

**FILED**

APR 05 2021

**APPEAL FORM**

CITY OF SANTA ROSA  
CITY CLERK'S OFFICE

Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

City Clerk's Office/Rec'd by: emailed to City Clerk email box

Name of Appellant: Kathleen Parnell

**TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:** The above named appellant does hereby appeal to your Honorable Body the following:

The decision of the: (List Board/Commission/Dept.) Planning Commission

Decision date: 3/25/2021

Decision: (approval, denial, other) Denial of Appeal of the Director's Determination for 1900 Brush Creek Rd.

Name of Applicant/Owner/Developer: Daniel and Amber Lichau

Type of application: (Rezoning, Tentative Map, etc.) After-the-fact tree removal and retroactive approval for building permits that deviates from parcel map requirements and zoning standards.

Street address of subject property: 1900 Brush Creek Road

The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed.)


1. Please see attached sheet

2. \_\_\_\_\_

The specific action which the undersigned wants the City Council to take is: (Attach additional sheets if more space is needed.)

Please see attached sheet

Appeals shall be submitted in writing.....on a City application form within 10 calendar days after the date of the decision. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.

	<u>April 2, 2021</u>
Applicant's Signature	Date
<u>Kathleen Parnell</u>	<u>1888 Brush Creek Road, Santa Rosa, CA 95404</u>
Applicant's Name (type or print)	Address
<u>415-336-8869</u>	<u>415-336-8869</u>
Daytime Phone Number	Home Phone Number

## SEPARATE SHEET FOR 1900 BRUSH CREEK ROAD APPEAL

### **The grounds upon which this appeal is filed are:**

1. The Planning Director's determination and the Planning Commission's decision to uphold that determination resulted in prejudicial abuse of discretion because: (1) the City failed to proceed in a manner required by law; (2) the decision was not supported by any findings; and (3) any implied findings were not supported by evidence. Examples of the abuse of discretion includes, but is not limited to:
  - a. Determination that building envelopes as shown on pg. 4 of Parcel Map are not applicable/enforceable.
  - b. Determination that an interior side setback is the applicable dimension for measuring compliance.
  - c. Determination that the conditions of approval for Parcel Map 609 are not applicable/enforceable.
  - d. Absence of consideration or applicability of scenic road factors in evaluating the illegal heritage tree removal.
2. The appeal of the Planning Director's determination submitted on 12/9/20 was unreasonably and improperly withheld by staff resulting in an abuse of process. During that time, the building permit was "legalized" by Staff, when a "stay" should have been in effect. The importance of this procedural abuse is recharacterizing the zoning code violation appeal to an appeal of a building permit, which the applicant and City affirm as a ministerial process.
3. The City further evidenced an abuse of process through denial and unreasonable delay in production of public records and unjustifiably redacting and withholding other public records.
4. The City also abused its discretion in January 2021 by approving an in-lieu fee petition as mitigation to the illegal heritage tree removal permit.
5. The City failed to validate assertions made in Applicant's explanation of the light complaint, which was a requirement to enable "legalization" of build.
6. There was an abuse of process in that the staff member that served as the Director for purposes of rendering a decision of conformance and approval of heritage tree removal is the same staff member who prepared and delivered the staff report to the Planning Commission. As a practical matter, the staff member is incentivized to defend his own work and affirm the determinations already rendered.

### **The specific actions which the undersigned wants the City Council to take is:**

1. Uphold the appeal and reverse the determination of the Director.
2. Enforce Chapter 17 of the Municipal Code by requiring appropriate mitigation for the illegal heritage tree removal. This measure of mitigation may come in the form of a replacement planting plan, in lieu fee, and/or plant appraisal by a qualified professional to determine the value of the tree that was illegally removed.
3. Enforce Chapter 17 of the Municipal Code by imposing the statutorily mandated 2-year moratorium on any additional permits on this property, including the illegally constructed addition.
4. Removal the illegal construction. The value of the construction was identified on the building permit as \$40,000. While this is certainly a meaningful amount of money, the materials could

be salvaged for future use on this property, after the 2-year moratorium, or sold to others to recover some of those costs.

5. Enforce the parcel map's building envelope as depicted on sheet 4 of that map.
6. Enforce the conditions of approval related to setbacks and improvements as detailed in the minutes approving the map.

Date: April 2, 2021  
To: Mayor Schwedhelm and Members of the City Council  
From: Kathy Parnell  
RE: 1900 Brush Creek Appeal (ST20-003)

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I respectfully request the City Council review my Appeal regarding 1900 Brush Creek Road. This isn't a "neighborly dispute," but an Appeal regarding the enforcement of City Code. Below, I have highlighted various errors, issues and concerns, which I hope will provide a more complete understanding of what has occurred.

In July 2019, the Applicants, Dan and Amber Lichau, purchased 1900 Brush Creek Road. Within 6 weeks, Amber Lichau contacted the City regarding the property, and Planner Monet Sheikhalil emailed Amber Lichau a **building permit application**, along with links to the property's Final Map, City Code section 20-28.050 on Scenic Roads (which includes the **permit requirement for tree removal**), and City Code section 20-30.110 with general information on setbacks.

In October 2019, Ivan Rezvoy, acting on behalf of the Lichaus, emailed the City, copying Amber Lichau and Tom Lynch (licensed contractor of Tom Lynch Construction). Ivan Rezvoy sent the City a site plan with questions about the setback for a 10'x29' proposed addition to the Lichau's existing home on the north side of the property.

Rezvoy stated, "*The final map ...shows the private road and utility easement of 30' from the northern property line of the parcel 182-140-056. This setback allows for 10'x29' footprint addition to the northern side of the existing house (see attached Site Plan). The building envelope, established with the recordation of the final map (see sheet 4 of the Final Map) does not define the distance of its northern boundary from the property line. Final Subdivision Report of June 21, 2000 does not mention this boundary at all. Please advise whether we can proceed with planned improvements as they are shown on the Site Plan, or should we apply for the modification of the building envelopes designated on the parcel.*"

Ivan Rezvoy erroneously concluded three critical pieces of information in his email sent with the site plan for this build:

(1) "*The final map...shows the private road and utility easement of 30' from the northern property line.*" **In fact, over Lot 3 (the Lichau property), the width of the private road and utility easement is approximately 43' where it meets Brush Creek Road, and then it tapers to 30' moving eastward on the private road. Of importance, the private road was acknowledged by Rezvoy.**

(2) "*This setback allows for a 10'x29' footprint addition to the northern boundary of the property line.*" **Here, Rezvoy wrongfully concluded that the 30' private road and private and public utilities easement is the building setback.**

(3) "*The building envelope ...does not define the distance of its northern boundary from the property line. Final Subdivision Report...does not mention this boundary at all.*" **Actually, the Minutes of the Subdivision for the Lands of Dehnert address the applicable building setbacks, the required distance of the existing home to the private road (a minimum of 10') and a 46' turn-around capability on the**

common driveway to opposing face of curb. This 46' foot measurement is measured from the northern edge of the building envelope on all three properties, which was shown on the Supplemental Sheet of the Parcel Map prepared by Surveyor Mike Buti at the time of the subdivision. The two homes later built in Lots 1 and 2 were within their 46' building envelopes. The 30' public utilities easement discussed above was recorded in 1993, prior to the subdivision of the property. An additional private road and private utilities easement was created in the subdivision, which impacts Lot 3 with a more restrictive easement due to the placement of a private water line from Brush Creek Road to Lots 1 and 2. Mike Buti checked the box on the Plan Review checklist for "*Building Setback Lines for Existing Building,*" indicating the existence of the building setback lines for the existing house on the Lichau property.

I believe the City then made an error in its review of Rezvoy's email and site plan:

**In October 2019**, Planner Monet Sheikhalii responds to Rezvoy, "*It has been determined that the new addition needs to comply with the required setbacks for R-1-15-SR zoning district per Section 20-22.050. No need to apply the setbacks being shown on the supplemental sheet.*" Here, Planning (Monet Sheikhalii) concluded without explanation that the building envelope on the supplemental sheet was **not applicable**, which would seem to defy logic to any homeowner, who has relied on the supplemental sheet of their Parcel Map at the time of purchase or sale of their home, or during a decision to build or not to build because of a building envelope. If envelopes on the supplemental sheet are not enforceable, then why did the Lichaus receive this page when signing their property deed in July 2019?

Note: This 2019 email correspondence was disclosed to me in the Staff Report attachments for my Appeal to the Planning Commission. Until this time, this information was withheld, even when it had been requested through a public records request.

It is my understanding that fire rebuilds under Resilient City do allow for re-building outside of original building envelopes using less restrictive, current zoning code without requiring Subdivision Committee Approval; and, that approval can be made within the City's Planning Department. I believe Monet Sheikhalii likely made an error in her 2019 response and treated 1900 Brush Creek similar to a Resilient City rebuild, whereby there would be "*no need to apply the setbacks being shown on the supplemental sheet,*" and current zoning code could be applied.

**On 12/10/20**, Chief Building Official Jesse Oswald emailed me, "**The investigation and determination for application of the Law were done during the Tubbs Fire rebuild.** *The determination(s) apply globally to supplemental information on Final Maps unless supporting entitlements and/or development requirements are found to have been applied.*"

The Lichau's build had absolutely nothing to do with the Tubbs Fire or Resilient City re-builds. The Director's determination that the build could be legalized was made on November 23, 2020, and the decision was communicated to me by phone by Chief Building Official, Jesse Oswald, on December 4, 2020, four months after filing my initial complaint about what I believe is a zoning code violation. Mr. Oswald followed up with an email regarding the decision on December 7, 2020, and **I emailed my Appeal to the City regarding this determination on December 9, 2020.**

**On November 17, 2020**, Andrew Trippel emailed Monet Sheikhalii, "*Hi, Monet, How did you determine that the building setback lines were not acceptable? Typically, we would review other Planning entitlements to determine if they were required by the DAC or a CUP. Did you not find anything?*"

This email was provided to me just recently as part of a public records request, and I believe it demonstrates that even 4 days prior to the Director's Determination about the building envelope, there were questions raised about Monet Sheikhal's 2019 determination.

On December 23, 2020, following multiple requests for the law or reasoning applied that had made the building envelope at 1900 Brush Creek "*not enforceable*," I was provided the City's reasoning for the decision, which I believe is flawed. If the law or reasoning were clear that the build was legal and not a zoning code violation with regard to the north set-back, then it should not have taken **four months** for the City to communicate this to me after filing my complaint and then **another 3 weeks** to provide an explanation to me. The City's lack of transparency and candor has been intentional and extremely frustrating.

*On information and belief, after receiving Sheikhal's email, the building setbacks for R-1-15-SR zoning district were **then incorrectly applied** by the Lichaus and their building experts, who knew better, in order to justify the 12'x30' addition.* Between October 2019 and around March 2020, when the build began, the Lichaus had time to research the set-back with their experts, or seek further clarification from the City. If they applied a setback from the private road and utilities easement, **they would have realized that the planned addition was not viable but for a few feet, at most, depending on the type of setback applied**; instead, they applied a setback from the northern property line *such that the building setback falls within the private road and utilities easement itself*. An interior side set-back was wrongly applied from the property line, instead of a set-back from the private road/driveway (e.g. corner side setback). The Planning Commission did not address a **corner side setback, which requires a 15' setback to a private road/driveway**.

The Lichaus by-passed the permit application process and any additional review by the City that could have uncovered the potential zoning code violation prior to starting the build out to the easement in May 2020.

Dan Lichau explained to the Planning Commission in a letter that they started the build in May 2020 and "*numerous local construction professionals...advised that city staff was out of the office...getting a permit at that time was impossible.*" The Planning Commission accepted an assertion that the Lichaus were unable to apply for a permit, and unable to contact the City about their plans to build in May 2020 due to the pandemic. This fails to consider that many businesses in the City began re-opening in May 2020 and that permit applications are primarily completed on line or through email. Presumably, the City was available at this time by email, at a minimum. It also fails to consider that the Lichaus were emailed a building permit application from Monet Sheikhal in fall 2019.

It was stated that the Lichaus were new builders, who did not know they needed permits. Then, it was stated that they knew they needed permits, but were told by a few contractors that they could get them *after* the build. Dan Lichau states a few contractors "*advised that an alternate approach to the build during this time was to complete the build to code, and take as many pictures as we could...and get the addition permitted after the completion of the build.*"

Based on an email between Mark Maystrovich and Dan Lichau (Code Enforcement Attachment to Staff Report), an experienced licensed contractor, Tom Lynch, possibly worked with Dan Lichau on the framing of the build. Presumably, an experienced licensed contractor working on the project would have inquired about the status of permits before commencing work and would have discussed it with Dan

Lichau. Numerous other individuals in construction worked on the project at various times (e.g. concrete foundation, electrical, HVAC, roofing, etc). Ignorance about permits does not seem believable to me.

And yet, **the Lichau's consultant in this Appeal, Mr. Cabrera**, states in his November 19, 2020 email to Planning Director, Bill Rose, that the Lichaus *"just added onto their master bedroom for a little extra elbow room. In the process of planning the addition, they removed a redwood. Unfortunately, they were given very bad advice from a neighbor that a permit was not necessary to start the construction. They could get the permit after everything was done because the City was busy with the fire and Covid. Anyway that's the situation. They're just new homeowners that have never dealt with the permit process and are very unsure and a bit frightened about what's going on."*

On information and belief, Dan and Amber Lichau knowingly and willfully decided to remove the redwood heritage tree and built without permits because it was the only way to develop in this area of their property, up to the private road easement. Also, I believe they are not naïve about the need for permits, or that they are inexperienced homeowners or builders. Ms. Zoia, their attorney, states, *"Due to misinformation given the Lichaus, who had no prior experience with building a home or addition, seeking permits, or a governmental land use authority, they proceeded with construction of the addition, which also required the removal of a redwood tree, without seeking a building permit from the City."*

**On information and belief:**

1. Dan Lichau is listed on the Contractors State License Board as being licensed through his company, Lidoli Corporation.  
*Note: While Ms. Zoia's March 24, 2020 letter states that Dan Lichau is not a licensed contractor, a neighbor told me that Dan said he had his contractors license; when I searched the CSLB website to verify this, it appeared that this was true. Even if Ms. Zoia's statement were correct, the mere fact a business partner in a co-owned construction business is a licensed contractor would indicate that Dan Lichau should have known that he needed permits*
2. Dan Lichau is a construction company co-owner and CEO (Lidoli Corp.), which is registered at 1900 Brush Creek Road (previous business called DXP Industries)
3. Dan and Amber Lichau appear to have owned 3 homes within the past 5 years (1900 Brush Creek Road; 1732 Alan Drive, Penngrove; 2246 Marsh Road, Santa Rosa)
4. The Lichaus have construction equipment, including an excavator and trailer often parked in their driveway
5. The Lichaus were actively working with consultants (Ivan Rezvoy and Tom Lynch) within months of moving into the home. They reviewed site plans, zoning and setbacks and presumably also knew that permits were required
6. Napa County Deputy Sheriff Facebook page states Dan Lichau *"likes to take on major home improvement projects. Home is everything, and he wants the best for his wife and children."*
7. **1900 Brush Creek is likely a development property.** Ivan Rezvoy's 2019 site plan, as well as Mr. Robertson's plan, appear to show a large structure (not labeled), separate from the addition, which is presumably an ADU (21'x60' on Rezvoy site plan)
8. **Amber Lichau contacted City Planning within 6 weeks of purchasing the home and was provided a Building Permit Application. She was also provided the City Code sections**

**pertaining to Scenic Road requirements, including discussion on Scenic Road Tree Removal and the need for permits, as well as general information on setbacks and the types of setbacks**

Even if only #8 above were considered as stand-alone, the **Lichaus were effectively put on notice by Planner Sheikhali regarding permits in September 2019** and Sheikhali even attached a copy of the building permit application.

After being provided with a Building Permit Application, it should have been clear that Sheikhali's email to Rezvoy was neither an "official" approval, nor an authorization to build. I believe the Lichaus are much more knowledgeable about building than the average homeowner. Only an experienced, more sophisticated builder would add a bedroom and a master bathroom, while also expanding the footprint of their home. On information and belief, they are not "new" (first-time) homeowners or naïve, as described by Mr. Cabrera and Ms. Zoia to the Planning Commission. Both Cabrera and Zoia acknowledge that the Lichaus had discussed permits prior to the tree removal and the build, but decided they could get them after-the-fact. They reached out to the City with questions about zoning and maps in 2019, yet did not reach out when it was time to start building.

Assuming the Lichaus did, in fact, know that a building permit was required prior to the build, one would have to ask the question, "*Why not submit plans to get a permit?*" The reason, I believe, is simple. With a closer look at any plans showing measurements of the build to the **private road** and utilities easement, I believe the City would have determined that the build is a **zoning code violation**, which would not have met the requirements for a variance. However, I believe the Lichaus took Sheikhali's email stating there was no need to apply the setbacks being shown on the Supplemental Sheet as an opportunity expand the home as much as they could on the north side.

I had believed that the Lichaus had permits, but realized this was not the case after I looked online in July 2020. **I also learned with filing my complaint that there was another code enforcement complaint filed by another party in February 2020.** It appears no action was taken by the City at that time. **Moreover, I learned that a third individual emailed the City with a complaint/concern regarding this build around September 2020.** A follow up email was sent mid-September to the City by this individual inquiring on the status of the complaint/concern that was raised. I do not know if this person received any response.

*I believe the building setbacks for R-1-15-SR zoning district were misapplied by the Lichaus and their building experts who knew better.* In an October 2020 letter from Mike Robertson of Robertson Engineering, it states that "***Per Monet, the zoning side yard setback of 10' supersedes the setback shown on the Supplemental Sheet.***" However, the email from Monet Sheikhali on October 15, 2019 did not specify that a side yard setback of 10' should be applied on the northerly side of the property. It only stated that the Lichaus should use the required setbacks for R-1-15-SR zoning district.

**Sheikhali's October 15, 2019 email did not specify from where the setback should be applied.** Based on Mike Robertson's letter, the Lichaus chose to apply an *interior side setback* of 10' and presumably measured this distance from the northerly property line. I believe using the northerly property line to measure the set-back shown under R-1-15-SR zoning is an incorrect application of the setback **because it ignores the private road and utilities easement.** The setback would effectively have no meaning and no purpose, as building setback would lie within the easement itself.



**However, applying the setback from the private road and utilities easement could not explain the build “after-the-fact.” If a set-back is applied from the private road and utilities easement, the build is a zoning code violation.**

Mr. Robertson’s Site Plan provided in October 2020, after the build was completed, **omits critical measurements**, including the building envelope, the distance of the build to the private road and utilities easement, and the width of the private road and utilities easement where it exceeds the 30’ PG&E and Pacific Bell easement. One has to wonder why critical measurements were omitted. I was provided just one page of Robertson’s Site Plan, but in a recent records request another full page was redacted. **What is the City hiding? I had asked for the Robertson Site Plan from Jesse Oswald on 12/4/2020 when I first learned it existed, and even went to see it at the Planning and Economic Development Office on 12/8/2020, where it was not in the record available for me to see. However, at that time, I did see a Building Permit Application signed on August 18, 2020 in the file. I had been told that by Mr. Oswald that no application had yet been made (as of December 7, 2020) and that after this occurred I could file an appeal.**

The new build does not adhere to the requirements set forth in the *“Minutes of the Subdivision for the Lands of Dehnert,”* specifically the 46’ turnaround capability, which is shown on the Supplemental Sheet as the north side of the building setback **and the 10’ minimum setback between the edge of pavement and the existing house**. Excluding the eaves of the new build, the westerly and easterly corners of the addition are 3.45’ and 6.87’, respectively from the edge of the private road and utility easement based on Ray Carlson’s survey.

**If the building envelope is not enforceable, as determined by Planning Director Bill Rose, the setback should be measured from the closest edge of the private road easement to the build.** The addition is 3.45’ from the easement on Ray Carlson’s Survey and also within a few feet of a private water line, which I recently had traced by GPRS (a private utilities location service that uses ground penetrating radar to trace utilities). The private water line to my home runs from Brush Creek Road, under the Lichau’s driveway, into the utilities easement just a few feet off the wall of their build, and then down along the Lichau’s fence line. The proximity of the water line to the new build could be problematic if repairs need to be done in the future or if there were a leak. Because the water line runs underground in the area next to the build, it is not likely that the area could have trees planted to screen the house.

