

County of Santa Clara

Environmental Resources Agency

Planning Office

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May 4, 2004

To: Morgan Hill Urban Limit Line/Greenbelt Advisory Committee, May 10, 2004

From: Bill Shoe, Planner

RE: Follow-Up to April 12, 2004 Presentation/Discussion of County
Viewshed/Open Space Work Plan Item

Introduction

This is a follow-up report to the presentation and report given to the Morgan Hill Urban Limit Line/Greenbelt Committee on April 12, 2004. At that meeting, staff presented a mapping analysis and information on the subject of viewshed and scenic resource protection. Staff and committee began a discussion of the subject, within the time allotted for it on the agenda, and continued the subject to the May 10, 2004 agenda.

Summary of Discussion on 4/12/04

Committee members had several suggestions, among other comments and questions:

- Possibility of making expanded use of the City's "Transfer of Development Credits" program, or TDCs, which is part of the City's Residential Development Control System, or Measure C;
- Exploring possible use of incentives, such as reduced permit costs or process requirements, to favor the selection of less visible development sites or other measures to reduce visual impacts;
- Evaluating the expanded use of clustering incentives and requirements for undeveloped lots with subdivision potential (or reconfiguration of existing lots).

These suggestions deserve further consideration. In some cases, they reflect existing policy and ordinances. For example, in areas with a "Rural Residential" or "Hillside" County General Plan designation, clustering of lots and development are already an existing option for subdivision proposals, if not mandated by policy. In Hillside areas, for example, a subdivision of three or more lots requires clustering and mandatory dedication of open space no less than 90% of gross land area involved. In Rural Residential areas, clustering is also an option. In hillside areas, it is the preferred option.

Key Findings of Report

The key findings of the report and presentation for the unincorporated areas were as follows:

- Limited subdivision potential remains in the study area, although there are some remaining large parcels.
- Development of individual lots with new homes and additions will be the most likely kind of future development in the viewshed areas.
- Approximately 50-65% of existing lots depicted in each subarea already contain residential development.
- Some parcels may contain underlying lots of record that are assessed and mapped for property taxation purposes as one lot.
- The viewshed area contains a significant amount of incorporated land with moderate densities of residential use. Some of these areas, such as the Jackson Oaks area in the hills east of the city, are highly visible.
- Few if any non-residential uses exist in the viewshed study area.
- The number of existing substandard lots is high.

Of all these points, the sheer number of existing substandard lots presents the most significant challenge to any efforts on the part of the County to enact policies or regulations that will significantly reduce the visual impacts of future development. However, given the fact that subdivision potential is low, if the County were to propose new means of controlling visual impacts from hillside development, it would most likely involve the use of incentives or controls imposed on the development of individual lots.

Factors Potentially Affecting Visual Impacts of Individual Lot Development

Staff identified a number of factors or aspects of single site development that might be addressed to reduce visual impacts of development:

- Placement of a primary residence, as well as site improvements like water tanks;
- Amount of grading and terrain alteration to create a building site and access;
- Size and massing of a structure;
- Stories, height of a structure;
- Color and light reflectivity values (LRV);
- Landscaping; and,
- Use of Design Review as a discretionary review process.

These development factors can be the subject of land use regulations, standards, or guidelines, with varying restrictiveness. Whether such factors should be the subject of additional regulation depends on the criteria or principles discussed previously:

- Whether a control will be effective and fit with the circumstances;
- Consistency with General Plan and other ordinances, including Zoning Ordinance, and the Subdivision and Land Development regulations of the County Ordinance Code;

- Whether the creation of additional regulations significantly contributes to the potential over-proliferation of differing standards;
- Cost versus benefit, or "pain-to-gain" ratio of enactment and implementation.

The latter criteria reflects not only the amount of effort and complexity that may be involved in creating a new regulation or standard, but also the potential for controversy, and the cost of implementation, development review, inspections, and enforcement.

Evaluation of Regulatory Mechanisms

Staff has considered and evaluated various means of regulating each aspect or development factor identified. For each factor, there are a number of ways to approach the issues, and varying degrees of restrictiveness and control.

1. Placement/grading/terrain alteration.

Staff groups these three factors together because they are integrally related aspects of single site development. Mechanisms to address or regulate placement and grading can range from simple case-by-case review of applications, taking each proposal as it is made at the time of submittal, to policies and ordinances which prohibit outright certain placement options, such as prohibitions on ridgeline placement.

For example, in the County's "-d2, Design Review" Zoning District, structures proposed along the perceived ridgeline of the east Milpitas hills may not protrude above the perceived crestline. Structures may be near a ridgeline in the "-d2" but cannot protrude above it, as seen from specified vantage points on the valley floor. Other options include discouraging or prohibiting development on lands above a certain percentage slope or specified elevations. All have pluses and minuses. The extreme variety of topography in the rural hillsides always presents a challenge. Many parcels that are not visible from the valley and have no impact on the viewshed are distant from developed roads, and to obtain site approval, a driveway or private road of significant length may be required. Some degree of flexibility is always appropriate. An overly rigid approach to all hillside areas may inadvertently create problems.

