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December 13, 2024

VIA U.S. MAIL

Town Council
Town of Los Gatos
Town Attorney's Office
110 E Main Street
Los Gatos, CA 95030

Re: Administrative Appeal Statement of Theodore and Lauri Deffenbaugh

Dear Town Clerk:

Theodore and Lauri Deffenbaugh are not liable under the citation that was issued on September 16, 2024. The Town of Los Gatos ("Town") had previously agreed to work with the Deffenbaughs rather than litigate, and it must be held to that requirement. The hearing set up violates the Town ordinances, state law, due process, and the eighth amendment proscription of excessive fines. And finally, there is no evidence that the Deffenbaughs conducted work without a permit, which is the only action they have been cited for.

Rather than threaten the Deffenbaughs with an unenforceable citation, the Town should be good neighbors and work with the Deffenbaughs as per the Town's previous agreement.

I. BACKGROUND

The Deffenbaughs are homeowners in the Town of Los Gatos, 16660 Cypress Way ("Property"). In the middle of 2019, the Town first raised concerns about specific structures on the Property, issuing a citation for \$200. The Deffenbaughs objected to the citation and requested a hearing. Rather than have a hearing, the Town and the Deffenbaughs entered into an agreement – the Town would hold the citation in abeyance and hold the Deffenbaughs' citation deposit of citation amount, and the Deffenbaughs would agree to an open extension on the hearing. This extension and abeyance would continue until the Deffenbaughs' litigation with their neighbor was completed ("Litigation"). The

ATTACHMENT 4

580954.1

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Agreement between the Town and the Deffenbaughs is attached as **Exhibit A** (“Agreement”). The Agreement has five main points:

1. The citation process would remain frozen, pending resolution of the remaining matters;
2. The Town could inspect the Property to confirm there was no pressing safety issue (none was found);
3. The Deffenbaughs would proceed with the retaining walls permit;
4. After the Litigation was complete, the parties would work to resolve the structure next to the swimming pool; and
5. All other alleged violations would be resolved after all other issues were resolved.

That Litigation is currently on appeal, and a decision is expected sometime in 2025. Thus, the Agreement is currently on steps 3 and 4.

Since 2019, the Deffenbaughs have worked diligently to secure permits for the retaining walls (as required by the Agreement). This process was delayed both by the COVID-19 pandemic and the ongoing Litigation, in which Town personnel were witnesses. At the Town’s request, the Deffenbaughs restarted the retaining wall permitting process in 2023. The Town requested and was granted a technical review of the retaining walls in January 2024. In that technical review, and contrary to the Agreement, Town personnel now required that other structures be included in the permitting process with the retaining wall. The Deffenbaughs continued to work on their retaining wall permitting, but their civil engineer had become less and less responsive.

In May of 2024, rather than abiding by the Agreement, the Town served a warrant on the Deffenbaughs to inspect the Property. The Deffenbaughs continued to push their civil engineer (as did Town staff), but he had become unresponsive. The Town then further breached the Agreement by beginning a new citation process in July 2024, issuing a warning to secure permits for various structures and to submit additional plans on the retaining wall by July 31, 2024. According to the warning, if an Architecture and Site application for “all unpermitted site improvements including all retaining walls, site drainage, grading, and tree removals...” were not submitted by July 31, then the Town would impose a late fee. Thus, The Deffenbaughs were no longer allowed to submit the retaining wall separately, in violation of the Agreement.

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The Deffenbaughs were unable to meet the Town's deadline. Since late 2023, Mr. Deffenbaugh's father was in hospice, passing away on September 17, 2024. At the same time, the Deffenbaughs were planning and putting on their daughter's wedding (married on September 14, 2024). And the civil engineer was unresponsive to the Deffenbaughs since May 2024.

Rather than inquire about any of these issues, the Town issued a citation for **\$11,100**, far in excess of the "late fee" referenced in the administrative warning, and orders of magnitude larger than the citation the Town previously issued in 2019 (\$200). As is their right, the Deffenbaughs disputed the citation and requested a hearing. The Deffenbaughs also requested all documentation from the Town so they can properly respond. The Town committed to providing all hearing materials by December 10, 2024. **Exhibit B. To date, no documents but the citation and administrative warning have been provided.**

Mr. Meyer, a code compliance officer for the Town (and the one who issued the citation), scheduled an "Administrative Appeal Hearing" in front of the Town Council ("Notice"). According to Mr. Meyer, "The Administrative Appeal Hearing will be heard by the Town Council acting in the combined capacity of hearing office and in the capacity of a board of appeal." Mr. Meyer cites no authority by which he can make this determination.

The Deffenbaughs request the right to submit additional documentation as it becomes available and relevant based on the Town's documentation.

II. ARGUMENT

Issuing this citation violates the Town's agreement with the Deffenbaughs from 2019, and on this basis alone these citations should be dismissed. A town, like any other government body, is bound by its agreements and should be estopped from breaching them. *Hughes v. Board of Architectural Examiners*, 17 Cal.4th 763, 794 (1998). Here, the Town made an agreement and then breached it by re-issuing the citation it had promised to leave in abeyance.

Further, the Town has failed to meet the requirements under the Building Code for an appeal of a citation. Under the California Building Code (incorporated into the Town Code): "Every city, county, or city and county **shall establish a process** to hear and decide appeals of orders, decisions and determinations made by the enforcing agency relative to the application and interpretation of this code and other regulations governing use, maintenance and change of occupancy." (Bld. Code § 1.8.8.1)(emphasis added). That process must either establish an appeals board, or have the Town Council act as the appeals board. *Id.*

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Here, **the Town has no process to administer administrative appeals that is in compliance with the Building Code.** According to the Notice, this hearing will be consistent with 1.30.040 of the Town Code, but this section only allows for a “hearing officer,” not a group of people like the Town Council. Moreover, the administrative hearing procedure violates the Deffenbaughs’ due process rights under the California and Federal constitutions. Instead of the burden of proof being on the government (where it belongs), the Deffenbaughs are forced to prove that the citation is *not* true. Further, the Deffenbaughs are not given any tools to defend themselves (such as subpoena power, an opportunity to review evidence against them prior to the hearing, or the power to cross-examine Town personnel). The Deffenbaughs are only allowed to testify on their behalf and present evidence that they can secure, and are required to submit written evidence on December 10, a full week before the hearing occurs. And the citation is for \$11,100, more than 50 times the citation previously given to the Deffenbaughs – this is an exorbitant fine in violation of the constitution.

