

1900 Brush Creek Road Appeal



Threshold Issues

Not a neighbor dispute; appeal is disputing Staff's application of Code to these facts

- Issue 1:
 - Heritage redwood tree removal
 - Insufficient mitigation
 - Procedural deficiencies
- Issue 2:
 - Home addition violates development standards



Heritage Tree Removal Framework

Andrew Trippel November 23, 2020 Email to Building Official

With Approval to remove (17-24.050(C)(1):

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.

Without Approval to remove (17-24.050(C)(2):

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 \$5,200

Numerous Staff documents confirm the tree removal was performed without approval.

2. Building Permit

- a. **What is the standard of review that the Commission is using to evaluate this decision by the Planning Director? Are we deciding whether the decision was made in a procedurally correct way - that is, that all the objective factors were considered and the process adhered to California state law and local ordinances?**

The Commission will review the Planning Director's decision for both its compliance with applicable procedural requirements and its compliance with applicable development standards. Pursuant to Section 20-62.030(F), the Commission may affirm, affirm in part or reverse the decision of the Planning Director.

The Planning Director reviewed the unpermitted addition portion of the ministerial Building Permit application (project) for compliance with applicable local regulations, including the Final Map adopted for the project site. The determination being made was if the project complied with objective standards or regulations. This determination is ministerial, not discretionary.

The Director reviewed the unpermitted tree removal in accordance with the Tree Ordinance. The Director exercised discretion when establishing the mitigation requirement for the tree removal. The Planning Commission may similarly exercise its discretion.

Staff directs the Commissioners where to look when evaluating unpermitted tree removal...

- c. **What other options did the Planning Director have with regard to resolving the tree removal?**
Tree approved for removal as part of an approved development can be mitigated as described in Section 17-24.050(C)(1). Tree not approved for removal as part of an approved development can be mitigated as described in Section 17-24.050(C)(2). Unpermitted tree removal is addressed in Article VII. Enforcement. This Article classifies unpermitted removal of a tree as a misdemeanor and provides procedure for processing a violation. Section 17-24.130 Replacement Trees establishes the same mitigation requirements as those contained in §17-24.050(C)(2).

Heritage Tree Removal

Timeline

- October 2019: tree removed
- September 1, 2020: Jesse Oswald informs appellant that Heritage Tree Removal is referred to City Attorney for input.

RE: [EXTERNAL] Deputy Sheriff/Contractor - Illegal Build

From: Oswald, Jesse (joswald@srcity.org)

To: kathleendpamell@yahoo.com

Cc: kmahre@srcity.org

Date: Tuesday, September 1, 2020, 07:07 AM PDT

Good morning Ms. Pamell,

My apologies for delays in response and the difficulties you have endured. Thank you for the detailed information on the matter next door. The details will definitely assist with the investigation.

Since beginning the investigation on the matter, our Code Enforcement and Planning Divisions have worked with the owner of 1900 Brush Creek Rd. to determine a path to legalize the addition. In no instance will any aspect of the project be "rubber-stamped". Any and all projects are required to meet all regulations administered by this department. If any variances are required, appropriate applications for them will be required and that-being an entitlement – will require public notification.

The process is still in infancy with plan development and evaluation by the professionals charged with ensuring compliance with all applicable zoning codes, building codes, and applicable regulations.

The matter of a tree removal without approvals has been referred to our City Attorney's Office for input.

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- September 17, 2020: City issues notice of violation and provides a copy of Tree Ordinance (17-24)



17-24.140 Violation—City approvals.

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. Prohibited approvals or permits shall include, but not be limited to, conditional use permits, variances, and building or demolition permits. The provisions of this section shall not apply to any approval or permit which is needed or required to maintain the health or safety of those occupying existing improvements on the property. If the violation has been established by the final judgment of a court, the Director shall, by appropriate notice to the owner of the property and the pertinent City departments and agencies, implement the provisions of this section. If an alleged violation of this chapter has not been the subject of a court

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- September 18, 2020: Builder issues statement to City justifying tree removal.

September 18, 2020

Director

Planning and Economic Development Department

100 Santa Rosa Avenue Room 3

Santa Rosa, CA 95404

Dear Sir or Madam:

We are the current owners of the property at 1900 Brush Creek Road Santa Rosa, CA 95404, which we purchased in July, 2019. Upon purchase, an immediate concern of ours was the redwood tree located on the north side of our property line. Our initial concerns with the tree were the root system that was encroaching on the existing foundation as well as limbs that were overlaying our roofline and causing damage to the existing shingles. Additionally, the overlaying braches and limbs also posed a foreseeable threat during windy conditions as well as eliminated the defensible space recommendation in an already high-risk fire zone. Due to the aforementioned reasons, it was recommended that we have the tree removed, which was completed in or around October 2019. Secondly, we are in the process of applying for a permit for an addition to our home on this property that also would have required the removal of this tree.

We sincerely apologize for our naïve actions in removing the tree without the proper permit; we were were unaware of this requirement. We are writing this letter to petition to either replant trees to replace the tree and/or pay a donation to

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6. Indicate the detached garage converted into ADU.
7. (E)house.
8. (E) shed or sheds

Regarding the Redwood Tree removal;

You stated it was recommended to have the tree removed. Please contact the professional tree company that removed.

Please submit following regarding the redwood tree;

- a. submit the arborist report on the health of the redwood tree and why the redwood tree needed to be removed.
- b. Submit any photographs showing before and after photographs of the redwood tree.

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

Hi Amber,

Mark included the questions/comments that I had in his email. He states that you should submit following regarding the redwood tree: (1) an arborist report on the health of the redwood tree and why the redwood tree needed to be removed, and (2) any photographs showing before and after photographs of the redwood tree.

The issue I had with what you submitted is that the tree data need to be provided preferably by a certified arborist but at a minimum by the company that removed the tree. I really can't accept tree data submitted by you or your husband. Does that make sense?

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

Heritage Tree Removal

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- September 24, 2020: Unknown letter submitted to City under guise of qualifying as arborist report.

To: Daniel & Amber Lichau

The Coastal Redwood, *Sequoia sempervirens*, at 1900 Brush Creek Rd. Santa Rosa, CA 95404 was approximately 55 feet in height. DBH was approximately 70 inches. The tree was encroaching on the foundation of the house. The tree had previously failed limbs and the drip line was overhanging the roofline posing a fire hazard. This tree was also a co dominant stem with included bark within the first 5-7 feet of the trunk above grade.

