



**CITY OF SUNNYVALE
REPORT
Planning Commission**

February 23, 2009

SUBJECT: **2008-1240** - Application for a property located at **1384 La Bella Avenue** (at Cascade Drive) in an R-1 (Low-Density Residential) Zoning District.

Motion Appeal by the applicant of a Condition of Approval of a Miscellaneous Plan Permit for construction of an approximately 3-foot fence in the front yard.

REPORT IN BRIEF

Existing Site Conditions Single Family Residence

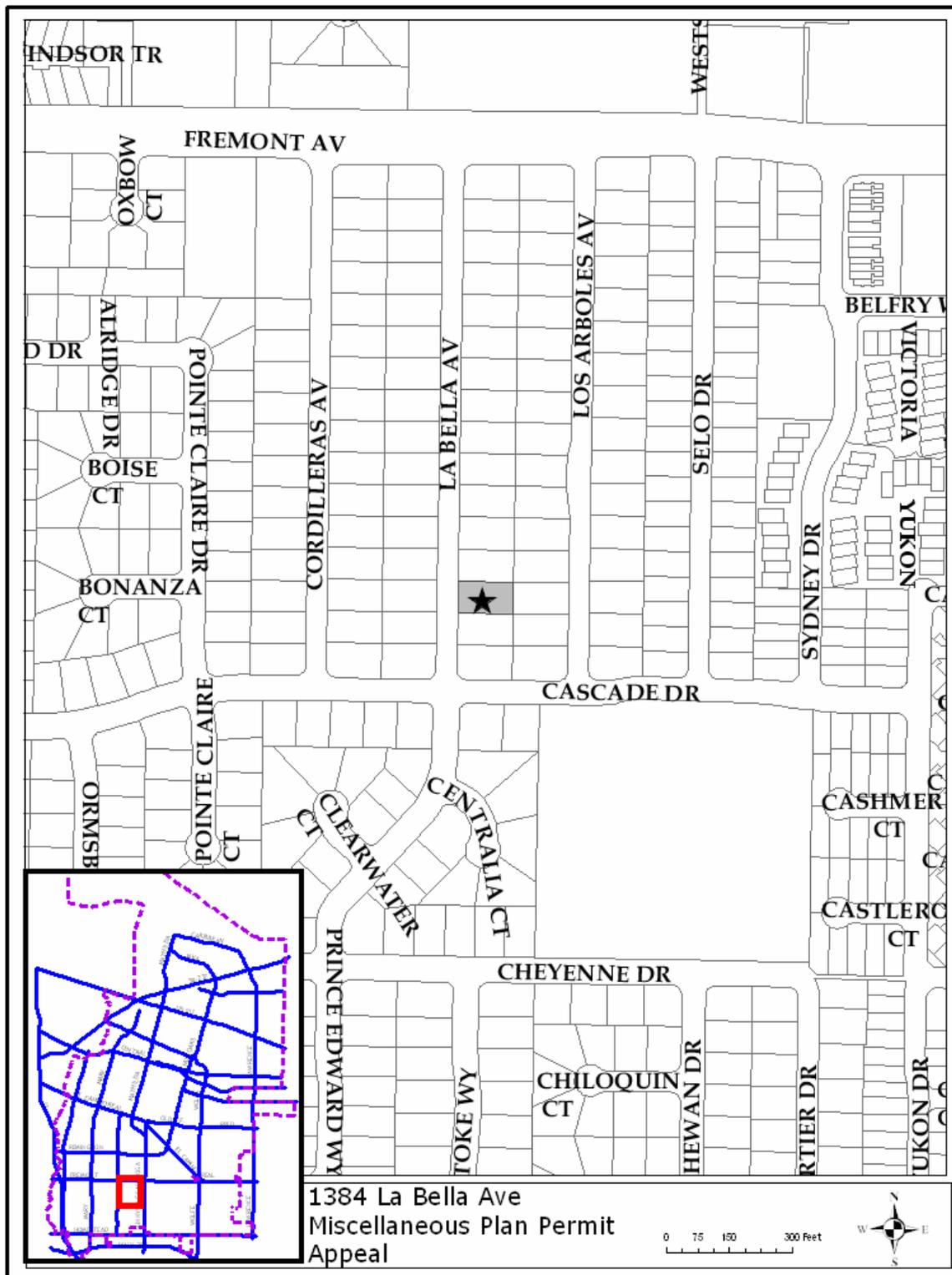
Surrounding Land Uses

- North Single Family Residential
- South Single Family Residential
- East Single Family Residential
- West Single Family Residential (across La Bella Ave.)

Issues Fence in Public Right-of-Way

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit including the Condition of Approval requiring that the fence be removed from the public right-of-way.



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	---
Zoning District	R-1	Same	R-1
Lot Size (s.f.)	9,633	Same	8,000 min.

ANALYSIS**Description of Proposed Project**

A Miscellaneous Plan Permit was submitted by the applicant on November 21, 2008 for an approximately three foot high fence. On that date, the permit was approved at the One-Stop Counter by the Planning Division based on the site plan provided by the applicant (Attachment C). Staff assumed that the site plan indicated property lines correctly. On December 10, 2008, the Neighborhood Preservation Division was notified that a one-foot high wall had been constructed within the public right-of-way at the applicant's home. City staff clarified with the applicant that the approval was not intended to grant approval of the fence to be constructed within the public right-of-way. Subsequently on January 16, 2009 it was determined, that since an action had been taken on the permit, the approved action should be modified with the clarification that the fence needed to be relocated or removed from the public right of way and be located entirely on private property. A 15-day deadline to remove the fence was given in conjunction with Neighborhood Preservation direction for enforcement. Since the permit was reconsidered and modified based on correct site information, a revised 15-day appeal period was made available for the applicant to appeal the decision. The applicant appealed the decision on January 30, 2009. Enforcement to relocate or remove the fence has been suspended pending a decision by the Planning Commission on the appeal.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2009-0270	Design Review for an approx. 1,436 s.f. addition	Staff / Under Review	N/A

File Number	Brief Description	Hearing/Decision	Date
2008-0741	Tree Removal Permit for three trees (appealed to P.C.)	Planning Commission / Approved	11/10/2008
2004-0238	Design Review for 672 s.f addition	Staff / Approved (Building Permit expired)	3/25/04
2001-0723	Variance from minimum side yard setbacks for 1,538 s.f. addition	Administrative Hearing / Approved (Building Permit expired)	11/28/01

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class #1 Categorical Exemptions includes accessory structures such as fences.

Miscellaneous Plan Permit

Detailed Description of Use: The proposal is for a three foot high fence (concrete wall) to be located in the front yard.

Site Layout & Design: The proposed fence, which is composed of concrete and has already been constructed, is located along the left side at the front of the property adjacent to 1378 La Bella Avenue. The fence had been approved to be approximately 3' tall; however, it is approximately 1' tall.

Compliance with Development Standards/Guidelines: Sunnyvale Municipal Code Section 19.48.020 states:

(5) Fences or walls may be built to the existing sidewalk, or if there is a monolithic sidewalk or if there are no sidewalks, to the existing property line; however, nothing in this section shall prohibit the city from exercising its rights pursuant to existing public rights-of-way or easements, and nothing in this section shall be construed as a waiver by the city of its rights thereto. Further, nothing in this section shall be construed as establishing any responsibility on the part of the city for any fence or wall, or portion thereof, which is constructed within the public right-of-way or easement.

In this case, there is no sidewalk on La Bella Avenue; therefore, the fence can be built up to the property line. The proposed wall is located beyond the property line and within the public right-of way therefore does not meet this standard.

Expected Impact on the Surroundings: The neighborhood does not contain public sidewalks. Approval of the fence, would further limit pedestrian access and force people to walk on the street. Although existing landscaping and unpermitted structures appear to be located within the public right-of-way near adjacent properties, this would legalize a structure and could set precedent for future structures.

Appeal: The applicant has submitted a letter of appeal, which can be found in Attachment E. The applicant notes that a one foot structure had previously been at this location and had been destroyed. The proposal was to replace that wall. After it had originally been approved, construction of the fence commenced. After a complaint was filed, the applicant was notified by the city to remove it. The applicant notes a concern of selective enforcement as other fences in the neighborhood exist which lie within the public right-of-way.

Response to Appeal: Although the applicant notes that a pre-existing fence had been located here and since destroyed, there are no City records enabling a structure at this location. This neighborhood was incorporated in the City in the mid-1970s and vegetation and other fences on nearby properties are located adjacent or near the existing rolled curb and within the public right of way. Throughout the City, Neighborhood Preservation Division staff follows a complaint based approach to Code enforcement. In many of the examples provided by the applicant, City staff has not yet been notified of any code enforcement issues of nearby properties. Regrettably the permit was issued and the applicant did not understand the requirement for structures to be out of the public right-of way.

As stated earlier in the report, the Miscellaneous Plan Permit approval was amended with the Condition of Approval to remove the fence within 15 days. As part of the decision, the Planning Commission has an option to grant the applicant additional time to remove the fence from the public right of way by modifying Condition of Approval #1B. The Commission can not approve the fence in the public right-of-way. There is no option for consideration of an encroachment permit from the Department of Public Works, because it is not a public improvement. Although some small landscape improvements can exist in the right-of way until improvements are necessary for their removal, this fence acts as a barrier to those seeking access across the right-of-way between properties.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Negative Declaration and Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 12 notices mailed to the property owners and residents within 300 ft. of the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website

Conclusion

Discussion: Staff is recommending denial of the appeal and that the Planning Commission uphold the approval of the Miscellaneous Plan Permit which requires the fence to be removed from the public right of way.

Findings and General Plan Goals: Staff was able to make the required Findings for the Miscellaneous Plan Permit. Recommended Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

Alternatives

1. Deny the appeal and uphold the approval of the Miscellaneous Plan Permit including the Condition of Approval to require the fence to be located entirely on private property.
2. Grant the appeal and approve the Miscellaneous Plan Permit as proposed subject to the conditions in Attachment B.
3. Grant the appeal and approve the Miscellaneous Plan Permit with modified condition to extend the enforcement compliance period.

Recommendation

Alternative 1.

