-----Original Message-----
From: Evelyn Haupt [redacted]
Sent: Monday, December 13, 2021 10:14 AM
To: JHamilton@migcom.com; Distrib- City Clerk <City.Clerk@cityofsanrafael.org>
Subject: The Neighborhood at Los Gamos project

We are writing to you to encourage approval of the Neighborhood at los Gamos project.

Ideally located near transportation, employment and amenities, Los Gamos will help to alleviate the housing crisis in Marin County and specifically in San Rafael.
With 192 new apartments and including 20 low-income units, this plan has been carefully designed to consider water conservation and solar integration as well as including sustainable materials.
The landscape design is attractive while unimposing to public view.

We hope that you will give your complete acceptance to the plan.

Ken and Evelyn Haupt

To: Dave Hogan,
Planning Department,
City of San Rafael.
Transmitted by email
To: Dave.Hogan@cityofsanrafael.org
cc: Leslie.Mendez@cityofsanrafael.org
cc: Alicia.Giudice@cityofsanrafael.org

From: Victor and Maria Kunin
[redacted]
San Rafael, CA 94901

Phone: [redacted]

RE: Opposition to the proposed lot line adjustment
Ross Street Terrace Residential
Assessor's Parcel Nos.: 012-141-59 and 012-141-60

Dave,

This letter is to express my opposition to the lot line adjustment ("Adjustment") of the 33/41 Ross Street Terrace Friedman lots ("Friedman Lots").

We are the owners of the 7-unit multi-family property at [redacted] We live on the property with our 3 children, alongside our tenants. This property is located immediately adjacent to and downhill from Friedman Lots.

As described below, the proposed Adjustment will be in stark violation of multiple ordinances in the San Rafael Municipal Code ("SRMC"), including but not limited to the following:

- Minimum lot size requirements per SRMC section 15.07.020,
- Requirements for panhandle lots per SRMC section 15.06.030(d),
- Application completeness requirements per SRMC section 15.06.030(d)(1),
- Safety requirements per SRMC section 15.04.030(b).

Please see below for a detailed discussion. Based on the presented facts the application for the Adjustment must be denied.

As you are well aware, I have written multiple letters outlining violations and safety concerns of this project as it is proposed. However, I have yet to receive a specific response from the City to any of the issues and concerns that I have raised. I find this to be troubling. Please respond to each of the issues that I raise herein within 7 days of your receipt of this letter.

Sincerely,
Victor and Maria Kunin.

January 3, 2022

Table of contents

1. The Adjustment must conform to the Zoning Ordinance and other pertinent municipal code provisions

The proposed Adjustment is regulated by Chapter 15.05 of the SRMC. SRMC section 15.05.040 requires that:

> *The department of community development **shall** prepare a written report to the community development director describing the lot line adjustment or lot consolidation. The written report **shall** include a statement indicating whether the application is consistent with the San Rafael general plan and any pertinent specific plan or neighborhood plan, **is in conformance with the Zoning Ordinance (Title 14) and any other pertinent municipal code provisions**, and is in conformance with the Uniform Building Code (UBC).*

Please recall that "shall" is mandatory. (SRMC 1.08.110)

If the required written report has been prepared, it was not shared with the public. Please provide a copy.

According to this ordinance, existing lots can not be 'adjusted' into lots that are illegal under the SRMC. Please note that the proposed Adjustment is NOT in compliance with the *Zoning Ordinance (Title 14)* and *other pertinent municipal code provisions* as specified below.

2. Proposed lot density exceeds that allowed by zoning district

The first page (TS) of the submitted Application states that the Zoning Requirement for the lot size is 7,500 sq.ft., and it acknowledges that the size of both lots falls short of this minimum lot

requirement. However, based on the information below the minimum lot sizes must be 10,000 for lot #59, and 20,000 for lot #60.

Both lots are designated *Residential - Low Density* on Figure 3.1 of the General Plan 2040 Land Use Map (unchanged from the General Plan 2020). See Exhibit A hereto. This document is accessible at:
https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/FullDocument-Adopted080221.pdf.

Table 15.07.020C of the SRMC, provided below, specifies minimum lot sizes for this designation.
For the lot #59 (slope 36.7%) the minimum lot size must be 10,000 sq.ft.
For the lot #60 (slope 40.3%) the minimum lot size must be 20,000 sq.ft.

SRMC Table 15.07.020C. Low Density Land Use Designation.

Percent of Slope	Dwelling Unit Per Gross Acre	Min. Lot Size	Avg. Lot Width
0-10	6.5	5,000 sq. ft.	50 feet
10-20	5.375	6,000 sq. ft.	50 feet
20-30	4.25	7,500 sq. ft.	60 feet
30-40	3.125	10,000 sq. ft.	75 feet
Over 40	2.0	20,000 sq. ft.	100 feet

Further, the required lot width shown on the Application is 60 linear feet for each lot. However, the minimum lot width required, as shown in SRMC Table 15.07.020C above, is 75 feet for lot #59 and 100 feet for lot #60. The width of 65 feet and 70 feet for lots #59 and #60 respectively, as shown on the Application, are non-compliant with this width requirement.

Beyond the above, it should be noted that there is a discrepancy between the lot sizes shown on the Application and the lot sizes shown on the county records (see Table 1).

Table 1. Lot sizes in square feet, as shown by the Marin County Assessor Recorder, as presented on the Application, and the minimum size required for the Adjustment.

	Assessor Recorder	**Application**	**Required Minimum stated on the Application**	**Required Minimum per SRMC 15.07.020C**
Lot #59	5,600	6,092	7,500	10,000
Lot #60	4,480	4,787	7,500	20,000

Under SRMC section 15.07.020(a), there are no exceptions to the minimum lot size requirements for projects such as Friedman Lots.

> ***In no instance can the density exceed that allowed by the zoning district.***

(Exceptions noted for affordable housing are not applicable here.)

Therefore the sizes of the lots, as specified in the Application, violate SRMC section 15.07.020(a).

The proposed lot sizes are non-compliant with the minimum lot size and minimum width requirements for the requested Adjustment. Approving the requested Adjustment would not only violate SRMC, it would set a dangerous precedent for future projects. Therefore, the requested Adjustment should not be approved.

3. Proposed Lot Line Adjustment creates dangerous conditions

SRMC section 15.04.030(b) states:

> *(b)Grounds for Conditional Approval or Denial. Notwithstanding (a), a permit, approval, extension, or entitlement may be conditioned or may be denied if any of the following are determined:*
>
> *(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both;*

My December 2, 2021 letter addressed to and acknowledged by you details the multiple aspects in which the proposed development will put the neighbors in a condition that is foreseeably dangerous to their health and safety. Some of those dangers will be created by the lot line adjustment alone. The newly proposed access driveway of lot #59 will be positioned directly above our property, with a steep driveway pointing directly to our residence (Figure 1). Moreover, the currently-proposed positioning of the Lot #59 driveway requires a truck turnaround area directly above our children's play area on our property. With this arrangement the question is more likely when, rather than if, vehicles will fall into our property and cause damage to the property and/or bodily harm to our family and/or tenants. For more details please see my December 2, 2021 letter, section XVII(c), pages 19-20.

Accordingly, for all of the above reasons, we respectfully request that pursuant to SRMC section 15.04.030(b)(1) the Adjustment be denied.

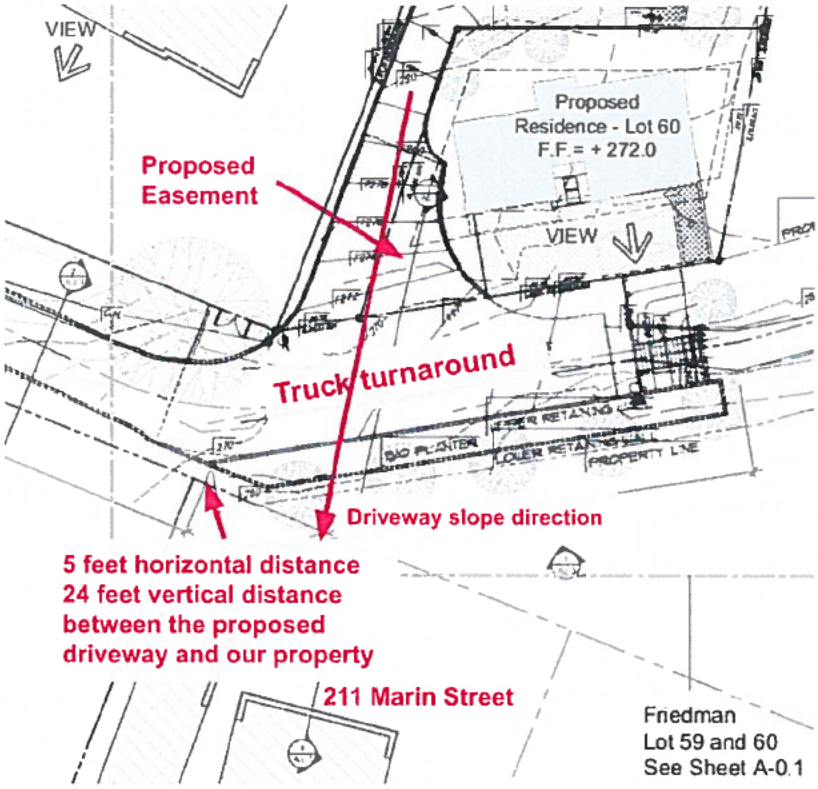


Figure 1. Proposed lot line adjustment will create an access driveway for lot #59, which will be dangerously steep, positioned directly above and pointing directly into our residence, which would clearly place the residents of our property in a condition dangerous to their safety. Therefore, pursuant to SRMC 15.04.030(b)(1) the Adjustment must be denied.

4. Proposed Adjustment of lot #59 violates the Panhandle/Flag lot requirements

Beyond the above, the proposed Adjustment violates SRMC section 15.06.030(d), as follows:

> *Panhandle/Flag Lots. Panhandle or flag lots are lots that are served by a strip of land that is used primarily for gaining access to a major portion of the lot or parcel. The creation of new panhandle or flag lots shall be permitted only when the following conditions can be met:*
>
> > *(1)The panhandle **shall not** be included in calculating the minimum required square footage of the lot or parcel;*
> >
> > *(2)The lot **shall** meet all of the requirements of the zoning district within which it is located;*
> >
> > *(3)The panhandle shall not be used to determine the minimum required front yard setback. The front yard setback shall be measured from the property line that is parallel and nearest to the public street; and*
> >
> > *(4)Access to a public street **shall** be over land under the same ownership as the lot, and **shall not** be over an easement granted by an adjacent property owner.*

Under SRMC 15.06.030(d), Lot #59 meets the definition of a Panhandle/Flag lot. The proposed Adjustment would specifically violate sections SRMC 15.06.030(d)(1),(2)&(4), as described below.

4.1 The proposed Adjustment provides an incorrect lot size calculation

Currently, the size of lot #59 is calculated including the panhandle in violation of SRMC 15.06.030(d)(1). The Application for lot line adjustment must be deemed incomplete until the correct calculation of lot size (i.e. without the panhandle) is provided.

4.2 The proposed Adjustment violates the panhandle lot access requirement

Proposed access to Lot #59 (panhandle lot) requires an easement on Lot #69 (Figure 1). Lots #59 and #60 are separately owned, in that they are two distinctly different lots that are separately alienable. Therefore, the proposed easement would violate SRMC 15.06.030(d)(4) and on this basis the Adjustment must be denied.

4.3 The proposed Adjustment does not meet all zoning district requirements

The proposed Adjustment fails to meet multiple zoning district requirements as follows:

- the minimum size and width requirement per SRMC section 15.07.020,
- Panhandle lot access requirements per SRMC section 15.06.030(d)(4),
- safety requirements per SRMC section 15.04.030(b)(1),

The Adjustment is therefore non-compliant with SRMC 15.06.030(d)(2) and must be denied.

Exhibit A

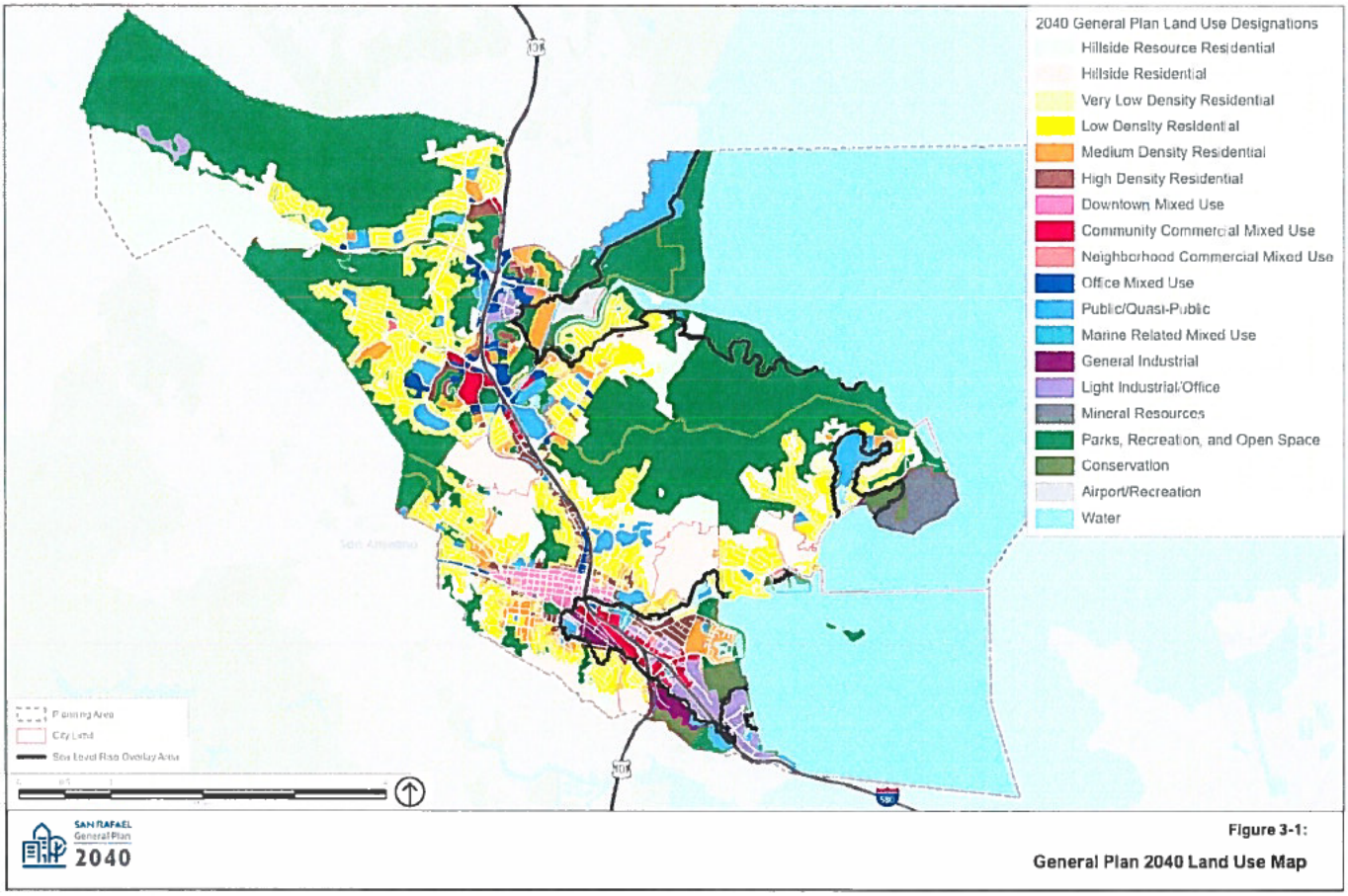


Figure 3-1:
General Plan 2040 Land Use Map

Dave Hogan

From: P Marks <___>
Sent: Friday, January 14, 2022 1:07 PM
To: Dave Hogan
Cc: Alicia Giudice; Leslie Mendez
Subject: Re: Project 33/41 Ross Street Terrace ** Statement of Opposition **

Thanks Dave.

