



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 01/21/2025

ITEM NO: 13

DATE: January 15, 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

RECOMMENDATION:

Conduct a public hearing to hear an 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.

BACKGROUND:

At the appellant's request, this appeal hearing was rescheduled to the January 21, 2025, Town Council meeting from the December 17, 2024, Town Council meeting.

On September 16, 2024, the Town Code Compliance Officer issued an Administrative Citation against Theodore and Lauri Deffenbaugh, the owners of the property located at 16660 Cypress Way ("subject property") (Attachment 19). The citation alleged violations of the Los Gatos Town Code ("LGTC") for unpermitted construction and unpermitted grading. The citation asserted that there were violations of LGTC section 6.150.010, incorporating California Residential Code section R105.1, regarding four buildings and one retaining wall. The citation also asserted that there was a violation of LGTC section 12.20.010 regarding failing to have the required grading permit. The citation imposed an administrative penalty of \$9,250.00 for the violations of section 6.150.010 and \$1,850.00 for the violation of section 12.20.010. The locations that are the subject of the citation are shown on the aerial photograph in Attachment 4.

PREPARED BY: Lance Bayer
Special Counsel

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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LGMC section 1.10.040(d) states that every day of violation constitutes a separate offense. The administrative penalties in the citation were calculated from the compliance date on the Administrative Warning dated 7/8/2024.

Mr. and Ms. Deffenbaugh have appealed the citation and are entitled to an appeal hearing. In hearing this appeal, the Town Council is acting both as the Hearing Officer under LGTC section 1.30.040 and as the Board of Appeals under California Residential Code section R112.1.¹ The Council shall determine whether to uphold or cancel the citation. The Council also may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved. Administrative costs may include any and all costs incurred by the Town (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the Town in connection with the hearing before the Hearing Officer, including but not limited to costs the Enforcement Officer incurred in preparation for the hearing and for participating in the hearing itself, and costs of the Town to conduct the hearing.

DISCUSSION:

On September 27, 2016, Theodore and Lauri Deffenbaugh (“the Deffenbaughs”) purchased the property located at 16660 Cypress Way (Attachment 22). Aerial photographs show grading and paving activity taking place without the required permits in May and August of 2018 (Attachments 1,2, and 3).

In the summer of 2019, Town staff became aware of the violations of the LGTC at the subject property. The Town Code Compliance Officer sent an Administrative Warning to the Deffenbaughs on July 17, 2019, describing observed violations consisting of new buildings, retaining walls, grading, interior remodeling, electrical, plumbing, and HVAC (Attachment 8). The Administrative Warning requested the Deffenbaughs contact Town staff to schedule a meeting to discuss the scope of work. After the Deffenbaughs failed to respond, a second notice was sent on August 22, 2019 (Attachment 9).

The subject property contains a large residential accessory unit that was built with permits. In 2019, several marketing internet sites showed unpermitted construction inside the unit. This construction was done without obtaining the necessary permits (Attachments 5, 6, and 7).

The Deffenbaughs submitted an application for a grading permit and an architectural and site approval at the subject property on July 9, 2021 (Attachment 10). The accompanying letter of justification cited previously unpermitted “emergency” construction and proposed to mitigate the non-conforming installations. The letter of justification did not address the unpermitted construction involving accessory structures.

¹ California Health and Safety Code section 17920.5

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Town staff conducted a site inspection on August 24, 2021, and took photographs (Attachment 11). Some photographs show unpermitted retaining walls. The Town provided the Deffenbaughs with a Staff Technical Review addressing numerous deficiencies in the Deffenbaughs' application, including the failure to provide a full scope of work, failure to address hillside development standards, and failure to describe the proposed design that will mitigate the unpermitted work (Attachment 12).

The Deffenbaughs did not respond to the Staff Technical Review. A pending civil lawsuit between the Deffenbaughs and their neighbors, *Deffenbaugh v. Watson, et. al.*, addressed issues regarding grading and the retaining walls as well as a structure of the Deffenbaughs that purportedly straddled the property line between the two neighbors. The Town's code enforcement action is independent of the litigation between the Deffenbaughs and their neighbors.

