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Daniel E. Post
Catherine J. Banti
Donald J. Black
Lisa Yoshida

Robert S. Rutherford
Michael Shklovsky
Kenneth R. Cyphers
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David G. Bjornstrom
Laney C. Rooks
Rose M. Zoia
Kayla M. Grant

March 24, 2021

VIA E-MAIL only (pcisco@srcityorg, kweeks@srcity.org, ccarter@srcity.org, akalia@srcity.org, vduggan@srcity.org, jokrepie@srcity.org, jpeter@srcity.org)

Chair Karen Weeks and Commissioners
City of Santa Rosa Planning Commission
Santa Rosa City Hall
100 Santa Rosa Avenue
Santa Rosa CA 95404

Re: 1900 Brush Creek Road
Lichau, Amber and Daniel
Hearing Date: March 25, 2021
Our File No.: 43501A

Dear Chair Weeks and Commissioners:

On behalf of Amber and Daniel Lichau, please consider this follow-up letter to my letter dated February 24, 2021, regarding the subject matter. This letter is in response to Chris Skelton's 25-page letter, which I received on March 23, 2021.

Appellant filed her appeal in December, 2020. She then requested, and despite the detriment caused the Lichaus, was granted a continuance of this hearing. On March 22, 2021, three (3) days before the hearing, appellant submitted (1) the 25-page letter from her attorney, Chris Skelton, (2) 245 pages of exhibits to that letter, and (3) a letter from Ray Carlson dated a month earlier. On March 23, 2021, appellant submitted yet another letter from Mike Buti, for a total of 273 pages. We have attempted to keep this letter in response to this document dump as short as possible and submitted as quickly as possible.

Nothing in this voluminous material changes the well thought-out, careful analysis and conclusion reached by staff. At the outset, the theme of Mr. Skelton's letter is to portray the Lichau's error as some sort of premediated scheme to avoid going through city processes and obtaining a permit. This is entirely unfounded and a reality that exists only in the mind of the appellant and/or her attorney. Mr. Skelton accuses the Lichaus of lying about their lack of knowledge about having to

obtain a permit prior to construction; he goes so far as to characterize Mr. Lichau as duplicitous, i.e., deceitful. Mr. Lichau is a Napa County Deputy Sheriff and veteran of four (4) tours of duty in the Iraq and Afghanistan wars as a special operations medic in the army rangers. Mr. Lichau received two (2) Purple Hearts for his service to this country. (Mrs. Lichau is a nurse at Kaiser and has been on the front lines of the pandemic for a year.) Mr. Skelton should know more about the individuals he is accusing of being dishonest prior to making such accusations.

The actual reality, as explained in my letter dated February 25, 2021 and in Mr. Lichau's submission dated March 23, 2021, is that the Lichauses were given misinformation, reasonably relied on it, and erroneously, and innocently, acted thereupon. The actual reality, as reflected in the record, is that the Lichauses have made every effort to correct their mistake, which efforts are sanctioned by city processes, at great expense – in fact, at more expense than they would have incurred had they not made the initial mistake.

Mr. Skelton's letter, unfortunately, contains further ad hominem references to the Lichauses, as well as to staff. For example, the Lichauses are referred to as a "Builder" in an apparent attempt to elevate them from homeowners who admittedly erred and apologized for the mistake and who followed as-built application procedures, to a nameless and faceless entity experienced in building single-family residences. The error is exaggeratedly characterized as a "callous and blatant disregard for the rules" in an apparent and unsubstantiated attempt to color this Commission's view of the applicants. In the letter, appellant accuses staff of acting "irrational," and arbitrarily and capriciously. The Lichauses are confident city staff involved in this process (from no less than the Planning Division, City Attorney's Office, Building Division, and Code Enforcement) are experienced, logical professionals who take their jobs seriously, perform it with skill and knowledge, and do not grant special favors.

Mr. Skelton does not stop at insulting the Lichauses and city staff, but goes on to accuse Tony Cabrera, a former City Engineer who left his position with the City six (6) years ago, of "utilizing his personal contacts with the City to artificially manipulate and influence this appeal." Not only is this accusation unfounded and insulting to Mr. Cabrera, who makes no secret of his former position on the website for Cabrera and Associates, but deeply offensive to City staff by implying their recommendation can be manipulated by a former city employee. There is no conflict, real or perceived, by Mr. Cabrera doing his job as a consultant to the Lichauses.

The Appeal

In his letter, Mr. Skelton states two (2) reason for the appeal: 1) the removal of the redwood tree and, 2) the construction of the addition which, according to appellant, is in violation of the “City’s development standards” and cannot now be granted a permit.¹ Neither ground has merit and the appeal should be denied.²

Removal of the Redwood Tree

Appellant fails to make a convincing case regarding the removal of the single redwood tree. She makes no showing the redwood tree enhanced the appearance of Brush Creek Road. She likewise fails to demonstrate a negative impact to Brush Creek Road. Appellant fails to identify “various alternative locations” on the property that would reasonably accommodate the addition.³ Unsupported assumptions and speculation do not make a cogent and persuasive argument.