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- September 18, 2020: Builder issues statement to City justifying tree removal.
- September 22, 2020: Mark Maystrovich requests arborist report; Andrew Trippel confirms under separate email request.
- September 24, 2020: Unknown letter submitted to City under guise of qualifying as arborist report.
- October 7, 2020: email exchange between Mark and Builder regarding arborist report.

Mark email to Developer @ 2:55 PM

The paper work submitted for the removal of the redwood tree is incorrect. The report as to why the redwood tree was removed must be on company letter head, meaning the arborist that had removed the tree needs to have the report on his letter head. This is the second request regarding the tree issue.

Developer response back to Mark @ 9:52 PM

As far as the requested letter for the tree, please excuse us for not getting you the correct document. We are seemingly at a point that we must request for alternative corrective actions than the requested letter. We consulted and hired an individual to cut down the tree and were given the details about the trees that were outlined in the submitted letter at the time. 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

Heritage Tree Removal Cont.

Timeline

- October 30, 2020: Letter from Robertson Engineering opining on the tree removal.

Robertson Engineering letter dated 10/30/20

It is my understanding that they had to remove an existing Coastal Redwood tree. I have reviewed a photograph of that tree. It was a 55' tall tree that was encroaching into the foundation of the house and had failed limbs fall onto the roof where the tree dripline was overhanging. 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 tree, which had a split trunk was also a co-dominant stem, which included bark within the first 5'-7' of the trunk above the existing ground. The diameters of the split double tree at chest height was approximately 48" and 26" respectively. Attached is a photo of the tree prior to its removal.

Heritage Tree Removal Cont.

Timeline

- October 30, 2020: Letter from Robertson Engineering opining on the tree removal.
- November 16, 2020: Jesse Oswald email to City staff (including City Attorney).
- November 23, 2020: Andrew Trippel email to planning and building staff confirming approval of tree removal without necessary documentation or rendering findings.

Jesse Oswald email to City staff 11/16/20

Adam (and realistically Andrew):

1. 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?

I am anticipating a bit of a “conversation” on that.

Andrew Trippel email to City staff 11/23/20

2. Mr. Robertson’s letter indicates that a tree image is attached; however, I didn’t receive an image of the tree. Could you request that image for the record? In the interim – and lacking an arborist’s report specifying that the tree is an imminent hazard – Planning would approve the tree removal as part of the approval of the project and require mitigation of a tree removed in accordance with City Code [Section 17-24.050 Permit category II – Tree alteration.](#)

Heritage Tree Removal Flawed Decision

Abuse of Discretion

- The City abused its discretion by applying 17-24.050 (tree removal where development is proposed on property) instead of applying 17-24.040 (tree removal where no development is proposed on property)
 - At the time of the removal, there was no development application submitted. The tree was voluntarily removed more than 6 months in advance of any project and should be subject to the four (4) specific findings detailed under 17-24.040(B). The Director failed to make ANY findings in approving the tree removal.
- No qualified arborist report was ever submitted to the City in support of the application.
- The Applicants' justifications for removing the tree evolved throughout investigation:
 - 1. Encroaching into home foundation at time of purchase and causing damage to roof (no evidence in home inspection report of either).
 - 2. Fire hazard claim from undocumented "arborist" letter (does not qualify as evidence).
 - 3. Safety hazard for people using the yard (hearsay opinion from unknown source).



17-24.140 Violation—City approvals.

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. Prohibited approvals or permits shall include, but not be limited to, conditional use permits, variances, and building or demolition permits. The provisions of this section shall not apply to any approval or permit which is needed or required to maintain the health or safety of those occupying existing improvements on the property. If the violation has been established by the final judgment of a court, the Director shall, by appropriate notice to the owner of the property and the pertinent City departments and agencies, implement the provisions of this section. If an alleged violation of this chapter has not been the subject of a court

17-24.090 Appeals.

Any decision made by the Director under the provisions of this chapter may be appealed to the Planning Commission by any interested person. The appeal must be filed in writing with the secretary of the Planning Commission within 10 days of the decision. The written appeal shall state all facts and each ground upon which the appeal is based and shall be signed by the applicant. The Planning Commission shall hold a noticed public hearing before making a decision on the appeal. An appeal of the Planning Commission decision may be made to the City Council by any interested person by filing the appeal in writing with the City Clerk within 10 days of the Planning Commission's decision. (Ord. 2858 § 1, 1990)



Home Addition Code Compliance

- Fails to comply with conditions of approval from original parcel map approval.
- Fails to comply with current zoning standards for setbacks.
- Fails to comply with building envelope restrictions imposed at time of parcel map.

Planning Condition 3:

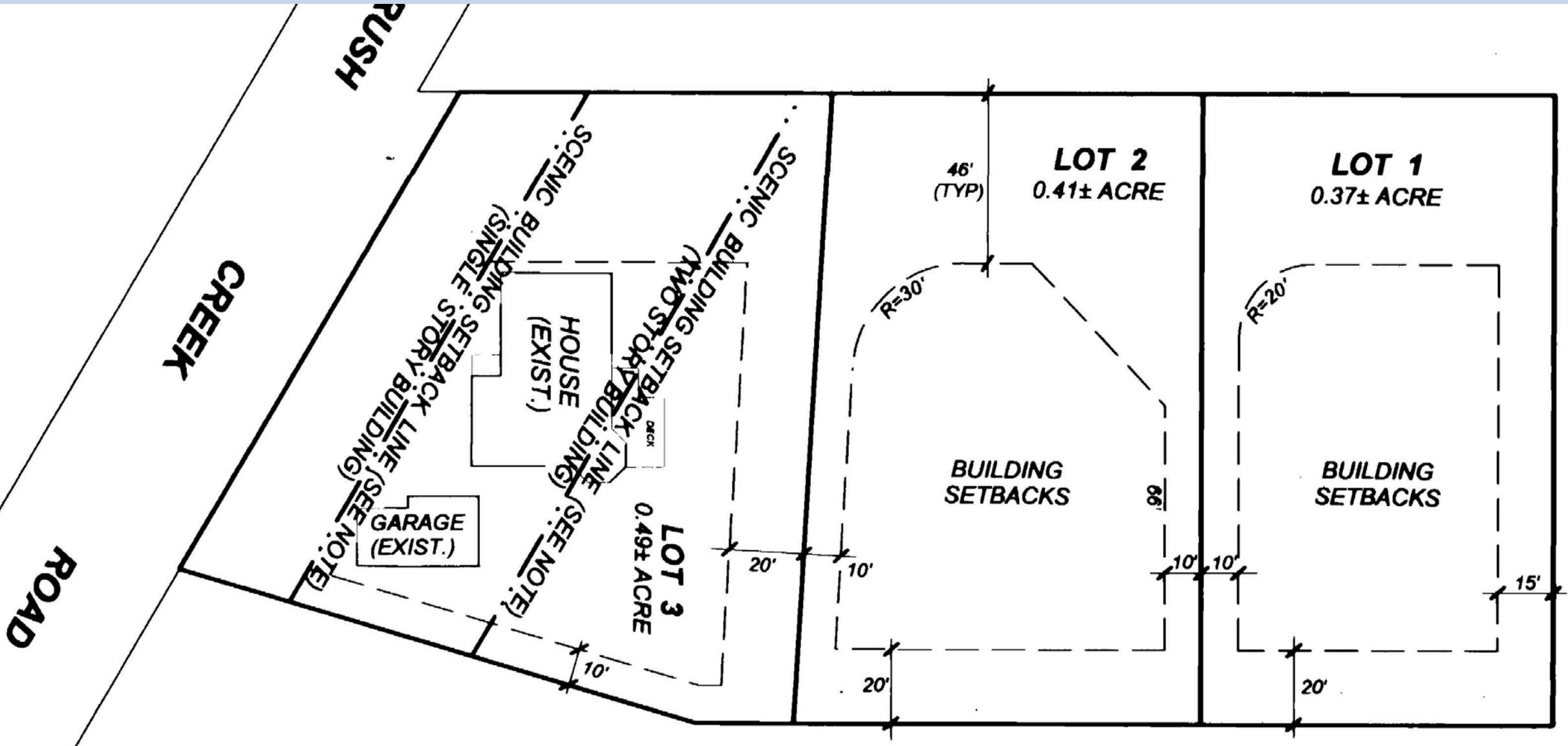
3. Building setbacks shall be shown on the local agency sheet of the final map. Front setbacks for one story structures shall be 50 feet from the Brush Creek Road pavement and 100 feet for the two story portion of the structure.

