

February 12, 2015

President London Breed
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlet Place
City Hall, Room 244
San Francisco, CA 94102

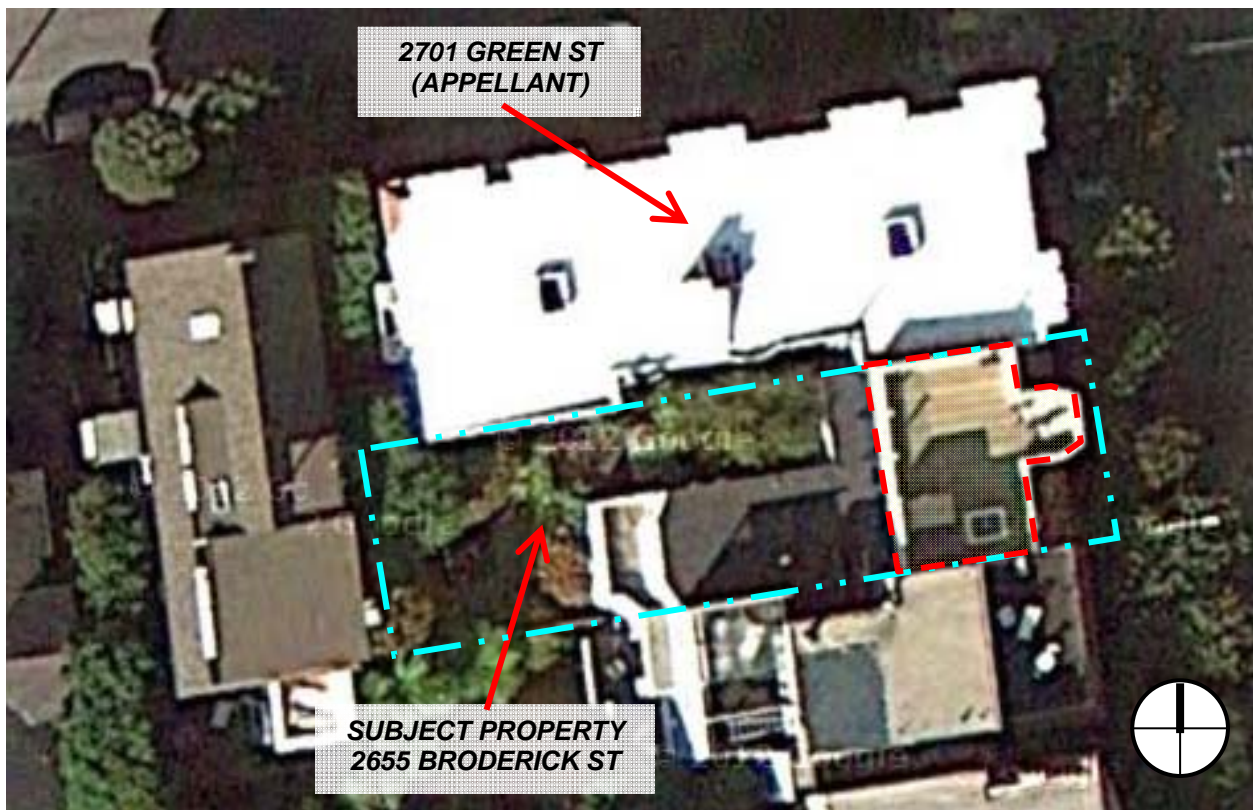
REGARDING: Appeal of Categorical Exemption
ADDRESS: 2655 Broderick St
SUBJECT: Project Sponsor Opposition to Appeal
FOR HEARING: February 24, 2015

Dear President Breed and Members of the Board,

On behalf of property owners Mark and Carrie Casey (“Project Sponsor”), we offer this information and these responses to the Appeal of Categorical Exemption for work at the subject property.

PROJECT BACKGROUND

The subject property is a 30-foot wide by 100-foot deep lot on the west side of Broderick Street, between Vallejo and Green Streets. The site is developed with a three-story (including garage) single-family home purchased by the Project Sponsor in October of 2007.