¹ These are the only grounds asserted by appellant, and all others have been waived. For example, in an email to city staff dated March 3, 2021, regarding a meeting with staff on March 4, 2021, Mr. Skelton sets forth his “agenda” of the items he would like to discuss at the meeting including what appears to be a claim that appellant relied, to her detriment, on the fact that building envelopes apply to the Lichau’s addition. It is not clear to what Mr. Skelton is referring but such claim is not ripe for appeal and, in any event, the City applied the building envelope and setbacks as required by code, and the addition is in compliance. Also, detrimental reliance is a legal term used to force another to perform their obligations under a contract, using a theory called promissory estoppel. Promissory estoppel means a promise was made, the person relied on the promise and the reliance was reasonable or foreseeable, there was actual reliance, the reliance was detrimental, and injustice can only be prevented by enforcing the promise. These elements are missing from this scenario. This, along with the rambling 25-page letter accompanied by hundreds of pages of exhibits, evidences appellant’s tactic of throwing concepts and claims against the wall and hoping something sticks.

² In his letter, Mr. Skelton states a water line was traced by a private service and located on the Lichau’s property. In early March 2021, painted lines and markings appeared on the Lichau’s property which were not placed there by the City. The Lichaus hope appellant did not authorize a third party to trespass on the Lichau’s property.

³ Given the fervor with which this neighbor/appellant objects to this 360 square foot bedroom addition to a small family home and removal of one tree in her neighbor’s yard, one must wonder whether any site on the property for the addition would be acceptable to the neighbor, or whether this neighbor is prepared to object to any work done on the Lichau’s property.

It is important to keep in mind this project involves the removal of one redwood tree which removal will be mitigated according to city code. Mr. Skelton's request to increase the required mitigation fees by four (4) times has no basis in law or logic. Mr. Skelton seems to think one homeowner's erroneous removal of one redwood tree on their property off of Brush Creek Road will unleash an avalanche of other homeowner's disregarding the tree ordinance. Such a conclusion is unbelievable.

Further, the two-year moratorium cannot logically and fairly be applied here. The addition has already been built and is proceeding on an application for an as-built. Imposing a two-year moratorium would presumably require either 1) the demolition of the addition, which is a remedy outrageously out of proportion to the violation or, 2) the addition remain empty for two (2) years prior to being permitted, a remedy that also is out of proportion to the violation and realistically unworkable. It further would lead to an unmaintained and potentially dilapidated structure attached to the original house.

The "chronology" to which Mr. Skelton attributes great importance does not lend support to appellant's complaint about the removal of the tree. Mr. Skelton's tenuous conclusions based on emails and letters are speculative and self-serving. (*Please see §§ 7.a., b., c.; 8.a., b.*)

Mr. Skelton's attempted "gotcha" attacks on Mr. Lichau by claiming he is a licensed contractor and owner of a construction company is of no help to appellant. Mr. Skelton is wrong about Mr. Lichau being a licensed contractor. As explained in Mr. Lichau's letter dated March 23, 2021, he is a co-owner with two (2) friends in a new company called Lidoli, Corp. and not the qualifying individual for the license. Mr. Lichau does not have his contractor's license and has no experience with building or pulling permits. In any event, Lidoli, Corp. has a certification for Hazardous Substance Removal and will focus on fire clean-up in cooperation with the California Department of Forestry and Fire Protection (Cal Fire).

Setbacks and Building Envelope

With respect to the setback issue, condition no. 3 states "[f]ront setbacks shall be 50 feet from Brush Creek Road" and City code section 20.30-110 C.1. a. states, "[a] required front setback shall be measured by the most restrictive of the following methods to the nearest point of the front wall of the building,..." The addition complies with both requirements.

The additional information on Sheet 4 of the parcel map “is for informational purposes, *describing conditions as of the date of filing*, and is not intended to affect record title interest.” (Gov. Code § 66434.2, emphasis supplied) City Code section 19-32.150). It does not override required setbacks as set forth in the city code. City Code section 20-22.050, sets forth the required setbacks for the R-1-15-SR Zoning District, and section 20-28.050 establishes the scenic road setbacks. The addition complies with all requirements. While acknowledging Ray Carlson’s long and respected career, nothing in his letter, or Mike Buti’s letter, changes this conclusion.

