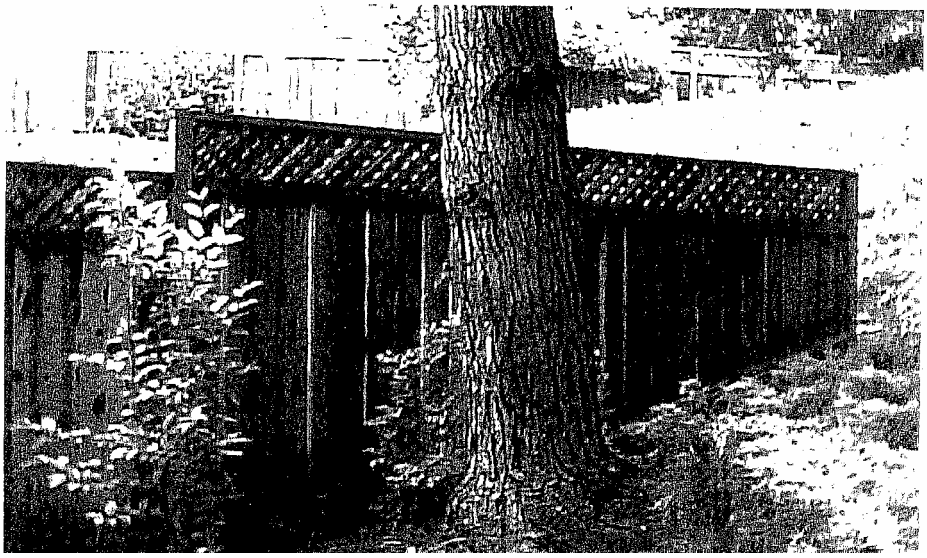
View from Appellant's Property

View from Subject Property



ATTACHMENT H
Page 1 of 2

RECEIVED
NOV 2 4 2004
PLANNING DIVISION

[redacted]
Sunnyvale, CA 940486

November 19, 2004

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94086

Dear Alice Gamboa:

I am writing regarding File 2004-0477, the fence permit for [redacted]

In response to Trudy Ryan's letter of November 17, 2004, I hereby notify you that I want to appeal to the City Council. I wish to appeal because the process was based on false premises, I was informed my appeal was off the schedule for November 8th, my request (approved by Amy Chan) to be present at the re-measuring of the fence was not honored, my requests (approved by Amy Chan) to meet with Amy Chan and Planning were not honored, my requests for a copy of the original hearing recording was not honored, the applicant no longer has standing since she is no longer the owner of the property, to name a few.

It is my position that I am not receiving equitable treatment and therefore I am submitting this notice of appeal under strong protest. My request that the original report be corrected of numerous misstatements and my approved request to be present at the re-measuring of the fence should have been honored prior to the original hearing. It was not. My subsequent attempts to have the report corrected were ignored and delayed. The permit should never have proceeded to hearing without the corrected information, or at least a representation of both sides of the disputed facts. The appeal should never have proceeded since discussion of the facts were still awaiting a meeting with Amy Chan and Planning. Moreover, I was told that the appeal was no longer scheduled for November 8. I sent a confirming letter and I was never called or informed that my letter was in error. It might appear my request to have a fence, that was built without a permit, conform to rules is being railroaded.

By submitting this appeal I am not waiving any of my rights and will be requesting return of my funds.

Finally, I must note that although the appeal was "heard" on November 8, I was not mailed Ryan's letter until 9 days later on November 17, 2004. Previously I had informed the City that I would be on vacation during this period. Ryan's letter provides only 6 days to respond and that includes mailing time. Why such

little time to respond. Surely if the intention is to support the process, a party would be afforded a more workable amount of time.

I have enclosed a check for $110 to cover the fee for the appeal.

Sincerely,

Kathey Fyke

Kathey Fyke

Cc: Amy Chan

January 5, 2005

Kathy Fyke
~~897 Rattan Terrace~~
Sunnyvale, CA 94086

Dear Ms. Fyke,

Thank you for your patience in waiting for this response to your letter. The purpose is to clarify the statements in your December 11, 2004 letter. The italics are the clarified statements – please note that there are revisions to what I indicated in our meeting on December 15, 2004.

1. If the Use Permit is approved, a building permit still must be issued.

   If the Use Permit is approved, a recommended Condition of Approval requires that a building permit must be issued within one month to exercise the permit. Normally, a Use Permit needs to be exercised within two years unless an extension of time is approved.

2. Only the owner can pull a building permit. Barouh has no standing to apply for the building permit.

   The Building Division staff have informed me that only a licensed contractor can pull a building permit for a fence on Association property. Neither Ms. Barouh nor the new owner has the standing to apply for the building permit.

3. If the new owner does not pull the building permit within two years, the Use Permit is void.

   If the licensed contractor does not pull the building permit within one month per the condition of approval, the Use Permit is void. Note that this condition does not require that the final inspection be completed within one month of the date of final approval.

4. If the fence is reduced to a six foot fence, for a period of more than year and <u>without</u> applying for a building permit, the Use Permit is void.

If the fence is reduced to a six foot fence then no building permit is required. If the building permit for the 7-foot fence is not obtained within one month of the date of final approval of the Use Permit, the Use Permit is void.

I also wanted to let you know that we do have a copy of the July 27, 2004 letter from the Homeowner's Association. Also per your request, enclosed is a copy of the audio tape from the Administrative Hearing of July 28, 2004.

Sincerely,

Trudi Ryan
Planning Officer

~~807 Rattan Terrace~~
Sunnyvale, CA 940486

RECEIVED
DEC 1 4 2004
PLANNING DIVISION

December 12, 2004

Trudy Ryan, Planning Officer
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Trudy Ryan:

Thank you for copying me on the letter to Leo Bokarius, the Homeowner President. Your letter references his May 24, 2004 letter to Barouh granting permission. However, there is no mention of Leo's subsequent July 27, 2004 letter to Barouh instructing her to remove the top of the fence since there was a complaint from a neighbor.

We discussed the second letter at our meeting last Tuesday. Do you need a copy? Please let me know.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

December 11, 2004

RECEIVED
DEC 1 4 2004
PLANNING DIVISION

Trudy Ryan, Planning Officer
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Trudy Ryan:

Thanks for returning my call on Wednesday. I wanted to confirm my understanding of the use permit and building permit as you explained it.

1. If the Use permit is approved, a building permit still must be issued.

2. Only the owner of the property can pull a building permit. Barouh has no standing to apply for the building permit.

3. If the new owner does not pull the building permit within two years, the Use permit is void.

4. If the fence is reduced to a six foot fence, for a period of more than year and <u>without</u> applying for a building permit, the Use permit is void.

If I misunderstood, please let me know the corrected interpretation. I also wanted to confirm my request for a copy of the recording from the July hearing.

Sincerely,

Kathey Fyke

Staff notes that no correspondence was received from either Mr. Bokarius or Ms. Lee

December 10, 2004

Mr. Leo Bokarius
900 Rosette Terrace
Sunnyvale, CA 94086

RE: Use Permit Application for a 7 ft. High Fence in the Rear Yard

Dear Mr. Bokarius,

We are sending you this letter in your capacity as the President of the Board of Directors of the Hidden Valley Homeowner's Association. There is currently a pending Use Permit application for a 7 ft. high fence in the rear yard between 893 and 897 Rattan Terrace. The previous owner, Lidia Barouh, initiated the application. We are aware that a new owner, Suzanne Lee, has recently purchased the property.

The fence was approved by the Planning Commission on November 8, 2004. That approval has been appealed by the owner of 897 Rattan Terrace, Kathey Fyke, and is pending a City Council hearing for final action. While we have a previous letter you sent to Ms. Barouh indicating your approval of the fence, we want to verify your consent to the application with the new ownership. We have also sent a letter to the new property owner.

Please contact me at (408) 730-7435 so that we can discuss your interest in proceeding with the Use Permit for the 7-foot fence. Unless I receive a written statement by December 30, 2004 that you do not approve the application, a public hearing will be scheduled on January 25, 2005 at 7:00 p.m.

Sincerely,

FILE COPY

Trudi Ryan
Planning Officer

CC: Suzanne Lee
Kathey Fyke
Lidia Barouh

December 7, 2004

HAND DELIVERED

Kathev Fyke

Sunnyvale, CA 94086

Dear Ms. Fyke:

On December 3, 2004 Amy Chan, the City Manager and I (Trudi Ryan, Planning Officer) met with you. The meeting started about 9:45 a.m. and ended at approximately 11:05 a.m. Following are general notes, of the meeting. These notes are not intended to be minutes of all of the discussion that was held, but are an attempt to capture the major items of discussion.

You indicated you had several items that you wanted to discuss and you listed about 14 areas of concern. Ms. Chan stated that this was your meeting, that we were here to listen and that you could proceed how you best saw fit. You commenced with discussing the Administrative Hearing (which you call the "Gerri Caruso" hearing as she is the Administrative Hearing Officer). You expressed your frustration that you only had 4 minutes to present your information and that the rules were not explained to you. I questioned you about whether you provided any additional information when you appealed the decision of the Administrative Hearing Officer. We then spent several minutes discussing how you made the appeal. In general you noted that you prepared the appeal prior to the decision based on the advice of Joan Borger, the then Senior Assistant City Attorney. You further explained your concern with the lack of response from the city staff.

We then spent some time talking about your desire for us to respond to the comments you were making at the meeting. Further, you indicated you felt that your letters, meetings and phone calls were ignored by staff.

Amy Chan asked you what you would like to do now and you responded that you wanted to go back to examine what had happened so that the process would be better in the future.

Amy Chan asked me to review the appeal process to the City Council. I suggested that I could advise you on how best to approach the City Council hearing. You indicated that you did not want to do that as you still had concerns that the facts were not accurately presented. Amy Chan indicated that your only recourse is to go to the City Council public hearing.

You gave an example where you were not provided information that you requested. Specifically you stated that you did not receive a copy of the tape of the Administrative Hearing meeting. You showed us a copy of a September 3, 2004 letter where you had requested a copy of the tape. I pointed out that you had requested a copy of the Administrative Hearing record. I explained that our normal practice is to use the tape to prepare the minutes of the meeting and that because the tapes are reused and recorded over we do not consider the tapes as part of the record.

You asked if the previous property owner has standing. I explained that "land use permits," in this case the Use Permit, are associated with the property and not the applicant or the property owner. Any person may represent the "land use permit," not just the property owner. We then talked about whether the current property owner wishes to pursue the application. You produced a copy of a letter from Joan Borger and indicated you read the letter to say that the new owner did not have standing. I indicated that I did not read that in the letter, that instead the letter says that the new property owner could withdraw the application by providing us a letter stating such. I repeated that anyone may make a presentation in favor of an application and that the property owner could choose to have someone represent them.

You then indicated your concern with the communication from staff. Amy Chan stated that she understood you are not happy with staff responses, that you are not satisfied with what has happened and that there are a lot of process improvements needed. Amy Chan said that she understood you felt "wronged" and upset about the process and that, if needed, she would look at process improvements with me.

Amy Chan further indicated that you can "go back to square one" by attending the Council hearing and presenting your information. She indicated that she respected what you had gone through. You stated that "no you don't" while Amy was talking.

You stated that Suzanne, the new property owner, and the Homeowners Association do not support the fence. I said that my understanding is that staff had spoken to the new owner. I have since learned that no one on my staff recalls a direct conversation with the new owner.

You said that the issue is no longer the fence, but the process. Both Amy and I told you that we cannot go back to change what has happened.

Amy Chan stated that your next choice is to meet with the City Council and review the process from beginning to end and to proceed with the appeal. She indicated that you could meet with any or all of the Councilmembers. You said

you did not want to do this but that you wanted to schedule another meeting to go over your issues.

Amy Chan indicated that neither she nor the city staff would follow up with more meetings after today. It would not be productive. Ms. Chan also explained that Joan Borger is her colleague and that you were not speaking for either Joan Borger or her staff. You stated that Amy Chan had "no interest in fixing the system." Amy Chan stated that that was your view.

We spoke again about the process for the City Council meeting. You asked if the meetings were televised. I stated yes. You indicated you would not appear unless they turned the cameras off.

We then spoke about the measurement of the fence. I indicated, that I would be willing, if the City Manager thought it appropriate, to meet with you for one hour to talk about the city code requirements and the process. I would not discuss what "he said-she said" as it was not productive. I was not present at all of the meetings, and even if I was we have already been hearing things differently. Amy Chan nodded her head to me indicating that the concept of such a meeting met her approval and that I could set up an appointment with you.