Peter

Peter Marks

From: <___>
Sent: Friday, January 14, 2022 11:59 AM
To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>
Cc: Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>; Leslie Mendez <Leslie.Mendez@cityofsanrafael.org>
Subject: RE: Project 33/41 Ross Street Terrace ** Statement of Opposition **

Dave,

** Can you please provide written confirmation that you've received this, and my email dated 1/12/2022, 7:08pm? **

While we spoke on the phone yesterday afternoon, I never received the requested written confirmation from you that our comments were received. It was my understanding that items received 72 hours prior to the meeting would be included in the printed packet; our comments were sent within the 72-hour window, so it's disappointing to hear that they were not included in the printed packet available for all interested parties to see. Please confirm that our comments, and the additional comment below, will be included as what I believe you said is a "desk item."

I was also surprised to see that none of the comments from previous meetings were included in the distribution packet which is now available. Are these previous comments no longer part of the record or open for consideration?

Below is the additional issue that has come to mind which directly impacts our property at 60 Woods St:

- **Our sewer, water and gas utility lines run from our property, down the middle of Ross Terrace, with our connections happening on Ross Street. All of this is within the boundaries of the proposed roadway**

and/or under the proposed retaining wall. We recently needed to replace our water line (fully permitted and paid), and there has also been sewer work done over the past few years which required excavation on Ross Terrace. If a retaining wall and roadway is built as proposed, this will create an issue for the future support of these vital utilities to our home. This has not been addressed in the submitted plans but needs to be. Possible solution include (at the developers or utilities expense):

- Require that the developer move water meter to be directly adjacent to our property and that MMWD & PG&E agree to take responsibility for any lines under the new roadway and/or retaining walls.

- Move the existing services to our property so they lie above the retaining wall, so they can be serviced in the future without disturbing the roadway or retaining walls.

Requiring that we sign a maintenance agreement related to the roadway so we can maintain our existing services is not an acceptable alternative, as we currently enjoy this maintenance access with the City's blessing.

I look forward to your confirmation of having received these items prior to the meeting next week, and including these comments in the final notes delivered to the DRB members.

Respectfully,

Peter Marks
[redacted]
San Rafael, CA 94901

From: <> _____ _____
Sent: Wednesday, January 12, 2022 7:08 PM
To: dave.hogan@cityofsanrafael.org; alicia.giudice@cityofsanrafael.org
Cc: 'Leslie Marks' <__>_____
Subject: Project 33/41 Ross Street Terrace ** Statement of Opposition **

Dear Dave and Alicia,

*** Please confirm receipt and inclusion in the packet for the upcoming DRB meeting. ***

My wife and I own the property at [redacted] in San Rafael which abuts the proposed Ross Terrace access to the 33/41 Ross Terrace project.

First, I want to acknowledge that while the developer has made modifications, apparently with the DPW and DRB's blessing, based upon community feedback (no overhead street lights, no sidewalks, narrower roadway, slightly smaller homes, and other minor items), these changes still fall dramatically short of an acceptable solution in terms of regulations and accommodating the current residents. While the developer may have the right to develop these lots, *there's no legal right that guarantees him a profit in doing so, nor is it the City's responsibility to grant exceptions to regulations and guidelines (at the expense and quiet enjoyment of existing property owners and residents), so that a profit may be realized.* Available housing is an issue throughout Marin County, but granting exceptions and ignoring

obvious problems to allow development of multi-million dollar homes on difficult sites that dramatically impact existing neighborhoods, is not the answer.

I'm including our previous comments on this project which remain largely intact, although the new plans do address the off-street parking concerns and slightly change the Natural State requirements which are now somewhere closer to a 50.6% and 55.4% per lot. Overall, the latest proposal falls far short of a satisfactory solution.

While we understand that the Design Review Board cannot adjudicate legal issues related to the ownership of the Ross Terrace roadway, nor is the Board responsible for addressing technical details such as drainage and ongoing roadway maintenance of a Ross Terrace access, these are critically important issues that the developer should be prepared to address in the future by the appropriate City or legal authority. Absent these issues, we hope the DRB makes sure the proposal meets local laws and regulations as well as addresses the needs and concerns of local residents and the community at large. A precedent set at this project will impact future projects, a fact that cannot be ignored.

In addition to our original comments, we'd like to add the following design concerns:

1. Natural State requirements are still 50% short of the zoning regulations. *On this basis alone, the project should be re-designed*. Board Member Summers has openly said he does not agree with these regulations which should be cause for recusal. Mr. Summers is not on the board to make regulations, but rather to enforce them.
2. *The Natural State calculation provided in the most recent plans does not include the new Ross Terrace roadway*, which would make the calculation much worse, likely bringing the project in at less than 25% of the current regulation. No calculation for the impact of the roadway has ever been provided. This calculation should be required if this roadway is to be included as everyone should be fully apprised of the overall Natural State impact of this project.
3. The Landscape plan calls for oak trees (up to 50' tall per the description) to be planted on the west, upper, side of the newly proposed roadway. This leads to several issues:
    a. These trees will provide no immediate screening of the roadway which currently exists
    b. the trees will grow directly into the overhead utilities causing a fire hazard (these lines should be undergrounded).
    c. These trees will block our existing view when they grow in the future, and there is no maintenance plan for these trees.
4. With respect to the existing overhead utilities (PG&E, internet, phone), these should be undergrounded (they are not shown on the current plans). This has not been called out on the plans, and this would solve part of the problem identified in #3 above.

5. Our existing access to Ross Terrace will be blocked by retaining walls; we currently have unimpeded access to Ross Terrace and use it regularly. This access should be accommodated in the plans for all current residents who abut Ross Terrace, which is an important fire escape route for all residents.
6. The proposed maintenance agreement makes no sense – all neighbors have access to Ross Terrace and the new road is not beneficial to any of us; why should we incur maintenance responsibilities for the benefit of the developer?
7. How will all the landscaping be tended to during a drought?
8. If the new road is a 'driveway' as opposed to a City maintained street, it should be made a requirement that the mailboxes be on Ross St. and that garbage collection be done at the corner of Ross Terrace and Ross St. to minimize pollution (noise and otherwise). It's important that the peace and quiet of dozens of adjoining residents (well over 45) be respected and protected.
9. Parking issues on Ross Street have still not been addressed – more than 4 spots will be lost, as Ross is very narrow and one is not able to see in either direction when exiting Ross Terrace unless there is more "red" curb on either side of the entrance. There is no mention as to how the existing parking issues will be mitigated in the plans presented.
10. The current steps leading from Ross Terrace to Clayton are not ADA compliant. These are labeled "public steps" on the plans (sheet A0.2), which is also in direct contradiction to the developers requested maintenance agreement for adjoining properties. Is the road private or public? Who owns this property and has access rights to it?
11. There appears to be substantially more grading of the site to accommodate off-street parking. How does this impact the overall grading calculations and CEQA reports?
12. *This development will block the owner of the property just to the north of 33/41 Ross Terrace from ever being able to develop their property due to access issues* (especially the new grading for off-street parking, see #11 above). How can the City take this right away in accommodation of another property owner, since a Clayton access has been ruled out?

We request that you carefully consider these points as you evaluate this project. Personally, we'd be happy to meet with any and all concerned parties to discuss alternatives so all parties' rights are and needs are met.

Respectfully,

Peter & Leslie Marks

[redacted]

San Rafael, CA 94901

From: Peter Marks (Peter R. Marks) <___>
Sent: Thursday, May 13, 2021 4:57 PM
To: dave.hogan@cityofsanrafael.org <dave.hogan@cityofsanrafael.org>; alicia.giudice@cityofsanrafael.org <alicia.giudice@cityofsanrafael.org>
Cc: Leslie Marks <___>
Subject: Additional Comments: Project 33/41 Ross Street Terrace ** Statement of Opposition **

Dear Dave and Alicia,

*** Kindly Acknowledge Receipt ***

We're submitting this additional letter of opposition the to project as proposed after having further reviewed the plans. This project clearly proposes **overbuilding the two lots, requiring significant variances to the detriment of the environment and the neighborhood**. The size of the homes and impact on the neighborhood should be reduced in scope.

The applicant should not be granted these **gross exceptions** for his sole benefit (profit) at the expense of the environment and all neighborhood residents. The rules and guidelines set by the City should be applied to this project and followed as closely as possible. **The exceptions being requested are not minor in nature or magnitude, and only serve the interests of the developer,** and perhaps the City in terms of future tax revenue.

- Minimum Natural State. The proposed development is not just a few percent off; **it's 53% and 54% short of the required minimum. This is over building the lots to maximizing profit for the developer *instead of developing a home or homes that are suitable for the site and stay within the rules.***

- Parking Exception: Why after proposing to build a 480' drive way should the developer be granted **a 50% reduction in the required guest parking requirement,** with one of the spaces actually impeding the use of a garage? Again, this only serves to maximize the size of the homes and the profit for the developer.

- Existing Lot Size: Both lots are tiny – **less than 78% and 67% of the 7,500 sq/ft minimum** respectively, with large proposed homes that are completely out of character with the nearby houses. The homes should be smaller (or maybe only a single home be built) which will easily solve the issues outlined above (but not the developers desire to maximize profit).

There are also several inaccuracies in the report, and other items left unaddressed:

- **Height of retaining walls at Ross St Entrance**. *The drawings do not show the wall heights at the steepest part of the proposed Ross St entrance to Ross Terrace*, instead they only show section A-A after where the road starts to level out and where the walls are still over 12' tall on the west side. The actual height of all retaining walls along the entire route should be detailed for both the uphill (west side) and downhill (east side) – the actual impact is far greater than it looks on the drawings.

- The **developer did not deliver the same photographic representation of the road for the Ross Street access, as he did for Clayton**. This should be done to provide a true perspective of the impact of the proposed Ross Terrace entrance for the DBR to see.

- **Why has the CEQA report not been delivered** for review? This is an important aspect of this project, and we believe it would be a critical part of the DBR's analysis.

- **Destruction of existing open space**: The proposed Ross Street roadway will destroy current open space *far in excess of the foot prints of the proposed homes*, creating more hard-scape and pavement contributing to global warming. The Clayton Street access largely exists, thus would be far less environmentally impactful, while at the same time improving fire access for all properties along Clayton St. How does preservation of habitat and open space factor into the City's analysis in light of it's current and future (2040) planning? **How does the developer propose to offset the environmental impact, loss of natural state, and loss of open space?**

- Access for current property owners **all along Ross Terrace will be blocked by a Ross Street entrance due to high retaining walls and fences on both sides of the proposed road**. Owners rights to continuously and safely access Ross Terrace cannot simply be taken or given away, especially since it's a critical fire escape route for all property owners along Ross Terrace.

- **There is another undeveloped, triangular, lot to the north of the subject lots**. If access is granted from Ross Street this lot will effectively be blocked from future development, *or the City would need to approve a plan for access via Clayton Street*. Providing access from Clayton will solve access for all lots on Ross Terrace, not just the two lots currently in question, in addition to many other benefits outline by various neighbors.

- There is an **unaddressed issue where the proposal located the garage level of the single-family residence on Lot 59 approximately 1½ feet from the property line**. This is exactly the type of exception that causes future problems, and is only being considered so the developer can maximize the size of the homes and his profit.

- The **Planner discuss the impact on neighbors with access via Clayton, but did not do the same for property owners along Ross Terrace should be access be via Ross St**. (where 9x's as may families would be impacted). No property owners along Ross Terrace have been approached about the impact to them by either the applicant or the design review board, while at the same time there have been repeated (unanswered) requests for information.

- **The City seems happy to relinquish any responsibility for the Ross Terrace street**, putting the responsibly and liability, upkeep, maintenance and policing on adjacent property owners. These responsibilities already fall upon the City for a Clayton St access, and if access is granted via Ross St, the City should not be released of its obligation to manage, maintain and police.

These are just a few of the concerns we have. We urge the DBR to carefully consider all the exceptions being granted, the impact of the proposed access routes, and adjust the scope of this project accordingly.

Respectfully,

Peter & Leslie Marks
[redacted]
San Rafael, CA 94901

To: Lisa Goldfein, San Rafael City Attorney Office lisa.goldfein@cityofsanrafael.org
cc: Dave.Hogan@cityofsanrafael.org
leslie.mendez@cityofsanrafael.org
rob.epstein@cityofsanrafael.org

From: Victor and Maria Kunin
[redacted]
San Rafael, CA 94901

Phone:

RE: Access and building rights on Ross Street Terrace
Ross Street Terrace Residential
Assessor's Parcel Nos.: 012-141-59 and 012-141-60

Dear Ms. Goldfein,

1. Building rights.

We are writing to inform you that the City's determination that Mr. Friedman's right to build on Ross Street Terrace is based on false information, as follows. The December 12, 2019 letter of Mr. Sorensen (attached) provided a Deed dated May 8, 1880 (recorded May 10, 1886) that Mr. Sorensen misinterpreted as dedicating a public street extending from Clayton Street all the way to Ross Street. This is incorrect.