**In October 2019,** Dan and Amber Lichau cut down a redwood heritage tree on their property. The tree was positioned north of the existing house in the area outside of the building envelope near the private road. This tree was shown on site plans around the time of the subdivision and is also referenced in the Minutes of the Lands of Dehnert. It provided a privacy screen for my home and other homes in the driveway, reduced road noise and I believe it added value to all the homes in the driveway. It also added to the scenic quality of Brush Creek Road.

**On or around mid-October 2019, Dan and Amber Lichau cut down the redwood heritage tree without a permit.**

The Lichaues represented to the City that they were unaware of a permit requirement for the redwood tree removal, **yet Amber Lichau was provided a building permit application in September, along with a link to the Code for Scenic Roads, which discusses tree removal and the need for a tree removal permit.** When asked to provide an arborist report, several documents supposedly from a tree company

were provided to the City. Nothing was dated, nothing was signed or indicated who wrote the “report,” nothing was provided on letterhead or identified the company name or address, and nothing more than a short description of the tree was provided. I believe the arborist letters provided about the tree were misrepresentations provided to the City.

Director Rose indicated he approved the tree removal after-the-fact with remediation because tree removal/mitigation was evaluated along with the build plans. One would think that heritage trees on parcels located within 50 feet of a scenic road would be more greatly protected than other heritage trees not on a scenic road. I do not believe any analysis took the scenic road or dripline of this tree into account.

The issue of the tree is a critical component to the City’s determination because the illegal tree removal should have prompted a 2-year moratorium on any future build by the Lichaus on this property per City Code 17-24.140 that states, *“The owner or occupant of any property on which a violation of the provisions of this chapter was committed, if such violation was committed by the owner or a lawful occupant thereof, or committed with the permission or consent of either such person, shall be denied, for a period of two years from the date of the City’s discovery of such violation, any approval or permit which otherwise might have been issued by the City for the development or further improvement of such property.”*

To legalize the heritage tree (which was cut down approximately 5 months prior to the build) after-the-fact with less than forthcoming information provided, in my personal opinion, is a “free pass” to continue developing the property.

With regard to the tree: (1) the former neighbor at this address told me that the tree was healthy and was a non-issue at the time of sale; (2) realtor for the sale of the property indicated the same, and (3) I paid Davey Trees to trim the trees at 1900 Brush Creek in early 2019 (and reimbursed later by my former neighbor) because Davey Trees was at my house trimming trees and there were some trees on the 1900 Brush Creek property that also needed trimming. To my knowledge, the condition of the redwood tree was not raised as an issue at time.

The 2019 emails were included as Staff Report attachments for this appeal. These emails were withheld from my December 2020 public records request and not shared with me at any point after filing my complaint in August 2020. Yet it would explain why it seemed that tacit approval had been granted to the Lichaus from the very outset, while I was told it was an ongoing “*investigation*” up until December 4, 2020. In my opinion, the City’s lack of candor, lack of transparency, omissions, deliberate withholding of information, denial/delay of public records requests, obstruction of my appeal, outward misrepresentations, and more has been egregious.

### **Appeal Process**

My appeal was submitted **December 9, 2020**, not on December 14, 2020 as represented in the Staff Report (**See attached exhibits**). **The Appeal submission date is critical because a “stay” on this matter should have been in place on 12/9/20.** The “legalization” enabling the City to accept permits under B20-6871, the acceptance of the Building Permit Submittal and required documents to mitigate the heritage tree and light complaint, as well as the acceptance of payment for building permits, took place after the “stay” should have been in effect.

My Appeal was first acknowledged to me by Andrew Trippel on 12/16/20 after I submitted it on 12/9/20 to the City Manager's Office, as directed in an email from Chief Building Official, Jesse Oswald on 12/7/2020.

The Staff Report indicates that the Building Permit Application was made by the Homeowners on 12/11/20. **I believe this should have been prevented through a *stay on proceedings* in accordance with Municipal Codes 17-04.030 and 20-62.030 had my Appeal be recognized timely.**

I made a good faith effort to make payment on 12/9/20, despite the City's COVID "Stay at Home" order being announced, as well as repeated attempts by email on 12/10/20 and 12/11/20. *(I received no response from Planning until 12/14/20 regarding the status of my Appeal, ability to make payment, and after an email request to Jesse Oswald for an in-person appointment in the Planning & Economic Development Office sent on 12/11/20).*

I believe that my Appeal was held by Planning Staff or Chief Building Official, and not acknowledged until after the Building Permit Submittal and other information was accepted and approved. **Through a public records request, just provided to me last week, I learned that the City Clerk, Sandi Bliss, forwarded my Appeal to the Planning and Building email-groups in the Planning & Economic Development Office on 12/10/2020.** The email with my Appeal was also then forwarded to Jesse Oswald on 12/10/20, who emailed others at the City about my appeal. Communications about my Appeal continued that afternoon and evening, although it was redacted in the documents provided to me.

In a separate email chain, discovered within a 333 document public records request received days prior to the Planning Commission meeting, **I learned that Jesse Oswald forwarded my appeal to Andrew Trippel, Adam Abel and Gabe Osburn on 12/10/20.** On this particular email thread provided to me, Oswald and Trippel then email on Saturday, 12/12/20 about my appeal and whether the appeal would have to be filed after the building permit is issued. I believe this exchange is intended to somehow excuse the delay in its processing. Then, Andrew Trippel emails the City Manager's Office to request a copy of my Appeal, as if he had never received it. I believe the emails show a possible cover-up for the delay in processing my appeal prior to acceptance of the Building Permit Submittal.

Chief Building Official, Jesse Oswald, emailed me on December 7, 2020 (copying the City Manager's Office) with specific instructions that I could file an appeal to the Planning Commission "through the City Manager's Office." I had requested these instructions during a 12/4/20 phone call, as I told him I intended to file an appeal and specifically asked Mr. Oswald to confirm the process, which he did in his 12/7/20 email. **Jesse Oswald explicitly directed me to file the Appeal through the City Manager's Office and the City Manager's Office was also copied on that email. I later learned this was incorrect and that Planning should have received the Appeal.**

Despite attempts to find out the status of my Appeal with the City Manager's Office, I heard nothing. At 10:45 AM on 12/11/20, I reached out to the City Clerk for assistance with my Appeal and didn't receive a reply until 1:07AM on December 14, 2020, when City Clerk, Sandi Bliss, emailed stating that she had forwarded the email I had sent to the City Manager's Office with the Appeal to the Planning & Economic Development Office. At that time, I did not know she had already forwarded my appeal on 12-10-20 to the Building and Planning email groups in the Planning & Economic Development Office and that Jesse Oswald and others had my Appeal on this date as well.

**I believe that Planning Staff and others involved in this matter were aware that I filed my Appeal and intentionally delayed its processing prior to the “legalization” of B20-6871, approval of the Building Permit Application, and acceptance of payment from the Lichaus. It is my opinion that this is a case of preferential treatment and an abuse of process.**

An email was sent from Planning & Economic Development CD Technician, Lisa Sevilla, to the Homeowners on **12/11/20 at 5:05pm** to confirm receipt of their Building Permit Submittal and requested the Homeowners pay fees owed so that the Plan Check and Plan Review process could begin. On 12/13/20, the Homeowner responded that fees were paid in the evening of 12/11/20, presumably after the close of business and that Dan Lichau will be at the Planning & Economic Development office on the 14<sup>th</sup> in the morning to see if there is anything he can do to help out at all. Lisa Sevilla entered it into the system showing a date of 12/14/20.

On Monday morning, 12/14/20, a staff member sends Cassidy Anderson an email, “*Lisa (Sevilla) assessed the two hours of CE time on the permit submittal, as it’s easier to capture fees for web site payment that way. Do you want to credit the fees so the fees don’t show as outstanding, and make a note of it?*” Cassidy Anderson then confirms with Mark Maystrovich and the fees are voided to presumably show that there are no fees due on this date and that the Building Permit Submittal could be accepted. (See attached email).

My Appeal was not acknowledged by Planning Staff until 12/16/20, when I received an email from Andrew Trippel with confirmation of my \$535 payment for the Appeal, and told that a “stay” was in place.

**Regardless of the reason cited by the City for the delay in recognizing my Appeal, I respectfully request that the City Council accept my Appeal as submitted on 12/9/20 and that the City Council retro-actively enact a stay on proceedings as of December 9, 2020, pursuant to Municipal Codes 17-04.030 and 20-62.030.**

### **Applicant Letters**

**In my opinion, both the matter of the heritage tree and the light nuisance were inadequately addressed to enable acceptance of a Building Permit Submittal, and I ask the City Council to reverse the decision made by Planning Staff and the Planning Commission.**

**Tree Mitigation Request.** Jesse Oswald informed me in his 12/7/20 email that upon request and approval by the Director, the Homeowner could pay an in-lieu fine of \$2600 for the heritage tree removal (instead of planting 26 coastal redwood trees). **The Homeowner’s in-lieu fee request (letter) for the Heritage Tree remediation was submitted to Planning on January 4, 2021 after the “stay” was in place. It is my understanding that no decisions should have been made after the stay was in effect.**

Page 8 of Planning Staff Report reads “*The Property Owner has requested that alternative mitigation in the form of a \$2,600 payment to the City’s Tree Mitigation Fund be accepted. **Planning has reviewed and approves this request.** Therefore, required tree removal mitigation consists of a \$2,600 payment to the Tree Mitigation Fund.*”

**On information and belief, acceptance of the January 4, 2021 letter from the Lichaus required for the Building Permit Submittal should not have been approved by Planning due to the stay.**

**Light Nuisance.** A letter from the Lichaus dated December 8, 2020 regarding the bright lights directed into the windows my living room 24/7 for approximately a month misrepresented the lights as simply replacements of the pre-existing lights on the home from the time of purchase in the same location. Photos indicate otherwise, with placement of the new offending light in a completely new location directed into my living room. This light was installed during a supposed Stop Work Order. The omission regarding the change in location and the lack of any ownership or any accountability about the matter should be recognized and addressed by this Council. As a letter of explanation was a requirement for the Building Permit Submittal, I would ask that the City Council review the Applicant's letter along with the information that I have presented about the light. I believe the explanation is inadequate. The issue for me is not the light, but the letter that was provided, which I believe is a misrepresentation.

### **Communications with City, Access to Records and More**

Jesse Oswald's email to me on 12/7/20 stated that **no Building Permit Application had been applied for by the Homeowners yet to appeal.** On 12/8/20, I filed a Public Records request to Planning, Building and Code Enforcement asking for documents, **including applications, site plans, emails,** etc. related to 1900 Brush Creek Road (Public Records Request 20-910). On 12/8/20, I went into the Planning & Economic Development Office to view the Robertson Engineering Site Plan as referenced on my 12/4/20 phone call by Jesse Oswald. **It was not in the file available for me to see.**

On 12/9/20, I was provided records from the City Clerk and noted that Planning **did not provide any records from 2020.** On 12/11/20, at 10:19AM, I emailed Jesse Oswald (copying City Manager's Office) and asked if I could schedule an appointment to see records that day for 1900 Brush Creek at the Planning & Economic Development Office. **I received no reply until 6:22AM on 12/14/20.**

On 12/11/20, at 10:46 AM, I emailed the City Clerk that I did not receive any records from Planning for 2020 and requested all documents from 2020. **I received no reply until 1AM on 12/14/20.**

**On 12/14/20, at approximately 1AM,** City Clerk, Sandi Bliss, opened a different (new) public records request number, 20-922 "on my behalf." **On 12/14/20 at 9:04AM,** I was provided Planning documents from 2020 (including a December date-stamped received Building Permit Application) under #20-922 for 2020.

When I went to the PED Office to view records on 12/8/20, I had observed that there was, in fact, a Building Permit Application in the file submitted from the homeowner, although Jesse Oswald had told me there was no application in the file. The file was stamped "received" on September 17, 2020. All Building Permit Submittal documents were also stamped received in September. I later received public records showing that the Building Permit Application/Building Permit Submittal was submitted both in August 2020 and September 2020 to the City. The Building Permit Application document was signed in August 2020.

Out of concern there could be other items in the file, I went by appointment to the PED office on or around 12/21/20. When I asked to see the file for 1900 Brush Creek Road, I was told, "*There's nothing to see here,*" by Pat Knoles and instructed to file a Public Records Request.

Jesse Oswald's email to me on 12/7/20 stating that **I should file my Appeal for the Planning Commission with the City Manager's Office,** rather than within the Planning & Economic Development Office. Here, the outcome of this instruction was that my Appeal was not acknowledged by anyone for

days, while decisions were made and actions were taken on the property. **I believe the City Council should question the intent behind this misinformation and these actions.**

Lastly, Mr. Trippel told the Planning Commission that I had requested a continuance of the 2/25/21 Planning Commission date because I was “*unavailable*.” This was simply not true. On 2/10/21, I asked Mr. Trippel if the meeting could be moved to a later date in order to obtain additional public records. Mr. Trippel denied my request. After the denial, my attorney then requested a continuance several days prior to the meeting due to the outstanding/pending public records requests and because we had received information in the Staff Report Attachments that was not provided in an earlier public records request.

The 2019 emails between the City and the Lichaus were a complete surprise and we were prejudiced by this unexpected disclosure. I believe that an omission of a material fact is a lie, and the information about the 2019 emails was withheld from me for months.

I was then provided 300+ email records several days prior to the Planning Commission meeting, which I had requested more than a month prior in a separate public records request.

I believe it is in the public interest to protect our scenic roads from actions that irreparably destroy the character of the area and that the tree removal and build without formal approvals were risks taken because a zoning code violation would have been identified. I respectfully request that the City Council grant my Appeal, dated December 9, 2020 and amended Appeal dated December 17, 2020, including a stay on proceedings as of December 9, 2020 and the enforcement of a two-year moratorium on future development on this lot given the unpermitted heritage tree removal.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Kathy Parnell

## EXHIBIT 1 – 12/9/20 APPEAL SUBMITTED TO CITY MANAGER'S OFFICE

Appeal / 1900 Brush Creek Road

Yahoo/Sent



Kathleen Parnell <kathleendarnell@yahoo.com>  
To: CMOOffice@srcity.org

Wed, Dec 9, 2020 at 3:41 PM

Attached please find an appeal application to the Planning Commission as it relates to 1900 Brush Creek Road.

Please let me know if you have any questions and whether there is a fee owed to file the application. I can pay immediately by any means convenient for you.

Kind regards,  
Kathy Parnell



K Parnell\_Ap...pdf  
953.2KB

## EXHIBIT 2 – 12/7/20 INSTRUCTIONS TO SEND APPEAL TO CITY MANAGER'S OFFICE

Back

Archive Move Delete Spam

RE: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation

Yahoo/Inbox



Jesse Oswald <joswald@srcity.org>  
To: Kathleen Parnell  
Cc: CMOOffice, Mahre, Kali

Mon, Dec 7, 2020 at 10:23 AM

Good morning Kathy,

Thank you so-much for the conversation Friday. I'll do my best to summarize the discussion and answer the key points you've provided for us to address.

Primary points to address:

1. Unpermitted construction over a building setback line
2. Process the applicant will be required to follow to legalize the addition
3. Removal of a heritage tree without authorization/permits
4. Candor/Transparency of process and investigation
5. Bias/Collusion with-respect to violator being a Deputy Sherriff
6. Other suspected properties with unpermitted construction
7. Stop Work Order Issuance date
8. Additional violation – bright lights affixed to subject property – shining on adjacent property
9. Appeal path

1. Through Planning staff's research and analysis shows the unpermitted addition can be permitted. The building setback lines placed on the Final Map Supplemental sheet(s) are not enforceable.
2. The applicant will be required to submit plans and specifications adhering to the attached "As-Built" process: <https://www.srcity.org/DocumentCenter/View/2159/-Handout-for-As-Built-Projects-PDF>. The applicant will be required to pay additional fees due to the work without a permit. The fee shall be equal to the permit fee as described on the bottom of page 28 of the fee schedule: <https://srcity.org/DocumentCenter/View/16129/Planning--Economic-Development-Department-Fee-Schedule?bidId=>. They will also be required to pay the Stop Work Order Removal Fee identified on page 43 (near the middle of the page) "Removal of Stop Work Order".

3. Planning staff have determined that had the applicant applied: The tree that was removed without authorization would have been approved for removal in accordance with the Tree Ordinance. In accordance with Subsection 17-24.050(C)(1), for each six inches or fraction thereof of the diameter of a tree which was approved for removal, two trees of the same genus and species as the removed tree (or another species, if approved by the Director), each of a minimum 15-gallon container size, shall be planted on the project site, provided however, that an increased number of smaller size trees of the same genus and species may be planted if approved by the Director, or a fewer number of such trees of a larger size if approved by the Director. Mr. Robertson's letter reports that the total diameter of the removed tree is 74 inches (48+26). Under this criteria, the mitigation requirement is planting of 26 Coast Redwood trees, each a minimum of 15-gallon container size (74 / 6 = 12.33 6-inch increments, which rounds up to 13 sections). In accordance with Subsection 17-24.050(C)(3), if the development site is inadequate in size to accommodate the replacement trees, the trees shall be planted on public property with the approval of the Director of the City's Recreation and Parks Department. Upon the request of the developer and the approval of the Director, the City may accept an in-lieu payment of \$100.00 per 15-gallon replacement tree on condition that all such payments shall be used for tree-related educational projects and/or planting programs of the City. The total payment in-lieu fee would be \$2,600.

4. Apologies for the lack of communication on the matter. We discussed our inability to prioritize investigations that are not immediate health/life-safety matters. This project and others have assisted us with adjusting our protocols for notifying complainants of investigative findings and actions.

5. This department provides no bias or special treatment for any violator of and Laws, Ordinances and/or Regulations. As we discussed, I had no knowledge the violation(s) were committed by a law enforcement officer until you provided me that information. Our department will investigate any violator to the fullest-legal extent allowed by adopted codes and Ordinances.

6. If any property within the City Limit jurisdiction of Santa Rosa has suspected Ordinance/code violations; a complaint may be filed via this site: <https://www.srcity.org/FormCenter/Housing-and-Community-Services-14/Code-Investigation-Request-Form-74> Or, by submitting this completed form: <https://www.srcity.org/DocumentCenter/View/21358/Code-Enforcement-Complaint-Form-PDF?bidId=> to [code@srcity.org](mailto:code@srcity.org)

7. The Stop Work Order was affixed (handed to occupant on-site) on 8/6/2020

8. The additional complaint for bright lights shining on adjacent (yours) properties will be required to be addressed with the building permit submittal.

9. The path to take to appeal the matters regarding Planning determinations would be before the Planning Commission. The application is here: <https://www.srcity.org/DocumentCenter/View/2628/Annual-Application--Planning-Commission-Design-Review-Board-Cultural-Heritage-Board>. The fee for the appeal is currently \$535.00 (I misspoke on the amount when we talked). At the moment, no application has been made to appeal, but I will notify you when the building permit has been applied-for. Appeals to a Board or Commission are filed through the City Manager's Office: <https://www.srcity.org/246/City-Manager>

Again, thank you for the discussion and your commitment to the vitality of your neighborhood.

Sincerely,

Jesse

## EXHIBIT 3–12/16/20 EMAIL CONFIRMING APPEAL AND STAY ON PROCEEDINGS

Planning Commission appeal of 1900 Brush Creek Rd. Code Enforcement Violation Yahoo/Inbox ★

**Trippel, Andrew** <atrippel@srcity.org>  
To: kathleendparnell@yahoo.com  
Cc: CMOOffice, Mahre, Kali, Santa Rosa Building Dept, Planning Shared, City Clerk, and 4 more...

Good afternoon,

My name is Andrew Trippel and I am the project planner who will be preparing your appeal for review by the Planning Commission. Going forward, please direct all communications to me. If others need to be brought into a conversation, I will do so. Please know that I have participated in issues analyses since the Code Enforcement violation was logged and the case was opened. As a result, I am fully informed about the issues and have been included on or been forwarded the majority of emails about the project. Below are the next steps in processing your appeal.

1. The appeal has been entered into our record system. The record number is ST20-003.
2. The appeal fee has been charged to your credit card. The receipt is attached.
3. In accordance with Zoning Code Section 20-62.030(D), this written appeal shall automatically stay all proceedings associated with the matter subject to the appeal (e.g., issuance of a Certificate of Occupancy, Building or Grading Permit, etc.), and put in abeyance all permits or approvals which may have been granted, and neither the applicant nor any enforcing agency may rely upon the approval, decision, denial, or other action, until the appeal has been resolved.
4. Planning staff will notify the property owner that the appeal has been filed.