The Categorical Exemption under appeal was issued pursuant to two building permit applications filed by Project Sponsor. The permit applications would legalize minor structures constructed by previous owners, and would clear Notices of Violation engendered by DBI complaints the Appellant filed.

Building permit application 2013 09 12 6711 (hereinafter "Permit 1") was filed to legalize part of a deck one story above rear grade, and an uncovered single-story stair from that deck to grade. This work was originally approved by the City in July of 1985, via permit number 8504468, filed by then-owner Mary Yolles. The work was constructed, but did not receive required inspections. The permit expired on 4/14/1986, which rendered the work illegal. This occurred more than 21 years prior to the purchase of the property by the Casey family. The status of the stair as an illegal but otherwise Code-complying structure was never disclosed to or discovered by Project Sponsor until the Appellant began his six-year campaign against them.

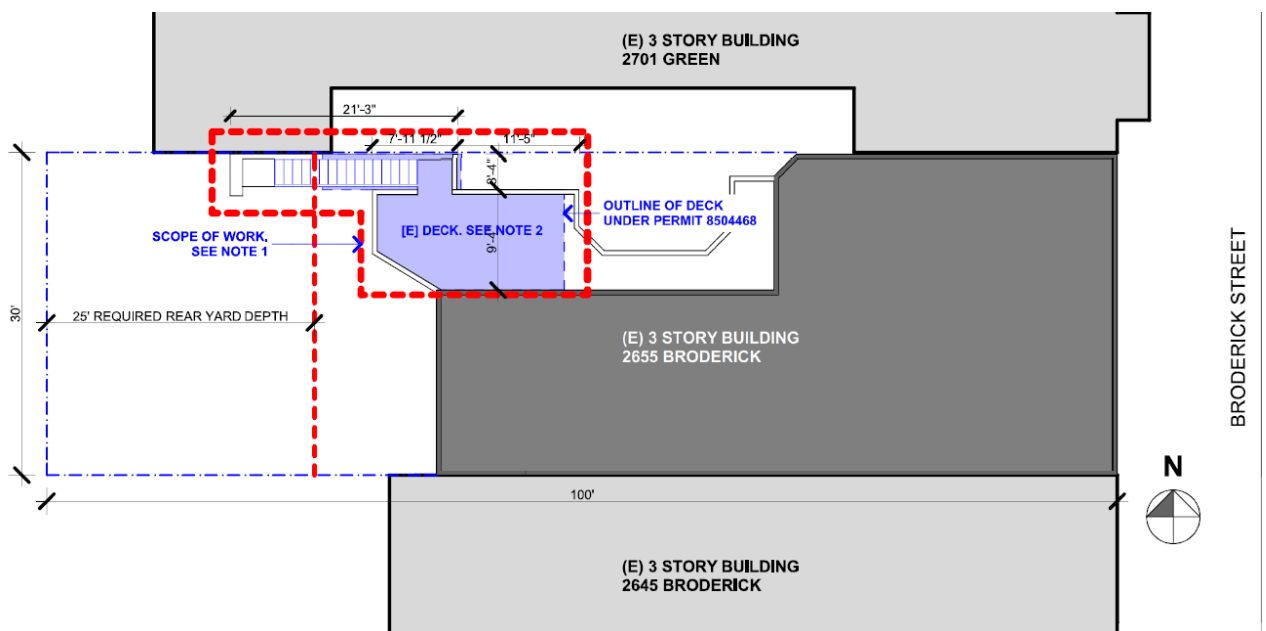


Figure 1: Site Plan showing scope of work under "Permit 1" (from DNM Architect)

Likewise, building permit application 2013 0912 6709 (hereinafter "Permit 2") was filed to legalize a stair penthouse and 425 square-foot roof deck, constructed without an approved permit.

In 1985, then-owner Mary Yolles filed permit applications that included addition of a roof deck and stair penthouse. Those elements were removed from the scope of the permits in notes handwritten by the applicant on the approved plans.