The Deed provided by Mr. Sorensen is very difficult to read, and the transcription provided by Mr. Sorensen is incomplete. Enclosed herewith is a property description obtained from our neighbors residing at 56 Clayton Street that describes the same property as the Deed provided by Mr. Sorensen. However the property description obtained from our neighbors is easily readable. This property description is presented, along with an overlay of the Assessor Recorder map, in Figure 1 on Page 3 of this letter.

The Deed established both the 56 Clayton property (APN 012-142-01) and a street at the time named 'Buena Vista Street'. Buena Vista Street, as described in the Deed, terminated approximately 360 feet short of Ross Street (see Figure 1). Contrary to Mr. Sorensen's December 12, 2019 assertion, Buena Vista Street as established on May 8th 1880 is not one and the same as Ross Street Terrace, which currently connects to Ross Street. Accordingly, Mr. Sorensen's assertion that the Deed documents the ownership of Ross Street Terrace is incorrect.

No Deed has ever been provided for the ownership of Ross Street Terrace. In that Mr. Friedman has failed to demonstrate ownership of Ross Street Terrace, he has no right to build on Ross Street Terrace. His application must be deemed incomplete until his ownership of Ross Street Terrace is established.

2. Access Rights.

Please note that the current plans propose construction of tall retaining walls that will deny us access to the historical Buena Vista Street as well as Ross Street Terrace. The right of a property owner to access an abutting street is well established in California law. Please see Sections 3 and 4 from the letter of Valerie Lels to Caron Parker, dated January 6, 2020 (attached) for authority on this issue.

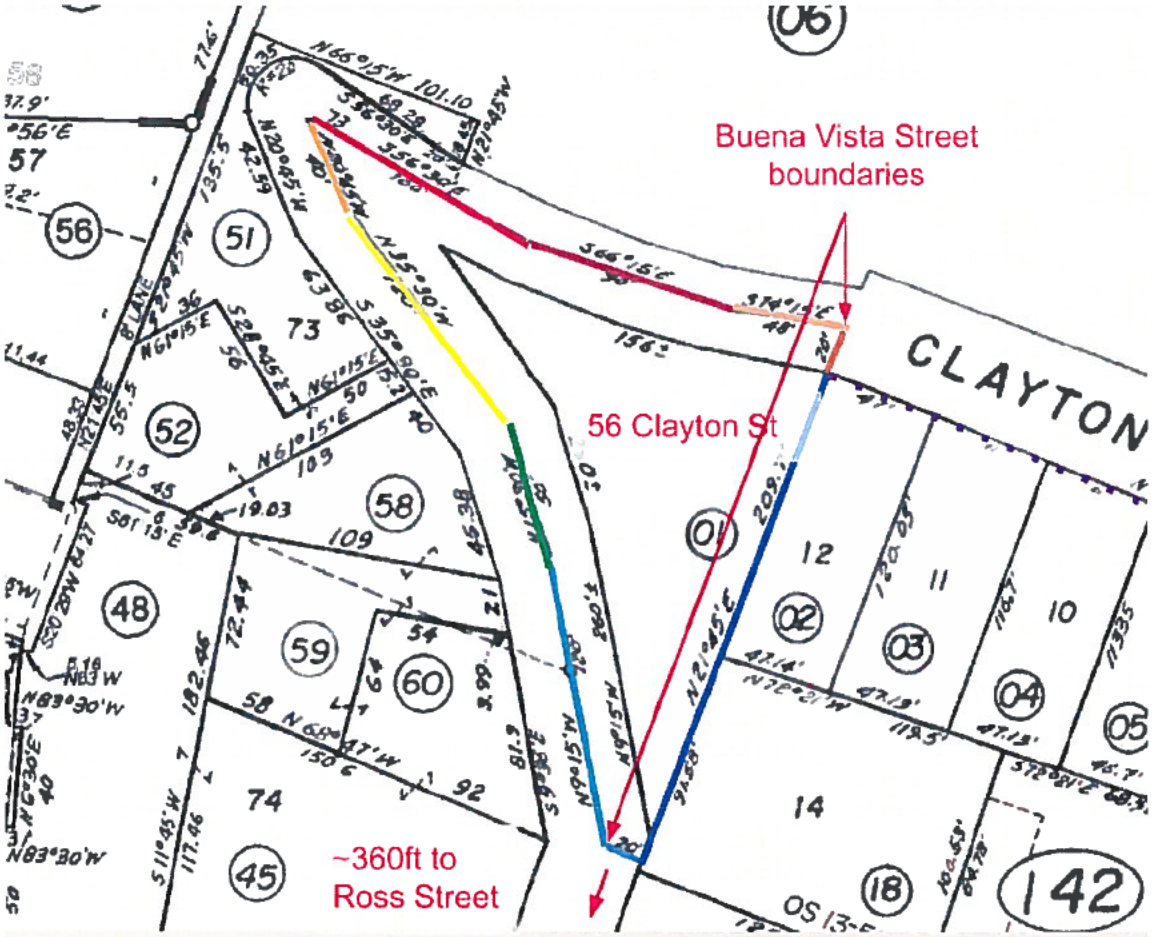
Further, in his December 12, 2019 letter, Mr. Sorensen provided a California Supreme Court case *Danielson v. Sykes* (1910) 157 Cal. 686, 689, holding that constructing barriers that prevent such access is illegal. Ironically, in his August 26, 2020 letter Mr. Sorensen recanted, reversing his position and claiming the right of access to belong exclusively to his client, Mr. Friedman. Mr. Sorensen failed to provide any authority whatsoever for his revised position on this issue.

We use Buena Vista Street and Ross Street Terrace to access our property. Buena Vista Street and Ross Street Terrace also provide us with a vital escape route in case of a fire or other emergency. The safety of our family and tenants is a non-negotiable issue. Permitting construction that will deny us such access is illegal, would put our safety at foreseeable and preventable risk, and would make the City of San Rafael liable for any adverse consequences arising from any permits issued for construction that prevents our access to Buena Vista Street and Ross Street Terrace.

We have communicated the above concerns to the Planning Department over and over again. Yet the issue of our access to Buena Vista Street and Ross Street Terrace has still not been addressed. Please communicate to the Planning Department the importance of addressing this issue at the earliest possible date.

Respectfully submitted,
Victor and Maria Kunin.

January 3, 2022.



DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY situate in the City of San Rafael, County of Marin, State of California, described as follows:

BEGINNING at a stake driven North 68° 15' West 66 feet from the Northwest corner of Lot 16, of Short's Addition to the Town of San Rafael, thence South 21° 45' West 209.7 feet to the Northeast corner of the portion of Lot 17 in said Addition now or formerly owned by J. S. McDonald; thence North 68° 15' West along the Northerly line of said Lot 17, 20 feet to a stake; thence leaving said line of said Lot and running North 9° 15' West 120 feet; North 15° 30' West 50 feet, North 35° 30' West 120 feet, North 20° 45' West 40 feet, South 56° 30' East 100 feet, South 66° 15' East 90 feet, South 74° 15' East 48 feet, South 21° 43' West 20 feet to the place of beginning.

BEING a portion of Lot 14 of Short's Addition to the Town of San Rafael.

The above is intended to be the same premises described in the deed from James S. McDonald to Peter Williams, dated May 8, 1886 and recorded in Book 3 at page 360 of Deeds, Marin County Records.

Figure 1. Assessor Recorder map and a legal description of the property of #56 Clayton Street. Each segment is denoted with a color-coded line, color matching the map and the legal description.

Valerie A. C. Lels
[redacted]
San Rafael, California 94901

January 6, 2020

Caron Jo Parker
Associate Planner
City of San Rafael
1400 Fifth Avenue
San Rafael, California 94901

Re: Clayton Lots- Legal Issues

Dear Caron,

This letter is written in response to December 12, 2019 correspondence to City Attorney Lisa Goldfein from Neil Sorensen, the attorney for Mr. Friedman, who is the developer of the Clayton Street lots. In addition to raising legal issues related to the proposed Clayton Street project, this letter contains some comments and observations of my own. The issues I address are issues that come to mind at this time. However, should any additional issues come to my attention in the future, I would like to reserve the opportunity to address them with the Planning Department and/or other City departments as appropriate.

I would ask that you please forward this letter to Ms. Goldfein for her review and analysis, and also that you please take into consideration the issues raised in this letter when you prepare your Letter of Completeness that is due to be submitted by January 10th.

1. A right of access does not automatically confer a right to construct. Although these are demonstrably two separate rights, Mr. Sorensen presents in his December 12, 2019 letter a seamless segue from the right of access to the right to construct, offering authority for the former and none at all for the latter. No issue is taken with the developer's right to access his lots via ingress and egress along Ross Street Terrace. That principle of access to one's property is not in dispute here. However, the right of access does not confer upon the developer the right to perform construction along the entirety of Ross Street Terrace. No evidence has been presented to show that the developer owns the entirety of Ross Street Terrace, and he has no rights of construction or development on property he does not own.

2. There are multiple properties abutting Ross Street Terrace that are owned by others. It is well-established that the owners of properties existing along a roadway and abutting that roadway also own the property from the abutting property line to the center line of the given roadway. California Civil Code § 831: "An owner of land bound by a road or street is presumed to own to the center of the way; but the contrary may be shown." California Civil Code § 1112: "A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant."

The deeds by which the abutting property owners acquired title to their property show no intent to except from those transfers of title the above-described contiguous portions of Ross Street Terrace, and no evidence has been presented that any such exceptions occurred earlier in the relevant chains of title. Accordingly, when the current abutting property owners took title to their property, they also acquired a fee title to the portions of Ross Street Terrace that lie between the abutting

property line and the center line of Ross Street Terrace. *Jones v. Deeter* (1984) 152 Cal.App.3d 798,802; *Safwenberg v. Maquez* (1975) 50 Cal.App.3d 301,307-309. Therefore, the developer may not construct upon or in any way alter the portions of Ross Street Terrace belonging to the abutting property owners without permission from those property owners. For the developer to do so would constitute a basis for causes of action for trespass, nuisance, willful and malicious destruction of property, and any additional unlawful acts committed by the developer.

3. Beyond the above, each abutting property owner possesses an additional, private right of easement and use in Ross Street Terrace for purposes of access to his property. This right of easement arises as a matter of law particular to each abutting property owner based upon ownership of the abutting property, and it is separate and distinct from any rights of access the general public may have to pass along Ross Street Terrace. *Brown v. Board of Supervisors* (1899) 124 Cal. 274,280. It is as fully a property right as the property owner has in the property itself. This right may not be taken away, destroyed, or substantially impaired or interfered with, and any such infringement gives the property owner a basis for one or more causes of action. *Rose v. State of California* (1942) 19 Cal.2d 713, 726-729. "It is well settled that where there is evidence to support a finding that substantial and unreasonable interference with the landowner's easement of access or right of ingress and egress has been caused as the result of an obstruction in the street or highway on which his property abuts, an appellate court will not say as a matter of law that such finding is erroneous." *Ibid.*,728. Accordingly, the developer is prohibited from interfering with the abutting property owners' private easement of access rights either during the construction process, or by constructing or creating any permanent barriers and/or changes to Ross Street Terrace that would block, restrict, or impede these easement rights in any way.

4. The developer's plans as presented to the City would create numerous dangerous conditions for adjacent property owners, including but not limited to the dangerous conditions described in Victor Kunin's 12/2/19 email to you. Such dangerous conditions could result in serious damage to adjacent properties as well as serious injury to the property owners, their families, guests, and tenants. Further, such a dangerous condition on property belonging to the abutting property owners would open those property owners, their tenants, and anyone else who occupies or controls the property, to premises liability claims. California Civil Code §1714(a); see also *Sprecher v Adamson Companies* (1981) 30 Cal.3d 358,368: "…the duty to take affirmative action for the protection of individuals coming upon the land is grounded in the possession of the premises and the attendant right to control and manage the premises."

Alarmingly, the maintenance agreement suggested by the developer for the Ross Street Terrace roadway, the proposed retaining walls, and other structures included in the plans presented to the City, allows the adjacent property owners no means of enforcement regarding such maintenance should the responsible parties under the maintenance agreement fail to maintain. Yet all the while the adjacent property owners remain potentially liable for injuries and accidents caused by such failure to maintain. This creates an untenable and entirely unfair burden and risk for the adjacent property owners. Would homeowners' insurance cover such a situation? That would depend on the facts, the scope of coverage, the policy limits, etc. In any event, it is entirely foreseeable that such a situation would constitute a legal nightmare.

5. I would like to comment on some of Mr. Sorensen's assertions in his December 12, 2019 letter:

a) Mr. Sorensen states on page one of his letter "...the relevant portion of Clayton Street is not a City Street." It is not clear what portion of Clayton Street Mr. Sorensen means by "the relevant portion of Clayton street", on what information he

relies in making this statement, and what relevance this statement has to the issues he presents.

b) Mr. Sorensen further states on page one of his letter "Clearly, the City would not have approved the initial lot split in 1963 or ratified it through the issuance of a Certificate of Compliance in 2004 if there was not legal access along Ross Street Terrace...". This statement is entirely speculative and conclusory. Mr. Sorensen has no information regarding what the San Rafael City officials were thinking or intending when they approved the subdivision in 1963 and/or when they issued the Certificate of Compliance in 2004. The only information we have as to the true intent of the City of San Rafael is the information contained within the four corners of the referenced documents, as follows: (1) The 1963 lot subdivision approval specifically requires the construction of a road along Clayton Street in front of the proposed lots as a condition of the approval; there is no mention of any access along Ross Street Terrace. (2) The 2004 Certificate of Compliance specifically requires the owner of the property to satisfy the conditions of the 1963 City of San Rafael Planning Commission (which conditions include the construction of a road along Clayton Street in front of the proposed lots) prior to the issuance of any building permits, and the 1963 subdivision conditions are attached to the Certificate of Compliance as Exhibit B, incorporating these conditions by reference. There is nothing in either of these documents that indicates any intention on the part of the City of San Rafael regarding access to the lots from Ross Street Terrace. On the contrary, the plain language in both documents clearly indicates the intention that access to the lots would be from Clayton Street, and in fact the Certificate of Compliance shows the street address of the three lots in question to be 33, 37, and 41 Clayton Street (not 33, 37, and 41 Ross Street Terrace).

6. Further to the above, in reviewing the 1963 subdivision approval document and the 2004 Certificate of Compliance, I note that the subdivision plans approved in 1963 show only one structure to be built on one of the lots: a duplex on Parcel 2 (Lot 59), with no construction at all on Parcels 1 and 3. Further, it appears that the issuance of the 2004 Certificate of Compliance was done in reliance on the 1963 subdivision approval and the plans submitted therewith. Yet the current construction plans are a far cry from, and greatly exceed the scope of, the minimal construction shown on the plans submitted in 1963, when the application for subdivision approval was submitted.