The Deffenbaughs also have no clear understanding of the evidence that will be presented. Much of the evidence may have been secured through an illegal warrant or a later illegal inspection in September 2024. Whatever the evidence, it cannot show that the Deffenbaughs violated the statutes claimed: Building Code § 105.1 requires a party to secure a permit before starting work; and 12.20.010 requires a party to secure a permit before conducting grading work. But everyone agrees that since the administrative warning, the **Deffenbaughs have done none of the requested work.** They therefore cannot violate the named statutes.

Moreover, the Property is designated as a historic site. *See Exhibit C.* The Town is requesting that the Deffenbaughs alter structures which are legal non-conforming items, as they were constructed consistent with law at that time.

III. CONCLUSION

The Deffenbaughs will raise the above defenses, as well as others, at the time of the hearing. They will not allow the Town to fail to establish the procedure for building code violations required by state law, and they will not agree to a hearing that violates their rights, and they will not be held liable under ordinances they clearly did not violate.

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I look forward to speaking with you on December 17.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'RMH', is centered below the closing text.

Richard M. Harris
Attorney for Theodore and Lauri Deffenbaugh

RMH:nca

Enclosure

cc: Gabrielle Whelan (gwhelan@losgatosca.gov)

EXHIBIT A

From: Sean O'Neill <sean@oneillplc.com>
Date: Tuesday, November 14, 2023 at 5:28 PM
To: Gabrielle Whelan <GWhelan@losgatosca.gov>
Cc: Info <info@oneillplc.com>
Subject: 16660 Cypress Way Outstanding Code Issues

Mrs. Whelan,

In reviewing my communications with the Town of Los Gatos ("TLG"), which are attached for your reference, I think there are some matters that require clarification.

In November of 2019, former TLG counsel Lynn Lampros and myself agreed to stay the citation provided that the Deffenbaughs waived time on the hearing they had requested and that the Deffenbaughs allowed the TLG to come onto their property and inspect the retaining walls built by my clients and bring into compliance with TLG building code these walls.

Essentially, my understanding of the agreement was as follows:

1. The citation process would be frozen and my clients would not seek a hearing.
2. My clients would allow the TLG on the property to make sure there were no pressing safety issues with the walls or the garage
3. My clients would proceed with getting their new retaining walls permitted
4. After our court case was resolved, my clients would resolve the issue with the structure next to the swimming pool
5. Then we would address any alleged violations with the Treehouse area after the other areas had been taken care of

My clients allowed TLG to inspect their property on December 9, 2019. After that inspection, multiple issues were identified that needed to be remedied. Subsequently, the pandemic struck in March of 2020, halting all remediation work. In 2021, communications with TLG resumed; however, the pending trial and the fact that TLG employees would be witnesses in the trial led to prior TLG counsel and myself to agree to put a pause on the process so that the communications would not become evidence in the trial.

The trial was initially set to begin in early December, 2021. However, no court rooms were available and the trial date was continued to July of 2022. Again, there was a continuance of the trial date to late August of 2022. Phase One and Two of the trial lasted from August to December of 2022. The

final phase of the trial occurred on September 15, 2023. Currently, we do not have a final judgment, so the trial is still “active.”

When the TLG contacted my clients about resuming the application process, we were happy to comply. However, we find the “reopening” of TLG’s code enforcement investigation to be most troubling and contrary to the agreement reached with TLG in 2019 and into 2021.

If TLG insists on resuming and/or expanding the scope of their initial code enforcement investigation then we cannot consent to providing the TLG access to the property and we request that the TLG set a hearing date for our appeal that complies with the authority in *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750. Given my review of the TLG municipal code, the process for appeal is not compliant. We also cannot agree to having Allan Meyer participate in any of this process as he is biased against my clients and a witness to the matters at issue in the trial.

As such, we request that TLG not pursue their code enforcement action, continue with permitting the retaining walls, and resolve the accessory structures after full resolution of the trial.

Regards,

Sean M. O’Neill, Esq.
O’Neill, P.C.

1879 Lundy Ave., Suite 169

San Jose, CA 95131

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sean@oneillplc.com

O’Neill, P.C.

A Professional Law Corporation

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Monday, November 13, 2023 at 12:35:47 Pacific Standard Time

Subject: RE: 16660 Cypress Way
Date: Tuesday, November 26, 2019 at 4:47:10 PM Pacific Standard Time
From: Lynne Lampros
To: Sean O'Neill
CC: Joel Paulson
Attachments: image003.png, image002.png

Dear Sean,

Thank you for speaking on the phone today. To memorialize my understanding, you will check on your and your client's availability for a site inspection and get back to me by December 2, 2019 with some dates available to conduct this inspection by December 13, 2019. At that inspection the Town will primarily be looking at the grading, paving, retaining walls that were constructed as well as the 'garage' structure by the pool. There will be no interior inspection of any other inhabited structure at this time. cursory exterior observation of the other accessory structures identified in the conversation (structures adjacent to the Treehouse and pool) will take place but any follow up can be done on a different timetable, as can the issue of the scope of any remodel.

Understanding your concerns regarding your ongoing litigation, I think it would be advisable for us both to waive time on the citation that was issued in October 2019. You probably don't want sworn testimony being required of your clients on this matter at this time. Accordingly the Town will hold that citation proceeding in abeyance, preserving your appeal rights of same, if you waive time on requiring an appeal hearing to be held by December 30, 2019. Please respond and let me know if you agree to that.