Ms Yolles sold the property in 1988 to Peter and Nancy Lowe, who filed permit application 9009756 with plans drawn by Butler Armsden Architects and dated 5-17-90, with a scope of work to remodel and add to the residence. Those plans show an "existing" roof deck and an "existing" rectangular stair penthouse in their current extant configurations. Part of the scope of work of those plans included re-construction of the stair penthouse and the addition of high

clerestory windows to the existing story below. This work was removed from the permit by notes added to the drawings after submittal, and changes to later revision sets.

Therefore we believe the roof deck (with hot tub) and penthouse were illegally constructed, apparently in accord with unapproved but professionally designed architectural and engineering plans, some time from 1985 to 1990. Again, this is between 17 and 22 years before the Casey family purchased the property in October 2007.

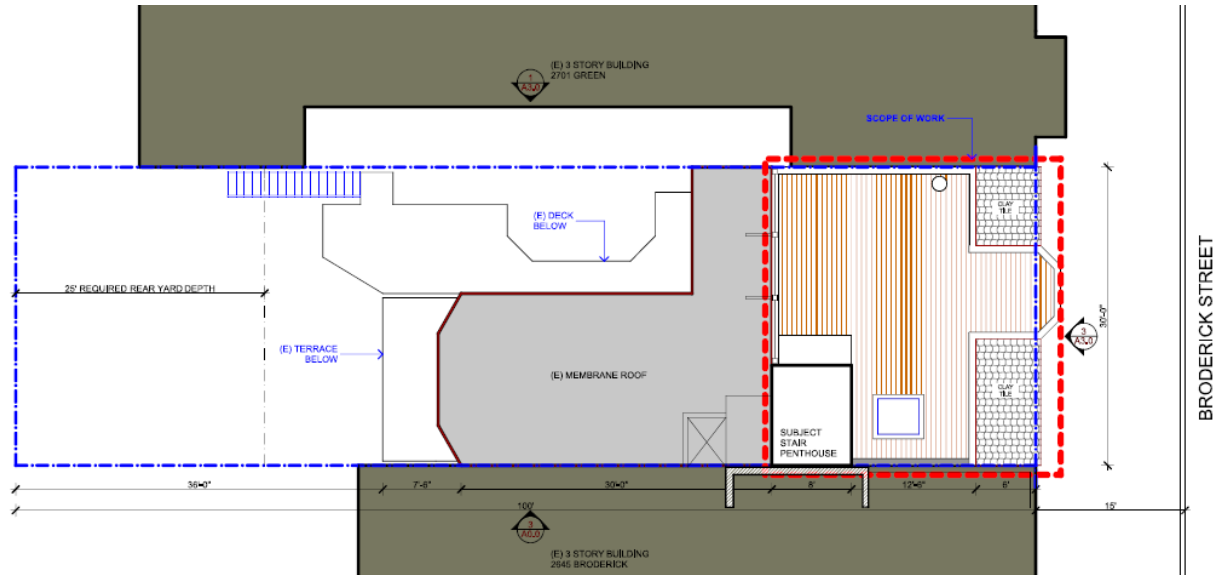


Figure 2: Roof Plan showing scope of work under "Permit 2" (from DNM Architect)

The Caseys filed permit 2008 02 12 4651 on 2/12/2008 to replace their failing roof membrane. They and their contractor, unaware that the deck and penthouse were not legally constructed, removed the hot tub, deck, and guard wall finishes to enable reroofing of the residence. Then the deck and walls were replaced, but the hot tub was not reinstated. The project was given a completed final inspection by DBI on 4/7/2008. Here is DBI's record of the permit, its approval, and its final inspection:

Permit Details Report

Application Number: 200802124651
 Form Number: 8
 Address(es): 0955 /002 /0 2655 BRODERICK ST
 Description: REROOFING.
 Cost: \$13,800.00
 Occupancy Code: R-3
 Building Use: 27 - 1 FAMILY DWELLING

Disposition / Stage:

Action Date	Stage	Comments
2/12/2008	TRIAGE	
2/12/2008	FILING	
2/12/2008	FILED	
2/12/2008	APPROVED	
2/12/2008	ISSUED	
4/7/2008	COMPLETE	Final Inspection/Approved

Activity Date	Inspector	Inspection Description	Inspection Status
4/7/2008	Michael Quinlan	FINAL INSPECT/APPRVD	FINAL INSPECT/APPRVD

Sometime in early 2008 the Appellant approached the Caseys with objections to the presence of the stair adjacent to his property, stating that City codes did not permit that. When told that the structure was allowed by Code, the Requester said he would have the Code changed so that it wouldn't be allowed, and that his legal pursuits would cost the Casey's \$75,000 or more. Because the Caseys chose to legalize a stair in a location that had been approved by permit, but had not received its final inspection under previous ownership, on a property they recently purchased in good faith, Appellant began a six-year campaign of bureaucratic complaints, a civil suit, and a relentless broadcast of distortions, misconceptions, and misstatements sent to the Mayor, the District Supervisor, the City Attorney, various DBI and Planning Department directors, managers and staff, the Zoning Administrator, City Commissioners, Appellant's colleagues in The Cow Hollow Association, and others.

Appellant's unrelenting use of every means possible to impede approval of any application that would legalize the stairs, roof deck, or any other permit filed by the Project Sponsor has taken its toll of time, City resources and funding on all sides. He appealed the issuance of a planter permit (one not subject to Planning Department review) to the Board of Appeals, where that permit was upheld unanimously. He filed requests for Discretionary Review on Permits "1" and "2" described above. The Planning Commission, on December 18, unanimously approved both of those permits as submitted. In none of these cases did he ask for appropriate resolution, or provide proof of his assertions of damage from the projects. Now we are focused on a frivolous appeal of a routine Categorical Exemption.

NO BASIS FOR CAT EX APPEAL

CEQA was enacted as state law to analyze projects for significant effects on the environment. Some projects are so minor in scope, so commonplace in occurrence, and so well-governed by the Building and Planning Codes, that CEQA recognizes they could have no effect on the environment. The projects are by law exempt from CEQA review. That is the case here, in a city where there are tens of thousands wood-frame stairs adjacent to neighboring properties, and where there are thousands of roof decks.

No where in his appeal of the Cat Ex does Appellant cite any point of law to support overturning the Planning Department's determination. Instead, he once again recycles the litany of complaints and demands that we have seen in his previous permit appeals and DR requests.

Because he will employ any means possible to delay resolution of these projects without valid reasons for his objections, including fabricating or exaggerating impacts to his property, and misconstruing code requirements, Appellant seems unable to present his concerns in the proper venue. For instance, in his DR Requests, Appellant raised multiple issues which fell into one or more of these categories:

- A. Invalid Planning Issues: wherein the Planning Code and Residential Design Guidelines allow structures Appellant believes shouldn't be allowed;
- B. DBI Issues: wherein Appellant asked the Planning Commission to take action on Building Code requirements or processes under the purview of the Department of Building Inspection; and,

C. Civil Issues: wherein Appellant asked the Planning Commission and DBI to impose revisions or conditions on matters that are subject to private agreements between land owners. It is in this category that Appellant has valid concerns. However, DR requests, appeals, and importuning City commissions to intercede in private agreements is not the way to resolve them.

At the Planning Commission DR hearings, we stated our willingness to try to reach agreements with Appellant on the following matters:

1. Flashing between Appellant's south roof curb and the subject roof deck guardwall.
2. Flashing between Appellant's south property line wall and the subject stair guardwall/railing.
3. Removal of the existing stair finishes and structure sufficient to provide access for Appellant's contractor, consultants, and inspectors to maintain or repair his south property line wall at 2701 Green, predicated on execution of a mutually acceptable written access agreement.
4. Removal of some "Type 3" fill as identified in our geotechnical report, to lower grade on the subject property a few inches in select areas.¹

Note: none of these is a CEQA issue. Appellant has, as of this writing, provided no arguments supporting his contention that the Planning Department erred in issuing the Cat Ex determination.