By this time, the City Manager's Assistant had interrupted the meeting three times to indicate that Amy Chan had another meeting to go to and that other appointments were backing up. I told you I would call you that afternoon to set up an appointment and provided you a copy of my business card so that you could call me.

What the above discussion does not include are the numerous times you, Amy Chan and I asked not to be interrupted and to not raise voices. I also recall that on a few occasions Amy Chan and I asked you not to attribute things to us we had not said and not to state how we were feeling about a matter.

In summary, we met for 1 hour and 20 minutes. I agreed to meet with you for one hour to discuss the regulations and the process. We have set up that meeting for **9:00 a.m. Tuesday December 7, 2004** at the One-Stop Counter at City Hall.

I have asked my staff to contact the new property owner directly and ask if she wishes to have the application withdrawn. I have conferred with the City Attorney's office to verify that if an appeal is pending and the application is withdrawn, it cancels the appeal and nullifies the prior approvals; this has been confirmed. In absence of a written notice withdrawing the application, the appeal must be heard and the decision of the City Council is final.

We did not discuss the status of the appeal hearing. I need to schedule a City Council hearing on your appeal. Two dates are possible: January 11, 2005 or February 8, 2005. If I do not hear from you by December 15 of your preference of meeting dates, I will proceed to schedule the matter for one of these two hearing dates.

Please be advised that all City Council public hearings are televised. If you do not want to appear at the City Council meeting you may have someone appear on your behalf and/or you may provide your comments to the City Council in writing. In any case I recommend that you provide us any comments about the facts you believe need correction and information supporting why you think the fence should not be approved. If staff has erred, we will correct the information in the staff report. If the information changes the analysis and findings we could modify or change the recommendation on the Use Permit application.

At the City Council hearing, an appellant is typically the first person to speak under the Public Hearing portion of the item and is allowed up to 10 minutes to present his/her case. The applicant or applicant's representative (if different from the appellant) is then given a similar opportunity to present his/her case. The appellant is given the final opportunity to speak after all other members of the public have had an opportunity. Typically this opportunity to speak is also up to 10 minutes.

If the appeal is heard and granted (denying the Use Permit) the fence will need to be removed. We typically work with the property owner to determine the appropriate schedule for removal. If the appeal is denied and the Use Permit is approved then the fence can remain provided a building permit has been issued and the final building permit inspection is approved. The final building permit inspection must occur within 2 years to exercise the permit (unless a one year extension of time is approved. If the fence is removed for a period of more than one year after exercising the permit (with certain exceptions) it cannot be reinstalled without approval of a new Use Permit.

I will deliver this letter to you at our meeting on Tuesday, December 7, 2004, at 9:00 a.m.

Sincerely,

Trudi Ryan

Trudi Ryan
Planning Officer

Cc: Amy Chan, City Manager
Joan Borger, Interim City Attorney

November 22, 2004

ALSO VIA FAX: 408/730-5166

Ms. Kathey Fyke

Sunnyvale, CA 94086

Re: 893 Rattan Terrace Appeal to the City Council

Dear Ms. Fyke:

I received a copy of your letter faxed to City Manager Amy Chan on November 19, 2004 regarding your appeal on the decision of the Planning Commission on November 8, 2004 denying your appeal and upholding the decision of the Administrative Hearing Officer approving a Use Permit to allow a 7-foot high fence.

As of today, November 22, 2004 at 3:12PM, I have not received your letter and your check for the appeal fee. Although your faxed letter indicates enclosure of the appeal fee, we have not received the check. In order to have a valid appeal application, we need to receive the appeal fee payment by tomorrow, November 23, 2004 at 5:00PM.

Sincerely,

Alice G. Gamboa-Navas
Administrative Aide

cc: Amy Chan, City Manager
Robert Paternoster, Director of Community Development
Trudi Ryan, Planning Officer
Joan Borger, Interim City Attorney

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501

Sunnyvale, CA 940486

November 19, 2004

RECEIVED
NOV 19 2004
City Manager's Office

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94086

Dear Alice Gamboa:

I am writing regarding File 2004-0477, the fence permit for 893 Rattan Terrace.

In response to Trudy Ryan's letter of November 17, 2004, I hereby notify you that I want to appeal to the City Council. I wish to appeal because the process was based on false premises, I was informed my appeal was off the schedule for November 8th, my request (approved by Amy Chan) to be present at the re-measuring of the fence was not honored, my requests (approved by Amy Chan) to meet with Amy Chan and Planning were not honored, my requests for a copy of the original hearing recording was not honored, the applicant no longer has standing since she is no longer the owner of the property, to name a few.

It is my position that I am not receiving equitable treatment and therefore I am submitting this notice of appeal under strong protest. My request that the original report be corrected of numerous misstatements and my approved request to be present at the re-measuring of the fence should have been honored prior to the original hearing. It was not. My subsequent attempts to have the report corrected were ignored and delayed. The permit should never have proceeded to hearing without the corrected information, or at least a representation of both sides of the disputed facts. The appeal should never have proceeded since discussion of the facts were still awaiting a meeting with Amy Chan and Planning. Moreover, I was told that the appeal was no longer scheduled for November 8. I sent a confirming letter and I was never called or informed that my letter was in error. It might appear my request to have a fence, that was built without a permit, conform to rules is being railroaded.

By submitting this appeal I am not waiving any of my rights and will be requesting return of my funds.

Finally, I must note that although the appeal was "heard" on November 8, I was not mailed Ryan's letter until 9 days later on November 17, 2004. Previously I had informed the City that I would be on vacation during this period. Ryan's letter provides only 6 days to respond and that includes mailing time. Why such little time

to respond. Surely if the intention is to support the process, a party would be afforded a more workable amount of time.

I have enclosed a check for $110 to cover the fee for the appeal.

Sincerely,

Kathey Fyke

Cc: Amy Chan

November 17, 2004

Ms. Kathev Fyke
ce
Sunnyvale, CA 94086

Subject: Planning Commission Decision on Your Appeal of the fence at

Dear Ms. Fyke,

The Planning Commission considered your appeal of the fence at 893 Rattan Terrace on November 8, 2004. After reviewing the correspondence regarding your appeal and hearing testimony from the applicant's representative, the Planning Commission denied your appeal and upheld the decision by the Director of Community Development to approve the fence.

You have the right to appeal this decision to the City Council for final action. To appeal the decision you will need to write a letter stating your reason for appeal with an appeal fee of $110.00 and send it to the Planning Division by November 23, 2004 at 5:00 p.m.

Sincerely,

Trudi Ryan
Planning Officer

Cc: Amy Chan, City Manager
Robert Paternoster, Director of Community Development

Sunnyvale, CA 940486

November 8, 2004

Fax: 730 7699, 328 0710

Trudy Ryan, Planning Officer
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Ms. Ryan:

I am writing in response to your letter of November 5, 2004 and the hearing scheduled for tonight.

First, I spoke with Alice Gamboa on Wednesday morning, November 3, 2004. During that conversation Ms. Gamboa "agreed that the meeting scheduled for November 8 was off." I have attached copies of my two letters to Ms. Gamboa I mailed that morning documenting that I was told the meeting was off.

It was my understanding that the hearing was postponed until after my meeting with Ms. Chan and yourself, as well as after I received the information I have requested from the city. This has been my request since July. Moreover, I have not heard from Ms. Gamboa informing me that my letter was in error.

Therefore to notify me that the hearing is on with one day's notice is clearly unfair. It does not allow me sufficient time to prepare and make arrangements to attend. Since I do not believe such unfair action is the intention of the Planning Department and Commission, I will conclude that there must have been a miscommunication within your department. I will conclude that that Ms. Gamboa, who is responsible for the scheduling, was correct and that my matter is off the schedule for tonight. If this is incorrect, please let me know.

Next, I would like to examine the chronology highlights of my complaint and appeal. Your letter states, "As it has been three months since you appealed the decision of the Administrative Hearing Officer we have moved forward and scheduled the hearing." Yes, it has been three months, but as the following will demonstrate the delay does not lie with me.

Summer 2003

- Met with Bob Straley of Neighborhood Preservation at my property. Took photos of fence and verified it was greater than 7 feet.

May 12, 2004

- Met with Bob Staley at my property. Confirmed fence was greater than 7 feet high. I asked him to proceed with complaint process.

July 9, 2004

- I learned that my fence complaint was not addressing that the fence was in excess of 7 feet.
- I requested copies of the paperwork from Planning and was denied.
- I requested to be present at the re-measuring of the fence and was denied by Planning.
- Called City Clerk, Susan Ramos
  - Confirmed I could have access to records through CA Public Records Act.
  - Ms. Ramos did not see why I could not be present at the measuring of the fence.
- Called City Manager, Amy Chan
  - Ms. Chan stated that I could be present at re-measuring of fence set up at a mutually convenient time.
  - Ms. Chan committed to write me a letter on July 12, documenting our telephone call.

(events documented in Fyke letter 7/12/04 to Chan)

July 10, 2004

- Mailed CA PRA request for records and documentation to Susan Ramos.

July 19, 2004

- Since I never received the July 12 response from Ms. Chan, I sent a follow-up letter to Ms. Chan, documenting the July 9 telecon and subsequent lack of response.
  (This letter was omitted from your Planning Commission Hearing packet, so I have attached a copy for reference.)

- Letter from Ms. Chan (received July 22)
  - "You stated that when staff comes out to re-measure the fence, you want to be able to observe the process. Staff indicated that you could observe the process on your side of the fence..."

July 22, 2004

- Letter to Trudy Ryan (hand delivered)
  - I reiterate Ms. Chan's July 9th position that I can observe the re-measure and that Ms. Chan would speak with her department about the refusal. I note I have not heard back from Community Development.
  - I request, "Would you please let me know if there is a re-measurement scheduled or if it has already been completed

without my participation. "
- I request, "With regard to the hearing, I was verbally informed that it is July 28. However, I would appreciate being informed as to what time and where it is scheduled."

I received no response from Ms. Ryan on these items.

July 26, 2004
- Letter to Ms. Chan and meeting with Ms. Chan to discuss letter.
  - I express that I am receiving unequal treatment with regard to the fence permit process.
  - "Because the hearing was scheduled in two days, you (Chan) explained that there would not be time before the hearing to address my concerns. Therefore, they would be discussed after the hearing."
  - As Ms. Chan's handwritten notes on my letter indicate, she was to set up a meeting with Trudy Ryan in mid-August to address my concerns of a lack of fair and equitable treatment with regard to the fence permit process.

July 27, 2004
- Planning and Gerri Caruso, the Hearing Officer, had a meeting with Lydia Barouh at the site and re-measured the fence. Although I was home, I was never contacted to participate. At the time, I was unaware as to who the parties were.

July 28, 2004
- Planning Hearing

July 30, 2004
- Letter to Alice Gamboa noticing appeal because the process was based on false premises. (These are the false premises/errors that are to be addressed in the future Chan and Ryan meeting.)

September 3, 2004
- Letter to Ms. Chan
  - I have not received any response in the last month.
    - Documents meeting of July 26, 2004.
    - No meeting with Chan and Ryan yet scheduled.
    - No response to July 22 letter to Ryan.
    - No response to attempt to set up meeting with Mr. Paternoster since July 28.

  (This letter was also omitted from your Planning Commission Hearing packet, so I have attached a copy for reference.)

September 3, 2004
- Letter from Ms. Ryan
  - "The City Manager's Office will be contacting you to arrange a follow-

up meeting with the City Manager and me."

- Letter to Susan Ramos
  - "I believe my request for documents was not fully complied with."

September 23, 2004

- Call from Ms. Chan's office to set up meeting on October 8, 2004.

October 5, 2004

- Letter to Ms. Ryan
  - Raise questions as to why I was not permitted to participate in fence re-measurement.
  - Raise questions as to what the methodology was to measure the fence.
  - Dispute notice process: why was I not sent a specific notice.
- Letter to Ms. Ramos
  - Enclosed is a check for the additional items.
  - "Not all records and documents have been provided."

October 8, 2004

- I called and cancelled meeting due to my son being ill. If required, I can document this through his school records. I committed to calling back the next week to reschedule.

October 12, 2004, approx.

- I called Ms. Chan's office and left a message requesting a callback to reschedule. Message was never returned.

October 12, 2004

- Letter from Ms. Ryan
  - Does not address questions as to why I was not permitted to participate in re-measuring process.
  - Does not answer questions as to what methodology was used.
  - Counters concerns with notice process with false information.

October 30, 2004

- Letter to Ryan
  - October 12 response fails to answer many questions. Poses October 5 questions again.
  - I am still awaiting response from city, thus November 8 hearing date is unacceptable.

