CC 01-18-2022

Oral Communications

Written Comments

Melissa Robertson

From: Kendra Rosenberg < kendra@knrds.com>

Sent: Friday, January 7, 2022 10:40 AM **To:** City Council; Debra Feng; Gian Martire

Subject: 10490 San Felipe - Potential ADU in existing "crawl space" **Attachments:** KNRDS_Council Letter_Cheung-Wang_2022 0107.pdf

Follow Up Flag: Follow up Flag Status: Completed

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Dear Cupertino City Council,

We respectfully request that the following letter be read during the public comments segment of the upcoming January 13th City Council meeting. It should take 3 minutes. I will be in (virtual) attendance, and would be happy to read it myself or have council read it on my behalf. Additionally, I would be happy to answer any questions from Council at that time.

Please let me know if you need anything else (for example: floor plans, letters from the client, etc.).

Best,

Kendra Rosenberg

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Kendra Rosenberg KNR Design Studio kendra@knrds.com 650-308-8745



January 07, 2022

City of Cupertino - CITY COUNCIL Cupertino City Hall 10300 Torre Avenue Cupertino, CA 95014-3202 408-777-3200 citycouncil@cupertino.org

TO: Darcy Paul, Mayor

Liang Chao, Vice Mayor Kitty Moore, Councilmember Hung Wei, Councilmember Jon Willey, Councilmember

CC: Deborah L. Feng, City Manager - DebF@cupertino.org

Gian Martire, Senior Planner, Planning Division - gianm@cupertino.org

RE: **10490 San Felipe Way - Potential ADU**

APN: 342-44-023 ZONE: R1-10

Dear Respected Members of the Council:

I am writing on behalf of my clients, Angela Cheung and Yuan-Chin Wang, to request the consideration of allowing an ADU to be built in an existing, legal/permitted crawl space.

The City of Cupertino has a somewhat unique situation where a series of houses were built with significant "crawl spaces" underneath homes - spaces that are not basements, as they are not fully underground, but that are tall enough to walk around in and even be habitable (as they meet the minimum building code requirement of 6'-8" height). Houses zoned in Cupertino's "Hillside zones" are allowed to have three stories, but "flat zones" are not. Some of the houses in the flat zones are essentially three stories tall already with these existing crawl spaces.

As it stands now: these crawl spaces in the flats may not be developed for any purpose beyond very basic storage, resulting in significant unusable potential square footage where these instances occur. As land and housing in this area is at a premium, this seems a tragic waste of potential.

With the stressful impositions of the ongoing COVID-19 pandemic, these extra spaces are needed now more than ever. The biggest single use of ADUs in this area are for "multi-generational living situations", which is the primary goal of this project as well.

When California passed sweeping reforms allowing for and encouraging ADUs back in January 2020, we saw a huge increase in demand for these structures. With the latest passing of SB-9, this state-protected demand is sure to continue to grow. This will take a toll on the physical limits of a property, and ultimately may negatively impact the surrounding neighbors by significantly increasing the density of structures on properties.

If the City allows existing habitable height crawl spaces to be converted to ADUs, the City can keep the density of stand-alone structures down, maintaining more of the existing feel and space of this area of Cupertino.

More specifically, utilizing existing crawl spaces for ADUs would achieve the following:

- There would be less site coverage/developed area, allowing more natural re-percolation of groundwater.
- There would be less need to remove existing trees to make way for new structures.
- There would be less long-term disruption to the neighbors; a new ADU could be as close as 4' to the property line. This alternative would maintain existing house distances between residences.
- Decreased long-term visual and noise impact to the neighborhood.
- The energy efficiency of the dwelling would be significantly improved, as a direct result of being within existing building structure. Power, water, and other utilities are readily available.
- The cost for the client would be significantly reduced, as the primary structure already exists. (We have been told by a GC that the cost savings could be \$250-350k versus building a new detached structure.)
- Decreased time and neighborhood impact of construction; as the projects do not start "from scratch", they would have shorter durations of construction when compared to stand-alone ADUs.
- Structurally, it is more sound to add weight to the bottom of the structure (and reinforce the existing structural elements during the project), rather than to create more weight to an attic space.

