January 8, 2018

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Members of the Sonoma City Council

There will be an appeal of a project of mine (owned by my children's trust) before you on February 5, 2018, that was approved by the Planning Commission ("PC"):

easterly lot above 95 Brazil (APN 018-051-007 / Lot 3 or Lot 228) – 2.7 acres – approved Aug 10

As outlined in the city's staff report, the PC was asked to evaluate the project using development standards and a number of design guidelines. In addition, a number of non-quantified objectives were to be factored in to the decision-making process. After considering the standards, guidelines and objectives, as well as all the facts and opinions of professionals regarding the California Environmental Quality Act ("CEQA"), separate projects, grading, drainage, tree preservation, development code, sizing, pads, hillside views, water, wildlife, and others, the planning commission approved the project with a list of reasonable conditions to address neighbor and public concerns.

In the Findings of Project Approval for the lot, the PC found that the developments is consistent with the general plan, complies with all applicable standards and regulations of the development code, that the project's uses are compatible with the existing and future land uses in the vicinity, and that it will not impair the architectural integrity and character of the zoning district surrounding it. The PC designated 23 conditions of approval to ensure that their findings are followed – CPAMMP below refers to these Conditions of Project Approval and Mitigation Monitoring Program.

The city council should <u>**deny the appeal**</u> of the planning commission's approval of this project as it is clear from all the submitted materials and the planning commission's extensive review that it meets all criteria for the building of a single-family house in Sonoma (Code section 19.040.50 F). Appellants have not brought forth any facts or arguments not already presented and considered by the planning commission. Thus there are no logical or legal reasons for denying the planning commission approval.

A short response to appellant claims follows with a more detailed analysis at the end of this document.

Appellant claim	Applicant rebuttal
(A) EIR required	Exempt under California Environmental Quality Act – *see legal analysis below.*
(A) 1. Segmented project	Nothing has been segmented; legally 3 separate lots and projects each requiring review by the planning commission; projects could have been submitted independently over a number of months but city staff encouraged us to submit them at the same time in order to consider any possible "cumulative impacts"; by submitting at the same time any cumulate impacts have been evaluated even though not required.
(A) 2. Aesthetics	Using the Sonoma Hillside Guidelines as well as the prescriptive requirements used to evaluate the visibility of new projects on the hills around Lake Tahoe, the project will have minimal visual

	impact on the area – *see more below.*
(A) 3. Hillside Zoning Requirements	As agreed by the PC, the proposed development complies with all requirements and any and all land use and planning impacts have been addressed by the PC approved CPAMMP. The project lies within the Northeast Planning Area and is zoned R-HS – residential hillside. As such building a house on the lot is 100% consistent with the hillside ordinance.
(A) 4. Trees	Trees lost will be replaced on a 1.5 to 1 basis, and conditions 9 and 19 of the CPAMMP adequately address the impact and future of trees on sites.
(A) 5. Bird species	Not an issue as none of those mentioned are endangered and none have been seen in the area, and conditions 9 and 19 of the CPAMMP adequately deal with the issue of bird nests.
(A) 6. Drainage plan	Appellant's issues are with existing conditions and will not be impacted by development - *see discussion below.* Work of professionals along with numbers 2 and 19 of the CPAMMP deal with drainage support; retention ponds and other mitigating steps will handle flows more than 35% above those expected from 100-year storms and will not exacerbate existing conditions at 4th and Brazil.
(A) 7. Grading	CPAMMP number 2 deals extensively with grading to ensure compliance with standards.
(B) 1. Development code	The project is a residence in a lot zoned R-HS or residential hillside – thus a house is permitted on the sites.
(B) 2. Pad size	The project has a pad total less than 5,000 sq ft. Portions of the project have been changed from slab on grade to elevated wood framed floors with perimeter stem walls and stepped footings in order to reduce the total pad size to below 5,000. Even if one incorrectly argues this is not the case, a reading of various sections of the code, regulations and legal cases, shows that the 5,000 sq ft limit applies to individual pads and not the totality of the project – *see further analysis below*.
(B) 3. Trees	Numbers 9 and 19 of the CPAMMP ensure the protection of trees now and in the future.
(B) 4. Cut and fill	Numbers 2, 7 and 13 of the CPAMMP ensure that all grading will be done to appropriate standards.
(C) Infrastructure	All work to be done will be legally compliant and in accordance with Sonoma standards as per the CPAMMPs.
(D) Lot creation	All legal steps were followed, and approved by the county and city, in obtaining a lot line

	adjustment and certificate of compliance; any appeal period has long since run – *see legal analysis below.*
(E) Mitigation	The city has the enforcement tools to obtain compliance with CPAMMPs.
(F) Parking	This is not an issue as there is adequate room on the property.