Planning Condition 8 (c):

- c. A 10 foot separation shall be maintained between the edge of pavement and existing house.

Engineering Condition 11:

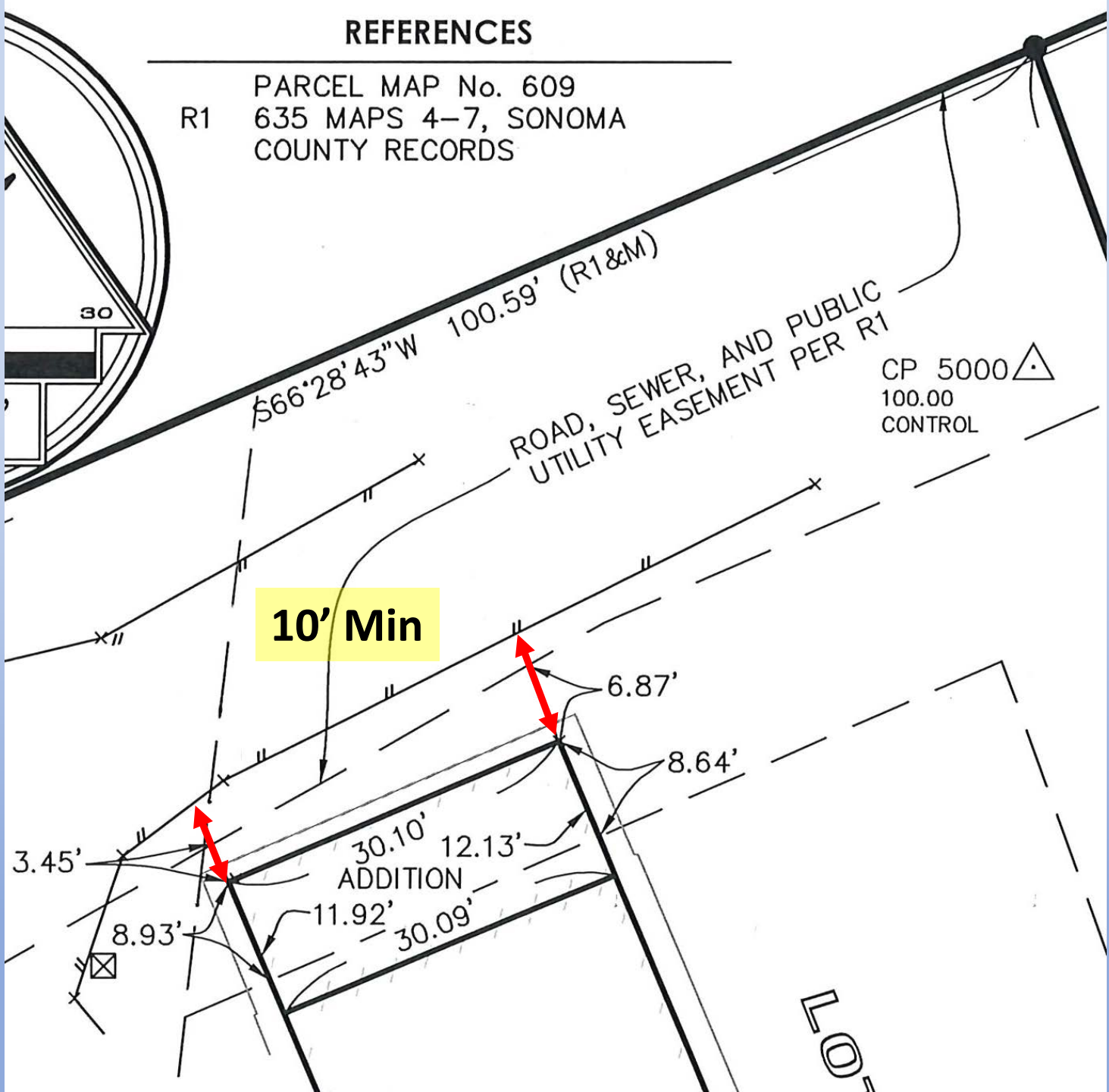
11. Turn around capability on the common driveway shall be provided with clear backup of 46 feet from garage face to opposing face of curb and with a continuation of the common driveway 10 feet beyond the last driveway access point.

