate the City's review of whether the Application complied with the applicable SB 35 objective standards. To the contrary, the City stated in the December 7 Determination that even without this material, the City had succeeded in completing its "review of the project" and rendered an assessment of whether the Application met the criteria for streamlined ministerial permitting.

In any case, even if the December 7 Determination *had* stated that the City required this information to assess the Project's compliance with the SB 35 standards, a locality cannot demand that an SB 35 applicant provide all of the information typically required for discretionary applications as a prerequisite to considering an SB 35 application. This question, too, has also been resolved by HCD. In the same memorandum cited above (Exhibit 1 hereto), HCD opined as follows:

> *4) Can a locality deny an SB 35 application on the grounds that the SB 35 application did not include the application material that the locality requires for complete discretionary Design Review and Use Permit applications?*
>
> No. Pursuant to Government Code § 65913.4 (a)(5) the only objective standards that can apply to the project are those external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Discretionary design review would not apply. Specifically, Government Code § 65913.4 (c) states design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects. Design review or public oversight can not in any way inhibit, chill, or preclude the streamlined ministerial approval process.
>
> In addition, the Streamlined Ministerial Permit process is a ministerial process. The requirement to apply for use permits, which are by definition discretionary, would also not apply. As stated in the Department's FAQs, Government Code § 65913.4 specifically exempts developments from the conditional use permit process and they must be approved through a streamlined, ministerial approval process if they satisfy the objective planning standards. Pursuant to the Streamlined Ministerial Approval Guidelines, the locality's process and application requirements shall not in any way inhibit, chill, or preclude the ministerial approval process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects.

The Appeal Staff Report has now, for the first time, more than 140 days after application submittal, provided some explanation of why the City now contends that the Project violated objective

planning standards. These newly articulated bases for denying the Project are simply irrelevant to the SB 35 process. A city may not unilaterally extend the timeline to identify objective standards beyond the mandatory requirements of State law. As a result, the Project is deemed to satisfy SB 35's standards. There is no other reasonable way to read the requirements of State law.

Nonetheless, at Part III, *infra*, we provide substantive responses to each of the points raised in the Appeal Staff Report, explaining why none of these contentions would have had merit even if they had been raised within the applicable timeframe. We do so without in any sense waiving our contention that it is far too late to raise these concerns.

III. Even if the Planning Standards Discussed in the Staff Report Had Been Cited within 60 Days of the Application Submittal, They Still Would Not Have Authorized the City to Reject the Project.

Most of the Appeal Staff Report purports to provide reasons – none of which were cited in the 60-Day Letter – why the City *could have* denied the Application. As set forth *infra*, none of these contentions have merit. Even if they had been cited within the appropriate timeframe, the City would not have been allowed to reject the Project on any of these bases.

A. Two-Thirds Residential Space.

With regard to the Project's compliance with the two-thirds residential requirement for mixed-use projects, we reiterate that the City failed to raise this issue within the 60-day timeframe during which it was required to respond to the Application pursuant to SB 35, and is therefore now barred from raising it *for the first time* in this appeal to City Council. The Application has been legally deemed to comply with this requirement.

Second, even if the City had raised the issue within the required timeframe, staff is relying on an incorrect assumption about the method of calculation. Staff treats the entirety of the subgrade parking levels as non-residential space. But the parking is exclusively for the residential users, and therefore is part of the residential portion of the project. A house does not become a "mixed use" development merely because it includes a parking garage; the garage is part of the home. If residential parking were excluded from the residential portion of the project, it would be very difficult, if not impossible, for any mixed-used project to ever qualify as a two-thirds residential project without also violating the City's requirements to include sufficient parking for residents.

If there were any doubt about this, HCD has resolved it. As HCD states in Exhibit 5, "[t]he parking for the residential user of the property is part of the residential use." This is consistent with the Guidelines, which state that for purposes of calculating the two-thirds ratio, space attributable to residential use includes the "gross square footage of residential space *and related facilities*…"[25] The definition of "related facilities" includes "any and all common area spaces that are included within the physical boundaries of the housing development, including, but not limited to, common

[25] Guidelines § 400(b)(1), emphasis added.

area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and *parking areas that are exclusively available to residential users*, except any portions of the overall development that are specifically commercial space."[26]

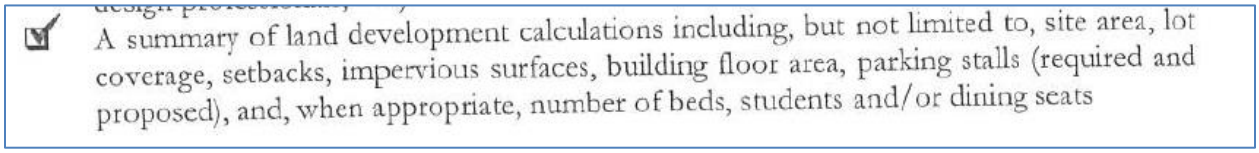
The subgrade parking areas are for the exclusive use of Project residents, and will not be accessible to the commercial space users. When the parking garage is calculated as part of the residential portion of the Project – as it must be – the Project clearly satisfies SB 35's "two-thirds residential" requirement, under any calculation.

B. Density Bonus Law and Ordinance.

The Appeal Staff Report raises issues with the Project's compliance with the State Density Bonus Law and Los Altos' local Density Bonus Ordinance. We first reiterate that the City failed to raise this issue within the 60-day timeframe during which it was required to respond to the Application pursuant to SB 35, and is therefore now barred from raising it as a valid ground on which the Application could be denied. Nonetheless, these objections are meritless.

Staff alleges that the Application did not provide sufficient information to determine the appropriate base density for the Property. The Appeal Staff Report states that in the General Plan's Downtown Commercial District and corresponding CRS/OAD zoning district, the maximum density of the Property is "not identified in maximum units per acre" but rather "based on site conditions such as its width, depth, geometry (shape), or topographic features and compliance with objective zoning standards such as setbacks, height limit, and parking standards."[27]

It is impossible to credit the Staff Report's contention that staff is unable to confirm the base density permissible on a property with all the information at its disposal, much of which it should be independently capable of confirming, such as the "width, depth, geometry (shape), or topographic features" of a site. In fact, in the attachments to the December 7 Determination Letter, the City indicated that the pertinent information *was* sufficiently included in the Application materials.


☑ A summary of land development calculations including, but not limited to, site area, lot coverage, setbacks, impervious surfaces, building floor area, parking stalls (required and proposed), and, when appropriate, number of beds, students and/or dining seats

Staff also suggests that an SB 35 Application is only intended to make use of the *State* Density Bonus Law, but cannot make use of the City's locally adopted Density Bonus Ordinance. This is incorrect. See Exhibit 5 (HCD clarifying that modifications to objective standards pursuant to a local density ordinance are also included in the modifications to which an SB 35 applicant is entitled).

[26] Guidelines § 102(u), emphasis added.
[27] Appeal Staff Report, at p. 5.

Staff next asserts that the Application requests an 87.5% density bonus. This also mischaracterizes the Application. A 35% density bonus is mandatory as a matter of state law, which adds three additional units (rounded up the nearest whole units[28]) to an eight-unit base project. After application of the 35% density bonus, the additional three density bonus units, and the waiver of all standards that would preclude use of the density bonus, the Application is additionally entitled to *two* concessions/incentives.[29] Merely granting one of the two mandatory concessions/incentives yields the Project as proposed. One "on-menu" addition of 11' to the height of the Project,[30] allows for the four additional units.[31] As staff explained in the Staff Report prepared for the Los Alto City Council hearing on the 4880 El Camino Real project dated June 28, 2016, a height increase requested by that project "fundamentally allow[ed] the project's fifth floor, or three additional units…"[32] The 11' on-menu height increase therefore clearly contemplates the addition of an entire floor to a project, which provides space for additional units.