Prepared by:

Ryan M. Kuchenig
Project Planner

Reviewed by:

Gerri Caruso
Principal Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site Plan
- D. Site Photo
- E. Letter and Supporting Documents from the Applicant

Recommended Findings – Miscellaneous Plan Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element – *Policy N.1.4. Preserve and enhance the high quality character of residential neighborhoods.*

Single Family Home Design Techniques – *3.11 Landscaping. Fencing along front property lines and along side property lines within front yard setback areas should not exceed three feet.*

1. The permit will attain the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding made]*

The proposed fence, as conditioned to be built on private property, meets the objectives and purposes of the General Plan of the City of Sunnyvale. The height of the fence does not exceed the recommended 3' fence height for front yards in single family residential neighborhoods.

2. The permit ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *[Finding not made]*

The use of a front yard fence is compatible to properties in the neighborhood and would not cause a negative impact to surrounding properties. However, the fence shall not be located within the public right-of way as conditioned.

Recommended Conditions of Approval – Miscellaneous Plan Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

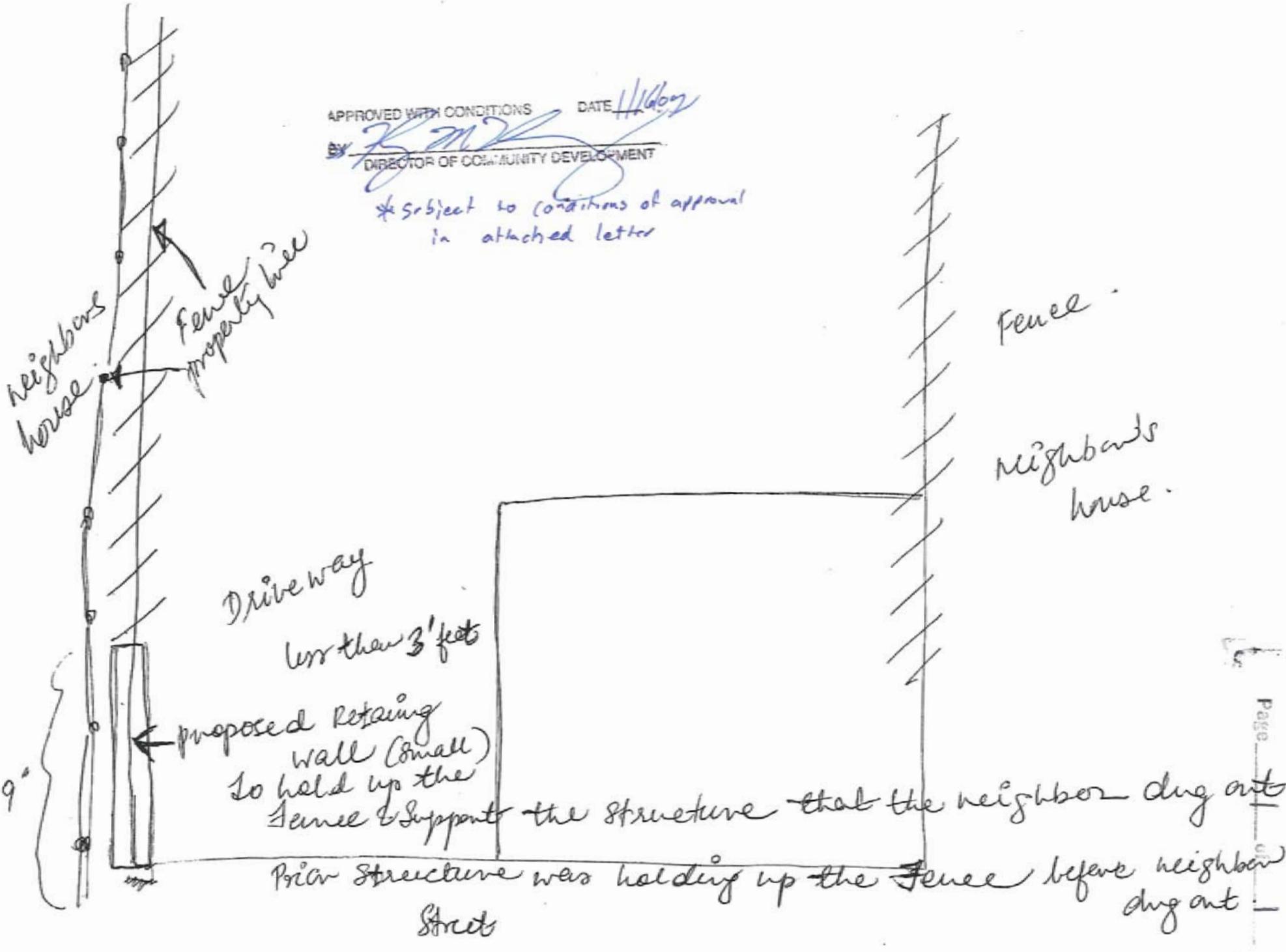
- A. The fence shall be located entirely on the subject property and not within the public right of way.
- B. Any portion of the fence located within the public right of way shall be removed within 15 days.

APPROVED WITH CONDITIONS

DATE 1/16/07

BY *[Signature]*
DIRECTOR OF COMMUNITY DEVELOPMENT

* Subject to conditions of approval
in attached letter





1384 La Bella Ave.
Sunnyvale, CA
April 20th, 2009

To: Planning Commission; Bo Chang, Harriet Rowe; and Members Charles Hungerford, Larry Klein, Brandon Sulser, Dianne McKenna and Nick Travis of the City of Sunnyvale:

Re: Miscellaneous Plan Permit on my property at 1384 La Bella Ave, Sunnyvale.

Dear Planning Commission Officials, Bo Chang, Harriet Rowe; and Members Charles Hungerford, Larry Klein, Brandon Sulser, Dianne McKenna and Nick Travis:

After multiple visits to the city of Sunnyvale in Nov 2008 for the application of a permit to build a 1 foot concrete structure to the existing fence, intentionally destroyed by my neighbor, ***the city of Sunnyvale granted and approved a miscellaneous plan permit for 1 foot concrete base structure on 11/21/2008. After which I hired a contractor to construct the concrete structure for an approx cost of \$1000 and remediate the destruction to my property.***

Since then the city has changed the conditions for approval and send me a letter stating that the valid permit approval was subject to conditions and the structure should be removed or the decision appealed without any accountability, consideration or reimbursement of the actual cost, time and materials spend to build the structure with the approved permit and the potential cost to remove the structure as stated in the letter by the city.

The fence rooted in a concrete base was in sound condition prior to the destruction, weathering multiple major storms in the bay area. The neighbor's trespassing and intentional premeditated, destruction of my property is being reviewed under the legal process.

The city mentioned the structure was in the public right of way after receiving the complaint from the very same neighbor. The public right of way including that of the specific neighbor and a multitude of neighbors and similar structures in the street of the above mentioned address, including neighboring streets have not been uniformly enforced. The city has not provided me with any guidance or answered any questions regarding the public right of way on my specific property. In addition, no plan for reconstruction or remediation to the destruction caused in the above mentioned public right way on my property has been discussed.

The city's selective and subjective enforcement and letter to remove the structure already constructed with prior approval and permit does not address the financial burden (to construct and remove) including the consequence of their recommendation due to prior approval.

I invite the planning commission members to the property location to discuss the situation and look forward to presenting my case before the Planning Commission.

Thank you for all the help. I really appreciate it.

Sincerely

Janet George (Home Owner)

Cell phone 408 396 5727

**Planning Commission meeting
regarding already approved
Miscellaneous Plan Permit**

**Presentation to Planning
Commission**

By

Janet George (Home Owner)

April 27th 2009

ATTACHMENT E
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Background and History (How it all started) Early 2007



Destruction spans parking area

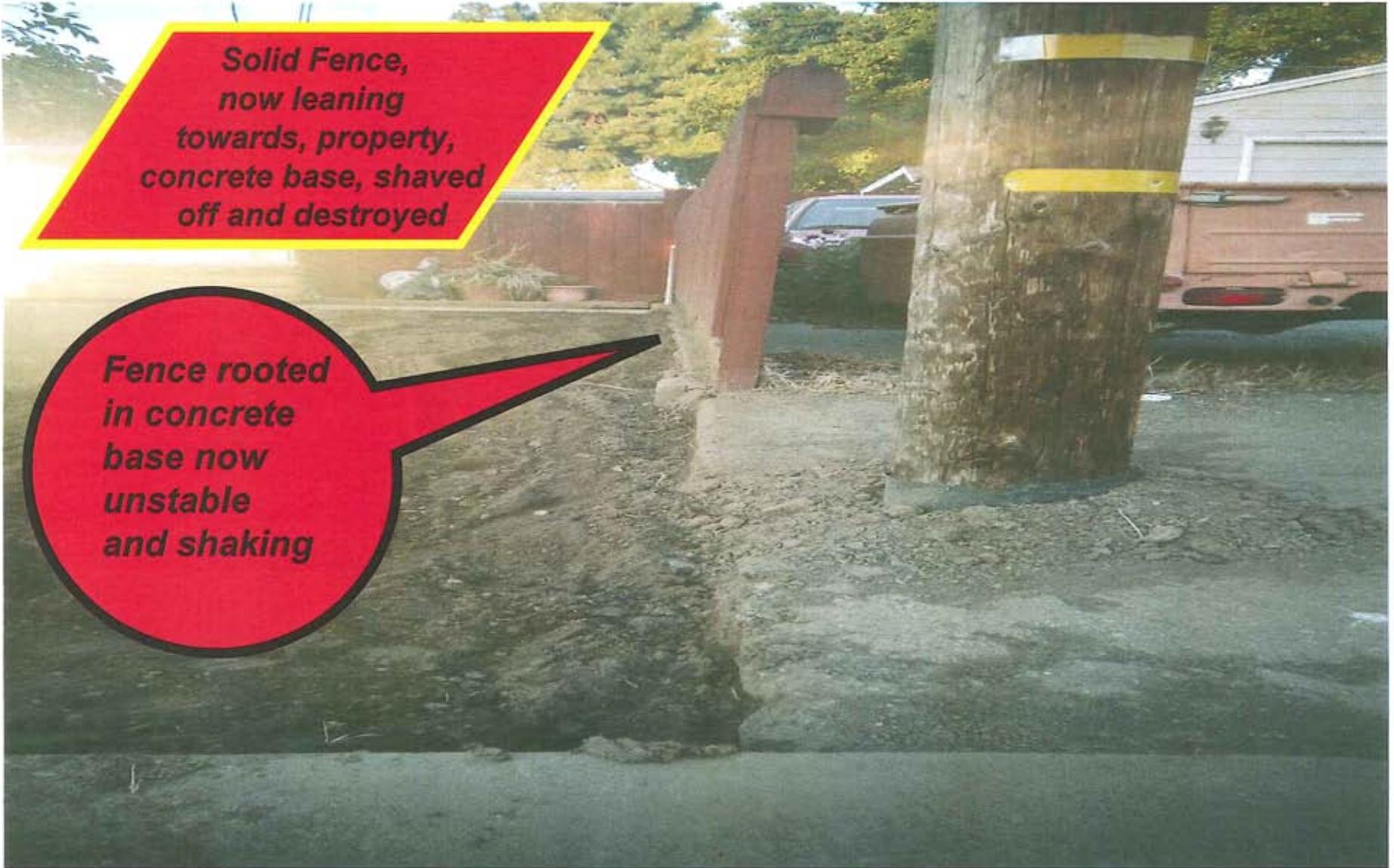
Every home owner's nightmare. Coming home after work to find intentional, premeditated, property destruction

