



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 01/21/2025

ITEM NO: 13

ADDENDUM

DATE: January 17, 2025
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Conduct a Public Hearing for Appeal of Administrative Citation VL-19-362 (16660 Cypress Way) for Violations of the Los Gatos Town Code Related to Grading and Building and Adopt a Resolution Upholding the Administrative Citation and Imposing Costs According to Proof

REMARKS:

Attachment 25 contains correspondence submitted by appellant, attachment 26 contains public comment, and attachment 27 contains the PowerPoint presentation.

Attachments received with the Staff Report:

1. Aerial View of Subject Property 9/2017
2. Aerial View of Subject Property 5/2018 Showing Grading in Progress
3. Aerial View of Subject Property 8/2018 Showing Completed Paving
4. Aerial View of Subject Property Showing Locations of Structures in Violation
5. Hotpads Internet Posting, Showing Violations
6. Trulia Internet Posting, Showing Violations
7. Realtor.com Internet Posting, Showing Violations
8. Administrative Warning Dated 7/17/2019
9. Administrative Warning (2nd notice) Dated 8/22/2019
10. Application for Grading Permit and Architecture and Site Approval dated 7/9/2021 and Letter of Justification and Project Description Dated 7/8/2021
11. Photos of Town Inspection on 8/24/2021
12. Staff Technical Review Dated 8/24/2021 and 8/25/2021
13. Email from Town Attorney Dated 10/30/2023
14. Updated Letter of Justification Regarding Application Dated 12/13/2023
15. Staff Technical Review Dated 1/31/2024
16. Letter dated 5/22/2024 and Inspection Warrant Dated 5/20/2024
17. Description and Photos of Site Inspection of Subject Property on May 30, 2024

PAGE 2 OF 2

SUBJECT: Public Hearing for Appeal of Administrative Citation VL-19-362 (16660 Cypress Way) for Violations of the Los Gatos Town Code Related to Grading and Building

DATE: January 15, 2025

18. Administrative Warning Dated 7/8/2024
19. Administrative Citation Dated 9/16/2024
20. Property Detail Report
21. Administrative Citation Hearing Request Dated 10/14/2024
22. Letter to Town Community Development Department from Attorney Rogers Joseph Dated 10/14/2024
23. Notice of Appeal Hearing
24. Proposed Resolution

Attachment Received with this Addendum:

25. Correspondence Submitted by Appellant
26. Public Comment
27. PowerPoint Presentation

From: [Sharon C. Ingram](#)
To: [Wendy Wood](#)
Cc: [Gabrielle Whelan](#); [Richard M. Harris](#)
Subject: Supplemental Administrative Appeal Statement of Theodore and Lauri
Date: Thursday, January 16, 2025 11:16:28 AM
Attachments: [2025-01-16; Ltr Town Council.pdf](#)

[EXTERNAL SENDER]

Dear Town Clerk,
Please find the attached correspondence sent on behalf of Mr. Harris.

Thank you,
Sharon

Sharon C. Ingram

Assistant

Aaron P. Silberman | Dennis C. Callahan | Dean D. Paik | Aaron M. Scolari | Richard M. Harris

ROGERS JOSEPH O'DONNELL | a Professional Law Corporation

311 California Street, 10th fl | San Francisco, CA 94104

415.956.2828 main | 415.365.5327 direct | 415.956.6457 fax

singram@rjo.com | www.rjo.com

Notice to recipient: This email is meant for only the intended recipient(s) of the transmission and may be privileged by law. If you receive this email in error, please notify us immediately. Do not print, copy, or disseminate it. Please delete the email from your system. Thank you.

ROGERS JOSEPH O'DONNELL

Richard M. Harris
415.365.5306 (d)
rharris@rjo.com

415.956.2828 (t)
415.956.6457 (f)

Robert Dollar Building
311 California Street, 10th Flr.
San Francisco CA 94104

202.777.8950 (t)
202.347.8429 (f)

1500 K Street, NW, Suite 800
Washington DC 20005

www.rjo.com

January 16, 2025

VIA EMAIL

wwood@losgatosca.gov

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

Re: Supplemental Administrative Appeal Statement of Theodore and Lauri Deffenbaugh

Dear Town Clerk:

This supplemental statement is provided in response to the Town's agenda item provided to the Deffenbaughs on December 13, 2024. It incorporates all of the objections and evidence presented in the Deffenbaughs' previous statement.

Mr. Deffenbaugh first requests a continuance of 180 days to work to resolve outstanding permitting issues. As I wrote to the Town's attorney, the engineer required for additional submittals is now re-involved in the project. **Exhibit A.** Mr. Deffenbaugh's father-in-law was on hospice during the Summer and the Deffenbaughs were the primary care providers. At the same time, Mr. Deffenbaugh was actively involved in planning his daughter's wedding which occurred in September 2024. With a sufficient continuance, the Deffenbaughs can resubmit to show how all structures can be permitted without requiring demolition.

Should the Town refuse to continue the hearing, then the Deffenbaughs object to this hearing, which is violating Town ordinances and state law. Not only is the Town estopped from litigating this permit issue (as described in our previous statement) and has failed to establish a procedure as required under the building code, but this hearing violates the Deffenbaugh's substantive and procedural due process rights. The Deffenbaughs has not been granted the right to subpoena witnesses (such as their neighbor); cross examine and directly confront those who will bring evidence on behalf of the Town; or have adverse witnesses placed under oath. Further, the code under which the Town is proceeding (1.30.040) does not even state the burden of proof the Town will be applying. This is the

Town Council
January 16, 2025
Page 2

consequence when the Town fails to institute a procedure for a hearing as required by the building code.

Even considering the Town's evidence, it has not shown that the Deffenbaughs have violated the town codes listed in the citation. The Deffenbaughs have received a violation for of 6.150.010 (R105.1) and a violation of 12.20.010. Even if the Deffenbaughs were found liable, the maximum fine would be \$600. This prosecution does not stand up to scrutiny. This citation should be dismissed.

A. The Deffenbaughs Are Not Intending to Complete Unpermitted Work, and Therefore Cannot Be Liable Under the Citation.

The Town claims that the Deffenbaughs are violating R105.1 and 12.20.010 because they have not yet secured permits for 5 structures and for some grading done on the property. But these ordinances prohibit constructing without a permit; they do not require securing permits for previously unpermitted work. On this basis alone the citation should be dismissed.

Under R105.1, a property owner violates the statute if they intend to construct on their property and fail to secure a permit. ("Any owner or owner's authorized agent **who intends to** construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the this code, or to cause any such work to be performed, **shall first make application of the building official and obtain the required permit.**")(emphasis added). But at best, the Town has shown that there are allegedly unpermitted structures on the Deffenbaugh's property. It is not a violation of R105 to have unpermitted structures on your property, only to construct without a permit.

12.20.010 is similar. That ordinance proscribes some grading without first obtaining a permit. But the Deffenbaughs are not intending on completing any grading work, and the Town does not claim otherwise; instead, the Town's evidence is simply that grading work occurred. There is no evidence that the Deffenbaughs are liable under this code section.

B. The Town's Evidence Does Not Show Violations That Cannot Be Resolved With Permitting After the Lawsuit Is Complete.

Not only are the Deffenbaughs not liable under the listed ordinances, but they are actively involved in getting all of the structures permitted. Contrary to the Town's position, the buildings do not need to be demolished.

Town Council
January 16, 2025
Page 3

As discussed below, Mr. Deffenbaugh should be allowed to get each building permitted under the code. For each building, there is no basis for this citation.

1. ADU remodel

The Town claims that this ADU was permitted on 1981, but there are “unpermitted interior improvements.” But the citation is for failing to secure a permit for construction that the owner *intends* to complete. R105 does not require that a party secure a permit for work already complete.

The Town also claims that “The sleeping room lacked sufficient emergency egress and the bathroom window was not tempered as required in a wet hazard area. The front entrance deck, stairs, and railings were unstable and appeared unsafe. The railings were far below minimum requirement and have openings exceeding a 4” diameter sphere.” But there is no support for this claim: the Town’s notes from its visit show that none of these issues were actually observed at the time of the inspection (see page 2 of attachment 17). Without some evidence supporting the Town’s claims, Mr. Deffenbaugh cannot respond except to state that any building code related issues were pre-existing at the time the Deffenbaughs’ purchased the property. As such, they cannot be liable under the Town ordinance for failing to secure a permit.

2. Accessory Structure (“Office” or “Shed”)

The Town claims this structure is an “Office,” but the Deffenbaughs are using it as a storage shed. Sheds need not be permitted if they are at or less than 120 square feet. The Deffenbaughs were obviously trying to build the shed to this specification, and 4 square feet over is a *de minimus* error that should not lead to thousands of dollars of fines. Contrary to the Town’s position, the shed has no electricity, and an extension cord is used to light the structure when people enter the structure.

The Town also claims that the Shed does not meet required setbacks because it is too close to the property line. But it also admits that there is a current litigation over the location of those property lines and easements associated with them. Given that the finalize location of the rights to the property line are not yet established, the Town should not attempt to enforce them as the Deffenbaughs’ neighbor understands them.

3. Storage Structure behind ADU

The Town claims that the Storage Structure is wired for “electrical and plumbing.” But there is no plumbing or electrical connected to this structure. Mr. Deffenbaugh used this building to practice with his children how to install electrical and

Town Council
January 16, 2025
Page 4

plumbing work, but nothing was completed, and nothing is connected. This is neither “plumbing” nor “electrical” as defined by the code.

The Town also claims that the Storage Structure does not have required setbacks. Again, this is dependent on the rights of the Deffenbaughs and their neighbors related to the property, and cannot be determined until that case is complete.

4. Garage Structure

Whether this building can be constructed in its current location is dependent on the determination of the Superior Court in the Lawsuit. Once determined, the Deffenbaughs will be able to get the structure permitted as to the foundation and electrical work. Tearing down the structure is not required, and the Town should give Mr. Deffenbaugh the opportunity to permit the structure as soon as the lawsuit regarding the underlying property rights is complete.