If you don't agree, we can hold the hearing on December 11, 2019. And, although this was not discussed on the phone, appeal hearings are held before a neutral, volunteer hearing officer. Violations of the Municipal Code (see for example Chapters 12 and 29) do not require Building appeal boards.

I look forward to your response.

Sincerely,



Lynne Lampros • Deputy Town Attorney

Town Attorney's Office • 110 East Main Street, Los Gatos CA95030

Ph: 408.354.6880 • llampros@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

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From: Sean O'Neill <sean@oneillandlian.com>

Sent: Thursday, November 21, 2019 6:48 PM
To: Lynne Lampros <LLampros@losgatosca.gov>
Subject: Re: 16660 Cypress Way

Ms. Lampros,

I think I have good news but I wish to lay out my analysis of the situation.

I understand Los Gatos' Concerns to be construction without permits as to the following areas:

1. Grading, paving, and construction of retaining walls.
2. Construction of accessory structures.
3. An interior remodel of an accessory structure without permits

Response

- 1) We are willing to work with the Town on this issue
- 2) I am informed that the accessory structure is less than 120sf and therefore does not require building permits. However, we are willing to work with the Town on this issue.
- 3) My client only performed new painting, appliances, tiling, carpeting, cabinets, counter tops and similar finish work which does not require permits.

If the Town wishes to pursue the construction of the accessory structure and remodel issue then we must renew our request a hearing which, as I understand it, is not compliant with *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, reh'g denied (Feb. 16, 2018), review denied (Apr. 11, 2018). This would expose everyone to substantial litigation costs.

However, we are open to working with Town regarding shed and retaining walls. Since we are in active litigation and the case involves boundaries, structures, prescriptive and equitable easements we need to proceed very carefully so that we do not inadvertently produce evidence the other side can use against us. To that end we wish to restrict communications and any inspection to clearly defined areas, as identified above. Further, I ask that the Town waive the fee for Application for Work Unlawfully Completed.

While we are willing work with the Town, we also request equal treatment and that the Town investigate conditions on Mr. Watson's property, which are as follows:

- Balcony/Deck support – Within the last couple years he has installed a new post system underneath his balcony that hangs over the Deffenbaugh's pool area. We are happy to provide photos demonstrating this work was performed.
- Bedroom support post – Since 2012, Watson has added new support posts beneath the master bedroom of the house.
- Retaining wall – A retaining wall that sits on Watson's property and supports his driveway is collapsing, threatening the Deffenbaughs' home and property.

A review of the Town's permit database indicates no permits have been issued for such work. All we ask is that the Town look into these matters, just like they did as to Mr. Deffenbaugh when Mr. Watson was the complaining party.

We hope the Town is amenable to this and will hold in abeyance any further enforcement action while the Deffenbaughs resolve issues 1 and 2 as well as investigating the conditions on Mr. Watson's property. Please advise. If this proposal is acceptable then we will contact Mr. Paulson and proceed as you have requested. I am available to discuss over the phone tomorrow.

Regards,

Sean M. O'Neill, Esq.
O'Neil & Lian, LLP
1879 Lundy Ave., Suite 169
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Direct (408) 652-8039
Phone (510) 933-8321
Fax (510) 259-9622



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On Nov 18, 2019, at 4:07 PM, Lynne Lampros <LLampros@losgatosca.gov> wrote:

Dear Sean,

Thank you for your time on the phone on November 13. As discussed, it appears from photographs, drone footage and other evidence that your clients engaged in grading, paving, construction of retaining walls, construction of accessory structures, and an interior remodel of an accessory structure without permits on the above referenced property. This is a violation of the Los Gatos Town Code, including but not limited to sections 6.150.010 and 12.20.010. The Town requires homeowners to go through the Building, Planning, and Engineering process before work of this nature is conducted. At this time, the Town is requiring the Deffenbaughs to start the Application and Site (A&S) process for review of this work and to obtain after the fact permits if or as needed. Please see the Town's webpage for further information. (www.losgatosca.gov, click on *Town Departments and Services, Community Development, Planning Division, Applications and Information, Community Development Application – scroll down to Applications in brown, then click on Development Review Application Package*).

The 10/2/19 citation issued to your clients is not the only remedy sought by the Town. The Town requires all homeowners go through Building, Planning, and Engineering for review of these type of changes. Typically homeowners voluntarily engage in this process, even after the fact, as is the case here. However please note that if the Deffenbaughs refuse to submit an Architecture and Site application and obtain after the fact permits in a timely manner, the Town Attorney and Code Enforcement will cite daily for every day your clients are not in compliance with this requirement. Fines are \$100 for the first citation, \$250 for the second citation, \$500 for the third citation and can escalate to \$1,000 per day for knowing and willful violations of the code. All other legal remedies will be preserved as well.

Please contact Community Development Director Joel Paulson by the end of this week to request a meeting with him. His contact information is jpaulson@losgatosca.gov. The phone number for the Planning Department is 408-354-6872.

The Town Attorney's Office is willing to hold in abeyance the code enforcement process if your clients begin and satisfactorily proceed with the Architecture and Site process in a timely manner. Dates certain will be required. Please communicate this position to your clients. We look forward to hearing back from you by the end of this week regarding your contact with Mr. Paulson and your clients' agreement to begin the A&S process. In the absence of same the Town Attorney's Office will cite accordingly.

Very truly yours,

Lynne Lampros

<image002.png>

Tuesday, November 14, 2023 at 16:33:22 Pacific Standard Time

Subject: RE: 16660 Cypress Way - Grading and Retaining Walls - Architecture and Site Application - Status
Date: Thursday, November 12, 2020 at 3:57:32 PM Pacific Standard Time
From: Lynne Lampros <LLampros@losgatosca.gov>
To: Sean O'Neill <sean@oneillandlian.com>
CC: Erin Walters <EWalters@losgatosca.gov>, Joel Paulson <jpaulson@losgatosca.gov>

Attachments: image001.png, image002.png

That's great Sean. Thank you to you and your clients for continuing to advance this.