On the Appeal Application, you note that "Attachments to follow"; however, I have not received any attachments. Please submit all attachments to me. If no attachments are submitted, then the appeal will consider the ground provided on the Appeal Application form.

I am available if you have any questions, and it's best to reach out to me via email first. I will provide additional information about scheduling of the Planning Commission public hearing early next week.

Best,

Andrew

Andrew Trippel | Acting Supervising Planner – Current Planning  
Planning & Economic Development | 100 Santa Rosa Ave Rm 3 | Santa Rosa, CA 95404

## EXHIBIT 4 – CITY CODE REGARDING STAY ON PROCEEDINGS

### Municipal Code 17-04.030 on Appeals and Stay on Proceedings

#### 17-04.030 Appeals.

- (A) An appeal may be made by any person aggrieved by, or any official, department, board or agency of the City affected by, any final decision of the Environmental Coordinator or Planning Commission rendered under the provisions of this chapter.
- (B) An appeal from a decision of the Environmental Coordinator shall be heard and determined by the Planning Commission. Any appeal from a decision by the Planning Commission shall be heard and determined by the City Council.
- (C) Appeals shall be made by written notice of appeal signed by the person or representative of the person making the appeal, and shall contain the printed name, mailing address and telephone number of the person making the appeal. The notice shall state all grounds and facts relied upon in making the appeal. The notice shall be filed with the Secretary of the Planning Commission where the appeal is to the Planning Commission, and with the City Clerk where the appeal is to the City Council. The notice of appeal must be filed within 10 working days from the date on which the action appealed from was taken.
- (D) The filing of an appeal which complies with this section shall stay all proceedings and toll the running of time under this chapter until a determination of the appeal is made, unless the Environmental Coordinator certifies in writing to the appellate body that a stay would cause violation of CEQA or otherwise endanger the public health, safety or welfare.
- (E) Within 30 calendar days after receipt of the notice of appeal, the date and time shall be set for a public hearing of the appeal before the appellate body; and notice of the hearing shall be given to the appellant and Environmental Coordinator. (Ord. 2629 § 1, 1987)

### Municipal Code 20-62.030 re-Filing and Processing of Appeals

D. Delay of proceedings. Timely filing of a written appeal shall automatically stay all proceedings associated with the matter subject to the appeal (e.g., issuance of a Certificate of Occupancy, Building or Grading Permit, etc.), and put in abeyance all permits or approvals which may have been granted, and neither the applicant nor any enforcing agency may rely upon the approval, decision, denial, or other action, until the appeal has been resolved.

## EXHIBIT 5 – EMAILS REQUESTING CONFIRMATION OF APPEAL

Re: Appeal / 1900 Brush Creek Road Yahoo/Sent ★

**Kathleen Parnell** <kathleendparnell@yahoo.com>  
To: CMOOffice@srcity.org

Just wanted to make sure that you received my appeal sent yesterday, 12/9. Please kindly confirm receipt. Also, if any fee is owed, please let me know.

Thank you very much,  
Kathy Parnell

On Wednesday, December 9, 2020, 3:41:40 PM PST, Kathleen Parnell <kathleendparnell@yahoo.com> wrote:

Attached please find an appeal application to the Planning Commission as it relates to 1900 Brush Creek Road.

Please let me know if you have any questions and whether there is a fee owed to file the application. I can pay immediately by any means convenient for you.

Kind regards,  
Kathy Parnell

EMAIL SENT TO CITY CLERK ON 12/11/20. NO RESPONSE UNTIL 12/14/20



Re: [EXTERNAL] Re: Request for Public Records/1900 Brush Creek Road

Yahoo/Sent



Kathleen Parnell <kathleendparnell@yahoo.com>  
To: City Clerk

Fri, Dec 11, 2020 at 10:45 AM

Hi Sandi,

I was able to retrieve the documents yesterday, but they were not what I was looking for. There are documents submitted this year (beginning in August/September) on 1900 Brush Creek Road. Could you provide to me all the documents submitted this year on this property?

Also, I sent the City Manager an Appeal for the Planning Commission. Is there a fee that I need to pay to submit an Appeal? Was it correct to send the appeal form to him directly, or should that go to the City Clerk's office?

Thank you!  
Kathy Parnell

## EMAIL SENT TO J OSWALD ON 12/11/20. NO RESPONSE UNTIL 12/14/20

Re: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation

Yahoo/Sent



Kathleen Parnell <kathleendparnell@yahoo.com>  
To: Oswald, Jesse  
Cc: CMOoffice, Mahre, Kali

Fri, Dec 11, 2020 at 10:19 AM

Thank you, Jesse. I look forward to hearing from someone with the specifics on the interpretation/reasoning applied to this case.

Also, as the Robertson Engineering plan wasn't available for me to see the other day, may I come by today to see it? I would like to see a copy of what was submitted before the COVID shut-down begins.

Thank you,  
Kathy

## EMAIL SENT REGARDING APPEAL

Re: Request for Public Records/1900 Brush Creek Road

From: Kathleen Parnell (kathleendparnell@yahoo.com)

To: cmooffice@srcity.org; kmahre@srcity.org; building@srcity.org; planning@srcity.org

Cc: cityclerk@srcity.org

Date: Wednesday, December 16, 2020, 11:52 AM PST

All,

I am following up on my Appeal for the Planning Commission that I submitted to CMOoffice on 12/9 regarding 1900 Brush Creek Road. (Per J.Oswald email with instructions to send the form to CMOoffice). Could you please let me know I can pay the fee? You can charge my card below or I can drop off a check today.

Thank you,  
Kathy

## EXHIBIT 6: 12/14/20 EMAIL FROM CITY CLERK THAT APPEAL HAS BEEN FORWARDED TO PLANNING

Request for Public Records/1900 Brush Creek Road

Yahoo/Inbox



City Clerk <cityclerk@srcity.org>  
To: Kathleen Parnell  
Cc: Planning Shared, Santa Rosa Building Dept

Mon, Dec 14, 2020 at 1:07 AM

Hi Kathy

Thank you for following up. Appeals to the Planning Commission are filed with the Planning and Economic Development Department. There is a fee associated with filing an appeal and I have included planning staff on this email so that they can provide you with the fee amount. I forwarded the email where you submitted the application to the Planning and Economic Development Department.

Staff are in the process of searching for records responsive to your request for public records # 20-910. I have updated your current request, as you have narrowed the request to 2020 and have submitted a 2<sup>nd</sup> request on your behalf to include the building permit application which was submitted after receipt of your initial request. The City's response to the new request #20-922 is December 21.

Sandi

# EXHIBIT 7: 2/12/21 PUBLIC RECORDS REQUEST FOR DOCUMENTS RELATED TO HANDLING OF APPEAL

Public Records Requests  
CITY OF SANTA ROSA
MAKE REQUEST ALL REQUESTS DOCUMENTS
SETTINGS

Request Visibility: 🔒 Unpublished

**< Request #21-176 >** OPEN

On 12/9/2020, I sent an email with my Appeal to the City Manager. Please provide the email or emails from Sandi Bliss, and anyone else, who forwarded my appeal, or sent an email regarding my Appeal, to anyone else at the City, to include but not limited to anyone in the Planning & Economic Development Office, Sean McGlynn, Jesse Oswald, Mark Maystrovich, or Andrew Trippel. Please provide the date, time and identify all persons who received any email about my Appeal, and provide a copy of the email correspondence (for any email about my Appeal from 12 AM on 12/9/2020 to 12/17/2020).

Received	February 12, 2021 via email
Departments	City Clerk
Requester	Kathy Parnell ✉ kathykendparnell@yahoo.com 📍 1888 Brush Creek Road, Santa Rosa, CA 95404 📞 (415) 336-8869

**Documents**

Public (pending)	(none)
Requester	(none)

**Staff**

Point of Contact	City Clerk
------------------	------------

External Message Hide
Requester + Staff

The disclosable public records you requested are available in electronic form, and will be provided to you at no charge on March 10, 2021. To the extent that this Request seeks public records that are within non-disclosable public records, the records are exempt from disclosure pursuant to Government Code § 6254 (k) [Evidence Code § 950 et seq.] [Attorney-Client Privilege], Government Code § 6254(a) (preliminary drafts and notes, and Government Code § 6255, your request is denied.

I am responsible for this determination concerning your records request in my capacity as City Clerk, in consultation with Assistant City Attorneys Ashle Crocker and Adam Abel, if you are able to refer me to controlling legal authority that supports a different result, please provide that authority.

March 4, 2021, 10:31am by Sarah Ross, Administrative Technician (Staff)

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External Message Hide
Requester + Staff

Thank you for your update on the pending Public Records Act response. To the extent that City intends to withhold documents, please produce a privilege log identifying the document and the reasoning with withholding it. Further, please provide any redacted documents at the same time as the distribution of other responsive materials.

March 4, 2021, 1:26pm by the requester

---

External Message Hide
Requester + Staff

We are still in the process of reviewing other potentially responsive documents. We reserve the right to withhold and/or redact any records or information that may be exempt from disclosure under the Public Records Act, and/or other applicable legal privileges including, but not limited to, attorney work product and attorney client privileges. You will be notified on or before March 3, 2021 whether we have disclosable records.

March 5, 2021, 10:55am by Sarah Ross, Administrative Technician (Staff)

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External Message
Requester + Staff

Please provide an update on this request, submitted on Feb. 12, 2021.

Thank you,  
Kathy Parnell

February 24, 2021, 2:03pm by the requester

**EXHIBIT 8: 12/10/2020 – EMAILS REGARDING APPEAL AND PLANNING STAFF AWARE OF APPEAL**

**From:** Oswald, Jesse <JOswald@srcity.org> on behalf of Oswald, Jesse  
**Sent on:** Friday, December 11, 2020 12:17:26 AM  
**To:** Trippel, Andrew <atrippel@srcity.org>; Abel, Adam <aabel@srcity.org>; Rose, William <WRose@srcity.org>  
**CC:** Osburn, Gabe <GOsburn@srcity.org>  
**Subject:** RE: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Redacted**

Jesse Oswald | Chief Building Official  
Planning & Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3249 | Fax (707) 543-3219 | [joswald@srcity.org](mailto:joswald@srcity.org)

**From:** Trippel, Andrew <atrippel@srcity.org>  
**Sent:** Thursday, December 10, 2020 4:17 PM  
**To:** Oswald, Jesse <JOswald@srcity.org>; Abel, Adam <aabel@srcity.org>; Rose, William <WRose@srcity.org>  
**Cc:** Osburn, Gabe <GOsburn@srcity.org>  
**Subject:** Re: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Redacted**

Thanks,  
Andrew

**From:** Oswald, Jesse <JOswald@srcity.org>  
**Sent:** Thursday, December 10, 2020 4:10 PM  
**To:** Abel, Adam <aabel@srcity.org>  
**Cc:** Trippel, Andrew <atrippel@srcity.org>; Osburn, Gabe <GOsburn@srcity.org>  
**Subject:** RE: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Redacted**

Jesse Oswald | Chief Building Official  
Planning & Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3249 | Fax (707) 543-3219 | [joswald@srcity.org](mailto:joswald@srcity.org)

**From:** Abel, Adam <aabel@srcity.org>  
**Sent:** Thursday, December 10, 2020 4:04 PM  
**To:** Oswald, Jesse <JOswald@srcity.org>  
**Cc:** Trippel, Andrew <atrippel@srcity.org>; Osburn, Gabe <GOsburn@srcity.org>  
**Subject:** Re: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Redacted**

On Dec 10, 2020, at 3:48 PM, Oswald, Jesse <JOswald@srcity.org> wrote:

FVI  
Jesse Oswald | Chief Building Official  
Planning & Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3249 | Fax (707) 543-3219 | [joswald@srcity.org](mailto:joswald@srcity.org)  
<image002.jpg>

From: Santa Rosa Building Dept <[building@srcity.org](mailto:building@srcity.org)>  
Sent: Thursday, December 10, 2020 3:47 PM  
To: Oswald, Jesse <[JOswald@srcity.org](mailto:JOswald@srcity.org)>  
Cc: Santa Rosa Building Dept <[building@srcity.org](mailto:building@srcity.org)>  
Subject: FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

Hi Jesse,  
Can you answer this? I believe it is PED, but I do not have much experience with appeals.  
Thank you.

**Erica Christopherson | Senior Administrative Assistant**

Planning & Economic Development  
100 Santa Rosa Ave., Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-4679 | Fax (707) 543-3219

[ecchristopherson@srcity.org](mailto:ecchristopherson@srcity.org)

<image003.jpg>

From: City Clerk <[cityclerk@srcity.org](mailto:cityclerk@srcity.org)>  
Sent: Thursday, December 10, 2020 2:56 PM  
To: Planning Shared <[planning@srcity.org](mailto:planning@srcity.org)>; Santa Rosa Building Dept <[building@srcity.org](mailto:building@srcity.org)>  
Subject: FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

Good afternoon

This appeal was emailed to the City Manager's Office. Please confirm if the appeal should be to a PED Board or Council?

Warmest regards,

Sandi

From: CMOOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>  
Sent: Thursday, December 10, 2020 11:12 AM  
To: City Clerk <[cityclerk@srcity.org](mailto:cityclerk@srcity.org)>  
Subject: FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Kelli Mahre | Senior Administrative Assistant**

City Manager's Office | 100 Santa Rosa Avenue, Room 10 | Santa Rosa, CA 95404

Tel. (707) 543-3011 | Fax (707) 540-3030 | [kmahre@srcity.org](mailto:kmahre@srcity.org)

*Please note, if you do not receive a reply on a Tuesday afternoon, I am assisting with the City Council meeting.*

<image003.jpg>

PLEASE NOTE: The City Manager's Office is currently closed to help curb a resurgence of coronavirus infections occurring in Sonoma County and nationwide.

From: **Redacted** <>

Sent: Wednesday, December 9, 2020 3:42 PM

To: CMOOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>

Subject: [EXTERNAL] Appeal / 1900 Brush Creek Road

Attached please find an appeal application to the Planning Commission as it relates to 1900 Brush Creek Road.

Please let me know if you have any questions and whether there is a fee owed to file the application. I can pay immediately by any means convenient for you.

Kind regards,

**Redacted**

**Redacted** <Redacted\_Appeal Application\_1900 Brush Creek\_12.9.20.pdf>

**EXHIBIT 9: 12/11/20 EMAIL TO HOMEOWNERS REGARDING RECEIPT OF APPLICATION, PAYMENT OF FEES AND REVIEW PROCESS**

**From:** daniel lichau <daniel\_lichau@yahoo.com>  
**Sent:** Sunday, December 13, 2020 9:24 AM  
**To:** Sevilla, Lisa  
**Subject:** [EXTERNAL] Re: 1900 Brush Creek Rd B20-6871

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good morning,

Thank you for your help! We went ahead and paid the fees that were available to pay on Friday evening, totaling approximately \$1,650.00. I apologize, I just saw the notation to email you once we've paid the fees. My husband, Daniel, has an appt with you all tomorrow morning to try to connect up with you to see if there's anything else we can do to help out at all.

Thanks so much!

Sincerely,  
Amber

On Friday, December 11, 2020, 05:05:22 PM MST, Sevilla, Lisa <lsevilla@srcity.org> wrote:

Good Afternoon,

I received your application at the above mentioned property. The plan check fees will need to be paid online to start the review process. Please follow the instructions included in this email. Once fees have been paid you will need to notify me so I can begin to have the plans reviewed.

Thank you,

Lisa Sevilla | CD Technician

Planning & Economic Development Dept | 100 Santa Rosa Ave, Rm 3 | Santa Rosa, CA 95404

[lsevilla@srcity.org](mailto:lsevilla@srcity.org)



**Lisa Sevilla enters information into online system showing date of 12/14/20**

**General** **Planning** **Permits** **Utilities** **Documents**

All (3) **Building (2)** Planning (0) Engineering (1) Fire (0) Water (0)

**Addition**  
Permit #: B20-6871 (Building) **In Plan Review**

Applicant: LICHAU DANIEL & LICHAU AMBER  
Primary Contractor: OWNER-BUILDER  
Permit Type: Addition-Alteration

**Permit Description:**  
Legalization of 360 Sq. Ft addition addressing CE20-0139, ok to take in per M.Maystrovich.

**Permit Progress Timeline**

Application 12/14/20 → Review 12/14/20 → Permit → Inspection → Closed

[Show Detailed Timeline](#)

**EXHIBIT 10: 12/16/20 APPEAL FEE PROCESSED 12/16/20**



Planning and Economic Development  
 100 Santa Rosa Avenue Room 3  
 Santa Rosa, CA 95404  
 (707) 543-3200 Fax (707) 543-3269

PAYMENT RECEIPT: 191666  
 CASHIER: E06878  
 DATE: 12/16/2020

**Receipt**

**Record Information**

Record Number	Record Name	Site Address	APN
ST20-003	Appeal	1900 BRUSH CREEK RD	182140056

**Fee Information**

Description	Account Code	Invoice#	Amount
Appeal	001100-4603	172877	\$535.00
<b>Total Fee Amount:</b>			<b>\$535.00</b>

**Payment Information**

Method	Reference No	Comments	Transaction Amount
Credit Card	6048 09159C		\$535.00
<b>Payor</b>			<b>Total Amount:</b>
Kathleen Parnell			\$535.00

**EXHIBIT 11: 12/10/20 EMAIL FROM J.OSWALD RE-TUBBS FIRE AND BUILDING ENVELOPE**

RE: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation Yahoo/Inbox ★

**J Oswald, Jesse** <joswald@srcity.org> Thu, Dec 10, 2020 at 12:45 PM ★

To: Kathleen Parnell  
 Cc: CMOOffice, Mahre, Kali

Good afternoon Kathy,

Apologies for the delay.

**Regarding point #1, could you please tell me what specific law or ordinance was applied to void enforceability of the property set-back lines (building envelope) for 1900 Brush Creek Road (which is shown on the Supplemental Parcel Map attached to our deeds)?**

*The Subdivision MAP Act was consulted and interpreted to make these determinations. [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=2.&title=7.&part=&chapter=1.&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=7.&part=&chapter=1.&article=1)*

*If you would like to discuss the details of the interpretation – I can request a Planning representative contact you. My apologies – this is not my area of expertise.*

**You stated that property set-backs shown on supplemental deed maps were removed following the Tubbs Fire (to support fire re-builds in Fountain Grove). When exactly did a law or ordinance removing building envelopes get applied to Scenic Brush Creek Road, and where is this publicly disclosed? You also stated that building envelopes are currently not enforceable for all properties in the City of Santa Rosa, but where is this located in city law or ordinance?**


*Lines were not actually removed. The investigation and determination for application of the Law were done during the tubs Fire rebuild. The determination(s) apply globally to supplemental information on Final Maps unless supporting entitlements and/or development requirements are found to have been applied.*

*The application of this approach is not an ordinance or adopted process. It is applied through interpretation of existing Laws in-collaboration with our professional team and the city Attorney.*



## EXHIBIT 12 – EMAIL TO J OSWALD 12/10/2020

Re: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation Yahoo/Sent ★

 **Kathleen Parnell** <kathleendparnell@yahoo.com>  
To: Oswald, Jesse  
Cc: CMOOffice, Mahre, Kali Thu, Dec 10, 2020 at 2:52 PM ★

Jesse,

Thank you. Could you please provide me the interpretation/reasoning in writing so there is no ambiguity or misunderstanding in how the Map Act was applied to the illegal build at 1900 Brush Creek Road? Are you referring to Resilient City and applying it to 1900 Brush Creek Road via the Map Act?

This property is not a fire re-build and was not impacted by the Tubbs fire, or any fire, the pandemic, etc. whatsoever. This home was purchased in July 2019 and is simply an expansion of an existing home (i.e. not destroyed and then re-built, such as the homes in Fountain Grove).

Also, the road in question is not public. It's a private road with a public utilities easement.

Lastly, work has continued on this build since August when it was reported.