Scope of destruction clearly beyond boundary

Concrete Base shaved off and destroyed along the entire length

**Solid Fence,
now leaning
towards, property,
concrete base, shaved
off and destroyed**

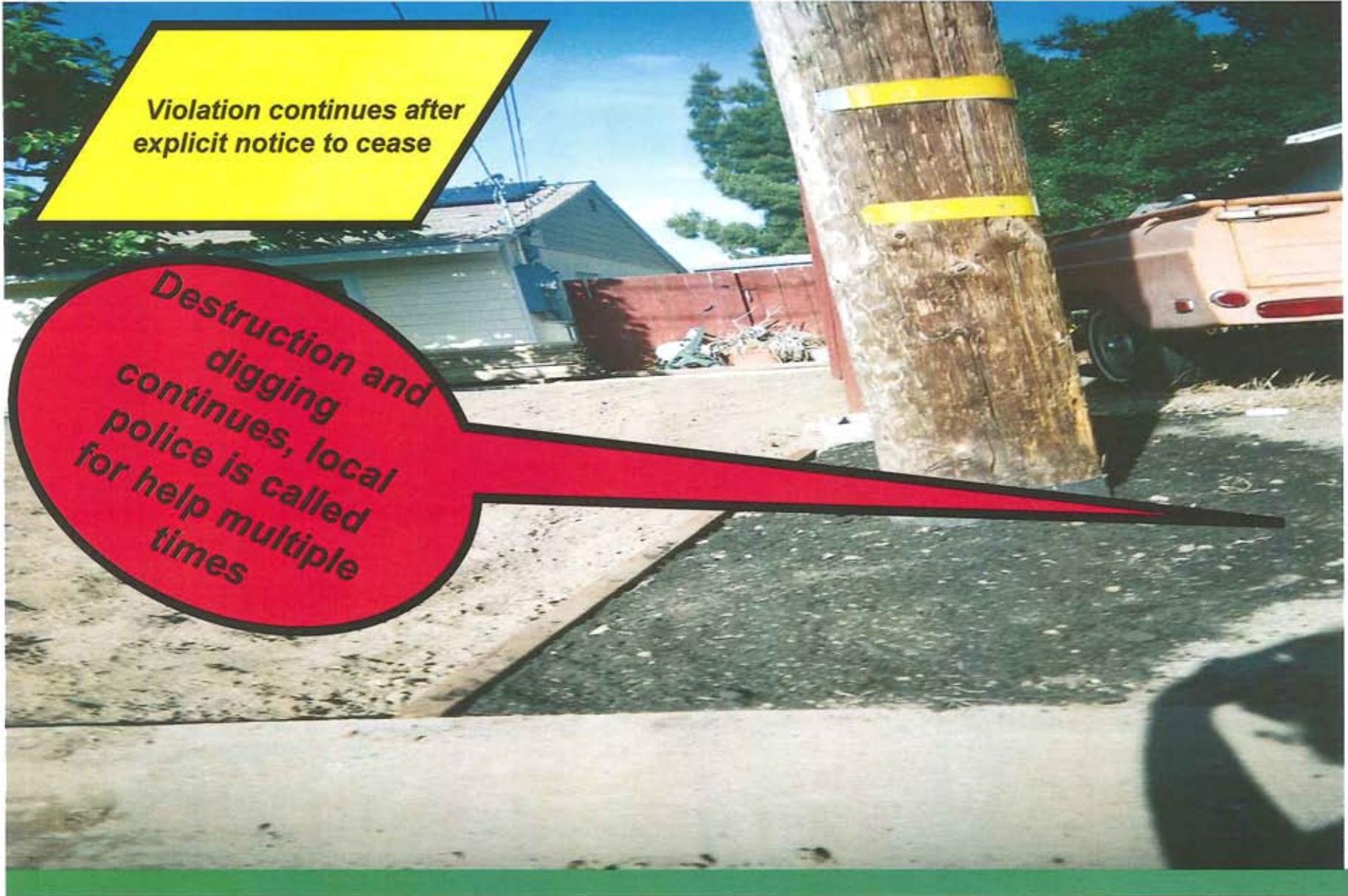
**Fence rooted
in concrete
base now
unstable
and shaking**



Destruction continues and local police called for help multiple times

Violation continues after explicit notice to cease

Destruction and digging continues, local police is called for help multiple times