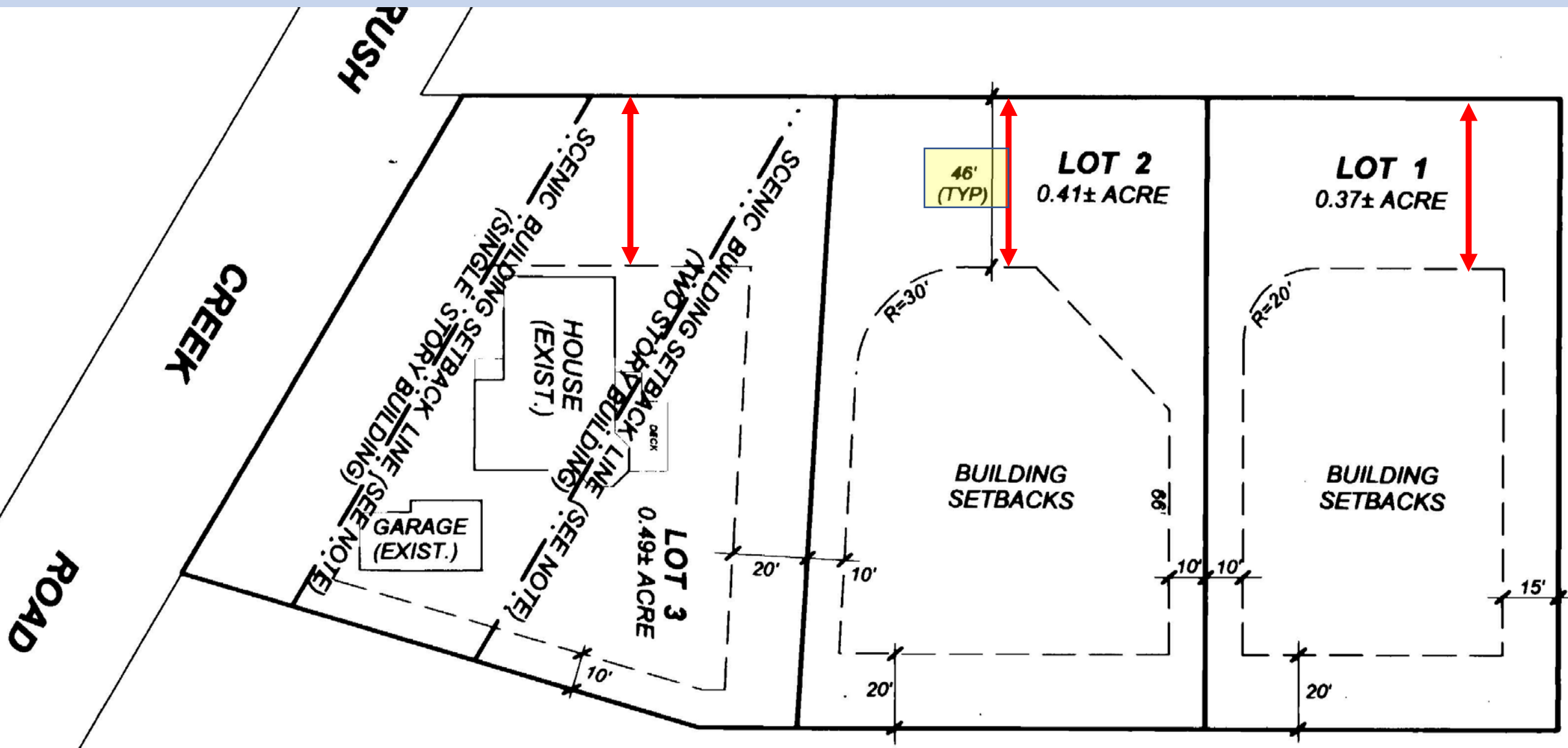


We know this because it is on the only sheet that references the 50'/100' setback for scenic roadway.

REFERENCES

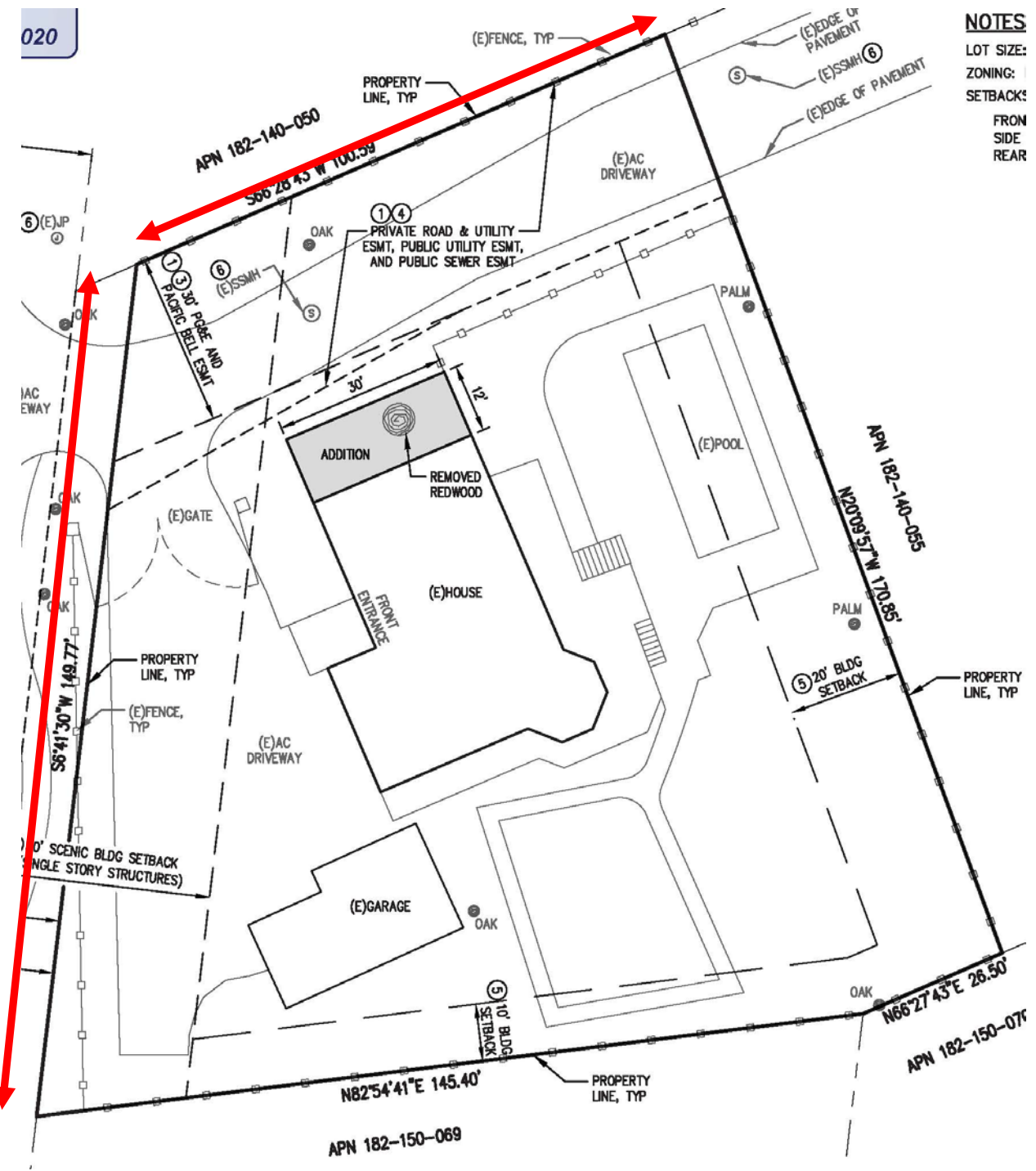
PARCEL MAP No. 609
R1 635 MAPS 4-7, SONOMA
COUNTY RECORDS