C. Any Penalties For Failing to Secure a Permit Are Limited to \$600, and an \$11,100 Fine is Excessive Under the Town Code, California Constitution and the Excessive Fines Clause.

Even if these code sections proscribed past work completed without a permit, the penalties would be limited to that violation (failing to secure a permit), which only occurred once for each construction site. If the Town is to be believed, at the time of the citation, Mr. Deffenbaugh had 5 structures constructed without permits and one grading violation without a permit. Since all the violations occurred on the same day (September 16, 2024), the maximum penalty allowed would be \$600 (one for each violation). There is no continuing violation, as the Deffenbaughs are not continuing to construct without a permit.

Further, this fine is excessive. It fifty times more than the Town brought previously against the Deffenbaughs for the same alleged violations, and is completely disconnected from any wrongdoing by the Deffenbaughs. The fine is unreasonably high and should be reduced or eliminated.

D. The Town Ignores Similar Issues with the Deffenbaughs’ Neighbor, and Fails to Resolve its Own Obligations to the Deffenbaughs’ Property.

Additionally, fairness concerns require the dismissal of this citation. First, as stated in my previous statement, the Town agreed to wait until the lawsuit was complete. This makes sense because the lawsuit will define the property rights between the neighbors and therefore define whether or not the structures could be permitted successfully. As the Town agreed to delaying any enforcement, it cannot go back on that agreement.

Town Council
January 16, 2025
Page 5

Further, the Town does not typically enforce these types of permitting concerns. One needs only to look at the Deffenbaughs' neighbors' property, where an accessory building is built right up against the property line. **Exhibit B.** Attached is a report from a civil engineer discussing how the wall is unsafe and must be replaced with a safe structure. **Exhibit C.** The Deffenbaughs informed the Town no later than December 2019 about the dangers of their neighbor's retaining wall. **Exhibit D.** Exhibit C and D show this wall, which has not substantially changed since 2019. It is clearly unsafe construction and threatens the Deffenbaughs' property. And yet the Town has refused to enforce these same permitting concerns against that neighbor; the only enforcement is against the Deffenbaughs.

In contrast, the Deffenbaughs have been good neighbors to the Town. For example, the Town is responsible for upkeep of slopes and embankments along Cypress Way. **Exhibit E.** The Town is also responsible for the upkeep of Cypress Way, which is the only road access to the Deffenbaughs' property. **Exhibit F.** But the Town has failed to keep up its responsibilities, and the embankment is overgrown and may fail. In 2022, a tree fell along the Town's easement, which should have been the Town's responsibility to clean. **Exhibit G.** The Deffenbaughs cleared this tree at their own expense when requested by the Town because that is the neighborly thing to do. As still, the Town has failed to properly upkeep the road access to the Deffenbaugh's property, creating a safety concern.

The Town should hold its end of the bargain. The Town should treat the Deffenbaughs similar to their neighbors. The Town should give the Deffenbaughs the time they need to get the structures permitted, which can only occur after the lawsuit is complete. It is the fair thing to do.

II. CONCLUSION

This hearing violates California law as the Deffenbaughs are entitled to an established procedure to hear their appeal, an ad hoc process because the current procedure does not follow state law. This hearing further violates due process, as the Deffenbaughs are not entitled to call and cross examine witnesses, and the Deffenbaughs are being treated differently than similarly situated landowners. Prosecuting this matter is in conflict with the agreement the Town previously made. The citation's listed ordinances are not at issue here, as the Deffenbaughs are not constructing anything. And finally, there are no violations that cannot be solved with the permitting process as soon as the lawsuit is complete and the property rights are known.

Town Council
January 16, 2025
Page 6

The Deffenbaughs request a dismissal of the citation, or a continuance until the lawsuit is complete. The penalty of the citation cannot be more than \$600.

Very truly yours,



Richard M. Harris
Attorney for Theodore and Lauri Deffenbaugh

RMH:nca

Enclosure

cc: Gabrielle Whelan (gwhelan@losgatosca.gov)

EXHIBIT A



January 6, 2025
Job No. 21-213

Los Gatos Town Council
Town Hall
110 E. Main St.
Los Gatos, CA 95030

Subject: 16660 Cypress Way - Grading Violation Abatement
Architecture and Site Application S-21-024

Dear Town Council Members:

I am writing to address the delays experienced in the Architecture Package S-21-024 project and explain the circumstances that have led to this situation.

Causes of Delay

The primary reasons for the project delay are as follows:

1. Subcontractor Issues: We encountered unforeseen challenges with the documentation of various subcontractors' retaining wall construction details. This has severely impacted our project timeline.
2. Retirement of Key Personnel: Our geotechnical engineer, who played a critical role in the project, unexpectedly retired. This sudden departure created a significant gap in our team. We need a gravity wall specialist who is both a qualified soil & structural engineer.
3. Competing Business Priorities: Other pressing needs within our business temporarily diverted our attention and resources from this project.

Resolution and Path Forward

I want to assure you that we have taken swift action to address these issues:

1. We have identified and implemented solutions to the subcontractor challenges.
2. A replacement for the retired geotechnical engineer has been found and integrated into our team.
3. We have reallocated our resources to ensure this project receives the necessary focus and attention.

Commitment to Completion

With these measures in place, we can refocus our efforts on Architecture Package S-21-024 and continue progressing as we have done with previous projects for the Town. Despite this temporary setback, our team is committed to delivering the high-quality results you expect from us.

Next Steps

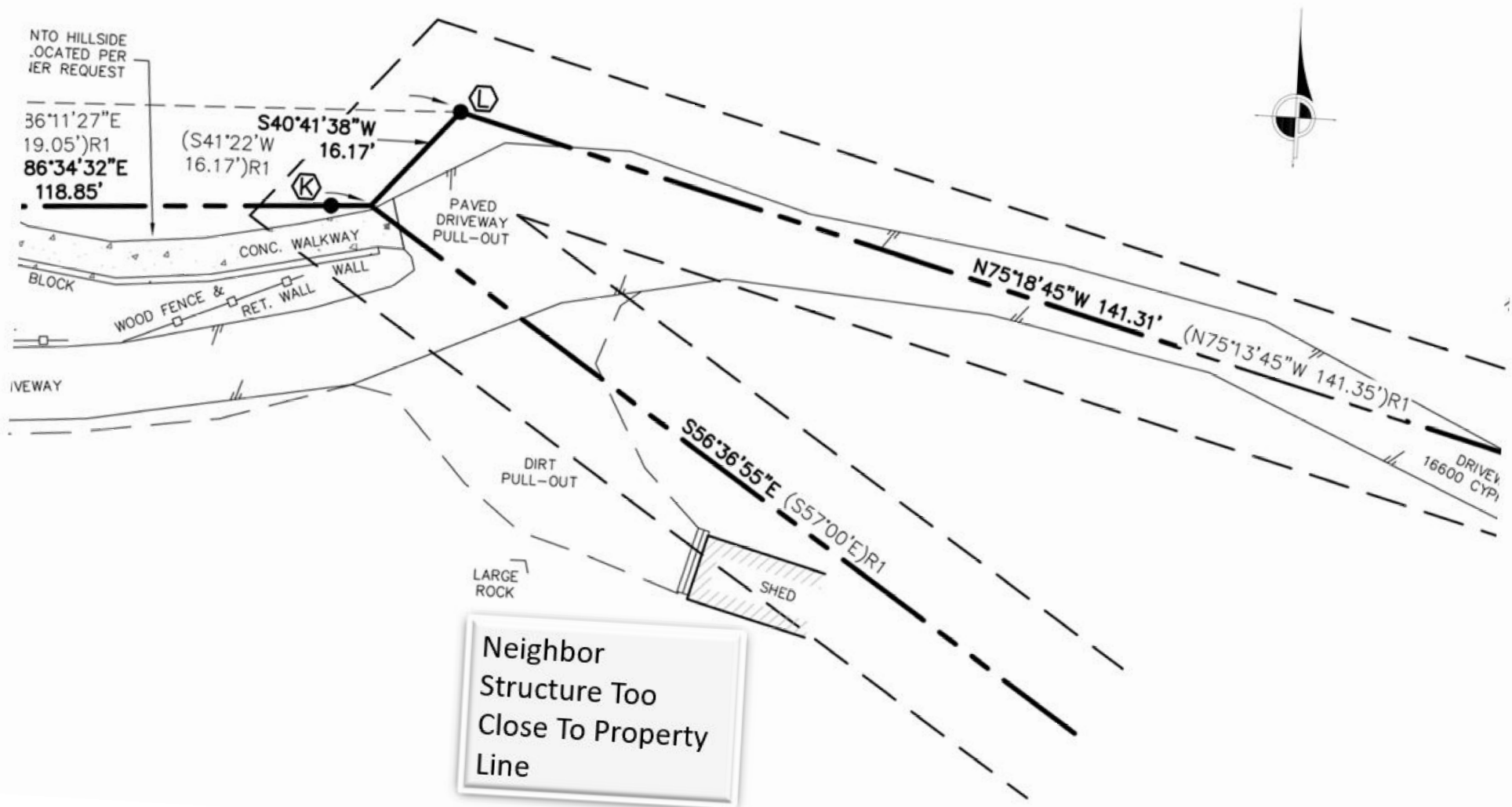
We have revised our project timeline and will provide you with an updated schedule in the coming days. We appreciate your understanding and patience during this period. Town staff has been very supportive in detailing the presentation format required for the Planning Commission review.

If you have any questions or require further information, please don't hesitate to contact me.

A handwritten signature in black ink, appearing to read 'Terence J. Szewczyk'.