The City did not make any of the findings required to deny the concession/incentive for 11' of additional height, and the time has now passed to do so. But in any case, by providing for an on-menu 11' height increase as an acceptable concession/incentive Citywide, the City has already explicitly determined that granting such a concession/incentive would not result in a public health or safety impact, nor an adverse impact on the environment that could not be mitigated.[33] Any improper denial of the requested density bonus, waivers, or concessions would have subjected the City to a legal cause of action and liability for attorney's fees and costs of suit.[34]

C. Parking Standards

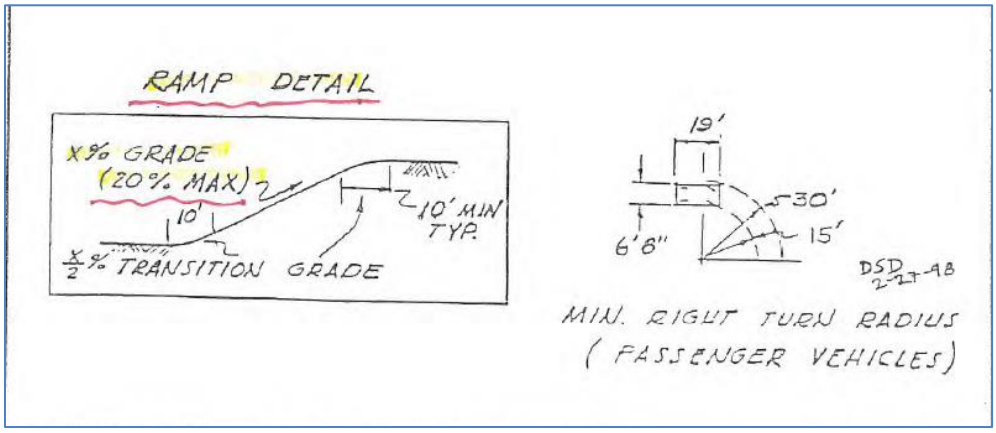
The Appeal Staff Report next identifies a smattering of "objective" parking standards with which it asserts the Project does not comply, and says these were identified as part of the City's "initial review."[35] In fact, these standards were never raised in any previous communication to the Applicant. These standards have been identified in the Appeal Staff Report *for the first time*, and the City is therefore barred from denying the Project using these standards, with which the Project has legally been deemed to comply pursuant to SB 35. Even if the City had raised compliance with these standards in the required timeframe, the City's assertion that the Project does not comply

[28] Guidelines § 402(f).
[29] Gov. Code § 65915(d)(2)(B).
[30] See LAMC § 14.28.040.F.
[31] Application, Attachment D, at p. 5.
[32] 4880 Staff Report, at p. 5; see also Staff Report prepared for August 32, 2016 City Council hearing on the 4880 El Camino Project, at p. 5, which also explains that consideration of appropriately sized units "supports the need for a fifth story to accommodate the additional four units." "A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals." Guidelines, § 300(b)(2).
[33] LAMC § 14.28.040.F.1.
[34] Gov. Code § 65915(d)(3), (e)(1).
[35] Appeal Staff Report, p. 8.

with these standards is meritless, and many of standards identified are not "objective" and therefore inapplicable regardless.

(1) Off Street Parking Standards

The City asserts that the Project does not comply with LAMC § 14.74.200N, which contains development standards for off-street parking and truck loading spaces and specifies that "the minimum standards for the design of off-street parking areas shall be in accordance with those shown on the drawing labeled 'Parking Standards Exhibit A' on file in the office of the planning department." The Appeal Staff Report says there "are no provisions in the Parking Standards Exhibit for a vehicle lift system that provides access to subgrade parking levels" and asserts that instead, the Project's parking must comply with the "detail of standards for ramps providing access/egress to parking," which is as follows:



First, we reiterate that the City failed to identify a specific, objective standard within the 60-day timeframe during which it was required to respond to the Application, and is therefore barred from asserting noncompliance with this code section ***for the first time*** in this appeal to City Council.

Second, this appears to be an assertion that Parking Standards Exhibit A prohibits a vehicle lift system. However, the Appeal Staff Report goes on to assert that the City has requested additional information "that would be used to analyze this system and identify the proper permitting process where such a system could be considered," which immediately contradicts the idea that there is any objective City standard that prohibits such a system. Further, to the extent the City does intend to assert that Parking Standards Exhibit A prohibits a vehicle lift system, this is demonstrably not the case. The City has considered and approved similar parking systems, finding that they "comply with all zoning codes."[36] "A locality may not require a development proponent to meet any

[36] See, e.g., 4880 Staff Report, at p. 2, wherein staff opines that project seeking approval of vehicle lift system complies with "all zoning codes" with the exception of height.

standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals."[37]

Further, the Project complies with the objective requirements that are expressed above, in that it provides the minimum required right turn radius for passenger vehicles, and all portions of the garage provide a compliant grade of between 0 and 20 degrees at the vehicle entrance/exit points. The Project complies with all objective standards contained in LAMC § 14.74.200N, and the City's assertion that it does not is meritless.

(2) Subgrade Parking Access/Egress & Impacts to Circulation at Parking Plaza 10

The Appeal Staff Report next purports to identify a second objective standard with which the Application does not comply, but the content under the report's subheading merely provide a continuation of staff's contention that the vehicle lift parking system does not comply with objective standards in Parking Standards Exhibit A. Here, staff even more clearly appears to assert that a vehicle lift is prohibited, and that the Project must instead provide for a ramped entrance and ramped transition areas. As explained, *supra*, Parking Standards Exhibit A cannot reasonably and clearly be read to prohibit a vehicle lift system, or to prohibit any parking system that does not consist of a series of ramps. We reiterate that with regard to the objective standards that Parking Standards Exhibit A does contain, the Project complies with the minimum right turn radius requirements for passenger vehicles, and the vehicle lift system provides a compliant grade of between 0 and 20 degrees at the vehicle entrance/exit points.

Staff also asserts under this subheading that the City requested further information to evaluate the vehicle lift parking system as part of its December 7 Determination, which it clearly did *not*. Rather, the December 7 Determination makes a vague assertion that the Project does not provide "adequate access/egress to the proposed off-street parking," without meeting the SB 35 requirement to identify specific standards with which the Project did not comply or under which the City required further information to make a compliance determination. As explained *supra*, the Notice of Incomplete Application dated December 7, 2018 that was provided with the December 7 Determination was specifically prepared to inform other discretionary "approval/permit avenues for the project," not the SB 35 application, which the December 7 Determination summarily denied. The Determination requested more information on the vehicle lift system in this list of items that would be required for a *discretionary* application, but did not request this information in order to evaluate the Project's consistency with a specified, objective standard. In any case, the list merely requests the information, and does not identify *any* specific standards for which the information is necessary.