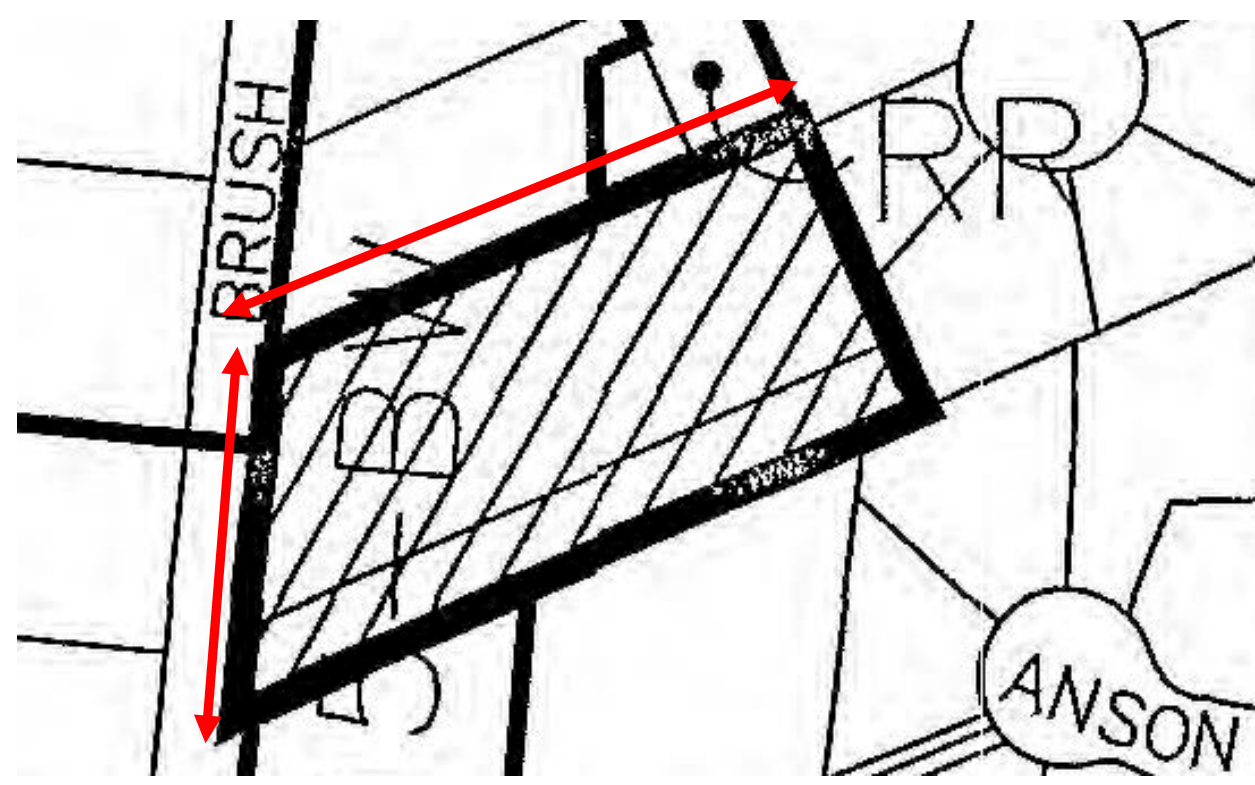


Defining Front Setback

- 20-30.110(C)(1) “the front setback shall be across the narrow dimension of the lot...”



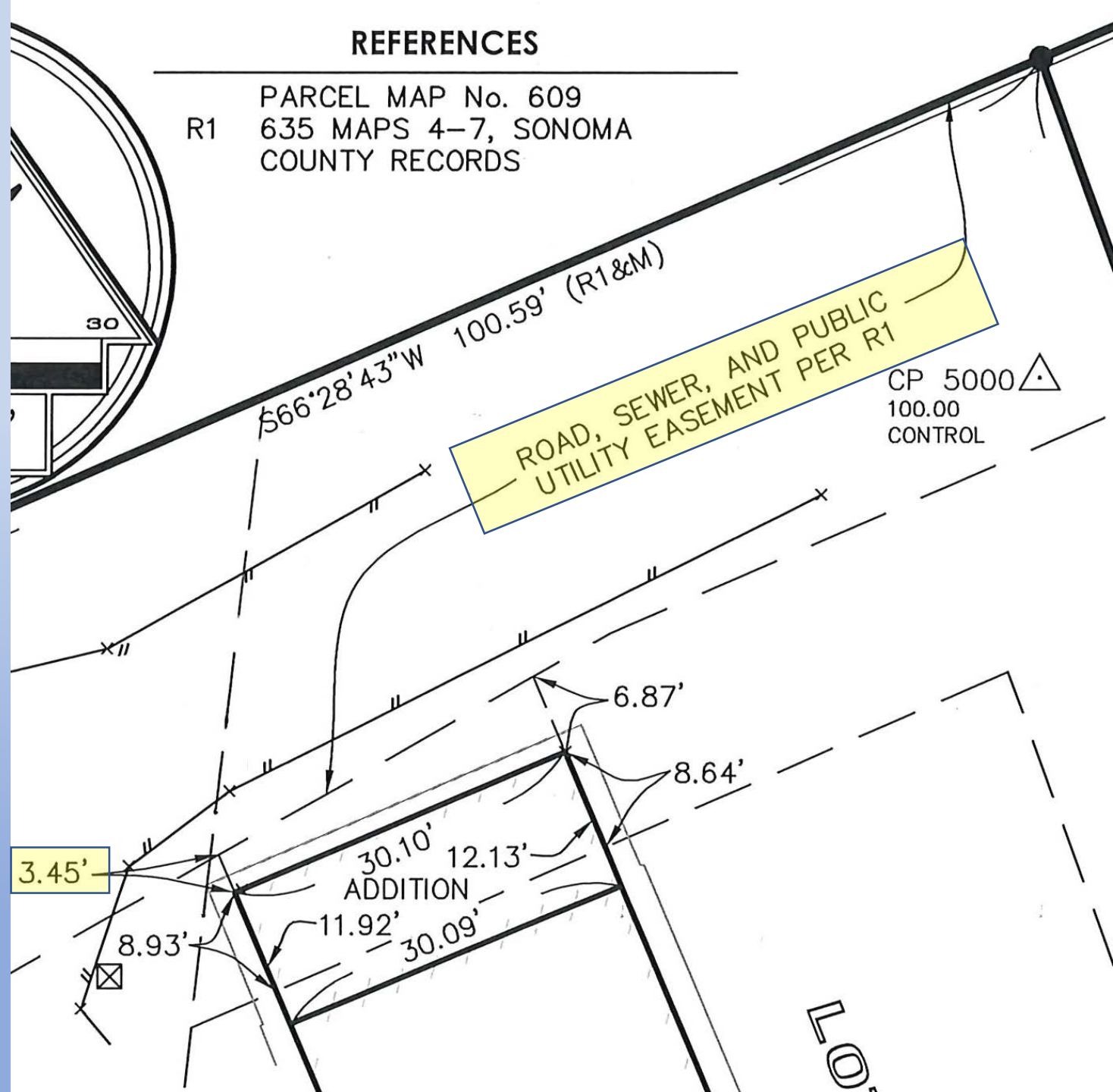
NOTES
 LOT SIZE:
 ZONING:
 SETBACKS:
 FROM
 SIDE
 REAR