While the above summarizes **why the appeals should be denied**, the following discussion provides more detail on the major issues before you tonight.

Planning Approach

Clare Walton, an architect who specializes in hillside homes, was brought in to design the home. Most of her work has been in the Lake Tahoe area, which is well known for having strict hillside guidelines for all new construction. She has successfully completed over 150 homes in the Lake Tahoe region and it is interesting to note that not one of her projects has been appealed. The Tahoe Regional Planning Agency ("TRPA") has developed a set of prescriptive visibility standards to determine how much of each proposed project may be visible within the sensitive shoreline of the lake. At a meeting earlier this year the city planning director indicated that he wished we had such standards in Sonoma in order to be able to objectively and not subjectively determine whether a proposed project's visibility is approvable. In addition to following the Sonoma Hillside Guidelines, Ms. Walton applied the TRPA standards to further examine the visibility of the project. She spent hours studying the terrain, topography and trees to find the location that was most suitable for achieving a quiet, visually unobtrusive home. She studied neighboring homes, and scaled the proposed house to be in keeping with those homes. And most importantly she met the goal of the hillside guidelines, which was to minimize visual impact. During the design phase, neighbors all received personal invitations to tour the properties with her.

In addition, in comparison with design guidelines for developments around the valley, the project design conforms to design guidelines published by Sonoma Mountain Preservation and the Sonoma Ranch Homeowners Association. Both of these organizations have strict design requirements focusing on the visual integrity of development to ensure that development blends in with the natural setting - the same goal of Sonoma's Hillside Guidelines. They do not prescribe specific numbers to any of these guidelines, instead allowing architects maximum creativity in designing homes that meet the visual integrity objectives. We believe we have achieved this on this project.

A local born and raised Sonoma Civil Engineer, Chad Moll, was brought aboard to guide the site plan and provide assurance that grading, tree mitigation and drainage would be well thought out and meet Sonoma's strict codes.

At the first hearing on March 9, 2017, this and another of my projects were discussed, and while the commission agreed that visibility was a non-issue, they voted to require an initial study of grading, trees and tree preservation to confirm. Between then and the August 10 meeting, the studies requested, as well as 2 others I elected to perform, were undertaken. *The final submitted design of this project incorporated findings from the PC requested reports (pertaining to grading and trees) as well as reflected a number of changes to address commissioner concerns expressed – reduced buildings sizes and changed structure positioning.*

Full Environmental Impact Report

Under the California Environmental Quality Act some projects require an extensive review of a project's potential impact (e.g. an EIR) unless the project is exempt by law, or unless it involves unusual

circumstances. One of the **common categorical exemptions from CEQA is** set forth in 14 Cal. Code of Regulations Section 15303, which is applicable to **single family residences** (Sec. 15303 (a)). A few years ago, the City of Berkeley relied on this categorical exemption in approving a 6,500 square foot home and a 3,400 square foot garage in the Berkeley hills. The Hillside Preservation group argued that unusual circumstances existed and that the categorical exemption should not apply, given that the proposed structures were much larger than other, similar homes in the area. In 2015 in the case of Berkeley Hillside Preservation v. City of Berkeley[1] the California Supreme Court rejected arguments that application of this exemption to construction of the home was barred by the exception to the categorical exemptions that applies when significant impacts may occur due to unusual circumstances. For this project, there are no unusual circumstances (the projects are not out of scale with others in the area, a fact the appellants have not disputed), and all of the studies done at the request of the PC show that there are no negative environmental impacts which cannot be addressed by conditions of approval. Indeed, the City could have relied on the categorical exemption for single family residences but has gone above and beyond by preparing a detailed Initial Study under CEQA and developing a Mitigated Negative Declaration.