November 1, 2004

- I returned message to Alice Gamboa

November 3, 2004

- First letter to Alice Gamboa

- I haven't heard back from my message and I'm following up.
- Call from and second letter to Ms. Gamboa
  - Technical difficulties with phone
  - "Meeting scheduled for November 8 was off."

November 3, 2204 approx.

- I called Ms. Chan's office and left another message to reschedule the meeting. The call was returned and the meeting set up for December 3, 2004.

November 5, 2004

- Letter from Ms. Ryan
  - "I am not going to respond to every question...I believe the questions are not relevant to the pending Use Permit Application....any additional attempts to respond will be fruitless."
  - A copy of the staff report is included.
  - Hearing is scheduled for November 8.

As the above demonstrates, I have been waiting months for this meeting with yourself and Ms. Chan to happen. I have been waiting months to obtain the documents and records salient to my complaint and they are still not all here. Please recall it was your staff who emphatically told me NO. The reality is that our meeting should have taken place before the original hearing, not after. There were errors in the Report that needed to be corrected and these errors would be easy to prove. All that was needed was some time to objectively review them. And the nature of your hearing did not provide that time. Even Ms. Chan asked that I be given more time at the hearing and that was not accommodated. I have a right to a fair hearing with the facts being presented as accurately as possible.

In the interest of time, I will continue this letter at a later time and further address the points you raised. This letter is not intended to serve as any statement at/to the Planning Commission Hearing. Please note my fax is technically challenged and will not automatically receive incoming faxes.

Sincerely,

Kathey Fyke

Cc: Amy Chan

Sunnyvale, CA 940486

November 3, 2004 (Letter Number 2)

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94088

Dear Alice Gamboa:

Thanks for calling me back. As you explained, there were some technical difficulties with your phone and you didn't pick up my message from Monday until today. No problem.

I shared with you that I had already posted a letter to you this morning since I hadn't heard back. I explained that I was still awaiting information from the city as well as my meeting with Ms. Chan and Ms. Ryan. Therefore, to proceed with the appeal was premature. You agreed that the meeting scheduled for November 8 was off.

Thanks for your assistance.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

November 3, 2004

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94088

Dear Alice Gamboa:

I was relayed a message to call you. On Monday, I did call you back. However, you did not answer therefore I left a message on your phonemail. I have not heard back from you.

If you still need to speak with me, please give me a call at 730 5166. If the matter is regarding scheduling the appeal, I am still awaiting feedback from the city. Once I have heard back, I will be sure to contact you to see what dates are most convenient for you.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

July 19, 2004

Amy Chan, City Manager
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Ms. Chan:

I originally met with you in your office on June 15, 2004. At that time I expressed that I believed there was room for city employees to be more considerate and respectful of people and their efforts. I was pleased to hear that you did not disagree and you thought customer service should be a priority.

I asked for your assistance on some matters. I had unsuccessfully been attempting to have a dialogue with the city regarding a recent appellate court decision that defined a fence as a row of trees and a problem with a neighbor. I raised a concern about a tree removal permit that had been issued under false premises and asked about having it revoked. I also questioned whether neighborhood preservation had a mandate to enforce all ordinances or whether they could be selective. You took copies of my documentation and committed to getting back to me.

On July 9, 2004, I called you on a new matter. I had previously filed a complaint with Community Development regarding a fence that a neighbor had built without a permit that was over seven feet high. As I explained, the fact that the fence exceeded seven feet was confirmed by the original neighborhood preservation officer. However, the current status of the complaint does not reflect the seven foot plus height. My requests to receive copies of the paperwork and to be present at another measuring of the fence were denied.

In speaking with the City Clerk, Susan Ramos, I confirmed that I could have access to the records through CAPRA. I have since formally submitted my request in writing. In addition, Ms. Ramos did not see why I could not be present at the measuring of the fence. Thus I called you. On the matter of observing the measuring of the fence, you stated that I could be present and that it should be able to be arranged at a mutually convenient time for all parties.

During our conversation, I also mentioned my disappointment that I had never heard back from you regarding our June meeting. You initially explained that my concerns had been addressed through the city attorney's office and that there was no need for you to have gotten back to me. You said that I had been sent a letter from the city

attorney's office stating that my fence/tree issue was a civil matter. I informed you that I had never received any letter. You responded that you would have a copy mailed to me.

Regarding the described content of the letter, I expressed further disappointment. As I shared with you and stated in my June 12 letter to Fred Bell, I was interested in opening a dialogue where I could share my research and input, where there would be some discussion. What you described was another one-sided decision where the matter was closed and no room for discussion. Sadly, this is the same response I had received from Fred Bell and was one of the reasons I originally came in to speak with you.

I also disagreed with your perception that you did not need to get back to me. I explained that I felt you had made a commitment to get back to me and that should have been honored and not delegated. Moreover, the appellate court decision was not the only matter on which I asked for your assistance. There had been no resolution on those additional items.

Later, you did acknowledge that you should have gotten back to me and I appreciate that. You went further to state that you would write me a letter on Monday, July 12 documenting what we had talked about in our telephone conversation in an effort to minimize communication error.

However, as of today's date, I have still not received a copy of any previous letter from the City Attorney's Office. I have not received the Monday letter from you. Nor have I received any notification regarding the measuring of the fence. I hope you can understand my disappointment. My efforts to work with the city to resolve my concerns seem to be ignored.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

September 3, 2004

Amy Chan, City Manager
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Ms. Chan:

I am writing to follow-up on both my letter and our meeting of July 26, 2004. I have included a copy of my letter for your reference. Although you had previously suggested that you would document our conversations in a letter to minimize miscommunication, I have not received any letter. In fact, in over a month's time, I have not received any response.

We reviewed my July 26 letter at our meeting.

On the first item: Caselaw, I expressed that I was in contact with Ms. Borger and I would continue the process with her. Nothing more was required from you at this point.

Second item: Tree Removal Permit. After our discussion, you stated that I would be given one more opportunity to discuss my concerns. You would set up a meeting with a representative of the city. I suggested that Leonard Dunn was already familiar with the site and might be an appropriate party. You responded that you would see if you could set up something with him. Over six weeks have passed and I have not heard from you or anyone else on this matter.

Third Item: City Maintaining Files... You stated that you would obtain a comment from Trudy on these two concerns and get back to me. Again, over six weeks have passed and I have not heard from either you or Trudy Ryan on these concerns.

Moreover, I expressed concern that I was receiving unequal treatment with regard to the fence permit. Because the hearing was scheduled in two days, you explained that there would not be time before the hearing to address my concerns. Therefore, they would be discussed after the hearing. You stated that you would set up a meeting with ourselves and Trudy Ryan. When you asked me when would be a convenient date, I responded with mid-August. As you are aware, August came and went and there was no meeting with Trudy Ryan. There has been nothing even scheduled and I have not been contacted by either yourself or Trudy.

There seems to be a pattern of non-response to my requests. In addition, my July 22 letter to Trudy Ryan has gone unanswered. On July 28, I spoke with Mr. Paternoster in the hall and requested to meet with him. He stated that he was busy until Friday, but he could see me then. I left a subsequent voicemail message for him to set up a time to meet on Friday. I also spoke in person with Ms. Lee and asked her to call me with a time on Friday that I could meet with Mr. Paternoster. I did not receive a response from either party and never was given an appointment.

As the above indicates, there are still open issues. If you do not wish to work with me to resolve my concerns, I would appreciate your letting me know.

Sincerely,

Kathey Fyke

CITY OF SUNNYVALE

456 WEST OLIVE AVENUE • SUNNYVALE, CALIFORNIA 94086 • (408) 730-7480

Office of the City Manager

November 8, 2004

Ms. Kathey Fvke

Sunnyvale, CA 94086

Dear Kathey:

Following up on our conversation last Thursday, this letter confirms your meeting with Amy Chan and Trudi Ryan that is scheduled for December 3, 2004 at 9:30. This is a follow up meeting that was originally scheduled for October 8.

You informed me that you will be on vacation prior to your meeting with Amy and Trudi. Considering that the holidays can be a hectic time, if anything changes during the interim or I can be of further assistance, please don't hesitate to contact me at 730-7482.

Sincerely,

Kathi

Kathi McGraw
Executive Assistant

cc: Trudi Ryan

HAND DELIVERED
and
VIA U.S. MAIL

November 5, 2004

Ms. Kathev Fvke

Sunnyvale, CA 94086

Dear Ms. Fyke:

I received your letter dated October 30, 2004 on November 3, 2004. You have repeated a series of questions you posed in previous correspondence and question the accuracy of information provided to you.

I am not going to respond to every question in your letter. I believe the questions are not relevant to the pending Use Permit Application nor is it productive to relive every action taken by you, the applicant or the city staff. For any previous delay in responding or miscommunication between staff, I apologize. We have had endless conversations and correspondence regarding the fence and your requests for information. I believe that any additional attempts to respond will be fruitless.

Your October 30, 2004 letter states that you are waiting for responses to your requests and concerns before you are able to work with us on a mutually convenient hearing date for the appeal. As it has been three months since you appealed the decision of the Administrative Hearing Officer we have moved forward and scheduled the hearing. By now, you should have received at least one copy of a notice of the hearing. We sent a notice to you by Certified Mail but have not yet received confirmation from the Post Office on whether the letter was accepted or not.

As the appellant of the Use Permit you are encouraged to attend the Planning Commission Hearing on **November 8, 2004 at 8:00 p.m. in the City Council Chambers at 456 West Olive Avenue.** You may speak to the Planning Commission stating the reasons for your appeal. You may include statements on additional information you believe they needed to make a decision. Please be advised that the Planning Commission requests applicants and appellants to prepare a concise presentation and typically limits the presentation to 5-10 minutes, depending on the complexity of the project. If you are unable to

attend the hearing, you are welcome to submit written comments to the Planning Commission prior to the hearing. The decision is up to the Planning Commission, and the Planning Commissioners need to be satisfied that they have all the information they need.

A copy of the staff report is enclosed.

The decision of the Planning Commission is final unless there is an appeal to the City Council within 15 days of the decision. An appeal must be on forms provided by the Community Development Department, stating the reason for the appeal and must be accompanied by the appropriate fee ($110).

Sincerely,

Trudi Ryan
Planning Officer

Enclosures:

- Excerpt from Sunnyvale Municipal Code: **Chapter 19.48 FENCES, DISTANCES BETWEEN BUILDINGS AND EXTENSIONS INTO YARDS**
- November 8, 2004 Report to Planning Commission (Appeal of Use Permit 2004-0477)
- Agenda, Planning Commission Meeting of November 8, 2004

cc: Amy Chan, City Manager
Joan Borger, Interim City Attorney
Robert Paternoster, Director of Community Development

Trudi Ryan - Kathey Fyke

From: Alice Gamboa-Navas
To: Borger, Joan; O'Dell, Diana; Ryan, Trudi
Date: 11/3/2004 10:49 AM
Subject: Kathey Fyke
CC: McGraw, Kathleen

Kathey returned my voicemail and she told me that sent me a letter today. She also told me that she is still waiting for the documents and a meeting with Trudi and Amy since July. She told me that the 8th is not going to work. I advised her that she can send us a letter of her concerns for the record.
Alice

RECEIVED
NOV 0 5 2004
PLANNING DIVISION

Sunnyvale, CA 940486

November 3, 2004 (Letter Number 2)

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94088

Dear Alice Gamboa:

Thanks for calling me back. As you explained, there were some technical difficulties with your phone and you didn't pick up my message from Monday until today. No problem.

I shared with you that I had already posted a letter to you this morning since I hadn't heard back. I explained that I was still awaiting information from the city as well as my meeting with Ms. Chan and Ms. Ryan. Therefore, to proceed with the appeal was premature. You agreed that the meeting scheduled for November 8 was off.

Thanks for your assistance.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

November 3, 2004

RECEIVED
NOV 0 5 2004
PLANNING DIVISION

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94088

Dear Alice Gamboa:

I was relayed a message to call you. On Monday, I did call you back. However, you did not answer therefore I left a message on your phonemail. I have not heard back from you.

If you still need to speak with me, please give me a call at 730 5166. If the matter is regarding scheduling the appeal, I am still awaiting feedback from the city. Once I have heard back, I will be sure to contact you to see what dates are most convenient for you.

Sincerely,

Kathey Fyke

Sunnyvale, CA 940486

October 30, 2004

RECEIVED
NOV 0 3 2004
PLANNING DIVISION

Trudy Ryan, Planning Officer
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Ms. Ryan:

I am writing in response to your letter of October 12 which you state is reflective of my October 5 letter. I continue to be disappointed in the response by the city. Your letter continues to perpetuate falsehoods (yet simple to disprove) and fails to respond to the majority of the questions I raised in my October 5 letter. I must question, why? Why is information not being presented accurately? Why are my questions being ignored? Why must I resort to the CA PRA to obtain information from your department and even after multiple requests, information is withheld? Why was the information presented at the Planning Hearing not accurate or verified prior to the hearing? Why has my attempts to meet with Ms. Chan and yourself not been accommodated? Why am I not receiving equitable treatment?