Best regards,
Lynne



Lynne Lampros • Deputy Town Attorney

Town Attorney's Office • 110 East Main Street, Los Gatos CA95030

Ph: 408.354.6880 • llampros@losgatosca.gov

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From: Sean O'Neill <sean@oneillandlian.com>
Sent: Thursday, November 12, 2020 3:51 PM
To: Lynne Lampros <LLampros@losgatosca.gov>
Cc: Erin Walters <EWalters@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>
Subject: Re: 16660 Cypress Way - Grading and Retaining Walls - Architecture and Site Application - Status

Lynne,

Once again, I thank the Town for the courtesy extended to my clients. The Deffenbaughs inform me that they will attempt to get the necessary bids and paperwork done. As long as the threat level stays at orange, and they can socially distance and zoom the potential contractors, we should be able to make forward progress.

My clients have submitted a request to 811 to help scope the existing powerlines and infrastructure, which was requested by some of the original contacts, and they should be able to contact Erin with their general plans next week in terms of getting some additional bids, if they have not already contacted you.

Regards,

Sean M. O'Neill, Esq.

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O'NEILL & LIAN, LLP

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On Oct 29, 2020, at 5:10 PM, Sean O'Neill <sean@oneillandlian.com> wrote:

Lynnne,

I thank you and the Town for the courtesy they have extended to my clients. I will pass this on.

Regards,

Sean M. O'Neill, Esq.
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On Oct 29, 2020, at 4:06 PM, Lynne Lampros
<LLampros@losgatosca.gov> wrote:

Dear Sean,

Thank you for your patience waiting for my reply. The Deffenbaughs

request was discussed with CDD, Building, Code Enforcement and Town Attorney. The Town is in a difficult position with this request. The Town hears your clients' assertion of the pandemic as the proffered reason for an almost open-ended extension of time to continue with the Architectural and Site (A&S) Application process. However, the Town sees construction and permitting processes in full swing town-wide, able to be accomplished with Covid-safe protocols. The Town has received further information regarding the recent construction of steps on your clients' property. Whether you will tell me that is the tenants engaging contractors to perform that work or not, your clients are allowing contractors on the property during Covid. Your clients can similarly remotely engage engineers and have them work on the premises outdoors in a socially distanced way. The grading and retaining wall work at issue is fundamentally a health and safety concern. Excavation and retention of that many cubic yards of dirt, if not done to code, can pose a danger. The Town will continue to require the A&S application process be completed.

That said, the Town wants to strike a balance on timing, in light of the stated pandemic complications. The Town will remove a hard due date for the A&S application submittal –**at this time**. However the Town requests that your clients continue the process of engaging design professionals to complete the A&S application in a timely manner, and continue to update Project Planner Erin Walters on their progress.

The Town will reevaluate the situation as necessary.

Regards,

<image002.png>

From: Sean O'Neill <sean@oneillandlian.com>
Sent: Friday, October 23, 2020 2:19 PM
To: Lynne Lampros <LLampros@losgatosca.gov>
Cc: Theodore Ted Deffenbaugh <laurilogic@gmail.com>; Erin Walters <EWalters@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>
Subject: Re: 16660 Cypress Way - Grading and Retaining Walls - Architecture and Site Application - Status

Hello Lynne,

I hope this email finds you and the rest of the Town staff both safe and well.

I am following up on the email.

Please respond when convenient.

Regards,
Sean M. O'Neill, Esq.

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On Oct 14, 2020, at 5:00 PM, Sean O'Neill
<sean@oneillandlian.com> wrote:

Lynn,

Thank you for your response, I am glad to see the Town handling this in an impartial manner.

I have discussed your email with my clients.

Essentially, I and my clients request that they be allowed to defer filing the A&S Application until 60 days after Santa Clara County Health Officer or the Governor declares an end to the local emergency caused by the COVID-19 pandemic. That way, they can be sure they are interacting with contractors and Town staff in a safe manner.

My clients have demonstrated their intention to fully cooperate with the Town and interviewed three contractors and obtained one bid before shelter in place, all of which they notified Erin Walters.

I think deferring any action on this is reasonable given the County's current shelter in place order and rising infection rates. Also, my clients tell me just getting a survey can take over a month, let alone drawing and soils testing, meaning they will not be able to comply by November 5th. Last, there is no imminent risk to life and limb posed by the construction at issue, further supporting the reasonableness of this request.

In sum, I ask for the Town's continued patience and deferral on any action by the Town in regards to this matter.

Regards,

Sean M. O'Neill, Esq.
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On Oct 8, 2020, at 11:49 AM, Lynne Lampros
<LLampros@losgatosca.gov> wrote:

Dear Mr. O'Neill,

I will respond to your letter in this email, as I am having home computer difficulties and cannot attach a word document to a work email at this time.

Thank you for your letter dated October 1, 2020. Please note that the Town does not wish to be 'weaponized' by either party to the litigation you reference. I have informed Mr. Watson that the Town does not intend to take Code Compliance action regarding his allegations of a property line dispute, as that is properly a private civil cause of action. However it is the Town's province to look into reports of unpermitted work, especially regarding health and safety violations. Toward that end I have forwarded your letter and presentation about the Watson/Chang property and Mr. Watson's complaints about the Deffenbaugh property to the Building Department for their review and handling.

With regard to the unpermitted grading and retaining wall work that has been the subject of Ms. Walters' interaction with your clients, the Town is requesting that your clients proceed with an Architecture and Site application for site work requiring a grading permit. The Town requests that the Deffenbaughs submit their A&S application to the Town's online permitting system by November 13, 2020.

Please note that the Town's online permitting system is fully functional and the Town is receiving many permit applications at this time through that system. The Deffenbaughs should work directly with Planner Erin Walters on this application.

Thank you,

<image002.png>

From: Sean O'Neill <sean@oneillandlian.com>
Sent: Thursday, October 1, 2020 12:19 PM
To: Lynne Lampros
<LLampros@losgatosca.gov>
Cc: Theodore Ted Deffenbaugh
<laurilogic@gmail.com>; Erin Walters
<EWalters@losgatosca.gov>; Allen Meyer
<AMeyer@losgatosca.gov>
Subject: Re: 16660 Cypress Way - Grading and Retaining Walls - Architecture and Site Application - Status

Lynne,

Attached is our response to your letter.