We understand that changing the City's guidelines for building out these crawl spaces may be cause for concern to the Council, and we support the continued prohibition of third floors still applying in general. We are only asking that exceptions be made in the instances of proposed ADUs.

We sincerely appreciate your time and consideration. If you have any further questions, please feel free to contact me.

Sincerely,

Kendra Rosenberg KNR Design Studio kendra@knrds.com 650-308-8745

Melissa Robertson

From: Douglas Pasos <dpasos@hotmail.com>
Sent: Tuesday, January 18, 2022 2:25 PM

To: City Clerk

Subject: FW:Northpoint Homeowners Association

Attachments: Back_20220116_220752.mp4; Back_20220116_185925.jpg; TimePhoto_20220116_151838.jpg;

TimePhoto_20211210_031753.jpg; master_20211028_85505_001.mp4; master_20211029_92657.mp4; 197901220_TimePhoto_20220116_152044_1210089.jpg; 1814572050_TimePhoto_20220116_000023_

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----- Original message -----

From: Douglas Pasos <dpasos@hotmail.com>

Date: 1/18/22 2:21 PM (GMT-08:00)
To: citycouncil@cupertino.org

Subject: Northpoint Homeowners Association

To whom it may concern,

My girlfriend (handicapped)lives at 10861 Northoak Square, Cupertino, CA 95014. The Northpoint board for decades for the majority of the time don't enforce their own cc&r's for certain homeowners. I called, Cupertino Code enforcement, Monica Diaz, about one month ago about my girlfriend's adjacent neighbor, 10853 Northoak Square. I have also emailed her photos of his Christmas lights on his fence, which are still on all three sides of his fence. I have emailed all nine board members and the previous and new management company. The president of the board, Ed Heim, who has been on the board for over 40 + years and is currently the board president, likes to harass my disabled girlfriend and myself. The reason the board retaliates against me is that I'm so frustrated with selective enforcement and the hostile environment due to the board. For example, for years our jr Olympic pool is sabotaged. They lock the bathrooms intentionally, which is in violation of the county health codes. For years, they have turned off the interior pool lights at night. Hence, the swimmers are swimming in pitch black. So for years, I continue to call DEH, (county of Santa Clara county, Department of environmental health). Finally, DEH, has being coming out to our pools and last week told me they will be doing maximum enforcement with Northpoint HOA.

Another example, I had a mediation with the board, the new management company, Infinity management company and the board's lawyer, Sharon Pratt. There were also two court mediators who work for Project Sentinel in Santa Clara, CA. Everything the board, management and lawyer said were lies. They said that the management company purpose is

not to enforce the cc&r's, city and county codes, etc..., including their lawyer. This is totally ridiculous. We're paying over \$130,000 per year for the new management company and one of their primary jobs is to enforce the cc&r's, bylaws, Cupertino codes and county codes.

Since, August 2020, the same adjacent next door neighbor at 10853 Northoak Square, has been parking his car in the main fire lane for the complex, like it's his own parking spot. Our parking rules, a subset of the cc&r's, say it's an automatic tow. During the mediation last month, the board lied and said he was towed once and received 22 tickets. That's impossible. He was never towed and it's impossible that he received 22 tickets. The reason being, since he moved in August 2020, the maximum amount of citations he received from the security patrol, would have been 15 citations, a maximum of 3 citations per quarter. Its irrelevant, he should have been towed immediately according to the Northpoint's parking rules.

I emailed and called Jeff Trybus, Cupertino code enforcement about him parking in the main fire lane, along with videos and photos. Jeff said he had no jurisdiction in our hoa, even though Jeff said it was a civil code violation. Next, I called the Santa Clara county fire Marshal and they also came out and did not cite or talk with Mr. Gupta, regarding him parking in the red main, 3 curbed fire lane, for over 1.5 years. That is a key fire lane and has access to the children's playground, small park and tennis courts behind our two units. I showed surveillance photos of mr. Gupta parking in the fire lane and the sheriff didn't do anything. The sheriff said to call them out when he is parking there, however, by the time the sheriff came out, he moved his car.