No development on Schocken Hill

One cited objection to these projects is that they are proposed on the side of Schocken Hill in the Northeast Planning Area of the city. What needs to be kept in mind is that the underlying land in this Area is zoned R-HS – **residential** hillside. It is not designated as open space, set aside for a park, or otherwise reserved for public use. To preclude residential development on this lot it would have to be acquired by the City or some other public entity on behalf of the public. The lot preexists the implementation of the 1964 general plan and development code, meaning that the lot is grandfathered in as a building site, even though it is less than the current 10-acre minimum required in the area. And contrary to opponent claims, it does not open Schocken Hill up to development, since, if you look at a city plot map, there are no more identifiable developable lots in the city that could be built around Schocken Hill (verified with city planning director).

Views of houses from points in valley

Appellants incorrectly assert that the house does not meet the primary goal of the hillside guidelines, which is to minimize visibility to and from the hillside. In addition to protecting views, the PC is tasked with evaluating a project based on 6 other overall objectives: preservation of natural topographic features; protection of natural topographic features and appearances via terracing, etc.; blend the homes into the terrain; use clustered sites and buildings; protect soil erosion; minimize grading alterations by using natural contours. As noted above, the architect took great care to minimize views of the houses from points on the east side of the city (see percentage visibility from various points later in the individual project memos), and to meet the other 5 objectives. Mention should be made that the project cannot be seen from the west side and it cannot be seen from the plaza. Thus, as evidenced by the planning commission approval, the house meets the primary goal of the hillside guidelines to minimize visibility to and from the hillside.

Aesthetic impact

Aesthetic impacts are insignificant as evidenced by studies done by the architect through story poles, drone video, digital modeling, photographic simulation and utilizing the prescriptive visibility standards required for projects around Lake Tahoe. The design proposed to the commission at the 8/10/17 hearing had 0%, 12%, 16% and 11% visibility from the required 4 vantage points around the valley and a visible area of 961 square feet. At the request of the commission at this meeting, the visible area has now been reduced to 517 square feet. This is a 46% reduction in visible project area. It should be noted that the visibility of the design presented at the 8/10/17 hearing had already been reduced due to input from the commission at the March hearing. Thus the results of all this work clearly show that there would be minimal visual impact.

[1] See 241 CA 4th 943; http://scocal.stanford.edu/opinion/berkeley-hillside-preservation-v-city-berkeley-34393

Pad sizes

The Planning Commission's process for addressing the pad issue followed both California code and case law (see more below) as well as city codes. The city development code establishes standards and guidelines for development – and in numerous sections the word "guidelines" is stressed as nothing that is cast in stone. As noted in the staff report, there are 9 guidelines (not development *standards*) which need to be considered, but a project may be approved "even though it fails to comply with one or more guidelines." This is important to note, because it would be impossible on certain sites to meet each guideline specifically, and achieve the overall intent of the guidelines - which in the case of the Hillside Guidelines is to design a home that blends in by terracing it along the grade, to reduce visual impacts.

The opponents of this project have focused most of their effort on trying to create controversy by trying to convince the Planning Commission, and now the City Council, to focus on just one design guideline pertaining to Pad Sizes, and to join them in interpreting it in a way that fundamentally does not make sense. The appellants refer to an "exception or variance" in this regard, when there is no exception or variance involved as pad size is just one of 9 guidelines. In order to try and agree with their arguments, you would also have to ignore the other 8 guidelines, their combined intent, the zoning codes, and California case law. The Planning Commission did not join in this incorrect approach nor should the City Council.

And since the PC's reasoned approval, portions of the project have been changed from slab on grade to elevated wood framed floors with perimeter stem walls and stepped footings in order to reduce total pad sizes for the project to below 5,000.

As an aside, note that even if one elects to focus on only the guideline dealing with pad size, confusion arises because the guidelines are poorly written. While code 19.040.50 E.2. states "Pads should not exceed 5,000 square feet in total area", a couple of paragraphs later in that same section in 19.040.050 E.3. it refers to "split-level foundations" and "terrace structures", and in 19.040.50 E.5.a.i it refers to "split pads, stepped footings, and grade separations". Also 19.040.50 E.2.[2] Evaluation of Applications refers to "successive padding and terracing of building sites". The confusion that might arise from this poorly written guideline is whether the 5,000 applies to individual pads or pads in aggregate.