D. Design Guidelines

Finally, staff asserts that the Project does not comply with three supposedly "objective" architecture and building design standards in the Downtown Design Guidelines ("DDG"). First,

[37] Guidelines, § 300(b)(2).

we reiterate that the City failed to identify these standards within the 60-day timeframe during which it was required to respond to the Application pursuant to SB 35, and is therefore now barred from asserting noncompliance with this code section *for the first time* in this appeal to City Council. Second, even if the City had raised these standards in the required timeframe (or any other point since, which it has failed to do until now), none of the standards are "objective," but rather require subjective evaluation and would not provide the reasonable person with a benchmark to determine definitively whether a project would comply when putting together an application. For the above reasons, the City is therefore barred from denying the Application or denying the Appeal under these subjective standards. Nonetheless, the Applicant made a good faith effort to address these subjective standards, to provide the City with a desirable and well-designed project.

DDG 3.2.1 b) – Break larger buildings into smaller components

The Appeal Staff Report asserts that the Project has not been sufficiently "divided up to appear as a series of smaller building forms of individual designs and architectural styles."[38] First, this is a subjective standard, with no established benchmark that would allow an applicant to evaluate its compliance in preparing an application. Second, the Project makes numerous efforts to provide a building that is broken into smaller components. At the ground level, there are three arched entries along Main Street. Each of these elements have been recessed by 2' – 0", and include transom windows above the awnings. Along Parking Plaza 10, there are four arched entries that have been set back by 2' – 0". Each of these elements have also been recessed by 1'- 7", and include transom windows above the awnings. At the second level, the south facing units (3 and 4) are recessed by a minimum of 5' – 0", but typically are 10' – 0" in depth to allow for comfort in their respective private patios. At the third and fourth level, balconies are provided at 4' – 0" in depth minimum for all units and further reduce the massing along Main Street and Parking Plaza 10. At the fifth level, every units' elevation has been recessed additionally by a minimum of 4' – 0", but up to 18' – 0" (at unit 13). The gable end (for the secondary egress location,) adjacent to the building along the North elevation has been peeled back as well.

With the Applicant having made these significant efforts to break down the building into smaller components, the City cannot reject the Application based on staff's opinion that the building is not "uniform in its materials, finishes, and trim," and that staff does not consider the building to be sufficiently " divided up to appear as a series of smaller building forms of individual designs and architectural styles."[39] Again, the relevant legal question is whether the standard involves "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 or proponent and the public official prior to submittal."[40]

[38] Appeal Staff Report, at p. 9.
[39] *Id*.
[40] Gov. Code § 65913.4(a)(5).

DDG 3.2.2 b) - Relate the façade designs to adjacent structures

The Appeal Staff Report next asserts, without support, that the structure "does not relate well to adjacent structures and rather than respect their scale, bulk, height, and mass introduces a building that is disruptive to those adjacent structures…"[41] This is an entirely subjective consideration, and the standard provides no benchmark with which a project applicant can evaluate consistency.

DDG 3.2.7 b) – Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos.

This standard is completely subjective, and the Appeal Staff Report makes no attempt to argue otherwise. Instead, it simply provides a bald assertion that the project "does not relate well to the small human scale of Downtown Los Altos." There is no objective benchmark provided to evaluate a project's consistency with this standard.

IV. Housing Accountability Act

The Appeal Staff Report asserts that because the City has not determined the SB 35 Application to be "complete", the Housing Accountability Act[42] (the "HAA") does not apply. The HAA will not be construed to allow cities to evade its requirements by refusing to consider applications "complete" or by unlawfully rejecting ministerial project applications that are not assessed for "completeness." The City's unlawful refusal to grant a streamlined ministerial permit violates the HAA and exposes the City to attorney's fees, fines, and penalties under that statute.[43]

V. Conclusion

We note that the Appeal Staff Report presents "advantages" and "disadvantages" to denying the appeal.[44] According to staff, the "disadvantages" of appeal denial are that the "Appellant may pursue other paths to obtain entitlements to construct the project."[45] The fact that Staff considers it a "disadvantage" that the Applicant may continue to seek to develop housing on this Property is deeply disappointing and profoundly misaligned with the State's housing production goals. According to Staff, another "disadvantage" of granting the appeal is that staff believes that the project is "inappropriate for its proposed location."[46] This is yet more of an indication that Staff is committed to deny the Project based on its subjective determinations about the Project rather than its noncompliance with the City's objective standards.

[41] Appeal Staff Report, at p. 9.
[42] Gov. Code § 65589.5.
[43] Gov. Code § 65589.5(k)(1)(A)
[44] Appeal Staff Report, at pp. 10-11.
[45] *Id.*, at p. 11.
[46] *Id.*

We respectfully request that the Council reverse the course Staff has set, recognize the clear requirements of State law, and grant the Applicant's appeal of the City's Determination.

Sincerely yours,

HOLLAND & KNIGHT LLP

Daniel R. Golub
Genna Yarkin

cc: Jon Biggs
Jon Maginot
Scott Ditfurth
Melinda Coy

Exhibit 1

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

March 11, 2019

Daniel Golub, Associate
Holland & Knight LLP
50 California Street, Suite 2899
San Francisco, CA 94111

RE: City of Los Altos SB 35 Application Technical Assistance

Dear Daniel Golb:

This letter is in response to your March 6, 2019 request for technical assistance regarding the requirements of Government Code § 65913.4 (SB 35, Chapter 366, Statutes of 2017) also known as the "Streamlined Ministerial Approval Process". The Department of Housing and Community Development (HCD) is informed that Rhoades Planning Group submitted an SB 35 application to the City of Los Altos on behalf of 40 Main Street Offices, LLC on November 8, 2018 for a 15-unit project of which 10 percent of the units are affordable to lower-income households.

SB 35 was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need. Government Code § 65913.4(l) states it is the policy of the state that section 65913.4 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. Approval of projects such as 40 Main Street fulfill this legislative intent.

Pursuant to Government Code § 65913.4(j), HCD, among other things, is responsible for reviewing, adopting, amending, and repealing guidelines to implement uniform standards or criteria that supplement or clarify the terms, reference, or standards set forth under Government Code § 65913.4. To that end, HCD released a series of Frequently Asked Questions in 2018 to facilitate implementation of the law. On November 29, 2018, HCD released guidelines pursuant to Government Code § 65913.4(j) which became effective January 1, 2019.

The following are HCD's responses to questions *(in italics)* posed in your March 6, 2019 request.

1) *In light of SB 35's requirement that a locality provide "the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," Government Code § 65913.4(b)(1); see also Guidelines, § 301(a)(3), can a locality deny an SB 35 application by issuing a written statement which claims that the project conflicts with an objective zoning standard, but does not cite the section or sections of the zoning ordinance containing the standard that the project supposedly violates?*

   No. Pursuant to Government Code § 65913.4(b)(1), if a local government determines that a proposed development conflicts with any of the objective planning standards, it must provide the development proponent written documentation of which standard or standards the development conflicts with. This would include a specific reference to what the specific objective standard is and a citation to where it can be found. Without this citation, the specific standard is not verifiable and thus would not meet the definition of objective standard pursuant to Government Code § 65913.4 (a)(5).

2) *Can a locality deny a SB 35 application by stating, without citing any code section, that a project does not provide "adequate access/egress to the proposed off-street parking," or by referring to notes written by staff members which state that effects on parking spaces are not "acceptable" and that parking circulation is "inadequate"?*

   No. Pursuant to Government Code § 65913.4 (a)(5) "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Terms like "adequate", "acceptable", and "inadequate" imply a subjective determination if they are not accompanied with reference to the specific requirement not met.