APPELLANT WON'T WORK TOWARD A RESOLUTION

At the DR hearing on December 18, we expressed openness to attempt, again, to reach agreement with Appellant on the issues listed above. Appellant's engineer Rodrigo Santos, during rebuttal, stated he was "delighted to hear of our willingness" to do so.

Following the DR hearing (at which the Planning Commission unanimously upheld both Permits 1 & 2) Appellant, instead of meeting to reach a resolution on design details for shared flashing, or working out the terms of an access agreement, proceeded to file this meritless Cat Ex appeal. This is not the behavior of someone who wants to solve neighbor-to-neighbor problems.

Appellant is becoming well-known to the City's permitting agencies and land use commissions for his obstructionist tactics, not only at this property but at others as well. He frequently makes last minute requests for rescheduling and continuances; he broadcasts misstatements and exaggerations that are unsupported by any evidence; he spreads misinformation among neighbors in attempts to garner allies in his opposition; he fails to provide timely analyses for

¹ Please see Exhibit A for a narrative regarding Appellant's assertions regarding fill imported to Project Sponsor's rear yard and the alleged effects of this exaggerated claim of a "surcharge" on his retaining wall. Even if Appellant's contentions were true, minor changes in soil levels (less than 8 feet) and alleged errant run-off from the project site do not trigger CEQA review, but are adequately addressed by the Building Code and are under the jurisdiction of DBI.

his misplaced appeals, and instead “document dumps” irrelevant histories and lengthy narratives that are not germane to the issues at hand; he overwhelms City staff with multiple daily emails; he wants City agencies to impose conditions that are not within their purview; he misunderstands his own appeals and the scopes of power of the appellant bodies, and he is unremittingly aggressive, irrational, hostile and unreasonable in his demands and actions.

It is difficult to reach a resolution with a party whose priority seems to be creating as much delay, hardship, and discord as possible.

S U M M A R Y

The project applications associated with the subject Cat Ex are entirely Code-complying, appropriate for the property and the neighborhood, and without exceptional or extraordinary circumstances. They are commonplace, mundane minor structures that are present on residential properties all over the City. The reasons offered by the Requester for opposing the Cat Ex are either fallacious Planning Code issues, or matters that are under the review and purview of DBI, or civil issues subject to private agreements between owners, not CEQA issues. Appellant has failed to meet his burden of proof that the Planning Department erred in issuing this Cat Ex.

Appellant is abusing the CEQA appeal process in a misguided attempt to undo the permit approval decisions of the Planning Commission. There are no environmental review issues with Project Sponsors’ permits, either in fact or law. The Planning issues have been adjudicated at the Commission. (There were none.) Any alleged Building Code issues regarding soil surcharges and site drainage should be (and probably will be) properly heard at the Board of Appeals.

We respectfully request that the Board vote to uphold the Determination of Categorical Exemption from Environmental Review as issued by the Planning Department, on the basis that the project meets all requirements for a Class 1 exemption in accord with CEQA Guidelines and Chapter 31 of the Administrative Code.

Yours truly,


Craig Nikitas

Exhibit A

*Information and Response Regarding
Soil Levels at Rear Yard of
2655 Broderick St.*

The centerpiece of Appellant's opposition to Project Sponsor's permits has become his *idée fixe*: that somehow, the grade of Project Sponsor's rear yard has been raised recently by two feet. In November of 2011, Appellant filed a complaint with DBI about this very issue.