Your letter states, "As stated previously, two notices were sent to your address. One was sent to Richard Falcone et Al, which is the listed owner in our records." (emphasis added) This is false. The letter was not addressed to Richard Falcone et al., intending to include others. It was sent to Mr. Falcone, singularly. This is documented in your own address labels that were provided in October in response to my multiple CA PRA requests. Even in my earlier conversations with Ms. Odell, she stated the letter was sent to Richard Falcone. Not Richard Falcone et al. Not me. (See my letter of October 5) Why is it necessary to distort the truth in order to support your position? This seems to be a pattern.

Please also understand, that if I am not getting the truth on minor issues, why should I believe I am getting the truth on larger issues?

With regard to your reiteration on the other noticing steps, again, my community does not receive the City's official newspaper. No letter to Resident was ever received. The site was not posted properly. Although staff was in contact with me by phone, my request to know the specifics of the meeting was not honored. As I mentioned in my earlier letter, even my written request to you went ignored.

Your letter references the municipal code as the source of the notification process. Would you please send me a copy of the appropriate section.

As I stated above, there are many questions and concerns that I raised in my October 5 letter. Some of these questions were repeats of questions that went unanswered from my July 22 letter. I have attached a copy of my October 5 letter in which I have highlighted in bold type, the questions and concerns that I feel are outstanding. I would appreciate your addressing them.

With regard to the Planning Commission Hearing, I am still awaiting responses to my requests and concerns. I appreciate your statement that "staff has a responsibility to resolve this issue in a timely manner." Hopefully, I will be able to get a timely response. Once I have received the information I have requested, I will be glad to work with you to schedule a mutually convenient hearing date. However, as I am sure you understand, November 8th is not acceptable since we have not reached that point yet.

Sincerely,

Kathey Fyke

October 28, 2004

Ms. Kathey Fyke

Sunnyvale, CA 94086

Re: Appeal on Planning Project #2004-0477 – 893 Rattan Terrace
VIA CERTIFIED MAIL

Dear Ms. Fyke:

This is to follow up the message Alice Gamboa-Navas left to someone at your house early this week regarding the scheduling of the public hearing of your appeal on the above subject.

The public hearing for your appeal on Project Number 2004-0477 located at 893 Rattan Terrace is scheduled for the Planning Commission Public Hearing of November 8, 2004. It is required that a final decision is made on this application. If you are unable to make this public hearing, you may send a letter prior to this date so we may include them at the public hearing for the record.

If you have any questions, you may contact the Project Planner, Diana O'Dell at 408 730-7452 or me at 408/730-7435.

Sincerely,

for Trudi Ryan
Planning Officer

cc: Joan Borger, City Attorney
Robert Paternoster, Director of Community Development
Diana O'Dell, Project Planner

October 15, 2004

RECEIVED
OCT 1 8 2004
PLANNING DIVISION

Kathev Fvke
[illegible]
Sunnyvale, CA 94086

RE: PUBLIC RECORDS ACT REQUEST PERTAINING TO 893 RATTAN TERRACE

Dear Kathey:

I am responding to your letter of October 5, 2004, which we received on October 8.

In Paragraph four, you expressed concern and asked about the process of documenting phone conversations, meetings, actions, site visits, etc. As stated in my letter of September 16, the Planning office does not document phone conversations, meetings, actions, site visits, etc. as its standard practice due to its high volume of activity.

In Paragraph five, you requested information as to what files were searched for your request. In Planning, the application and correspondence files on 893 Rattan Terrace were searched. Additionally, Planning staff searched for any correspondence with you that was not contained in the 893 Rattan Terrace file. As stated in my letter of September 16, this correspondence file is currently available for your review. In Neighborhood Preservation, this information was provided to you by Richard Gutierrez in his letter dated July 16, 2004.

In Paragraph six, you stated that you are aware of an item that has not been previously provided and you are choosing not to specifically disclose this information at this time. Please be aware that Government Code section 6253.1 contemplates that a requester of records works with the public agency to provide additional clarifying information.

At this point, we have provided you with copies of records we have in our possession based on information you have provided us in your letters. If you need further assistance regarding your records request for 893 Rattan Terrace, it would be helpful if you could provide us with specific details about the record(s) you are searching for, including the record you referenced in your letter of

October 5, 2004. Otherwise, we believe we have met all of the requirements under the Public Records Act for this request and we will consider this matter closed.

Sincerely,

Susan A. Ramos

Susan A. Ramos
City Clerk

cc: Joan Borger, Interim City Attorney
Robert Boco, Deputy City Attorney
Robert Paternoster, Director of Community Development
Trudi Ryan, Planning Division
Christine Gunvalsen, Neighborhood Preservation Division

CITY OF SUNNYVALE

P.O. BOX 3707 • SUNNYVALE, CA 94088-3707 • (408) 730-7464 • FAX (408) 730-7468

Office of the City Attorney

October 12, 2004

Ms. Kathey Fyke
[redacted]
Sunnyvale, CA 94086

Re: **Response to letter dated October 5, 2004**

Dear Ms. Fyke:

This letter responds to several questions you raised in a letter I received from you on October 8, 2004, related to fence permits.

You have asked "what is the policy regarding a fence permit that is in the appeal stage and there has been a change of ownership?" A use permit (which is the type of fence permit issued to your neighbor) attaches to the property, not to the specific owner. Therefore, the fact that property changes ownership during an appeal does not necessarily affect the permit or the appeal. If the new property owner wishes to withdraw the use permit application he or she may do so. In that case, the permit application would be withdrawn, and the appeal would thereby be rendered moot. The new owner would then be required to make sure any fence complied with City code requirements, in addition to any private requirements which may be imposed by the Homeowner's Association.

If the new owner has no interest in pursuing the permit and is willing to remove the fence, he or she may do so. If the new owner wants to maintain the fence at a height which requires a permit, the appeal should proceed for consideration.

If the permit application is not withdrawn and the planning commission denies the appeal and grants the permit, then the new owner may build or maintain the fence in accord with the permit conditions. If the planning commission grants the appeal and denies the fence permit application, then the new owner will have to modify the fence to conform with City codes. A use permit shall become null and void if the permit has not been exercised within two years from the date it was approved by the final approving authority.

I hope this addresses your questions. Please feel free to contact me if you need further explanation.

Sincerely,

Joan A. Borger

Joan A. Borger
Senior Assistant City Attorney

JAB:sam

October 12, 2004

Ms. Kathey Fyke
[redacted]
Sunnyvale, CA 94086

Subject: Response to Letter Dated October 5, 2004

Dear Ms. Fyke:

This correspondence responds generally to questions and concerns raised in your letter dated October 5, 2004 regarding the fence at 893 Rattan Terrace.

In a previous letter of September 3, 2004, staff described what occurred with the re-measuring of the fence and the determination of height. I cannot speak to what Bob Staley said or didn't say, but based on his notes in our database, applicant information, and staff measurement the height of the fence is 7 ft. as measured from the highest adjoining grade (Sunnyvale Municipal Code section 19.48.020(a)(3)).

In regards to noticing, the steps taken were described in the letter of September 3, 2004. As stated previously, two notices were sent to your address. One was sent to Richard Falcone et Al, which is the listed owner in our records. We receive this information from the County of Santa Clara. Another letter was sent to Current Resident at your address. Neither letter was returned by the post office for insufficient or inaccurate resident or address data. In addition, the site was posted and a legal ad was placed in the City's official newspaper, and staff was in contact by phone with you. You attended the public hearing. Sunnyvale Municipal Code section 19.98.040 lays out the legal notification requirements for planning applications.

The process Ms. Barouh is going through is a Use Permit process. Typically, fences which are 7 ft. or less in height in the side yard may be

processed with a Miscellaneous Plan Permit (staff-level permit) provided a signed agreement is provided from all adjoining property owners. Since that agreement was not procured, a Use Permit process is required.

Lastly, with regards to the change in property ownership, if the new property owner does not wish to pursue the Use Permit application, they have the ability to submit a letter withdrawing the application or remove the fence. Until that time, staff has a responsibility to resolve this issue in a timely manner. The appeal can be scheduled for a Planning Commission Hearing date of November 8, 2004. We will be contacting you to finalize the date of the hearing.

Sincerely,

Trudi Ryan
Planning Officer

cc: Amy Chan, City Manager
Robert Paternoster, Director of Community Development

RECEIVED
OCT 1 2 2004
PLANNING DIVISION

MEMORANDUM

TO: Robert Paternoster, Director of Community Development
Trudi Ryan, Planning Manager
Gerri Caruso, Planning Office
Diana O'Dell, Planning Office
Christy Gunvalsen, Neighborhood Preservation
Richard Gutierrez, Neighborhood Preservation

FROM: Susan A. Ramos, City Clerk

CC: Amy Chan, City Manager
Robert Boco, Office of the City Attorney

DATE: October 8, 2004

RE: Request for Records from Kathey Fyke pertaining to [redacted]

Attached is a copy of a letter received in my office on October 8, 2004 from Kathey Fyke commenting on the City's responses to her previous requests and requesting additional information under paragraphs 4 and 5. Since she is asking for information versus records, I will be consulting with the City Attorney's office on how we should respond.

She is also requesting to review the City's file containing correspondences between her and the City. I would appreciate it if you would let me know when this file will be available for inspection so I can respond within the ten-day statutory deadline.

Thank you for your assistance. If you have any questions, please feel free to call me at Extension 7474.

Attachment

Rec'd check #2368 $3.

~~897 Rattan Terrace~~
Sunnyvale, CA 940486

CITY OF SUNNYVALE, CA
CITY CLERK'S OFFICE
2004 OCT -8 P 12: 05

October 5, 2004

Susan Ramos, City Clerk
City of Sunnyvale
603 All American Way
Sunnyvale, CA 94088

Dear Susan:

I am writing in response to your letter of September 16th. I recognize that you are merely the messenger in this saga, however, I must take exception to some of the information you relayed.

First, there was no "clarification" of my request. It remained the same. What I did was point out a document that I knew existed, met the criteria of my request, and had failed to be provided in my CA PRA request.

Second, the city's letter of August 10 states, "The responsive records we provided to you on July 22 included **all** records and documents regarding your complaints against your neighbor at 893 Rattan including records from the Planning office." (emphasis added). As the items identified in the September 16th letter demonstrate, this statement was false.

I wanted to confirm the following that was contained in the letter. "The Planning Office does not document phone conversations, meetings, actions, site visits, etc." I find this policy of lack of documentation a concern. Is this accurate? Accordingly, Diana Odell and Gerri Caruso participated in a site visit to the property on 7-27-04 and no notes or documentation were generated? Accordingly, there was no documentation regarding my phone conversations with Planning? I must admit I find this policy difficult to accept as a business practice.

My September letter also requested to be informed as to what files were searched. My request went unanswered and I would still appreciate it being addressed.

Finally, it is my position that not all records and documents have been provided and my CA PRA request has not been complied with. I am aware of an item that has not been previously provided nor is it included in the bullet point list. I am choosing at this point not to specifically disclose that information, but to hold it

until a later apprppriate time.

Enclosed is a check for $3.70 for the reproduction costs of the items you have. With regard to my letters and responses, I will be at the city offices on Friday morning and will stop by to review them if possible. I recognize that this gives you short notice, so if it is not workable, I will find an alternative.

Susan, as always, thank you for your efforts.

Sincerely,

Kathey

Kathey Fyke

[redacted]
Sunnyvale, CA 940486

October 5, 2004

RECEI
OCT 0 8 2004
CITY ATTORNEY

Joan Borger, Senior Assistant City Attorney
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Ms. Borger:

I have an issue regarding fence permits with which I would appreciate your feedback. What is the policy regarding a fence permit that is in the appeal stage and there has been a change of ownership? For example, the party that originally build the fence without a permit and then applied for a permit is no longer the property owner. The new owner has no interest in pursuing the permit and will respect the Homeowner Association's rules limiting fences to 6 feet. What happens?

I would appreciate whatever guidance you can provide. I can be reached at 408 730 5166. Thank you.

Sincerely,

Kathey

Kathey Fyke

RECEIVED
OCT 0 8 2004
PLANNING DIVISION

[redacted]
Sunnyvale, CA 940486

October 5, 2004

Trudy Ryan, Planning Officer
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Ms. Ryan:

I am writing in response to your letter of September 3. I believe some of the information you provided is in error.