3) *If the locality does not provide any written communication to the applicant citing any specific code section that the project violates within the applicable 60- or 90-day timeline from the date the application is submitted, is the project deemed to satisfy the objective standards?*

   Yes. Pursuant to Government Code § 65913.4(b)(2), if the local government fails to provide the required documentation pursuant to Government Code § 65913.4(b)(1), the development shall be deemed to satisfy the objective planning standards.

4) *Can a locality deny an SB 35 application on the grounds that the SB 35 application did not include the application material that the locality requires for complete discretionary Design Review and Use Permit applications?*

No. Pursuant to Government Code § 65913.4 (a)(5) the only objective standards that can apply to the project are those external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Discretionary design review would not apply. Specifically, Government Code § 65913.4 (c) states design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects. Design review or public oversight can not in any way inhibit, chill, or preclude the streamlined ministerial approval process.

In addition, the Streamlined Ministerial Permit process is a ministerial process. The requirement to apply for use permits, which are by definition discretionary, would also not apply. As stated in the Department's FAQs, Government Code § 65913.4 specifically exempts developments from the conditional use permit process and they must be approved through a streamlined, ministerial approval process if they satisfy the objective planning standards. Pursuant to the Streamlined Ministerial Approval Guidelines, the locality's process and application requirements shall not in any way inhibit, chill, or preclude the ministerial approval process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects.

HCD appreciates the opportunity to provide comments. If you have any questions, please contact me at (916) 263-7425.

Sincerely,

Melinda Coy

Melinda Coy
Senior Policy Specialist

Exhibit 2

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Scott W. Ditfurth
(951) 826-8209
scott.ditfurth@bbklaw.com
File No. 38082.00200

April 2, 2019

VIA EMAIL ONLY – DANIEL.GOLUB@HKLAW.COM

Daniel Golub
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111

Re: Los Altos / 40 Main Street, Applications 18-D-07 and 18-UP-10

Dear Mr. Golub:

We are in receipt of your email dated March 19, 2019 regarding the above stated matter. This letter shall serve as a response thereto. As an initial note, your email seeks information about the notice for the appeal. The notice of the appeal was sent out last week.

With respect to the appeal, your email sets forth a series of questions. We address those questions in the same order of your email. The City's response is set forth in italics.

1. As we noted, Los Altos Municipal Code § 1.12.020, entitled "No appeal from ministerial acts," states that the Council's appeal procedures do not apply "when the decision or action is ministerial." The SB 35 application at issue is, pursuant to state law, "ministerial." Gov. Code § 65913.4(a). Would you please share with me the basis for the City's position that the Council's appeal procedures apply to this ministerial act?

This City's position is that this is not a ministerial act. Rather, the City's position is that the application presented by 40 Main Street does not invoke SB 35. Your client has attempted to frame the issue that the City has failed to set forth permissible grounds for denying the SB 35 Project application. However, as set forth in the City's December 7, 2018 letter, as well as the reasons set forth below, the review of the Project application indicates that the Project is not subject to the provisions of SB 35. By way of example, the Project application was determined not to involve SB35 for the following reasons:

(1) The Project application did not provide the percentage of affordable dwelling units required by the State regulations. Specifically, the Project seeks density bonus units in excess of the 35% mandated by State Law and City Code. Although an applicant can seek this increase in the number of density bonus units, the decision to grant such a request is discretionary and rests with the City

Council. The project also exceeds the amount that the Code and State Law specify for a project providing 20% affordable low income units. Although the City has discretion to grant additional density bonus units, SB 35 does not authorize or require the City to consider such units as being consistent with objective development standards.

(2) The Project does not satisfy the SB 35 criteria for a mixed-use project comprising of at least 2/3 of project square footage as designated for residential uses.

(3) The development, excluding density bonus units, concession, incentives, or waiver is inconsistent with the City's objective zoning standards and, despite the City's December 7 request for further information, no clarifying information was provided by your client to enable the City to determine if certain findings could be met under state law to grant the concessions, incentives or waivers as requested by the City. Additionally, the proposed egress/ingress to the sub grade parking levels does not comply with Municipal Code Section 14.74.200 N., which requires that off-street parking areas be in accordance with the minimum standards shown on the drawing labeled "Parking Standards Exhibit A" (attached). These standards do not provide criterion for the vehicle lift system being proposed and thus the Project does not comply with objective standards. Given this, the base Project will need to be revised to demonstrate compliance with this standard and others for a ramping system that allows the egress and ingress of vehicles from grade level to subgrade levels.

(4) The Project does not comply with objective standards found in the Downtown Design Guidelines, notably the following:

3.2.1 b) Break larger building into smaller components. Proposed building is one large multi-story structure that is uniform in its materials, finishes, and trim and has not been divided up to appear as a series of smaller building forms of individual designs and architectural styles.

3.2.2 b) Relate the façade designs to adjacent structures. The proposed structure does not relate well to adjacent structures and rather than respect their scale, bulk, height, and mass introduces a building that is disruptive to those adjacent structures and presents a façade that is not in harmony with adjacent buildings and the pedestrian nature of this portion of Main Street.

3.2.7 b) Avoid architectural styles and monumental building elements that do not relate to the small human scale of Downtown Los Altos. At five stories and a

height of 66'4", the Project does not relate well to the small human scale of Downtown Los Altos.

Accordingly, the City appropriately determined the Project application was not subject to SB 35. Such a decision is not a ministerial act. Pursuant to LAMC Section 1.12.010, "[e]xcept where an appeals procedure is otherwise specifically set forth in this code, any interested person objecting to the whole or any portion of an administrative determination or decision made by a commission, committee or an official of the city, where such determination or decision involves the exercise of administrative discretion or personal judgment pursuant to any of the provisions of this code, may appeal to the city council by filing with the city clerk a notice of appeal clearly identifying the determination or decision from which the appeal is taken and stating the grounds for the appeal. The notice of appeal shall be accompanied by the payment of a filing fee in such amount as established from time to time by resolution of the city council."

2. State law requires that "any . . . public oversight" that a city council conducts over an SB 35 application must be completed within 90 days of the application submission where, as here, the project involves less than 150 housing units. Gov. Code § 65913.4(c). Can you please share with me the basis of the City's conclusion that the Council can, consistent with this, conduct an appeal over the determination long after this 90-day period has expired?

Please see the above response to Question No. 1., which sets forth the City's position on why an appeal is appropriate. Consistent with the Los Altos Municipal Code requirements, the matter was scheduled for the first available regular City Council meeting after the appeal was filed.

3. As we also noted, Los Altos Municipal Code § 1.12.050 states that "[u]pon the filing of the notice of appeal and payment of the appeal fee," the appeal must be scheduled for the "next available regular meeting of the city council." The appeal was filed and payment made on February 21 – the same day City staff first advised us that staff "believe[d]" that an appeal was available and required. Would you please share with me the basis of the City's conclusion that it is permitted to put off the scheduling of this appeal until April 9?

In accordance with the Code, the City has scheduled the hearing on the appeal requested by 40 Main Street for the next available regular meeting. As noted above, based on existing established schedules and prior City Council obligations, the next available regular meeting is April 9, 2019.