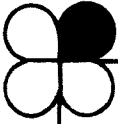
TS/CIVIL ENGINEERING, INC.
Terence J. Szewczyk, P.E. C35527
Principal Engineer

EXHIBIT B



Neighbor
 Structure Too
 Close To Property
 Line

EXHIBIT C



August 18, 2021

Sean O'Neill, Esq.
O'Neill & Lian
1879 Lundy Ave #169
San Jose, Ca. 95131

**Re: Retaining Wall Review
16660 Cypress Way
Los Gatos, Ca.**

Dear Mr. O'Neill,

At your request, I visited the referenced property to evaluate the current condition of the retaining wall between the subject property and the adjoining property, 16600 Cypress Way. My assessment consisted of observing the visible aspects of the wall and surrounding area.

Findings

1. The subject wall is the predominate wall below the paved parking area for 16600 Cypress Way. On the West side of this wall there is a more recently constructed soldier pile retaining wall, which is not included in our review.
2. The retaining wall consists of 2 x 12 wood lagging spanning horizontally between 9" dia. wood columns approximately 6 feet on center. The lagging was found to have excessive deflection between columns and advanced stages of decay. The columns had advanced decay and were leaning or out of position. Temporary repairs were observed in several areas to address localized problems as they occurred.
3. The bottoms of the columns are embedded below grade and the tops restrained by 1/2" stranded steel cables. Cables were applied directly to the columns without bearing plates to prevent crushing. Cables are likely anchored to *deadmen* uphill of the wall below the parking area.
4. After original construction, the top of the wall was raised 3 feet by adding additional posts and lagging to support fill that was placed to create the raised parking surface at its current elevation.
5. At the East end of the wall, the wall had completely failed. Posts had rotted and fallen downhill, leaving the lagging with no lateral support. Retained soil was sagging and had dropped.
6. At the last column still standing next to the failed section, the top steel cable had failed and the end was visible. The cable had been unprotected when installed in contact with the soil and rusted through.
7. The end of a residential unit is situated at the West end of the subject wall. There is a sloping grade with a paved access road below the subject retaining wall.

Discussion

When the wood retaining wall was first constructed, standard practice would have been to design it with the capacity to resist anticipated forces imposed on it by the soil it retained. Raising the elevation of the parking pad it now supports could have doubled the design loads imposed on the wall rendering the original design overstressed. Degradation over time reduces the wall's capacity (rust and dry rot). Combining those causes premature failure in areas or sections. As that occurred, localized repairs were performed to extend the wall's useful life. Degradation has continued to the point where there is now nothing of value left to repair.

The wall has exceeded its useful life and should be replaced in its entirety. If it is not replaced, it is subject to complete failure, particularly if vehicular surcharge loads are imposed on the wall. If the mode of failure was due to other cables snapping, the result could be instant and dramatic, adversely affecting the end of the residential unit and/or the lower road. For that reason, it is recommended the wall be replaced with a properly designed solution as soon as possible. In the interim, cars should not be driven within 20 feet of the current wall location.

Limitations

The opinions herein are based on the limited review of the accessible areas described above. Our services are in general conformance with the ordinary skill and care exercised by other professionals offering similar services in this area. No other warranties or assurances are expressed or implied. If additional information becomes available for review, EWI reserves the right to modify our opinions if warranted.

Photographs are appended depicting the conditions described. If you have any questions, or if we can be of further assistance, feel free to contact us.

Sincerely,

Engineering West
Consulting Engineers, Inc.



Jeffrey D. Beam, P.E.
President





Photo 1 – Over view of retaining wall. Note proximity of roof overhang of residential init.



Photo 2 – Top of wall extended 3 boards (3 feet) to support raised parking pad.



Photo 3 – Dry rot visible on back of lagging. Amount varies by location.



Photo 4 – Excessive deflection of lagging.



Photo 5 – 8" space between lagging and displaced column.



Photo 6 – Leaning column where cable holding top of column failed.



Photo 7 – Rusted end of cable where it failed and pulled out of soil. Inadequate bearing of lagging at steel column repair.



Photo 8 – Photo showing various repairs. Paving at parking now exposed as lagging has slid down.



Photo 9 – Wall failure from degradation of components at right (East) end of wall.



Photo 10 - Wall failure from degradation of components at right (East) end of wall. Excessive deflection of lagging in upper wall is another potential failure mode.

EXHIBIT D

Retaining Wall Concerns

Neighbor Has Unfenced Area Over Rotting Retaining Wall



Held Together With Cables And Rotting Boards



Details Of Sordid State Of Wall

Cracked pavement,
drains into wall

Car stop: Unanchored tie

Old Knob and Tube
Indicating 100 Years Old

Already Collapsed

Dry Rot

Dry Rot

Wall hollowed out by
Squirrels

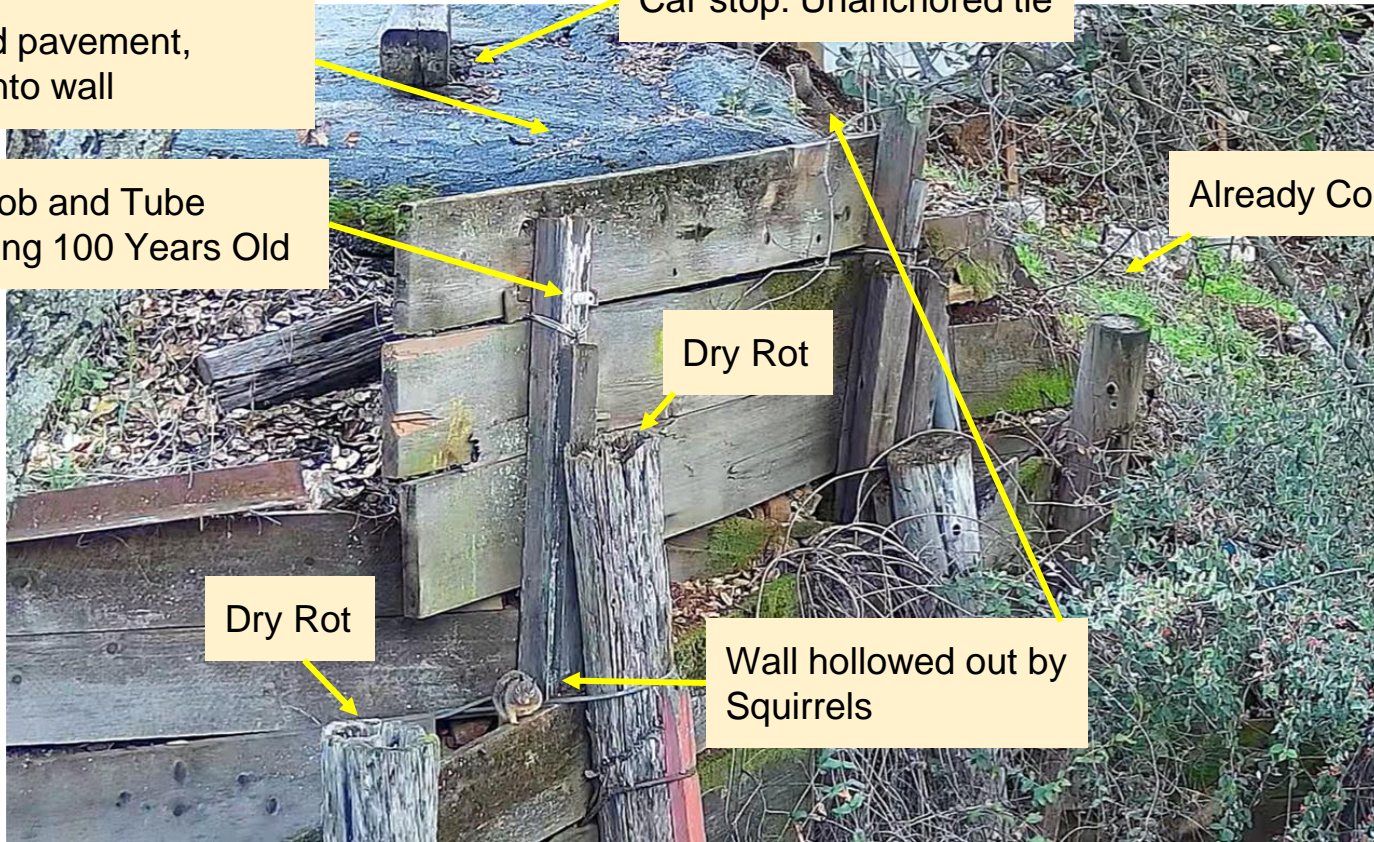


EXHIBIT E

DR BOOK

0042

PAGE



RECORD & RETURN TO: TOWN CLERK, P O Box 949, LOS GATOS, CA. 95030

NO TAX DUE

NO FEE 4358076

GRANT OF EASEMENT

BOOK 0042 PAGE 547

C. A. TAUGHINBAUGH, as Grantor, hereby grants to the TOWN OF LOS GATOS, a municipal corporation, an easement to locate, construct, and maintain slopes and embankments appurtenant to the adjacent Cypress Way, upon and across the following described parcel of land:

PARCEL ONE:

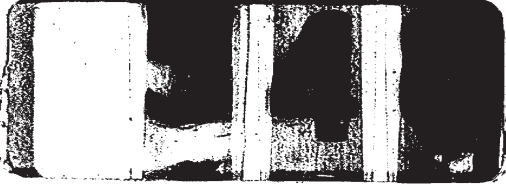
COMMENCING in Cypress Way at the most Northerly corner of that property shown on that Record of Survey of a portion of the Lands of C. A. Taughinbaugh, on file in Book 281 of Maps, at Page 37, Santa Clara County Records; thence South 09° 45' 08" West along the line between the lands of Altmann and Taughinbaugh, 17.22 feet to the True Point of Beginning; thence to the right along a 302.24 foot radius curve, through an arc of 14° 18' 11" for a distance of 75.45 feet to a point of reverse curvature; thence along a 620.00 foot radius curve to the left, through an arc of 3° 49' 06", for a distance of 41.32 feet to a point of tangency; thence South 79° 15' 00" East, 118.00 feet to a point of tangency; thence to the right along a 280.00 foot radius curve, through an arc of 18° 55' 00", for a distance of 92.44 feet to a point of tangency; thence South 60° 20' 00" East, 88.00 feet to a point of tangency; thence to the right along a 280.00 foot radius curve, through an arc of 25° 21' 33", for a distance of 123.93 feet to a point of tangency; thence South 34° 58' 27" East, 178.00 feet to a point of tangency; thence to the right along a 1157.81 foot radius curve, through an arc of 3° 43' 01", for a distance of 75.11 feet to a point of tangency; thence South 31° 15' 26" East, 30.46 feet to a point of tangency; thence to the left along a 160.00 foot radius curve, through an arc of 46° 23' 50", for a distance of 129.57 feet to a point of tangency; thence South 77° 39' 16" East, 22.00 feet to a point of tangency; thence to the right along a 280.00 foot radius curve, through an arc of 11° 19' 18", for a distance of 55.33 feet; thence South 08° 11' 00" East, 6.29 feet; thence South 89° 17' 00" West, 83.22 feet to a point of tangency; thence along a 190.00 foot radius curve, to the right through an arc of 45° 35' 09", for a distance of 153.86 feet to a point of tangency; thence North 31° 15' 26" West, 30.46 feet to a point of tangency; thence to the left along a 1127.81 foot radius curve, through an arc of 3° 43' 01", for a distance of 73.16 feet to a point of tangency; thence North 34° 58' 27" West, 178.00 feet to a point of tangency; thence to the left along a 250.00 foot radius curve, through an arc of 25° 21' 33", for a distance of 110.65 feet to a point of tangency; thence North 60° 20' 00" West, 88.00 feet to a point of tangency; thence along a 250.00 foot radius curve to the left, through an arc of 18° 55' 00", for a distance of 82.54 feet to a point of tangency; thence North 79° 15' 00" West, 118.00 feet to a point of tangency; thence along a 650.00 foot radius curve to the right, through an arc of 3° 49' 06", for a distance of 43.32 feet to a point of reverse curvature; thence to the left along a 272.24 foot radius curve, through an arc of 15° 21' 35", for a distance of 72.98 feet to the division

RECORDED IN SANTA CLARA COUNTY

DR. BOOK

0042

PAGE



0042 100548

line between the lands of Altmann and Taughinbaugh; thence along said line North 09° 45' 08" East, 30.46 feet to the True Point of Beginning, Containing 0.722 Acres.

Dated: Sept. 25, 1972

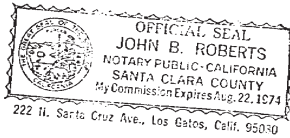
C. A. Taughinbaugh
C. A. TAUGHINBAUGH

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On Sept 25, 1972, 1972, before me, the undersigned, a Notary Public in and for said State, personally appeared C.A. Taughinbaugh, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.
Signature John B. Roberts

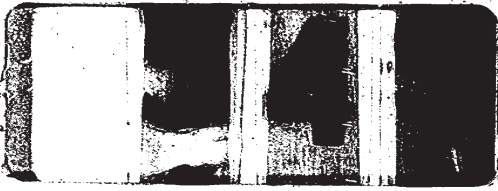
SEAL:



DRIBBON

0042

PAGE



EXX 0042 PAGE 549

CERTIFICATE ACCEPTING GRANT OF EASEMENT
CYPRESS WAY

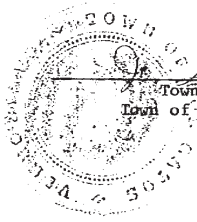
This is to certify that the interest in real property conveyed by that Grant of Easement dated September 25, 1972, which is attached hereto, from C. A. TAUGHINBAUGH, to the Town of Los Gatos, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the Town Council of the Town of Los Gatos pursuant to authority conferred by Resolution No. 1968-191 adopted by the Town Council on November 18, 1968, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 9/27/72

By R L Warmick
Director of Public Works
Town of Los Gatos

ATTEST:

[Signature]
Town Clerk
Town of Los Gatos



4358076

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE E. FOWLES
RECORDER

SEP 20 1 15 PM '72

FILED FOR RECORD
AT REQUEST OF
[Signature]

EXX 0042 MAR 347

NO FEE

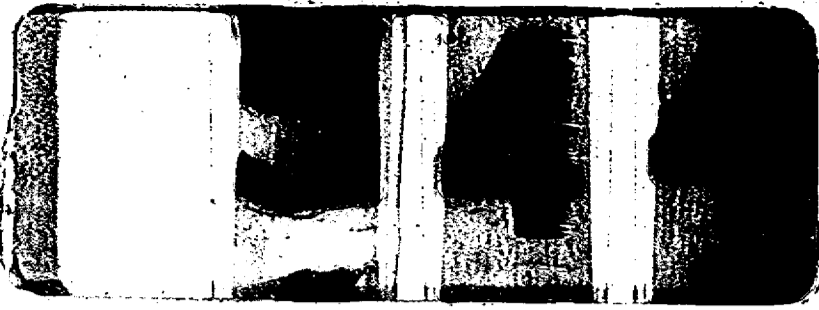
OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE E. FOWLES
RECORDER

EXHIBIT F

DR. BOON

0042

P
A
G
E



RECORD & RETURN TO: TOWN CLERK, P O BOX 949, LOS GATOS, CA. 95030

W7

0042 PAGE 544

4358075

NO TAX DUE

NO FEE

DEDICATION

C. A. TAUGHINBAUGH, hereby dedicates the hereinafter described real property to the TOWN OF LOS GATOS, a municipal corporation, for public use for all lawful purposes forever.

The property so dedicated to be a public thoroughfare and to become a portion of the public street system in the Town of Los Gatos, County of Santa Clara, State of California.

The following is a description of the real property so dedicated:

PARCEL ONE:

BEGINNING in Cypress Way at the most Northerly corner of that property shown on that Record of Survey of a Portion of the Lands of C. A. Taughinbaugh, on file in Book 281 of Maps, at Page 37, Santa Clara County Records. Thence along Cypress Way the following courses: North 89° 24' 00" East, 21.31 feet; South 79° 58' 00" East, 234.40 feet; South 62° 18' 00" East, 234.22 feet; South 34° 58' 27" East, 417.13 feet; South 72° 38' 00" East, 120.58 feet; thence leaving Cypress Way, South 08° 11' 00" East, 18.40 feet to a point on a line 20.00 feet from and at right angles to, the proposed centerline of Cypress Way; thence to the left along a 280.00 foot radius curve through an arc of 11° 19' 18", a distance of 55.33 feet to a point of tangency; thence North 77° 39' 16" West, 22.00 feet; thence to the right along a 160.00 foot radius curve, through an arc of 46° 23' 50", a distance of 129.57 feet to a point of tangency; thence North 31° 15' 26" West, 30.46 feet to a point of tangency; thence to the left along a 1157.81 foot radius curve, through an arc of 3° 43' 01", for a distance of 75.11 feet to a point of tangency; thence North 34° 58' 27" West, 178.00 feet to a point of tangency; thence to the left along a 280.00 foot radius curve, through an arc of 25° 21' 33", for a distance of 123.93 feet to a point of tangency; thence North 60° 20' 00" West, 88.00 feet to a point of tangency; thence to the left along a 280.00 foot radius curve, through an arc of 18° 55' 00", a distance of 92.44 feet to a point of tangency; thence North 79° 15' 00" West, 118.00 feet to a point of tangency; thence to the right along a 620.00 foot radius curve, through an arc of 3° 49' 06", for a distance of 41.32 feet to a point of reverse curvature; thence to the left along a 302.24 foot radius curve, through an arc of 14° 18' 11", for a distance of 75.45 feet to the line between the lands of Altman and Taughinbaugh; thence North 09° 45' 08" East, 17.22 feet to the Point of Beginning, Containing 0.452 acres.

PARCEL TWO:

BEGINNING at the Southerly terminous of a line shown as North 17° 44' 00" East, 10.12 feet on that Record of Survey of a Portion of the Lands of C. A. Taughinbaugh, on file in Book 281 of Maps,

DR. BOON

0042

PAGE

0042 PAGE 546

CERTIFICATE ACCEPTING DEDICATION
STREET PURPOSES
CYPRESS WAY & MIREVAL ROAD

This is to certify that the interest in real property conveyed by that Dedication dated September 25, 1972, which is attached hereto, from C. A. TAUGHINBAUGH to the Town of Los Gatos, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the Town Council of the Town of Los Gatos, pursuant to authority conferred by Resolution No. 1968-191 adopted by the Town Council on November 18, 1968, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 9/27/72

By R. L. Warnick
Director of Public Works
Town of Los Gatos

ATTEST:

J. L. Leifritz
Town Clerk
Town of Los Gatos

OFFICIAL RECORDS
SANTA ANITA COUNTY
GEORGE FOWLES
RECORDER

FILED RECORDS
AT REQUEST OF
SEP 28 1 15 PM '72
George Fowles

SANTA ANITA COUNTY
GEORGE FOWLES
4958075

NO FEE

EXHIBIT G





This Page Intentionally Left Blank

Dear Town Councils,

This is Ivy Chang and Scott Watson: the neighbors of the Mr. and Ms. Deffenbaugh in this case.

Town staff have provided a comprehensive investigation report, and we respectfully request the Town Council adopt a resolution (Attachment 24) upholding the administrative citation and imposing costs according to proof. In support of this, we want to highlight the following:

1. In a letter addressed to me in 2017 before the subject construction, Mr. Deffenbaugh said:

“I talked to a architect, and for all practical purposes, he said that getting anything built on my property was going to be a massive undertaking. I can fill you in on the details, but Los Gatos has clamped down on allow us to do stuff with our houses in the hills.” See Exhibit A.