7. The following comments relate to the 1886 deed provided by Mr. Sorensen, the maps he provided in conjunction with the deed, and Mr. Sorensen's analysis of the same. Much clarification and additional information is needed here.

a) Only one of the maps provided, the Shorts Addition map, is legible; the other map is nothing but a gray blur. The Shorts Addition map does not extend far enough up Ross Street Terrace to show Clayton Street or to illustrate what Mr. Sorensen asserts the 1886 deed is conveying and reserving/dedicating. It is impossible to understand from the deed and maps provided either the metes and bounds description shown in the 1886 deed, or what was actually conveyed and what was reserved/dedicated at that time. (For example, what/where are the all-important "courses three (3) to nine (9)" referred to in the deed?)

b) Notwithstanding the above, the minimal information I have been able to glean from the deed and maps provided seems to indicate that Mr. Sorensen's assertion on page two of his letter that the 1886 deed from McDonald to Williams dedicated Ross Street Terrace "starting at Ross Street (a City street) and extending all the way up to the portion of Clayton Street that is a City street" cannot be correct, because:

(1) The Shorts Addition map shows that McDonald did not own the two lots on either side of Ross Street Terrace where it intersects with Ross Street. He could not convey or reserve/dedicate Ross Street Terrace at that point because he did not own those lots.

Caron Jo Parker

(2) The 1886 deed states that the newly-dedicated roadway extends to "the north end of the 40 foot Street known as Ross Street Terrace", which is further evidence that the newly-dedicated roadway did not extend all the way to Ross Street, as Mr. Sorensen contends. It is also evidence that McDonald neither "created Ross Street Terrace" nor "reserved the street for his use", as Mr. Sorensen also contends. Under the circumstances, Mr. Sorensen's statement that the 1886 deed "creates both a public right-of-way and private rights in all lot owners in the area" seems at a minimum to be overly-broad, and he does not address by what means or legal authority McDonald could have reserved the entirety of Ross Street Terrace for his use or could have created private rights in all lot owners in the area.

(3) Further, Mr. Sorensen's reference to the term "use of the parties" to support his statement that the deed creates "private rights in all lot owners in the area" is incorrect and misleading. The 1886 deed actually reads "use of the parties of the first and second part", which refers specifically to McDonald and Williams respectively, and which, on the contrary, tends to indicate the dedication of an easement for the use of McDonald and Williams. "A dedication is legally equivalent to the granting of an easement." *Jones v. Deeter* (1984) 152 Cal.App.3d 798,802.

8. I see no evidence of a chain of title connecting whatever portion of land McDonald actually did convey and reserve/dedicate in 1886 with the land purchased by the developer in 2014. We know that the three lots the developer purchased in 2014 were owned by McPhee in 1963. But we have no information regarding what land transfers might have occurred in the 75+ years between the 1886 deed (which is at this time unclear) and the creation of the three lots that were owned by McPhee in 1963. Accordingly, any relationship or connection that Mr. Sorensen currently alleges between the land conveyed and reserved/dedicated by the 1886 deed and the lots the purchased by the developer in 2014 is without merit. Unless an appropriate and complete chain of title is provided, the 1886 deed cannot be offered as evidence of the developer's property ownership and/or property rights.

Further to the above, I respectfully request that the City of San Rafael revisit any previously-expressed opinions regarding the developer's rights pertaining to the proposed Clayton Street project.

Sincerely yours,

Valerie Lels

LAW OFFICES OF
NEIL SORENSEN

950 NORTHGATE DRIVE, SUITE 200
SAN RAFAEL, CALIFORNIA 94903
WEB www.sorensenlaw.com

TELEPHONE 415 499-8600
FACSIMILE 415 491-9515
EMAIL neil@sorensenlaw.com

December 12, 2019

VIA E-MAIL

Lisa A. Goldfien
Assistant City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: ED 19-090 and 19-091
A.P. 12-141-59 and 60 (Friedman)

Dear Lisa:

This letter is a follow-up to our telephone conference on December 11th regarding this project. I am the attorney for the applicant, Coby Friedman.

As we discussed, my client was surprised the City was raising an issue over access four years after he first applied to the City to develop these lots and after numerous City reviews and a staff report to the Planning Commission. Not once during this four year period has staff ever raised an issue with access or requested that my client submit documentation showing he has "rights to access and construct a new roadway on Ross Street Terrace."

The two lots my client seeks to develop were created by a subdivision approved by the City in 1963. Although access at that time was from Clayton Street, the relevant portion of Clayton Street is not a City street. The legality of the lots was confirmed through a Certificate of Compliance process in 2004. Clearly, the City would not have approved the initial lot split in 1963 or ratified it through the issuance of a Certificate of Compliance in 2004 if there was not legal access along Ross Street Terrace or the portion of Clayton Street that is not a City street.

We believe there is absolutely no question that these two lots have the right to access and construct a roadway on Ross Street Terrace based upon the following:

1. The property is part of the unrecorded map of Shorts Addition (copy enclosed). Specifically, it was shown on the unrecorded map of Shorts Addition as the property of "J. S. McDonald." The unrecorded map of Shorts Addition shows Ross Street Terrace extending from Ross Street (a City street) up to the property and continuing to Clayton Street. There are

numerous California Appellate Court cases that stand for the proposition that when lots are sold by map or with reference to the streets on a map, the streets as designated on the map are "open to the purchaser and to any subsequent purchaser." See *Day v. Robison* (1955) 131 Cal.App.2d 622, 623-24. The *Day* case references the famous California Supreme Court opinion in *Danielson v. Sykes* (157 Cal. 686, 689) which stands for the proposition that when lots are sold and refer to streets shown on maps (whether recorded or unrecorded) it creates private easement rights in the lot owners. See also *Douglas v. Lewin* (1933) 131 Cal.App. 159 which held that the sale of a lot with reference to an unrecorded map created rights in the purchaser of the lot to use that roadway for access (Mill Valley case). Thus, because the Friedman property was shown on the Map of Shorts Addition, it has easement rights over the adjacent street.

2. As the City knows, there is a deed recorded in 1886 that dedicated Ross Street Terrace starting at Ross Street (a City street) and extending all the way up to the portion of Clayton Street that is a City street. I am enclosing a copy of the deed, which is very difficult to read. We have had the deed transcribed and I am also enclosing a transcribed portion of the deed. The deed involves the sale of land in Shorts Addition by James S. McDonald (same as on Map of Shorts Addition) to Peter Williams and the creation of two public streets between Ross Street and the end of the City owned portion of Clayton Street.

> "The object being a continuous street of the uniform width of 40 feet from Ross street to a point 130 feet West from the West end of Clayton street. The 130 feet having been otherwise dedicated by party of the first part and M. M. Jordan. Said new street to be known as Buena Vista street; the said Buena Vista street being dedicated hereby for the use of the parties of the first and second part and the public and the same extending along the North Easterly and the Westerly sides of the land having conveyed." (Emphasis added.)

The language in the 1886 deed creates both a public right-of-way and private rights in all lot owners in the area ("use of the parties"). Since James S. McDonald owned the Friedman property when he created Ross Street Terrace and reserved the street for his use, the Friedman property clearly has easement rights over Ross Street Terrace.

3. When Mr. Friedman purchased his property, he also purchased a Policy of Title Insurance from Fidelity National Title Company (copy enclosed). The Policy of Title Insurance (see page 2) specifically insures Mr. Friedman against "lack of right of access" to and from the land." As referenced in the title policy legal description (page 4) and in Mr. Friedman's deed, the description of his property clearly references that it borders "Ross Street Terrace (formerly Buena Vista) as described and dedicated to public use in the deed from James S. McDonald to Peter Williams recorded in Book 3 of Deeds at page 360, Marin County Records...." This alone creates access rights in Ross Street Terrace.

I trust that the above provides you with sufficient information to conclude that Mr. Friedman has adequate access rights over Ross Street Terrace. If not, I would ask that you put

your objections in writing so that I may convey them to Mr. Friedman's title company and make a claim for lack of access to his property.

If you have any questions or wish to discuss this further, please feel free to contact me.

Sincerely,

NEIL SORENSEN

NS/mjs
Enclosures
cc: Coby Friedman

Deed Recorded Book 3, Page 360
Marin County Records

This Indenture made the 8th day of May in the year of our Lord one thousand eight hundred and eighty is between James S. McDonald of San Rafael, Marin County, California party of the first part and Peter Williams of the same place, the party of the second part.

Witnesseth that the said party of the first part for and in consideration of the sum of five dollars gold coin of the United States of America to him in hand paid by the said party of the second part the receipt of whereof is hereby acknowledged doth by these presents grant bargain and sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever all that certain lot and parcel of land situate lying and being in the town of San Rafael, County of Marin and State of California and bounded and particularly described as follows to wit: Beginning at a stake driven __ 68° 15' W 66 feet from the Northwest corner of Lot 16 of Shorts Addition to the town of San Rafael: Thence S 21° 45' W 214.6 feet to the Northwest corner of the portion of Lot 17 in _____ Shorts Addition owned by J. S. McDonald; thence N 68° _ W along the Northerly line of said Lot 17 20 feet to a stake; thence leaving said line of said Lot 17 and running __ 15 W __ feet N 15° 30 W 11.50 feet __ 35° 30 __ 20 feet ___ ___ ___ 56° 30 __ 0.100 feet S 66° 15 S 90 feet ___ 48 feet S 21° 45 feet to the place of beginning. Being a portion of Lot 14 of Shorts Addition to the town of San Rafael. Party of the first part hereto reserves and hereby dedicates for use as a public street, twenty (20) feet on each side of courses three (3) to nine (9) both inclusive of the distance above given. Said street being 568 feet in length and 40 feet in width. Said party of the first part also hereby dedicates for use as a public street a strip of land of the uniform width of 40 feet and extending from the South end of the street above dedicated to the north end of the 40 foot street known as Ross Street Terrace the East line of said strip of land being the West line of said Lot 16 in Shorts Addition. The object being a continuous street of the uniform width of 40 feet from Ross street to a point 130 feet West from the West end of Clayton street. The 130 feet having been otherwise dedicated by party of the first part and M. M. Jordan. Said new street to be known as Buena Vista street; the said Buena Vista street being dedicated hereby for the use of the parties of the first and second part and the public and the same extending along the North Easterly and the Westerly sides of the land having conveyed. Together with all and singular the tenements hereditaments(?); and appurtenances thereunto belonging or in anywise ___ pertaining and the reversion and reversions remainder and remainders, rents issues and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In Witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

NOTARY ACKNOWLEDGEMENT

Signed by James S. McDonald
Acknowledged by Hepburn Wilkins, Notary Public

Filed for record and recorded at request of L. Williams May 10th, 1886 at 5 mins. past 9 o'clock A.M.

This Indenture made the 8th day of May in the year of our Lord one thousand eight hundred and eighty six Between James J. Mc Farland of San Rafael Marin County California party of the first part and Peter Williams of the same place the party of the second part Witnesseth that the said party of the first part for and in consideration of the sum of five dollars and coin of the United States of America to him in hands paid by the said party of the second part the receipt whereof is hereby acknowledged doth by these presents grant bargain and sell convey and confirm unto the said party of the second part and to his heirs and assigns forever all that certain lot and parcel of land situate lying and being in the town of San Rafael County of Marin and State of California and bounded and particularly described as follows to wit. Beginning at a stake driven N. 66° 15' W. 66 feet from the South east corner of Lot 16 of Shorts Addition to the town of San Rafael. Thence S. 21° 45' W. 214.6 feet to the South East corner of the portion of Lot 17 in said Shorts Addition, owned by J. J. Mc Farland. Thence N. 68° 15' W. along the Northerly line of said Lot 17. 70 feet to a stake. Thence leaving said line of said Lot 17 and running N. 9° 15' W. 120 feet. N. 15° 30' W. 50 feet N. 35° 30' W. 120 feet. N. 50° 45' W. 44 feet. S. 56° 30' E. 100 feet. S. 66° 15' E. 90 feet. S. 74° 15' E. 48 feet. S. 21° 45' W. 7.2 feet to the place of beginning. Being a portion of Lot 16 of Shorts Addition to the town of San Rafael. Party of the first part hereto reserves, and hereby dedicates for use as a public street, twenty (20) feet on each side of courses three (3) to nine (9) both inclusive of the distance above given. And

street being 568 feet in length, and 40 feet in width, said party of the first part also hereby dedicates for use as a public street a strip of land of the uniform width of 40 feet and extending from the South end of the street above dedicated to the North end of the 40 foot street known as Dora Street, TAKEN AS NORTH
the East line of said strip of land being the West line of said Lot 16 in Shorts Addition. The object being a continuous street of the uniform width of 40 feet from Dora street to a point 130 feet West from the West end of Clayton Street. The 130 feet having been heretofore dedicated by party of the first part and M. M. Jordan. Said new street to be known as Buena Vista street, the said Buena Vista street being dedicated hereby for the use of the parties of the first and second part and the public and the same extending along the North easterly and the West. EAST
erly sides of the land hereby conveyed. Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents issues and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In Witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Signed sealed and delivered in the presence of: James D. McDonald (seal)