4. As I mentioned in my email to Mr. Biggs, it appears that pursuant to LAMC § 1.12.060, no "public hearing" will be held on the appeal since the staff-level decision on the SB 35 permit application was not "made in connection with a proceeding which required a public hearing." I would appreciate it if you could confirm that that is the case, and if so, advise us of

what process the City intends to conduct in reviewing the appeal, and whether there will be an opportunity for us to present the appeal on behalf of the applicant.

The appeal has been properly noticed for a public hearing. There, the appellant, i.e., 40 Main Street, will be given an opportunity to set forth its position (usually around 10 minutes). Here, the staff will first provide its report to the Council to provide background on their decision and detail why in their professional judgment they believe the project does not comply with SB 35. After the staff presentation, the public hearing will be opened and Council can hear from the appellant, and then allow for public comment. Please see excerpts from the LAMC regarding the appeal procedure.

> 11.3 Appeal Procedures. Appellants shall be given the opportunity to speak first. Appellants and applicants responding to appeals may be given a total of up to 10 minutes each to present their positions to the City Council prior to hearing public comments. Appellants shall be given up to 5 minutes of rebuttal time after public comments are heard.
>
> 11.5 Staff and Consultant Reports. Staff and consultant reports will be given a limit of up to 10 minutes. Staff is to assume that the Council has read all materials submitted. Council shall be given an opportunity to ask questions of staff prior to hearing public comments.

5. State law further provides that any public oversight a city council conducts over an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and further provides that such "public oversight . . . shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section." Gov. Code § 65913.4(c). Can you confirm that the Council's review of this appeal will be limited to the question of whether the city identified permissible grounds for denying the application within the required 60-day timeframe, see Gov. Code § 65913.4(b)(1)(A), and will not in any way inhibit the ministerial process mandated by state law?

As set forth above, it is the City's position that SB 35 is not applicable to the Project application. As such, the public oversight set forth above regarding the compliance criteria for streamlined project is not applicable. Accordingly, the appeal would encompass the reasons for staff's determination, including the City's position that SB 35 is not applicable. The appeal would not be limited as suggested in your question.

Please feel free to contact me if you have any questions.

Sincerely,

Scott W. Ditfurth
of BEST BEST & KRIEGER LLP

Parking Standards
Exhibit A

CITY OF LOS ALTOS

COMMUNITY DEVELOPMENT DEPARTMENT

March 2001

CITY OF LOS ALTOS

Landscaping Guidelines

The Architectural and Site Control Committee of the Planning Commission will use the following guidelines with respect to interior and perimeter landscaping:

1. Interior Landscaping

   a. In parking areas with 10 or more spaces, at least 5 percent of the interior of the parking area shall be landscaped. Hedges or other landscaping installed to meet the screening requirements are not to be included in computing the portion of interior lot area devoted to landscaping.

   b. Individual planting areas shall preferably be a minimum of 6 feet wide and 50 square feet in area.

   c. There shall be a minimum of one 15-gallon tree per 100 square feet of landscaped area, with a balance in shrub and ground cover.

2. Perimeter and Buffer Strips

   a. Unless otherwise specified by the Zoning Ordinance, a 4-foot planted strip shall be maintained when adjacent to streets. This shall be increased to 6 feet if car bumpers overhang.

   b. Unless otherwise specified by the Zoning Ordinance, there shall be a 4-foot planted strip at abutting property lines (6-foot if bumper overhangs.)

   c. Unless otherwise specified by the Zoning Ordinance, there shall be a 10-foot strip with dense screen planting when abutting property is residential.

   d. Unless otherwise specified by the Zoning Ordinance, an alternate to (c) is a minimum 5-foot-high fence with 4-foot planted strip.

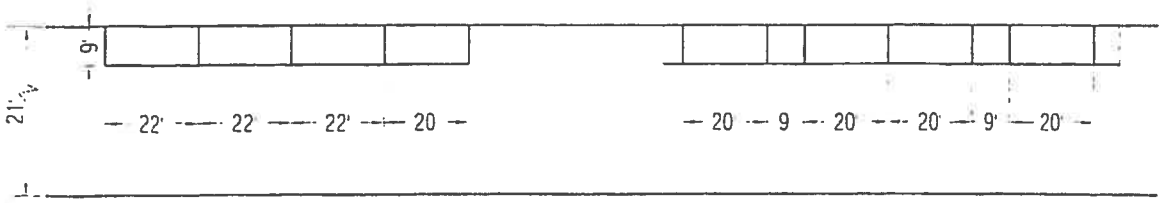
3. Maintenance

   a. Protection for planted areas shall be provided by a 6-inch minimum height concrete curb.

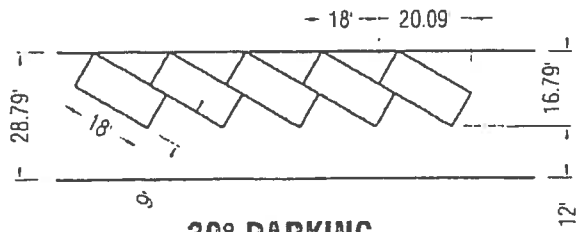
   b. Permanent automatic sprinklers are required.

4. Exceptions

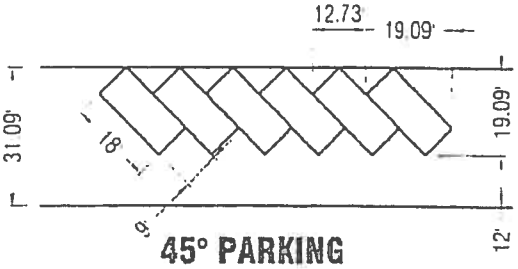
   These requirements for landscaping may be waived or modified at the discretion of the Architectural and Site Control Committee when in their judgment the environment or particular locations would prove hostile to plants, trees, or shrubs.



