

Planning Commission Date: May 23, 2007

Item No.

3.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Cindy Hom

Public Hearing: Yes: X No: _____

Notices Mailed On: 5/11/07

Published On: 4/26/07

Posted On: 5/11/07

TITLE: MINOR TENTATIVE MAP AMENDMENT NO. MM2007-1

Proposal: A request to delete Condition of Approval No. 5 requirement to underground utilities.

Location: 387 Rudyard Drive.

RECOMMENDATION: Approve as submitted.

Applicant/Owner: Hai Tran, 387 Rudyard Drive, Milpitas, CA 95035

Previous Action(s): S-Zone Approval, Minor Tentative Map

Environmental Info: Categorically exempt pursuant to Class 15, Section 15315 ("Minor Land Divisions") of the California Environmental Quality Act Guidelines

General Plan Designation: Single-Family Residential, Low Density

Present Zoning: R1-6, Single Family Residential minimum 6,000 sq. ft. lot

Existing Land Use: Residential

Agenda Sent To: Applicant and Owner as noted above.

Attachments: Applicant's letter dated April 12, 2007

PJ# 3202

BACKGROUND

The Planning Commission approved a Minor Tentative Map for a two-lot subdivision of .38-acre parcel on April 12, 2006.

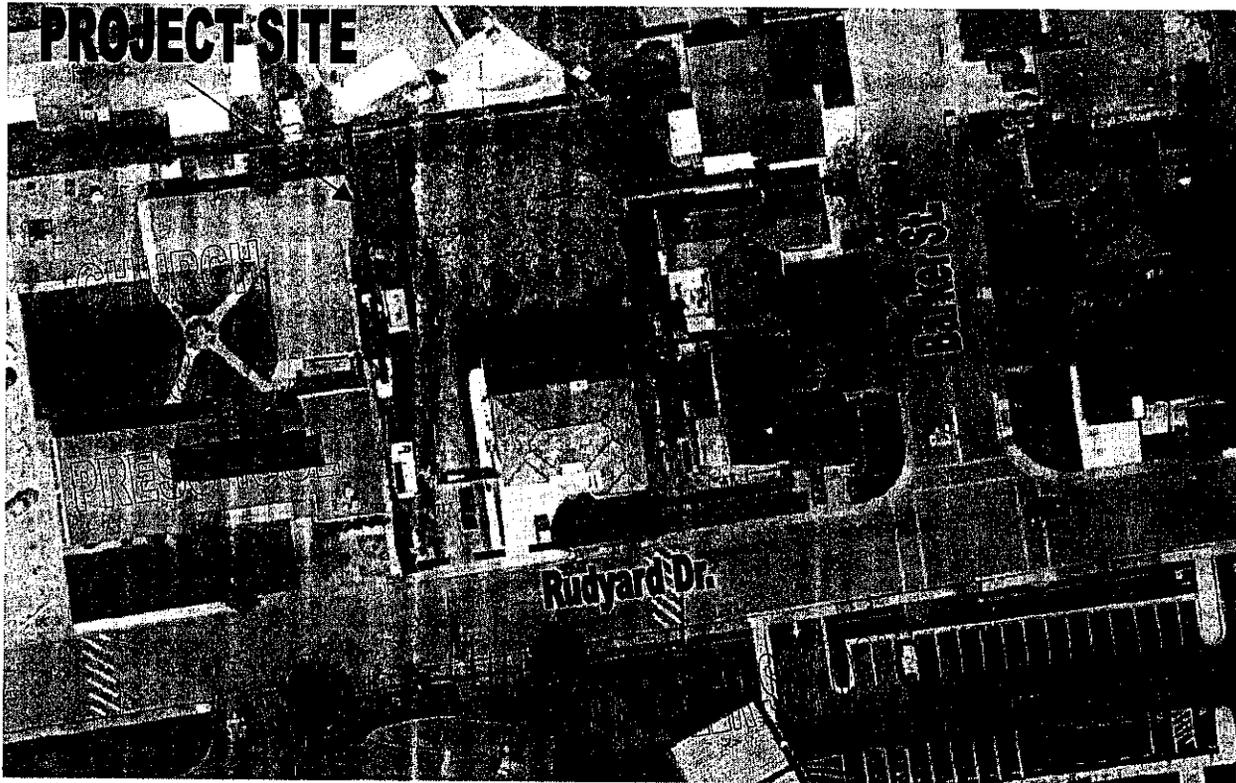
As a condition of approval, the applicant was required to underground utilities located along the eastern property line. During plan review, the applicant expressed difficulty in complying with the condition. According to the applicant's letter dated August 6, 2006 (Attachment A), the applicant could not obtain consent of the adjacent neighbors. The applicant also noted that the pole to be removed and utilities to be underground, supports an existing streetlight.