2. 532 cubic yard earthwork

According to Town Civil Engineer Mike Wise’s calculation, after his onsite visit in 2021. There are 532 cubic yard earthwork for asphalt parking area. See Exhibit B. According to a picture of 2016 March, there is no such wall in front of main house, see Exhibit C, which was found in Los Gatos Library given the main house is registered as historical house.

Further, per Town Code, it is clearly defined 4’ cut and 3’ fill in HDS&G. The evidence shows it is 14’ fill. Can Councils direct staff to confirm what is the resubmitting plan Town is expecting? Are you enforcing fully comply the Town Code to enforcing to cut down to 3’ fill from 14’ fill? or are you ok with as it and only need to pay fine and add engineering to the 14’ wall?

3. Page 559 summarizes the timeline well. On July 9, 2021, the Deffenbaughs submitted an Application for Development Permits; this consisted of a property survey and a 2 page justification letter which verbally described a scope of work. Staff Technical Review of Aug 24-25, 2021 response included 18 pages of additional information that Deffenbaughs needed to submit for the Town and Santa Clara County Fire review. Applicant did *nothing* for over 2 years, finally submitting only re-edited letter of justification on Dec 13, 2023. Staff Technical Review of Jan 31, 2024 reiterated the deficiencies in the application. Please ask Town Staff how they plan to enforce Town codes in a timely manner and not allow the Deffenbaughs to delay remediation indefinitely.

4. Page 677, states “*Code enforcement to send a compliance order to resubmit required documents within 60 days or impose fines*”. Can Councils’ ask staff to detail the fines to be imposed, and ask staff how to enforce the resubmittal of a completed plan, so this process does not incur another 2 years delay?
5. Also, while staff is waiting for the plan resubmittal, will Town Councils red flag the unpermitted parking area? If no, why not?
6. Drainage – Mudslide
I witnessed the mudslide on Cypress Way in 2023 and it worsened in March 2024. The mudslide location appears to be the water runoff from the un-permitted parking area, which likely to have caused the mudslide onto Cypress Way. See Exhibit D. Can Councils direct the staff to prioritize the investigation of the drainage issue because of public safety concern?
7. Town’s Cost
On Page 598, it only shows staff hourly rate. Can Councils direct staff to confirm who should be paying the hourly rate for Town Attorney and Outside Special Counsel Lance Bayer? If it’s not violator, will the town be paying that, which means the town residence is paying it. Please clarify.

Your fair review on this matter is highly appreciated.

Sincerely
Ivy Chang and Scott Watson

EXHIBIT A

Scott Watson <sewats64@gmail.com>

Let Me Know When You Are Around

TE Deffenbaugh [REDACTED]

To: Scott Watson [REDACTED]

Sun, May 7, 2017 at 9:13 AM

Scott,

I am still trying to figure out what to do with the property line. I wanted to jot down some brainstorming notes, then maybe we can talk when you have time.

I talked to a architect, and for all practical purposes, he said that getting anything built on my property was going to be a massive undertaking. I can fill you in on the details, but Los Gatos has clamped down on allow us to do stuff with our houses in the hills.

However, I would like an easement for both the road and the shed that is on your property because I want to open the road to my lower property and rebuild the shed.

[Los Gatos just passed a weed abatement ordinance which I was reading about \(basically they signed up for Santa Clara county version\) start here.](#)

Maybe I could trade the easement for keeping your weeds down in the easement area.

Alternatively, I was looking at my property appraisal, which I can send you, and additional land on a house is valued at \$100K per acre, but because we can't build, I don't see the value in it! However, if you would rather do this, I would be open to it at about this rate.

However, the easement is really the only thing I would like to take care of now because I would like to get going on the road and the shed.

Ted

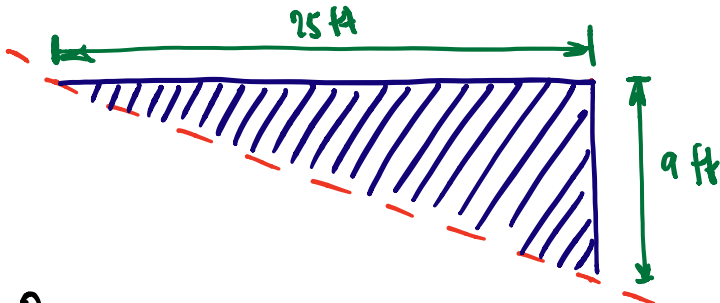
EXHIBIT B

DETERMINING EARTHWORK FOR ASPHALT PARKING AREA

16660 CYPRESS WAY

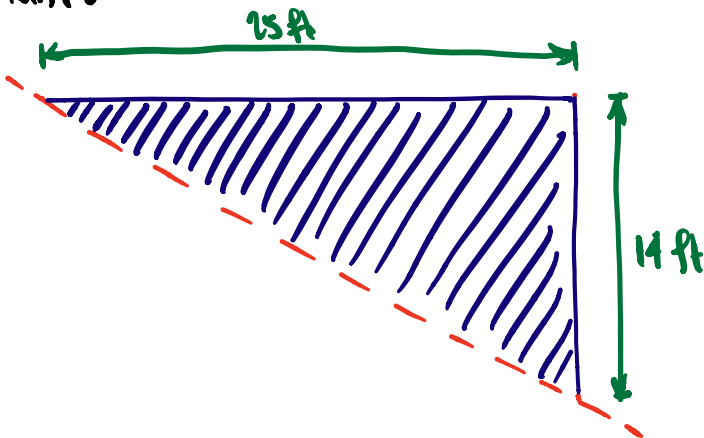
At Point 0: $A_0 = 0 \text{ sf}$

Point 1:



$$\begin{aligned} A_1 &= \frac{1}{2} b h \\ &= \frac{1}{2} \times 25 \text{ ft} \times 9 \text{ ft} \\ &= 112.5 \text{ sf} \end{aligned}$$

Point 2:



$$\begin{aligned} A_2 &= \frac{1}{2} b h \\ &= \frac{1}{2} \times 25 \text{ ft} \times 14 \text{ ft} \\ &= 175 \text{ sf} \end{aligned}$$

$$\begin{aligned} V_{0 \rightarrow 1} &= \frac{A_0 + A_1}{2} \times L_{0 \rightarrow 1} = \frac{0 \text{ sf} + 112.5 \text{ sf}}{2} \times 41 \text{ ft} = 2,306.25 \text{ sf} \\ &= 2,306.25 \text{ sf} \times \frac{1 \text{ cy}}{27 \text{ sf}} \end{aligned}$$

$$V_{0 \rightarrow 1} = 85.4 \text{ cy}$$

$$\begin{aligned} V_{1 \rightarrow 2} &= \frac{A_1 + A_2}{2} \times L_{1 \rightarrow 2} = \frac{112.5 \text{ sf} + 175 \text{ sf}}{2} \times 84 \text{ ft} = 12,075 \text{ sf} \\ &= 12,075 \text{ sf} \times \frac{1 \text{ cy}}{27 \text{ sf}} \end{aligned}$$

$$V_{1 \rightarrow 2} = 447.2 \text{ cy}$$

$$\begin{aligned} \Sigma V &= V_{0 \rightarrow 1} + V_{1 \rightarrow 2} \\ &= 85.4 \text{ cy} + 447.2 \text{ cy} \end{aligned}$$

$$\Sigma V = 532.6 \text{ cy} > 50 \text{ cy} \rightarrow \text{GRADING PERMIT!}$$

PER TOWN CODE, EARTHWORK GREATER THAN 50 CUBIC YARDS w/o SPECIFIC EXEMPTIONS REQUIRE A GRADING PERMIT (CH. 12, ART. II)

EXHIBIT C

16660 CYPRESS WAY | LOS GATOS

- 4.28 +/- Acre Parcel
- Three buildings totaling over 6,750 +/- Sq. Ft.
- Panoramic Silicon Valley views
- Close proximity to Downtown Los Gatos

Offered at \$3,690,000

March
2016

RIESEREAL ESTATE

A Coldwell Banker Team



EXHIBIT D

March 22, 2024



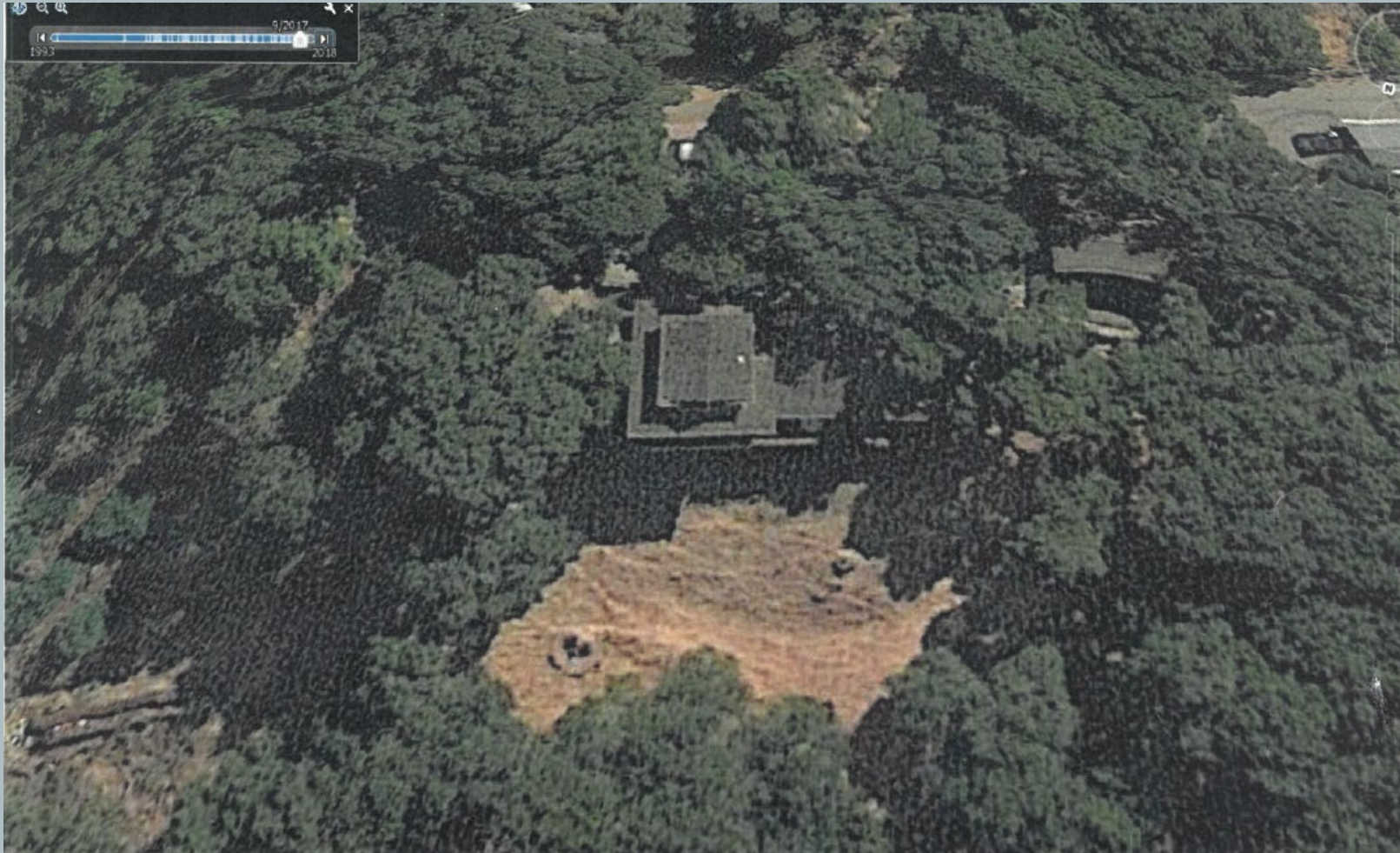
16660 Cypress Way Administrative Appeal of Citation VL-19-362 issued to Theodore and Lauri Deffenbaugh