Sean M. O'Neill, Esq.
O'Neill & Lian, LLP
1879 Lundy Ave., Suite 169
San Jose, CA 95131
Direct (408) 652-8039
Main (510) 933-8321
Fax (510) 259-9622

<image001.png>

contains information that may be confidential, be protected by the attorney-client or other applicable privileges, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

On Sep 17, 2020, at 10:30 AM,
Lynne Lampros
<LLampros@losgatosca.gov> wrote:

Please see attached.

<image001.png>
<200917 letter to owner.doc>

Tuesday, November 14, 2023 at 16:34:57 Pacific Standard Time

Subject: Re: S-21-024- 16660 Cypress Avenue - Site Visit
Date: Monday, August 23, 2021 at 1:38:48 PM Pacific Daylight Time
From: TE Deffenbaugh <deffenbaugh@gmail.com>
To: Erin Walters <EWalters@losgatosca.gov>
CC: Terence J. Szewczyk <terry@tscivil.com>, Lauri Deffenbaugh <laurilogic@gmail.com>, Robert Schultz <RSchultz@losgatosca.gov>, Robert Gray <RGray@losgatosca.gov>, Mike Weisz <MWeisz@losgatosca.gov>, Sean O'Neill <sean@oneillandlian.com>

Attachments: image003.jpg, image004.jpg, image005.jpg, image006.jpg
Erin,

We look forward to your visit.

Ted

On Mon, Aug 23, 2021 at 1:22 PM Erin Walters <EWalters@losgatosca.gov> wrote:

Hello Ted,

Let's go with Option B. and we will keep the appointment tomorrow ahead of the Staff Technical Review Meeting on Wednesday August 25th at 9 a.m.. Allen Meyer, Code Enforcement, will not be in attendance at tomorrow's site visit.

Thank you,

Erin



Erin Walters • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6867 • 408-354-6872

www.losgatosca.gov • ewalters@losgatosca.gov

Erin's Office Hours – M-F – 9:00 a.m. to 3:00 p.m.

In accordance with the Santa Clara County Public Health Office Order, Town Offices are closed until further notice. No in-person counter services are currently available, but the Town is open for business and we are working towards full reopening for in-person services. Inspections that can be completed via video are being scheduled and other on-site inspection services are evaluated on a case by case basis. Staff resources are available to perform work on permits remotely and meet with the public via Zoom, Microsoft Teams, or phone. Electronic permit submittal, resubmittal, and issuance is available. Please visit the [Building](#) and [Planning](#) webpages for further information on electronic permit submittal.



General Plan update, learn more at www.losgatos2040.com

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From: TE Deffenbaugh <deffenbaugh@gmail.com>

Sent: Monday, August 23, 2021 1:05 PM

To: Erin Walters <EWalters@losgatosca.gov>

Cc: Terence J. Szewczyk <terry@tscivil.com>; Lauri Deffenbaugh <laurilogic@gmail.com>; Robert Schultz <RSchultz@losgatosca.gov>; Robert Gray <RGray@losgatosca.gov>; Mike Weisz <MWeisz@losgatosca.gov>; Sean O'Neill <sean@oneilandlian.com>

Subject: Re: S-21-024- 16660 Cypress Avenue - Site Visit

Hi Erin,

Thank you for your prompt response, and I also copied my attorney. I did get to him, and he told me that he realized Lynne's departure and had already reached out to Robert.

I think we have two options:

- a. Push out the onsite visit until our Robert can confer with Sean.
- b. Sean has also told me that he is comfortable with the town visiting and keeping the schedule, but he is requesting an alternative to Allen be sent.

Details of our concern is attorney-client privileged and therefore I am unable to discuss, and unfortunately needs to be solved by our respective legal representation.

Thanks,

Ted

On Mon, Aug 23, 2021 at 11:13 AM Erin Walters <EWalters@losgatosca.gov> wrote:

Hello Ted,

Lynne Lampros no longer works at the Town. Please contact Robert Schultz, Town Attorney, if you have any legal questions. I have cc'd him in this email.

Per Lauri's email sent Wednesday, July 28th, staff will be on site on Tuesday, August 24 at 1:00 p.m. for a site visit to review the submitted Architecture and Site application (S-21-024).

The Town staff and Town consultants invited to tomorrow's site visit include:

- Erin Walters, Associate Planner
- Robert Gray, Chief Building Official
- Mike Weisz, Senior Civil Engineer
- Rob Campbell, Sr. Fire Protection Engineer, Santa Clara County Fire Department
- Kenny Ip, Deputy Fire Marshal, Santa Clara County Fire Department
- Allen Mayer, Code Enforcement
- Richard Gessner, Town's Consulting Town Arborist

We understand parking at the site is limited so we will coordinate a carpooling as much as possible.

Thank you,

Erin



Erin Walters • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6867 • 408-354-6872

www.losgatosca.gov • ewalters@losgatosca.gov

Erin's Office Hours – M-F – 9:00 a.m. to 3:00 p.m.

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From: TE Deffenbaugh <deffenbaugh@gmail.com>
Sent: Monday, August 23, 2021 9:46 AM
To: Erin Walters <EWalters@losgatosca.gov>
Cc: Terence J. Szewczyk <terry@tscivil.com>; Lauri Deffenbaugh <laurilogic@gmail.com>
Subject: Re: S-21-024- 16660 Cypress Avenue - Site Visit

Hi Erin,

I would like to confirm attendees for tomorrow, as my attorney contacted Lynne with a concern because of ongoing litigation in our civil lawsuit.

Ted

On Mon, Jul 26, 2021 at 3:33 PM Erin Walters <EWalters@losgatosca.gov> wrote:

Hello Terry and Lauri,

Staff would like to access the project site for a site visit on Wednesday, August 18th from 2:30pm to 3:30pm or Friday, August 20, 2021 from 11:30am to 12:30pm.