Right around the mediation we suddenly had a leak coming from the outside sprinklers and the water was leaking into the storm drain. Once again, I reported the leak to all the board members and the new management company. For two weeks after my emails without any replies, I called, Manny Barragan, Cupertino water investigator. Manny was furious with the board and management company for not shutting off the water leaking from the outside sprinklers into the storm drain. After a couple of weeks, Manny summoned, Bryan who is the manager of infinity management for this complex. I was there with Manny and Bryan. Manny told Bryan to shut off the leaking sprinkler or Northpoint would be fined. Finally, only because of the help from Manny, the management company forced the landscaping company, Medallion, to shut off the leaking sprinkler, otherwise, knowing the vindicative board the leak would still be going on!

Another serious problem, the adjacent neighbor, Mr. Gupta, replaced his outside, white round frosted light fixture with a clear light fixture and a very bright light bulb over this holiday weekend. We can see his bright light in the upstairs sleeping bedroom, throughout the downstairs, kitchen and living room and the back patio. We can also see his bright, non compliant light, hundreds of feet away from his unit. The light is a serious light nuisance and is an invasion of privacy. The original, round white, thick frosted lights are used to stop the light radiating into my girlfriend's unit and other units. So, his new clear light fixture and very bright bulb, intensifies the light. I will attach videos, photos and the section V of the cc&r's, relating to light fixtures and Christmas lights on fences. The videos and photos will show mr. Gupta parking in the fire lane, the Christmas lights which are still all over the back fence and the new bright non compliant light fixture along with the very bright light. For two days this weekend, Mr. Gupta had the light on, day and night, which intrudes the bedroom where my girlfriend sleeps.

A few weeks ago I copied one page from our cc&r's, relating to lights on fences and outside light fixtures, i.e. section V. I had my girlfriend, Karen Jacobson, who owns the townhouse at 10861 Northoak Square, bring the copy of Section V of our cc&r's and put it on Mr. Gupta's side garage door. Karen said mr Gupta, was furious and ripped it off the side garage door and crumpled it in his hands. I also went to his adjacent townhouse and asked him nicely to take down the lights on the top of all three sides of his fence. He told me to leave and he said he was going to call our the sheriff! He didn't and made up some lies to the previous manager and management company, regius management's owner, Zayra Yves. Zayra Yves, made up some more lies and nothing was done. My girlfriend had a similar experience years ago with the same unit with different owners, Mr and Mrs Gao. For over six years, the fence at 10853 Northoak Square had their back patio fence heightened over two feet, all across their back fence. Their corner unit is offset approximately 8 feet, set back from Karen's unit. As a result, for over six years, karen and her mother could not see the children's playground, park and the trees from her downstairs unit. We hired my previous HOA attorney, Laurence Steffan, from Fong and Fong law firm in Alameda, CA. We paid \$1,000 for Laurence to send two demand letters to their lawyers, Berding and Weil, Regius Management and all board members. Laurence also became frustrated with the board. Finally,

a lawyer from Berding and Weil law firm, wrote a letter to Laurence Steffan, stating the lawyers could have a mediation for \$3,500. The problem was that Karen was taking care of her mother and paying 24 hour caregivers and ran out of money.

After that, i contacted Phillip Willkomm, Cupertino building code enforcement. With his help after appapproximately nine months, Phillip was able to force the board and mananagement to take down the illegally heightened fence. Phillip told me it was hard for him and the city of Cupertino to push the board and property manager, Zayra yves, to finally remove the heightened fence!

Unfortunately, my lawyer, Laurence Steffan, is now retired. Even so, if were not retired the board like to drag out lawsuits for years to outspend and wear down the homeowners. The board loves to drag out lawsuits for years, since it's not their money, it's the homeowners money!