Town Council Meeting
January 21, 2025

In October 2016, the Deffenbaughs acquired title to the property



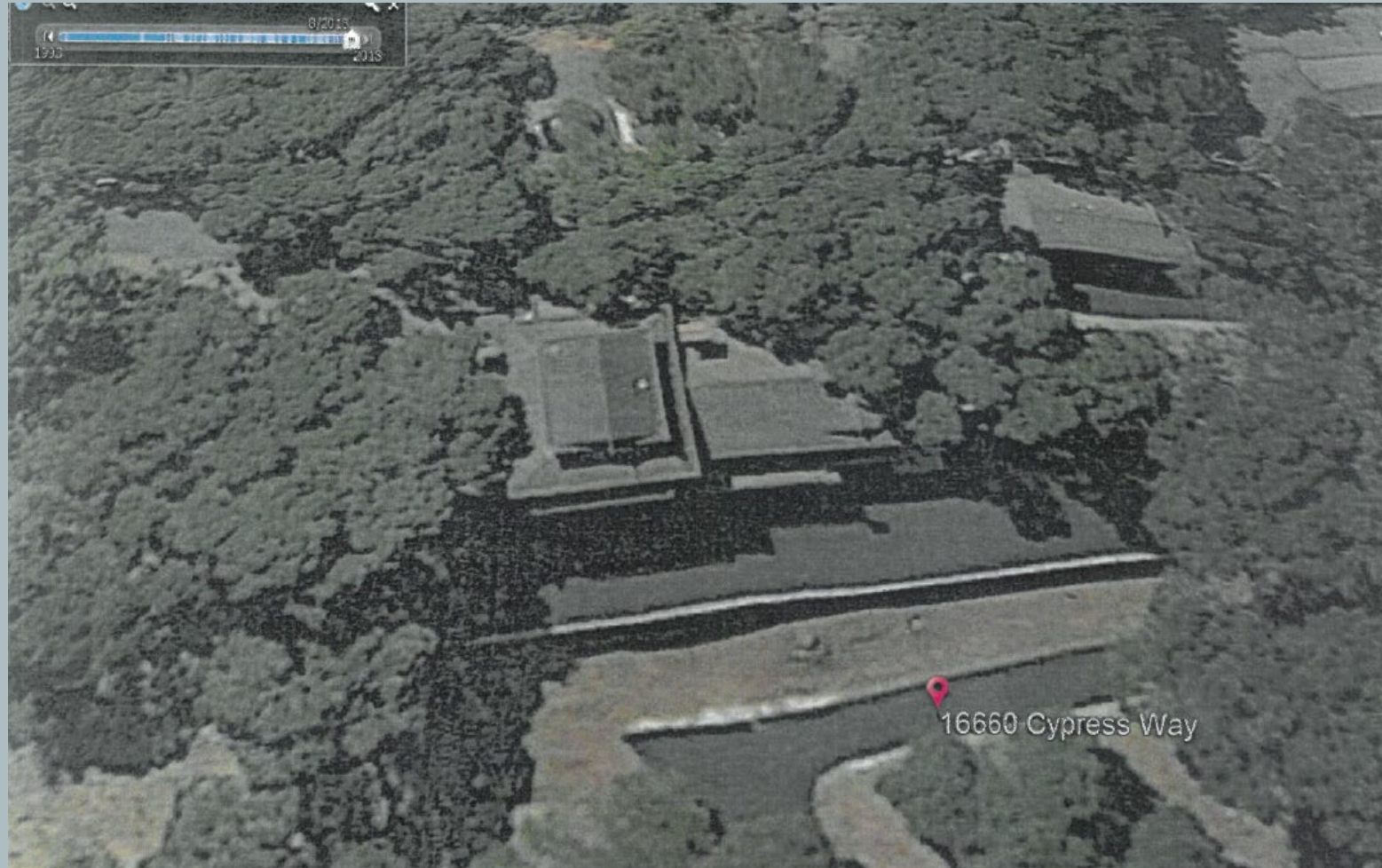
September 2017 Google Earth image of the property



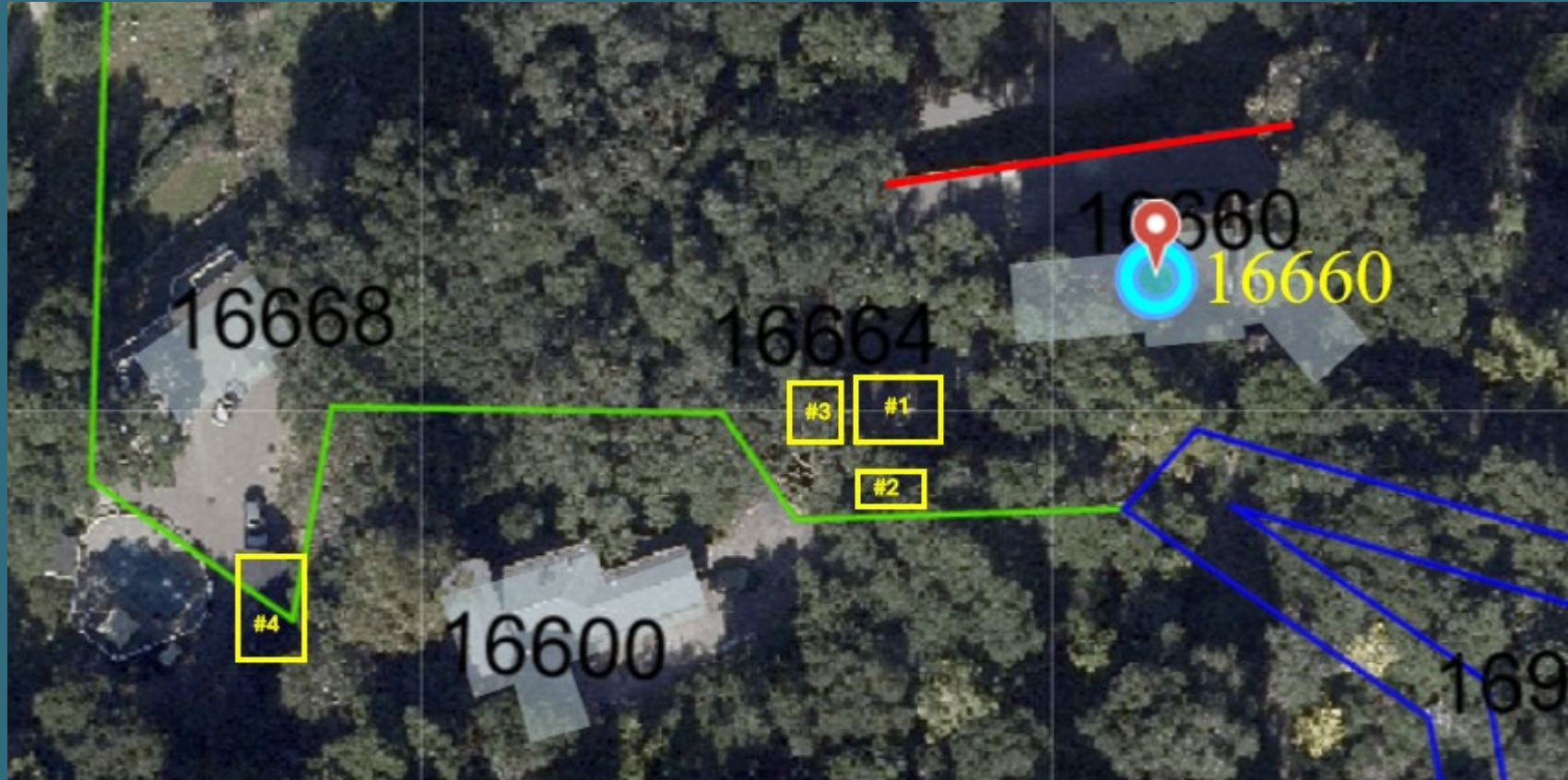
May 2018 Google Earth image of the property



August 2018 Google Earth image of the property



Approximate location of unpermitted retaining walls, ADU remodel, and accessory buildings