Thank you,  
Kathy

## EXHIBIT 13– 2019 EMAIL FROM M. SHEIKHALI TO HOMEOWNER AND HOMEOWNER'S AGENTS

**From:** Sheikhal, Monet  
**Sent:** Tuesday, October 15, 2019 4:56 PM  
**To:** McKeag, Jesus <JMcKeag@srcity.org>; 'irezvoy@gmail.com' <irezvoy@gmail.com>  
**Cc:** 'Tom Lynch' <tlynch@sonic.net>; 'Amber Lichau' <lichau.amber@gmail.com>  
**Subject:** RE: [EXTERNAL] Setbacks at 1900 BRUSH CREEK RD, SANTA ROSA, 95404

Ivan,

Planning has reviewed your request and it has been determined that the new addition needs to comply with the required setbacks for R-1-15-SR zoning district per [Section 20-22.050](#). No need to apply the setbacks being shown on the supplemental sheet.

Let me know if you have any further questions,

**Monet Sheikhal | City Planner**

Planning and Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543- 4698 | Fax (707) 543-3269 | [msheikhal@srcity.org](mailto:msheikhal@srcity.org)

From: Ivan Rezvoy [mailto:irezvoy@gmail.com]  
 Sent: Tuesday, October 8, 2019 6:27 PM  
 To: McKeag, Jesus <JMckeag@srcity.org>  
 Cc: Tom Lynch <tlynch@sonic.net>; Amber Lichau <lichau.amber@gmail.com>  
 Subject: [EXTERNAL] Setbacks at 1900 BRUSH CREEK RD, SANTA ROSA, 95404

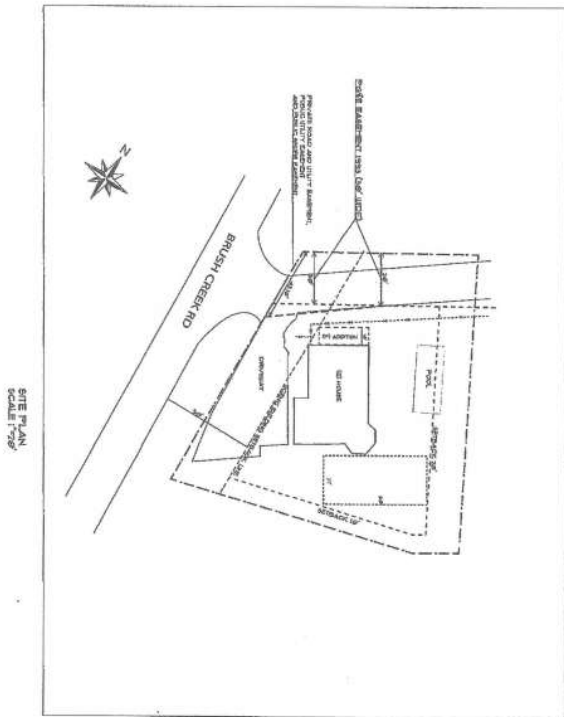
Hello, Mr. McKeag

This is to follow up on my phone call regarding the setbacks as they are shown on the Final Map for the property at 1900 Brush Creek Rd. AP# 182-140-056  
 The final map (see link below) shows the private road and utility easement of 30' from the northern property line of the parcel 182-140-056. This setback allows for 10'x29' footprint addition to the northern side of the existing house (see attached Site Plan).  
 The building envelope, established with the recordation of the final map (see sheet 4 of the Final Map) does not define the distance of its northern boundary from the property line. Final Subdivision Report of June 21, 2000 does not mention this boundary at all. Please advise whether we can proceed with planned improvements as they are shown on the Site Plan, or should we apply for the modification of the building envelopes designated on the parcel.

Here is the link for Final Map: [http://imaps.srcity.org/img/PW\\_Docs/PDF\\_Combined/2002-0071.pdf](http://imaps.srcity.org/img/PW_Docs/PDF_Combined/2002-0071.pdf)  
 The property is zoned R-1-15-SR (Single Family Residential- Scenic Road).

Sincerely,

Ivan Rezvoy,  
 415 279 9055



	<b>COVER SHEET-SITE PLAN-NOTES</b> LANDS OF LICHAU 1900 BRUSH CREEK RD SANTA ROSA, CA 95404	<b>IDR DRAFTING</b> 1484 COLONY RD SANTA ROSA CA 95401 TEL: 415 279 9055 EMAIL:IDR@IDRTEL.COM
	DATE: 10/08/19 DRAWN BY: IREZVOY CHECKED BY: JLMCKEAG	
	SHEET NO. 1 OF 1	



**EXHIBIT 14– 2019 EMAIL FROM PLANNER MONET TO HOMEOWNER RE: MAPS, ZONING and BUILDING PERMIT SUBMITTAL APPLICATION**

**From:** Sheikhal, Monet  
**Sent:** Monday, September 9, 2019 11:33 AM  
**To:** lichau.amber@gmail.com  
**Subject:** 1900 BRUSH CREEK RD, SANTA ROSA, 95404

Amber,

Here is the link for Final Map: [http://imaps.srcity.org/img/PW\\_Docs/PDF\\_Combined/2002-0071.pdf](http://imaps.srcity.org/img/PW_Docs/PDF_Combined/2002-0071.pdf)  
Your property is zoned R-1-15-SR (Single Family Residential- Scenic Road). Please see [Section 20-28.050](#) from Santa Rosa Zoning Code Regarding SR zoning district.

For general setback information see [Section 20-30.110](#).  
Also, attached is the Building Permit application.

Have a great day,

**Monet Sheikhal | City Planner**

Planning and Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543- 4698 | Fax (707) 543-3269 | [msheikhal@srcity.org](mailto:msheikhal@srcity.org)

**EXHIBIT 15 – 1/4/21 LETTER REGARDING TREE MITIGATION AND IN LIEU PAYMENT**

Attachment 5

January 3, 2020

To Whom It May Concern:

As the property owners of 1900 Brush Creek Road in Santa Rosa, please accept this letter as a response to the permit submittal requirements outlined by Jesse Oswald in his letter dated December 7, 2020. After receiving the tree removal requirements, we contacted Urban Tree Farm in seeking expert evaluation regarding the feasibility of planting the requested number of replacement redwood trees on our property based on their professional recommendation of necessary distance between adjacent planted redwood trees in order to ensure we have adequate space and optimal conditions for their growth. Upon discussion, we were advised to plant each redwood a minimum of eight feet apart from one another due to their expansive root systems with optimal spacing being fifteen feet apart. Additionally, our property has multiple trees as well as bushes planted along the perimeter fence line as well as a large concrete area surrounding our pool located at the East/rear side of our property line. The recommendation of spacing between planted trees as well as the limited physical area available for planting, has severely limited the number of redwood trees that we would be able to plant on our property.

In seeking an alternative to the redwood tree species, as outlined as an option in the submittal requirements, we also inquired about a similar species that may allow for the maintenance of the tree canopy on our property but perhaps with a smaller spacing requirement between each planted tree. The recommendation of a close alternate with a less expansive/invasive root system was the Western Red Cedar. Although still an evergreen and native Californian conifer, the recommendation for spacing was six to eight feet between each tree rather than the eight to fifteen feet spacing recommendation for the redwood and are also available in fifteen gallon containers.

After much consideration and expert evaluation of our property, we would like to opt/request to pay the stated in-lieu fee outlined in the removal requirements in place of planting replacement trees due to planting space limitations on our property. We hope this may allow the city to utilize the funds where it deems it necessary to allow replanting of trees in an area where they may flourish and not be restricted by property size and/or use for tree educational programs. In addition, we have made a voluntary monetary donation to the Redwood Forest Foundation, providing the foundation the funds to plant ten redwood trees in one of Northern California's redwood forests.

Thank you for your time and consideration.

Sincerely,  
Amber and Daniel Lichau

City of Santa Rosa  
JAN 04 2021  
Planning & Economic  
Development Department

## EXHIBIT 16: LETTER FROM HOMEOWNERS REGARDING LIGHT NUISANCE

December 8, 2020

To Whom It May Concern:

This letter is intended to provide information regarding the lights on the external sidings of our home at 1900 Brush Creek Road Santa Rosa. These motion-detection light fixtures were present at time of purchase of the home. We did, however, replace both the rear-facing and south-facing light fixtures with Ring wired motion-detection light fixtures. The specifications from the manufacture are as follows: incandescent wattage equivalent is 125 watts (total of two bulbs for each light at approximately 60 watts each). Both are set to turn on for a 15 second duration with motion detection from dusk until dawn, pointed in a downward direction with no reflection. The rear-facing fixture sits at 10'2" from ground level. The south-facing fixture sits at 11' from ground level and facing our side yard where no adjacent neighboring property resides. Both fixtures are mounted under the eve of the home. Please reach out with any additional questions.

Sincerely,  
Amber and Daniel Lichau

**LIGHT CONDITION BEFORE LIGHT INSTALLATION BETWEEN THE FRENCH DOORS**



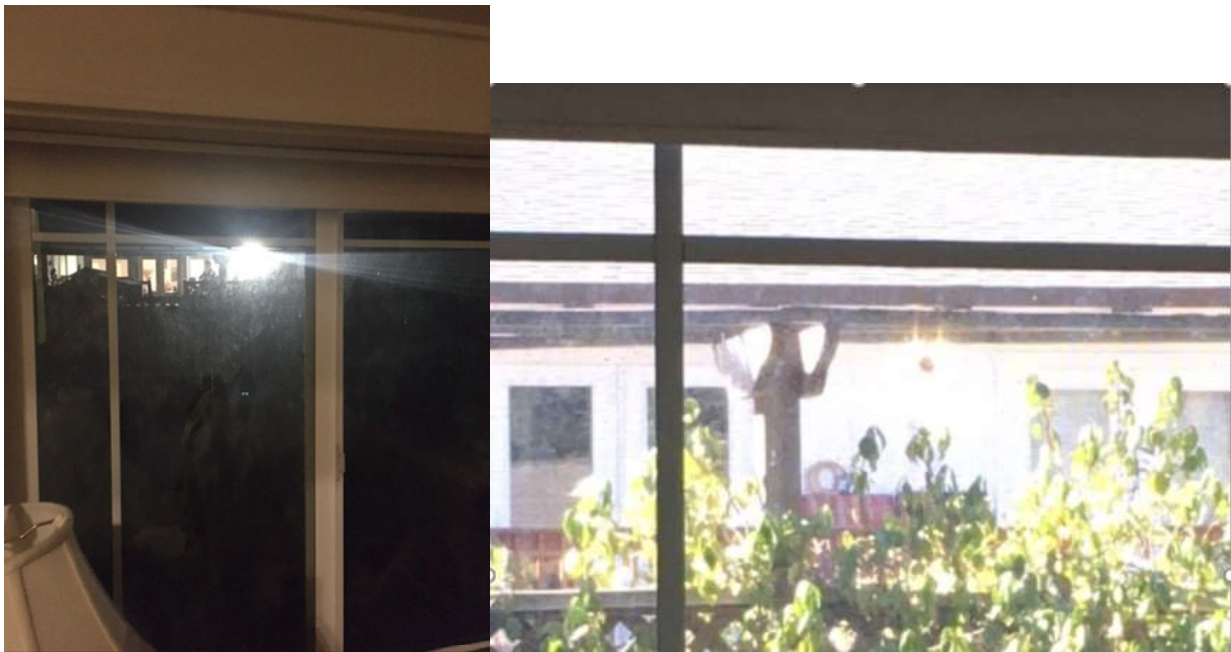
**ACTUAL (NEW) LOCATION OF LIGHT - BETWEEN FRENCH DOORS as of mid-Oct 2020**



**ACTUAL LOCATION OF LIGHT BETWEEN TWO SETS OF FRENCH DOORS (PHOTO FROM MARCH 2021)**



**LIGHTS WERE LEFT ON 24/7 AND DIRECTED INTO OUR HOME (MID OCT-NOV/DECEMBER)**





**EXHIBIT 17: 12/14/20 EMAIL FROM OSWALD FOLLOWING 12/11 REQUEST TO VIEW RECORDS**

On Monday, December 14, 2020, 6:22:34 AM PST, Oswald, Jesse <[joswald@srcity.org](mailto:joswald@srcity.org)> wrote:

Good morning Kathy,

Apologies that plan wasn't available and that I missed you on Friday. Staff were still processing the materials.

We are still deciphering the latest Health Order and are unsure if we are allowed to have the public in now. I'll be working through that with the executive team today.

Regards,

Jesse Oswald |Chief Building Official

Planning & Economic Development |100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404

Tel. (707) 543-3249 | Fax (707) 543-3219 | [joswald@srcity.org](mailto:joswald@srcity.org)



---

**From:** Kathleen Parnell <[kathleendparnell@yahoo.com](mailto:kathleendparnell@yahoo.com)>  
**Sent:** Friday, December 11, 2020 10:19 AM  
**To:** Oswald, Jesse <[joswald@srcity.org](mailto:joswald@srcity.org)>  
**Cc:** CMOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>; Mahre, Kali <[KMahre@srcity.org](mailto:KMahre@srcity.org)>  
**Subject:** Re: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation

Thank you, Jesse. I look forward to hearing from someone with the specifics on the interpretation/reasoning applied to this case.

---

**From:** Kathleen Parnell <[kathleendparnell@yahoo.com](mailto:kathleendparnell@yahoo.com)>  
**Sent:** Monday, December 14, 2020 9:06 AM  
**To:** Oswald, Jesse <[joswald@srcity.org](mailto:joswald@srcity.org)>  
**Cc:** CMOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>; Mahre, Kali <[KMahre@srcity.org](mailto:KMahre@srcity.org)>  
**Subject:** Re: [EXTERNAL] 1900 BRUSH CREEK ROAD / ILLEGAL BUILD / Additional Information for City's Investigation

Thank you, Jesse. As indicated, I would like to see all documents submitted to the City for 1900 Brush Creek Road (in 2020), and I provided a formal request to the City Clerk last week. With my prior request, I received nothing from 2020 or submitted by the Lichau's. It was all old and unrelated documents. If I am not able to come into your office due to COVID, what is the City's mechanism to enable my ability to view information prior to decisions being made?

Also, could you please follow up on the specifics for the interpretation, reasoning and law applied to this matter whereby the MAP Act is being utilized to void the building envelope at 1900 Brush Creek Rd. in order to legalize this illegal build? *The Subdivision MAP Act was consulted and interpreted to make these determinations.*

I'm not trying to be difficult but would like to understand how this could occur and the reasoning behind it.

Thank you,  
Kathy

**EXHIBIT 18: PUBLIC RECORDS REQUEST OPENED BY THE CITY ON DECEMBER 14, 2020 TO PROVIDE DOCUMENTS PREVIOUSLY REQUESTED UNDER #20-910**

Public Record Requests  
CITY OF SANTA ROSA

MAKE REQUEST ALL REQUESTS DOCUMENTS

Request page preview

< Request #20-922 > CLOSED

All documents (including but not limited to) plans, applications, photos, emails submitted by or on behalf of the owners at 1900 Brush Creek Road, copy of stop work order and documentation pertaining to stop work order or release from stop work order in 2020.  
\*\*See Request 20-910\*\*

Received December 11, 2020 via email

Departments

Requester **Kathy Parnell**  
kathleendparnell@yahoo.com  
1888 Brush Creek Road, Santa Rosa, CA 95404  
(415) 336-8869

Documents

Public (none)

Requester

- Building - staff and requester only
  - Brush Creek Road\_1900-Plan CALGreen Checklist.pdf
  - Brush Creek Road\_1900-Plan CALGreen Inspection Verification Letter.pdf
  - Brush Creek Road\_1900-Plan Foundation and flooring detail plans.pdf
  - Brush Creek Road\_1900-Plan Site Plan.pdf
  - Brush Creek Road\_1900-Plan Foundations Reports.pdf
  - Brush Creek Road\_1900-Plan Electronic Disclosure.pdf
  - Brush Creek Road\_1900-Plan Foundation detail.pdf
  - Brush Creek Road\_1900-Plan External lighting explanation.docx
  - Brush Creek Road\_1900-Plan Roof framing and beam connection detail.pdf
  - Brush Creek Road\_1900-Plan.pdf

Request Published December 16, 2020, 1:28pm Public

Request Closed Hide Public  
The records you requested and which were determined to be disclosable exist in electronic format and we have provided all responsive non-exempt records to you.  
December 16, 2020, 1:28pm

External Message Requester + Staff  
Some of the records requested have been previously released under PRA 20-910  
December 16, 2020, 1:28pm by Carrie Wilson, Senior Administrative Assistant (Staff)

Document(s) Released to Requester Public  
BRUSH CREEK RD 1900-1.pdf  
December 16, 2020, 1:27pm

Document(s) Released to Requester Details Public  
December 14, 2020, 9:04am

External Message Requester + Staff  
The disclosable public records you requested are available in electronic form and are being provided to you at no charge.  
December 14, 2020, 9:04am by Carrie Wilson, Senior Administrative Assistant (Staff)

External Message Hide Requester + Staff  
Requester + Staff  
\*\*Due to the State of Emergency declared by Governor Newsom and the Order of the Health Officer of Sonoma County to Shelter in Place, a response to your request may be delayed. We will respond as circumstances allow.\*\*  
December 14, 2020, 1:02am

Request Opened Public

**EXHIBIT 19: 2/10/21 REQUEST TO TRIPPEL AND BILL ROSE TO CHANGE DATE OF PLANNING COMMISSION MEETING DUE TO DESIRE TO OBTAIN PUBLIC RECORDS**

From: Kathleen Parnell <kathleendparnell@yahoo.com>  
Sent: Wednesday, February 10, 2021 1:54 PM  
To: Trippel, Andrew <atrippel@srtc.org>  
Cc: Rose, William <WRose@srtc.org>  
Subject: [EXTERNAL] Re: Planning Commission 1900 Brush Creek appeal hearing on February 25, 2021

Good afternoon, Andrew,

As there are some public records that I have requested and would like to obtain for my attachment to the Planning Commission, could you kindly reschedule the meeting date of my Appeal from February 25th to a later meeting? Late March or early April would be more preferable.

Best regards,  
Kathy

Date : 12/12/2020 6:02:09 PM

From : "Oswald, Jesse"

To : "Trippel, Andrew"

Cc : "Osburn, Gabe" , "Abel, Adam"

Subject : Re: [EXTERNAL] Appeal / 1900 Brush Creek Road

Attachment : image006.jpg;image007.jpg;image008.jpg;image001.jpg;

Hi Andrew.

You may be on to something with regard-to no permit being issued yet, but an official determination has been made with regard to the setback and tree.

Any appeals to this project regarding zoning code issues will go to the PC. It's a bit twisted because there are no building regulations to appeal.. that is what BOBRA can hear and make determination on.

I'd want to see what the admin section of the ZC says about timing of an appeal.

Always a twist huh?

J

Sent from my iPhone

On Dec 12, 2020, at 3:29 PM, Trippel, Andrew <atrippel@srcity.org> wrote:

Hi Jesse,

Would this appeal have to be filed after the Building Permit is issued? We agree that she's appealing the Director determination of both the building's location *vis-à-vis* the building envelope and the tree removal. But what is she appealing if we haven't issued a permit? If the building permit does need to be issued in order for her to appeal, does this mean that the appeal route is different because she would be appealing the building permit?

Andrew

Andrew Trippel | Acting Supervising Planner – Current Planning

Planning & Economic Development | 100 Santa Rosa Ave Rm 3 | Santa Rosa, CA 95404

Tel. (707) 543-3223 | Fax (707) 543-3269 | atrippel@srcity.org

<image001.jpg>

From: Oswald, Jesse <JOswald@srcity.org>

Sent: Thursday, December 10, 2020 3:48 PM

To: Trippel, Andrew <atrippel@srcity.org>; Abel, Adam <aabel@srcity.org>

Cc: Osburn, Gabe <GOsburn@srcity.org>

Subject: FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

FYI

Jesse Oswald | Chief Building Official

Planning & Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404

Tel. (707) 543-3249 | Fax (707) 543-3219 | joswald@srcity.org

<image006.jpg>

From: Santa Rosa Building Dept <building@srcity.org>

Sent: Thursday, December 10, 2020 3:47 PM

To: Oswald, Jesse <JOswald@srcity.org>

Cc: Santa Rosa Building Dept <building@srcity.org>

Subject: FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

Hi Jesse,

Can you answer this? I believe it is PED, but I do not have much experience with appeals.

Thank you.