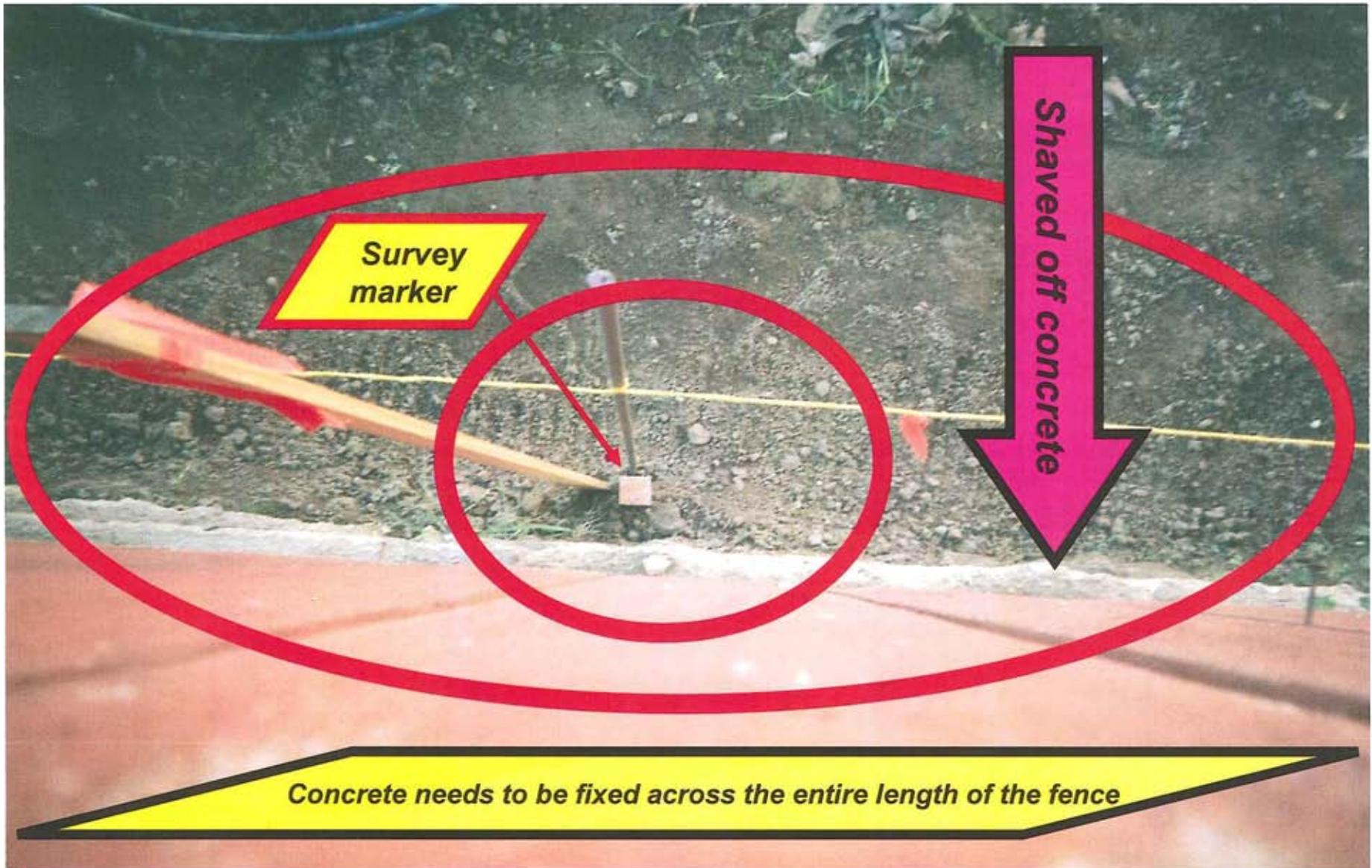


Professional Property Boundary survey done with results

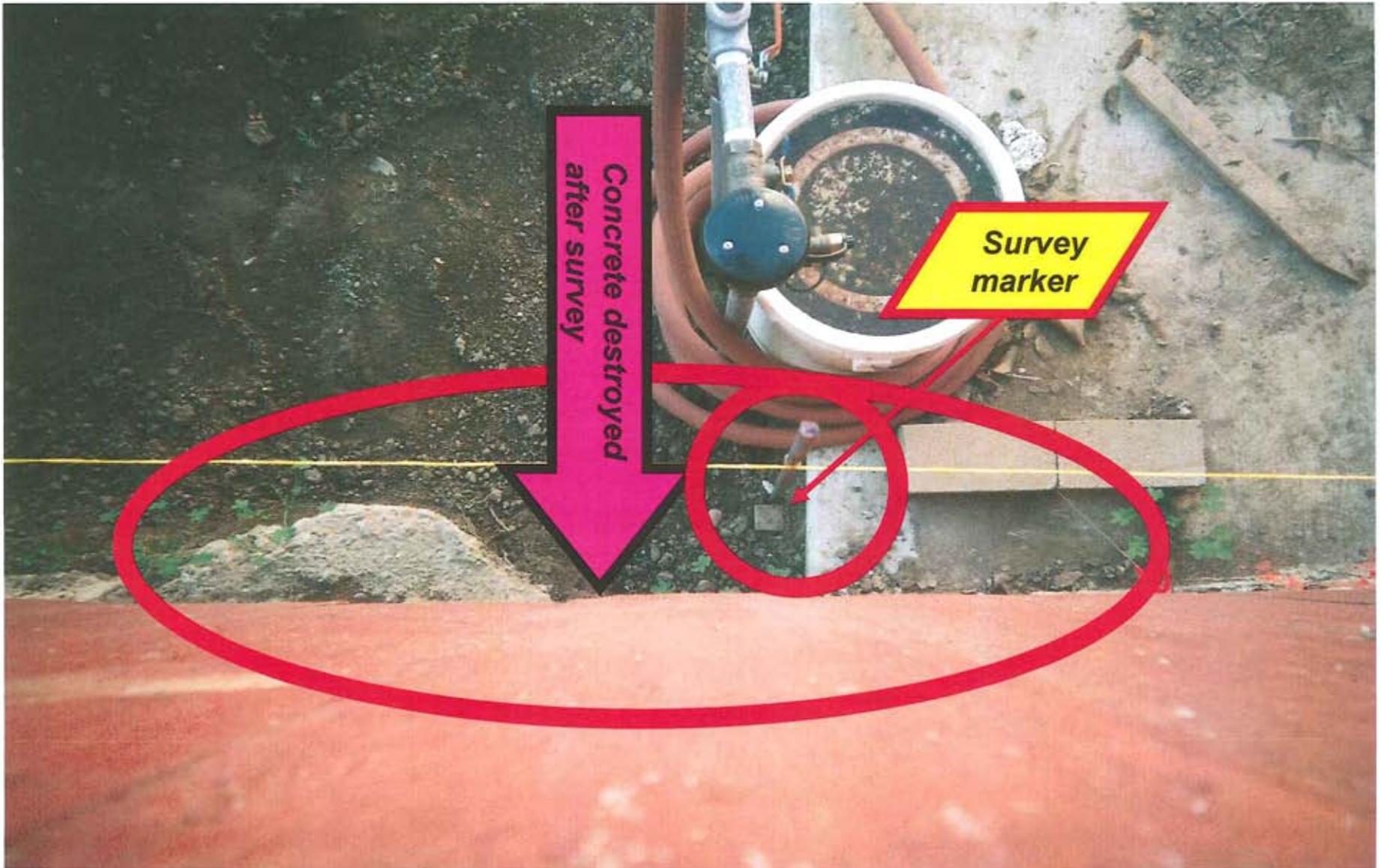
Survey indicates clear violation, entire fence inside the property line, including destroyed concrete



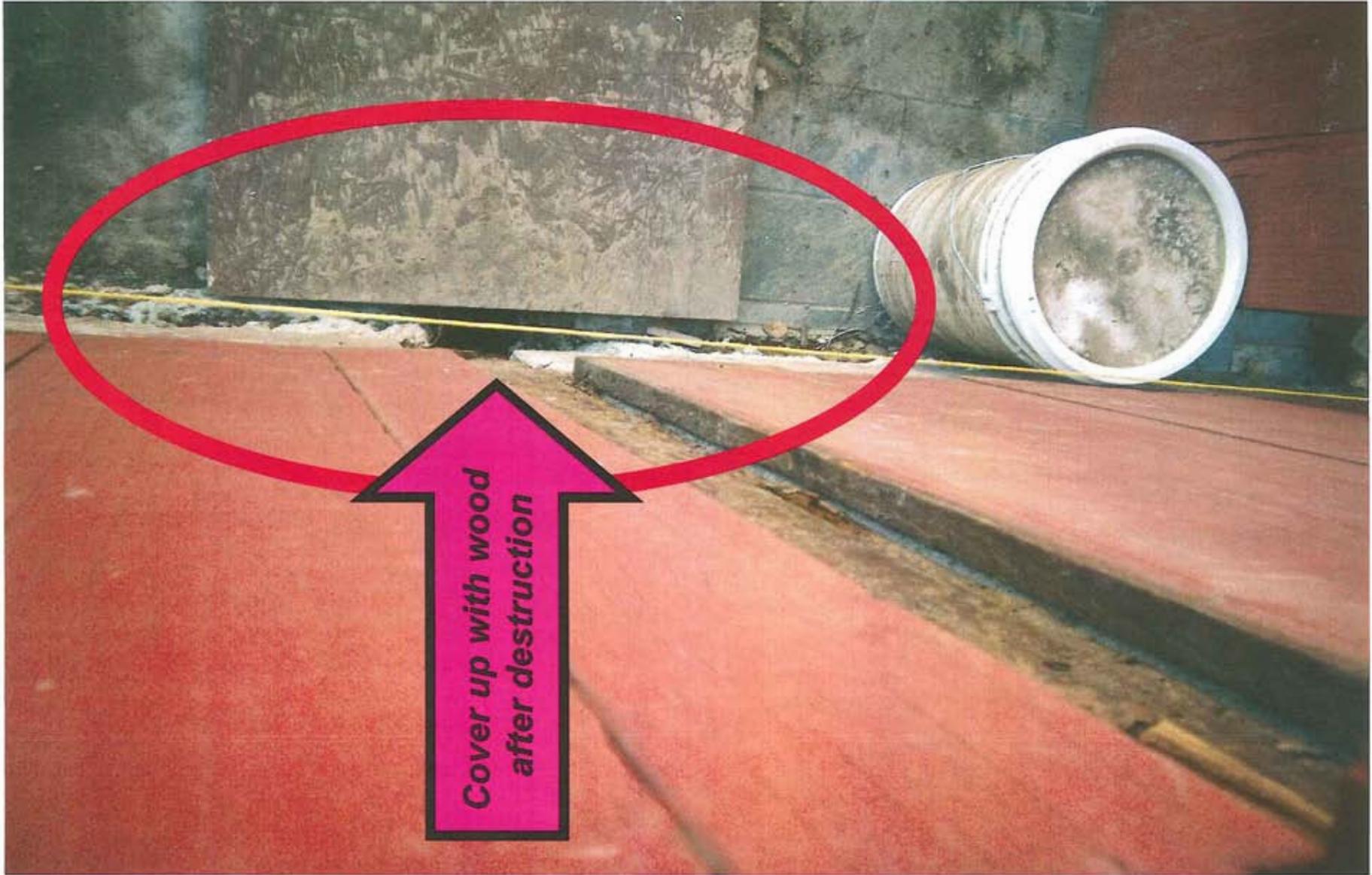
Concrete destruction along the entire length of the Fence



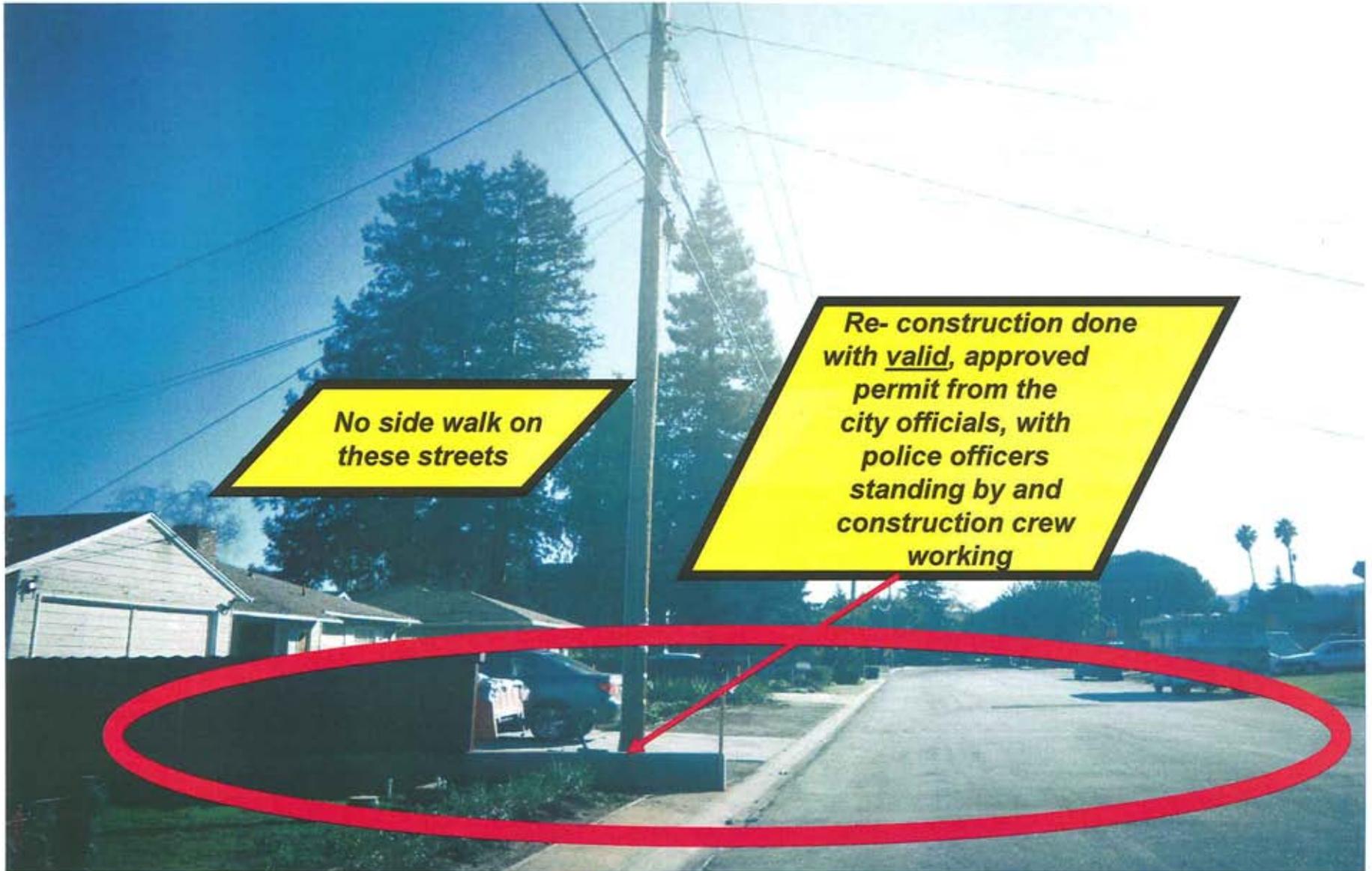
Concrete destruction continues after survey