Regarding the height of the fence, it is my belief that the fence is significantly greater than 7 feet. When Bob Staley originally measured the fence with me, it was greater than 7 feet. When I recently measured the fence and took photos, it was still greater than 7 feet.

I specifically asked Ms. Odell if I could be present for the re-measure and was told no. Thereafter, the City Manager stated that I could be present. In addition I dropped my letter off for you at your office on July 22, asking when it was scheduled. This was a full week before the fence was remeasured, plenty of time to contact me.

The question must be asked, Why? Why was I not permitted to attend the re-measure? There was plenty of time to notify me. I could easily view the measurement from my property. The City Manager said I could be present. In light of the difference in measurements, it would have made sense for the complaining party to witness "your" measurement. Most importantly, I had a right to participate in an unbiased and open measurement. Please help me understand what was the motivation to not allow me to participate: Why?

Regarding the measurement, I request specific information regarding the methodology. Where exactly was the fence measured at its highest point? What exactly was the measurement? Was a photo taken to document the height? Was the measurement taken on the east or west elevation of the fence? Who took the measurement? What are the City's parameters for measuring a fence and where are they documented?

Your letter goes on to state that there are three methods for notifying the public and adjoining neighbors regarding a hearing? It reads, "all 3 of these methods

were used." This is not true. Item 2 lists "Sending notices to both residents and property owners of adjoining properties." I, as a property owner, was never sent a notice.

I spoke with Diana Odell, who confirmed that I was not sent a notice. The notice was addressed to a Rich Falcone. When I pursued this with Ms. Odell, she emphatically told me I was not on the county records. I think I know better than Ms. Odell whether I have held title to my property for the last twenty years. I also checked with the County and they confirm I am in their records. You are welcome to check as well.

According to Ms. Odell, the "second" notice was sent to "resident". Strangely, I never received any notice addressed to Resident. Regarding the Sunnyvale Sun posting, the Sun is not delivered to my complex. Regarding the posting of the notice at the property, this was not posted within the prescribed time frame.

Despite your "redundancies", I did not receive adequate notice. Instead of relying on your redundancies, why was I not simply sent a notice in my name to my address. I would have hoped it was policy that the party initiating a complaint was specifically sent a notice of hearing. Even more disappointing is that I asked you directly in my letter of July 22 for specifics on the hearing and you never bothered to respond.

Paragraph 7 of my letter asked questions that you did not address

- What is the notification process for the party that initiates a complaint?
- What rules/ordinance governs the process?
- How much advanced notice is required?
- Who is responsible for notifying me?

I would still appreciate a response.

Your letter states, "The agenda had a typo which described the site as 7,920 sq. ft. This was incorrect and the correct information was included in the staff report." What is the corrected "typo"? Where specifically is it corrected in the staff report? If in fact this was corrected, why do the hearing minutes still state the erroneous 7,920 sq. ft.? In the very first sentence!

Finally, a month and a half to respond to a citizen's letter especially when some of the concerns are time critical is unacceptable. Would you disagree?

On another matter, on September 13, Richard Gutierrez wrote back to me regarding questions I had asked him about the type of permit that Ms. Barouh was applying for. He responded that my questions would be most appropriately answered by Planning. Therefore, let me pose my questions to you.

There was a reference that Ms. Barouh needs to apply for a Miscellaneous Plan Permit. Is Barouh applying for a MPP or a use

permit? Can you explain the difference? What are the applications and requirements of each?

Sincerely,

Kathey Fyke

RECEIVED
SEP 17 2004
PLANNING DIVISION

September 16, 2004

Kathey Fyke
[redacted]
Sunnyvale, CA 94086

RE: PUBLIC RECORDS ACT REQUEST PERTAINING TO 893 RATTAN TERRACE

Dear Kathey:

I am responding to your letter of September 3, 2004, which we received on September 9 regarding your previous Public Records Act requests pertaining to 893 Rattan Terrace.

Thank you for clarifying your request. Your request was forwarded to the Community Development Department. Below are responsive records from the Planning office:

- Application from Lidia Barouh dated 6/10/04
- Administrative Hearing minutes dated 7/28/04
- Administrative Hearing report and 6 attachments dated 7/28/04
- E mail communication from various individuals
- Public Notice and mailing labels
- Proposal and Contract #004497

In addition to the records above, the Planning office has a file containing records of your letters and the City's responses. If you would also like to get copies of these letters, please let me know. The Planning Office does not document phone conversations, meetings, actions, site visits, etc. The Neighborhood Preservation Office does as a matter of procedure.

Finally, in your letter you updated your request for all subsequent records from the date of your initial request through September 3, 2004. Below are the responsive records from the Neighborhood Preservation office. There are no subsequent records from Planning:

- Logs from the Complaint Module dated July 12, 16, 19, 27 and 28

The above records total 37 pages. The City imposes a reproduction fee of $0.10 per page. Total cost for this request is $3.70. Copies will be made available upon receipt of payment.

Sincerely,

Susan A. Ramos

Susan A. Ramos
City Clerk

cc: Robert Boco, Deputy City Attorney
Robert Paternoster, Director of Community Development
Trudi Ryan, Planning Division
Christine Gunvalsen, Neighborhood Preservation Division

RECEIVED
SEP 10 2004
PLANNING DIVISION

MEMORANDUM

TO: Robert Paternoster, Director of Community Development
Christy Gunvalsen, Neighborhood Preservation Manager
Trudi Ryan, Planning Manager

FROM: Susan A. Ramos, City Clerk

CC: Amy Chan, City Manager
Robert Boco, Office of the City Attorney

DATE: September 10, 2004

RE: Request for Records from Kathey Fyke pertaining to code violation complaints at 893 Rattan Terrace (subsequent records from the date of her initial request through September 3, 2004) and permit applications from Lydia Barouh for 893 Rattan Terrace

Attached is a copy of a letter received in my office on September 9, 2004 from Kathey Fyke requesting certain records as identified in the subject letter. Please let me know if you have the referenced records and when copies would be available by **September 15, 2004**, so that I can provide Ms. Fyke with a response within the ten-day statutory requirement. Please do not provide records or information to the requestor directly.

Thank you for your assistance. If you have any questions, please feel free to call me at Extension 7474.

Attachment

G:\OCMUSERS\Sramos\RFRs\Fyke memo 09-10-04.doc

cc TR
CG

~~807 Rattan Terrace~~
Sunnyvale, CA 940486

September 3, 2004

RECEIVED
SEP 09 2004
COMMUNITY DEV.

Susan Ramos, City Clerk
City of Sunnyvale
603 All American Way
Sunnyvale, CA 94088

Dear Susan:

I am writing in response to your letter of August 10th. Thank you for letting me know about the delay in delivery time. I have contacted the Post Office about the problem.

With regard to my July 27 letter, I believe my request for documents was not fully complied with by the department identified. With all due respect, I feel my initial request for documents was made in an identifiable manner. Moreover, CA PRA requires the agency to provide assistance by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)

As an general example, Richard Guttierrez of Neighborhood Preservation provided his records off the system (Sun modules and Novel Groupwise). These were identifiable from my initial request. In contrast, there are no records from Planning (O'dell, Bell, Caruso, Trudy, etc.). If Planning does not document phone conversations, meetings, actions, site visits, etc., please have them let me know.

As a more specific example, Ms. Barouh submitted an application to Planning for the disputed fence on June 11, 2004. This would fall clearly within the records I identified and requested. Neighborhood Preservation provided their note that the application was turned in. In contrast, I was not provided a copy of the application nor was I provided any justification for the withholding of such record from Planning.

Your letter relays that the "records... provided... included all records and documents regarding your complaints against your neighbor at 893 Rattan Terrace, including records from the Planning Office." I would conclude that it is the organization's claim that the additional records do not exist. I would request to be informed as to what files were searched.

Please let this serve as my fourth request to Community Development/Planning for all the documents responsive to my request. At this point, I would also like to update my request for all subsequent records from the date of my initial request through September 3, 2004.

Please let me know what the cost will be for the additional documents.
Thanks again for all you help.

Sincerely,

Kathey Fyke

Kathey Fyke

cc: Robert Boco
Robert Pasternoster

September 3, 2004

Ms. Kathey Fyke
~~893 Rattan Terrace~~
Sunnyvale, CA 94086

Subject: Response to Letter Dated July 22, 2004

Dear Ms. Fyke:

This correspondence is offered on behalf of the City Manager in response to questions and concerns raised in your letter dated July 22, 2004 regarding the fence at 893 Rattan Terrace.

Based on your concerns about the height of the fence, staff made an appointment with your neighbor to re-measure the fence. We apologize that we didn't notify you of the time of the measurement. We are confident in the accuracy. As indicated in the Neighborhood Preservation database, the application information, and staff re-measurement, the fence is not higher than 7 ft. from the highest adjoining grade.

We have three methods of notifying the public and adjoining neighbors regarding items going to Administrative Hearing.

1. Posting notice in the *Sunnyvale Sun*
2. Sending notices to both residents and property owners of adjoining properties
3. Posting the affected property with "Notice" sign with a copy of the notice attached.

All three of these methods were used, and our records indicate that two notices were sent to your address. In addition, the red "Notice" sign with application and hearing information was posted in front of 893 Rattan Terrace on July 16, 2004. Staff notes that this sign was still in place two days before the hearing on July 28, 2004. These "redundancies" of

multiple notices and posting of the site are done to ensure that interested neighbors will be informed of the hearing by one or more of the methods.

The agenda had a typo which described the site as 7,920 sq. ft. This was incorrect, and the correct information was included in the staff report. We apologize for any confusion that might have caused.

Staff appreciates your suggestions for improvement and will evaluate the feasibility of the suggestions. The City Manager's office will be contacting you to arrange a follow-up meeting with the City Manager and me.

Sincerely,

Trudi Ryan

Trudi Ryan
Planning Officer

cc: Amy Chan, City Manager
Robert Paternoster, Director of Community Development

~~907 Rattan Terrace~~
Sunnyvale, CA 940486

September 3, 2004

Richard Gutierrez, Neighborhood Preservation Specialist
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94088

Dear Richard Gutierrez:

I am writing in response to your letter of July 16th that was postmarked on July 23rd. My apologies for the delay, I was on vacation for August.

You seem to have taken exception to a statement I made in my July 10 letter to Susan Ramos; "As I mentioned, I had attempted to informally obtain the information regarding my complaint directly from the Department of Community Development, but I was denied." I believe you might have misinterpreted my statement.

My statement referred to the actions of Ms. O'Dell. I had asked her for documents and to participate in a re-measuring of the fence to which she denied both. It is my understanding that Ms. O'Dell works in Planning, a function of Community Development. (Please correct me if my understanding is in error.)

My letter of July 22nd to Trudy Ryan reiterates that my concern was directed towards Ms. O'Dell. As the applicable paragraph of my letter reads:

> "I believe if a party to the complaint requests copies of the notification/compliance letter and other documents from the department, they should be accommodated and provided. Especially if they are the party initiating the complaint. The documents are available under the Public Relations Act, but why make it more difficult. Moreover, I feel the department should disclose to parties that obtaining the documents under CAPRA is an option. In my case, I asked Ms. O'Dell for copies of some documents and she refused. "

I chose not to mention any specific names in my letter to Ms. Ramos, since I had already shared the name, Ms. O'Dell, with her in an earlier telephone conversation that day.

Please recognize that my letter never specified you or the Neighborhood Preservation group. Nor was it my intention to criticize you or your group. As your letter states, "If I had received a request from you, I would have provided the information to you." I have no reason to doubt that.

However, the documents that I wanted were in Planning and that's where the problem lied. Ms. O'dell refused.

I do have some questions about the documents that you provided and I would appreciate your assistance.

1. Your June 2 letter to Ms. Barouh references that she needs to apply for a Miscellaneous Plan Permit. Is Barouh applying for a MPP or a use permit? Can you explain the difference? What are the applications and requirements of each?

2. With regard to the green screen printouts, I wanted to make sure I understood what they were showing.
   A. What is the difference between schedule date and inspection date?
   B. What is inspection type SI ? OT?

3. Your notes of 7/8 mention that you would go out with Diana to re-measure. Did this ever happen? If so when?

4. Your notes of 5/24 mention that you spoke with a Steve L. Who is this and what department?

Thanks in advance for your assistance with my questions.