On October 30, 2023, the Town notified the Deffenbaughs and their attorney that the Town would renew its code enforcement efforts at the subject property, beginning with a site inspection (Attachment 13). On December 13, 2023, the Deffenbaughs submitted an updated letter of justification for their July 9, 2021 application (Attachment 14). On January 31, 2024, the Town provided the Deffenbaughs with a Staff Technical Review addressing numerous deficiencies in the Deffenbaughs revised application, including the failure to provide a full scope of work, failure to address hillside development standards, and failure to describe the proposed design that will mitigate the unpermitted work (Attachment 15). The Deffenbaughs have not responded to the Staff Technical Review.

After efforts by Town staff to obtain consent to inspect the subject property were unsuccessful, the Town applied to the superior court and obtained an inspection warrant for the subject property on May 20, 2024 (Attachment 16).

The inspection took place on May 30, 2024. It was conducted by the Town Chief Building Official and included other members of Town staff. During the inspection, staff took photographs and observed: (1) The interior of an ADU above the garage (Attachment 4, #1). There was an interior remodel of the kitchen and bathroom areas without obtaining the required permits. 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 the minimum requirement and had openings exceeding a 4" diameter sphere; (2) A detached "office structure" beside the ADU (Attachment 4, #2). The structure was constructed without obtaining the required permits. It did not appear to be used for sleeping. It did not appear to have a foundation or seismic restraint. The power was provided via an extension cord (possibly a 12-gauge cord with ground). The structure was approximately 124 square feet with electrical. Although the building would require a building permit, the Zoning Code does not allow a

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structure at that location; (3) A storage structure behind the ADU (Attachment 4, #3). The structure was constructed without obtaining the required permits. The primary use appears to be storage but is wired for electrical and plumbed for what may be a future restroom. When asked about the electricity to the structure, the property owner stated it was provided via a battery system and is not connected to permanent power. The source or termination of the plumbing was not determined. The structure was approximately 197 sq. ft. with electrical and plumbing. Although the structure would require a building permit, the Zoning Code does not allow a structure at that location; and (4) The garage structure near the second living unit and pool (Attachment 4, #4). The structure was constructed without obtaining the required permits. This structure appeared to be a garage/storage with electrical provided from the second living unit. The structure was approximately 294 sq. ft. with electrical. The structure would require a building permit; however, the structure crosses a property line boundary and must be demolished (Attachment 17).

The Town Code Compliance Officer sent an Administrative Warning to the Deffenbaughs on July 8, 2024, describing observed code violations (Attachment 18). The warning provided a compliance date of September 8, 2024. The warning advised the Deffenbaughs that failure to comply “may result in daily fines and/or any other available legal remedies.” The Deffenbaughs did not meet the compliance requirements.

On September 16, 2024, the Town Code Compliance Officer issued an Administrative Citation against the Deffenbaughs (Attachment 19). On October 14, 2024, the Deffenbaughs submitted an Administrative Citation Hearing Request Form (Attachment 21). On the same date, attorney Richard M. Harris, representing the Deffenbaughs, submitted a letter to the Town Community Development Department regarding the appeal (Attachment 22). Notice of the Administrative Appeal hearing was sent to the Deffenbaughs and their legal counsel on November 7, 2024 (Attachment 23).

Town staff have calculated their costs related to the enforcement of this action as follows:

Employee	Amount of Hours	Hourly Rate (including benefits)	Total
Town Code Compliance Officer	23.5	\$ 140.27	\$3296.34
Town Chief Building Official	6	\$ 208.88	\$1253.28
Senior Planner	8	\$ 159.33	\$1274.64
			TOTAL \$5824.26

CONCLUSION:

Town staff respectfully requests the Town Council adopt a resolution (Attachment 24) upholding the administrative citation and imposing costs according to proof.

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ALTERNATIVES:

The Town Council has the following alternatives:

1. Uphold the administrative citation.
2. Cancel the administrative citation.
3. Impose costs.
4. Not impose costs.

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

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
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