Note part of deed written in hand writing of witness. Josephine Watkins

State of California }
County of Marin } ss

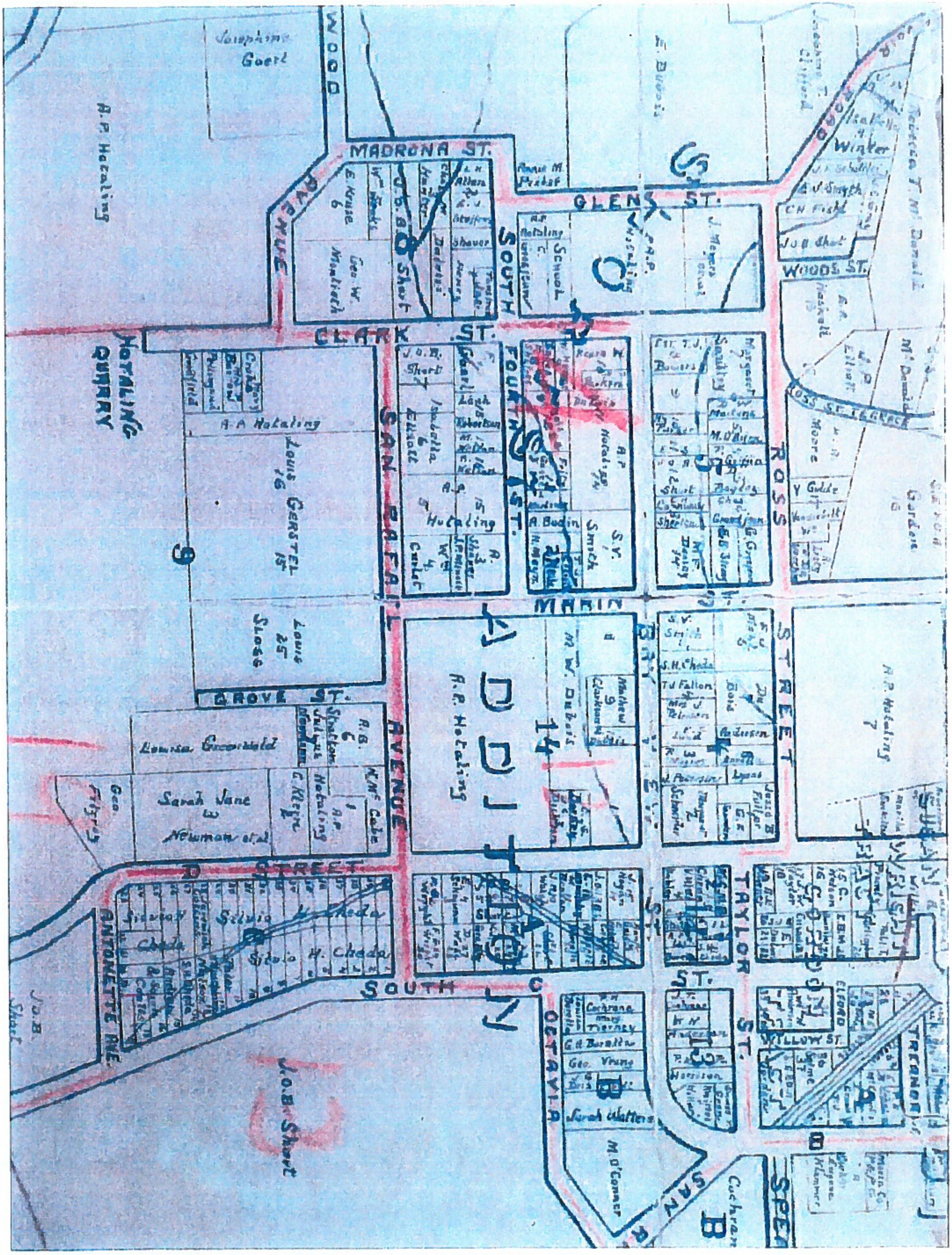
On this 8th day of May in the year one thousand eight hundred and eighty six before me Hepburn Wilkins a Notary Public in and for the County of Marin State of California personally appeared James A. McDonald personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

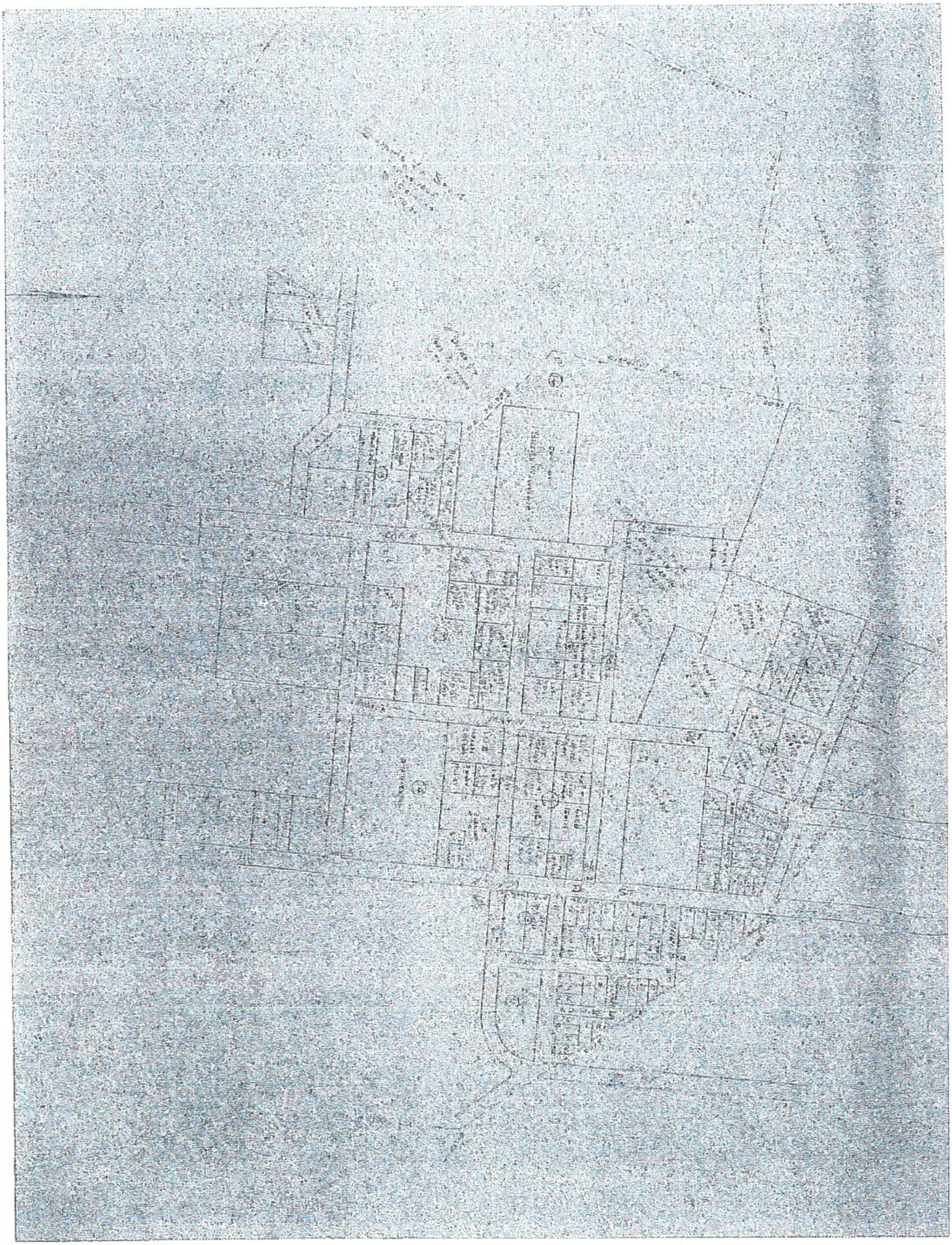
In Witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Hepburn Wilkins
Notary Public

Seal

Filed for record
and Recorded at request of J. Williams
May 10th 1886 at 6 mins past 9 o'clock A. M.


MADRONA ST.
GLENS ST.
CLARK ST.
WOODS ST.
ROSS ST. TERRACE
ROSS STREET
SOUTH FOURTH ST.
SAN RAFAEL AVENUE
MARIN
GROVE ST.
D STREET
SOUTH
TAYLOR ST.
WILLOW ST.
OCTAVIA
ANTOINETTE AVE.
HOTALING QUARRY
A.P. Hotaling
Josephine Goerl
Louis Gerstel
Louis Sloss
Louisa Greenwald
Sarah Jane Newman et al
Silvio H. Cheda
J.O.B. Short
Sarah Watters
McConner
School
ADDITION
14



Fidelity National Title Company

ISSUING OFFICE: 11050 Olson Drive, Suite 200, Rancho Cordova, CA 95670

FOR SETTLEMENT INQUIRIES, CONTACT: Fidelity National Title Company
1250 Church Street, Suite C · St. Helena, CA 94574
(707)963-1906 · FAX (707)963-4801

April 30, 2015

2143 3 AT 1.050
Jacob Friedman
[redacted]
Fairfax CA 94930-1827

Order No.: FMNA-MTO1401053

Property Address:	Vacant Land APN 012-141-59 and APN 012-141-60, San Rafael, CA 94901
Seller:	John Maib, Suzanne Maib, Haskell J. Matheson, Dawn M. Matheson and AVBEJB Investments, LLC
Buyer:	Coby Friedman

We appreciate the opportunity of being of service to you. Please call us immediately if you have any questions or concerns.

Sincerely,

Fidelity National Title Company

Escrow Contact:

Title Contact:
Karin Bosch
(916)853-7665
karin.bosch@fnf.com

CLTA STANDARD COVERAGE POLICY OF TITLE INSURANCE

Issued By:

Fidelity National Title
Insurance Company

Policy Number:

FMNA-MTO1401053

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

and, in addition, as to an insured lender only:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Fidelity National Title Insurance Company

By:

President

Attest:

Secretary

Fidelity National Title Company
11050 Olson Drive, Suite 200
Rancho Cordova, CA 95670

Countersigned By:

Authorized Officer or Agent

SEAL

SCHEDULE A

Date of Policy	Amount of Insurance	Premium
March 4, 2015 at 01:55 PM	$200,000.00	$808.00

1. Name of Insured:

   Jacob Friedman

2. The estate or interest in the land which is covered by this policy is:

   A Fee

3. Title to the estate or interest in the land is vested in:

   Jacob Friedman, an unmarried man

4. The land referred to in this policy is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

END OF SCHEDULE A

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 021-141-59 and 021-141-60

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN RAFAEL COUNTY OF MARIN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

BEING a portion of the lands conveyed to John G. MacPhee, Jr., by Deed recorded March 16, 1961 in Book 1444 of Official Records, at Page 582, Marin County Records and to Jack G. MacPhee by Deed recorded September 21, 1962 in Book 1613 of Official Records at page 396, Marin County Records, more particularly described as follows:

BEGINNING at the Westerly corner of the lands conveyed to Jack G. MacPhee recorded September 21, 1962 in Book 1613 of Official Records at page 396, Marin County Records, and running along the Southerly line South 68° 15' East 19.03 feet, thence leaving said Southerly line South 79° 39' 21" East 109 feet more or less to the Westerly line of Ross Street Terrace (formerly Buena Vista) as described and dedicated to public use in the Deed from James J. McDonald to Peter Williams, recorded in Book 3 of Deeds, at Page 360, Marin County Records, thence along said Westerly line South 9° 15' East, 21 feet, thence leaving said Westerly line North 85° 19' 38" West 54 feet; South 14° 55' 26" West 64 feet, more or less, to the Southerly line of the Deed to John G. MacPhee above referred to (1444 O.R. 582), thence along said Southerly line North 68° 47' 00" West 58 feet to the Southwesterly corner; thence along the Westerly line of said Deed North 11° 45' 00" 72.15 feet to the point of beginning.

BEING PARCEL 2 as shown upon the proposed subdivision approved and recorded November 26, 1963 in Book 1753 of Official Records, at Page 247, Marin County Records.

APN: 012-141-59

Parcel Two:

BEING A PORTION of the lands conveyed to John G. MacPhee, Jr., by Deed recorded March 16, 1961 in Book 1444 of Official Records, at Page 582, Marin County Records, and to Jack G. MacPhee, by Deed recorded September 21, 1962 in Book 1613 of Official Records, at Page 396, Marin County Records, more particularly described as follows:

COMMENCING at the Westerly corner of the lands conveyed to Jack G. MacPhee, recorded September 21, 1962 in Book 1613 of Official Records, at Page 396, Marin County Records, and running along the Southerly line South 68° 15' East 19.03 feet, thence leaving said Southerly line South 79° 39' 21" East 109 feet, more or less, to the Westerly line of Ross Street Terrace (formerly Buena Vista) as described and dedicated to Public use in the Deed from James J. McDonald to Peter Williams, recorded in Book 3 of Deeds, at Page 360, Marin County Records, thence along said Westerly line South 9° 15' East, 21 feet, to the true point of beginning, thence leaving said Westerly line North 85° 19' 38" West 54 feet; South 14° 55' 26" West 64 feet, more or less to the Southerly line of the Deed to John G. MacPhee above referred to, (1444 O.R. 582), thence along said Southerly line South 68° 47' 00" East 92 feet to the Southeasterly corner; thence along the Westerly line of Ross Street Terrace, North 11° 45' 00" 81.90 feet to the true point of beginning.

BEING PARCEL 1, as shown upon the proposed subdivision approved and recorded November 26, 1963 in Book 1753 of Official Records, at Page 247, Marin County Records.

EXHIBIT "A"
Legal Description

APN: 012-141-60

SCHEDULE B
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matter excepted under (a), (b), or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material not shown by the public records.

END OF SCHEDULE B - PART I

SCHEDULE B
EXCEPTIONS FROM COVERAGE

PART II

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2015-2016.

2. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

   Recording Date: July 9, 1952
   Recording No.: Book 752, Page 56, of Official Records

   Modification(s) of said covenants, conditions and restrictions

   Recording Date: January 6, 1958
   Recording No.: Book 1163, Page 643, of Official Records

3. Matters contained in that certain document

   Entitled: Lot Split Application
   Executed by: John MacPhee
   Recording Date: November 26, 1963
   Recording No.: Book 1753, Page 247, of Official Records

   Reference is hereby made to said document for full particulars.

4. Matters contained in that certain document

   Entitled: Certificate of Compliance
   Dated: April 8, 2004
   Executed by: City of San Rafael, a municipal corporation
   Recording Date: April 13, 2004
   Recording No.: 2004-0029763, of Official Records

   Reference is hereby made to said document for full particulars.

END OF SCHEDULE B - PART II

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

   (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributes, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes
      (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
      (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
      (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
   (b) "insured claimant": an insured claiming loss or damage.
   (c) "insured lender": the owner of an insured mortgage.
   (d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.
   (e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
   (f) "land": the land described, or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
   (g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
   (h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
   (i) "unmarketability of the title" an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

(continued)

2. CONTINUATION OF INSURANCE

(a) After Acquisition of Title by Insured Lender.

If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all of any part of the estate or interest in the land by foreclosures, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title by an Insured.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) Amount of Insurance.

The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(continued)

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within ninety (90) days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefore.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the Insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an Insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of Insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the Insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(continued)

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of the Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals there from, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2.a. of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(continued)

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of an insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is One Million And No/100 Dollars ($1,000,000) or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of One Million And No/100 Dollars ($1,000,000) shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, and Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Fidelity National Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023
Attn: Claims Department

END OF CONDITIONS AND STIPULATIONS

To: Dave Hogan,
Planning Department,
City of San Rafael.
Transmitted by email
To: Dave.Hogan@cityofsanrafael.org
cc: Leslie.Mendez@cityofsanrafael.org

From: Victor and Maria Kunin
[redacted]
San Rafael, CA 94901

Phone:

RE: Letter for DRB consideration
Ross Street Terrace Residential
Assessor's Parcel Nos.: 012-141-59 and 012-141-60

Dear DRB members,

I'm writing to point your attention to several design decisions in the submitted plans.