Sincerely,

Kathey Fyke

RECEIVED
SEP 0 9 2004
PLANNING DIVISION

~~897 Rattan Terrace~~
Sunnyvale, CA 940486

September 3, 2004

Alice Gamboa, Planning
City of Sunnyvale
46 West Olive Avenue
Sunnyvale, CA 94086

Dear Alice Gamboa:

Thank you for your calls to schedule the appeal regarding File 2004-0477, the fence permit for 893 Rattan Terrace.

However, at this point, I am still awaiting feedback from the city. Specifically, I am awaiting responses from Amy Chan and Trudy Ryan, from over six weeks ago. In addition, I requested a copy of the hearing record back in July on the date of the hearing. I have not heard back on that item.

Hopefully, I will soon hear from these parties. Once I do, I will be sure to contact you to see what dates are most convenient for you.

Thank you for your time and assistance.

Sincerely,

Kathey Fyke

August 21, 2003

Ms. Kathey Fyke
~~897 Rattan Terrace~~
Sunnyvale, CA 94086

Subject: Response to correspondence regarding Tree Removal Permit 2002-0736 located at 867, 873, 879 and 897 Rattan Terrace.

Dear Ms. Fyke;

Thank you for your correspondence received August 20, 2003 regarding Tree Removal Permit 2002-0736 located at 867, 873, 879 and 897 Rattan Terrace. As we discussed on the phone, I have revisited the background and associated facts with City staff whom have been involved in Tree Removal Permit 2002-0736. Staff believes that the application for the removal request was adequate in the amount and accuracy of the information provided. Further, staff believes that the action taken on the application was appropriate.

As we discussed, approval of a tree removal permit does not require the physical removal of the tree(s). You may wish to consult with your Home Owners Association to consider not exercising that portion of the permit that would result in the removal of the subject tree.

Should you have any further questions on this matter, please feel free to call me at (408) 730-7443.

Sincerely,

Fred Bell
Principle Planner

Attachment

cc President, Hidden Valley Homeowners Association
Planning Officer

2002-0736 Rattan Ter

RECEIVED
AUG 2 0 2003
PLANNING DIVISION

~~897 Rattan Terrace~~
Sunnyvale, CA 94086

August 2, 2003

Fred Bell
Planning Department
City Of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Fred;

When we last spoke a couple weeks ago, you were called to a meeting and said you would call me back when you got out. I'm hoping they have let you out by now or at least you're in Tahiti, enjoying your lottery winnings. If not, I could use your help on my continuing tree problem. In addition to dealing with my specific situation, I would also like to provide some customer feedback as to how the system might be improved.

During our previous call, it dawned on my that we were working with some erroneous assumptions. So let me take a moment to reiterate what I think are the salient facts.

First, I do not think Leonard Dunn and Steve Sukke are contradicting each other. If you look at what they are saying as well as Mark Spandler, they are in consensus. The problem is not with the health of the tree or it's structure, it's the pavement albeit fictitious pavement hazards.

Application
I have included the application for your review. On 9/25/2002 Gardy Carney filled out the tree removal permit application. (My tree is the one at 897 Rattan.) Ms. Carney gives 3 and only 3 reasons on the application for removal.

"1. Overhanging master bedroom (too close to homes)
2. Damage to foundation
3. Trip hazard (please find encl. Bill 12/31-01 $11,276.00 repair of trip hazards due to tree roots."

Ms. Carney enclosed a copy of a $11,276 check to Re-New Construction for the 10/24/01 concrete replacement. Ms. Carney also includes a site map locating the trees.

Let's look at the application with regard to my Euc:
Item 1. Overhanging master bedroom does not apply to my tree. On the top of the site map, Ms. Carney indicates that the "overhanging house " applies to 869 Rattan only.

Item 2. Foundation damage does not apply to my tree or to any of the other trees for that matter. When Leonard came out last October (after the permit had already been issued), he agreed there was no foundation damage. You are welcome to come out today and see there is still no foundation damage. Bottomline: there is no and never was any foundation damage due to the trees listed on the permit application or any trees. Ms. Carney represented a falsehood as a reason.
Item 3. Repaired concrete trip hazard does not apply to my tree or to any of the other trees for that matter. In speaking with you, I learned that you had the misperception that even if the $11,276 was not spent directly with these four trees, the money had been spent on other tree trip hazards. This would make it ok and appropriate to approve the permit. However, this is not the case at all. Although the application states that the Association spent $11,276 to repair trip hazards in the concrete due to the trees, this is another falsehood. The $11,276 invoice had nothing to do with any trees in the complex. Previously, we had some drainage problems under a building and installed perimeter drains and sump pumps. As a result, an area of concrete drives and sidewalks settled very unevenly. This problem was compounded by the parking of extremely heavy trucks on the concrete which stressed and cracked the concrete.
Bottomline: The repair bill had nothing to do with any trees and the repair work was not in the direct vicinity of the trees mentioned in the permit application. This is another falsehood that was represented by Ms. Carney to the City as a reason for removing trees.

Permit Checklist - Steve Sukke
Next, look at what the Tree Removal Permit Checklist is saying and what it is not saying. Steve Sukke is not finding that the tree is diseased or badly damaged or decayed or in decline. It says nothing about the tree itself being dangerous or questioning the health of the tree. What it does say is that the permit is being approved due to "pavement" concerns.

"Pavement" concerns that were misrepresented in the application and do not exist. Disingenuous pavement concerns that were presented by Ms. Carney as the reason for removal and falsely supported by an unrelated check. This is just wrong. The city made a decision based on misrepresentation.

Conversation with Mark Spandler
Last October 18, I spoke with Mark Spandler, who wrote the letter approving Ms. Carney's application. I reviewed my conversation with him and his comments support my position. He states, "They are healthy trees...it's just the effect they are having on the pavement." He goes on to state that he "included what they paid to have some of it fixed." (the disingenuous $11,276 check) Mark believed that we had spent $11,276 on tree trip hazard repairs.

Conversations with Leonard Dunn
When I met with Leonard last October, he looked for the "foundation damage"

and the "concrete repairs" worth $11,276. He could not find any. He looked at my Euc and did not see a problem with it. Makes sense. His assessment was consistent with Steve and Mark. The problem was not with the tree, but with a perceived (though non-existent) trip hazard with the concrete. When I spoke with him this month, his opinion is the same. The tree is fine. He went on to say that even if the asphalt is raised slightly around the tree, it's not near a public walkway but at a dead end. There's no reason to take the tree down.

In Closing

Thus, it's not that Steve and Leonard are looking at the situation differently. They are seeing the same thing. The tree itself is fine. The false assertion that the trees are causing trip hazards and $11,276 worth of damage is what is causing the difference of opinions. The question is would the tree removal have been approved if the $11,276 check had not been presented? Mark and even you were under the impression that $11,276 was spent on tree trip hazard repair. Take that fictitious amount out of the equation and why would a permit have been issued for my Euc tree. According to the application reasons, it doesn't overhang the bedroom nor is there any foundation damage. There are no other reason listed. The permit approval needs to be re-examined in light of the true facts.

By way of this letter, I would ask Planning to re-evaluate the tree permit, since the application information that was provided was not accurate and misrepresented the situation. Please let me know if this can be accommodated.

As a citizen, it bothers me that folks can manipulate the system. I realize that there will always be individuals that cheat. Please understand that I do not hold city personnel responsible. They are not mind readers and can only work on what information is provided (accurate or not)

But it introduces three concerns.

- First, there seems to be no process to re-address the situation/permit once the manipulation is revealed. Even is the subterfuge is uncovered, the perpetrator still gets away with it. There needs to be consequences for not being truthful.
- Second, perhaps the application can be tweaked to contain a statement that the applicant is certifying that he is telling the truth. It might make someone think twice before they misrepresent the facts.
- Third, I wish there was a checks and balance process where someone who opposed the removal of a tree can participate in the early stages of the process. As an example, with my neighbors seven foot fence, I can participate at a hearing if I oppose the fence. I would appreciate whatever can be done to make the process more "opposition and tree friendly"

Thank you for your assistance. If you have any questions, please let me know.

Sincerely,

Kathey Fyke

Cc: Trudy Ryan

TREE REMOVAL PERMIT APPLICATION
DEPARTMENT OF COMMUNITY DEVELOPMENT, PLANNING DIVISION

PLEASE TYPE OR PRINT LEGIBLY

ADDRESS OF PROPERTY 867, 873, 879, 897 Rattan Terrace
869 Rattan T. (severe trim?)

ASSESSOR'S PARCEL NUMBER 213-56-008

PROPERTY OWNER
Name Hidden Valley Homeowners Association
Address 894 Rosette Terrace City Sunnyvale Zip 94086
Phone(Bus.)(408) 773-8333 (Home)( )

APPLICANT/ CONTACT PERSON
Name Sandy Carney (wants to [illegible])
Address 894 Rosette Terrace City Sunnyvale Zip 94086
Phone(Bus.)(408) 773-8333 (Home)( )

Number of tree(s) proposed to be removed: 4 (severe trim) Proposed removal date: asap
Branch came crashing down

Type and size of tree(s) proposed for removal (attach a site plan showing location of the tree(s)):
3 Eucalyptus (1 Eucalyptus at 869 Rattan severe trim)
1 ash tree

Reason for removal (attach additional pages if needed):
overhanging master bedroom (too close to homes)
damage to foundation
trip hazard (please find end. bill 12/31-01 $ 11,276.00
repair of trip hazards due to tree roots

Hidden Valley Homeowners Association — Property Owner's Name (Print)
Sandy Carney VP HVHOA — Property Owner's Signature
9/25/2002 — Date

OFFICE USE ONLY
File no. 2002-0735
Accepted by MK
Application date 9/25/02
Inspection date 10/7/02

DENIED

APPROVED

X APPROVED WITH THE FOLLOWING CONDITIONS:

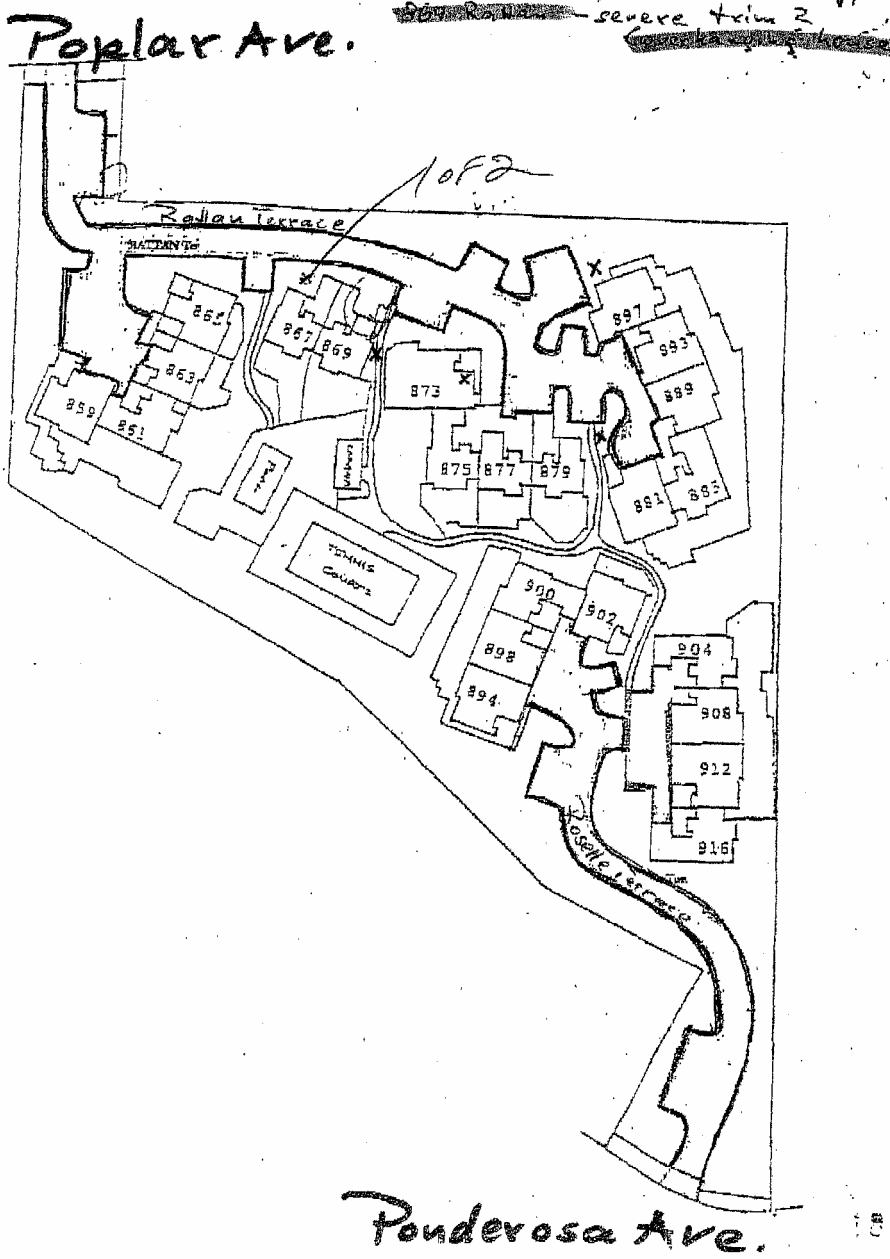
1. Plant replacement tree(s) Number 4 Size 15 gallon
2.
3.
4.