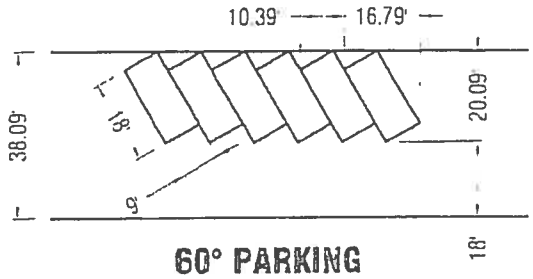
PARALLEL PARKING ALTERNATES



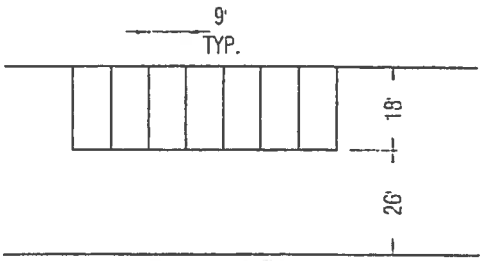
30° PARKING



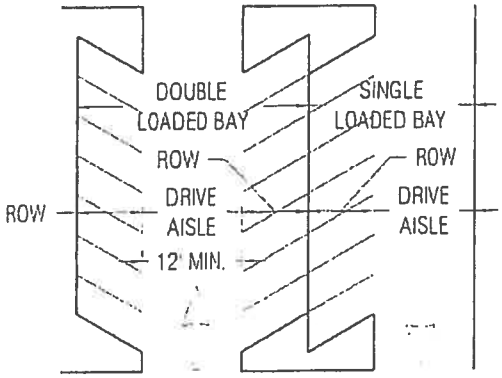
45° PARKING



60° PARKING



90° PARKING



ONE WAY

Approved: _____ City Engineer _____ Date

CITY OF LOS ALTOS CALIFORNIA INCORPORATED DECEMBER 1, 1952

REVISION	
Description	Date

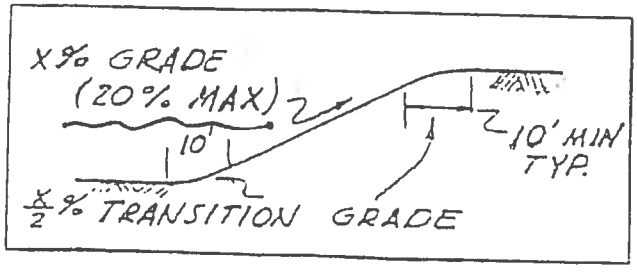
DEPARTMENT OF PUBLIC WORKS

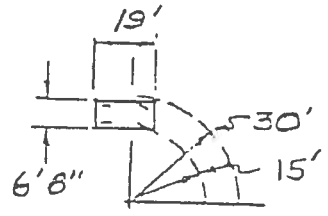
STANDARD PARKING STALL DETAILS

SU-17

STANDARD PLANS 2007

RAMP DETAIL





DSD 2-27-AB

MIN. RIGHT TURN RADIUS
(PASSENGER VEHICLES)

ENGINEERING DEPT. CITY OF LOS ALTOS SANTA CLARA COUNTY, CALIFORNIA	PARKING STALL STANDARD DESIGN	DRAWN E.C.F. CHECKED D.S.B. APP. DATE 4 JULY 63 SCALE 1" = 50' DRAW. NO.

DIETZGEN-PORT CLINTON PRINT

Exhibit 3

Yarkin, Genna (SFO - X56990)

From: Golub, Daniel R (SFO - X56976)
Sent: Friday, March 15, 2019 1:13 PM
To: Scott Ditfurth
Cc: Yarkin, Genna (SFO - X56990)
Subject: RE: 40 Main Street, Applications 18-D-07 and 18-UP-10
Attachments: LosAltosMarch2019.pdf

Scott-

Thank you for your email. Despite your indication last week that the appeal was being scheduled, we have yet to receive any notice. I must note that the City's position that an appeal to the Council is required, and its position that that an appeal cannot be scheduled until April 9, are the most recent in a series of delays in the processing of applications for the development of housing at this site, which we described in Part I of our February 19 letter to the City and documented in Exhibit 6 to that letter.

To begin, I wanted to share with you the attached technical assistance letter by the Department of Housing and Community Development ("HCD"). The Legislature has delegated to HCD to authority to implement SB 35. Gov Code § 65913.4(j). In the attached, HCD states clearly that none of the grounds on which the City denied the 40 Main Street SB 35 application were lawful. In light of this, we request that the City reconsider its position that the City had a lawful basis to reject the application.

If the City continues to maintain that it had a lawful basis to deny the application, and intends on conducting an appeal on the application denial, I would appreciate your attention to the following questions.

With respect to the appeal:

1. As we noted, Los Altos Municipal Code § 1.12.020, entitled "No appeal from ministerial acts," states that the Council's appeal procedures do not apply "when the decision or action is ministerial." The SB 35 application at issue is, pursuant to state law, "ministerial." Gov. Code § 65913.4(a). Would you please share with me the basis for the City's position that the Council's appeal procedures apply to this ministerial act?

2. State law requires that "any . . . public oversight" that a city council conducts over an SB 35 application must be completed within 90 days of the application submission where, as here, the project involves less than 150 housing units. Gov. Code § 65913.4(c). Can you please share with me the basis of the City's conclusion that the Council can, consistent with this, conduct an appeal over the determination long after this 90-day period has expired?

3. As we also noted, Los Altos Municipal Code § 1.12.050 states that "[u]pon the filing of the notice of appeal and payment of the appeal fee," the appeal must be scheduled for the "next available regular meeting of the city council." The appeal was filed and payment made on February 21 – the same day City staff first advised us that staff "believe[d]" that an appeal was available and required. Would you please share with me the basis of the City's conclusion that it is permitted to put off the scheduling of this appeal until April 9?

Assuming the appeal does go forward:

4. As I mentioned in my email to Mr. Biggs, it appears that pursuant to LAMC § 1.12.060, no "public hearing" will be held on the appeal since the staff-level decision on the SB 35 permit application was not "made in connection with a proceeding which required a public hearing." I would appreciate it if you could confirm that that is the

case, and if so, advise us of what process the City intends to conduct in reviewing the appeal, and whether there will be an opportunity for us to present the appeal on behalf of the applicant.

5. State law further provides that any public oversight a city council conducts over an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and further provides that such "public oversight . . . shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section." Gov. Code § 65913.4(c). Can you confirm that the Council's review of this appeal will be limited to the question of whether the city identified permissible grounds for denying the application within the required 60-day timeframe, see Gov. Code § 65913.4(b)(1)(A), and will not in any way inhibit the ministerial process mandated by state law?

Please let me know if it would be helpful to discuss.

Daniel Golub | **Holland & Knight**
Associate
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco, CA 94111
Phone 415.743.6976 | Fax 415.743.6910
daniel.golub@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Scott Ditfurth [mailto:Scott.Ditfurth@bbklaw.com]
Sent: Thursday, March 07, 2019 2:30 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Subject: 40 Main Street, Applications 18-D-07 and 18-UP-10

Daniel

Thank you for the call this morning. As a follow up to our call, I am informed that the City, based on their present meeting schedules, are going to schedule the appeal on the above stated matter for April 9, 2019 at 7:00 pm in the Council Chambers at City Hall.

I understand that the notice will go out accordingly.

Let me know if you have any questions. Thanks.

BEST BEST & KRIEGER ATTORNEYS AT LAW

Scott Ditfurth
Partner
scott.ditfurth@bbklaw.com
T: (951) 826-8209 C: (909) 261-9853
www.BBKlaw.com

Exhibit 4

Yarkin, Genna (SFO - X56990)

From: Golub, Daniel R (SFO - X56976)
Sent: Monday, April 01, 2019 10:20 AM
To: Scott Ditfurth
Cc: Yarkin, Genna (SFO - X56990)
Subject: RE: 40 Main Street, Applications 18-D-07 and 18-UP-10

Scott-

I am surprised that I have yet to receive any response of any kind to my email or my voicemail regarding the 40 Main Street project. Mr. Biggs told me that the City Attorney's office would be responding on the City's behalf to my attempts to discuss the appeal on the 40 Main Street project, but aside from your brief call and email on March 7, I have yet to receive any communication from you regarding the appeal the City intends to conduct on my client's application.

I asked Mr. Biggs, and then you, to confirm that no public hearing would be held on the appeal, and requested to discuss the process the City intended to follow in conducting the appeal. Neither of you responded to my emails on this point, but I have now received a "public hearing notice" for the appeal. As I mentioned, section 1.12.060 of the Los Altos Municipal Code, governing appeals, states that "no public hearing shall be required unless the determination or decision was made in connection with a proceeding which required a public hearing." Here, the City staff's determination to deny the SB 35 application was not made in connection with a proceeding which required a public hearing. Can you please explain why the City has nonetheless required a public hearing on the appeal? In addition to contradicting the requirements of the city's code, this also contradicts the requirements of State law, which, as applicable here, provides that any public oversight over an SB 35 application must be conducted within 90 days of the application submission, and further provides that such public oversight must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and further provides that such "public oversight . . . shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section." Gov. Code § 65913.4(c). The time for any such public oversight has long since expired, and nothing in the hearing notice indicates that the scope of the Council's review will be strictly limited in the manner required by State law.