The City Did Not Abuse its Discretion

Accusing the City of abusing its discretion, and/or acting arbitrarily and capriciously (these are two different standards), is another of appellant’s red herrings, i.e., attempts to divert from the actual issue at hand. The issues on this appeal are the removal of the tree and the construction of the addition being mitigated and permitted as-built. The issues do not revolve around how code enforcement processes complaints, how the building department logs submittals, or the precise timing of the city’s determinations. Mr. Skelton goes so far as to complain about the replacement of a light fixture.

The complaints around the submission of the appeal and the alleged “prejudice” in the scheduling of this hearing are curious. Appellant’s appeal was accepted and the hearing was continued at appellant’s request. Mr. Skelton’s complaints regarding the substance and process of this hearing are unclear. A building permit is a ministerial process, appellant was permitted to appeal, and we now have a hearing before the Planning Commission where appellant can air, and has aired, her grievances.

In sum, the Lichaus are in agreement with and support the City’s determination that the addition can be permitted and the loss of the tree mitigated. The Lichaus are prepared to move forward with finalizing the construction of this modest addition to their family home, complying with all requirements, and respectfully request this Commission deny the appeal in its entirety. It is time for all to move on with their lives.

Thank you for your considered attention to this matter.

Sincerely,

Rose M. Zoia

Rose M. Zoia

cc: Amber and Dan Lichaus
Andrew Trippel
Bill Rose
Sue Gallagher
Tony Cabrera

From: [Chris Skelton](#)
To: [Trippel, Andrew](#)
Cc: [CMOffice](#); [Rose, William](#); [McGlynn, Sean](#)
Subject: [EXTERNAL] Appeal B20-687 Supp. Documents
Date: Monday, March 22, 2021 6:06:00 PM
Attachments: [image001.png](#)
[image003.png](#)
[EXHIBITS to Supp. Appeal Letter 3.22.21 \(compressed\).pdf](#)
[Supp. Appeal Letter 3.22.21.pdf](#)

Mr. Trippel,

Please find attached a supplemental appeal letter in support of the above referenced matter that is scheduled for hearing this Thursday before the Planning Commission. Please confirm receipt of the two attachments.

Can you please forward this communication and the supporting exhibits to the Commissioners to ensure they receive the information in advance of the hearing date.

Respectfully,

Chris

Chris A. Skelton

Attorney

Land Law LLP

1010 B Street, Suite 200 | San Rafael, CA | 94901
O. 415.483.0050 | M. 415.272.4336 | Chris@landlawllp.com
www.landlawllp.com

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From: [Chris Skelton](#)
To: [Trippel, Andrew](#)
Cc: [CMOffice](#); [Rose, William](#); [McGlynn, Sean](#)
Subject: [EXTERNAL] RE: Appeal B20-687 Supp. Documents
Date: Monday, March 22, 2021 6:07:55 PM
Attachments: [image001.png](#)
[image003.png](#)
[image005.png](#)
[Ray Carlson Ltr..pdf](#)

All,

Please find attached an additional public communication in support of the above referenced appeal by Ray Carlson. Here too, please confirm receipt and inclusion in the public record.

Chris

Chris A. Skelton

Attorney

Land Law LLP

1010 B Street, Suite 200 | San Rafael, CA | 94901
O. 415.483.0050 | M. 415.272.4336 | Chris@landlawllp.com
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From: Chris Skelton
Sent: Monday, March 22, 2021 6:05 PM
To: ATrippel@srcity.org
Cc: CMOffice@srcity.org; [Rose, William <WRose@srcity.org>](mailto:WRose@srcity.org); [McGlynn, Sean <smcglynn@srcity.org>](mailto:smcglynn@srcity.org)
Subject: Appeal B20-687 Supp. Documents

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From: [Chris Skelton](#)
To: [Trippel, Andrew](#)
Cc: [CMOffice](#); [Rose, William](#); [McGlynn, Sean](#)
Subject: [EXTERNAL] RE: Appeal B20-687 Supp. Documents
Date: Tuesday, March 23, 2021 3:38:48 PM
Attachments: [image001.png](#)
[image003.png](#)
[image005.png](#)
[image007.png](#)
[878-Parnell.pdf](#)

All,

Please find attached a letter from Mike Buti in support of the appeal. As with the prior documents submitted, please confirm receipt and forward to the Commissioners in advance of Thursday's meeting.

Thank you,

Chris

Chris A. Skelton
Attorney

Land Law LLP
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From: Chris Skelton
Sent: Monday, March 22, 2021 6:08 PM
To: ATrippel@srcity.org
Cc: CMOffice@srcity.org; [Rose, William <WRose@srcity.org>](mailto:WRose@srcity.org); [McGlynn, Sean <smcglynn@srcity.org>](mailto:smcglynn@srcity.org)
Subject: RE: Appeal B20-687 Supp. Documents

All,

Please find attached an additional public communication in support of the above referenced appeal by Ray Carlson. Here too, please confirm receipt and inclusion in the public record.