1. The current design (and lot line adjustment) create dangerous conditions. By following the existing lot lines this danger would NOT be created. Please request a redesign.
2. The unnecessary tall retaining walls near our property are merely a matter of choice and convenience for the Applicant. Lots can be developed with lower retaining walls.
3. The removal of many significant trees is a choice. It is possible to redesign plans so that many of the trees are kept intact.
4. The plans fail to delineate property boundaries and street boundaries. Please request that the applicant correct this omission.
5. The applicant never provided calculations of the lot #59 size excluding the panhandle, as required by San Rafael Municipal Code (SRMC) Section 15.06.030(d)(1).
6. Approving the design of walls that prevent us from accessing the roadway and our emergency escape route is unnecessary and illegal. Plans should be redesigned to provide us with the roadway access that we continuously use and are entitled to.
7. The project, as shown, will cause flooding of #56 Clayton Street. Please request that the Applicant redesign.
8. The project, as presented, fails every single criterion for approval of exceptions as defined in SRMC Section 14.12.040(a)and(b). Please request a redesign to meet these criteria.

Please see the next pages for details.

Respectfully submitted,
Victor and Maria Kunin.

January 13, 2022.

1. Dangerous conditions created.
As we described in our December 2, 2021 and January 3, 2022 letters, the lot line adjustment will create a steep downfacing driveway in the panhandle of lot #59 that terminates with a cliff looming over our property (See Figure 1). Every time a vehicle will be on that driveway will represent a danger for us. This danger is manufactured by the design of the lot line adjustment. **The solution is to simply follow the existing lot lines** and to redesign the project to eliminate lot line adjustment. While we understand that the lot line adjustment may result in various advantages for the applicant, creating new dangers for neighbors is not an appropriate rationale for any such advantages. The DRB can request the plans be designed to eliminate lot line adjustment.

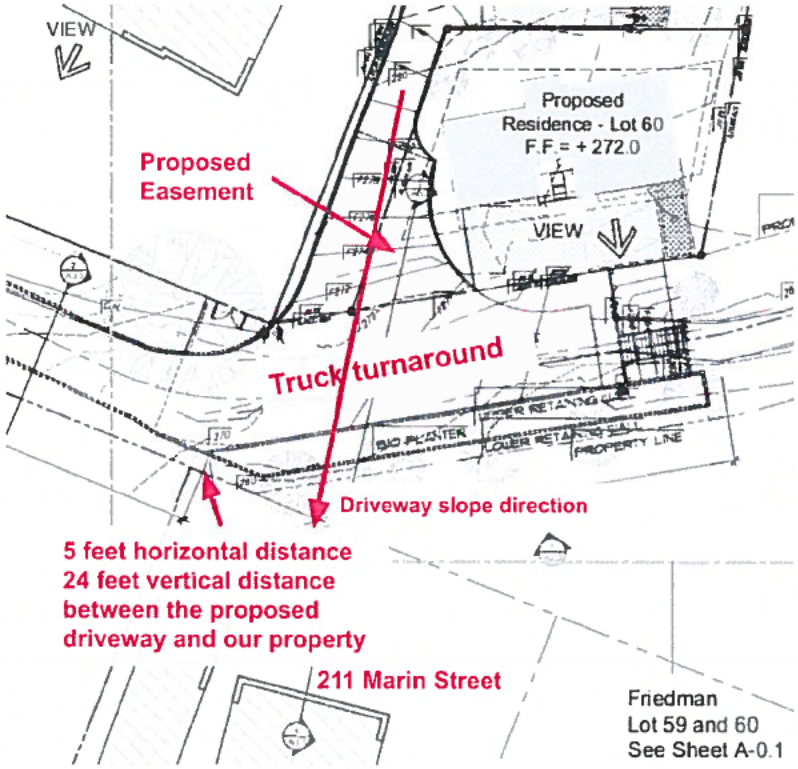


Figure 1. Proposed lot line adjustment will create an access driveway for lot #59, which will be dangerously steep, positioned directly above and pointing directly into our residence, which would clearly place the residents of our property in a highly dangerous condition.

2. The height of retaining walls is a choice.
The unnecessarily tall retaining walls near our property will create safety, legal, aesthetic and noise reflection issues as described in our previous letters. These walls will support landfill and are not absolutely required to develop the site. This landfill will prevent lot #58 from being developed, as specified in my December 2, 2021 letter. The existing plans propose that these retaining walls face neighbors rather than the properties to be developed (Figure 2). **A solution would be better grading and terracing of the Applicant's properties.** Please request a redesign.

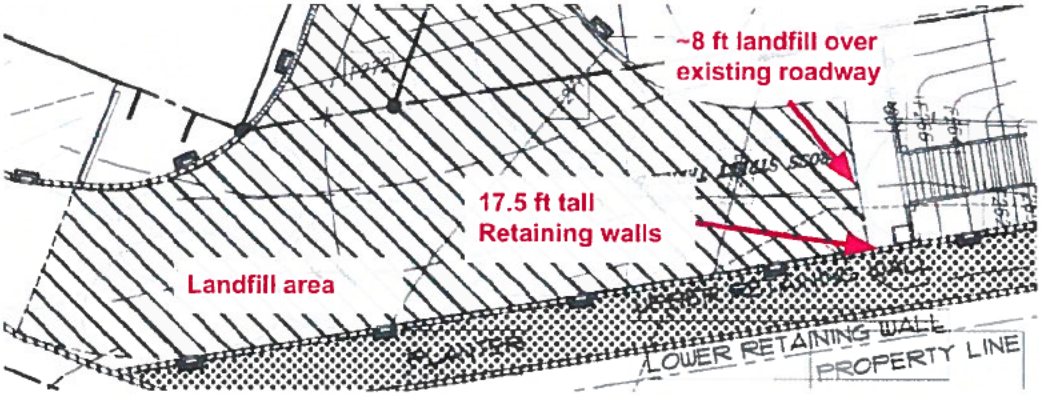


Figure 2. The tall retaining walls are a design decision, not a necessity.

3. Tree removal is excessive and can be modified.
The current tree removal plan envisions removal of almost all trees on both the lots as well as the roadway. Removal of so many trees will destabilize the hillside. Further, significant trees will not be replaced at 3:1 as designated by the Hillside Design Guidelines. Removal of so many trees is merely a cost-saving choice on the part of the Applicant. Many of the trees targeted for removal are on the edge of the development, and the plans can be redesigned to save such trees. Please request that the Applicant a) revise the tree removal plan and b) devise a strategy for tree replacement as specified in the Hillside Design Guidelines.

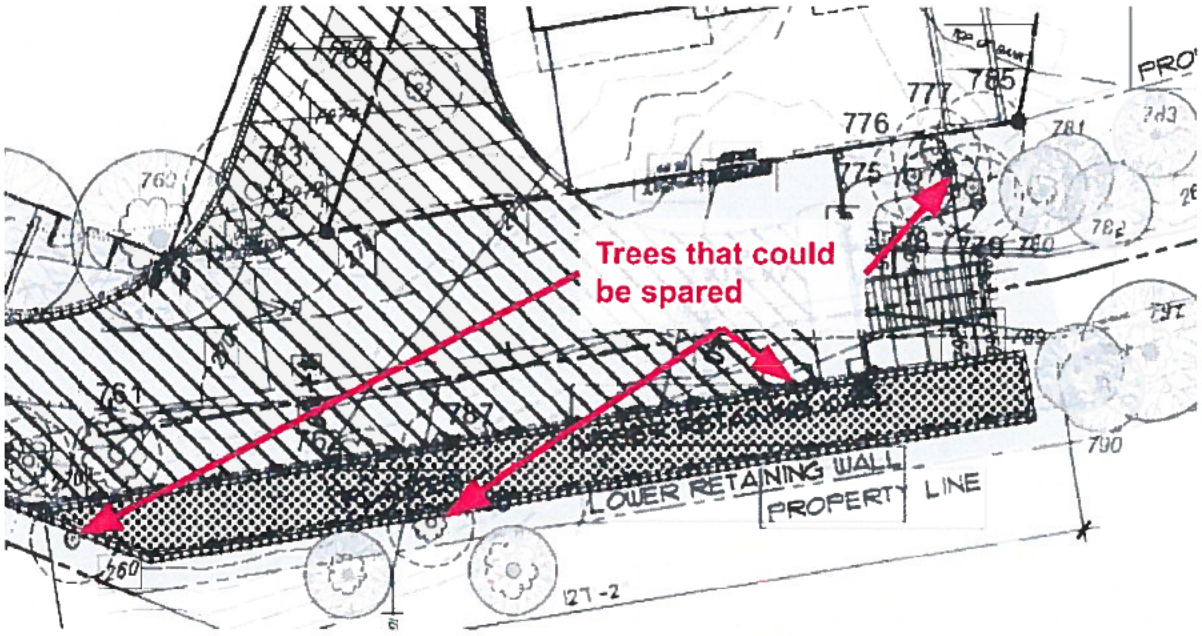


Figure 3. An example showing that proposed removal of trees is a matter of cost and convenience, not necessity.

4.The plans fail to delineate property and street boundaries
The Applicant's plans and the included survey fail to differentiate between the historic Buena Vista Street (currently Clayton) and Ross Street Terrace (See Exhibit 1 on the last page of this letter). We recently demonstrated to both planners and the City Attorney that these streets have legally distinct histories (see our letter to Lisa Goldfien dated January 3, 2022). In addition, the plans contain a line in the middle of the historic Buena Vista Street, annotated as 'property line – adjoiners', delineating the property line of #56 Clayton (Exhibit 1). The Southern boundary of this property is not shown. Please request a) that the boundary between the two streets be specified and b) property boundaries are properly marked on the plans before this project can move forward.

5. Lot size calculations violate SRMC section 15.06.030(d)(1).
The Applicant provides lot #59 size calculations with respect to the lot line adjustment on Page 25 of the application. This calculation does not exclude the panhandle, in violation of SRMC section 15.06.030(d)(1). Please request a correct calculation.

6. Neighbors should not be deprived of access to the roadway
As we specified in multiple letters, including December 2, 2021 to Dave Hogan and January 3rd, 2022 to Lisa Goldfien, blocking our existing access to the roadway should not be allowed. Please request a redesign that provides the neighbors with access to the roadway.

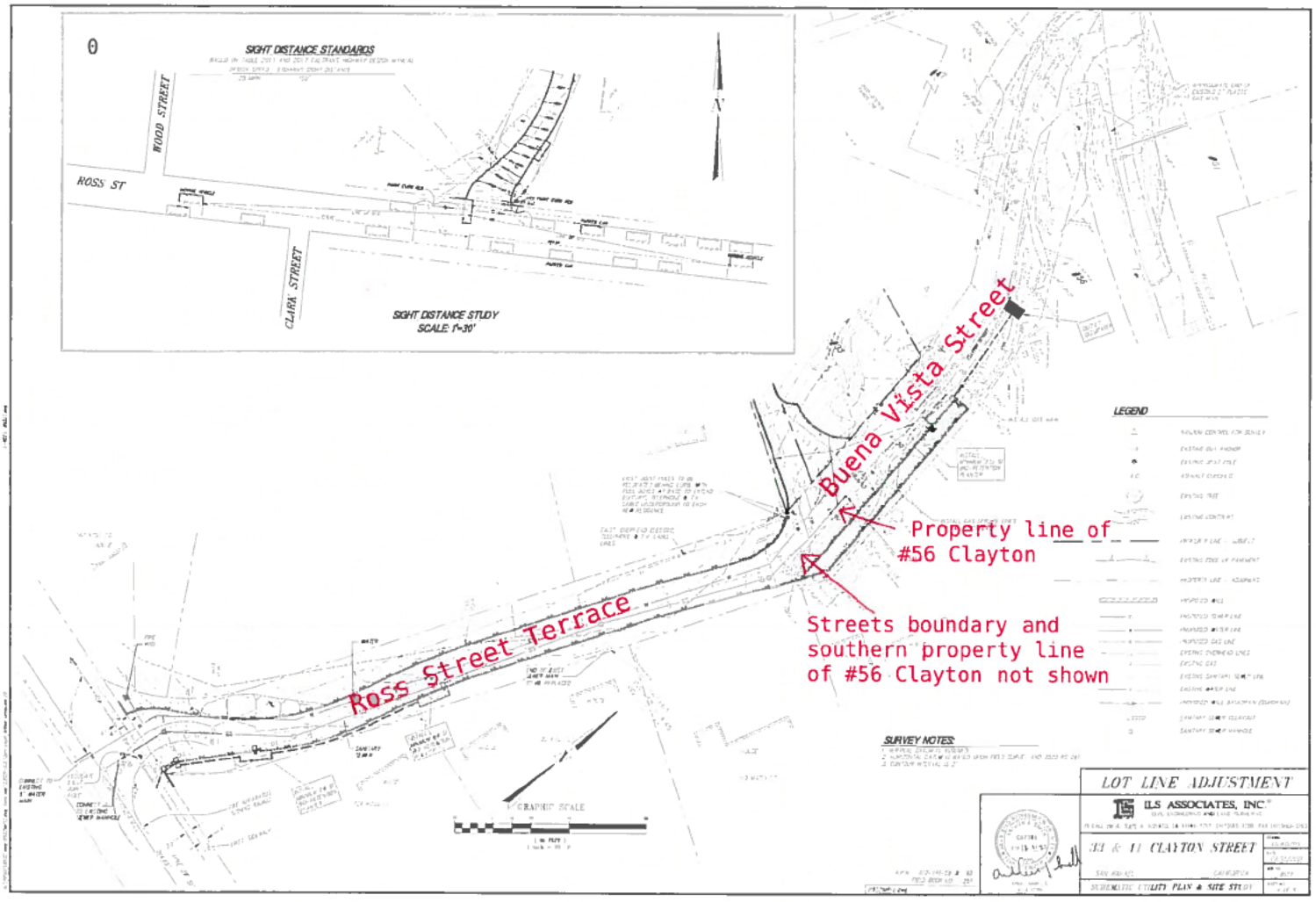
7. Flooding nearby properties
As specified in my December 2, 2021 letter, current plans, if implemented, will cause flooding of #56 Clayton. Please request a redesign.

8. Failure to abide by the guidelines.
SRMC 14.12.040, provided for your reference below, describes the process and criteria for approval of exceptions for hillside properties. This project, as submitted, markedly fails every single criterion for approving an exception. Please request that the Applicant fulfill all criteria set forth in SRMC 14.12.040 relating to approval of exceptions.