Effectiveness:

- a. On the whole, staff believes that for many viewshed parcels addressing the potential visual and environmental impacts of development through site design may be preferable to the alternative of only addressing them through building design, such as through Design Review. Design Review affects only certain aspects of the development of a lot.
- b. Modifications to the single site development process can and should be viewed as a natural evolution of policies, ordinances, and standards. Over time, a County or City should evaluate how well its standards,

procedures, and practices are working and whether outcomes are being achieved consistent with County goals and policies. The County currently addresses the various aspects of individual site development through three primary types of review, Single Building Site Approval, Grading Permits, and Design Review. Geologic Report requirements may accompany any application. Within the Building Site Approval process, there are two tracks, one for development on slopes less than 30%, and one for development on slopes 30% and over. The latter is a more rigorous process.

- c. There is potential for improved coordination between review agencies from evaluating the general approach to single site development, which could benefit the public, individual property owners, and the agencies.

General Plan/Ordinance Consistency:

- a. Placement and grading are factors directly related to existing General Plan policies on Scenic Resources.
- b. Addressing these factors also directly relates to fundamental health and safety issues addressed in the General Plan, such as fire hazards, emergency response times, and natural hazard avoidance.
- c. Care will be needed to address areas where different ordinances overlap and to ensure adequate flexibility in a discretionary review process.

Proliferation of Standards

- a. Modifying the County's approach to regulating placement, grading, and terrain alteration would be based on existing universally applicable ordinances.
- b. Standards and procedures would not vary from area to area, but could be specifically tailored to address viewshed development issues.

Cost/Benefit

- a. All such evaluations take time and effort, but like periodic reviews and updates of the General Plan, they are necessary and valuable for keeping regulatory approaches relevant and effective.
- b. Costs of not further evaluating current practices include the time and effort presently spent in dealing with more difficult, constrained sites.
- c. Over time, most of the more easily developable areas of hillside lands have already been developed. The undeveloped lots and areas that remain pose significantly greater difficulties and constraints.

2. Size/massing/story and height limits

Only one hillside area in the County has floor area limits for dwellings, the “-d2” design review district for Milpitas’ hills. However, the limits are fairly generous, up to 6,000 s.f. for lots under 10 acres, and 8,000 s.f. for lots 10 acres or larger. The County proposed to regulate house size in the west hillsides above Los Gatos and Saratoga through the enactment of the “-d1” ordinance, but did not do so.

In the “-d1” design review district, maximum building height is 30 ft., rather than the standard 35 ft. This limit allows two story homes, but typically lower ceiling heights and roof pitch. In the “-d2” district, maximum height is 27 feet and two stories. In the “-d” districts, standard height limits apply, but may be reduced through the process and permit. These varying standards are similar to those of the applicable cities.

Effectiveness:

- a. Marginal reductions in maximum allowed height tend to have marginal effect on reduced visibility. Story limits may reduce the number of stories facing the valley floor.
- b. Severe height limits of one story can result in much larger building pads and significantly more grading and retaining walls than designs that use multiple stories and are tailored to a hillside’s slope.
- c. Most hillside homes are custom designs, and even non-custom designs typically have sufficient detail, articulation, and features to conform to County Design Review guidelines in that regard, without modification.

General Plan/Ordinance Consistency/Proliferation of Standards

- a. The General Plan does not directly address home size. Policies of the General Plan discourage construction that would create a significant adverse visual impact.
- b. A significant issue is the potential for many slightly differing standards for height, number of stories, and size limits. Such complexity for different areas of the County can be confusing for the public, designers, builders, and for staff reviewing development.

Cost/Benefit

- a. More so than for color and landscaping, proposals for regulating size, floor area, or height elicits strong opposition from designers, owners, and developers.

- b. With the potential for controversy so high, and the need for a more generally consistent set of standards within viewshed areas visible from the valley floor, staff would recommend no further new standards at this time regulating height, stories, or house size.

3. Color/Light Reflectivity Value (LRV) and Landscaping

Limiting the use of bright and highly reflective house colors is one of the most common means of minimizing visual impact. County standards for “-d1” and “-d2” zoning districts impose a 60 LRV limit or lower, depending on circumstances. Landscaping plans are required for single building site approval applications on slopes of 30% or more. Landscaping is an option for most Design Review permits, but is often required as a condition of approval, and can be useful for screening a building from valley views or from a neighboring home.

Effectiveness

- a. Regulation of light reflectivity, or color brightness, is a fairly simple and straightforward means of mitigating visual impact.
- b. The most significant drawback of LRV/color regulation is that repainting a house does not require any kind of building permit. Enforcement tends to depend on the County receiving complaints from other neighbors about violations of such standards, which is unreliable. And enforcing such standards through the courts, if necessary, is costly and time consuming for a violation of the law that is termed an “infraction,” which is a lesser offense than a misdemeanor.
- c. Current County standards of 60 LRV permit a level of brightness which can, at times, still significantly contrast with natural landscapes. Determining what is an appropriate limit is important if a standard is to be imposed.
- d. Many areas of the hillsides have weather, soil, and other limitations that do not favor reliance on landscaping to reduce visual impacts. Growth of landscaping takes many years and proper maintenance. Even once it matures and achieves the desired effect, it can be quickly and easily removed, defeating the purpose. Fines and penalties for unlawful removal of such plantings are established by existing ordinance, but are not necessarily a deterrent.