**Erica Christopherson |Senior Administrative Assistant**  
Planning & Economic Development  
100 Santa Rosa Ave., Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-4679 | Fax (707) 543-3219  
[echristopherson@srcity.org](mailto:echristopherson@srcity.org)

<image007.jpg>

---

**From:** City Clerk <[cityclerk@srcity.org](mailto:cityclerk@srcity.org)>  
**Sent:** Thursday, December 10, 2020 2:56 PM  
**To:** Planning Shared <[planning@srcity.org](mailto:planning@srcity.org)>; Santa Rosa Building Dept <[building@srcity.org](mailto:building@srcity.org)>  
**Subject:** FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

Good afternoon

This appeal was emailed to the City Manager's Office. Please confirm if the appeal should be to a PED Board or Council?

Warmest regards,

Sandi

---

**From:** CMOOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>  
**Sent:** Thursday, December 10, 2020 11:12 AM  
**To:** City Clerk <[cityclerk@srcity.org](mailto:cityclerk@srcity.org)>  
**Subject:** FW: [EXTERNAL] Appeal / 1900 Brush Creek Road

**Kali Mahre | Senior Administrative Assistant**

City Manager's Office | 100 Santa Rosa Avenue, Room 10 | Santa Rosa, CA 95404  
Tel. (707) 543-3011 | Fax (707) 540-3030 | [kmahre@srcity.org](mailto:kmahre@srcity.org)

*Please note, if you do not receive a reply on a Tuesday afternoon, I am assisting with the City Council meeting.*

<image008.jpg>

**PLEASE NOTE: The City Manager's Office is currently closed to help curb a resurgence of coronavirus infections occurring in Sonoma County and nationwide.**

---

**From:** Kathleen Parnell <[kathleendparnell@yahoo.com](mailto:kathleendparnell@yahoo.com)>  
**Sent:** Wednesday, December 9, 2020 3:42 PM  
**To:** CMOOffice <[CMOffice@srcity.org](mailto:CMOffice@srcity.org)>  
**Subject:** [EXTERNAL] Appeal / 1900 Brush Creek Road

Attached please find an appeal application to the Planning Commission as it relates to 1900 Brush Creek Road.

Please let me know if you have any questions and whether there is a fee owed to file the application. I can pay immediately by any means convenient for you.

Kind regards,  
Kathy Parnell



**From:** Sheikhal, Monet<msheikhali@srcity.org> on behalf of Sheikhal, Monet  
**Sent on:** Tuesday, November 17, 2020 4:57:20 PM  
**To:** Trippel, Andrew<atrippel@srcity.org>  
**Subject:** RE: 1900 Brush Creek  
**Follow up:** Follow up  
**Start date:** Saturday, November 21, 2020 12:00:00 AM  
**Due date:** Saturday, November 21, 2020 12:00:00 AM



**Monet Sheikhal | City Planner**

Planning and Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543- 4698 | Fax (707) 543-3269 | [msheikhali@srcity.org](mailto:msheikhali@srcity.org)



**Counter Hours**

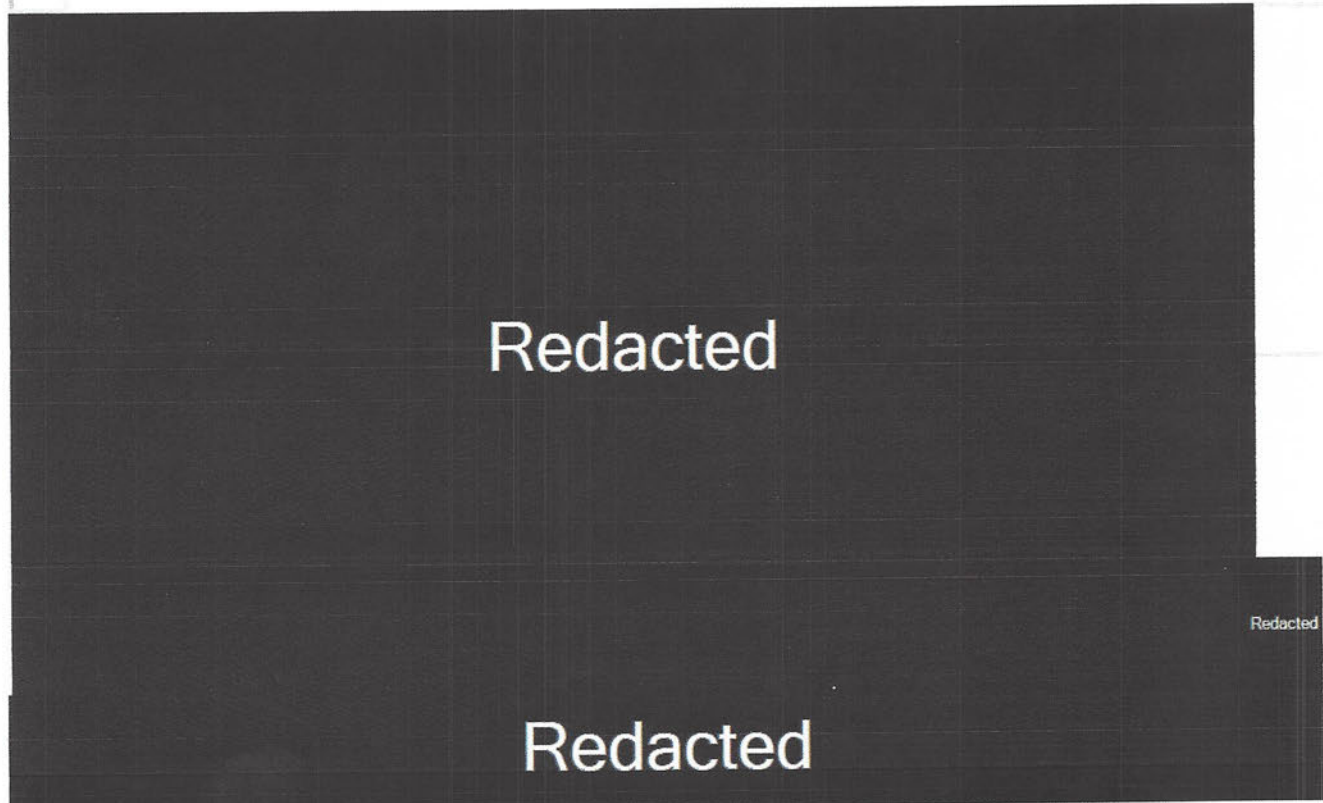
Monday/Tuesday/Thursday: 8 a.m. – 4:30 p.m.  
Wednesday: 10:30 a.m. – 4:30 p.m.(No new permits are accepted after 3:30 p.m.)  
Friday: 8 a.m. to noon(No new permits are accepted after 11:00 a.m.)

**From:** Trippel, Andrew <atrippel@srcity.org>  
**Sent:** Tuesday, November 17, 2020 8:46 AM  
**To:** Sheikhal, Monet <msheikhali@srcity.org>  
**Subject:** FW: 1900 Brush Creek

Hi Monet,  
How did you determine that the building setback lines were not applicable? Typically, we would review other Planning entitlements to determine if they were required by the DAC or a CUP. Did you not find anything?  
Andrew

**Andrew Trippel | Acting Supervising Planner – Current Planning**

Planning & Economic Development | 100 Santa Rosa Ave Rm 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3223 | Fax (707) 543-3269 | [atrippel@srcity.org](mailto:atrippel@srcity.org)



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

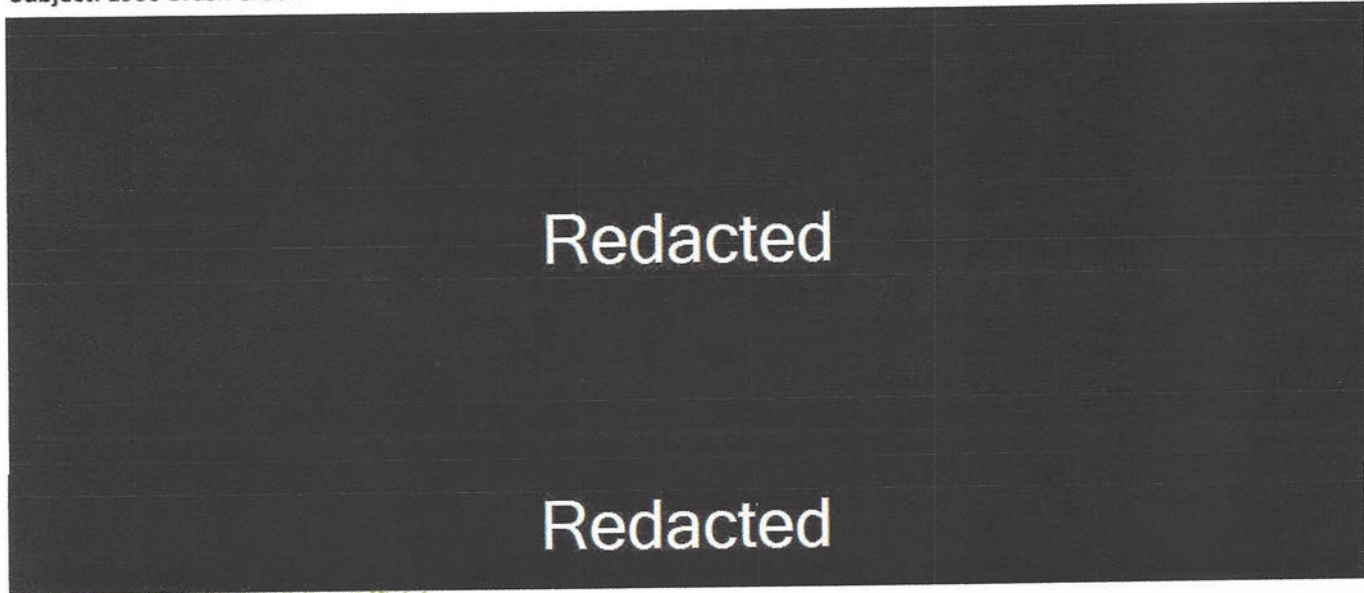
[REDACTED]

**Andrew Trippel | Acting Supervising Planner – Current Planning**

Planning & Economic Development | 100 Santa Rosa Ave Rm 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3223 | Fax (707) 543-3269 | atrippel@srcity.org



**From:** Oswald, Jesse <JOswald@srcity.org>  
**Sent:** Monday, November 16, 2020 12:09 PM  
**To:** Trippel, Andrew <atrippel@srcity.org>  
**Cc:** Maystrovich, Mark <MMaystrovich@srcity.org>; Abel, Adam <aabel@srcity.org>  
**Subject:** 1900 Brush Creek



**Jesse Oswald | Chief Building Official**

Planning & Economic Development | 100 Santa Rosa Avenue, Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-3249 | Fax (707) 543-3219 | [joswald@srcity.org](mailto:joswald@srcity.org)



**Date :** 12/14/2020 9:26:57 AM  
**From :** "Maystrovich, Mark"  
**To :** "Charlton, Lynne" , "Anderson, Cassidy"  
**Subject :** RE: CE Fees for 1900 Brush Creek  
**Attachment :** image001.jpg;image002.jpg;

thanks

---

**From:** Charlton, Lynne <LCharlton@srcity.org>  
**Sent:** Monday, December 14, 2020 9:26 AM  
**To:** Anderson, Cassidy <cganderson@srcity.org>; Maystrovich, Mark <MMaystrovich@srcity.org>  
**Subject:** RE: CE Fees for 1900 Brush Creek

Thank you, Mark. I voided the CE case fees that were collected on the building permit.

Lynne

**Lynne Charlton | CD Technician**  
Planning & Economic Development | 100 Santa Rosa Ave. Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-4334 | Fax (707) 543-3219 | [lcharlton@srcity.org](mailto:lcharlton@srcity.org)



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**From:** Anderson, Cassidy <cganderson@srcity.org>  
**Sent:** Monday, December 14, 2020 9:16 AM  
**To:** Maystrovich, Mark <MMaystrovich@srcity.org>  
**Cc:** Charlton, Lynne <LCharlton@srcity.org>  
**Subject:** Fwd: CE Fees for 1900 Brush Creek

Mark, please advise.

Thanks,  
Cassidy

Cassidy Anderson  
Code Enforcement Officer  
City of Santa Rosa  
Planning and Economic Development  
Tel- [707-543-3229](tel:707-543-3229) | Fax-707-543-3218

Sent from my iPhone

Begin forwarded message:

**From:** "Charlton, Lynne" <LCharlton@srcity.org>  
**Date:** December 14, 2020 at 8:44:27 AM PST  
**To:** "Anderson, Cassidy" <cganderson@srcity.org>  
**Subject:** CE Fees for 1900 Brush Creek

Cassidy, Lisa assessed the two hours of CE time on the permit submittal, as it's easier to capture fees for web site payment that way. Do you want me to credit the fees so the fees don't show as outstanding, and make a note of it?

Thank you.

Lynne

**Lynne Charlton | CD Technician**  
Planning & Economic Development | 100 Santa Rosa Ave. Room 3 | Santa Rosa, CA 95404  
Tel. (707) 543-4334 | Fax (707) 543-3219 | [lcharlton@srcity.org](mailto:lcharlton@srcity.org)





**Date : 9/17/2020 4:20:47 PM**  
**From : "Maystrovich, Mark"**  
**To : "Anderson, Cassidy"**  
**Subject : FW: 1900 Brush Creek**  
**Attachment : administrator@srcity.org\_20200917\_142428.pdf;**

-----Original Message-----

From: Maystrovich, Mark  
Sent: Thursday, September 17, 2020 3:55 PM  
To: Oswald, Jesse <JOswald@srcity.org>; Hartman, Clare <CHartman@srcity.org>; Guhin, David <dguhin@srcity.org>; Sheikhal, Monet <msheikhal@srcity.org>; Rose, William <WRose@srcity.org>; Trippel, Andrew <atrippel@srcity.org>; Garibaldi, Jill <jgaribaldi@srcity.org>; Sevilla, Lisa <LSevilla@srcity.org>; Baughman, Eileen <EBaughman@srcity.org>; Cubley, Robert <RCubley@srcity.org>; Abel, Adam <aabel@srcity.org>; Schalich, Cindy <CSchalich@srcity.org>  
Subject: 1900 Brush Creek

Good Afternoon

I am sending this violation letter to everyone regarding the above property. The violation is for the removal of a redwood tree without approvals, and tree removal permit through planning. This was a very large redwood tree on the site. The redwood tree was removed to make room and an addition. This addition was to expand the master bedroom, master bathroom and add a bedroom. The site is also located in or on a scenic area of town. The owner just submitted plans. The site plan does not indicate location of the redwood tree that was removed, plus other trees on site nor does the owner show the location of all other structures on the property. Please read this letter and the code sections especially the last code section 17-24.140.

Code, Chief Building official and City Attorney Adam will be fielding all questions Thanks Mark

Mark Maystrovich |Senior Code Enforcement Officer Planning and Economic Development |100 Santa Rosa Avenue | Santa Rosa, CA 95404 Tel. (707) 543-3268 | Fax (707) 543-4315 | mmaystrovich@srcity.org

Hello and thank you for your email. Please note: The City of Santa Rosa has closed most of its public counters until further notice to help curb a resurgence of coronavirus infections occurring in Sonoma County and statewide. Access to most City services remains available online, by phone, and in some instances in-person by appointment. For a current list of those services, visit [srcity.org/ServiceFinder](http://srcity.org/ServiceFinder).

For detailed information about the City of Santa Rosa's ongoing response the coronavirus public health emergency, please visit the City's website at [srcity.org/PreventTheSpread](http://srcity.org/PreventTheSpread)

-----Original Message-----

From: Administrator <Administrator@srcity.org>  
Sent: Thursday, September 17, 2020 3:24 PM  
To: Maystrovich, Mark <MMaystrovich@srcity.org>  
Subject: Scanned image from MX-C402SC

Reply to: administrator@srcity.org <administrator@srcity.org> Device Name: COPIER.CD-CODEENF Device Model: MX-4071  
Location: Not Set

File Format: PDF MMR(G4)  
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.  
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.  
Adobe(R)Reader(R) can be downloaded from the following URL:  
Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.

<http://www.adobe.com/>

Another  
complaint

Date : 9/15/2020 4:55:30 PM

From : "code"

To : "Anderson, Cassidy" , "Maystrovich, Mark"

Subject : FW: [EXTERNAL] Building Code Violation follow up - 1900 Brush Creek Rd. Santa Rosa

Attachment : image003.png;image004.jpg;

Fyi...

**Jenny L. Marquez | Senior Administrative Assistant**

Code Enforcement | Neighborhood Revitalization Program

Planning and Economic Development | 100 Santa Rosa Ave, Room 3 | Santa Rosa, CA 95404

Tel. (707) 543-3319 | Fax (707) 543-4315 | [jennymarquez@srcity.org](mailto:jennymarquez@srcity.org)



The City Building Department has received a large volume of applications since opening a virtual counter, with limited resources. Staff will contact you directly with next steps in the process.

Thank you for your continued patience.

Did you know? You can check status on your project by going online to:

<https://citizen.srcity.org/CitizenAccess/Default.aspx>.

From: [REDACTED]

Sent: Tuesday, September 15, 2020 4:28 PM

To: code <code@srcity.org>

Subject: [EXTERNAL] Building Code Violation follow up - 1900 Brush Creek Rd. Santa Rosa

To whom it concerns,

I am following up on a building code violation complaint/concern. The subject property is at 1900 Brush Creek Rd. Santa Rosa. My property is at [REDACTED] Santa Rosa.

I entered in a complaint last week and have not heard back from anyone regarding the status. To my knowledge the city is aware that this build was done without permit nor variance. I would just like to have an update on what is going on and if the city is thinking about giving this builder and home owner a variance without any input from local residences.

Thank you,

[REDACTED]  
Santa Rosa



March 22, 2021

**SENT VIA EMAIL ONLY**

[CMOffice@srcity.org](mailto:CMOffice@srcity.org);

[ATrippel@srcity.org](mailto:ATrippel@srcity.org)

[Smcglynn@srcity.org](mailto:Smcglynn@srcity.org)

Mr. Sean McGlynn, City Manager  
Mr. Andrew Trippel, acting Supervising Planner  
City of Santa Rosa  
100 Santa Rosa Avenue, Rm 10  
Santa Rosa, CA 95404

**RE: Appeal of B20-6871 after-the-fact residential additional-alteration approval that was triggered by CE20-0139 code enforcement complaint for unpermitted work in violation of the City's Municipal Code**

Dear Mr. McGlynn and Mr. Trippel:

This office represents Appellant Kathleen Parnell, owner of the property at 1888 Brush Creek Road in Santa Rosa. I am writing to you, in particular, because of the grossly inadequate treatment of the above referenced appeal ("Appeal"), which is scheduled to be heard by the Planning Commission on March 25, 2021. In brief summary, the City's arbitrary and capricious treatment of the code enforcement complaints related to unpermitted work by the owner of 1900 Brush Creek Road ("Builder") in 2020 culminated in a compounded arbitrary and capricious granting of an after-the-fact ("ATF") building permit that violates the City of Santa Rosa's Municipal Code. The public records confirm that the Builder was given preferential treatment by the City in violation of both the procedural and substantive requirements outlined in the City's land use regulations, including General Plan and Municipal Code. This letter supplement to the Appeal is incorporated into the administrative record and I respectfully request that it be distributed to the Commissioners in advance of the hearing scheduled for March 25, 2021.

There are two reasons for this Appeal: (1) illegal removal of heritage redwood tree; and, (2) unpermitted addition in violation of City's development standards that cannot qualify for an ATF building permit. Waste is often an undesirable outcome; however, under these circumstances, including the callous and blatant disregard for the rules by allegedly qualified professional(s), I request that the City condemn the addition and require the Builder to remove that portion of the new addition that objectively violates the Municipal Code. If the City fails to follow through on this requested result, it will send a clear message to the general public that it is individually advantageous to "beg for forgiveness than to ask for permission." In doing so, the detriment from similar projects will be externalized on those members in the community that have reasonably relied on the Municipal Code and other regulatory

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framework for managing expectations regarding the built environment. This is patently unfair and should not be tolerated.

This supplemental appeal letter is broken down into three distinct components:

1. Applications of substantive violations of the Municipal Code;
2. Procedural defects in processing the code enforcement violations and corresponding ATF building permits;
3. A comprehensive chronology revealing the abuse of discretion by City staff.