14.12.040 - Exceptions to property development standards
City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council, upon the recommendation of the design review board and the planning commission, when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan based on the following criteria:

A. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and
B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

Exhibit 1


SIGHT DISTANCE STANDARDS
WOOD STREET
ROSS ST
CLARA STREET
SIGHT DISTANCE STUDY
SCALE: 1"=30'
Buena Vista Street
Property line of #56 Clayton
Streets boundary and southern property line of #56 Clayton not shown
Ross Street Terrace
LEGEND
SURVEY NOTES
GRAPHIC SCALE
LOT LINE ADJUSTMENT
ILS ASSOCIATES, INC.
SCHEMATIC UTILITY PLAN & SITE STUDY

January 12, 2022

Design Review Board
c/o David Hogan, Project Planner
Community Development Dept.
City of San Rafael
1400 Fifth Ave
San Rafael, CA. 94901
via email: dave.hogan@cityofsanrafael.org, leslie.mendez@cityofsanrafael.org, planningpubliccomment@cityofsanrafael.org

RE: 33/41 Ross Street Terrace - Design Review Board meeting on January 19, 2022, File Nos. LLA19-008/ED19-090/ED19-091/EX20-006

Design Review Board Members:

I urge you *NOT* to recommend approval of this application for an Environmental and Design Review Permit and Hillside Exceptions for 33/41 Ross Street Terrace for the following reasons:

1) Hillside Residential Design Guidelines:

This application shows a blatant disregard for the Hillside Design Guidelines, including an extreme exception to the natural state requirement, lack of preservation of significant trees and the natural setting, excessive grading, and incompatibility with the surrounding neighborhood. In fact, our award-winning Hillside Design Guidelines were adopted precisely to prevent this type of development on our hillsides.

a. Natural State:

Hillside development must comply with the Natural State Requirement, per SRMC 14.12.030(c).

"*Natural state*" means all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Incidental minor grading for hiking trails, bicycle paths, equestrian trails, picnic areas and planting and landscaping which enhances the natural environment are permitted when approved through an environmental and design review permit, per SRMC 14.03.030 Definitions.

The attempt to squeeze two homes on these undersized lots should not be allowed. Other hillside development has required merging of 2, 3, 4, or more undersized hillside lots in order to create a reasonable building site and meet Hillside development standards, such as:

- 45 Fremont, 2,200 sq' home, combined 4 substandard lots (APN 012-041-49)
- 31 Upper Fremont, 2,400 sq' home, combined 4 substandard lots (APN 012-045-17)
- 75 Upper Fremont, 2,903 sq' home, merged 5 smaller lots (APN 012-045-11)
- 79 Upper Fremont, 2,903 sq' home, 2 lots, one a flag-lot, were merged (APN 012-045-14)
- 38 Upper Fremont, approved 2020, not yet built, 3 lots merged (APN 012-041-48)

I am asking you to maintain the current practice of merging substandard sized lots for the reasonable development of our hillsides. This is the precedent that has been established in the City of San Rafael for development of substandard, non-conforming lots on hillsides and is supported by General Plan 2040, as follows:

> *General Plan Program CDP-1.3A: Hillside Residential Design Guidelines.* Continue to implement hillside residential design guidelines through the design review process, as well as larger lot size requirements for hillside areas where there are access limitations or natural hazards. Update the design guidelines as needed.
>
> *General Plan Program CDP-1.3B: Hillside Lot Consolidation.* Where feasible, consolidate small, nonconforming hillside lots in areas with slope and emergency vehicle access constraints into larger, conforming parcels. Apply hillside development standards in the event such lots are developed to ensure that construction is compatible with the neighborhood development pattern.

The applicant is requesting an extreme exception to the natural state requirement with a significant reduction in the natural state, ~ 50% less than required, for each lot. Exceptions to the Hillside development standards are allowed in rare circumstances where the proposed project shows excellence in design and meets specific conditions outlined in SRMC 14.12.040. I have never seen a hillside project approved with such an extreme reduction in the natural state.

The precedent for development on smaller hillside lots is to combine them to allow for reasonable development and comply with all Hillside development standards (SRMC 14.12) and the Hillside Design Guidelines (SRMC 14.25.050-B).

If you approve the requested exception to the Natural State requirement, you will forever change hillside development in San Rafael because the exception you approve on this property will set the standard by which you will review all future hillside development, opening the door to other equivalent reductions in the Natural State and undermining this important protection of our hillsides.

b. Parking and circulation (IV.A5):

All required guest parking spaces, 2 per residence, should be located on-site, not on the street or within the City right-of-way. In addition, the application needs a circulation plan showing all vehicular maneuvering into and out of the garage and guest parking on lot 59, including when a vehicle is parked in the guest parking space. The circulation plan should indicate how both lots comply with SRMC 14.12.030 (F) which prohibits vehicles from backing out onto streets less than 26' wide.

c. Preservation of Significant Trees (IV.A2).

The applicant has NOT shown that a diligent effort has been made to retain as many significant trees as possible, as required by the Hillside Design Guidelines. In fact, quite the opposite, the applicant proposes removing all but one oak tree on lot 59 and removing all existing trees on lot 60. No existing trees will be retained along the proposed access drive, as well, resulting in approximately 58 trees over 6" in diameter being removed, according to the WRA Environmental Consultants report dated March 27, 2020, submitted with the application.

The applicant has NOT proposed a plan for tree replacement that includes a 3:1 ratio as required. If approved, this project will have the unfortunate outcome of clearing the land and changing the natural environment, completely opposite of the Hillside Guidelines objective to preserve the inherent characteristics of the hillside and display sensitivity to the natural setting.

A tree protection plan prepared by a licensed arborist is needed to establish safety procedures both during and after construction for the remaining oak tree on lot 59.

d. Grading (IV.A3).

Hillside Design guidelines promote minimizing grading in order to preserve the inherent characteristics of sloping hillside sites and the natural environment. This project requires extensive grading and extensive removal of the natural vegetation on this hillside.

e. Architectural Design (IV.A7) **and Reduction of Building Bulk** (IV.A6).

The design is too boxy and bulky. The style is very contemporary with a "butterfly" roof design. To comply with the Hillside Guidelines and reduce bulk, the houses should be stepped back with the topography and roof slopes should follow the site contours.

f. Compatibility with surrounding neighborhood (IV.A1).

Current zoning designation of R7.5 requires a minimum lot size of 7,500 sq' per lot. This project proposes 2 new houses on undersized lots of 4,787 sq' and 6,092 sq'. The houses are densely packed together, eliminating all tree canopy and ground cover of the natural setting except for one lone oak tree. This proposed project is not compatible with the development pattern of the surrounding neighborhood where land area around existing structures is between 12,000 to 16,000 sq' and where the natural environment supports the hillside character of this neighborhood.

A better solution would be to combine the lots to form a single 10,879 sq' lot, still small for the area, but complies with zoning requirements and is more likely to accommodate a modest sized home that complies with all Hillside Design Guidelines and is more compatible with the surrounding development pattern of this neighborhood.

Another solution was previously suggested by a board member to merge lots #59 and #60 with lot #58 which is contiguous and undeveloped with only 5,000 sq'. If these 3 non-conforming lots were reconfigured into 2 lots, they would meet the minimum square footage of 7,500 sq' per lot and could allow reasonable development for 2 homes that meet the Hillside development standards.

2) <u>Hillside Exceptions</u>:

The application must meet the criteria established in SRMC 14.12.040 for hillside exceptions, as stated below:

> *A. That the project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods and maintain a strong relationship to the natural setting; and*

B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

This application does not meet the criteria for approving an exception to the Hillside development standards. The applicant has NOT demonstrated a superior project with greater sensitivity to the natural setting and compatibility with nearby hillside neighbors. In fact, this application replaces the natural setting with concrete driveways, building footprints and retaining walls.

The exception request for 33/41 Ross Street Terrace to reduce the natural state by almost 50% does NOT result in a superior project with greater sensitivity to the natural setting or preserve the inherent characteristics of the site. In fact, both lots are completely stripped of all trees, except for one oak tree and replaced with small slivers of ornamental landscaping. This project does NOT meet the criteria for a hillside exception, per SRMC 14.12.040.

Staff references 22 Jewel as an example of a previous hillside project on a flag lot where an exception to the natural state was approved. However, the exception requested for this project was minor. The applicant for 22 Jewel revised their plans, in response to neighborhood comments, and improved the design by increasing the building stepback which resulted in a slight reduction in the natural state from 57.6% to 50.3% and required an exception. By providing a superior design with greater sensitivity to nearby neighbors, this project met the objectives of SRMC 14.12.040 for exception approval. (*note*: the lot remains vacant - the design permit for 22 Jewel has expired. no building permit was ever issued).

The approval of this application will set a bad precedent going forward for future hillside development and will undermine our Hillside Design Guidelines and development standards.

This application does not meet the criteria required for an Exception approval. I urge the City to be consistent with their past practice and require compliance with the Hillside Design Guidelines, per SRMC Chapter 14.12.

As a licensed building contractor, the owner/applicant, should have been well informed about the substandard size of these two lots and the City of San Rafael's Hillside Design Guidelines before he purchased them in 2015.

3) **Petition to recuse Stewart Summers:**

I support the Petition to recuse Stewart Summers that was presented to the Design Review Board at their meeting on November 16, 2021. Stewart Summers' repeated expression of his unwavering personal objections to the Natural State requirement at board meetings is inappropriate and offensive. I hope the board is not swayed by his rhetoric and acts to uphold the municipal code, as adopted by the City Council, and applies the Natural State Requirement to this and other hillside projects and only recommends approval of an Exception in those rare cases where the required findings are met (per SRMC 14.12.040).

In response to the Petition, City Attorney Rob Epstein stated that someone who has a pre-existing bias that makes them unable to be a fair hearing officer would be disqualified and that the question is

whether there is an "unacceptable probability of actual bias". He goes on to say that it's up to the individual member to look into their heart or mind and decide for themselves if they are able to be fair and unbiased and state the reasons for their decision for the record.

Stewart Summers did not clearly state the reasons why he felt he could be fair and unbiased but instead repeated his rhetoric about "the Natural State requirement being antiquated" and that he doesn't like it and further suggests the City should change it. I ask Stewart Summers to look into his heart and mind to reflect on whether his strong bias against the Natural State requirement prevents him from being an impartial board member for this project and ask that if he has any doubt whatsoever, he recuse himself in order to ensure a fair and unbiased hearing for 33/41 Ross Street Terrace.

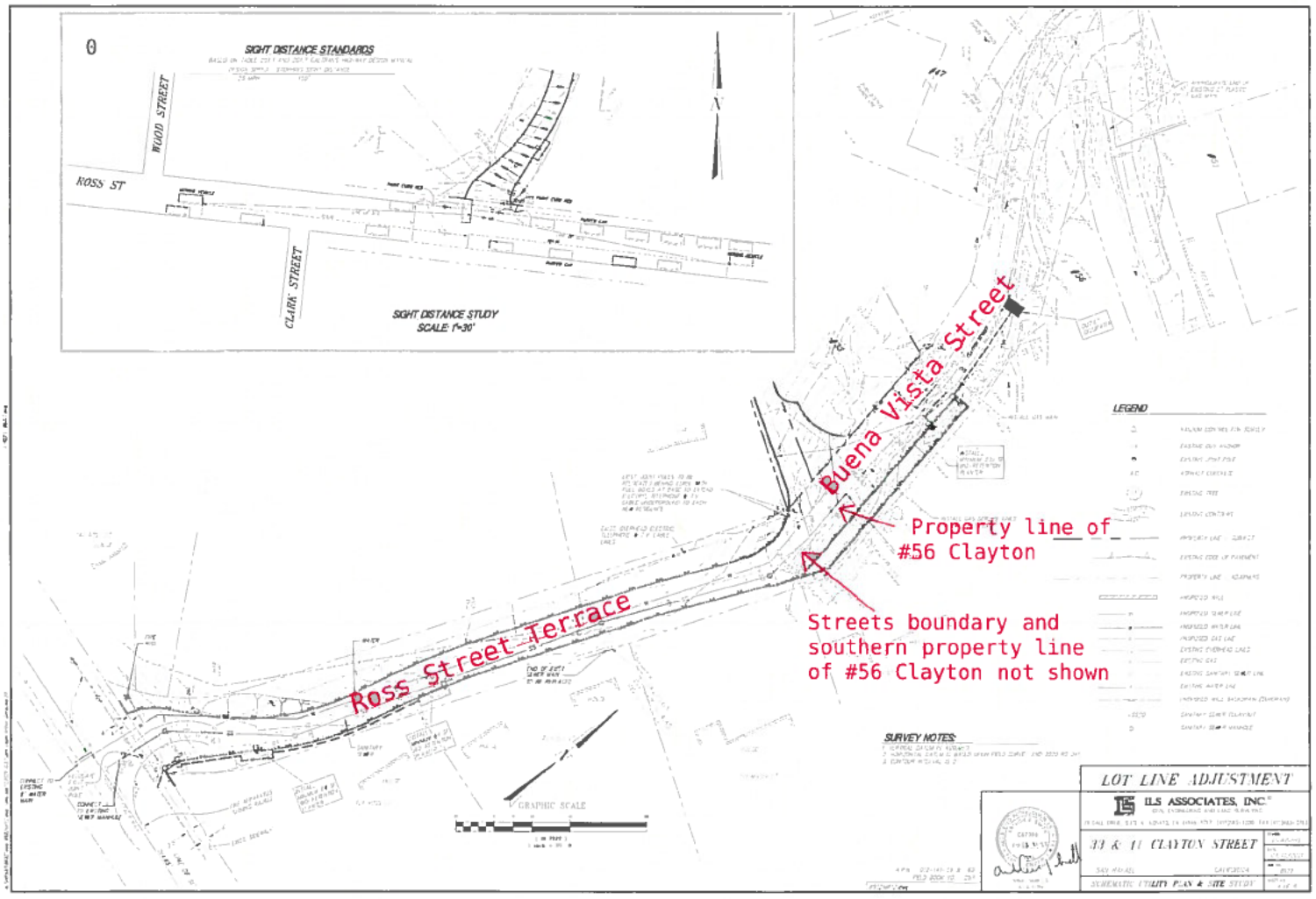
I suggest the record clearly show that the opinion that "the Natural State requirement is antiquated" is Stewart Summers' opinion alone and does not reflect the board's position as a whole. I believe, in my heart, that Stewart Summers cannot be an impartial board member tasked with reviewing this project given his statements made during the prior hearing for this project on June 8, 2021, and his response to the Petition submitted on November 16, 2021. He should recuse himself from participating in the design review for this project at 33/41 Ross Street Terrace before the board tonight.