REQUESTED ACTION

The applicant is requesting to delete Condition of Approval No. 5 which is a requirement to underground utilities. Pursuant to Municipal Code XI-1-7.02-2.2 (Exceptions) of the Milpitas Subdivision Ordinance, an exception may be granted for "...poles supporting streetlights and electrical lines within said poles and may be situated above the surface of the ground." Based on staff's review of the subject utilities (Pole 3 and support wires), it was determined that the project is eligible for an exception. Additionally, the existing overhead utilities will be consistent with existing conditions. The area is an older subdivision, which have existing overhead utilities and therefore will not be out of character with the surrounding area.

SITE DESCRIPTION

The project site is a .38-acre rectangular parcel located north of Rudyard Drive, in between North Abbott Avenue and Barker Street. The project site is bounded by Rudyard Drive to the south, a church and preschool to the west, and residential homes to the north and east. The southern portion of the parcel is currently developed with a single-family residence (387 Rudyard Drive). Adjacent land uses include single-family homes to the north and east, Spangler Elementary School to the south, public, quasi-public and residential uses to the west as depicted in the following aerial photo:



Conformance with the General Plan

The Single Family-Low Density General Plan designation allows a residential density of between 3 and 5 units per gross acre) the project site is approximately .38 acres and proposed 2 lots with a density of 5.26 dwelling units per acre. The density provides 5 dwelling units per acre and is consistent with the General Plan.

Conformance with the Zoning Ordinance

The proposed parcels and building footprints conforms to the Single-Family Residence (R1-6) zoning district development standards, as shown on Table 1.

**Table 1:
Conformance with Single-Family Residential (R1-6)
Development Standards**

Lot Size, Width and Setbacks	Parcel 1	Parcel 2
Lot size (min. 6,000 sq. ft.):	7574.45 sq.ft.	7515.17 sq.ft.
Lot Width (min. 60')	75'	185.65'
Setbacks:		
Front (min. 20')	20'	20'
Side (min. 6' adjacent to garage, total 13')	6'/7'	6'/7'
Rear (min. 25')	25'	25'
Driveway/Parking spaces (min. 10' x 20'; 2 spaces)	15' / 2	20' / 2
Conforms with minimum standards?	Yes	Yes

Conformance with the Subdivision Map Act and Subdivision Ordinance

The Subdivision Map Act defers the approval of minor tentative parcel map applications to local ordinances (Article 5, Section 66463). The City's Subdivision Ordinance requires design and improvement consistency with the General Plan. The proposed Tentative Map amendment is in conformance with the General Plan in terms of land use, density, and improvement consistency. The Tentative Map Amendment will allow for an exception to maintain the existing overhead utilities. As mention earlier in the staff report, the existing overhead utilities would be in keeping with surrounding area.

Conformance with CEQA

The project is categorically exempt from further environmental review pursuant to Class 15, Section 15315 ("Minor Land Divisions) of the Environmental Quality Act (CEQA) guidelines. This section exempts such projects involving the division of property in urbanized area into four or fewer parcels when the division in conformance with the General Plan and zoning. As

discussed above, the proposed project is located in a developed, urbanized area and conforms to the General Plan and Zoning Ordinance.

RECOMMENDATION

Close the Public Hearing. Approve Minor Tentative Map No. MI2005-4 based on the findings and conditions of approval.

FINDINGS

General Plan

1. The proposed project is consistent with the Milpitas General Plan in that it is consistent with:
 - Guiding Principles 2.a-G-3 and 2.a-I-10, which provide for a variety of housing types and densities that meet the needs of individuals and families, as well as foster community pride and growth through beautification of existing and future development;
 - Implementation Policy 2.a-I-2 which promotes in-fill development in the incorporated city limits. The project is an infill project replacing existing residential structures, primarily surrounded by existing developed sites;
 - It does not conflict with any existing policies, allows the development of new housing uses within this portion of the City, and will be in conformance with the underlying General Plan land use designations once approved by the City Council.