Direction	Length
North	100.59'
West	149.77'
South	171.90'
East	170.85'
N+S	272.49'
W+E	320.62'

From Where Do You Measure?

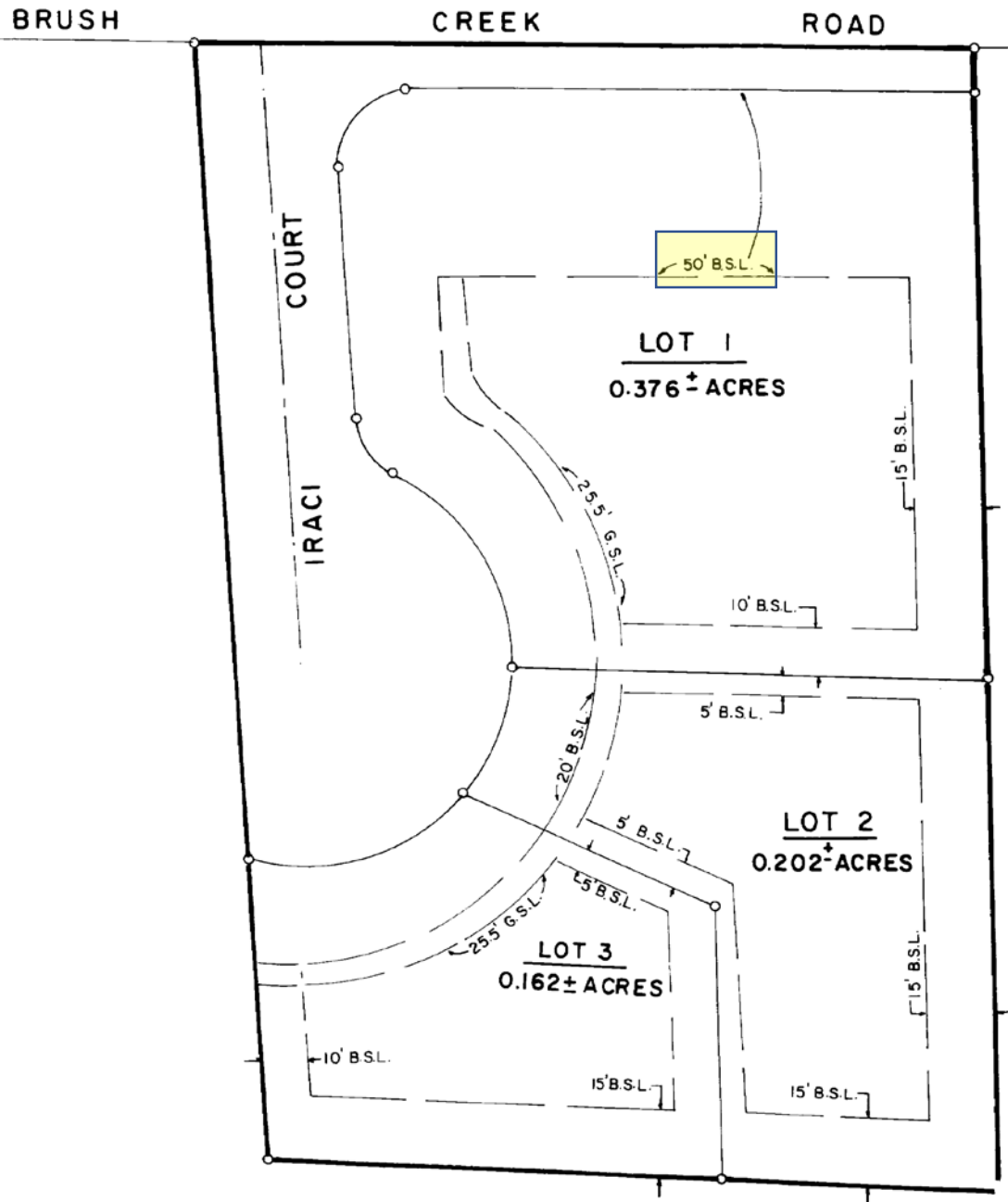
- 20-30.110(C)(1)(a) “a required front setback shall be measured by the *most restrictive* of the following methods to the nearest point on the front wall of the building...(4) the edge of an easement for a private road or driveway.”
- R-1-15 SR Zoning District requires 20’ for front yard setback!
- As depicted in Ray Carlson’s exhibit, the illegal construction affords only 3.45’.



Building Envelope Map Compliance

- Ray Carlson submitted his professional opinion regarding application of building envelopes to parcel maps in City of Santa Rosa.
- Mike Buti, the engineer/surveyor who prepared this specific map submitted his professional opinion on the application of the building envelope restrictions.
- The City failed to read its Code in totality to appreciate how the building envelope restrictions are applied and enforced:
 - 19-28.200(D): “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].”
 - 19-08.040; “Building Envelope is defined as the area of a lot or parcel of real property within which structures must be confined...and which is delineated on the information sheet of the parcel map and so designated.”
- Numerous other maps containing building envelopes have been filed and accepted by the City.