Methodical cover-up after destruction



Re-construction application for Permit with the city approved (valid)



No side walk on these streets

Re- construction done with valid, approved permit from the city officials, with police officers standing by and construction crew working

Clearly more work needs to be done to stabilize the fence



More concrete work needs to be done to reinforce fence

Limited by available funds to complete the rest of the concrete reconstruction work

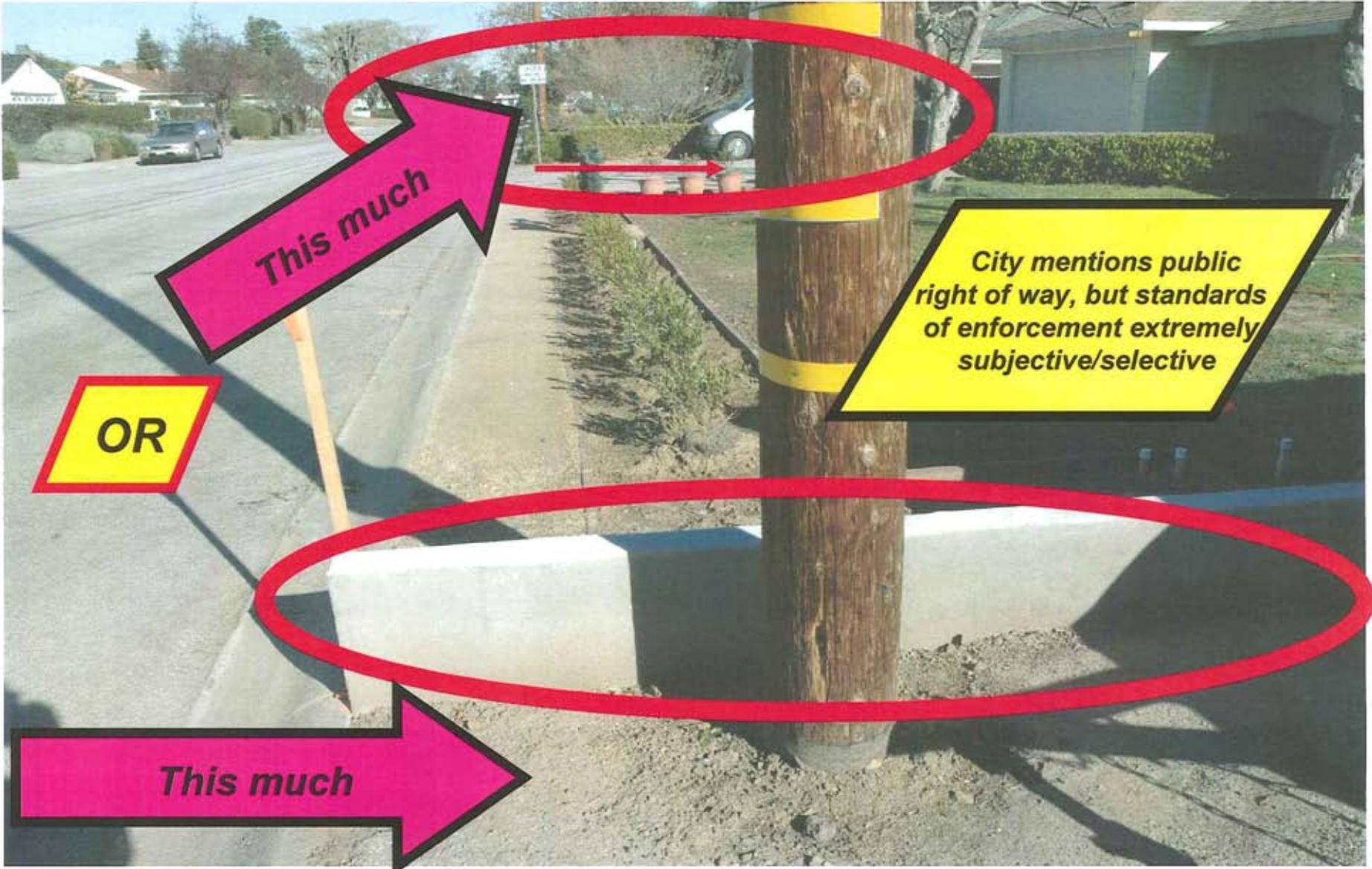
Complaint to the city, conditions for approval changed

Neighbor embarks on his own self construction and self landscape plan in the "right of way"

Neighbor upset with the re- construction done with valid, approved permit from the city, complains to the city, city changes the conditions for approval **after the fact**



City unable to explain how much is "Public Right of Way"



OR

This much

City mentions public right of way, but standards of enforcement extremely subjective/selective

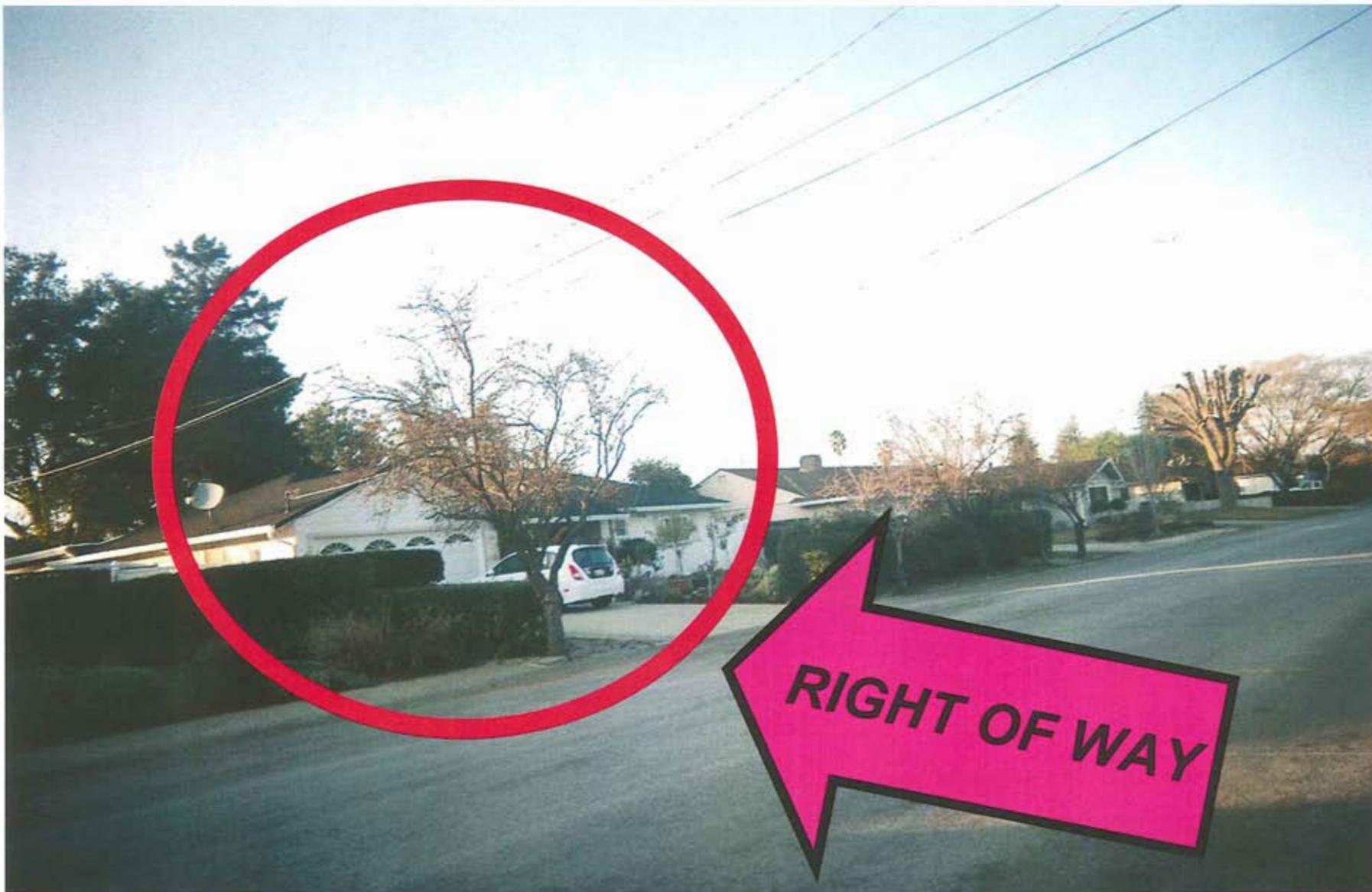
This much

Permissible to construct IRON Gate in Public right of way?