An example how serious this problem is regarding lawyers and lawsuits. Many officials with the City of Cupertino are familiar with the David Critzer lawsuits. I knew David critzer fairly well. The board allowed one of their puppets, Jerry Enos to illegally install a window in his upstairs bathroom which looked into his living room and kitchen. The lawsuit began around 2005 and the board drug it out in the courts, for over six years. David spent approximately \$800,000 of his own money. When it came time to select a jury for the trial, the board settled with the Critzers for \$125,000. So, David was out \$675,000. The board never replaced Jerry Enos window and only heightened the gate for the critzer's. With so much of their money drained because of that lawsuit, along with stress, David and his wife Margaret divorced. David moved out and bought a single family home in mountain view and his ex wife lives in the townhouse in Northpoint. In 2007, I had a lawsuit in Santa Clara superior court and the board drug my lawsuit for over two years and Laurence steffan and i won the case against the board. D. Pasos vs Northpoint hoa. Now that Laurence steffan is fully retired and it is extremely hard to find an attorney like him. Most attorneys are on the side of the HOA's, not for homeowners! In conclusion, I am asking for someone in the city of Cupertino to intervene with Mr Gupta and his wife FNU Sakshi. Karen and i don't have hundreds of thousands of dollars to burn off for a new hoa attorney. If possible I would like to bring up these matters tonight during the online city council meeting tonight or talk with the mayor and or the city attorney. I also have many years of videos, photos, documents that can prove just how serious problems are with the Northpoint board members.

Thank You, Karen Jacobson and Douglas Pasos 10861 Northoak Square, Cupertino 4082348918: my cell phone







CC 01-18-2022

#9

Attachment C - OE3 Side Letter Agreement

Desk Item



Side Letter Agreement

SIDE LETTER AGREEMENT TO THE 2019 – 2022 OPERATING ENGINEERS, LOCAL NO. 3 UNION, AFL-CIO MEMORANDUM OF UNDERSTANDING CONCERNING CONSTRUCTIVE RECEIPT AND LEAVE SELLBACKS

DATE: November 30, 2021

Background Overview

This Side Letter Agreement ("Agreement") relates to modifications to the City of Cupertino's ("City") sell back provisions whereby an employee has the option to receive the cash value of annual leave earned instead of taking the time off. Specifically, and pursuant to the current Memorandum of Understanding between the City and Operating Engineers, Local No. 3 ("Union") effective July 1, 2019 through June 30, 2022 ("MOU"), employees have the options to sell back the following types of leaves:

- Under Section 9.6, employees may exercise the option twice each calendar year to convert any/or all accumulated compensatory time to cash.
- Under Section 14.3, employees may convert, on a twice per calendar year basis, unused vacation time for payment subject to the following conditions: i) the employee must have accrued vacation of at least 120 hours; ii) any payments made for unused vacation will be subject to all appropriate taxes; iii) minimum exchange will be 8 hours; maximum exchange will be 80 hours; and, iv) all changes are irrevocable.

Under these Internal Revenue Service ("IRS") Regulations, the IRS considers income to be received for tax purposes if the individual actually receives it or has an option to receive it during each tax year. This is known as the constructive receipt doctrine. Application of this constructive receipt doctrine to the City's sell back of leave provisions would mean that any annual leave subject to sell back would have to be taxed as it is



Side Letter Agreement

earned because the City's program allows the employee an unimpeded option to take this leave as cash rather than to take the time off.

However, IRS Regulations also provide that the constructive receipt doctrine will not apply if an individual's control over the receipt of income is subject to substantial limitations or restrictions. Several private letter rulings have held that income is not constructively received as annual leave accrues if an individual has made an irrevocable election before the tax year in which it accrues to receive only a designated portion of this annual leave as cash.

Relying on these private letter rulings as an indication of how the IRS would view the City's sell back of leave provisions, the City has proposed and the Union has agreed to modify the program prospectively to comply with applicable IRS Regulations.