Please advise which date and time works best for you.

Thank you,

Erin



Erin Walters • Associate Planner

95030

Community Development Department • 110 E. Main Street, Los Gatos CA

Ph: 408.354.6867 • 408-354-6872

www.losgatosca.gov • ewalters@losgatosca.gov

In accordance with the Santa Clara County Public Health Office Order, Town Offices are closed until further notice. No in-person counter services are currently available, but the Town is open for business and we are working towards full reopening for in-person services. Inspections that can be completed via video are being scheduled and other on-site inspection services are evaluated on a case by case basis. Staff resources are available to perform work on permits remotely and meet with the public via Zoom, Microsoft Teams, or phone. Electronic permit submittal, resubmittal, and issuance is available. Please visit the [Building](#) and [Planning](#) webpages for further information on electronic permit submittal.



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| |

EXHIBIT B

From: [Gabrielle Whelan](#)
To: [Richard M. Harris](#)
Cc: [Robert Gray](#); [Erin Walters](#); [Lance Bayer](#); [Bridgette Falconio](#); laurilogic@gmail.com; [Allen Meyer](#)
Subject: RE: 16660 Cypress Way, Los Gatos
Date: Friday, November 15, 2024 10:20:26 AM
Attachments: [image006.png](#)

Hello, Mr. Harris. The Town can continue the hearing to the Town Council's December 17th meeting. Could you first send me an email waiving the 60-day time limit and confirming that you and the Deffenbaughs have requested the new hearing date and agree to the December 17th date?

The Town can commit to sending you the hearing materials one week prior to the hearing. The materials will be much the same as the correspondence that the Town has had with the Deffenbaughs to date.

Thank you.

Gabrielle Whelan • Town Attorney

Town Attorney's Office • 110 E Main Street, Los Gatos, CA 95030
Desk: 408.354.6818 • gwhelan@losgatosca.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

From: Richard M. Harris <RHarris@rjo.com>
Sent: Monday, November 11, 2024 2:09 PM
To: Allen Meyer <AMeyer@losgatosca.gov>
Cc: Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; Bridgette Falconio <BFalconio@losgatosca.gov>; laurilogic@gmail.com
Subject: RE: 16660 Cypress Way, Los Gatos

[EXTERNAL SENDER]

Mr. Meyer:

Thank you and received. I have a previously scheduled mediation on December 3 that conflicts with this date. Would the Town be willing to continue the hearing to a hearing date in January? Mr. Deffenbaugh would obviously waive his right to have the hearing within 60 days.

In addition, would the Town be willing to provide any additional documents I requested in my letter, and/or documents it intends to present at the hearing a couple of weeks before the hearing?

Thanks,

Richard M. Harris |
ROGERS JOSEPH O'DONNELL | a Professional Law Corporation
311 California Street, 10th fl | San Francisco, CA 94104
415.956.2828 main | 415.956.6457 fax
rharris@rjo.com | www.rjo.com

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From: Allen Meyer <AMeyer@losgatosca.gov>
Sent: Thursday, November 7, 2024 11:26 AM
To: Richard M. Harris <RHarris@rjo.com>
Cc: Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; Bridgette Falconio <BFalconio@losgatosca.gov>; laurilogic@gmail.com
Subject: RE: 16660 Cypress Way, Los Gatos

Good morning Mr. Harris,

Attached you will find a Notice of Administrative Appeal Hearing notification. The hearing has been scheduled for December 3, 2024, at 7:00 pm. A copy of this notice will be placed in today's mail. Please reach out to us if you should have any questions.

Best,

Allen Meyer • Code Compliance Officer

Community Development Department • 110 E. Main Street, Los Gatos CA 95030
Ph: 408.399.5746 • Ameyer@LosGatosCA.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

Regular Code Compliance hours:
7:00 AM – 3:30 PM, Monday – Friday

TOWN CLOSURE NOTICE: Town offices will be closed Monday, November 11, 2024, in observance of the Veterans' Day Holiday. We will resume normal business hours on Tuesday, November 12, 2024.

All permit submittals are to be done online via our Citizen's Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the Building and Planning webpages.

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Think Green, please consider the environment before printing this e-mail.

From: Richard M. Harris <RHarris@rjo.com>
Sent: Tuesday, September 24, 2024 1:44 PM
To: Gabrielle Whelan <GWhelan@losgatosca.gov>
Cc: Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer

<bayer.lance@gmail.com>; Allen Meyer <AMeyer@losgatosca.gov>; Bridgette Falconio <BFalconio@losgatosca.gov>

Subject: RE: 16660 Cypress Way, Los Gatos

[EXTERNAL SENDER]

Ms. Whelan:

Thank you for your email. I am available the afternoon 10/1 or 10/2, between 12:30 and 3:30. Let me know a good time and who will be attending, and I can send a TEAMS invite.

I understand that the Town is proceeding under a separate citation, but I don't think that means the previous arrangement isn't still workable. I am hopeful we can find a way forward that will meet everyone's needs.

Thanks,

Richard M. Harris |
ROGERS JOSEPH O'DONNELL | a Professional Law Corporation
311 California Street, 10th fl | San Francisco, CA 94104
415.956.2828 main | 415.956.6457 fax
rharris@rjo.com | www.rjo.com

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From: Gabrielle Whelan <GWhelan@losgatosca.gov>

Sent: Monday, September 23, 2024 1:36 PM

To: Richard M. Harris <RHarris@rjo.com>

Cc: Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; Allen Meyer <AMeyer@losgatosca.gov>; Bridgette Falconio <BFalconio@losgatosca.gov>

Subject: 16660 Cypress Way, Los Gatos

Hello, Mr. Harris. Thank you for your email. I would be happy to meet with you. I will include special counsel, Lance Bayer, who is handling this matter for the Town and the Town's code enforcement officer, Allen Meyer. Please send us some good dates/times starting 9/30 for you to meet with us. Please also let us know if you have a preference for a Zoom meeting or in person.