***I. The Builder's intentional and premeditated defiance of the City's land use regulations cannot be supported by ATF permitting under the Director or Planning staff's discretionary decision making authority.***

- a. The City has mistakenly processed the tree removal application as a Type-II category (alongside proposed development) instead of the Type-I category (standalone tree removal).*

The builder illegally removed the heritage redwood tree within three months of purchasing the property. The tree was proactively removed prior to development of plans or meaningful consultation with the City regarding future development of the property. Further, the tree was removed approximately 5 months prior to commencing the illegal construction. This begs the question why the City has processed this illegal tree removal permit in conjunction with the ATF building permit.

There is no objective documentation of the heritage redwood tree causing damage to the home's foundation. If this were a known problem, it would have been disclosed during the purchase transaction at the end of July 2019. The prior owner of the property acknowledged that the redwood duff required routine maintenance. It appears clear that the tree was proactively removed by the Builder as a matter of personal convenience rather than an informed decision making process as outlined and required by the Type-I application requirements detailed in 17-24.040 of the Code.

- b. Deliberate disregard for the tree removal policies and procedures should qualify for imposition of remediation more than the statutory minimums.*

Tree removal on property proposed for development is governed by Municipal Code 17-24.050. That section identifies certain application materials as a *prerequisite* to development. The purpose is to enable informed decision making in conformance with the statutory requirements. Page 10 of the February 25 staff report<sup>1</sup> declares that the "Building and Planning Division practice is to process tree removal proposed as part of construction concurrently." Under the present circumstances, the heritage tree removal occurred months before the illegal construction commenced, so the City's determination under an unofficial policy in processing applications cannot and should not form the basis for dismissing the initial code violation of unpermitted heritage tree removal.

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<sup>1</sup> All reference to the staff report are the report prepared for the originally scheduled hearing on February 25, 2021.



The Builder failed to comply with the process, and to-date, has not fully complied with the substantive requirements of an ATF application for the illegal heritage tree removal. Specifically, there is not a site plan that indicates the genus and species, the shape, the drip line, and the trunk circumference of the tree.<sup>2</sup> Further, 17-24.050 (A)(1) demands that “the proposed development shall be designed so that the proposed improvements preserve and protect any heritage trees *to the greatest extent possible.*” (emphasis added). This *necessary* finding cannot be made in review of the piecemealed application materials that were produced in connection with the ATF permit because: (1) the home addition was a voluntary act, and (2) there were various alternative locations on the Builder’s property to accommodate an approximately 360 square foot addition if a more thoughtful site strategy were considered in connection with a properly processed application for a tree removal.

Staff’s ATF approval is further flawed because of the inconsistency with the City’s General Plan policies and goals. Specifically, Transportation Policy G-5 states “retain existing trees and vegetation along scenic roads, as possible. Enhance roadway appearance through landscaping, using native plant material.” Brush Creek Road is among one of less than a dozen designated scenic roads in the City. As shared above, the tree removal was voluntary, not necessary. Preservation of the tree would have been possible with proper advance planning procedures and consideration of appropriate site development.

Furthermore, Open Space and Conservation policy H-1 states “preserve trees and other vegetation...both as individual specimens and as part of larger plant communities.” There is no evidence in the record of any attempt to preserve the heritage redwood tree; nor is there evidence that removal of the tree was necessary for reasonable development of the property. There is a singular self-serving statement from the Builder’s representative that the tree roots were in conflict with the existing foundation. If that were true, photos of the foundation intrusion would have been provided and this information would have been revealed in the home inspection report produced in connection with the 2019 purchase. No objective evidence has been submitted to support the unjustifiable claims.

Municipal Code 20-28.050 Scenic Road (-SR) combining district states, “Prior to the approval of a project, the applicant shall demonstrate that each tree proposed for removal shall not have a negative impact on the scenic quality of the corridor, or that the tree is a hazard or unhealthy, as determined by a certified arborist.” Here, there was no evaluation of the scenic quality of the corridor either prior to or after the tree removal, and there was no certified arborist report regarding the health of the tree.

Additionally, the Planning Commission is encouraged to reflect on the declaration of legislative intent and purpose for Municipal Code 17-24.010. That provision states, “Trees are key elements in a living system the boundaries of which do not conform to the arbitrary

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<sup>2</sup> Public records reveal a disjointed attempt to retroactively justify the illegal tree removal, including: T1 single sheet site plan produced by IDR Drafting (approximately 9/18/20); a single sheet site plan prepared by Robertson Engineering inc. dated 10/13/20 depicts an area of addition with a generic symbol of a “removed redwood” within the area of the illegal home addition.

property lines of individual lots and parcels and upon which the continued health and welfare of this community depends. In addition, trees in the community and in a neighborhood provide a sense of identity and tradition and enhance property values. The City Council further finds and declares that careless treatment and arbitrary removal of trees detracts from scenic beauty... reduces property values, increases construction costs and drainage costs, and thereby further reduces the attractiveness of an area.”

## **CHRONOLOGY**

Perhaps the most disturbing aspect of the ATF heritage tree removal permit determination is the disjointed chronological process, which now reveals fundamental inconsistencies with “truth” and fact. This process is outlined below to demonstrate the irrational and unjustifiable granting of the heritage tree removal permit:

1. August/September 2020: Appellant submitted complaints regarding an unpermitted heritage tree removal.
2. September 17, 2020: Notice of violation issued to Builder by City identifying the illegal tree removal and providing a copy of the applicable Municipal Code.
3. September 18, 2020: Petition letter from Builder to City confirming that the heritage redwood tree was removed in October 2019; and, that the Builder was naively unaware that a tree removal permit was required by the City prior to removing a heritage redwood tree. Unidentified source letter provided by the Builder with information about the illegally removed tree – apparently in an attempt to qualify as an arborist report as required by the City.
4. September 22, 2020: Email from Mark Maystrovich to Builder confirming that the building permit plans submitted on September 16, 2020 were rejected for being inaccurate and demanding that “the professional tree company that removed” the tree provide an arborist report detailing the health of the tree and why it needed to be removed.
5. September 22, 2020: Email from Amber Lichau to Andrew Trippel clarifying the unqualified tree condition letter that was previously shared with the City. “[The company is] stating that the individual that had actually worked with us and cut down the tree is ill and no longer working with the company so I have been speaking to another member of the company. I have reached out to them again today...In the event they do not provide us with the requested information beyond the preliminary info of width at breast height, total height, and species of tree, are there alternative steps that we can take in lieu of this to get this all take care of?”
6. September 24, 2020: Unidentified source letter provided by the Builder with information about the illegally removed tree – apparently in an attempt to qualify as an arborist report as required by the City based on the demand from Mark Maystrovich in the September 22, 2020 email to Builder.
7. October 7, 2020: Email from Builder to Mark Maystrovich stating “We contacted the individual who cut down the tree to obtain the requested info on the tree and were given the letter without letterhead or a signature. Upon further contact today, we were informed that the individual that cut down the tree was not an arborist nor does he own the tree company for which he works for and therefore drafted the letter with the requested information and sent it to us but without a signature or letterhead. I’ve had

extensive contact with the arborist and owner and although he did write us up the letter with your office's requested information that we had given to you, he's not able to sign his name because he did not personally see the tree prior to it being cut. *He said he's willing to talk to whomever regarding the situation* but won't be able to sign for the provided information because it was his employee (and father) that cut down the tree. Can you please advise us on how to proceed without an arborist report? I wish we had known there was a proper protocol and permit needed to remove a tree."

- a. If members of the community that hold themselves out as qualified professionals are performing this type of illegal work on an obvious heritage redwood tree along a scenic roadway, acting on behalf of their employer without permits, then the public has a right to know who they are to safeguard against future violations. If the Builder was induced by the allegedly qualified professionals to perform the work (i.e. if Builder truly had believed the individual that cut down the tree was an arborist acting on behalf of the tree company), then the Builder should consider recourse against them for the damages that are rightfully imposed by the City based on the violations.
  - b. If the individual did not present as a qualified professional and was hired to cut down the tree because it was advantageous to the Builder, this may demonstrate that the lack of permit was a deliberate and willful choice by the Builder with a blatant disregard to the Code requirements.
  - c. Despite the offer in the October 7 communication, there is no record that the City accepted the invitation to speak with the company owner and investigate the circumstances.
8. February 5, 2021: Letter from Builder's attorney, Rose Zoia, states in relevant part, "The Lichaus, who had no prior experience with building a home or addition, seeking permits, or a governmental land use authority, they proceeded with construction of the addition, which also required the removal of a redwood tree, without seeking a building permit from the City." This statement is problematic since the Owners illegally removed the heritage redwood tree in October 2019 under the claimed guise of fire protection and abatement of root intrusion into their existing home's foundation, not as a prerequisite to reasonable development of their property, as suggested by Ms. Zoia. Nonetheless, to portray the Builders as unsophisticated novices is patently false:
- a. The Builder is a licensed contractor through his construction company of which he is an owner and CEO. The company also lists its principal address at 1900 Brush Creek Rd. To claim any ignorance of the need to first obtain a building permit or tree removal permit defies logic. Builder reached out to City Planning seeking answers to development standards within two months of moving into the home. This is not reflective of an unsophisticated or naïve builder.
  - b. On September 9, 2019, City Planner Monet Sheikahli sent a link to the Final Map, Zoning Code and Setbacks for R-1-15-SR, *and Building Permit Application* to the Builder's representative by email. The Builder was effectively on notice that a permit application would be needed for development of the property.

## TREE MITIGATION

Municipal Code 17-24.050, subsection (C) clarifies the “tree replacement program” for heritage trees authorized for removal. On December 23, 2020, Andrew Trippel emailed Appellant that Planning would approve the tree removal and required tree mitigation based on the 11-23-20 Planning Determination. This determination was made a full year after the tree removal occurred and without adequate information. Still missing from the record are: an arborist report from the company that performed the work; a copy of the purchase disclosures or other objective information from the time of purchase to demonstrate that the roots of the redwood tree were interfering with the existing home’s foundation system, as well as a hazard assessment, which was an additional justification for the illegal removal. The Appellant spoke with the former owner of the property, who shared that the heritage tree did not present any health or safety concern and was never an issue during his ownership of the property. Similarly, the prior owner’s realtor also acknowledged that it was not an issue raised or ever noted during the sale of the home in 2019.

In light of the seemingly duplicitous representations by the Builder, the mitigation prescribed by the City seems deficient and will only serve as an example how to justifiably remove heritage trees with minimal repercussions. Specifically, the replacement program is tiered off statutory minimums (i.e. 15-gallon size plantings). Based on the Builder’s petition to the City in January 2021 (notably after the determination approving the removal was made by the City), the required replacement plantings will not actually be installed on private or public property, but rather will be replaced with an in lieu fee totaling \$2,600; \$100 for the 26 replacement trees.

First, application of minimum standards for knowing disregard of the tree removal permit process only encourages similar behavior for future property owners. Second, it would take decades for 15-gallon redwoods to achieve a similar environmental benefit as the heritage tree illegal removed; therefore, a combination of 24” – 36” box plantings are more appropriate for measuring the prescribed replacement plan and/or cost assessment. Third, the in lieu fee calculation prescribed by City staff disregards transactional costs associated with replacement plantings, such as: taxes, delivery, installation, irrigation, among other factors. Fourth, and finally, the City should consider the public policy in accommodating a culture of disregard for the rules and regulations, especially pertaining to precious heritage redwood trees. Accordingly, demand is made that the mitigation measures imposed on the Builder be increased to *at least* 4x the minimum prescribed by the City’s original determination, amounting to *at least* \$10,400.

Absent from any application material is an arborist report or other similar documentation from a qualified professional to opine on the circumstances and conditions of the tree.<sup>3</sup> On September 22, 2020, Mark Maystrovich asked the Builder for the arborist report and corresponding backup documentation. Instead, the project engineer submitted a letter dated October 30, 2020 that purports to represent a professional opinion about the tree removal. Unfortunately, the project engineer did not personally observe the conditions and is not

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<sup>3</sup> A public record was produced from an unknown source with unknown qualifications that provided general ATF details about the illegally removed tree without any supporting documentation or independent verifications.

qualified to render an opinion. Regardless, the City appears to have accepted his letter as truth, which reads in relevant part, “the gentleman that removed the tree felt that it posed a fire hazard and a safety hazard for the existing house and people who may be using the yard.” This self-serving statement from an engineer that did not personally observe the conditions does not qualify as facts to support the City’s findings approving the tree removal.

Further, A hazard assessment is a term of art that incorporates ANSI standards and requires a written report. The Builder’s letter to Mark Maystrovich on October 7, 2020 claims that an arborist report cannot be produced because the employee who performed the work is not an arborist and does not own the company. The letter supporting the tree removal is unsigned and without any identification as to the company or qualifications of the person presenting the information, nor did it discuss any safety or fire issues.

On November 23, 2020, Andrew Trippell wrote to Jesse Oswald: “Based upon my reading of the Tree Ordinance, two circumstances exist with regard to situations where development is approved: (a) a situation where tree removal and development are approved, and (b) a situation where development is approved but tree removal is not. As we discussed, **while Planning recommends implementing (a), your discussion with the CE complaint filer may result in (b) being an acceptable suitable alternative.**” Yet, despite the lack of arborist report and additional required information, the City arbitrarily chose the more lenient of the two tree mitigation options.

Finally, the City issued a notice of violation to the Builder on September 17, 2020 regarding the illegal tree removal that occurred nearly a year prior. In that notice, the City included a copy of Municipal Code section 17-24.140 (Violations – City Approvals). That section holds that **the owner of any property on which a violation of Chapter 17 was committed shall be denied for two years from the date of discovery of the violation any approval or permit which otherwise might have been issued by the City for the development or further improvements of such property.** In light of the blatant violation of Chapter 17, it is impossible to reconcile the City’s granting of ATF building permit that was only accomplished due to the illegal tree removal in light of the 2-year prohibitory language detailed above. Note that the 2-year moratorium is mandatory, not permissive. The statute specifically uses the words “*shall* be denied”. It is impossible to reconcile how the City is entitled to disregard these objective mandates in granting the Builder’s ATF permits.

On November 16, 2020, Jesse Oswald emailed Andrew Trippell, “When I talk to the complainant and explain the realistic approvals – should I explain that when submitted – the application will be approved and no moratorium will be set on the property for two years for applications. If she wishes to appeal this she can to the Director?”

**The Planning Commission is respectfully being asked to enforce the two-year moratorium pursuant to Section 17-24.140, given the blatant violations by the Builders. Based on the strict reading of the Municipal Code, the 2 year moratorium must be enforced.**

Page 7 of the staff report arbitrarily and broadly declares “Planning established that tree removal would have been approved had a building permit for the addition been sought as required....Planning Division, in partnership with the City Attorney’s Office, Building Division, and Code Enforcement, reviewed [Article VII. Enforcement] and again determined that tree removal would have been approved had a building permit for the addition been sought as required.” There is no rational basis for drawing the conclusion stated in the staff report. Based on the information above, the conclusion drawn in the staff report is not supported by any evidence, let alone substantial evidence, in the administrative record.

*c. The City failed to apply the required setbacks in conformance with the development standards outlined under the Municipal Code and R-1-15 SR Zoning District. The disputed encroachment is subject to a front yard setback, not a side interior yard setback as originally determined by Staff.*

## **FRONT SETBACKS**

The ATF building permit is supported by a letter from Mike Robertson dated October 31, 2020. That letter reads in pertinent part, “On October 15, 2020 Planning reviewed your [application] request and it determined that the new addition needs to comply with the required setbacks for R-1-15 SR Zoning District per Section 20-22.050. No need to apply the setbacks being shown on the Supplemental Sheet.”<sup>4</sup> The letter goes on to share “Per Monet [Sheikhali], the zoning side yard setback of 10’ supersedes the setback shown on the Supplemental Sheet.” Note: the conclusion of a zoning “side yard setback of 10’ is not contained in Ms. Sheikhali’s October 15, 2019 email but appears to be a conclusion drawn by Mr. Robertson and/or the Builder. In the same December 23, 2020 email communication with Appellant, Mr. Trippel declared “based upon its review of the project plan set against applicable Zoning Code requirements, the Planning Director determined that the residential addition complies with applicable development standards and approved Planning Review for B20-6871.”

The disputed addition should be measured based on a front yard setback, not an interior side yard setback as originally determined by City staff.

Municipal Code section 20-30.110 defines setback requirements and exceptions. It is noteworthy that an express purpose of this code section is to provide minimum dimensions for *landscaping*. Not so ironically, the Builder removed a precious heritage redwood tree for unreasonable expansion of his project that effectively prohibits any reasonable opportunity for accomplishing the landscaping purpose of the setback requirements.

Subsection (C)(1) reads “the front setback shall be across the narrow dimension of the lot, unless determined otherwise by the Director.” There has been no independent determination by the Director where the front property line is for the subject property, so we are in a situation where we read and apply the definitions of the Code. The Parcel Map confirms that the northern property line for the Builder’s property (Parcel 3) is 100.59’ as

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<sup>4</sup> No communication from October 15, 2020 has been produced under the public records request.

compared to the western property line along Brush Creek Road, which measures 149.77'.<sup>5</sup> It is objective and obvious that the narrow dimension of the lot is the northern property line. In accordance with the express language in the Code, no further analysis is required to determine the front property line.

Due to the irregular shape of the Builder's property, an argument could be made that the northern property line is artificially truncated and not representative of the narrow dimension for the parcel as a whole. To resolve this potential counter claim, a reasonable alternative approach is to take the average of the opposite side property lines to calculate the "narrow dimension of the lot." Here, the average of the northern and southern property lines is 136.25' compared to the average of the eastern and western property lines, which measure 160.31'. Regardless of applying the strict language of the Code or adopting an alternative interpretation, the same conclusion is reached – the northern property line is the front property.

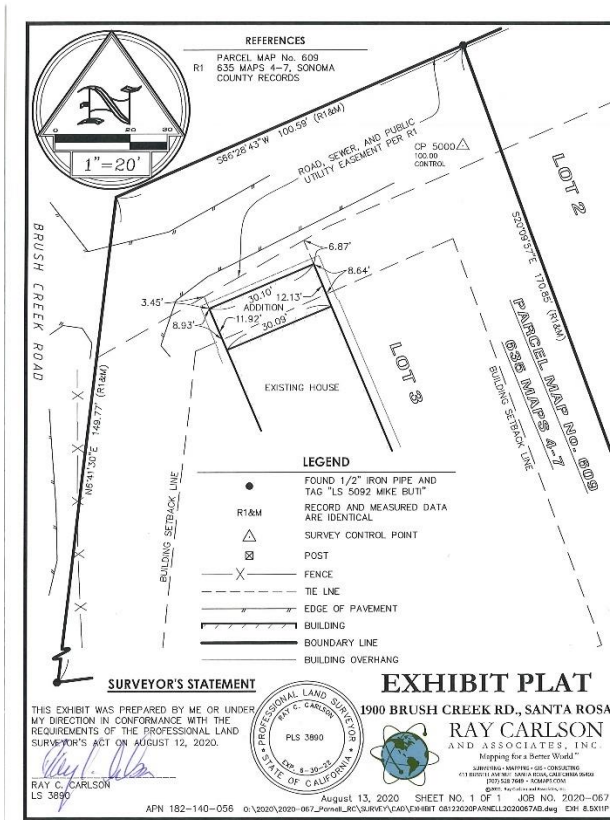
It is noteworthy that prior to the subdivision of property in 2002, the larger parcel comprising lots 1, 2, and 3 would have had a front lot line abutting Brush Creek Road since that would have been the narrow dimension of the lot from which access is taken. However, that changed in 2002 when the property was subdivided. As staff has consistently shared in this process, we are looking at the code as of the date of the building permit submittal. Therefore, the Builder does not have the benefit of claiming Brush Creek Road as the front property line since it fails to comply with the Code.

Next, it is important to confirm *from where* the front setback is measured. Pursuant to 20-30.110 (C)(1)(a) "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...(4) the edge of an easement for a private road or driveway." (emphasis added). The parcel map and all corresponding application materials clearly depict a private road and utility easement measuring slightly more than 30-feet in width along the northern portion of Parcel 3. The illegally constructed new addition's location relative to the easement is depicted in the below image prepared by licensed survey Ray Carlson.

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<sup>5</sup> Measurements accepted from Robertson Site Plan dated 10/13/20.





This image confirms that the face of building for the illegally constructed addition is a variable 3.45' – 6.87' from the roadway easement (eaves on the home would reduce these distances by approximately 1'). Mr. Trippel's December 23, 2020 letter to Appellant explicitly confirms that the required setbacks for the R-1-15 SR zoning district are 20 feet for a front yard setback. Staff's determination of compliance with Municipal Code development standards cannot be reconciled with the above analysis, which is why the Commission should uphold the appeal.