<u>Summary of Modifications to Existing Leave Sell Back Provisions and Intent of This Agreement</u>

The modification contained in this Agreement is designed to preserve the employee's ability to receive sell back of leave provisions but substantially limit that ability so that there is no "constructive receipt" as the IRS defines it. To accomplish this, an employee will be required to make an irrevocable election annually by December 31 or by the preceding Friday if December 31 falls on a Saturday or Sunday, to specify how much payin-lieu of leave to be earned in the following calendar year the employee wishes to receive during that calendar year.

The details related to the administration of this modified sell back of leave provisions are set forth below. Unless otherwise noted herein, an employee's right to earn and use annual leave as specified in any applicable MOU or City policies or Personnel Rules, remains unchanged.

Terms of Agreement



Side Letter Agreement

The City and the Union enter into this Agreement and hereby agree to as follows:

- 1. Effective for all calendar years beginning on and after January 1, 2022, employees may sell back any applicable vacation or comp time leaves (as specified under Sections 14.3 and 9.6 of the MOU, respectively; collectively referred to hereinafter as "annual leave hours"), each calendar year, subject to the following rules:
 - a. If an employee fails to elect by December 31 each year or by the preceding Friday if December 31 falls on a Saturday or Sunday, to receive any of the annual leave hours he or she will earn in the following calendar year as payin-lieu, his or her annual leave will accrue in accordance with the applicable MOU, City policy or Personnel Rules provisions.
 - b. If an employee irrevocably elects by December 31 each year or by the preceding Friday if December 31 falls on a Saturday or Sunday, to receive a portion of the annual leave hours he or she will earn in the following calendar year, not to exceed 80 hours of vacation or 80 hours of comp time for the calendar year, as pay-in lieu, the City will make payments to the employee as designated on the City-approved form, which may occur up to twice annually on: the second full pay period in January and the second full pay period in July of the following year. However, an employee cannot request the pay-out of any pay-in-lieu hours until those hours have been earned and accrued. Further, at the time of payment, the employee must have the requisite number of hours available and meet the requirements pursuant to the applicable MOU section for sell back. Otherwise, the amount to be cashed out will be based on the number of hours available at the time of the sell back payment.
 - c. An employee must make an irrevocable election by December 31 each year or .by the preceding Friday if December 31 falls on a Saturday or Sunday, if the employee wishes to participate in the pay-in-lieu of annual leave program for the following calendar year. Elections will not automatically carry over from one calendar year to the next calendar year. An employee who fails to elect by December 31 each year or by the preceding Friday if December 31 falls on a Saturday or Sunday, to participate in the pay-in-lieu



Side Letter Agreement

of annual leave program for the following year will be deemed to have elected not to participate and he or she will be prohibited from receiving any pay-in-lieu during that year except as, and only to the extent, permitted under Section 4 below.

- d. Each year, in advance of this annual December 31 deadline, the City will provide employees with notice and an explanation regarding the need for an irrevocable election as well as the relevant form for making the election.
- When pay-in-lieu is cashed out, it will be paid based on the employee's rate of pay at the time it is paid. All pay-in-lieu pay-outs are taxable income, subject to all applicable withholdings and payroll deductions.
- 3. Existing caps on the accrual of annual leave will remain in effect.
- 4. Effective for calendar years beginning on and after January 1, 2022, an employee's election with regard to pay-in-lieu shall be irrevocable except in the event of an unforeseeable financial emergency subject to the following rules:
 - a. In the event of an unforeseeable emergency, as defined in subsection b, an employee may apply to receive pay-in-lieu of annual leave accrued on or after January 1, 2022, but limited to the amount that is reasonably necessary to satisfy the emergency need, including any amounts that may be necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated as a result of the cash out. If Human Resources approves an employee's application, the City will pay the employee the pay-in-lieu amount it deems necessary to meet the emergency need.
 - b. "Unforeseeable emergency" means a severe financial hardship of the employee resulting from an illness or accident of the employee, the employee's spouse, or the employee's dependent (as defined in Internal Revenue Code sections 152, and, without regard to Internal Revenue Code sections 152(b)(1), (b)(2), and (d)(l)(B)); loss of the employee's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a direct result of events beyond the control of the employee. For example, the imminent foreclosure or eviction