Not to scale



Large Retaining Wall



Building #1-ADU

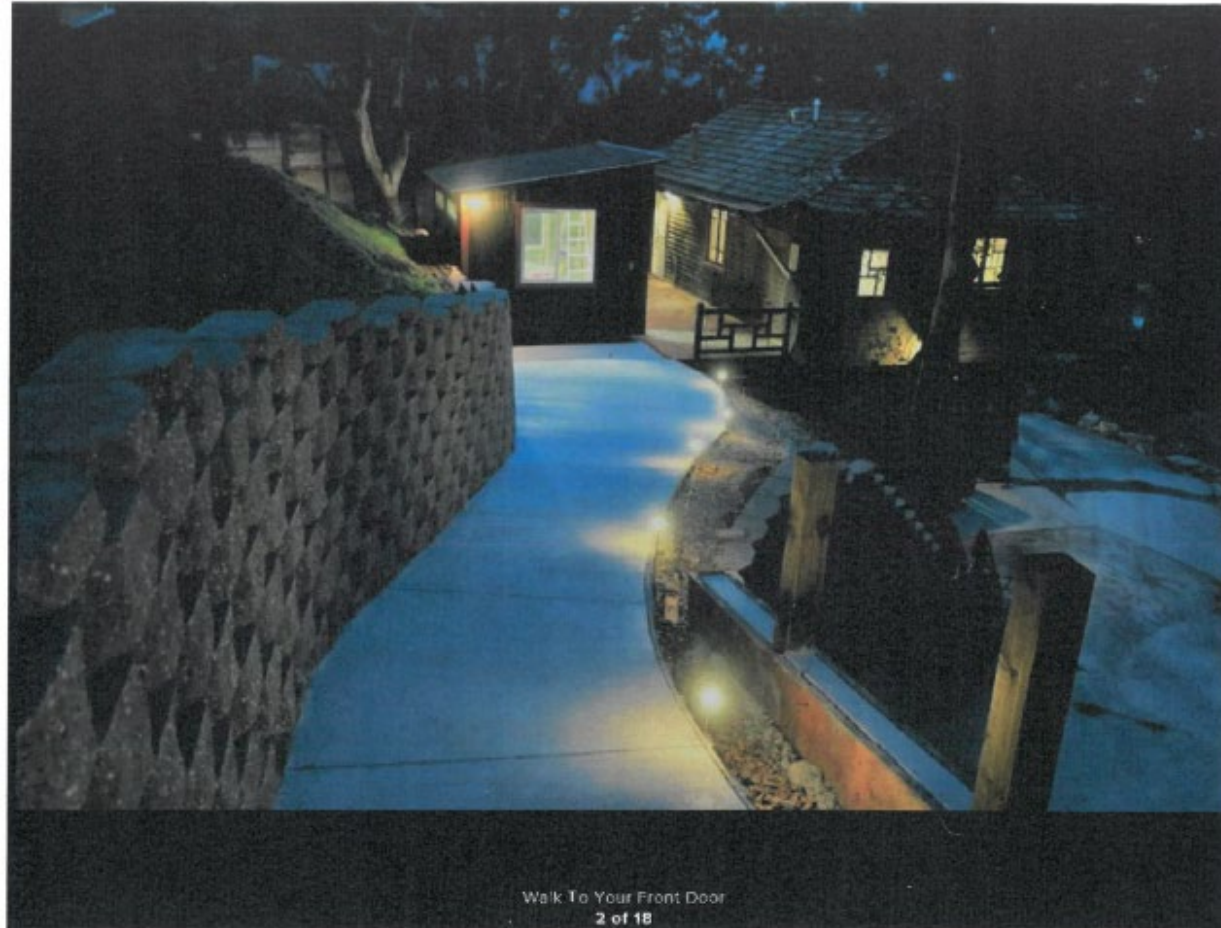
Building #2-Office Shed 124 sf

Building #3-Storage Building 197 sf

Building #4-Garage 294 sf

Unpermitted ADU remodel (Building # 1)

<https://hotpads.com/16664-cypress-way-los-gatos-ca-95030-1txztsu/pad> Accessed 11-13-19

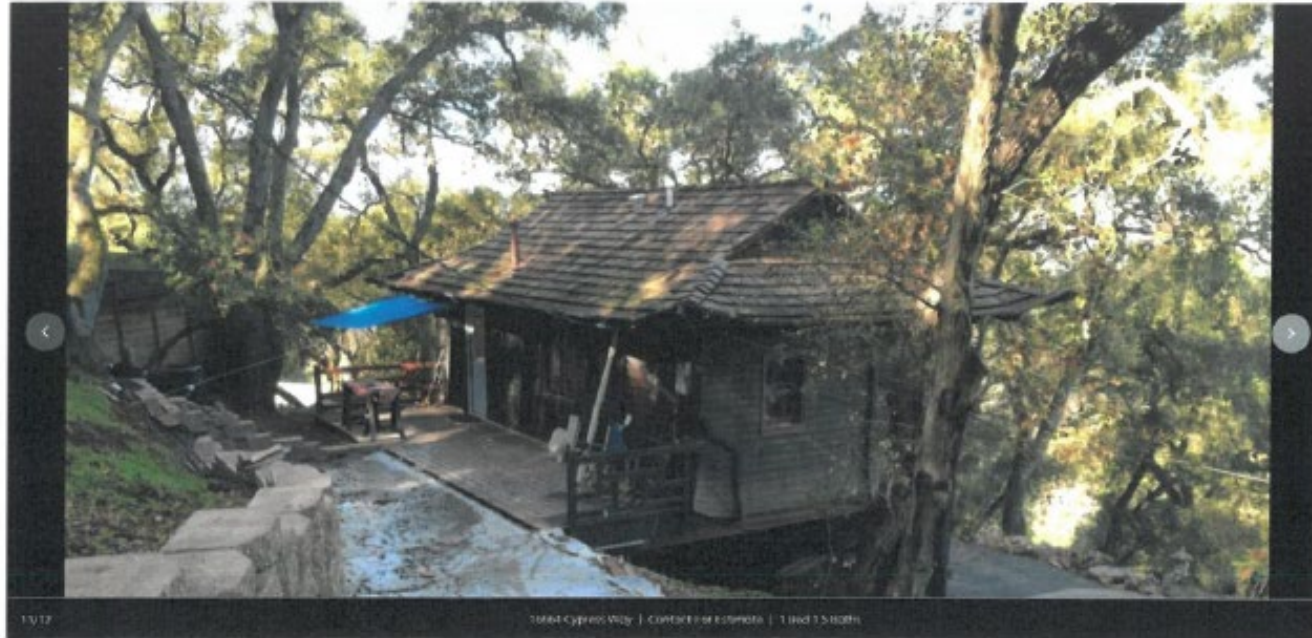


Walk To Your Front Door
2 of 18

Unpermitted ADU remodel (Building # 1)

<https://www.trulia.com/p/ca/los-gatos/16664-cypress-way-los-gatos-ca-95030-2345744967>

Accessed 11-13-19



Outside parking for your horse or horseless carriage. Up to 120 square foot out-building will be built depending on your desire. While a one year lease is offered, preference will be given to individuals that will sign a 2 year lease, with second year locked in at 5% higher rental rate than first year.

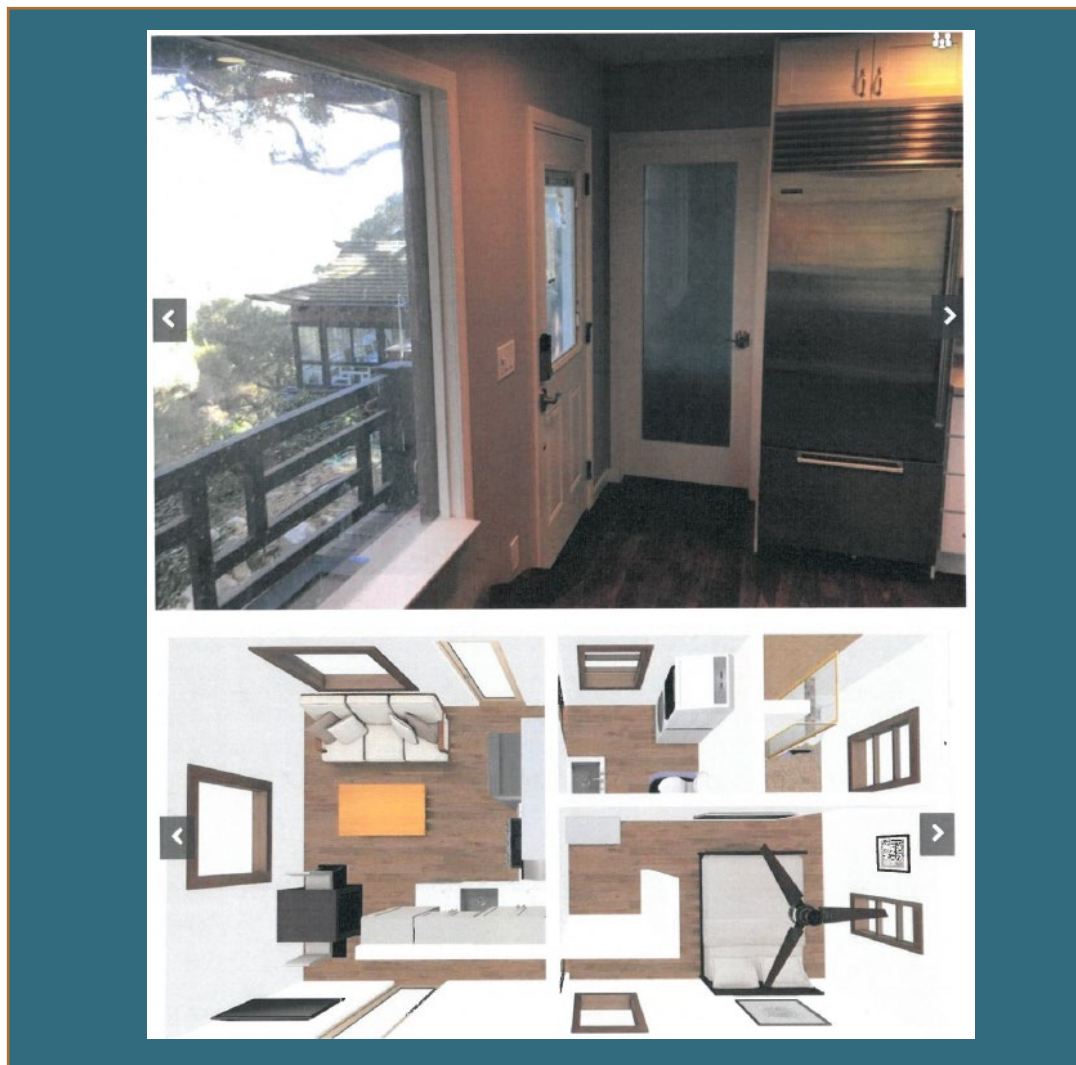
We are in final stages of the refresh, and are targeting a March 1st move in date. If you act now, you will be able to help us finalize the window coverings, laundry room sink, washer and dryer combo, and specify what you would like in the outbuilding, which can be a workshop storage or possibly even extra space for a separate office.