By [signature] 10/21/02
Director of Community Development Date

(Distribution: Top White, Planning; Canary, Arborist; Pink and Bottom Hard White, Applicant)

CD 304 (11/98)

867 Rattan (1 Ash tree)
873, 879, 891 Rattan (3 Eucalyptus)
[redacted] severe trim 2 [redacted]



Attachment J
Page 63 of 86

Hidden Valley HOA 1050

Payee RE-NEW CONSTRUCTION INC. ID 0066 Date 12/31/01

Invoice	Date	Description	Gross	Discount	Net
HH-884	10/24/01	REPL. FAILED CONCRETE, TRIP HAZARDS	11,276.00		11,276.00
				TOTAL:	$11,276.00

Hidden Valley HOA 1050

Payee RE-NEW CONSTRUCTION INC. ID 0066 Date 12/31/01

Invoice	Date	Description	Gross	Discount	Net
H-884	10/24/01	REPL. FAILED CONCRETE, TRIP HAZARDS	11,276.00		11,276.00
				TOTAL:	$11,276.00

THIS CHECK IS ISSUED WITHOUT A RETURN FOR BACKGROUND AND A TRUE WATERMARK PROVIDING THE LIGHT TEST

Hidden Valley HOA
P.O. Box 906
Campbell, CA 95009

San Jose National Bank
1 North Market St.
San Jose, CA 95113
90-3021/1211

1050

Reserve Cash - SJNB

DATE	AMOUNT
12/31/01	*11,276.00

AY ***Eleven Thousand Two Hundred Seventy-Six & No/100 Dollars

RDER RE-NEW CONSTRUCTION INC.
980 AMES AVE.
MILPITAS, CA 95035

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES FLUORESCENT & VISIBLE FIBERS. BORDER CONTAINS MICROPRINTING

⑈001050⑈ ⑆121139216⑆ 0001814268⑈

City of Sunnyvale

Inspection Date: 10/7/02

Community Development Department
Tree Removal Permit Checklist

Address: 867-873-879-897
File: 2002 0732 RATHAN M

Species and size of trees: 3 - Eucalyptus
1 - Ash

Recommendation:
✓ Approve -
Deny -

Findings:
____ Tree is diseased or badly damaged.
✓ Trees represent a hazard.
____ Sound condition, but restricts owners reasonable use of property.
____ Other:

Replacement trees required?

✓ yes ✓ 15 gallon- number: 4

____ no ____ 24 inch box- number:

____ Recommended species to be planted: Replacement tree should be located where a ____ Small, ✓ Medium ____ or Large tree will grow to maturity without being impaired by:
-pavement -utilities -building -other trees

Ok to recommend permit due to: Decline Disease

Decay Hazard that cannot bet remedied through normal

means of maintenance, or future growth of tree is impaired by high

voltage structure ✓ pavement other trees utilities

Comments:

Submitted by: Steve Sukke Date: 10/8/02

Steve Sukke, C.A. 193__
Senior Public Works Leader

October 9, 2002

Gardy Carney
894 Rosette Terrace
Sunnyvale, CA 94086

Subject: Tree removal request – 894 Rattan Terrace; File #2002-0736

Dear Gardy Carney:

The Department of Community Development has reviewed your application for a Tree Removal Permit for the four Eucalyptus trees located at the above referenced address and has granted approval to remove the trees. The trees represent a hazard; therefore a Tree Removal Permit has been granted for the four trees.

According to the Sunnyvale Municipal Code, Section 19.81.090, any tree removed is required to be replaced. The City requires that four 15-gallon replacement trees of any suitable species be planted where a medium sized tree can grow to maturity unimpaired. You may refer to the enclosed Water Conserving Plant list to assist you in tree selection based on growth rates, height, spread, and other factors for tree management. Please complete and mail the enclosed green postcard to let us know when the replacement tree has been planted.

If you need assistance with replacement tree selection or have questions on tree maintenance, you may consult with the City Arborist, Steve Sukke, at (408) 730-7505. If you have any questions regarding this permit, please contact me at (408) 730-7613. Thank you for your cooperation.

Sincerely,

Mark Spandler
Neighborhood Preservation Specialist

Enclosures

File # 2002-0736

[redacted]
Sunnyvale, CA 940486

July 26, 2004

Amy Chan, City Manager
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Ms. Chan:

Thank you for your letter of July 19, 2004 which I received on July 22. I believe your suggestion to document our conversation in a letter to minimize miscommunica-tion was a good one.

Caselaw
With regard to the matter of the caselaw and what defines a fence, I have spoken briefly with Ms. Borger. She indicated that there might have been some miscommunication between Mr. Bell and herself, since her perception of what my concern was and what I voiced in meeting with her were different. She has indicated that I am welcome to come back and further discuss the matter in more detail. My intentions are to do so in the future.

I have also included a copy of my July 10 response to the Fred Bell letter of June 16 that you referenced. As it indicates, Mr. Bell never shared any feedback from the Office of the City Attorney with me.

Tree Removal Permit
On the issue of the tree removal permit, you write that you consider the matter closed. You reviewed the permit and concur that the request was accurate. I had asked for the opportunity to review the supporting documentation. As I indicated at our meeting, I have photographs, video and tape recordings that support that the application was based on misrepresentation. In addition, there are witnesses and financial records that will support the same claim. Plus I have statements from a city employee that the tree was not a hazard.

When a determination is so simple as to just look of a photo of where the alleged concrete repairs were required and not to see any concrete repairs; I cannot understand why the accuracy of the application would be confirmed, let alone not even questioned. What makes the matter even more ludicrous is that not even are there no concrete repairs in the specified area, there is not even any concrete. The area is asphalt.

I believe that my documentation and evidence deserved to be looked at and taken into consideration, before a decision that the matter is closed was made. Why wasn't there even a willingness to look at the documentation? I ask that you reconsider your decision.

City Maintaining Files on All Complaints...
I believe this item might encompass two concerns that I expressed.

The first was a suggestion that when a party lodges a complaint, some form of written feedback is provided to them. This way a party could confirm that the specifics of what they are complaining about have been successfully translated. If there is some miscommunication, the paperwork allows it to be caught and corrected early on. In my instance, such feedback would have eliminated the problem of learning that the 7 foot plus issue was not incorporated into my complaint.

The second concern was that if a party requests documents directly from a department, it should be accommodated without making the party avail themselves of the Public Records Act. Also, the PRA should be offered as an option to parties seeking records. My request for documents was denied by Ms. O'dell and she never raised the PRA option.

On the matter of my request to the City Clerk for records under the CA PRA, I received the package today. However, it is my perception that the records are not complete. I will be writing to the Clerk to address my concern.

Numbered Items
1. My complaint was that the fence was greater than 7 feet in height.

2. My concern was misunderstood. Let me explain. When I asked about a continuance, I was told that I could write a letter requesting one. However, the decision to continue the item would be made by the Hearing Officer but not until at the meeting.

I feel this approach is taking a big gamble, If your continuance is not granted, then you are not present at the meeting to state your case. So to be safe, you need to be at the meeting one way or another. I was suggesting a procedure be researched that would allow continuances for good cause be granted prior to the meeting.

Contrary to your statement, I was never notified that staff would contact the owner.

3. I am surprised by Bob's measurements. I know when he measured with me, he came up with greater dimensions. Thus, the request for the re-measure.

4. Your letter states that staff indicated that I could observe the re-measuring process on my side of the fence. This is not accurate. I was told I could not observe. Although when I spoke with the City Clerk, she stated that she didn't see why I couldn't, she had no authority to let me. In contrast, when I asked Ms. O'dell if I could observe, she clearly stated no. Ms. O'dell's NO is the reason why I escalated the request to the City Clerk and then to you. Even Mr. Guttierrez's own notes do not support the contention that I could observe. He writes, "She (Kathey) asked if she could be there when we take measurements and I informed her that it would be better if she was not."

Furthermore, if I can observe, why have I not been told a time and date to be there, let alone called to find a mutually convenient time as you and I discussed. I even wrote to Trudy Ryan on July 22 asking her to let me know if there was a re-measurement scheduled. I have not heard anything.

I never requested to go on my neighbors property. My intent was always to observe from my side.

As the above indicates, I feel there are still open issues. I look forward to meeting with you to reach a resolution.

Sincerely,

Kathy Fyke

Kathey Fyke

- fair & equal treatment
  - re-measurement
  - noticing requirements
- next meeting to have Trudi at my meeting
- don't want the fence.
- next meeting mid August

RECEIVED
JUL 2 6 2004
PLANNING DIVISION

[redacted]
Sunnyvale, CA 940486

July 22, 2004

Trudy Ryan
Planning Development
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Trudy Ryan:

I have some concerns and questions with regard to my complaint about my neighbor's un-permitted fence that I would appreciate your assistance with.

Last year, I met with Bob Staley of Neighborhood Preservation at my property. As part of our discussion, he measured the fence and verified that it was greater than seven feet high. I asked Bob not to initiate any formal process, since I wished to first try and directly resolve the matter with my neighbor. I was unsuccessful.

On May 12th of this year, I again met with Bob at my property. I asked him to proceed with the complaint process. In addition, I again confirmed that the fence was greater than 7 feet.

Plus, if you recall in my conversations with you, I discussed that the fence was greater than 7 feet in height and you provided me with feedback as to how that would be addressed.

However, I recently learned from Ms. O'Dell that the complaint and permit process is not addressing the greater than 7 foot aspect and is dealing with the fence as being only seven feet tall. I was informed that Miss Barouh's (the neighbor's) permit application lists the fence as only seven feet high and that is what prevailed.

When I raised the matter with Ms. O'Dell she stated that the fence would be re-measured. I asked her if I could be present and she replied no. After her refusal, I spoke with the City Manager. The City manager stated that I could be present. She also thought an attempt to set up a mutually convenient time would be appropriate. She committed to speaking to your department about the refusal. This was on Friday, July 9th. To date, I have not heard from Community Development. Would you please let me know if there is a re-measurement scheduled or if it has already been completed without my participation. I would also appreciate knowing the results, if any.

With regard to the hearing, I was verbally informed it is July 28. However, I would appreciate being informed as to what time and where it is scheduled. What is the notification process for the party that initiates a complaint? What rules/ordinance governs the process? How much advanced notice is required? Who is responsible for notifying me?

I was informed that the project is described as a 7,920 square foot site. Would you please let me know how that measurement was derived. It seems large for the unit involved.

I would also like to offer some suggestions for improvement from a citizen's perspective.
I would find it beneficial to receive some form of paperwork in response to filing a complaint. That way a party could confirm that the specifics of what they are complaining about is successfully translated. In my case, I feel receiving some form of written feedback would have eliminated my finding out months later that the greater than seven foot issue was <u>not</u> incorporated into the process.

I believe if a party to the complaint requests copies of the notification/compliance letter and other documents from the department, they should be accommodated and provided. Especially if they are the party initiating the complaint. The documents are available under the Public Relations Act, but why make it more difficult. Moreover, I feel the department should disclose to parties that obtaining the documents under CAPRA is an option. In my case, I asked Ms. O'Dell for copies of some documents and she refused.

I feel the hearing notification process could be improved to assure that the complainant specifically receives a copy of the notice.

If there is a controverted issue, I believe both parties should have the right to participate in any resolution. For example, I should have been permitted to observe any re-measuring. My standing on my side of the fence and watching the process should be accommodated.

If there is a situation where the facts are disputed, I believe both parties should be consulted. For example, I was informed that since Ms. Barouh stated on her permit application that the fence was 7 feet high, that is what is being taken as fact. I believe 'my facts' should have just as much, if not more, weight than hers, especially since Miss Barouh had already actively disregarded the rules and built the fence without a permit even though she had been informed by your department that she needed a permit

I would appreciate your help in resolving my questions and concerns. If you have any questions or need additional information, please give me a call at 730 5166. Perhaps some of my concerns do not fall within your department. If that is the case, I would appreciate being informed to whom I should address those topics.

Sincerely,

Kathey Fyke

July 22, 2004

Kathey Fyke
[redacted]
Sunnyvale, CA 94086

Subject: Acknowledgement of correspondence received July 14, 2004.