Side Letter Agreement

from the employee's home may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent (as defined in Internal Revenue Code section 152, and, without regard to Internal Revenue Code sections 152(6)(1), (6)(2), and (d)(l)(B)) of the employee may also constitute an unforeseeable emergency. Neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. Pay-in-lieu of annual leave on account of an unforeseeable emergency will not be paid to the extent that such an emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the employee's assets, to the extent liquidation of such assets would not itself cause severe financial hardship. Employees who face an unforeseen emergency and experience the need for an emergency cash out of annual leave are advised to contact Human Resources for a determination, which will be made based on the individualized and specific circumstances presented.

- 5. To comply with effective date of this change beginning on or after January 1, 2022, employees must make the requisite election by December 31, 2021.
- 6. Specific provisions in this Agreement supersede any previous agreements, whether oral or written, regarding the subject matter of this Agreement.
- 7. Upon approval by the City Council, this Agreement is intended to be read in conjunction with the MOU and where in conflict on the specific issue covered by this Agreement, this Agreement will control.
- 8. The City and the Union will incorporate the language set forth in this Agreement into any successor MOU, as well as into and applicable City policies and Personnel Rules. The terms and contents contained in this Side Letter Agreement shall remain in force beyond the expiration of the 2019 2022 MOU.

2019 - 2022 MOU

Operating Engineers, Local No. 3 Union, AFL-CIO



Side Letter Agreement

All other provisions of the parties' MOU shall otherwise remain in full force and effect. This Side Letter Agreement shall only become binding and effective upon the City Council's approval and adoption of this Side Letter Agreement.

The parties' signatures below signify that they have met and conferred in good faith in accordance with California Government Code Section 3500, et seq. Agreed to on this 18th day of November 2021, by the parties' authorized representatives.

For the City		For the Union	
MRC_		Michael Moore	1/10/22
Christopher Boucher	Date	Michael Moore	Date
hos	1/10/2022		
Kristina Alfaro	Date		
vanessa Guerra			
Vanessa Guerra	Date		

OE3 Side Letter Agreement 11-30-21

Final Audit Report 2022-01-13

Created: 2021-12-07

By: Siu Ley (siul@cupertino.org)

Status: Signed

Transaction ID: CBJCHBCAABAAFchRH1PiylPObAgfhZFDMBEbvS7u5Try

"OE3 Side Letter Agreement 11-30-21" History

1 Document created by Siu Ley (siul@cupertino.org)

2021-12-07 - 10:29:24 PM GMT-IP address: 157.131.74.13

Document emailed to Michael Moore (mmoore@oe3.org) for signature

2021-12-07 - 10:32:04 PM GMT

Email viewed by Michael Moore (mmoore@oe3.org)

2021-12-07 - 10:40:37 PM GMT-IP address: 174.194.192.214

🖰 Email viewed by Michael Moore (mmoore@oe3.org)

2022-01-10 - 7:51:31 PM GMT- IP address: 50.255.26.73

Document e-signed by Michael Moore (mmoore@oe3.org)

Signature Date: 2022-01-10 - 7:52:21 PM GMT - Time Source: server- IP address: 50.255.26.73

Document emailed to Vanessa Guerra (vanessag@cupertino.org) for signature

2022-01-10 - 7:52:23 PM GMT

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Signature Date: 2022-01-10 - 7:54:40 PM GMT - Time Source: server- IP address: 108.213.70.66

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🖰 Email viewed by Kristina Alfaro (kristinaa@cupertino.org)

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Document e-signed by Kristina Alfaro (kristinaa@cupertino.org)

Signature Date: 2022-01-10 - 8:12:29 PM GMT - Time Source: server- IP address: 208.95.236.60



Document emailed to Christopher Boucher (christopher@boucher.law) for signature

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Document e-signed by Christopher Boucher (christopher@boucher.law)

Signature Date: 2022-01-13 - 8:21:32 PM GMT - Time Source: server- IP address: 23.19.75.144

Agreement completed.

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