Zoning Ordinance

2. The proposed project, as conditioned, is consistent with the Milpitas Zoning Ordinance in that the proposed development is within the allowable density of the zoning district and conforms to the land use and development standards of the Single-Family Residential (R1-6) zoning district.
3. The layout of the site is compatible and aesthetically harmonious with adjacent and surrounding development because the project would be complementary to the adjacent existing residential development to the northwest, west, and south of the project site.

Subdivision Map Act

4. The proposed project is consistent with the State Subdivision Map Act and the Subdivision Ordinance in that the proposed subdivision, design, and improvements are consistent with the General Plan.
5. The site is physically suitable for the type of development proposed because the project site is relatively flat, currently developed with one (1) residential structures, and located adjacent to residential developed properties.
6. The site is physically suitable for the proposed density of development because the project is in conformance with the General Plan density requirements, and the Zoning Ordinance in terms of lot area, width, and yard requirements.

7. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage beyond what is already anticipated by the General Plan and Zoning Ordinance for the R1-6 Zone.
8. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision because, as conditioned, all appropriate encroachment easements will be obtained prior to construction activities, and access to property will be from a city maintained public street.

California Environmental Quality Act

9. The project is exempt from further environmental review pursuant to Class 15, Section 15315 ("Minor Land Divisions) of the California Environmental Quality Act (CEQA) guidelines.

CONDITIONS OF APPROVAL

1. This approval is for Minor Tentative Map No. MI2005-4 to subdivide one lot into two parcels as depicted on the approved Minor Tentative Map, dated April 12, 2006, and as amended by these conditions of approval. (P)
2. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. If, at the time of submittal for Parcel Map approval, there is a project job account balance due to the City for recovery of review fees, review of parcel map will not be initiated until the balance is paid in full. (P)
4. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
5. ~~Prior to parcel map recordation, in accordance with Milpitas Municipal Code XI-1-7.02-2, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more that do not have to be undergrounded, the developer shall underground all existing wires between the utility poles number 2 to 4, and removing pole number 3, as shown on the Engineering Services Exhibit TM, dated 3/1/06. The overhead electric service lines serving adjacent properties and facilities from pole number 3, and all proposed utilities within the subdivision shall also be undergrounded. (E)~~
6. Prior to parcel map recordation, the developer shall submit maps to PG & E for their review and comments. PG & E shall verify that the existing PUE in the back of the property is sufficient or additional easement for the Wire Clearance is required. If additional easement is required, developer shall dedicate the necessary easements prior (or concurrent with) parcel map recordation. (E)
7. Prior to parcel map recordation, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
8. The parcel map shall be recorded prior to issuance of any building permit. (E)

9. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Special Flood Hazard Zone AE, therefore, floodproofing is required. Floodproofing can be accomplished by elevating the structure. Per Chapter 15, Title XI of Milpitas Municipal Code(Ord. No. 209.4) the lowest floor elevation (finish floor) of each structure shall be at least one foot above the BFE and the pad elevation shall be at or above the BFE which is approximately at elevation 15 feet NGVD. The applicant's civil engineer shall complete and submit a FEMA Elevation Certificate to the City, certifying the "as built" lowest floor elevation. Forms are available at the City of Milpitas, Engineering Division. Additionally, applicant shall demonstrate that this development will not cause any significant increase in flood levels during the occurrence of the base flood discharge. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Regulations. (E)
10. Prior to parcel map recordation, the developer shall obtain design approval and bond for all necessary public improvements including but not limited to undergrounding of overhead wires, slurry seal of the entire Rudyard street frontage, restriping, storm drain, sewer and water service connection. (E)
11. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to connection fees for sewer, water and storm, and plan check and inspection deposit. (E)
12. At the time of plan check submittal for building permit, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to building permit issuance. (E)
13. If the existing services (water, sewer and storm) are not adequately sized to serve this additional development, plans showing new services must be submitted and approved prior to building permit issuance. (E)
14. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
15. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
16. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
17. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
18. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:

- A. Storm water connection fee of **\$1100**, water connection fee of **\$1910**, sewer connection fee of **\$1908** and wastewater treatment plant fee of **\$880**.
- B. Water Service Agreement(s) for water meter(s) and detector check(s).
- C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

- 19. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies, including but not limited to, Pacific Gas and Electric, SBC, Comcast and City of Milpitas Engineering Division. Copies of approvals or permits from other agencies must be submitted to the City of Milpitas Engineering Division. 48 hrs prior to start of construction, the developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, for location of utilities. (E)
- 20. Make changes as noted on Engineering Services Exhibit "T"(dated 3/1/2006) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)
- 21. Due to limited fire apparatus access to rear lot, an automatic fire protection system (sprinklers) per NFPA 13D shall be provided for the future residence. California Fire Code Section 1001.9. (F)
- 22. In lieu of an automatic fire protection system, per comment No. 1 above, a private hydrant may be installed at the rear lot. The Fire Department reserves the right to designate the specific location of the hydrant. CFC Section 1001.9. If this option is not feasible, an automatic sprinkler system shall be installed. (F)
- 23. Fire access easements. No source of access from lands adjoining a property to be developed shall be considered unless there is obtained the irrevocable and unobstructed right to use same. CFC Section 902.2.1.2 amended by Milpitas Municipal Code V-300-2.01. Fire access easements shall be legally recorded. (F)
- 24. The required width of a fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. The minimum required widths and clearances shall be maintained at all times. CFC Section 902.2.4.1. (F)
- 25. Grading of both lots shall be provided in such a way that site storm drainage from one lot shall not be directed to adjacent lot. (B)
- 26. Structures on each lot shall be provided with independent utility lines. Utility lines of one lot shall not cross or pass through adjacent lot. (B)

(P) – Planning Division

(E) – Engineering Division

(F) – Fire Department

(B) – Building Department

ATTACHMENT ~~B~~ A

From: Hai Tran & Marsha Tran
 387 Rudyard Drive, Milpitas, CA 95035
 (408) 957-0882 (H) / (650) 580-2003 (C)

To: Planning Commission, City of Milpitas

Subject: Letter of Inquiry for an Amendment of the Conditions for Minor Tentative Map No. M12005-4 (PJ# 3202)

Date: April 11, 2007

Dear Commissioners:

This letter is to inquire for your approval of the amendment of the conditions for Minor Tentative Map No. M12005-4 (PJ# 3202) which was approved by Planning Commission on April 12, 2006. This amendment is required as staff has reviewed and granted our request in response to our letter dated August 6, 2006 seeking the removal of the underground requirement for existing overhead utilities. The requirement is shown as Condition #5 in Approved Special Conditions for Minor Tentative Map No. M12005-4 (PJ# 3202) for a 2-lot subdivision (copies enclosed).

The staff has reviewed and granted our request based on our reasons as follows:

1. The project meets criteria for an exception according to Milpitas Municipal Code XI-1-7.02-2.2(c):
 "Poles supporting street lights and the electrical lines within said poles, may be situated above the surface of the ground."
2. Due to safety concerns related to the underground of high voltage lines, our adjacent neighbors do not support the underground project. Therefore, without our neighbors' consents, to comply with the underground requirement is impossible.

We, therefore, seek your consideration and approval for the amendment. Please feel free to contact us if you have any questions.

Sincerely,



Hai Tran

RECEIVED

APR 12 2007

CITY OF MILPITAS
PLANNING DIVISION

RECEIVED

From: Hai Tran & Marsha Tran
387 Rudyard Drive, Milpitas, CA 95035 / Tel. (650) 580-2003
To: City of Milpitas
Subject: Letter of Request for Review of Conditions.
Minor Tentative Map No. M12005-4 (PJ# 3202)
(Project Address: 387 Rudyard Drive, Milpitas, CA 95035)
Date: August 6, 2006

APR 12 2007

CITY OF MILPITAS
PLANNING DIVISION

To Whom It May Concern:

Our letter is to request the City of Milpitas for a review and removal of the utilities underground requirement shown as Condition #5 in Approved Special Conditions for Minor Tentative Map No. M12005-4 (PJ# 3202), Planning Commission Approval April 12, 2006 for a 2-lot subdivision. Condition #5 is as follows:

5. Prior to parcel map recordation, in accordance with Milpitas Municipal Code XI-1-7.02-2, with the exception of transmission lines supported by metal poles carry voltages of 37.5KV or more that do not have to be undergrounded, the developer shall underground all existing wires between the utility poles number 2 to 4, and removing pole number 3, as shown on the Engineering Services Exhibit TM, dated 3/1/06. The overhead electric service lines serving adjacent properties and facilities from pole number 3, and all proposed utilities within the subdivision shall also be under grounded. (E)

In seeking for City's review and removal of this requirement, our supporting reasons are as follows:

- 1. According to City of Milpitas' Zoning Ordinance for Subdivisions, exception is applied for this case.**

According to Milpitas Municipal Code XI-1-7.02-2.2(c):

"Poles supporting street lights and the electrical lines within said poles, may be situated above the surface of the ground."

From this exception, pole number 3 stated above, which supports electrical lines to a street light pole on Barker Street, should be exempted from the utilities underground requirements. Please refer to **Appendix A** for pictures and location of this street light and its electrical lines.

- 2. Without our neighbors' support, this underground project is impossible.**

As the overhead electric service lines serving adjacent properties shall also be undergrounded, our neighbors' consents are required. However, none of our neighbors has agreed nor supported this underground project; and therefore, to implement this requirement is impossible. Please refer to **Appendix B** for our neighbors' written consents in response to our letter.

- 3. According to PG&E, existing utilities easements within surrounding subdivisions are overhead easements, overhead-to-underground conversions require underground easements from our neighbors.**

As overhead-to-underground conversions require underground easements, new easements are needed from our neighbors. We do not believe this requirement is enforceable. Please refer to **Appendix B** for our neighbors' written consents regarding new easements.

- 4. The whole neighborhood is greatly concerned about the safety issues that may arise from the underground of high voltage lines.**

All families within the surrounding subdivision, including the adjacent daycare center on Abbott Ave, are strongly concerned about the safety issues that may arise from the underground of PG&E high voltage lines in the backyards, especially where this subdivision is in the flood zone per FEMA. As the neighborhood has opposed to this underground, we, the applicants, the City of Milpitas, and PG&E may be liable for future safety issues that arise from this underground project. Please refer to **Appendix B** for our neighbors' written consents regarding the safety concerns from the underground requirement of high voltage lines.

- 5. We, the applicants, would significantly face financial hardship if this requirement is enforced.**

We, the applicants, have submitted an application to PG&E for this overhead-to-underground conversion. The initial feedback from PG&E is that this project would cost from \$200,000 up to \$250,000 and may take several months for PG&E to actually initiate the work. For a minor 2-lot subdivision, PG&E costs for this underground project is outrageous and unreasonable. Also according to PG&E, the project must be supported with written consents from adjacent neighbors. PG&E refused to provide any written estimate or comment until the project completed its design & planning phase by PG&E Engineering Division. The process may also take several months according to PG&E. Please call Scott Yeater, PG&E manager for this project, at (408) 299-1050 for verification of the initial estimate and other related information.

We, again, seek your consideration for review and removal of this requirement. Please contact us if you have any questions.