In the interim, if the Deffenbaughs wish to appeal the citations, they will need to submit an appeal following the instructions on the back of the citation form.

I wanted to make sure you knew that this is a new, separate code enforcement action from the one that was initiated in July of 2019. Since five years had elapsed since the initial citations were issued, the Town dismissed the original citation, refunded the original appeal hearing fee to the Deffenbaughs in July of this year, and initiated a new code enforcement action.

Gabrielle Whelan • Town Attorney

Town Attorney's Office • 110 E Main Street, Los Gatos, CA 95030
Desk: 408.354.6818 • gwhelan@losgatosca.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

From: Richard M. Harris <RHarris@rjo.com>

Sent: Friday, September 20, 2024 8:16 AM

To: Gabrielle Whelan <GWhelan@losgatosca.gov>

Cc: Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; Allen Meyer <AMeyer@losgatosca.gov>

Subject: RE: FW: Administrative Warning, 16660 Cypress Way, Los Gatos

[EXTERNAL SENDER]

Ms. Whelan:

I have been retained by the Deffenbaughs to represent them related to alleged violation of Building Permits within the Town of Los Gatos. After reviewing the record and the Town Code, I believe the Town is making significant mistakes in moving forward with this citation. I would appreciate a few minutes of your time to discuss the matter and see if we can avoid litigation.

As I am sure you are aware, the Town brought a previous citation in 2019. Even though my clients immediately requested a hearing and submitted the fine the Town was requesting, the Town was unwilling to move forward with the hearing. Instead, the Deffenbaughs and the Town came to an agreement that the Deffenbaughs are continuing to honor. The Town continued to hold the fine amount until August 2024, even without a hearing. Issuing a new citation is a violation of this agreement.

Further, the citation is deficient. The citation states that my clients must obtain building permits, demolition permits, and grading permits, claiming this is a violation of the building code R105.1 and 12.20.010. But R105.1 only requires building permits when an owner "intends to" construct something new, which is not the case here. Similarly, 12.20.010 requires a permit before grading is done – but my clients are not intending on doing any grading. Even if my clients obtained the requested permits, they would not be able to complete the construction as the Architecture and Site Application S-21-024 has not yet been approved. Further, A fine of \$11,100 is excessive and likely unconstitutional, especially given that my clients had no notice that the Town intended to levy such a fine.

Mr. Deffenbaugh has been a good civic citizen, and the subject property is the location of the broadcast equipment for KPRC, Los Gatos's only public access radio station. We find it disturbing that the staff of Los Gatos has chosen to suddenly change their approach to Mr. Deffenbaugh shortly after this Federally Approved Radio station was set up in Los Gatos. Mr. Deffenbaugh worked cooperatively with the previous administration and would hope to work cooperatively to resolve this dispute in the most amicable manner possible.

To this end, I would like a few moments of your time to help frame these issues. The Town has gone through a tremendous turnover in both legal staff and now Town Management. Based on my review of the Los Gatos Town Council meeting notes and formal statements, I have concerns that this turnover in staff has created confusion and lack of a hand off. I am requesting that both the current town Manager and the new Town Manager attend this meeting to make sure that the town can agree to an approach. I am hopeful that the Town and my clients can agree on a path forward. If litigation is inevitable, then perhaps we can agree on a more appropriate fine to litigate over for the alleged violations, and we can have clarity about the appropriate appeals process, as the Town code conflicts with the Building Code. I would like to remind the Town that under CCP 1021.5 and under other federal and state rulings, the Town will be liable for Mr. Deffenbaugh's legal fees should we not head off litigation.

I look forward to working with you to resolve this matter.

Richard M. Harris |
ROGERS JOSEPH O'DONNELL | a Professional Law Corporation
311 California Street, 10th fl | San Francisco, CA 94104
415.956.2828 main | 415.956.6457 fax
rharris@rjo.com | www.rjo.com

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From: Allen Meyer <AMeyer@losgatosca.gov>
Sent: Monday, September 16, 2024 2:58 PM
To: Lauri Deffenbaugh <laurilogic@gmail.com>
Cc: Gabrielle Whelan <GWhelan@losgatosca.gov>; Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; Richard M. Harris <RHarris@rjo.com>
Subject: RE: FW: Administrative Warning, 16660 Cypress Way, Los Gatos

Good afternoon Lauri,

Attached is the Administrative Citation Hearing request form. The advance deposit of the total penalty amount (\$11,100) or an Advance Deposit Hardship Waiver is required with the hearing request.

You received an Administrative Warning on July 8, 2024, via email (see July 8th email below) and a copy was also sent via US Mail. Attached is a copy of this notice.

Best,

Allen Meyer • Code Compliance Officer

Community Development Department • 110 E. Main Street, Los Gatos CA 95030
Ph: 408.399.5746 • Ameyer@LosGatosCA.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

Regular Code Compliance hours:
7:00 AM – 3:30 PM, Monday – Friday

All permit submittals are to be done online via our Citizen's Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the Building and Planning webpages.

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Think Green, please consider the environment before printing this e-mail.

From: Lauri Deffenbaugh <laurilogic@gmail.com>

Sent: Monday, September 16, 2024 11:05 AM

To: Allen Meyer <AMeyer@losgatosca.gov>

Cc: Gabrielle Whelan <GWhelan@losgatosca.gov>; Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; sean@oneillplc.com; rharris@rjo.com

Subject: Re: FW: Administrative Warning, 16660 Cypress Way, Los Gatos

[EXTERNAL SENDER]

Hi Allen and Gabrielle,

Please copy Richard Harris on all email as he will be taking over resolving the issue with the town of Los Gatos.

We plan to ask for a hearing, but to do so we will need to fill out the form and pay the fine. I want to make sure that I am clear about the amount of monies that the Town of Los Gatos feels that we need to receive a hearing.

Is it the \$11,100 that you currently have said has been accumulating since Sept 8th, even though this is the first time we have received any notification of a fine? Or is it some other amount?