I would appreciate your response to this issue and the other questions I raised in my March 15 email.

Sincerely,

Daniel Golub | **Holland & Knight**
Associate
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco, CA 94111
Phone 415.743.6976 | Fax 415.743.6910
daniel.golub@hklaw.com | www.hklaw.com

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From: Golub, Daniel R (SFO - X56976)
Sent: Friday, March 15, 2019 1:13 PM
To: 'Scott Ditfurth' <Scott.Ditfurth@bbklaw.com>

Cc: Yarkin, Genna (SFO - X56990) <Genna.Yarkin@hklaw.com>
Subject: RE: 40 Main Street, Applications 18-D-07 and 18-UP-10

Scott-

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3. As we also noted, Los Altos Municipal Code § 1.12.050 states that "[u]pon the filing of the notice of appeal and payment of the appeal fee," the appeal must be scheduled for the "next available regular meeting of the city council." The appeal was filed and payment made on February 21 – the same day City staff first advised us that staff "believe[d]" that an appeal was available and required. Would you please share with me the basis of the City's conclusion that it is permitted to put off the scheduling of this appeal until April 9?

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5. State law further provides that any public oversight a city council conducts over an SB 35 application must be "strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction," and further provides that such "public oversight . . . shall not in any way inhibit, chill, or preclude

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Please let me know if it would be helpful to discuss.

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daniel.golub@hklaw.com | www.hklaw.com

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From: Scott Ditfurth [mailto:Scott.Ditfurth@bbklaw.com]
Sent: Thursday, March 07, 2019 2:30 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Subject: 40 Main Street, Applications 18-D-07 and 18-UP-10

Daniel

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Let me know if you have any questions. Thanks.

BEST BEST & KRIEGER ATTORNEYS AT LAW

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Yarkin, Genna (SFO - X56990)

From: Golub, Daniel R (SFO - X56976)
Sent: Friday, March 15, 2019 1:13 PM
To: Scott Ditfurth
Cc: Yarkin, Genna (SFO - X56990)
Subject: RE: 40 Main Street, Applications 18-D-07 and 18-UP-10
Attachments: LosAltosMarch2019.pdf

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Please let me know if it would be helpful to discuss.

Daniel Golub | **Holland & Knight**
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daniel.golub@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Scott Ditfurth [mailto:Scott.Ditfurth@bbklaw.com]
Sent: Thursday, March 07, 2019 2:30 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Subject: 40 Main Street, Applications 18-D-07 and 18-UP-10

Daniel

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Let me know if you have any questions. Thanks.

BEST BEST & KRIEGER ATTORNEYS AT LAW

Scott Ditfurth
Partner
scott.ditfurth@bbklaw.com
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www.BBKlaw.com

Yarkin, Genna (SFO - X56990)

From: Scott Ditfurth <Scott.Ditfurth@bbklaw.com>
Sent: Thursday, March 07, 2019 2:30 PM
To: Golub, Daniel R (SFO - X56976)
Subject: 40 Main Street, Applications 18-D-07 and 18-UP-10

Daniel

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Partner
scott.ditfurth@bbklaw.com
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www.BBKlaw.com

Yarkin, Genna (SFO - X56990)

From: Jon Biggs <jbiggs@losaltosca.gov>
Sent: Thursday, March 07, 2019 10:46 AM
To: Golub, Daniel R (SFO - X56976)
Subject: RE: 40 Main Street Los Altos

I have passed this on to our City Attorney's Office.

Jon

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Thursday, March 07, 2019 10:04 AM
To: Jon Biggs <jbiggs@losaltosca.gov>; Jon Maginot <JMaginot@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com; Chris Jordan <cjordan@losaltosca.gov>; Christopher.Diaz@bbklaw.com
Subject: RE: 40 Main Street Los Altos

Dear Mr. Biggs:

Despite your promise that the City Attorney's Office would be in touch with me early this week, I have yet to hear from anyone.

Daniel Golub | **Holland & Knight**
Associate
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco, CA 94111
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daniel.golub@hklaw.com | www.hklaw.com

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From: Jon Biggs [mailto:jbiggs@losaltosca.gov]
Sent: Friday, March 01, 2019 4:21 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>; Jon Maginot <JMaginot@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com; Chris Jordan <cjordan@losaltosca.gov>; Christopher Diaz <Christopher.Diaz@bbklaw.com>
Subject: RE: 40 Main Street Los Altos

Dear Mr. Golub,

Our City Attorney's office will be in touch with you early next week.

Jon Biggs, City of Los Altos
Community Development Department

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Friday, March 01, 2019 11:26 AM
To: Jon Biggs <jbiggs@losaltosca.gov>; Jon Maginot <JMaginot@losaltosca.gov>

Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos
Importance: High

Dear Mr. Biggs:

I am emailing to follow up on my voicemail regarding the appeal we filed on February 21.

Pursuant to Los Altos Municipal Code 1.12.050, the appeal must be set for the next available regular meeting of the city council, which is March 12. Can you confirm that this is the date the appeal is to be heard? We have yet to receive any notice of the date, time and place of the hearing, which pursuant to LAMC 1.12.050 must be sent to us no later than today.

I also note that pursuant to LAMC 1.12.060, there will be no "public hearing" on the appeal, so can you confirm what you expect the process to be for considering the item and whether there will be an opportunity for us to present the appeal on behalf of the applicant?

Sincerely,

Daniel Golub | **Holland & Knight**
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From: Golub, Daniel R (SFO - X56976)
Sent: Thursday, February 21, 2019 2:04 PM
To: 'Jon Biggs' <jbiggs@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos

Mr. Biggs and Mr. Maginot:

In response to Mr. Biggs' email from this morning, please find a cover letter and a completed appeal form.

The grounds for the appeal, the issues that are contested, and the arguments and evidence in the record that support the basis of the appeal are those provided in our January 10 and February 19 letters and accompanying exhibits, which are already in the City's files, and are also attached to this email, as well as provided in electronic format at the URL below:

https://www.imanageshare.com/pd/3S3ARWxhPZA

Hard copies of these materials will be delivered today with the check for the appeal fee.

Daniel Golub | **Holland & Knight**
Associate
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco, CA 94111

Phone 415.743.6976 | Fax 415.743.6910
daniel.golub@hklaw.com | www.hklaw.com

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From: Jon Biggs [mailto:jbiggs@losaltosca.gov]
Sent: Thursday, February 21, 2019 8:49 AM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos
Importance: High

Hello Mr. Golub,

Please see the attached regarding appeal and short time frame to submit appeal.

Jon Biggs, City of Los Altos
Community Development Director

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Tuesday, February 19, 2019 1:58 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos

Dear Mr. Biggs:

Attached please find a letter in response to your February 6, 2019 letter regarding the 40 Main Street SB 35 Application. Printed copies of the letter and its accompanying exhibits will follow by messenger. For your convenience, I have also uploaded to the URL below a zip file containing the letter and the accompanying exhibits in electronic format.

https://www.imanageshare.com/pd/3S3ARWxhPZA

Please feel free to contact me if you would like to discuss.