Thank you for your consideration of these comments.

Sincerely,

Victoria DeWitt
Emily A. Foehr
Jason and Jamey Chan
Jonathan Steel
Emese Wood
Denise Van Horn
Tom Heinz
Linda Donaghue
Dave Lammel
David Simon
Jessica Yarnall Loarie
Scott Loarie
Sue Ritter
Lucinda Callaway
Larry Sneddon
Amy Likover
Joe Likover
Peter R. Marks
Leslie Marks
Valerie Lels
Grant Gildroy
Bill Baker
Sandy Baker
Kurt Scheidt

Exhibit 1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SCALE: 1"=30'
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Property line of #56 Clayton
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Ross Street Terrace
LEGEND
SURVEY NOTES
GRAPHIC SCALE
LOT LINE ADJUSTMENT
ILS ASSOCIATES, INC.
33 & 41 CLAYTON STREET
SCHEMATIC UTILITY PLAN & SITE STUDY

Dave Hogan

From: David Campbell <___>
Sent: Friday, January 14, 2022 12:55 PM
To: Dave Hogan
Cc: Leslie Mendez
Subject: Ross Street Terrace Residential,Assessor's Parcel Nos.: 012-141-59 and 012-141-60

To: Dave Hogan
Planning Department
City of San Rafael.
Transmitted by email
To: Dave.Hogan@cityofsanrafael.org
cc: Leslie.Mendez@cityofsanrafael.org

From: David and Jeanne Campbell
[redacted]
San Rafael, CA 94901

Phone:

RE: Letter for DRB consideration
Ross Street Terrace Residential
Assessor's Parcel Nos.: 012-141-59 and 012-141-60

Dear Mr. Hogan,

Please include my letter below as a "desk item" to be delivered to each of the board members as part of the upcoming meeting.

Thank you,

David Campbell

Dear DRB Members,

I have written several past letters to the city planning department detailing our profound concern over the viability of the proposed Ross St. Terrace project in question. I trust you have been provided access to those letters and have considered their content.

At this time, I want to draw your attention to two particular aspects of the proposed project that require your further scrutiny.

1. 1. The section of Buena Vista (Clayton) Street slated for installation of a large retaining wall with numerous pedestrian steps is adjacent to and part of the 56 Clayton St property. This project design component effectively disrupts historical public pedestrian access, with a large set of stairs now required to navigate the significant and abrupt elevation differential caused by the fill and retainer proposed. Further, the presence of this wall and stairs component on the road bed prevents our vehicular access to this section of easement which is rightfully owned as part of the 56 Clayton St property. The developer has not demonstrated rightful ownership of this property area to allow for his installation of project features on this land that he does not own. Modifications to the project plan to allow for maintaining existing roadbed grade should be strongly considered.

2. 2. Site drainage design has not been provided in submitted plans showing proper control of site drainage being directed into the city storm drainage system. In fact, the plan drawings I have seen show drainage from the proposed project property directed for dispersal onto our [redacted] property, on a steep slope directly above the entry door to our home. While such a design of dumping runoff onto neighboring properties is conspicuously erroneous and intolerable, it is also unacceptable for a new building project to fail to ensure proper control of site drainage. The builder should be required to provide proper control of storm drainage waters exiting his project property, rightfully directing such waters into the existing municipal drain system.

Thank you for your consideration,

David and Jeanne Campbell

Design Review Board
c/o David Hogan, Project Planner
Community Development Dept.
City of San Rafael
1400 Fifth Ave
San Rafael, CA. 94901

RE: 33/41 Ross Street Terrace - Design Review Board meeting on January 19, 2022,

File Nos. LLA19-008/ED19-090/ED19-091/EX20-006

Via email: *dave.hogan@cityofsanrafael.org*, *leslie.mendez@cityofsanrafael.org*

Design Review Board Members:

We are the current owners of the [redacted] which is adjacent to the entire southern boundary of APN: 012-141-59 and portion of the western boundary of Ross Street Terrace. The [redacted] property has been owned by our family for over 50 years.

The project design proposes the construction of two houses and a private roadway. The lots and the access are unapproved. The design of the lots was previously approved based on access from Clayton Street. The current design includes a lot line adjustment and access from Ross Street Terrace, property the applicant does not own and has not received the property owners' approval to submit an application to construct a private roadway, which have not been approved. Therefore, the current design is an unapproved new project.

These comments contain our objections to the project design and certain objections to the project design, which we agree with, previously made by others, to emphasize their importance.

The project design is incompatible with the hillside topography, Gerstle Park Neighborhood, and project up slope/down slope property owners.

The project design contains significant environmental and safety hazard impacts that adversely affect the future project property owners and the current and future property owners up slope/down slope of the project.

- Slopes of the driveway on APN: 012-141-59 and private road exceed the maximum slope requirement.
- The intersections of the driveway on APN: 012-141-59 at Clayton Street and the private road at Ross Street are sight impaired.
- A previous review of the access from Ross Street to the private road design revealed there is no evidence that the access has been approved by San Rafael Fire Department.
- The removal of 59 mature trees will decrease the hillside slope stability.

- The design requires the construction of a 500 foot long private road with extensive retaining/vehicle barrier walls on both sides and the associated drainage/bio retention system. Failure of the road, retaining/vehicle barrier walls, or the drainage/bio retention system would cause damages to the project property and the up slope/down slope properties and injuries/deaths to the project and upslope/down slope property occupants. Adequate inspection, maintenance, repair, and replacement of the pavement, retaining/vehicle barrier walls, and drainage system must be provided for the life of the project. The project life could easily be 100 years or more. The proposed private road maintenance plan agreement does not sufficiently provide funding or adequate requirements for the inspection, maintenance, repair, and replacement of the pavement, retaining/vehicle barrier walls, and drainage system during their service life.

- The applicant, architect/engineer, City of San Rafael, contractors, and future project owners would be liable for damages, injuries, or deaths due to the unsafe driveway/private road design and inadequate private road maintenance agreement.

- The design of the private road elevations and retaining/vehicle barrier walls on Ross Street Terrace prevents the adjacent property owners'/occupants' prescriptive easement right to access Ross Street Terrace. The owners'/occupants' have used Ross Street Terrace for pedestrian and vehicle access to Clayton Street since the early 1950's.

- The accuracy of the project drawings is questionable. Sheet A-5.3 inaccurately depict the location of the fence on the eastern boundary of 62 Woods Street. The fence is shown to be within the Ross Street Terrace right of way and requires it to be removed. The recent survey of the 62 Woods Street property confirmed the fence is located within the 62 Woods Street eastern property line. The drawings most likely contain more inaccuracies.

The Project design fails to comply with the Hillside Design Guidelines and Zoning Requirement

- This application has shown a blatant disregard for the Hillside Design Guidelines, including an extreme exception to the natural state requirement, preservation of significant trees, grading, hillside design and neighborhood compatibility. In fact, the Hillside Design Guidelines were adopted precisely to prevent this type of development on our hillsides.

- Natural State
  Hillside development must comply with the Natural State Requirement, per SRMC 14.12.030(c).

  "*Natural state*" means all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Incidental minor grading for hiking trails, bicycle paths, equestrian trails, picnic areas and planting and landscaping which enhances the natural environment are permitted when approved through an environmental and design review permit, per SRMC 14.03.030 Definitions.

The attempt to squeeze two homes on these undersized lots should not be allowed. Other hillside development has required merging of 2, 3, 4, or more undersized hillside lots in order to create a reasonable building site and meet Hillside development standards, such as:

45 Fremont, 2,200 sq. ft. home, combined 4 substandard lots (APN 012-041-49)

31 Upper Fremont, 2,400 sq. ft. home, combined 4 substandard lots (APN 012-045-17)

75 Upper Fremont, 2,903 sq. ft. home, merged 5 smaller lots (APN 012-045-11)

79 Upper Fremont, 2,903 sq. ft. home, 2 lots, one a flag-lot, were merged (APN 012-045-14)

38 Upper Fremont, approved 2020, not yet built, 3 lots merged (APN 012-041-48)

The past practice of merging substandard sized lots for the reasonable development of our hillsides, in compliance with our award-winning Hillside Design Guidelines should be maintained.

This is the precedent that has been established in the City of San Rafael for development of substandard, non-conforming lots on hillsides and should be consistently applied to this development, as well.

The applicant is requesting an extreme exception to the natural state requirement with a significant reduction in the natural state, ~ 50% less than required, for each lot. The project design actually requires the disturbance of the entire surface of the lots, the portion of Clayton Street adjacent to the lots, and the portion of Ross Street Terrace used for the private access road due to the grading, excavation, rock removal and drilling required for the pavement, drainage system, building, and retaining/vehicle barrier wall construction. Exceptions to the Hillside development standards are allowed in rare circumstances where the proposed project shows excellence in design and meets specific conditions outlined in SRMC 14.12.040.

If you approve the requested exception to the Natural State requirement, you will forever change hillside development in San Rafael because the exception you approve on this property will set the standard by which you will review all future hillside development, opening the door to other equivalent reductions in the Natural State and undermining this important protection of our hillsides.

The precedent for development on smaller hillside lots is to combine them to allow for reasonable development and still comply with the Hillside development standards (SRMC 14.12) and the Hillside Design Guidelines, per SRMC 14.25.030(c).

- Preservation of Significant Trees (IV.A2)

  The applicant has NOT shown that a diligent effort has been made to retain as many significant trees as possible, as required by the Hillside Design Guidelines. In fact, quite the opposite, the applicant proposes removing all but one oak tree on lot 59 and removing all existing trees on lot 60. No existing trees will be retained along the proposed access drive, as well, resulting in approximately 58 trees over 6" in diameter being removed, according to the WRA Environmental Consultants report dated March 27, 2020, submitted with the application.

  The removal of 58 mature trees, including 37 significant trees, from the project area and only replacing them with 20 partially developed 24" box trees creates significant detrimental impact. The project construction will also critically damage or destroy many trees located on near the boundaries of parcels adjoining the project area boundaries. Replacement of the damaged or destroyed trees with suitably sized should be addressed in order to mitigate this significant impact.

  The applicant has NOT proposed a plan for tree replacement that includes a 3:1 ratio as required. If approved, this project will have the unfortunate outcome of clearing the land and changing the natural environment, completely opposite of the Hillside Guidelines objective to preserve the inherent characteristics of the hillside and display sensitivity to the natural setting.

  A tree protection plan prepared by a licensed arborist is needed to establish safety procedures both during and after construction for the remaining oak tree on lot 59 and trees located on near the boundaries of parcels adjoining the project area boundaries.

- Grading (IV.A3)

  Hillside Design guidelines promote minimizing grading in order to preserve the inherent characteristics of sloping hillside sites and the natural environment. This project requires extensive grading and extensive removal of the natural vegetation on this hillside.

- Architectural Design (IV.A7) and Reduction of Building Bulk (IV.A6)

  The boxy, bulky, butterfly roof design is not compatible with the hillside topography. To comply with the Hillside Guidelines and reduce bulk, the houses should be stepped back with the topography and roof slopes should follow the site contours.

- Compatibility with surrounding neighborhood (IV.A1)

  Current zoning designation of R7.5 requires a minimum lot size of 7,500 sq. ft. per lot. This project proposes 2 new houses on undersized lots of 4,787 sq. ft. and 6,092 sq. ft. (The narrow staff portion of the flag lot does not qualify as a buildable portion of the lot, therefore the lot size is considerably less) The houses are densely packed together, eliminating all tree canopy and ground cover of the natural setting except for one oak tree. This proposed project is not compatible with the development pattern of the surrounding neighborhood where land area around existing structures is between 12,000 to 16,000 sq. ft. and where the natural environment supports the hillside character of this neighborhood.

A better solution would be to combine the lots to form a single 10,879 sq. ft. lot, still small for the area, but complies with zoning requirements and is more likely to accommodate a modest sized home that complies with all Hillside Design Guidelines and is more compatible with the surrounding development pattern of this neighborhood.

Hillside Exceptions

The application must meet the criteria established in SRMC 14.12.040 for hillside exceptions, as stated below:

That the project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods and maintain a strong relationship to the natural setting; and

Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures

This application does not meet the criteria for approving an exception to the Hillside development standards. The applicant has NOT demonstrated a superior project with greater sensitivity to the natural setting and compatibility with nearby hillside neighbors. In fact, this application replaces the natural setting with concrete driveways, building footprints and retaining walls.

The exception request for 33/41 Ross Street Terrace to reduce the natural state by almost 50 percent does NOT result in a superior project with greater sensitivity to the natural setting or preserve the inherent characteristics of the site. In fact, both lots are completely stripped of all trees, except for one oak tree and replaced with small slivers of ornamental landscaping. This project does NOT meet the criteria for a hillside exception, per SRMC 14.12.040.

Staff references 22 Jewel as an example of a previous hillside project on a flag lot where an exception to the natural state was approved. However, the exception requested for this project was minor. The applicant for 22 Jewel revised their plans, in response to neighborhood comments, and improved the design by increasing the building step back which resulted in a slight reduction in the natural state from 57.6% to 50.3% and required an exception. By providing a superior design with greater sensitivity to nearby neighbors, this project met the objectives of SRMC 14.12.040 for exception approval. (*note*: the lot remains vacant - the design permit for 22 Jewel has expired. no building permit was ever issued).

The approval of this application will set a precedent going forward for future hillside development that undermines the Hillside Design Guidelines and development standards. The precedent will make it impossible to enforce the Hillside Design Guidelines and development standards in the future.

This application does not meet the criteria required for an Exception approval. The City should be consistent with their past practice and require compliance with the Hillside Design Guidelines, per SRMC Chapter 14.12.Sustainability

As a licensed building contractor, the owner/applicant, should have known about the substandard size of these two lots and the City of San Rafael's Hillside Design Guidelines before he purchased them in 2015.

The project design fails to address the reduction of its carbon foot print.

- There is no adequate mitigation plan for the removal of 58 mature trees.
- There are no provisions to incorporate the use of sustainable building materials or clean energy power.

The Design Review Board should not recommend approval of this project to the Planning Commission. The approval of this project would establish a precedent that would make it impossible for the Design Review Board to deny approval of project designs with unapproved lots/access, environmental deficiencies, neighborhood and upslope/downslope property incompatibilities, that do not comply with vehicle/pedestrian safety, fire department response, Zoning, Hillside Guideline requirements. The recommendation of approval of this project design to the Planning Commission would also establish a precedent of supporting the Planning Commission's approval of such projects.

Respectfully submitted,

Ron and Lori Stickel
Owners of [redacted]