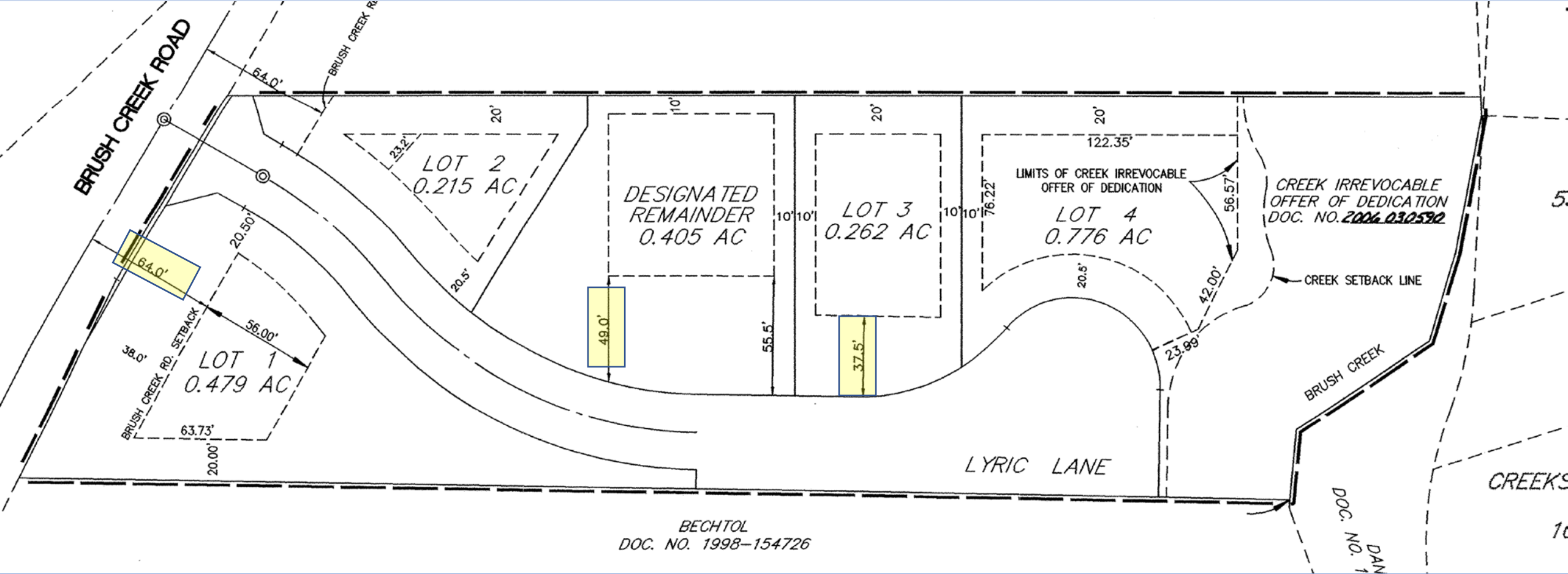
Parcel Map 435 (1988)
Book 421, Pages 6-8