COMPLAINT DATA SHEET

Complaint Number: 201173477
 Owner/Agent: OWNER DATA SUPPRESSED Date Filed: 11/29/2011
 Owner's Phone: -- Location: 2655 BRODERICK ST
 Contact Name: -- Block: 0955
 Contact Phone: -- Lot: 002
 Complainant: COMPLAINANT DATA SUPPRESSED Site:
 Rating:
 Occupancy Code:
 Received By: Christina Wang
 Division: BID
 Complainant's Phone:
 Complaint Source: TELEPHONE
 Assigned to Division: BID
 Description: Grade was raised in rear yard w/out required grading permit. This raise grade purchase (E) neighbor retaining wall
 Instructions:

INSPECTOR INFORMATION

DIVISION	INSPECTOR	ID	DISTRICT	PRIORITY
BID	DUFFY	1100		

REFERRAL INFORMATION

COMPLAINT STATUS AND COMMENTS

DATE	TYPE	DIV	INSPECTOR	STATUS	COMMENT
11/29/11	CASE OPENED	BID	Duffy	CASE RECEIVED	
12/07/11	OTHER BLDG/HOUSING VIOLATION	CES	Duffy	CASE CONTINUED	Send letter to owner.
12/09/11	OTHER BLDG/HOUSING VIOLATION	PID	Duffy	OFFICE/COUNTER VISIT	Mailed "Inspection Request."
12/16/11	OTHER BLDG/HOUSING VIOLATION	PID	Duffy	CASE UPDATE	Mailed "Inspection Request."
06/28/12	OTHER BLDG/HOUSING VIOLATION	INS	Duffy	FIRST NOV SENT	Issued 1st NOV by Inspector D. Duffy
07/02/12	OTHER BLDG/HOUSING VIOLATION	INS	Duffy	CASE UPDATE	Mailed copy of 1st NOV -- mst
07/11/12	OTHER BLDG/HOUSING VIOLATION	BID	Duffy	CASE ABATED	No evidence that grade was raised. in excess of that exempted under section J103.12. No evidence presented to indicate when grade was raised or by how much. Photos (included) are inconclusive invoice (included) indicates 2 8 yd dirt boxes of material removed

Figure A.1: Abated complaint regarding raised grade

Code Enforcement Inspector Donal Duffy abated that complaint over two years ago. Project Sponsor did remove some soil from the rear yard, to correct grading and drainage issues that could cause some water flow off their property. This corrected any Code issues to the City's satisfaction, if not Appellant's. The month after his first complaint about soil level was cleared,

he filed a second, identical complaint. This complaint was found to be without merit, and was abated in December of 2012.

COMPLAINT DATA SHEET

Complaint Number: 201261763
Owner/Agent: OWNER DATA SUPPRESSED
Owner's Phone: --
Contact Name: --
Contact Phone: --
Complainant: COMPLAINANT DATA SUPPRESSED
Date Filed: 08/31/2012
Location: 2655 BRODERICK ST
Block: 0955
Lot: 002
Site:
Rating:
Occupancy Code:
Received By: Ying Pei
Division: BID
Complainant's Phone:
Complaint Source: TELEPHONE
Assigned to Division: BID
Description: Soil level raised at northern elevation of rear and side yards without grading permit surcharging neighbor retaining wall at 2701 Green Street. At southern elevation soil has been lowered affecting sub-lateral support for retaining wall at 2645 Broderck.

Instructions:

INSPECTOR INFORMATION

DIVISION	INSPECTOR	ID	DISTRICT	PRIORITY
BID	DUFFY	1100		

REFERRAL INFORMATION

COMPLAINT STATUS AND COMMENTS

DATE	TYPE	DIV	INSPECTOR	STATUS	COMMENT
08/31/12	CASE OPENED	BID	Rafael Jr.	CASE RECEIVED	
12/19/12	OTHER BLDG/HOUSING VIOLATION	CES	Duffy	CASE ABATED	Same complaint as C#201173477 abated 7/11/12

Figure A.2: Second complaint regarding raised grade

In response to these and a suite of other complaints, the Caseys had a geotechnical report prepared by Mr. Patrick Shires, a principal engineer of Cotton, Shires And Associates, Inc. regarding the soil at the Casey property. Mr. Zaretsky (presumably it was he; complainant information is suppressed on-line) filed a third complaint about the soil level at 2655 Broderick (see Fig. 5), and his consultant Paul Cox twisted the findings in Mr. Shire's report as follows, in reference to the rear stairs in a letter Cox wrote to Planner Mary Woods dated September 9, 2014:

"Specifically, the vertical dimension showing that the existing stair at 3-feet above the ground level meets the 25-foot setback is incorrect in at least two ways. First, it is measured from the top of the existing unpermitted patio tile and not the top of the soil. Second, the soil level itself is backfill that is part of the illegal surcharge on the neighboring retaining wall that must be significantly reduced ..."