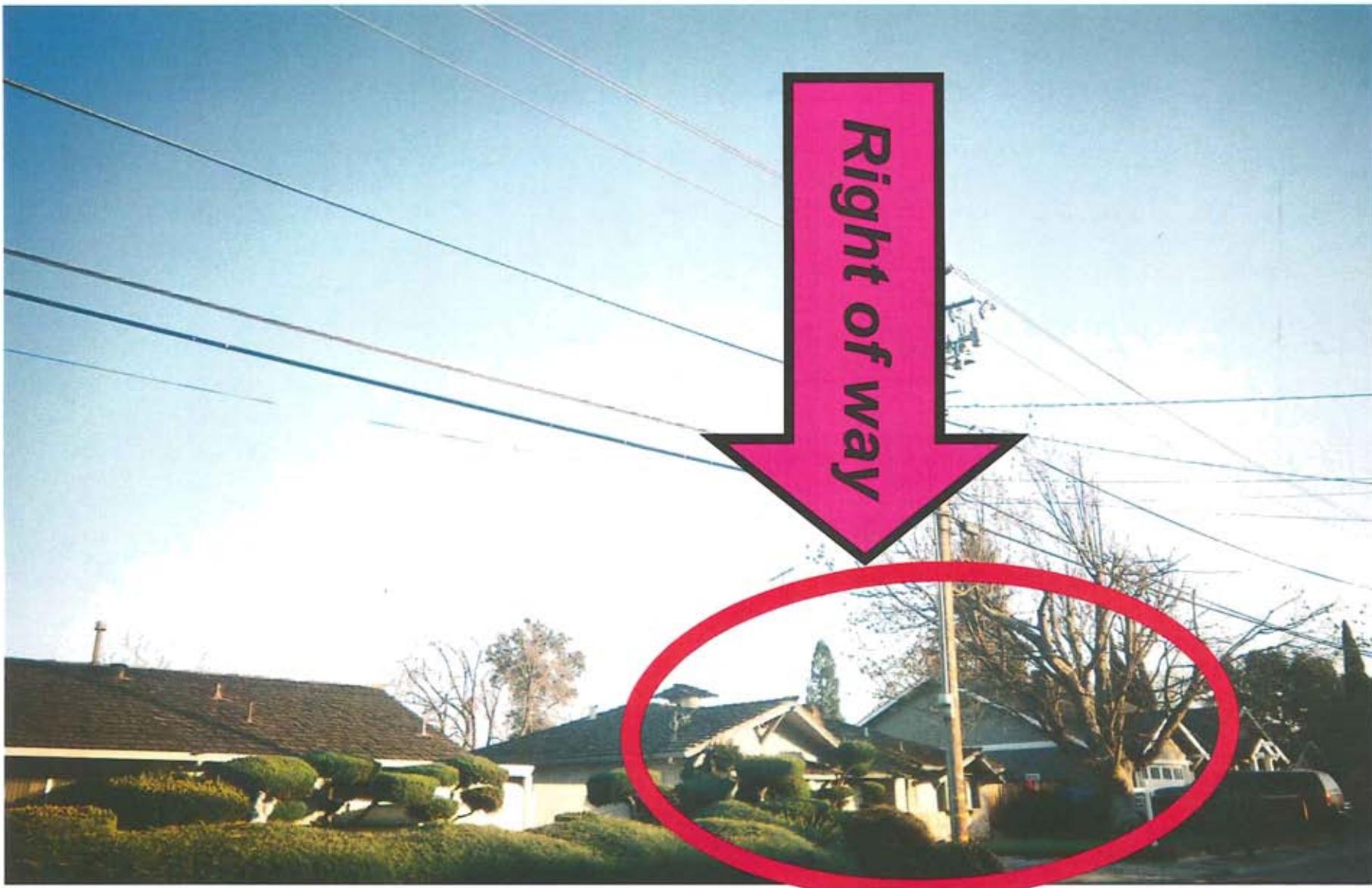
**Solid IRON Gate
constructed, in public
"Right of way"
Enforcement subjective
and selective**

Neighbors on the Street : Example 1 of Public right of way



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Neighbors on the Street : Example 2 of Public right of way



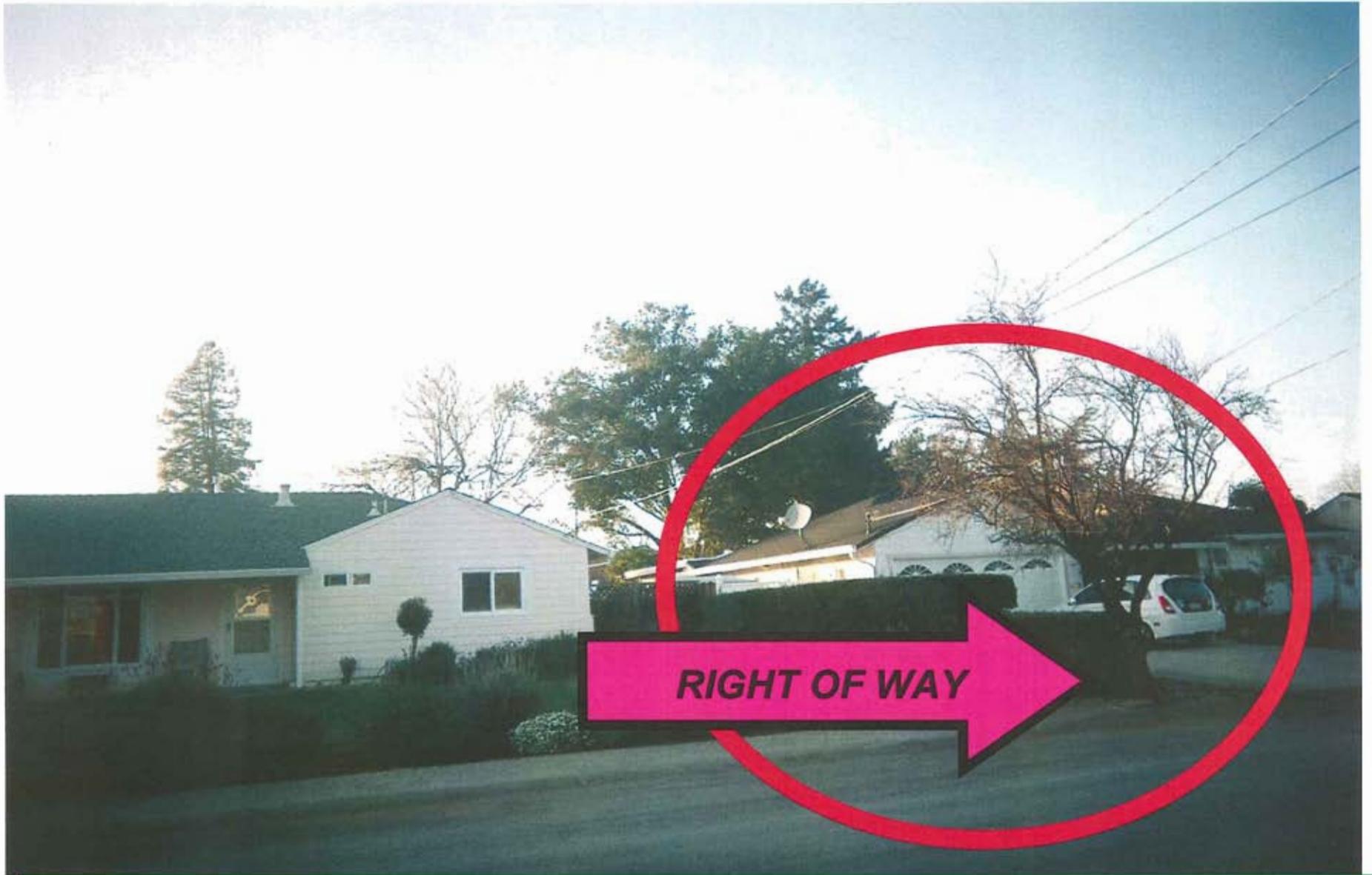
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Neighbors on the Street : Example 3 of Public right of way



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Neighbors on the Street : Example 4 of Public right of way