Dear Ms. Fyke;

This correspondence is offered as acknowledgement of receipt of your letter dated July 10, 2004.

The facts set forth in my June 16 letter are, by my recollection, accurate.

If I can be of further assistance please let me know.

Sincerely,

Fred Bell
Principal Planner

cc Director of Community Development
Planning Officer
Senior Assistant City Attorney

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501
Printed on Recycled Paper

CITY OF SUNNYVALE

456 WEST OLIVE AVENUE • SUNNYVALE, CALIFORNIA 94086 • (408) 730-7480

Office of the City Manager

July 19, 2004

RECEIVED
JUL 2 0 2004
PLANNING DIVISION

Ms. Kathey Fyke
[redacted]
Sunnyvale, CA 94086

Dear Kathey:

First let me apologize for the delay in getting this letter to you. I took time to review through all of the correspondence that you have had with staff, as well as review in detail the list of questions and concerns that you raised.

At our phone conversation on Friday, July 9, I committed to memorialize in writing all of the issues that I understand you have so as to better identify resolutions to them as well as reduce risk of misunderstanding. These include comments you related to my Executive Assistant, Kathi McGraw. I have also committed to provide you with a copy of the City Attorney's response to the case law that you wanted reviewed regarding the issue of whether a row of trees constituted a fence. Also you requested that I review the tree permit issues in addition to whether we have a file on all the complaints you have filed with us.

Let me first go to the City Attorney's letter regarding the case law. In reviewing the record, I was mistaken in indicating to you that there was a letter from the City Attorney regarding that issue. What I thought I recalled was actually a letter from Fred Bell to you dated June 16 recapping his discussion with the Office of the City Attorney on the tree matter. To that end, I have discussed with the City Attorney's office, and they would welcome your direct contact with them. I believe you wanted to meet and discuss information you have with the City Attorney's office to help them better understand the situation before they render an opinion. Please feel free to contact Senior Assistant City Attorney, Joan Borger, at 730-7467 to arrange for a meeting time.

As to the tree removal permit matter, I have reviewed the permit and concur with staff's conclusion that the removal request was adequate in the amount and accuracy of information provided.

Finally regarding the City's maintaining of files on all the complaints we received, I believe we do have a record of all of your complaints on file. I also noted that our City Clerk on July 14 acknowledged receipt of your Public Records Act requesting all of the file information we have regarding your complaints against

interpretation of the law, I hope the meeting you have with our City Attorney's staff will provide the information you are seeking.

Again, I am sorry that your experience in these matters that I have discussed in this letter has not been to your satisfaction. We do try to provide as responsive service as we can. Clearly there is room for improvement. I thank you for your time and your suggestions in how we can better provide good customer service.

Sincerely,

Amy Chan
City Manager

cc: Planning Officer
Senior City Attorney

AC/km

RECEIVED
JUL 1 4 2004
PLANNING DIVISION

[redacted]
Sunnyvale, CA 940486

July 10, 2004

Fred Bell
Planning Department
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Fred Bell:

I am in receipt of your letter dated June 16, 2004. I find it of concern that your perception of the facts does not reflect what actually transpired.

Let me first address the issue of the caselaw. You are correct in that we had an initial, brief telephone discussion on the appellate case and trees as fences several weeks earlier. I was the one that brought up the issue. You were unfamiliar with it and had me spell out the name of the case for you. It was at this point that you suggested I come in and meet with you some time in the future. That was the full extent of any conversation on the appellate case until I called you on June 8th to set up the Thursday meeting.

Your letter states, "As I had noted then, my discussion with the Office of the City Attorney clarified that the Wilson v. Handley decision might relate to a civil action between you and your neighbor, but that it had no legal bearing on the City's Municipal Code." Your sentence seems to imply that prior to our meeting you shared some discussions you had with the Office of the City Attorney. If this is your implication, your statement is erroneous. You never shared any such information with me.

First, as you letter recognizes, there was only the one phone call, one brief discussion on the matter.

Second, during this call, I introduced the case to you, you knew nothing about it, so there would have been no prior discussion with the Office of the City Attorney at this point.

Third, during the call you never mentioned anything about the decision being limited to a civil matter. Just that you would look into it and that we should meet in the future.

Forth, if in fact you had told me it was a limited to a civil matter, I would have simply countered that if the city's fence ordinance regulates fence

heights, it can't discriminate between types of fences, either a wood fence or a fence of trees. That discussion never took place.

Fifth, if you had shared some subsequent discussion with me, why would I have wasted my time coming in to speak with you instead of proceeding to speak with someone in the City Attorney's Office. As your letter indicates, at our June 10 meeting you offered to have me meet with a representative of the Office of the City Attorney. Surely, if there had been this second prior discussion on the caselaw, you would have made a comparable offer at that time. But your letter makes no mention of an earlier offer. That's because there was no earlier offer and there was no second discussion.

Bottomline: After I raised the question on the appellate case, you and I had no subsequent discussion on it and you never shared any feedback from the Office of the City Attorney prior to our June 10th meeting. That is the reason I took you up on your prior invitation to come in and meet with you about it. Furthermore, I specified that the appellate case was what I wanted to speak to you about when I made the appointment. Contrary to your letter, the issue was never addressed.

Your letter indicates that it was your impression that I scheduled the meeting to discuss a recent letter I had received from my neighbor. No, as I mentioned at the time I scheduled the meeting, it was to discuss the appellate case. Please reflect, you had previously invited me to come in to discuss that specific matter. Yes, you and I had several conversations regarding the height of my neighbor's un-permitted fence. But they were always handled on the telephone. There would have been no need to take the time and come in for a formal meeting on that situation.

Your letter continues that your impression was reinforced "when our meeting began with your announcement that the neighbor had also called to talk." My perspective differs. I do not feel I made any announcement, but rather answered your direct question. As we walked from the front lobby area to your office, in the manner of small talk, you asked me how things were going with my neighbor. I answered that I had received a call from her, made a comment and then expressed that it was something we need not be bothered with today. This entire brief conversation occurred before we ever entered your office. It occurred before we ever started our meeting. And most importantly you brought my neighbor up, not me.

I hope you can understand my disappointment with how my concerns are being addressed.

Sincerely,

Kathey Fyke

cc: Director of Community Development
Planning Officer
Senior Assistant City Attorney

~~897 Rattan Terrace~~
Sunnyvale, CA 940486

July 10, 2004

Susan Ramos, City Clerk
City of Sunnyvale
603 All American Way
Sunnyvale, CA 94088

Dear Susan Ramos:

Thank you for taking the time in speaking with me on Friday. I appreciate the information and direction that you provided.

As I mentioned, I had attempted to informally obtain the information regarding my complaint directly from the Department of Community Development, but I was denied. Therefore, I am formally writing to you to request the information under CA PRA, the Public Records Act.

> Please provide all records and documents, including electronic ones, regarding my complaints against my neighbor, Lydia Barouh of 893 Rattan Terrace, including but not limited to the fence she built without a permit.

Please let me know what costs will be involved. I would also appreciate knowing what files were searched in obtaining the above records.

Thanks again for all you help. If you have any questions or need additional information, please give me a call at 730 5166.

Sincerely,

Kathey Fyke

June 16, 2004

Kathey Fyke
897 Rattan Terrace
Sunnyvale, CA 94086

Subject: Response to Correspondence related to meeting of June 10, 2004.

Dear Ms. Fyke;

This correspondence is offered in response to your letter received June 16, 2004 regarding your dissatisfaction with our meeting of June 10, 2004.

I regret that you left the meeting with the sense that I was unresponsive to your wish to discuss a matter of case law related to your concerns with your neighbor's fence. It was my impression that when you called to schedule the meeting that its purpose related to a recent letter that you had received from the neighbor in question. My impression for the purpose for the meeting was somewhat reinforced when our meeting began with your announcement that the neighbor had also called you to talk about the matter. Further, I was surprised that you wanted to restart a discussion on the case law matter as we had briefly discussed it on the phone a couple of weeks prior. As I had noted then, my discussion with the Office of the City Attorney clarified that the Wilson v. Handley decision might relate to a civil action between you and your neighbor but that it had no legal bearing on the City's Municipal Code. Since opinion on such legal matters are not within my purview, I did not want to waste your time, particularly since I thought that issue had already been addressed.

As I had offered at our June 10 meeting, if you would like to meet with a representative from the Office of the City Attorney to discuss the case law matter, I would be happy to assist. If there are other questions that you may have related to your neighbor's fence (or any other Planning related matter) please feel free to call me at (408) 730-7443.

Sincerely,

Fred Bell
Principal Planner

cc Director of Community Development
Planning Officer
Senior Assistant City Attorney

~~807 Rattan Terrace~~
Sunnyvale, CA 940486

June 12, 2004

RECEIVED
JUN 16 2004
PLANNING DIVISION

Fred Bell
Planning Department
Olive Avenue
Sunnyvale, CA

Dear Fred Bell:

As you are aware, I am extremely disappointed with how my concerns were addressed Thursday morning.

Let me review what transpired to bring about our meeting. Back in May, I was speaking via telephone with you regarding my neighbor's fences. My neighbor had built a 7 plus foot fence without a permit or neighbor agreement despite being informed by your department that she needed a permit. As part of that discussion, I asked what the department's policy was regarding rows of trees/vegetation and the fence height requirement. I mentioned the Wilson v. Handley decision, where the California Court of Appeals ruled that a row of trees constituted a fence. You were unfamiliar with the case so I shared the title and brief facts of the case. You invited me to meet with you some time in the future to discuss it further.

On Tuesday, I took you up on your suggestion and called. We set up the meeting for Thursday morning. In preparation, I obtained a copy of the appellate decision and reviewed the 18 pages, highlighting the salient points. I also brought additional research that I had done.

Imagine my disappointment in the first minutes of our meeting when after I placed the court decision on your desk, you stated my concerns were a "civil matter". Apparently this judgment had been made before I ever reached your office. You did not touch, let alone look at the research I offered.

I thought I had taken the time out of my day to meet with you so we could have a dialogue about my concerns. I believe I should have had the opportunity to discuss my points in an open setting, not one where the decision had already been made and the issue was closed. I thought I was walking into a meeting where the city would have been open to a different perspective and new case law. I don't disagree that you had the right to reach whatever decision you wished, but I firmly believe you had an obligation to at least listen to my feedback and recognize it in the decision making process. That did not happen. Instead, I

was quickly told, in essence: issue closed...civil matter... not interested.

When I pursued the matter, you informed me that I could come back and speak with a Joan in the city attorney's office.

The way my concerns were handled demonstrates that there is room in your department to be more considerate and respectful of citizens and their efforts. I would hope that you recognize that often citizens need to make arrangements to come into you offices to meet, i.e., take time off from work, hire a babysitter, rearrange a schedule. So to have someone come in needlessly is simply disrespectful. If you had already reached a decision, why didn't you just call to let me know. We had already had several conversations and you had my number. A call would have saved me valuable time and resources.

Moreover, if the next step was to meet with Joan, why not call and explain you can't help me and suggest that I call and set up an appointment directly with Joan. It would have saved me the inconvenience and frustration.

With regard to the substance of my concerns, I remain firm that the California Court system has recognized that a row of trees constitute a fence. The city has an obligation to enforce all of its ordinances equally under the law.

Bottomline, I hope you can put yourself in my shoes and understand my disappointment. There was an opportunity to learn from each other that was lost. But more importantly, a city should be strive to maintain the trust of its citizens. Based on my experience, that trust was undermined.

Sincerely,

Kathey Fyke

Fred Bell

~~807 Rattan Terrace~~
Sunnyvale, CA 940486

July 10, 2004

RECEIVED
JUL 14 2004
COMMUNITY DEV.

Ann Lee
Community Development
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Ann Lee:

I am responding to a letter from Fred Bell on which he copied a number of positions. Since I am unsure as to who the parties are, I would appreciate it if you would see that the:

Director of Community Development
Planning Officer
Senior Assistant City Attorney

all get copied on my enclosed letter to Fred Bell. If this is a problem, please give me a call at 730 5166.

Thank you for your help and my apologies for taking your time.

Sincerely,
Kathey
Kathey Fyke

[redacted]
Sunnyvale, CA 940486

July 10, 2004

Fred Bell
Planning Department
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Fred Bell:

I am in receipt of your letter dated June 16, 2004. I find it of concern that your perception of the facts does not reflect what actually transpired.

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I hope you can understand my disappointment with how my concerns are being addressed.

Sincerely,

Kathey Fyke

cc: Director of Community Development
Planning Officer
Senior Assistant City Attorney