Unpermitted ADU remodel (Building # 1)

16664 Cypress Way- https://www.realtor.com/realestateandhomes-detail/16664-Cypress-Way_Los-Gatos_CA_95030_M19889-26473



Unpermitted ADU remodel (Building # 1)



Unpermitted ADU remodel (Building # 1)



Unpermitted 124 sf office shed (Building # 2)



Unpermitted 197 sf storage building (Building # 3)



Unpermitted 197 sf storage building (Building # 3)



Unpermitted 294 sf garage (Building # 4)



August 24, 2021 Architectural & Site inspection of unpermitted retaining walls and grading



August 24, 2021 A&S inspection of unpermitted retaining walls



August 24, 2021 Architectural & Site inspection of unpermitted retaining walls

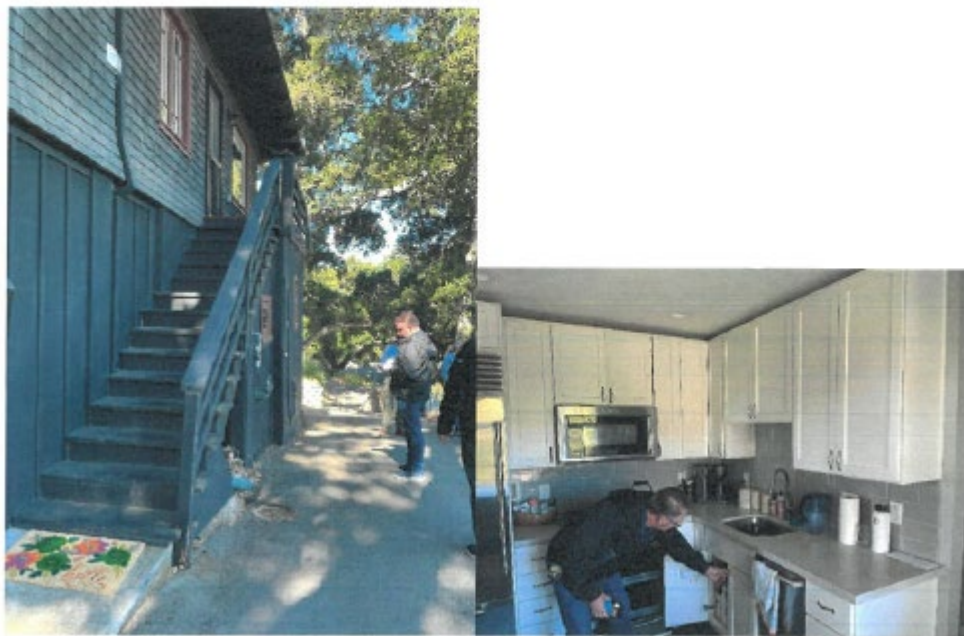


May 30, 2024

Inspection Warrant inspection

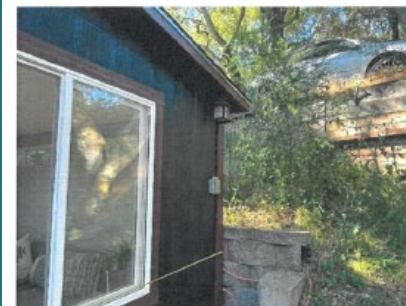
Detached Accessory Structure- Unpermitted Interior Improvements to a Permitted ADU on 2nd Floor/Over Garage

- ADU permitted on 08-27-87 (D-85-7)
- Unpermitted interior improvements
- Action: Obtain building permits for unpermitted improvements.



Detached Accessory Structure – Office behind Unpermitted ADU

- Unpermitted with power
 - o Power is provided via extension cord from ADU
- Does not meet setbacks for an accessory structure in the HR-2-1/2 zone
- Building Size: Approx: 124 s.f.
- Building Height: Approx: 10 ft – 2 in.
- Action: Obtain demolition permit from Building Department and demolish structure



May 30, 2024

Inspection Warrant inspection

Detached Accessory Structure – Storage to Adjacent to the Unpermitted ADU

- Unpermitted
- Less than 5 feet between accessory structures
- Does not meet setbacks for an accessory structure in the HR-2-1/2 zone
- Building Size: Approx: 197 s.f.
- Building Height: Approx: 14 ft – 1 in.
- Action: Obtain demolition permit from Building Department and demolish structure



May 30, 2024

Inspection Warrant inspection

Detached Accessory Structure – Garage next to Pool

- Unpermitted with power
- Crosses property line
- Does not meet setbacks for an accessory structure in the HR-2-1/2 zone
- Building Size: Approx: - 294 s.f.
- Building Height: 14ft
- Action: Obtain demolition permit from Building Department and demolish structure



Architecture and Site Application S-21-024 for Unpermitted Site Improvements Requiring a Grading Permit (Including Retaining Walls, Site Drainage, Grading and Tree Removal)

- Erin Walters, Associate Planner, asked for the status of the resubmittal of materials addressing the Staff Technical Review comments provided on January 31, 2024.
- Ted Defenbaugh, Property Owner, said he would check with the project Civil Engineer, Terry Szewczyk, on the status of resubmittal.
- Action: Code Enforcement to send a Compliance Order to resubmit required documents within 60 days or impose fines.



September 13, 2024
Photos prior to citation
(Building #2)



September 13, 2024 Photos prior to citation (Building #3)



September 13, 2024
Photos prior to citation
(Building #4)



Town Code Section 6.150.010 (R105.1)

105.1 Permits Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building structure, or facilities or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

Town Code Section 12.20.010

Sec. 12.20.010. - Required.

Except for the exemptions listed hereinafter, no person may grade or do grading work or perform any other land-disturbing or landfilling activity without first obtaining a grading permit.

(Code 1968, § 36.02.010)

September 16, 2024 Administrative Citation



Town of Los Gatos
Administrative Warning/Citation

Code Compliance
110 E. Main Street
Los Gatos, CA 95030
(408) 399-5746
PLADMCIT

Date Issued: 9/16/24 Time: _____

Code Compliance Violation NO. VL- 19-362 Zone: _____

Violation Address: 16660 Cypress Way Town: Los Gatos State: CA Zip: 95030

Name (Responsible person/business): Theodore and Lauri Deffenbaugh

Mailing Address: _____

Town/City: _____ State: _____ Zip: _____ Same as Violation Address

Document Issued: WARNING CORRECTION NOTICE ADMINISTRATIVE CITE

Issuing Department: CDD Compliance Date: 9/8/24 Inspection Date: 9/13/24

The total penalty is now due. Instructions for payment are listed on reverse page.

In order to comply with the Los Gatos Town Code, you will need to:

Obtain building permit for ADU remodel at 16664 Cypress Way. Obtain demolition permit and demolish approximately 124 sf office structure beside ADU, 197 sf storage structure behind ADU, and 294 sf garage structure adjacent to pool. Obtain retaining wall permit for unpermitted retaining walls. Obtain grading permit for unpermitted grading. Violations are accrued on a daily basis after the compliance date. \$100.00 for first violation, \$250.00 for second violation, \$500.00 for every violation thereafter. This citation is for September 9-13, 2024. *See attached for breakdown

Code Section	Description	Penalty Amount
6.150.010 (R105.1)	Permit required (4 buildings, 1 retaining wall)	\$9250.00
12.20.010	Grading permit required (grading associated with retaining walls and roadways)	\$1850.00

Photos Taken: (Circle one) YES / NO Quantity: 3 photos Total: \$11,100.00

Appeal of this Administrative Citation may be made by filling out a Hearing Request. Contact the Town of Los Gatos Community Development Department, 110 E. Main Street, Los Gatos, CA 95030 or by e-mail at CodeCompliance@LosGatosCA.gov for an application. Additional citations may be issued each day the violation exists.

NOTE: PERMIT(S) FROM THE PLANNING, BUILDING AND/OR PARKS AND PUBLIC WORKS DEPARTMENTS MAY ALSO BE REQUIRED FOR VIOLATIONS INVOLVING STRUCTURES, GRADING, ENCROACHMENTS AND TREE REMOVALS. WORK PERFORMED WITHOUT THE REQUIRED PERMIT(S) AND TOWN INSPECTION IS A VIOLATION OF THE TOWN OF LOS GATOS TOWN CODE AND WILL NOT QUALIFY AS COMPLIANCE.

Issuing Official: Allen Meyer Badge/Title NO.: Code Compliance Officer

Signature: *Allen Meyer* Date: 9/16/24 Phone: 408-399-5746

Signature: _____ Print Name: _____

Proof of Service: Via US Mail and email on September 16, 2024