Neighbors on the Street : Example 5 of Public right of way



RIGHT OF WAY

Neighbors on the Street : Example 6 of Public right of way

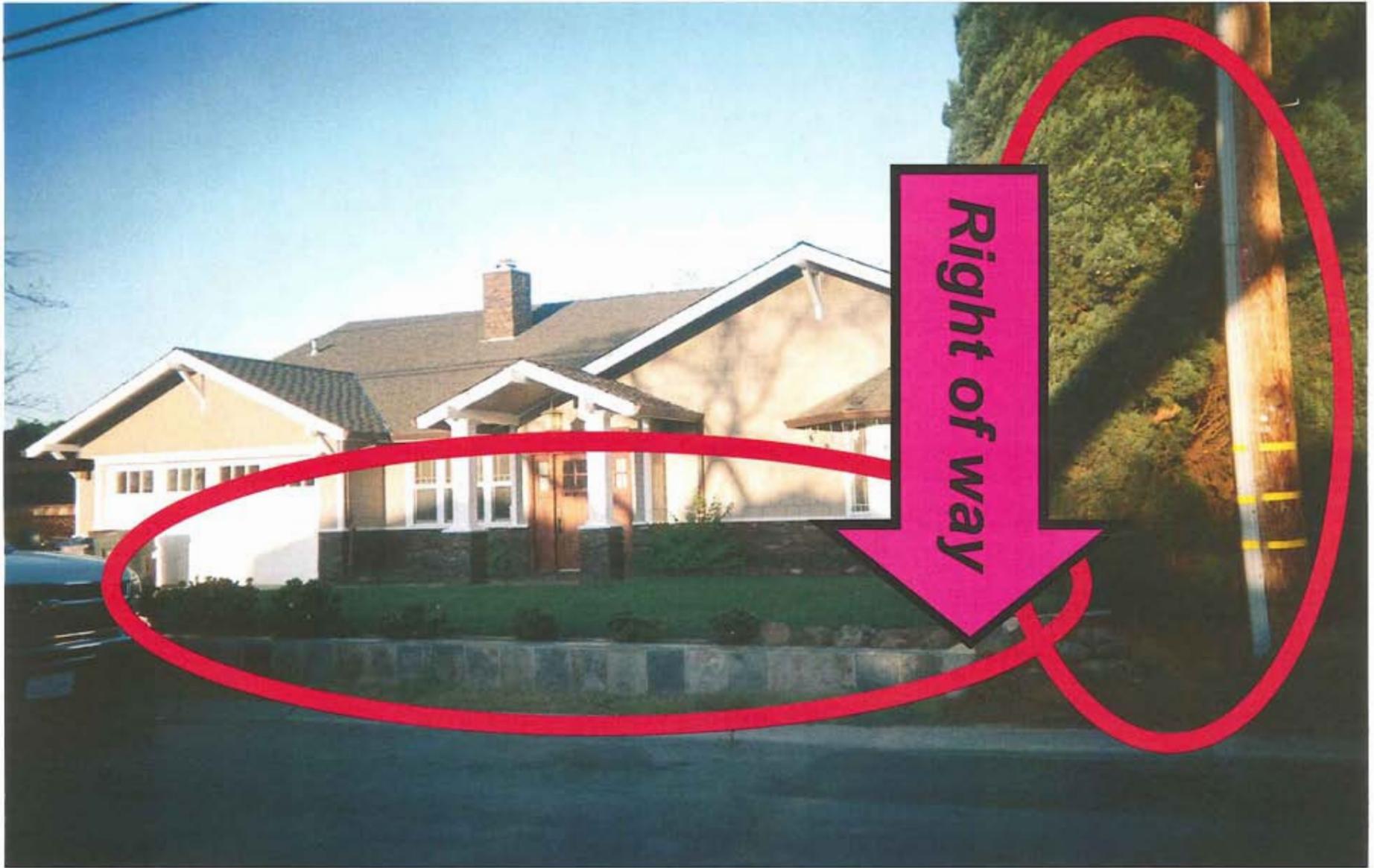


Neighbors on the Street : Example 7 of Public right of way



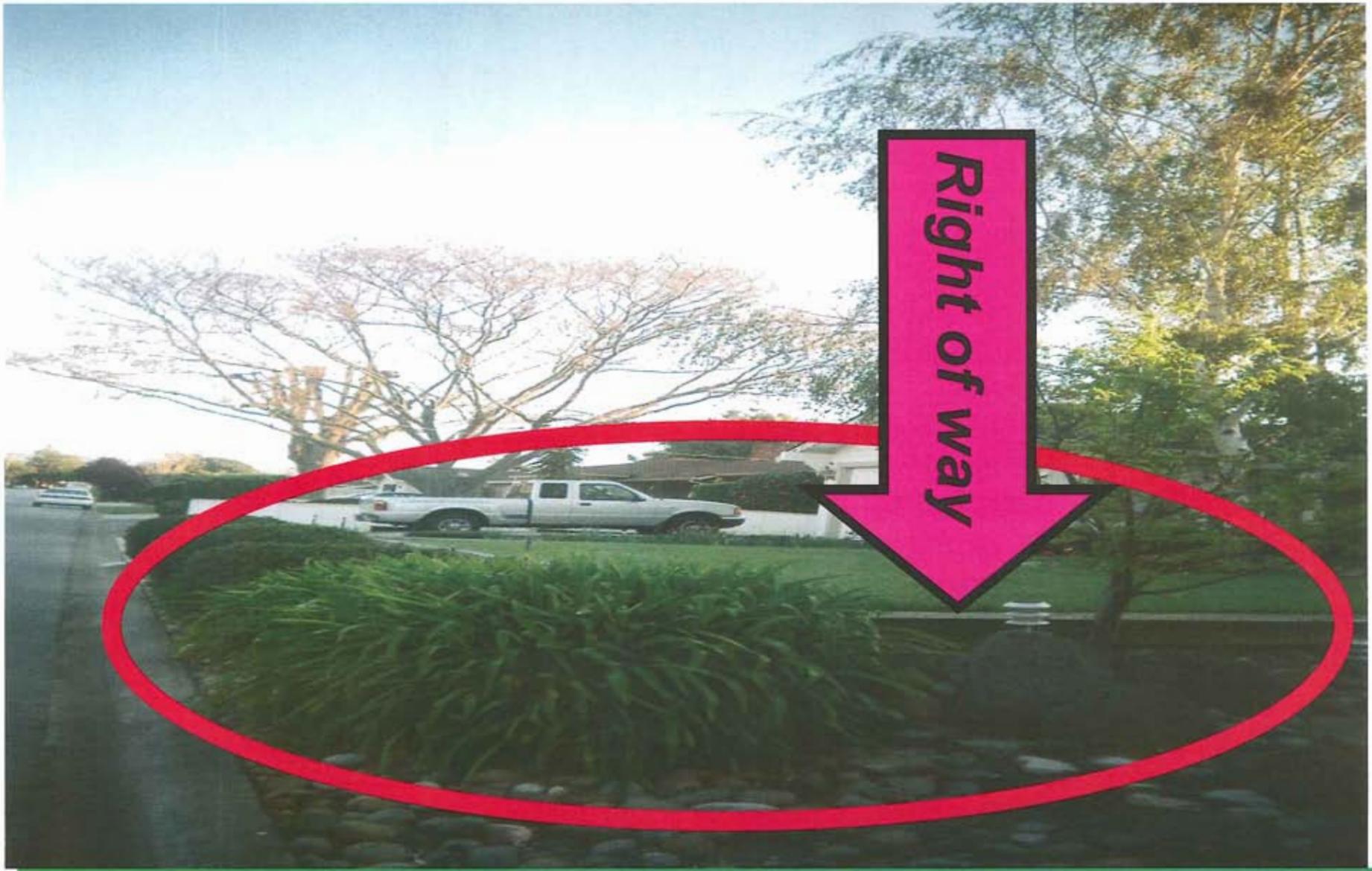
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Neighbors on the Street : Example 8 of Public right of way

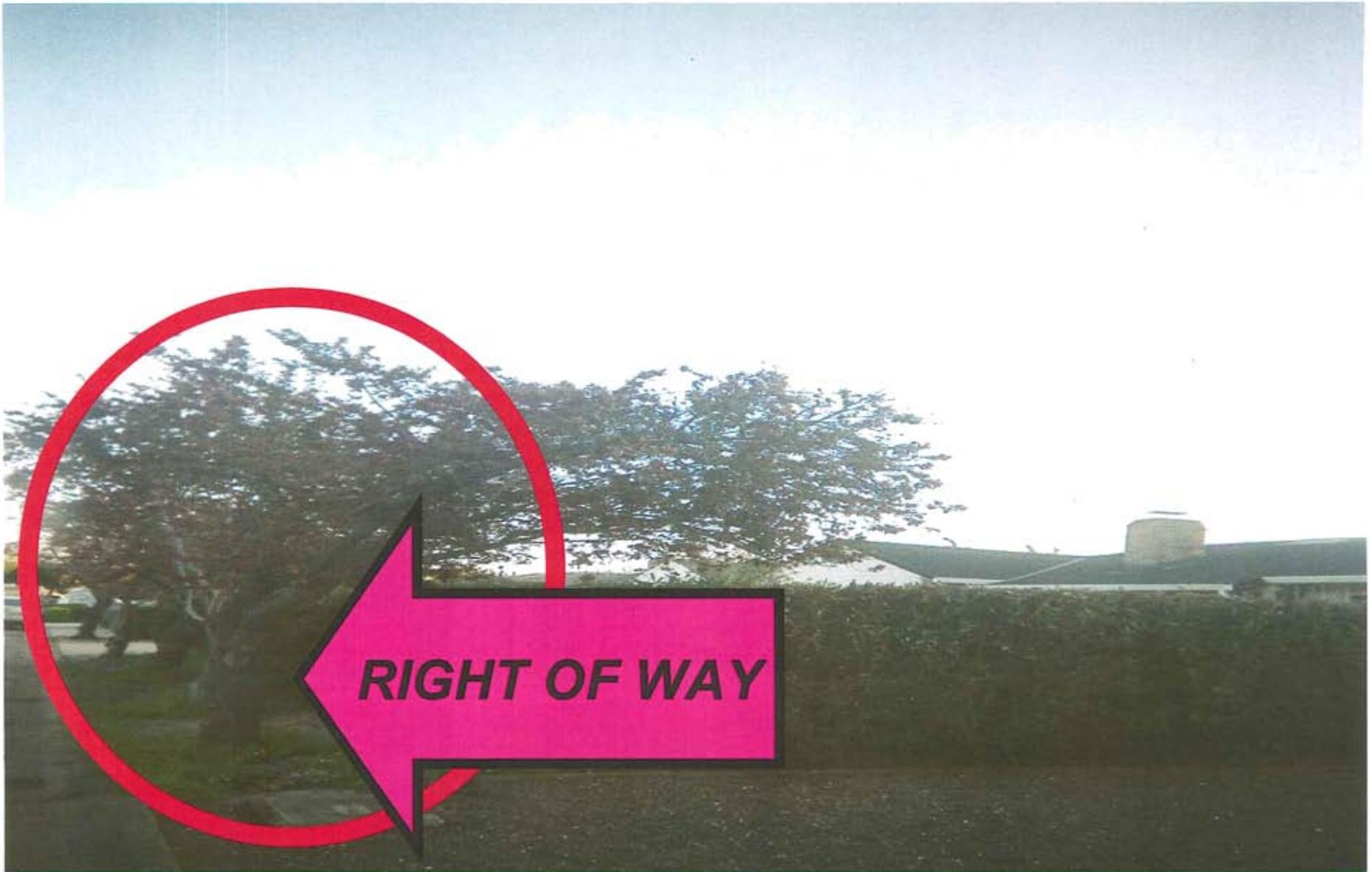


Right of way

Neighbors on the Street : Example 9 of Public right of way



Neighbors on the Street : Example 10 of Public right of way



Neighbors on the Street : Example 11 of Public right of way



Neighbors on the Street : Example 12 of Public right of way



Neighbors on the Street : Example 13 of Public right of way



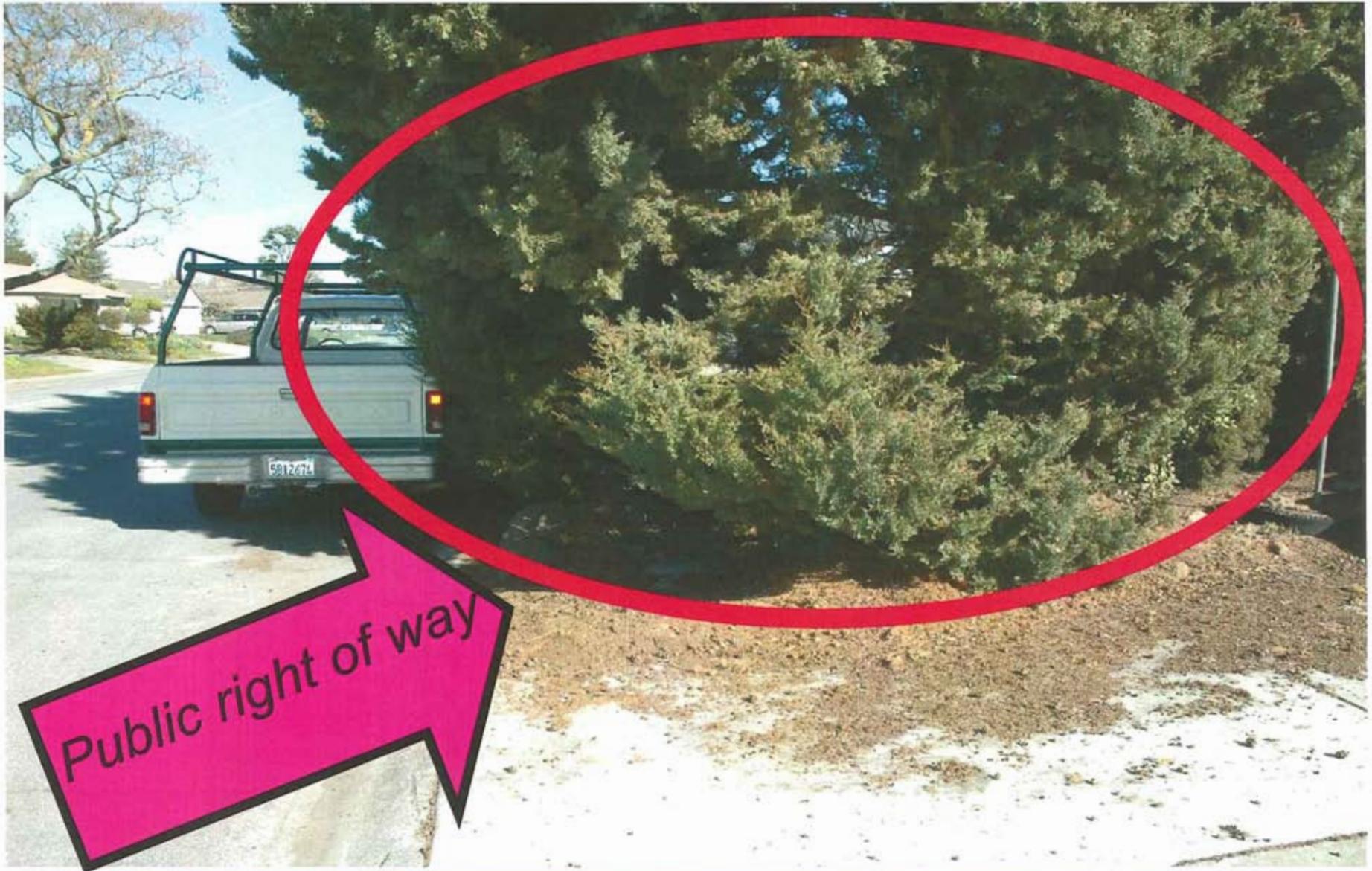
Neighbors on the Street : Example 14 of Public right of way