But in the case of the project before you tonight there is no confusion, as architects, civil engineers, land use lawyers and contractors agree that "pads" are created in areas where land is leveled to create a flat surface. Structures on elevated framing do not enter into the calculation of pad size as the area underneath is not leveled. Rather, the structures are built above grade, are aligned with contour and step down in various levels to preserve the characteristics of the natural topography. **For this project, calculating only the new padded areas as itemized in the hillside guidelines yields individual and aggregate pad sizes less than 5,000 square feet.** Thus there is no need to argue how to interpret the 5,000 figure in the guidelines, and the appellant's appeal should be denied just as the planning commission approved the projects.

However, since the appellants might take exception to this definition by professionals, and instead try to argue that pad sizes are determined by all areas where building takes place (i.e. includes areas under elevated or cantilevered framing), in order to show that their interpretation is incorrect then the guideline does need to be examined further to determine whether the 5,000 applies to individual pads or to the area of pads in the aggregate.

[2] The online version of the code says section E but it should be F as E is the section immediately preceding this one.

Although this question is not applicable to this project, if we had to take a position it would be that the 5,000 applies to individual pads and not the aggregate. A common sense reading of these guidelines and codes indicates that there can be multiple pads on a property, none of which individually should exceed 5,000 square feet, but the total area of them can exceed 5,000 square feet up to the zoning limitation of 15% site coverage for these projects zoned residential-hillside. Clearly the intent of these requirements, read together and with the intent to give effect to each of them as was done by the PC, is to spread hillside development out such that it does not present a visual eyesore on the property. Otherwise, if the opponent's 5,000 foot limit applied to the whole project, under their interpretation it would encourage someone to stack multiple stories on a site, whereas a single story home following the topography would be less visually impactful. Such an unwarranted interpretation would mean that a full 10-acre lot (435,600 square feet) could only be developed to roughly a little over 1% versus the code limitation of 15% coverage.

In summary the appellant's incorrect interpretation of the guideline would require that you make null a zoning code and that you ignore California code and case law, where rules of statutory interpretation provide that an interpretation which gives effect is preferred to one which makes void.[3] And case law dictates that the direction is to harmonize conflicting statutes if possible by giving them such a construction as will render both effective.[4] Thus where a statute is susceptible of two constructions, the one leading inevitably to mischief or absurdity should be rejected and one consistent with justice, sound sense, and wise policy be adopted.[5] And most importantly, it is a common sense, logical, fully considered reading of the code and guidelines together that make it very clear that the planning commission's interpretation of the code and intent of the Hillside Guidelines was correct.

Trees

As noted in submissions, the number of trees to be removed and replaced on a 1:1.5 basis is minimal over the 2.7 acres (not counting the driveway) underlying this project: for the 800 foot driveway - 21, with most having a diameter of less than 12"; for the house - three. This results 36 new trees being planted to negate the impact of any removals, a majority of which have diameters less than 12 inches.

Drainage

Neighbor's objections relate to existing water runoff in the watershed around the intersection of 4th Street East and Brazil Street and not a new development issue. On November 2 Mr. Moll and I met with the city engineer and staff to review the situation. Subsequent to that meeting Mr. Moll provided an analysis to the city of measures that should be taken on public and private property to help alleviate the existing runoff concerns, irrespective of whether or not the 3 new homes are built. On January 8 we met again with the city engineer who acknowledged there is an existing drainage problem, that would benefit from maintenance and possible upgrades. We asked that the city engineer facilitate a meeting with us and the impacted property owners in the area to discuss the recommended solutions in the civil engineer's report, and to reach an agreement to do the necessary work. It was agreed the most cost-effective solution for the neighbors would be to take on this neglected maintenance and upgrades during construction of the new systems.

For the new projects, Mr. Moll has designed mitigation measures to prevent existing runoff from being greater than it already is. In fact the design provides for more than double the retention expected from a 10-year storm and 35% more retention than runoff expected from a 100-year storm. An operations and maintenance plan is required as part of the Bay Area Stormwater Management Agencies Association requirements for obtaining a permit. This manual will be provided to the ultimate lot owner prescribing timeframes and maintenance activities for detention and drainage features. We indicated to the city engineer

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[3] Civil Code § 3541.

[4] *In re Steidl's Estate* (1948) 89 Cal.App.2d 488.