Sincerely,

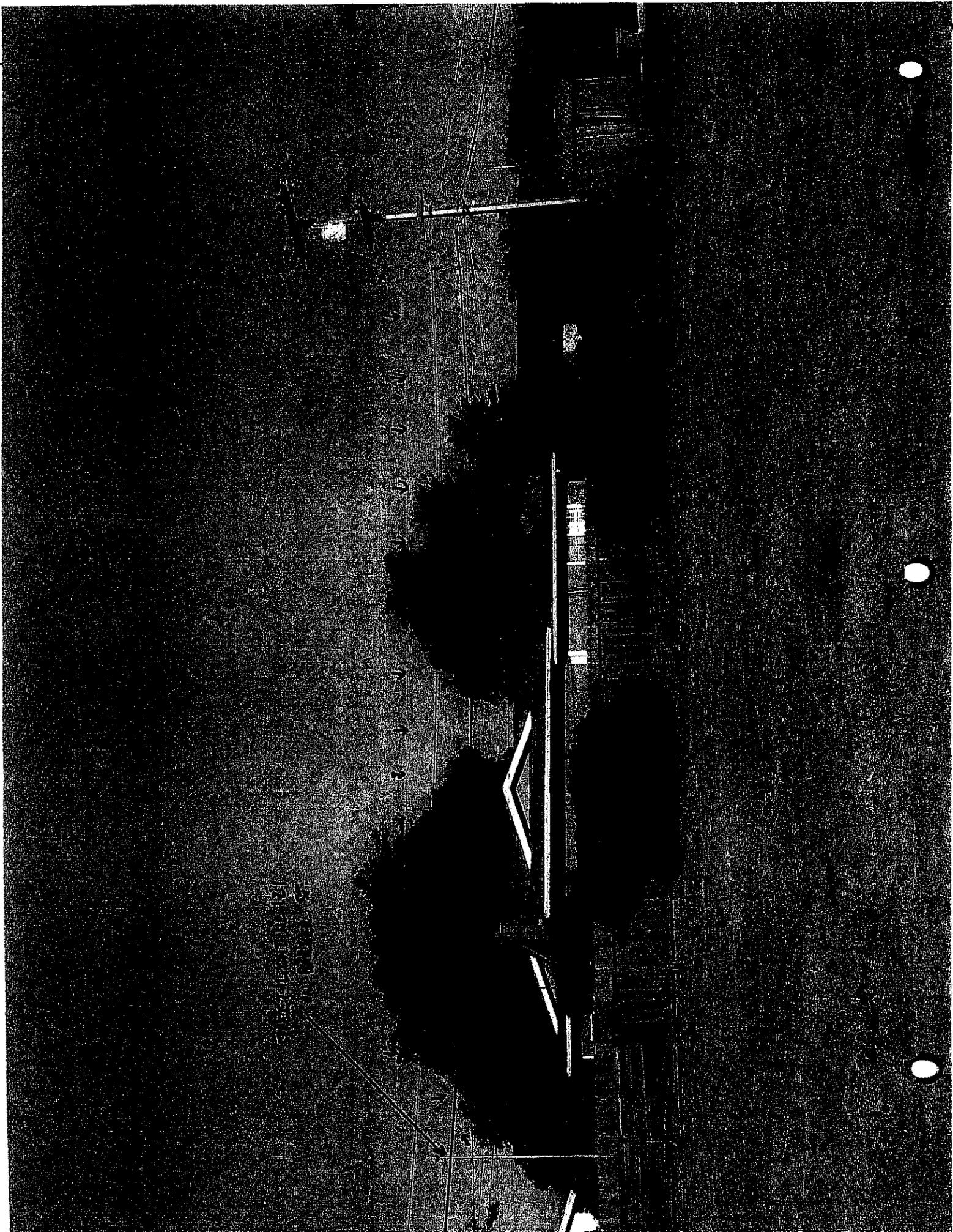


Hai Tran

08/06/2006

Appendix A

**(Pictures & Location of Pole #3 Supporting Street
Light on Barker St.)**



Appendix B

**(Adjacent Neighbors' Consents in Response to
The Underground Project)**

From: Hai & Marsha Tran
387 Rudyard Drive, Milpitas, CA 95035 / Tel. (650) 580-2003
To: Our Neighbors
Subject: Request for Authorization to Underground Utilities' Lines.
Date: July 4, 2006

Dear Mr. / Mrs.:

This letter is to request for your authorization to underground the utilities' lines that provide electric, telephone, and cable services to your home. This work also includes the underground of all PG&E, Comcast, and AT&T lines at the rear of your home as part of the requirements from the City of Milpitas related to the our application for a 2-lot subdivision for our property located at 387 Rudyard Drive, Milpitas, CA 95035.

Though this project will be done at our expenses, the work will require a number of tasks to be done on your property including:

- Working ~~crises~~ to access onto your property.
- Removal and replacement of the fences.
- Trenching work for underground utilities' lines (concrete cutting of your walkway and/or driveway, removal and replacement of your landscape and/or lawn may be required).
- Installation of new equipment (electric meters, junction boxes, etc.) to your walls.
- Some interruption of services from the involved work.

Please provide your consent in the section below. Your help is greatly appreciated.