General Plan/Ordinance Consistency/Proliferation of Standards

- a. In addition to placement regulations, color limits can be an important part of a strategy for mitigating visual impacts, when landscaping and natural land features cannot be relied on to reduce visibility.

- b. Use of a single LRV standard for all viewshed areas would counter the tendency for proliferation of varying standards. Whether it is possible to re-open a discussion of having a uniform standard in areas that already have such a standard is uncertain.

Cost/Benefit

- a. Although color controls are most commonly imposed as a condition of development through design review or some other discretionary permit, LRV limits could be enforced through a different ordinance and effected through a building permit or other means.
- b. Reviews of development prior to final issuance of building permits may require more site visits by staff.
- c. Any limit on homeowner preferences can be controversial, but less so if the requirement does not include the imposition of application fees, process time, public hearings, and appeal processes such as with Design Review.
- d. Landscaping ordinances without use of a discretionary review and approval process pose much more significant challenges than LRV and color standards. Staff does not recommend them at this time.

4. Design Review Permit Requirements

Design Review in County Zoning Regulations is a form of discretionary permit. An application is required, such as for a new house or addition, with an application fee of \$1,040.00. It involves referrals to other affected agencies, plan review and comment, site visits, counseling of applicants, interaction with neighbors noticed for a public hearing, agenda preparation, noticing, conducting public hearings, follow-up paperwork for files, and the possibility of appeals from anyone dissatisfied with an outcome. With an appeal, the hearing process is repeated at the Planning Commission and possibly at the Board of Supervisors. Many consider the imposition placed on the developer as the most significant impact of Design Review processes, but there is a considerable impact on staff resources as well.

Furthermore, Design Review processes are like any application process, with the potential for multiple resubmittals, and other factors that can make it a prolonged process for all involved. [Note: Design Review (DR) and Architecture & Site Approval, or ASA, are similar County procedures, but DR is used almost exclusively for residential development, and ASA tends to be focused on other forms of development].

Effectiveness:

- a. Design Review involves both application of zoning standards and guidelines, interpreted through the judgement of the hearing

authority. In some instances, an application may conform well enough to all the standards and guidelines that the review process has no effect on the proposed development. In others, conditions are imposed to address various issues. Rarely does Design Review result in a denial.

- b. Design Review is typically imposed through enactment of “-d” Zoning Districts. With the standards and limits that may be included in such rezonings, the potential for controversy is extremely high.
- c. Design Review’s scope is broad, but it is least influential in altering home placement and access location, unless the Zoning District is highly restrictive in that regard. DR addresses potential visual impacts primarily resulting from structural design. It is not a panacea for reducing visual impacts, although in the last 15 years since DR was created in 1988, it has been the centerpiece of the County’s general approach to viewshed protection, because, at minimum, it provides for discretionary review.

General Plan/Ordinance Consistency/Proliferation of Standards

- a. The General Plan’s implementation recommendations include a proposal to impose Design Review where studies indicate there is a need for further protection and Design Review would be effective.
- b. Design Review Zoning Districts now have three versions, “-d,” “-d1,” and “-d2”. The “-d1” district resulted from planning studies with the four major west valley cities (Cupertino, Saratoga, Los Gatos, Monte Sereno), while “-d2” resulted from joint planning with Milpitas. The standards and approach for each reflects certain goals and issues of concern to those cities. For each new area proposed for Design Review zoning, there is the potential for more iterations, each with its particular approach and standards. However, this pattern contributes to the proliferation of varying standards.

Cost/Benefit

- a. The amount off controversy, staff effort, and time typically required to enact a new “-d” zoning district is high.
- b. In an area such as the viewshed of Morgan Hill, where more than half to two thirds of unincorporated parcels are already developed, the more likely type of development to be regulated through DR are additions and alterations to existing homes and their accessory structures, over time, compared with new homes.
- c. The benefits of regulating home additions are not as great compared with regulating the appearance of new buildings in a mostly

undeveloped area. Additions need to be designed for consistency with the existing home, more so than any other factor.

- d. There are staff resource implications of adding new areas of Design Review Zoning Districts. It is uncertain whether the prevailing reliance on Design Review as presently conceived to address visual impacts is more effective than other potential review processes.

Conclusions

Staff's analysis at this time is intended to help guide the Committee and other participants and provide information on which to base Committee recommendations. Staff is not endorsing any particular approach or recommendation. Some types of development regulation are more involved than others, and may need further evaluation time to determine the most feasible means of enacting and implementing them. Most of all, Planning Office staff must ensure that adequate coordination occurs with other County agencies, the Fire Marshal's Office, and the affected city before making significant changes in the way single site development is regulated.