Daniel Golub | **Holland & Knight**
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From: Jon Biggs [mailto:jbiggs@losaltosca.gov]
Sent: Wednesday, February 06, 2019 4:34 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Cc: Ted Sorensen <ted@tgslawoffices.com>; Bill Maston <billm@mastonarchitect.com>
Subject: 40 Main Street Los Altos

Dear Mr. Golub,

Attached please find a letter in response to the letter you submitted regarding the project at 40 Main Street, Los Altos CA. Printed versions to follow in the mail.

Please feel free to contact me at this email address or by phone at 650.947.2635 if you have any questions.

Jon Biggs, City of Los Altos
Community Development Director

Yarkin, Genna (SFO - X56990)

From: Jon Biggs <jbiggs@losaltosca.gov>
Sent: Monday, March 04, 2019 1:35 PM
To: Golub, Daniel R (SFO - X56976)
Subject: RE: 40 Main Street Los Altos

Hello Mr. Golub,

They will be contacting you.

Jon

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Monday, March 04, 2019 10:48 AM
To: Jon Biggs <jbiggs@losaltosca.gov>; Jon Maginot <JMaginot@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com; Chris Jordan <cjordan@losaltosca.gov>; Christopher.Diaz@bbklaw.com
Subject: RE: 40 Main Street Los Altos

Mr. Biggs:

I am looking forward to the discussion; please let me know when the City Attorney's Office would like to talk.

In the interim, please note that your final letter denying the SB 35 application did not advise the applicant of any available avenue to appeal the decision. Instead, the City advised the applicant of the availability of an appeal (despite the fact that the Municipal Code states there is no available appeal for a ministerial project) only at our prompting, and only on the last day the City contended that an appeal could be filed. Despite this, the appeal was timely submitted and the City has accepted the applicant's appeal fee. The Municipal Code requires the appeal to be considered at the March 12 Council meeting.

Daniel Golub | **Holland & Knight**
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Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com; Chris Jordan <cjordan@losaltosca.gov>; Christopher Diaz <Christopher.Diaz@bbklaw.com>
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Community Development Department

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Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
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Importance: High

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Sent: Thursday, February 21, 2019 2:04 PM
To: 'Jon Biggs' <jbiggs@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos

Mr. Biggs and Mr. Maginot:

In response to Mr. Biggs' email from this morning, please find a cover letter and a completed appeal form.

The grounds for the appeal, the issues that are contested, and the arguments and evidence in the record that support the basis of the appeal are those provided in our January 10 and February 19 letters and accompanying exhibits, which are already in the City's files, and are also attached to this email, as well as provided in electronic format at the URL below:

https://www.imanageshare.com/pd/3S3ARWxhPZA

Hard copies of these materials will be delivered today with the check for the appeal fee.

Daniel Golub | **Holland & Knight**
Associate
Holland & Knight LLP
50 California Street, Suite 2800 | San Francisco, CA 94111
Phone 415.743.6976 | Fax 415.743.6910
daniel.golub@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Jon Biggs [mailto:jbiggs@losaltosca.gov]
Sent: Thursday, February 21, 2019 8:49 AM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos
Importance: High

Hello Mr. Golub,

Please see the attached regarding appeal and short time frame to submit appeal.

Jon Biggs, City of Los Altos
Community Development Director

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Tuesday, February 19, 2019 1:58 PM
To: Jon Biggs <jbiggs@losaltosca.gov>
Cc: ted@tgslawoffices.com; Bill Maston <billm@mastonarchitect.com>; gjsorensen_1999@yahoo.com
Subject: RE: 40 Main Street Los Altos

Dear Mr. Biggs:

Attached please find a letter in response to your February 6, 2019 letter regarding the 40 Main Street SB 35 Application. Printed copies of the letter and its accompanying exhibits will follow by messenger. For your convenience, I have also uploaded to the URL below a zip file containing the letter and the accompanying exhibits in electronic format.

https://www.imanageshare.com/pd/3S3ARWxhPZA

Please feel free to contact me if you would like to discuss.

Daniel Golub | **Holland & Knight**
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From: Jon Biggs [mailto:jbiggs@losaltosca.gov]
Sent: Wednesday, February 06, 2019 4:34 PM
To: Golub, Daniel R (SFO - X56976) <Daniel.Golub@hklaw.com>
Cc: Ted Sorensen <ted@tgslawoffices.com>; Bill Maston <billm@mastonarchitect.com>
Subject: 40 Main Street Los Altos

Dear Mr. Golub,

Attached please find a letter in response to the letter you submitted regarding the project at 40 Main Street, Los Altos CA. Printed versions to follow in the mail.

Please feel free to contact me at this email address or by phone at 650.947.2635 if you have any questions.

Jon Biggs, City of Los Altos
Community Development Director

Exhibit 5

Golub, Daniel R (SFO - X56976)

From: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Sent: Tuesday, April 09, 2019 1:16 PM
To: Golub, Daniel R (SFO - X56976)
Subject: RE: SB 35 technical assistance request

[External email, exercise caution]

Hi Daniel

The following are answers your questions,

1. If a development application submits an streamlined ministerial approval application for a project with less than 150 residential units, can a locality validly deny the application by providing an explanation more than 140 days after the application is submitted, which explanation for the first time identifies certain objective development standards with which the locality believes the project to conflict?

No, in accordance to the statute, the local government must provide the development proponent written documentation of the conflicting standards within 60 days of the submittal.

Government Code 65913.4 (b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

2. For purposes of determining whether two thirds of the square footage of a development is designated for residential use, is a parking area exclusively available to residential users considered to be part of the project designated for residential use?

The parking for the residential user of the property is part of the residential use. This is consistent with the definition of "related facilities" in the Streamlined Ministerial Guidelines Section 102 (u).

3. Under SB 35, density bonus modifications, concessions, incentives, waivers, and parking reductions do not render a project inconsistent with objective standards. Does this also include density bonus modifications, concessions, incentives, parking reductions or waivers pursuant to a local adopted density bonus ordinance?

Yes. Section 300(b)(3) of the Streamlined Ministerial Guidelines States:

"(3) Modifications to objective standards granted as part of a density bonus concession, incentive, parking reduction, or waiver of development standards pursuant to Density Bonus Law Government Code section 65915,1 or a local density bonus ordinance, shall be considered consistent with objective standards. "

If you have any further questions, please let me know.

Melinda Coy

Melinda Coy
Senior Policy Specialist
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7425

From: Daniel.Golub@hklaw.com <Daniel.Golub@hklaw.com>
Sent: Thursday, April 4, 2019 4:05 PM
To: Coy, Melinda@HCD <Melinda.Coy@hcd.ca.gov>
Subject: SB 35 technical assistance request

Dear Ms. Coy:

I respectfully request technical assistance regarding the requirements of Government Code 65913.4 (SB 35, Chapter 366, Statutes of 2017), also known as the "Streamlined Ministerial Approval Process."

1. If a development application submits an streamlined ministerial approval application for a project with less than 150 residential units, can a locality validly deny the application by providing an explanation more than 140 days after the application is submitted, which explanation for the first time identifies certain objective development standards with which the locality believes the project to conflict?

2. For purposes of determining whether two thirds of the square footage of a development is designated for residential use, is a parking area exclusively available to residential users considered to be part of the project designated for residential use?

3. Under SB 35, density bonus modifications, concessions, incentives, waivers, and parking reductions do not render a project inconsistent with objective standards. Does this also include density bonus modifications, concessions, incentives, parking reductions or waivers pursuant to a local adopted density bonus ordinance?

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