### SIDE CORNER SETBACKS

Municipal Code section 20-30.110 (C)(2)(b) details the requirements of a corner side setback. Like the front setback measurement described above, the side setback on the street side (private roadway) of a corner lot shall be measured **from the edge of an easement for private road or driveway** so that it results is the greatest setback that extends between the front setback and the rear property line. Accordingly, even if this slightly more favorable standard were applied to the current Appeal (i.e. 15' compared to 20'), a finding of compliance with the development standards still could not be made.

It would appear that Builders misapplied the Zoning Code when they built without permits by considering the setback as an interior side setback. In doing so, it would seem they illogically applied the 10' set-back so that it falls within the 30' private road and private and public utilities easement.

### **ALTERNATIVE SETBACK INTERPRETATION**

A decisionmaker could review Sheet 4 of 4 to Parcel Map 609 and observe Lot 3's 20' setback along the eastern property. A potential implication is that the eastern property line for Lot 3 was meant to be the rear property with the frontage along Brush Creek Road as the reciprocal front yard since the 20' dimension is consistent with the development standards. However, City staff has staked out the extreme position that Sheet 4 of 4 to the Parcel Map is for information purposes only and holds no value in governing interpretation or application of the building envelope or setback standards. Accordingly, Staff's unjustifiable determination of code compliance cannot be based on acceptance of the positive attributes from Sheet 4 of 4 to the Parcel Map while refuting the detrimental aspects associated with the building envelop restrictions that are also depicted on the same.

### **SUBDIVISION CONDITION OF APPROVAL SETBACK**

The Final Subdivision Committee Report from June 2000 details conditions of approval for the subject property's then subdivision.

Planning's Condition 3 reads "**Building setbacks shall be shown on the local agency sheet of the final map.**" 19-31.140 demands that parcel maps contain the following reference, "Sheet No. \_\_\_ for all local agency-required information." This condition of approval, read in conjunction with the Code that was in place at that same time, *requires* that the setback information be depicted on sheet 4 of the Dehnert's subdivision. See the subdivision map arguments below for application of this information.

Planning condition of approval 8 describes the driveway design relative to adjacent features. Specifically, condition 8(c) reads, "**a 10 foot separation shall be maintained between the edge of pavement and existing house.**" At the time of the subdivision application, only the current Builder's home existed, so this condition was specifically included to regulate the future development of Parcel 3. The ATF permit plans fail to include any topographic map prepared by a qualified professional that locate and provide dimensions to the edge of pavement. Therefore, the City did not have the necessary information at the time of making its various unjustifiable determinations on this application to confirm compliance with the historical condition of approval. However, Ray Carlson's August Survey image, which was provided to the City by the Appellant in advance of the final determination and this appeal, depicts the edge of pavement and objectively demonstrates that the illegally constructed home addition fails to comply with this minimum 10-foot setback condition of approval requirement.

Finally, Private Street/Driveway Improvements condition of approval 11 requires "**clear backup of 46 feet from garage faces to opposing faces of curb**" which is clearly called out on the subdivision map as the 46' building envelope setback from northern property line. This was explicitly included in the condition of approval and memorializes the design and layout of the subdivision, which all other properties in this subdivision have relied on in their own development of lots 1 and 2. It is unjustifiable for staff to blindly disregard all of these conditions of approval in connection with approving the ATF building permit.

For all of the reasons outlined above, the City abused its discretion in making the determination in support of the ATF application since there were no findings made and any implied findings were not supported by facts. Such an arbitrary and capricious decision cannot be maintained, and the Commission should uphold this appeal.

- d. Staff's determination that the information included on Sheet 4 of 4 to Parcel Map 609 does not create enforceable development standards is inconsistent with historic practices, unjustifiable in the context of the Subdivision Map Act and Municipal Code, and unreasonably deviates from this Map's conditions of approval.*

Mr. Trippel's December 23, 2020 letter to Appellant details staff's analysis why the building envelope restrictions identified on Sheet 4 of 4 to Parcel Map 609 are not enforced by the City. That analysis is fundamentally flawed as described below.

In 1985, Government Code §66434.2 was added. It reads:

*(a) On or after January 1, 1987, a city or county may, by ordinance, require additional information to be filed or recorded simultaneously with a final or parcel map. The additional information shall be in the form of a separate document or an additional map sheet which shall indicate its relationship to the final or parcel map, and shall contain a statement that the additional information is for informational purposes, describing conditions as of the date of filing, and is not intended to affect record title interest. The document or additional map sheet may also contain a notation that the additional information is derived from public records or reports, and does not imply the correctness or sufficiency of those records or reports by the preparer of the document or additional map sheet.*

*(b) Additional survey and map information may include, but need not be limited to: building setback lines, flood hazard zones, seismic lines and setbacks, geologic mapping, and archaeological sites.*

In 1987, the City adopted verbatim language into Chapter 19 of the Municipal Code, presumably in response to the change in state law under the Subdivision Map Act ("SMA").

First, in refusing to enforce the building envelope restrictions on the Parcel Map, City staff appears to overly rely on the header and technical language required under the SMA for justification. Mr. Trippel declares in the December 23, 2020 letter: "(1) Supplemental Sheet Note (1) states that 'This sheet is for informational purposes *only*, describing conditions as of filing and is not intended to affect recording interest.'" (emphasis added). Nowhere in the SMA or Municipal code does it say that the supplemental sheet is for information *only*. It does hold that the information is not intended to affect record title interest. There is no claim in this appeal that the Builder's title interest is disturbed based on building envelope restrictions included on the map.

The SMA code section above specifically requires that the map contain the statement as written. If that statement was not included on Sheet 4 of 4, the map would have been rejected by the City Engineer for failing to comply with the SMA. Therefore, staff's reliance on this technical statement is misguided and does not refute the imposition of building envelope standards that staff appears so desperately to conclude.

Second, if the City's finding about inapplicability of any substance on Sheet 4 of 4 is affirmed, it renders an absurd result. Specifically, Sheet 2's notes read "see sheet 4 for easement information", and the scenic building setback is only listed on Sheet 4. If sheet 4 is given no weight or authority, then these details are seemingly irrelevant. If that were intended to be the case, then the Parcel Map would have consisted of only 3 sheets and the fourth informational sheet would have been precluded from the public record – likely only used for internal Builder planning purposes. Similar to the rules of contract interpretation, the map should be read as a whole, and any interpretation should be based on all of the sheets together. As stated above, you cannot understand sheet 2 without reference and information depicted on sheet 4.

Third, staff's finding of non-application of the building envelope restriction is based on regurgitating Municipal Code 19-28.200. However, a careful read of that provision, in connection with the broader statutory framework of Chapter 19, demands a different conclusion. Specifically, subsection (D) reads "All required notes and all required additional survey and map information, including but not limited to, building setback lines, building envelopes...[shall be contained on the information sheet]." Nowhere in the Code does it say that the information sheet will not be enforced. Nowhere in the Code does it say that the information sheet is a pretty picture that has zero independent meaning. Nowhere in the Code does it say that the information sheet should not be relied upon by successors in interest. **The Code does state that building envelopes shall be contained on the information sheet.**

Further, staff failed to read Chapter 19 of the Code in context. Specifically, 19-08.040 defines building envelope as "**the area of a lot or parcel of real property within which structures *must* be confined, except fencing and driveways and which is delineated on the information sheet of the final/parcel map and so designated.**" (emphasis added). Not only does the Code define what is a "building envelope" but the Code also tells us where we should look to understand how that space is presented – on the informational sheet of the parcel map. The building envelope restrictions is included on the informational sheet to satisfy the City's own requirements as detailed in the Municipal Code. It would be inconsistent to look elsewhere on the map for that information. Further, consistent with the first point above, if the building envelope were intended but not depicted on the informational sheet of the parcel map, then the City Engineer may have rejected it for failing to comply with the Municipal Code.

Fourth, City staff overlooked and/or disregarded the catchall language in section 19-28.200 that reads "typical representations may also be utilized if, in the opinion of the City Engineer, they adequately communicate the desired information." Using common symbols to locate

and depict building envelopes, which are labeled as such on the additional information sheet of the parcel map, is a typical representation that clearly communicates a piece of information. It is challenging to reconcile staff's refusal to accept this reasonable catch-all interpretation.

Fifth, staff has shared that building envelope restrictions, as well as other details depicted on the additional information sheet of parcel maps, is meant to capture a moment in time but not necessarily be carried forward if there is conflict with current development standards. Although there is disagreement over this proposition, assuming it to be true, the election to deviate from the building envelope depicted on the map necessitates a changed circumstance in the development standards since those standards were required as of the filing of the map in early 2000s. Staff has failed to provide any information reflecting a revision to the Code's development standards over the past 20 years that demands a different result from what is depicted on the map.

Sixth, and finally, we have the benefit of reviewing the conditions of approval for the subdivision. As described above in the setback analysis, there are numerous references in the final conditions adopted by the local agency that demand the building envelope be honored and maintained.

### **Conflict of Interest**

It was recently discovered that Anthony (Tony) Cabrera, the former City Engineer, has been privately consulting for the Builder and utilizing his personal contacts with the City to artificially manipulate and influence this appeal. It was particularly disturbing to hear from Tony at the February 25, 2021 Commission meeting where he demanded that the City prohibit any additional information from being submitted into the record or considered by the Commission in advance of the March 11 appeal hearing, which was then continued until March 25 to accommodate the City's preference for additional time to search for public records. As a former public employee, it seems that Tony forgot that the appeal requires a transparent and fully informed decision-making process based on facts.

Tony's undue influence as a former City employee regarding interpretation of matters that he personally managed where he now has a financial interest in the outcome creates a serious concern about the objectivity of the City's application of the Code and Tony's ability to serve as an advocate for the Builder. In anticipation of this tainted process, Ray Carlson was retained to share his professional opinion on the application of the additional information sheet relative to building envelopes for parcel maps and other subdivision applications he has managed, both across the state and within Santa Rosa over the past few decades. Ray's opinion is submitted as a supplement to the appeal information.

### **Practical Implications**

It is important to take a step back and reconcile the parcel map with the zoning district's development standards to appreciate how the proposed building envelope was actually an expansion of the development potential area for Parcel 3. Lot 3 was the most constrained lot since it was burdened by the access easement on the north, front property line on the

north, and scenic roadway overlay zoning district supplemental setbacks from Brush Creek Road. As described in the setback analysis above, the then existing house was already in violation of the newly defined front yard setback, which is measured from the edge of the easement area. Therefore, designating the building envelope to within approximately 3 feet of the existing home actually expanded the potential development footprint of the property. Although the City and Builder have consistently demanded that the building envelope restriction is not applicable, both should reconsider that position since the building envelope affords greater development potential as compared to strict application of the zoning standards.

Lastly, a private water line to the Appellant's home appears to be situated directly adjacent to the Builder's addition. The water line was traced recently by a private utility locating service, GPRS, and the water line was detected along the northern edge of the new build then down the fence line. It is obviously problematic that the Appellant may not be able to reasonably access the water line in the easement as a result of Builder's illegal addition. Furthermore, it appears that Builder is effectively prohibited from mitigating the impact of the new addition through landscape screening or fencing since those features would be in conflict with the waterline in and around this area.

For all of the reasons outlined above, it should be clear that the City's various determinations and findings related to ATF tree removal and Planning approval for illegal construction is fundamentally flawed. This Appeal should be upheld, and the Builder should be directed to abate the nuisance (i.e. self-created violation of the development standards).

***II. The City's processing of both the code enforcement investigation and building permit application for ATF approval of the illegal construction amounts to an abuse of process.***

Below are a series of events that detail the City's abuse of discretion in processing matters related to 1900 Brush Creek Road. Such abuse cannot be accepted by the Commission and independently justify approval of the appeal.

***a. Unjustifiable determination of building envelope standards***

On October 8, 2019, Ivan Rezvoy, on behalf of the Builder, emailed Jesus McKeag confirming whether the Builder should apply for a modification of the building envelopes designated on the parcel map. Mr. Rezvoy understood that the building envelope was established with the recordation of the final map but struggled to confirm the distance of that restriction from the northern property line. Note that all three parcels have 46-foot setback from the northern property line as shown on the map. Both Engineering and Planning staff confirmed for Mr. Rezvoy that staff would not object to the addition proposed. This communication appears to be the basis for Builder's pursuit of the construction without a permit. The law is clear that an owner cannot vest a right to an illegal permit. However, staff should not have rendered an opinion on the merits of an informal inquiry based on an incomplete information, such as the one shared by Mr. Rezvoy on behalf of the Builder.



*b. Publication and attribution of Code Enforcement complaints*

The City's published materials declare that "anonymous complaints are not accepted but be assured that complainant information is kept confidential." The City's staff report explicitly identifies Appellant as the complaining party. More detrimental is that the City published the complaints and supporting information supplied by Appellant in the Exhibits to the staff report (attachment 9 – Appellant Correspondence). Such an egregious error violates the public trust and demonstrates a complete disregard by the City of following its own policies and procedures.

Page 4 of the staff report attributes the February 19, 2020 Code Enforcement case to Appellant. This is simply not true and a demand for correction is made. Prior to publishing the identity of the February 19, 2020 complaining party, I recommend that staff confer with that person and gain permission.

Further, the City should not conflate various Code Enforcement complaints into a single matter. For example, the February 2020 complaint should have been designated a separate case file and investigation compared to the subsequent complaints in August 2020. To date, there has not been any meaningful attempt by staff to investigate and resolve the complaints for either case beyond the notice of violation for the tree removal dated September 17, 2020. Instead, it appears that staff unjustifiably folded the complaint into the ATF building permit and summarily dismissed the rest as being unrelated to health and safety priority projects.

On August 10, 2020, Appellant notified Code Enforcement about continuing illegal construction and possible disruption to necessary public utilities serving the properties. Appellant learned that water had been shut off to the common utility easement allegedly to accommodate planting of a new olive tree. There was no right to relocate utilities in the easement area without prior advance notice. Property owners have a right to be reasonably concerned about what modifications were made to the utilities, especially since it was done without inspection and oversight by the City or utility company. A proper Code Enforcement investigation would require that the utility trench be photo documented. In the absence of objective documentation, then it would be appropriate to open back up the trench to expose the utilities and independently verify the location and condition of those lines. This was not done.

*c. Stop Work notice ineffective or non-existent*

In response to the August 4, 2020 complaint filed with the City, Jesse Oswald confirmed that a "stop work order was affixed (handed to occupant on-site) on 8/6/20." It is presumed that Mark Maystrovich handed the notice to Builder since that was the same day as his site inspection. It is highly troubling that the Builder believed it was acceptable to continue the site work, including excavation and removal of dirt along Brush Creek Road. To date, no stop work order is identified on the City's website public records portal, no stop work order was provided to the Appellant as specifically identified in Public Records Request #20-910,

and the Building Permit Application submitted by the Builder does not show the submittal as a Code Enforcement case. This appears to be an anomaly since a stop work notice is an important piece of information in implementing citations or other enforcement activities by the City. The City has not reconciled this inconsistency.

*d. Denying an opportunity to Appeal and staff's corresponding false statements*

On December 7, 2020, Jesse Oswald informed Appellant that “at the moment[,] no application has been made to appeal, but I will notify you when the building permit has been applied for.” The staff report on this appeal includes a chronology that details December 11, 2020 as the date of building permit application was open. That same date in the chronology reads “Planning review determines that the project proposed in the building permit application complies with all applicable Zoning Code and other municipal code regulations.” This information is patently false and begs the question why the City is artificially manipulating this process.

First, the building permit application was submitted by the Builder on August 25, 2020.<sup>6</sup> The City acknowledged receipt of the application the following day via email. Then, on September 16, 2020, the Builder submitted another permit application and supporting documentation. Mark Maystrovich notified the Builder that he believed the submittal was returned on September 17, 2020 due to the Tree Violation Notice, but states he needed only the Site Plan to be revised.

The City later coordinated with Builder to have another application submitted with documents that are now date stamped December 9, 2020 and the Building Permit Application (B20-6871) is dated December 11, 2020. It is unclear why the City did not log the original submittals in the tracking system or follow other standard procedures in processing this ATF application. The Building Permit Application, itself, has been unmodified since it was signed on August 18, 2020. Yet Appellant was told that no Building Permit had been applied for and there was no decision to Appeal.

Second, planning staff made its determination well in advance of December 11, 2020 date detailed in the staff report chronology.

- It could be argued that planning staff made the determination as early as October 9, 2019 based on the email exchange with Mr. Rezvoy. However, there was no formal application submitted at that time, rather an informal consultation with conceptual site plan.
- Practically, the determination was made on or around mid-October 2020, since that was shortly after Robertson Engineering submitted the site plan excluding the building envelope.
- In Mr. Trippel’s December 23, 2020 letter to Appellant, he declares “on November 23, 2020, Acting Supervising Planner Andrew Trippel informed CBO Jesse Oswald that Planning would (1) approve Planning review of the residential addition as shown on

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<sup>6</sup> The application is dated 8/18/20.

the Site Plan (Exhibit Plat dated August 13, 2020, prepared by Ray Carlson and Associates, Inc, attached), and (2) approve the tree removal and require tree mitigation in accordance with [municipal code]. (11-23-2020-Trippel-Planning determination, attached).” December 23 was the first time that the November 23 determination was broadcast. In light of that earlier determination by planning staff, why did Oswald inform the Appellant on December 7 that there was no application on file and no decision that could be appealed?

Third, the staff report identifies on both page 11 as well as Attachment 5<sup>7</sup> that the mitigation measures associated with the illegal heritage redwood tree removal were approved on January 4, 2021. This demonstrates the inconsistency with the City’s statements that the application materials were received and accepted on December 11, the same date as the alleged determination(s) were made.

Although a building permit is considered a ministerial action, there are two discretionary mitigation measures that are folded into the ATF application: (1) plantings as described above; and, (2) light pollution as described below.

The December 8, 2020 letter submitted by Builder to the City regarding the security lighting complaint mischaracterizes the circumstances. First, the light at issue was not an existing fixture on the east facing side of the home, as stated in the Builder’s communication with the City. Rather, a new light was installed by the Builder in October, presumably requiring an electrical permit, which took place during the time the stop work order was supposed to be in force and effect. It appears that no one from the City investigated the light issue since a sight inspection compared to the real estate listing photos available online would reveal whether the current light is new or a replacement of the pre-existing fixtures.

*e. Appeal Timing Clarification*

On December 7, 2020, Jesse Oswald informed Appellant that appeals to a Board or Commission are filed through the City Manager’s office. On December 9, Appellant sent her appeal to the City Manager’s office via email as directed by Mr. Oswald. She attempted to submit payment in person, but the office was closed. On December 10, Appellant emailed the City Manager’s office to confirm receipt of the appeal – no response. December 11 email to City Clerk also confirming receipt of appeal went without a response. Finally, at 1:07 AM on December 14, Appellant received an email from the City Clerk stating, “appeals to the Planning Commission are filed with the Planning and Economic Development Department.” Through a public records request, it was discovered that the City Clerk forwarded the Appellant’s Appeal to Building and Planning mailgroups on December 10, 2020. It was then forwarded to Jesse Oswald and multiple email exchanges followed between Mr. Rose, Mr. Trippel and others on that same day about the Appellant’s Appeal. The following day, December 11, 2020, the City accepted the Builder’s Building Permit Submittal and “legalized” the build for permits, even contacting the Builder after 5pm to remind them to make payment. On December 14, 2020 and again on December 16, 2020

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<sup>7</sup> The letter is dated January 4, 2020, but should reflect 2021, which was the date it was received by the City.

Appellant emailed all departments because there had not been any confirmation of receipt of the Appeal. Finally, Andrew Trippel confirmed receipt and confirmed that the appeal “shall automatically stay all proceedings associated with the matter subject in the appeal.” However, this appears not to be the case since staff determined on January 4, 2021 that the mitigation measures for the illegal heritage tree removal were accepted and more significantly, staff allowed for the legalization of the build on December 11, 2020, knowing that there was an Appeal submitted and that the Appellant had filed a complaint with City Engineering on December 10, 2020.

It is unclear why various City departments effectively alluded the receipt of this Appeal for over a week, presumably because it would have created a stay on the matter, during the same time that the Builder’s application was taken in and various overly broad and uninformed determinations were made. Appellant’s Appeal was submitted **prior to** Building Permit application B20-6871 and was filed to Appeal the decision to legalize the illegal build and unpermitted tree removal, which apparently was made on November 23, 2020.