Chris

Chris A. Skelton

Attorney

Land Law LLP

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From: Chris Skelton

Sent: Monday, March 22, 2021 6:05 PM

To: Atrippel@srcity.org

Cc: CMOffice@srcity.org; Rose, William <WRose@srcity.org>; McGlynn, Sean <smcglynn@srcity.org>

Subject: Appeal B20-687 Supp. Documents

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From: [Peterson, Julian](#)
To: [Chris Skelton](#)
Cc: [Trippel, Andrew](#); [Rose, William](#)
Subject: Re: [EXTERNAL] 1900 Brush Creek Appeal Documents
Date: Wednesday, March 24, 2021 9:34:38 AM
Attachments: [image003.png](#)

Good morning,

Received, thank you.

Julian

From: Chris Skelton <chris@landlawllp.com>
Sent: Tuesday, March 23, 2021 10:22 PM
To: Peterson, Julian <jpeterson@srcity.org>
Subject: [EXTERNAL] 1900 Brush Creek Appeal Documents

Dear Commissioner Peterson,

I am writing to you directly since it appears that City Staff may not have previously distributed the supplemental appeal letter(s) submitted this week. I draw this conclusion because agenda item 9.2 includes "late correspondence as of 3.23.21" but the agenda item 9.1 for the Brush Creek appeal does not include any similar annotation. Although I did receive confirmation from the City Manager's office email that the documents were received, neither Andrew Trippel nor Bill Rose directly confirmed receipt or distribution to the Commission.

Regardless, please find attached the following:

1. Letter supporting appeal from Ray Carlson (licensed surveyor)
2. Letter supporting appeal from Mike Buti (licensed surveyor and consultant who worked on the Dehnert subdivision)
3. Supplemental appeal letter prepared by my office
4. Exhibits to support the supplemental appeal letter.

To the extent that I may clarify any questions or concerns in advance of the hearing, please feel free to reach out directly. Also, if you would like to visit the property and understand the conditions from the appellant's point of view, Kathy Parnell may be reached at 415.336.8869.

Many thanks in advance for your service on the commission as well as time and attention to this appeal.

Sincerely,

Chris

Chris A. Skelton

Attorney

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O. 415.483.0050 | M. 415.272.4336 | chris@landlawllp.com

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From: [Amber Lichau](#)
To: [Weeks, Karen](#); [Peterson, Julian](#); [Carter, Charles](#); [Rose M. Zoia](#); [Trippel, Andrew](#); [Kalia, Akash](#); [Duggan, Vicki](#); [Okrepkie, Jeff](#); [Holton, Jeffrey](#); [Rose, William](#)
Subject: [EXTERNAL] 1900 Brush Creek Road Appeal Applicant Response- March 25th Commission Meeting
Date: Wednesday, March 24, 2021 8:05:08 AM
Attachments: [1900 Brush Creek Road Appeal Applicant Response.pdf](#)

Good morning,
Please see attached response letter in regards to tomorrow, March 25th's, scheduled meeting.
I thank you for your time.

Sincerely,
Daniel Lichau

From: [Tony](#)
To: [Rose, William](#); [Trippel, Andrew](#)
Subject: [EXTERNAL] Planning Commission - March 25
Date: Friday, March 19, 2021 11:09:11 AM

Good morning Bill and Andrew. Happy Friday!
We're looking forward to meeting/talking with you next week. Due to availability we'd prefer to have a phone conference call rather than Zoom. So when you have the time set, please let us know.

Through our Records Request, we see that Chris Skelton sent you a message outlining what he wanted to discuss in your meeting set for March 4. So we'd like to know what your response was to his following questions/items of discussion (paraphrased):

- 1 - What is the difference between a Report Item and a Public Hearing? Why was this determined to be a Report Item?
- 2 - At the last PC meeting we were limited to only 3 minutes to speak to the Commission. Mr. Skelton appears to be asking to speak for 15-20 minutes. How much time will we be allotted to speak on the 25th? Will we be allotted time to respond to any comments made by the appellant?

We have a few additional questions not related to Mr. Skelton's message. Why did the Commission hold a vote for the previous continuance and it appears that this continuance was automatic and no vote was held? Will other continuances be granted or considered? If so, will a vote be held or will it be automatic? Is there a limit to the number of continuances for this item?

Lastly it appears from Mr. Skelton's message that the issues he raised are focused on policy and procedure and do not address the appeal itself. Will these issues that Mr Skelton raise be heard by the Commission, since they do not address the appeal? Will the issues have any bearing on the decision of the Commission? Will these issues delay any decision by the Commission?

Please let us know when you find a time to have our conference call next week.

Thank you,

Tony

Cabrera and Associates
252 Pheasant Drive
Healdsburg, Ca. 95448
707-321-9951