Neighbors on the Street : Example 15 of Public right of way



Neighbors on the Street : Example 16 of Public right of way



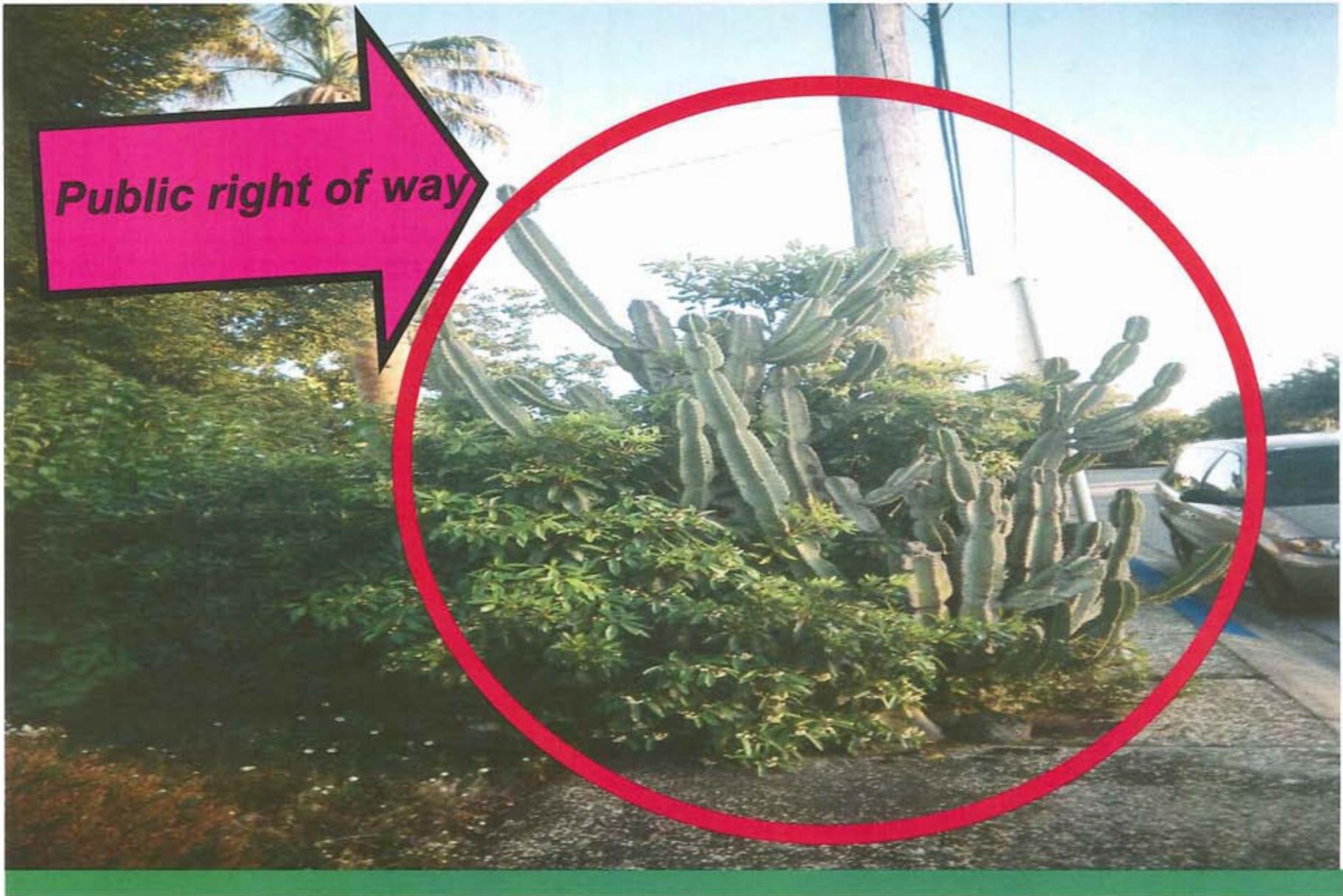
Immediate Neighbor to the right: Public right of way

UNFAIR

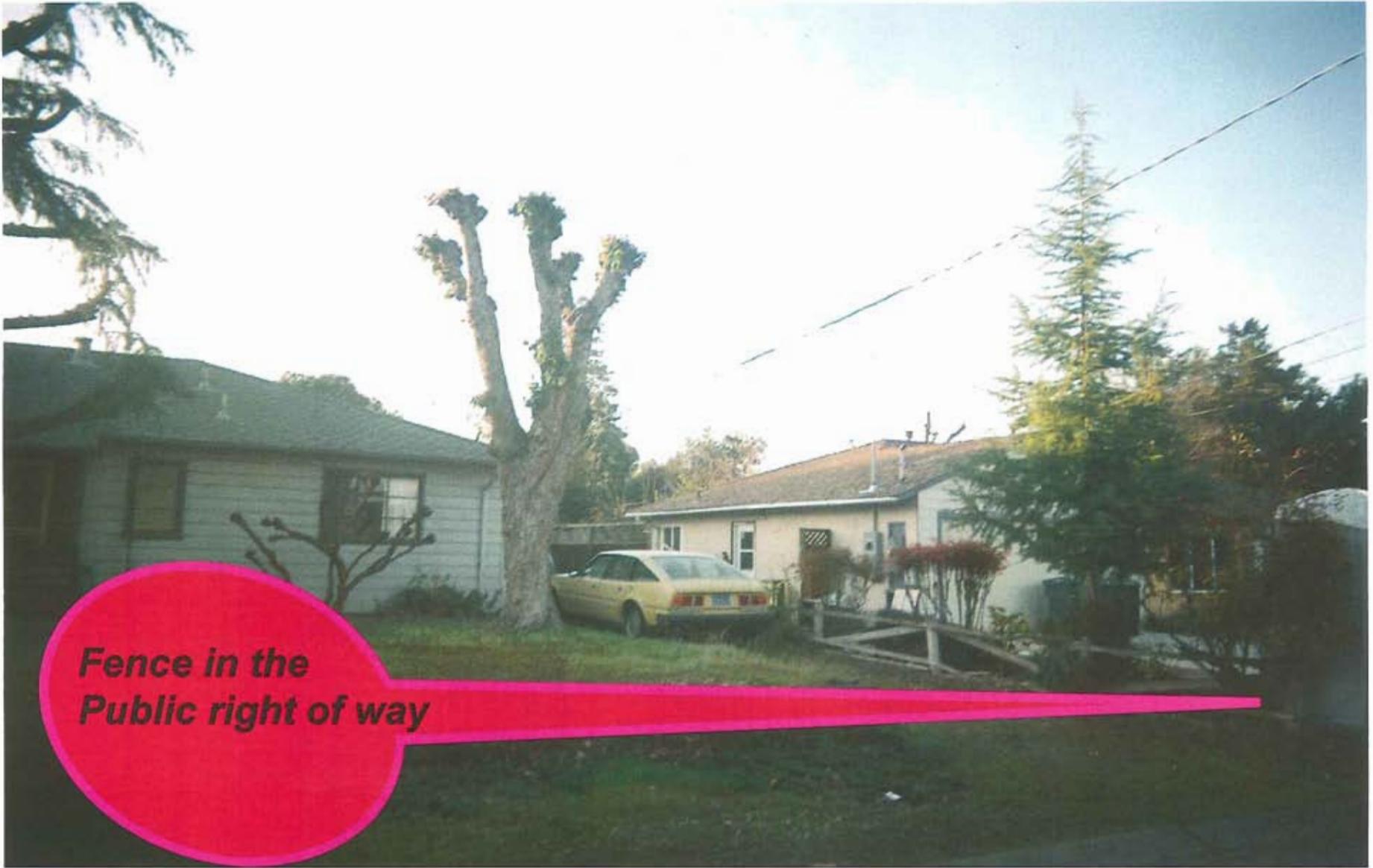
SPEED
CHECKED
BY RADAR

Selective enforcement
Public right of way

Immediate Neighbor to the left : Public right of way



Immediate Neighbor in the Front : Public right of way



***Fence in the
Public right of way***

Accountability: City must be financially accountable for its actions

Property owner reserves the right to bring legal action to recover funds for the construction and removal of a 1 foot concrete base to the fence, originally constructed with a valid permit, if the city planning commission ruling adversely affects the property owner financially.

***Selective and Subjective Enforcement:
Unfair and Unnecessary***

***All citizens of the City of Sunnyvale have equal rights
and must be treated as such during enforcement***