*f. Prejudice in scheduling public hearing*

On February 10, 2021, Appellant emailed Andrew Trippel requesting the appeal be continued to a hearing date in March due to pending Public Records Requests, which remain outstanding as of March 8, 2021. Andrew Trippel summarily denied the request on the unreasonable basis that the Code requires scheduling of the appeal review at the earliest regular meeting following the date on which the appeal was accepted as filed. There is no prejudice to the Builder in continuing the item until March since there has been no disruption to his occupation or enjoyment of the property since he had “completed” the construction (according to Mark Maystrovich’s email to Appellant on August 6, 2020) prior to the City taking an interest in the unpermitted illegal activities. The Appellant, however, is prejudiced, having just learned in reading the Staff Report Attachments that Planning had communicated to the Builder that there was “no need to apply the building envelope” as early as **October 2019**, yet at no point was this information shared with the Appellant, or provided through Public Records Requests.

Separately, the December 23, 2020 letter from Mr. Trippel to Appellant explicitly states that the staff report and supporting materials will be available for public review and comment *at least 10 days prior to the scheduled public hearing*. The materials were only made available at approximately 8:00 PM on February 18, which is less than the time promoted in his prior communication.

*g. Access to Public Records*

Appellant submitted a public records request on 12/8/20 for all information pertaining to 1900 Brush Creek Road, including a copy of the stop work order. It was never provided. Appellant also requested all correspondence between City officials and the Builders or their agents. The October 15, 2019 email from Planner Monet Sheikhal, which provided the initial determination about the building envelope at 1900 Brush Creek Rd. and referenced in the

October 30, 2020 Robertson Engineering letter (incorrectly as 2020) was not released. No emails from 2019 were provided to the Appellant. Oswald had told Appellant that she could not file an appeal until a Building Permit Application had been made, and as of 12/7/20, nothing had been made. However, when Appellant went in person to see the file on 12/8/20, she observed the Building Permit Application stamped received in September. When Appellant returned to look at the file again in person on December 21, 2020, she was told “there’s nothing to see here” except microfiche. She was told to file a public records request, which she did and have ironically failed to produce meaningful documents that contribute to the fundamental failures of this application process. Records have been delayed, denied and excessively redacted

*h. Staff artificially restricting substance and process of public hearing*

Mr. Trippel’s December letter appears to draw a distinction between a “report item” and a “public hearing item” for this appeal. Here too, staff has abused its discretion in making an unofficial determination that the review authority (Director) deems a public hearing undesirable. (See Municipal Code 20-62-030(E)(4).) This determination fails to consider the truly appropriate review authority, for example: Commission for a variance; Subdivision Committee for a parcel map amendment; or Director for Tree permit. Instead, staff has apparently attempted to cloak the applicant in a protective cover by wrapping all the failures into a ministerial building permit application process. As detailed in this letter, the application has undergone numerous discretionary decision making intersections that is incompatible with the ministerial building permit process alone.

**III. Appeal Chronology**

1. June 21, 2000: Minutes approved for the Lands of Dehnert Parcel Map subdivision. Planning item 3 in the Minutes specifies that “Building setbacks shall be shown on the local agency sheet of the final map, and Planning item 8(c) with regard to the private road specifies that a “10’ distance shall be maintained between the edge of pavement and existing house.” **(EXHIBIT 1)**
2. June 11, 2002, Parcel Map No. 609 Recorded. **(EXHIBIT 2)**
3. July 29, 2019: Builder purchased home at 1900 Brush Creek Road. Reference to Lot 3 as shown on Parcel Map No. 609 in book 635 of Maps pp. 4-7. **(EXHIBIT 3)**
4. September 9, 2019: Email from Planner Monet Sheikhal to Builder responding with zoning and set-back codes. *Permit Application was provided to Builder.* **(EXHIBIT 4)**
5. October 9, 2019: Email from Ivan Rezvoy to Jesus McKeag copying Tom Lynch and Builder inquiring about the building envelope restrictions and whether a map amendment is necessary prior to pursuing a remodel/addition project. **(EXHIBIT 5)**
6. October 15, 2019: Monet Sheikhal emailed Planning’s determination to the Builder team that the Code required setbacks *supersede* the building envelope restrictions depicted on the Parcel Map. **(EXHIBIT 6)**
7. October 2019: Illegal removal of heritage redwood tree. **(EXHIBIT 7)**

8. February 19, 2020: Code Enforcement complaint filed regarding yard debris, gate and driveway construction without a permit at 1900 Brush Creek Road (CE 20-0139). No action was taken by the City. **(EXHIBIT 8)**
9. May 22, 2020: Builder obtains Contractors License (#1065989). **(EXHIBIT 9)**
10. August 2, 2020: Builder's construction company files Secretary of State Statement of Information showing 1900 Brush Creek Road as its principal address. **(EXHIBIT 10)**
11. August 4, 2020: Complaint filed with City regarding illegal construction and heritage tree removal.
12. August 5, 2020: Email from Appellant to Mark Maystrovich to notify him that unpermitted work is continuing at the property. No response. **(EXHIBIT 11)**
13. August 6, 2020: Email from Mark to Appellant confirming that he visited the Builder's property and the project was already "complete." He directed the Builder to obtain all necessary approvals, permits and inspections for the illegal construction. In additional email on August 6, 2020, Mark states he spoke with Tom Lynch, who he believes did the framing on the project (see attachment 10 of Staff Report) **(EXHIBIT 12)**
14. August 10, 2020: Email from Builder to Mark Maystrovich confirms permits are required for the illegal construction. **(EXHIBIT 13)**
15. August 10, 2020: Email from Appellant to Mark Maystrovich regarding concerns about the easement and possible engineering of water/sewer lines in the easement during the illegal construction.
16. August 12, 2020: Appellant retains Ray Carlson to survey the build on lot 3. Report shows illegal building addition to be 12'x30' with 9.5'x30' over the building envelope. **(EXHIBIT 14)**
17. August 13, 2020: Complaint filed by Appellant regarding excavation and concerns regarding potential access to water lines by Builder during excavation
18. August 18, 2020: Builder completes and signs Building Permit Application. Does not check box indicating a Code Enforcement Case. **(EXHIBIT 15)**
19. August 25, 2020: Builder submitted retroactive application for ATF building permit. **(EXHIBIT 16)**
20. August 26, 2020: City acknowledges receipt of application materials. **(EXHIBIT 17)**
21. August 25 and August 31, 2020: Complaints filed by Appellant regarding heritage tree, addition, excavation, lack of transparency and concerns regarding preferential treatment.
22. September 1, 2020: Email from Jesse Oswald to Appellant affirming that the City was working with the Builder to determine a path to legalize the unpermitted construction. Further, the illegal heritage tree removal was being referred to the City Attorney's office. **(EXHIBIT 18)**
23. September 2, 2020: Email from Appellant to Jesse Oswald to inquire whether a stop work notice was issued to Builder in light of continuing unpermitted illegal construction. No response. **(EXHIBIT 19)**
24. September 9, 2020: Email from Appellant to Jesse Oswald and City Manager concerning grading and soil removal along Scenic Brush Creek Road. Oswald states that City will be out to speak to Builder although no record of fines or actions taken for unpermitted grading. **(EXHIBIT 20)**



25. September 16, 2020: Builder submitted another permit application and supporting materials for the ATF permit. **(EXHIBIT 21)**
26. September 17, 2020: Notice of Tree Violation issued by City identifying the illegal tree removal and providing a copy of the applicable Municipal Code. 44 days after original complaint. **(EXHIBIT 22)**
27. September 18, 2020: Petition letter from Builder to City confirming that the heritage redwood tree was removed in October 2019; and, that the Builder was naively unaware that a tree removal permit was required by the City prior to removing a heritage redwood tree. Letter from unidentified source provided by Builder with information about the illegally removed tree – apparently in an attempt to qualify as an arborist report. **(EXHIBIT 23)**
28. September 20, 2020: Email from Builder to Andrew Trippel (copying Ivan Rezvoy) regarding heritage tree remediation letter and claiming unawareness of requirement for a tree removal permit – September 18 letter attached to this email. **(EXHIBIT 23)**
29. September 22, 2020: Email from Mark Maystrovich to Builder confirming that the building permit plans submitted on September 16, 2020 were rejected and demanding that “the professional tree company that removed” the tree provide an arborist report detailing the health of the tree and why it needed to be removed. Mark directed Builder to streamline the resubmittal of only a site plan that accurately reflects certain items. **(EXHIBIT 24)**
30. September 22, 2020: Email from Amber Lichau to Andrew Trippel clarifying the unqualified tree condition letter that was previously shared with the City. **(EXHIBIT 25)**
31. September 24, 2020: Letter from unidentified source provided by Builder with information about the illegally removed tree – apparently in an attempt to qualify as an arborist report as required by the City based on the demand from Mark Maystrovich in the September 22, 2020 email to Builder. **(EXHIBIT 26)**
32. October 7, 2020: Email from Builder to Mark Maystrovich stating that an arborist report could not be generated in response to the City’s submittal requirements. **(EXHIBIT 27)**
33. October 13, 2020: Robertson Engineering site plan prepared. **(EXHIBIT 28)**
34. October 30, 2020: Robertson Engineering letter in support of tree removal and ATF permitting. **(EXHIBIT 29)**
35. November 2, 2020: Email to Jesse Oswald regarding new light installed that shines directly into Appellant’s windows. Lights seemingly installed as retaliation to illegal construction concerns raised with the City by Appellant. **(EXHIBIT 30)**
36. November 23, 2020: Andrew Trippel’s Planning determination approving the illegal construction and tree removal. No notice or documentation produced. Determination referenced in December 23, 2020 letter to Appellant. **(EXHIBIT 31)**
37. November 24, 2020: Jesse Oswald emails Appellant to discuss “various aspects of the case” at 1900 Brush Creek Road **(EXHIBIT 32)**
38. December 4, 2020: Telephone call between Appellant and Jesse Oswald in which he shared the City’s determination to legalize the ATF building permit. Jesse confirmed that a stop work order is in place but could not provide the effective date of that notice.

39. December 7, 2020: Email from Jesse Oswald confirming that “the Stop Work Order was affixed (handed to occupant on-site) on 8/6/2020.” Coincidentally, this was the same day that Mark Maystrovich performed the site inspection and determined that the work was already complete. **(EXHIBIT 33)**
40. December 7, 2020: Email from Amber Lichau to Jesse Oswald clarifying lighting conditions at property in response to code enforcement investigation. Note Jesse Oswald’s confirmation email that Planning had already determined that the tree removal permit will be granted. **(EXHIBIT 34)**
41. December 8, 2020: Appellant submits Public Records Request #20-910 requesting public records regarding plans, applications, photos, emails submitted by or on behalf of the owners at 1900 Brush Creek Road. **(EXHIBIT 35)**
42. December 8, 2020: Appellant visits City Hall to view records in the file for 1900 Brush Creek Road and observes the Building Permit Application dated 8/18/20, which is date stamped received September 17, 2020. Appellant also views all other submittal documents with exception of the Robertson Engineering Site Plan which was not available in the file.
43. December 8, 2020: Builder letter dated December 8 in response to December 7 harassing light code enforcement complaint. **(EXHIBIT 36)**
44. December 9, 2020: Appellant supplemental documents reflecting ongoing harassing light complaint. **(EXHIBIT 37)**
45. December 9, 2020: Email dated December 9, 2020 from Appellant to Jesse Oswald regarding incomplete files maintained by City. **(EXHIBIT 38)**
46. December 9, 2020: Appellant submits Appeal to City Manager’s Office as directed by Mr. Oswald. No response provided to Appellant. Stay on matter should have been in place on this date due to Appeal. **(EXHIBIT 39)**
47. December 10, 2020: Appellant emails City Engineer Gabe Osburn an engineering complaint regarding dirt removal on Brush Creek Road and excavation around the easement. **(EXHIBIT 40)**
48. December 10, 2020: Email from Chief Building Official to Appellant in Response to Questions Regarding Director's Determination. **(EXHIBIT 41)**
49. December 11, 2020 (Friday): At 5:05 PM, staff member Lisa Sevilla emails Builder to inform him that Building Permit Submittal has been received and instructs Builder to make payment online and then notify her so that the review may begin. **(EXHIBIT 42)**
50. December 14, 2020: Appellant receives records request items that include the Building Permit Submittal now dated December 9 at 6:33 AM. **(EXHIBIT 43)**
51. December 14, 2020: Appellant receives email from Jesse Oswald confirming that “you will be receiving a response from our Planning division soon on the matter regarding the setbacks and trees.” Yes, this determination was made weeks prior. **(EXHIBIT 44)**
52. December 16, 2020: Appellant receives confirmation on December 16 that Appeal has been received by Planning and a stay is in place. **(EXHIBIT 45)**
53. December 21, 2020: Appellant scheduled 8:00 AM appointment in the Planning & Economic Development Office to inspect file for 1900 Brush Creek Road. CD Technician, Pat Knoles, told her that there was “nothing to see here” and that she needed to put in a Public Records Request.

54. December 23, 2020: Andrew Trippel email to Appellant detailed City's determinations and justifications for ATF permitting. **(EXHIBIT 46)**
55. January 4, 2021: Builder submits petition to City regarding in lieu fee payment proposal as part of illegal heritage tree removal mitigation measure. **(EXHIBIT 47)**
56. February 10, 2021: Email to Andrew Trippel requesting the appeal hearing get continued until late March of April to enable access and review of additional public records. Response from Andrew Trippel affirming that the Planning Commission appeal hearing would be on February 25, 2021. **(EXHIBIT 48)**
57. Public records confirming that Lot 1 of the Dehnert subdivision complied with the building envelope restrictions. **(EXHIBIT 49)**
58. February 24, 2021: Email from Gabe Osburn to Appellant regarding Appellant's 12/10/20 complaint regarding water line near build in easement and dirt excavation on Brush Creek Road **(EXHIBIT 50)**
59. Photos of GPRS technician on 3/16/21 tracing private water line using Ground Penetrating Radar from Brush Creek Road in the easement **(EXHIBIT 51)**

## **Conclusion**

For the reasons articulated in this supplemental appeal letter, the Commission is encouraged to uphold the appeal and overturn staff's prior determination. Fundamentally, the City's arbitrary and capricious exercise of discretion in prosecuting the code enforcement complaint and unjustifiable issuance of the disputed building permit in violation of the Municipal Code is not supported by the facts or law.

City Planning made an error in telling the Builder in October 2019 that the building envelope did not apply on the Supplemental Sheet of the Parcel Map. The Builder is not an unsophisticated builder, but a licensed contractor (#1065989) who engaged various consultants to advise him early and often in the process. The Builder proactively inquired with the City about the property's zoning within two months of purchasing the home and was provided information to complete a permit application. It is likely that the permit application was ignored by the Builder after the City had provided the erroneous information about the building envelope because a closer look by Planning with a proper review would have resulted in a different conclusion about the envelope and the appropriate setback from the easement. Further, neighbors would have received notice and an opportunity to be heard regarding a potential zoning violation or variance application (which would likely have not been approved) or changes being made to the Parcel Map. The Builder assumed the risk and built anyway. These callous actions should not be rewarded after the fact.

Ray Carlson's survey confirms the building envelope on the northern side of the existing house as well as measurements from the access easement. This information was timely provided to the City.

I request that: (1) the Building Permit Application is denied and that the illegal build be removed and re-built within its original building envelope with trees planted and the fence restored to its original position along the private road, (2) that the Planning Commission enforce a two-year moratorium on all permits for this parcel pursuant to Municipal Code

section 17-24.140 after item (1) has been completed to the Commission's satisfaction, and (3) that maximum fines be applied in connection with the unpermitted heritage tree removal to deter this conduct.

Respectfully,

A black rectangular redaction box covering the signature of Chris Skelton.

Chris Skelton

City of Santa Rosa

DEC 14 2020

Planning & Economic  
Development Department



# APPEAL APPLICATION

www.srcity.org

G E N E R A L	LOCATION OF PROJECT (ADDRESS)	<b>Note: This form is for appeals of Department actions only. Appeals of Commission and Board actions are filed in the City Manager's Office.</b>		
	1900 Brush Creek Road			
	NAME OF PROJECT			
	1900 Brush Creek Road			
	APPELLANT NAME	DAYTIME PHONE	HOME PHONE	
Kathy Parnell	( 415 ) 336 - 8869	( 415 ) 336 - 8869		
APPELLANT ADDRESS	CITY	STATE	ZIP	
1888 Brush Creek Road	Santa Rosa	CA	95404	

To the Chairman and Members of the Planning Commission / Design Review Board/Cultural Heritage Board:

The undersigned: Kathleen Parnell does hereby appeal to the Planning Commission /

Design Review Board/Cultural Heritage Board the decision of the Department of Planning and Economic Development made on 12/4/20  
(Date)

which approved the application of Dan & Amber Lichau  
(approved, denied, other) (Name of property owner or developer)

for a 12'x30' home addition over a property set-back and removal of redwood heritage tree  
(State nature of request made to the Planning and Economic Development Department)

on property situated at 1900 Brush Creek Road, Santa Rosa, CA 95404  
(Street address of subject property)

A. The grounds upon which this appeal is filed are: (list all grounds relied upon in making this appeal. Please attach additional sheets if more space is needed.)

1. Per CBO (J.Oswald), the unpermitted home addition on frontage Scenic Brush Creek Rd is now able to be permitted because "building setback lines placed on the Final Map Supplemental sheet are not enforceable." I disagree. This is a zoning code violation, whereby a property set-back (building envelope) is being voided to enable an illegal build.
2. A redwood heritage tree was removed on frontage Brush Creek in a scenic set-back and outside a building envelope to enable illegal build. Per CBO, this "would have been approved for removal in-accordance with the Tree Ordinance." I disagree.  
(Attachments to follow)

B. The specific action which the undersigned wants the City Planning Commission/Design Review Board/Cultural Heritage Board to take is:

Enforce the building set-backs shown on deed maps for 1900 Brush Creek Rd. Enforce zoning code and heritage tree violations. Require illegal build to be re-built within set-back lines with trees planted and fence returned along shared driveway.  
(Attachments to follow)

Appellant's signature

12/9/2020

Date

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# APPEAL APPLICATION

www.srcity.org

<b>G E N E R A L</b>	LOCATION OF PROJECT (ADDRESS) <b>1900 Brush Creek Road</b>	<b>Note: This form is for appeals of Department actions only. Appeals of Commission and Board actions are filed in the City Manager's Office.</b>	
	NAME OF PROJECT <b>1900 Brush Creek Road</b>		
	APPELLANT NAME <b>Kathy Parnell</b>	DAYTIME PHONE <b>(415) 336 - 8869</b>	HOME PHONE <b>(415) 336 - 8869</b>
	APPELLANT ADDRESS	CITY	STATE
	<b>1888 Brush Creek Road</b>	<b>Santa Rosa</b>	<b>CA</b>
			ZIP <b>95404</b>

To the Chairman and Members of the Planning Commission / Design Review Board/Cultural Heritage Board:

The undersigned: Kathleen Parnell does hereby appeal to the Planning Commission / Design Review Board/Cultural Heritage Board the decision of the Department of Planning and Economic Development made on 12/4/20 (Date)

which approved the application of Dan & Amber Lichau (approved, denied, other) (Name of property owner or developer)

for a 12'x30' home addition with 9'x30' through their building envelope (State nature of request made to the Planning and Economic Development Department)

on property situated at 1900 Brush Creek Road, Santa Rosa, CA 95404 (Street address of subject property)

A. The grounds upon which this appeal is filed are: (list all grounds relied upon in making this appeal. Please attach additional sheets if more space is needed.)

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1. Zoning code violation - Home addition of 12'x30' with 9'x30' through a building envelope. Per CBO (J.Oswald), the building envelope was removed by the City to enable the legalization of the unpermitted build and removal of a heritage tree.

*Attachments to follow*

2. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. The specific action which the undersigned wants the City Planning Commission/Design Review Board/Cultural Heritage Board to take is:

Enforcement of building envelope shown on deed maps for 1900 Brush Creek Road.

Require illegal build to be re-built within the building envelope with trees planted and fence returned along the shared driveway.

\_\_\_\_\_

Appellant's signature

12/17/20

Date