Name: HUANY BANG
Address: 165 BARKER STREET
MILPITAS, CA 95035

Comments/concerns: 1/ This project will cause the damages to the property & trouble me.
2/ I don't agree to new easement created on my property.
3/ This project will cause a lot of noise and take away my peaceful time while I am at home.

4/ I strongly oppose to it due to safety issue related to high voltage line.
Consent: I/We authorize do not authorize work to be done on my property. if this is of my free

Signature:  HUANY BANG Date 7/9/06

From: Hai & Marsha Tran
387 Rudyard Drive, Milpitas, CA 95035 / Tel. (650) 580-2003
To: Our Neighbors
Subject: Request for Authorization to Underground Utilities' Lines.
Date: July 4, 2006

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- Working crews to access onto your property.
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- Installation of new equipment (electric meters, junction boxes, etc.) to your walls.
- Some interruption of services from the involved work.

Please provide your consent in the section below. Your help is greatly appreciated.

Name: Larry W. Saint
Address: 175 Banker St.
MILPITAS, CA 95035
Comments/concerns: WHILE I DO THINK UNDERGROUND UTILITY
WIRES MAKE GOOD SENSE AND ARE NOT UNSIGHTLY AS
OVER HEAD WIRES. I HAVE NO INTEREST IN HAVING MY YARD
TOLE UP AT THIS TIME.

Consent: I/We authorize do not authorize work to be done on my property.

Signature: Larry W. Saint Date 7/14/06

From: Hai & Marsha Tran
387 Rudyard Drive, Milpitas, CA 95035 / Tel. (650) 580-2003
To: Our Neighbors
Subject: Request for Authorization to Underground Utilities' Lines.
Date: July 4, 2006

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Though this project will be done at our expenses, the work will require a number of tasks to be done on your property including:

- Working ~~crises~~ to access onto your property.
- Removal and replacement of the fences.
- Trenching work for underground utilities' lines (concrete cutting of your walkway and/or driveway, removal and replacement of your landscape and/or lawn may be required).
- Installation of new equipment (electric meters, junction boxes, etc.) to your walls.
- Some interruption of services from the involved work.

Please provide your consent in the section below. Your help is greatly appreciated.

Name: JOSEPH & LAURELL JOHNSON.
Address: 187, BARKER STREET.
MILPITAS, CALIFORNIA 95035.

Comments/concerns: WE DO NOT WISH TO HAVE OUR PROPERTY
DISMANTLED^{also} DUE TO THE INCONVENIENCE OF POWER DISRUPTION
WHILE THIS PROJECT IS BEING WORKED ON.
DUE TO THE UNSAFE CONNITION SURROUNDING THIS PROJECT WE WILL NOT AUTHORIZE
THE PROPOSED WORK TO BE DONE

Consent: I/We authorize do not authorize work to be done on my property.

Signature: Joseph & Laurell Johnson. Date 7-12-2006

From: Hai & Marsha Tran
387 Rudyard Drive, Milpitas, CA 95035 / Tel. (650) 580-2003
To: Our Neighbors
Subject: Request for Authorization to Underground Utilities' Lines.
Date: July 4, 2006

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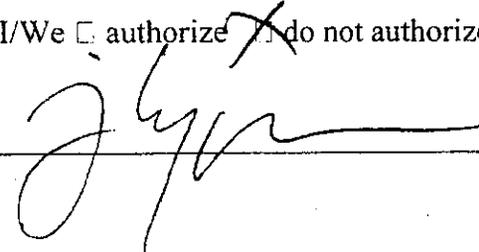
Though this project will be done at our expenses, the work will require a number of tasks to be done on your property including:

- Working ~~crises~~ to access onto your property.
- Removal and replacement of the fences.
- Trenching work for underground utilities' lines (concrete cutting of your walkway and/or driveway, removal and replacement of your landscape and/or lawn may be required).
- Installation of new equipment (electric meters, junction boxes, etc.) to your walls.
- Some interruption of services from the involved work.

Please provide your consent in the section below. Your help is greatly appreciated.

Name: Jose Lagpagan
Address: 392 Kariston Ave
Milpitas, CA 95035
Comments/concerns: We are concerned of property damages
from this underground project. We have many fruit
trees in backyard and no financial budget to
have backyard fix if project gets approve.

Consent: I/We authorize do not authorize work to be done on my property.

Signature: 

Date: 7/12/06