[5] *Carson v. Lampto*n (1937) 23 Cal.App.2d 535.

that we will ensure that the CPAMMP's for the property specify that the property owner will meet the operations and maintenance plan requirements of their storm water runoff system, will annually inspect it to confirm it is an operable state, and upon request of the city provide a report so stipulating.

Lot legality

Nothing is questionable about the lot as all legal steps were followed in obtaining a lot line adjustment (note that there is no certificate of compliance involved with this lot). LLAs are governed by Map Act Section 66412(d) which allows for the adjustment of common boundary lines between "four or fewer existing adjoining parcels." The lot line adjustment was approved by the city and duly recorded with Sonoma County on February 17, 2017. The time for filing an appeal or challenging the City's administrative determinations with regard to the lot line adjustment of approval and recordation of the certificates of compliance has long since passed.[6]

City Access to Water Tank on lot 228

In January 2017, the Council approved a revised easement for city access to the water tank on this lot. Under the revised easement, the city will have the ability to access the tank off a road going up the hill if the road is built. If the road is not built then access is problematic as is the case today, which is why the easement was revised.

Fire Access

During the October fires the city (actually the Oakland Fire Department) cut a fire road up through the "cross property" (next to the cemetery at the end of 2nd Street East), east up over a ridge on Schocken Hill, east behind this lot and one other being heard by you, and then continuing to the east toward Gehricke Road. This emergency road was extremely steep and intended to allow firefighters to trek up to the city limits and create a fire break should the fires have come down toward the city via Schocken Hill. With a road built up to the two lots there will be much easier access for city fire trucks and personnel to defend the northern city limits of the city.

Responses to appellant's claims not covered above:

(A) 4. Trees

As noted above great care has been taken with respect to the impact of this project on trees. Restrictive property covenants to address long-term tree protection and hillside view preservation are addressed in conditions 9 and 19 of the CPAMMP. Those covenants will be enforceable by the adjacent homeowners, subject to the same CC&Rs and will be designed to provide the City with the right (at its discretion) to enforce them if deemed necessary at some point in the future.

(A) 5. Bird species

The appeal states that "documentation submitted by the developer identified at least three special-status bird species." This statement did not come from my consultant reports but was staff's wording based on a biological assessment report performed for a property approximately 600 feet from the project property. Staff considered that report useful given the location of the property for which it was prepared. Note that the staff report says that the species "have the potential to occur on site and that they have not been observed." (emphasis added.) Nor are any of them listed as endangered on the California Department of Fish and Wildlife California Natural Diversity Database.[7] If any of these species were to be present and decided to

[6] "Appeals shall be filed in the office of the city clerk within 15 days following the final date of the determination or action being appealed." Sonoma Municipal Code Section 19.84.030.B.

[7] See https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406&inline

nest, note that condition 18 of the CPAMMP deals with the treatment of any bird nests from these or other species found on the property.

(A) 7. Grading
As noted in the staff report, the use of an existing driveway as the starting point for access reduces grading and changes to the natural topographic features, and since the site is gently sloping there is minimal need to alter the natural topography. Again, a qualified local civil engineer has drawn up the plans for grading, and CPAMMP number 2 is intended to ensure that site impacts are minimal and respective of the land.

(B) 3. Trees
As noted above in (A) 4. treatment of trees has been more than adequately covered by the arborist's report as well as the PC analysis of the situation. Number 9. C. of the CPAMMP specifically limits tree replacement to native species, number 9. G. is a requirement to ensure that tress required for preservation are preserved, and number 19 is extensive in protecting trees now and in the future.

(B) 4. Cut and Fill
Almost any project has cut and fill, and the CPAMMP deals extensively with conditions to ensure that grading, erosion, drainage, etc. are all done in a professional manner – see CPAMMP numbers 2., 7. and 13.

(C) Infrastructure
All points in the CPAMMP deal directly or indirectly with Sonoma infrastructure to ensure that the projects are legally, aesthetically and environmentally consistent with city requirements.

(E) Inadequate mitigation
Throughout the CPAMMP are requirements giving the city the enforcement tools it needs to ensure that the conditions of approval are adhered to.

(F) Parking
The design of the project meets all legal requirements for parking and is more than adequate to handle anticipated visitors.