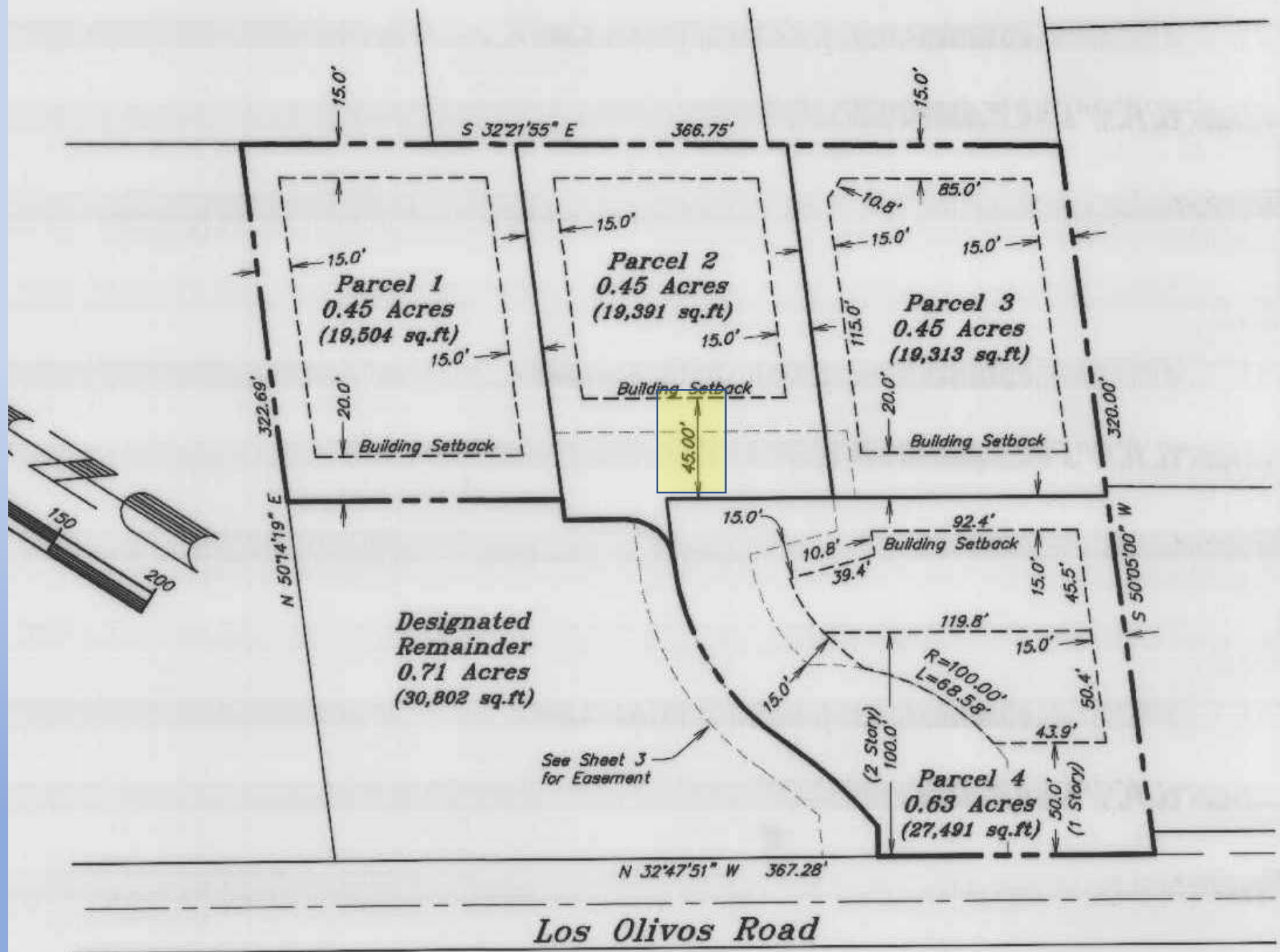
Parcel Map 639

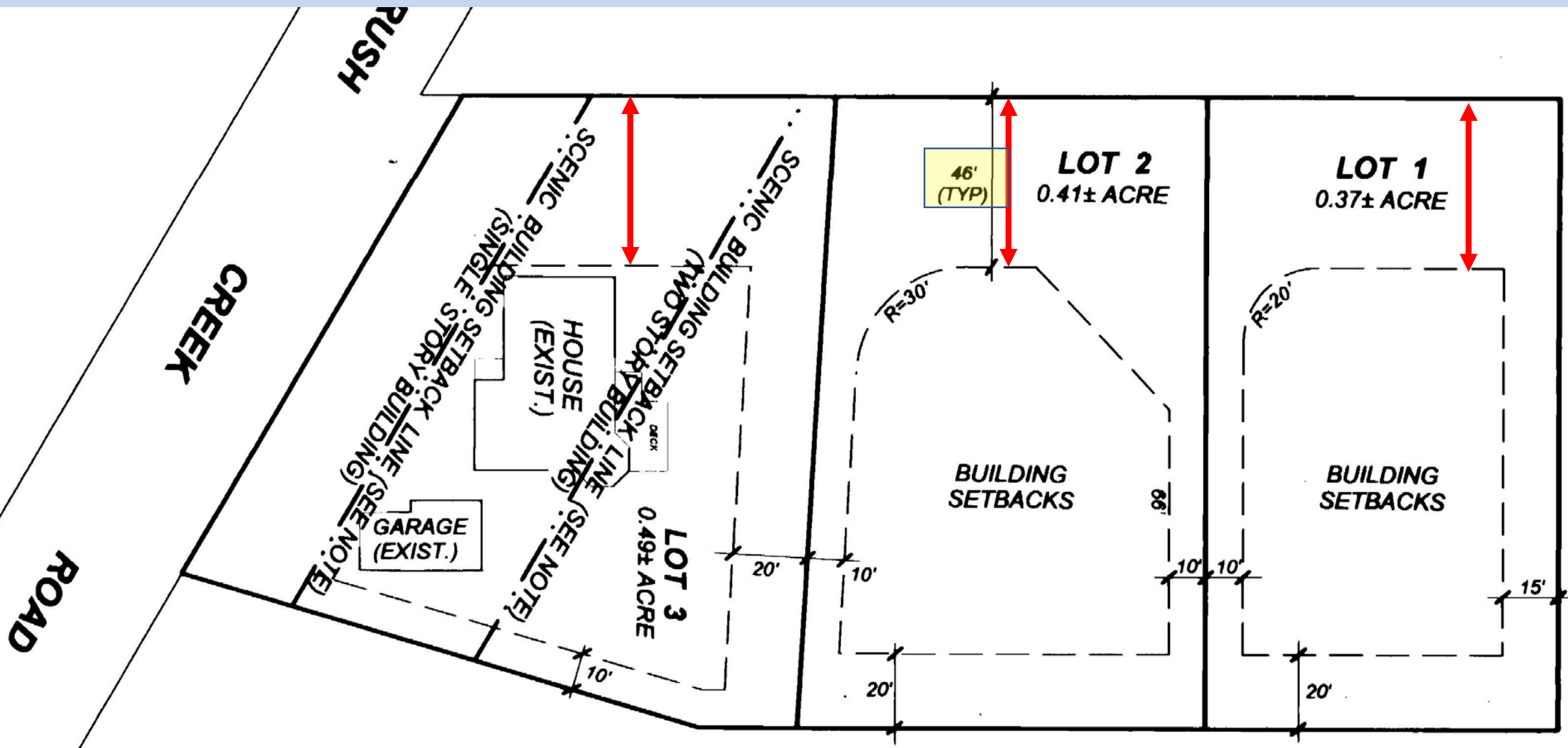
(2006)

Book 694, P. 1-5



Parcel Map 741
(2017)
Book 786, P. 3-8





Non-enforcement of map conditions

the existing house noted in that requirement. Is this correct? Does it still maintain (or need to maintain) the 10 foot separation from the private drive?

The purpose of the Final Subdivision Committee Report is to condition the Tentative Parcel Map project that would regulate development of the parcels created by the Final Map. After the Final Map is recorded and development anticipated by the project is completed, any changes to land use or development would be regulated by the Zoning Code and conditions presented on the Final Map. Neither Planning Division nor Engineering Development Services feels that this condition is enforceable upon this addition, the development of which has occurred after the development project has been implemented. If we are to hold that they remain enforceable in perpetuity, then that means that means you could not do any changes to features specified on the conditions. For example, condition #5 specified a 6' foot fence. I do not believe we would require an amendment to these conditions to allow a 6' fence with 2' of lattice if that was requested today.

Non-enforcement of map conditions cont.

The law does not support Staff's belief that conditions dissolve after completion of the development.

-A condition of approval imposed as part of a permit process is not a typical covenant. It runs with the land as a matter of law. *Ojavan Investors, inc. v. California Coastal Commission* (1994) 26 Cal.app.4th 516, 526

-See Also, *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510, which holds that "it is well settled that the burdens of permits run with the land once the benefits have been accepted."

Even if the Commission wants to accept staff's contention that the map restrictions are relinquished after the map development obligations were fulfilled, then strict application of the zoning code for front setbacks would be applied and this project would fail to satisfy those current development standards.

Conclusions

The Commission should uphold this appeal and overturn the City's decision. This presentation and previously submitted written communications objectively demonstrate the arbitrarily granted retroactive tree removal permit and after-the-fact building permit.

The Commission is in a very difficult position of applying the Code (law) to these facts. Unfortunately, the Code is clear that the applicant *shall* be denied any approval or permit for development or further improvements to the property for a period of two years. The decision to approve the tree removal was completed on November 23, 2020, weeks before the City accepted the final application for the building permit. While this may feel like a harsh penalty, it was legislatively adopted by the Council to prohibit illegal (heritage) tree removal.

If the Commission will not adopt the appellant's request for increased mitigation fees, then we request that the City engage a qualified third-party arborist (at applicant's expense) to present an appraisal of the tree based on the Guide for Plant Appraisal 10th edition (revised).

Regardless of whether the tree removal itself prohibits the granting of a building permit, the necessary findings for approving the construction project in conformance with the Code cannot be made.

1900 Brush Creek Road Appeal