Thank you.

On Mon, Sep 16, 2024 at 10:20 AM Allen Meyer <AMeyer@losgatosca.gov> wrote:

Good morning Laurie,

Attached you will find an updated Administrative Citation for failure to obtain the required permits for the ADU remodel, three accessory building demolitions, retaining walls, and grading. The Administrative Cite box was not checked on the previously send notice. A paper copy will go out in today's mail. Please reach out if you should have any questions.

Sincerely,



Allen Meyer • Code Compliance Officer

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • Ameyer@LosGatosCA.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

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From: Allen Meyer

Sent: Monday, July 8, 2024 12:49 PM

To: laurilogic@gmail.com

Cc: Gabrielle Whelan <GWhelan@losgatosca.gov>; Robert Gray <RGray@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>; Lance Bayer <bayer.lance@gmail.com>; sean@oneillplc.com

Subject: Administrative Warning, 16660 Cypress Way, Los Gatos

Good afternoon,

Attached you will find an Administrative Warning regarding violations observed on the property during the Town's site inspection on May 30, 2024. Please reach out if you should have any questions.

Sincerely,



Allen Meyer • Code Compliance Officer

Community Development Department • 110 E. Main Street, Los Gatos CA 95030
Ph: 408.399.5746 • Ameyer@LosGatosCA.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

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EXHIBIT C

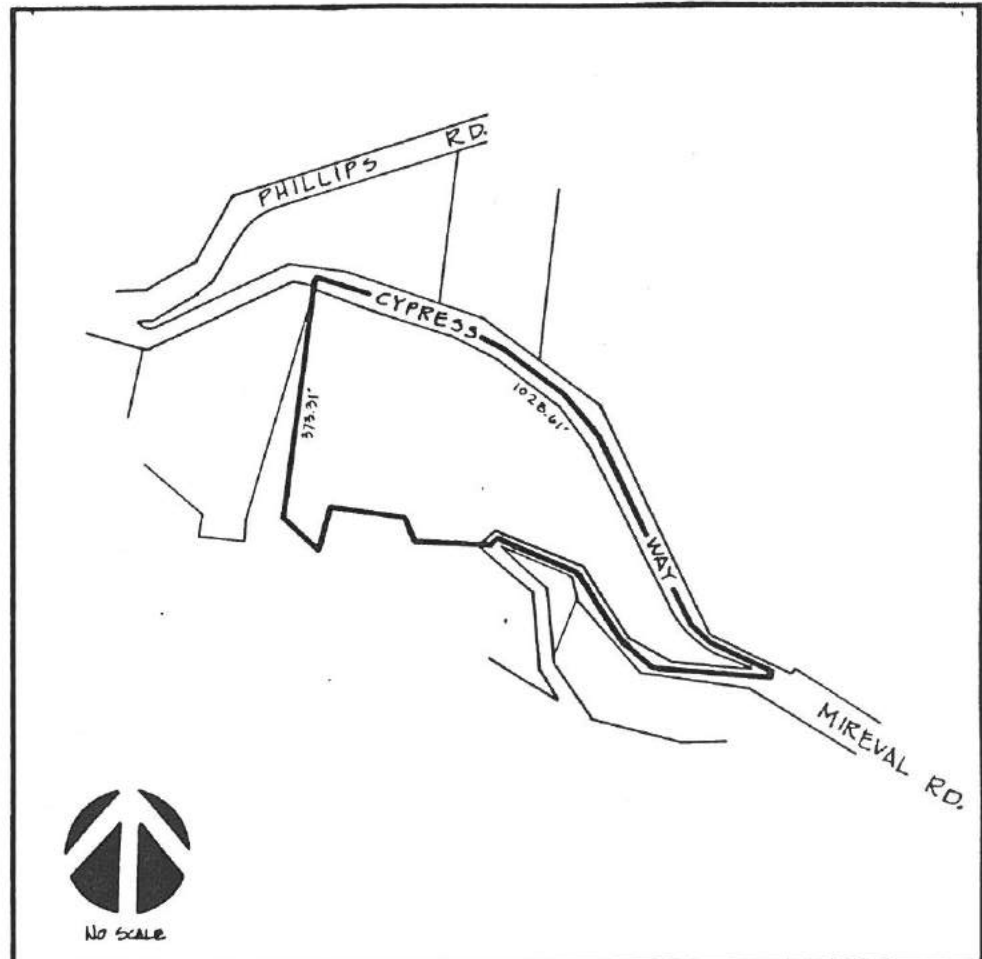
SECTION II

The property listed is designated to be of historic, architectural, or aesthetic significance for the reasons listed below:

- A. Property: Yung See San Fong House, 16660 Cypress Way
- B. Historic Designation No.: HD-83-1
- C. Description of Designation: Structure
- D. Description of Characteristics which Justify Designation:

The Yung See San Fong House, "Young's Home in the Heart of the Hills" was completed in 1917 for Ruth Comfort Mitchell Young, a writer, and her husband, Sanborn Young, a gentleman farmer, conservationist and California State Senator. The design of the house was inspired by a Chinese Play, The Sweetmeat Game, which Mrs. Young had written. The roofs at Yung See San Fong are constructed in such a way as to affect Chinese temple roof shapes. Carved wood decorations were supplied by craftsmen from Chinatown, San Francisco, or directly from China. The house in an eclectic mixture of Eastern decorative motifs and Western massing and plan layout. The house was a notable gathering place for local and international celebrities in the early Twentieth Century.

- E. Description of Particular Features that Should be Preserved in Addition to Those Covered under Section 4.86.120: None



TOWN OF LOS GATOS

Application No. HD-83-1. Change of zoning map amending the Town Zoning Ordinance.

Zone Change from HR-2 1/2 to HR-2 1/2-LHP
 Prezoning to _____

APPROVED by Planning Commission date FEB. 23, 1983

Approved by Town Council date April 4, 1983 Ord. 1574
 Town Clerk /s/ Rose E. Aldag (seal) Mayor /s/ Brent N. Ventura