"For background on the surcharge issues, I refer you to Cotton, Shires and Associates' report to Mr. Casey's then attorney James Biernat, dated February 3, 2012, and to WJE's report to Mr. Zaretsky's then attorney Robert Hendrickson, dated November 14, 2012. If you do not have copies of these reports, please let me know and I will forward them to you."

Here is engineer Shire's response to this distortion:

"Regarding Mr. Zaretsky's claim that Mr. Casey's predecessor added 2 feet of soil behind the retaining wall and his use of our report as justification for that claim:

"Nowhere in our referenced geotechnical report did we state or imply that the original backfill of the old retaining wall was augmented within the past several decades by adding Type 2 fill. In the early 1900's as it is today, it was/is common practice when constructing cut/fill lots such as those along Broderick Street to use both the native materials removed as fill as well as importing fill from offsite. They would cut on the upslope side of the lot and fill on the downslope side of the lot, building retaining walls at the property lines to add more level area for yards, etc. Because the builder of Mr. Zaretsky's lot wanted a parking garage beneath the structure and because his lot fronts on Green Street, they had to cut an additional depth to create a level lot and had to build a higher retaining wall to support that deeper cut. It was not the practice in the early 1900s, nor is it now, to build retaining walls at the boundaries of cut/fill lots that have 2 feet of freeboard (2 feet of unused retaining wall sticking up in the air). The different types of fill logged in our test pits behind the retaining wall simply represent Type 1 - the re-use of native materials, Type 2 - the import of offsite materials for the original lot construction as described above, and Type 3, more recent infill from detritus and landscaping activities. We are recommending that more recent Type 3 materials be removed in the area of the new planter box, but not the Type 1 and Type 2 materials from original construction. Those Type 1 and Type 2 materials have been behind Zaretsky's wall since it was built and removing them would create a sinkhole to trap water behind the wall, adding hydrostatic pressure to it unless the water is somehow caught and pumped away. We recommend leaving the wall backfill conditions as they were intended to be when the wall was constructed." [Emphasis added.]

For engineer Cox willfully to attribute to another design professional the misstatement that off-site fill imported to the site a century ago is recently added fill is unconscionable.

COMPLAINT DATA SHEET

Complaint Number: 201486293
 Owner/Agent: OWNER DATA SUPPRESSED
 Owner's Phone: --
 Contact Name: --
 Contact Phone: --
 Complainant: COMPLAINANT DATA SUPPRESSED
 Date Filed: 07/18/2014
 Location: 2655 BRODERICK ST
 Block: 0955
 Lot: 002
 Site: --
 Rating: --
 Occupancy Code: --
 Received By: Gregory Slocum
 Division: INS
 Complainant's Phone: --
 Complaint Source: TELEPHONE
 Assigned to: BID
 Division: BID
 Description: Increased soil level to 2' along 70' retaining wall surcharging retaining wall of 2701 Green St. Soil raised per Shire's geotechnical report ordered by DBI. Hazardous condition on going threatening apartment building at 2701 Green

Instructions:

INSPECTOR INFORMATION

DIVISION	INSPECTOR	ID	DISTRICT	PRIORITY
BID	FESSLER	6252	4	

COMPLAINT STATUS AND COMMENTS

DATE	TYPE	DIV	INSPECTOR	STATUS	COMMENT
07/18/14	CASE OPENED	BID	Fessler	CASE RECEIVED	
07/24/14	OTHER BLDG/HOUSING VIOLATION	CES	Fessler	CASE CONTINUED	Received report. Will review filed plans for compliance. D Duffy

Figure A.3: Third (pending) complaint regarding raised grade

Mr. Shire's report does make clear that a few inches of soil have accumulated since Appellant's wall was constructed – designated "Type 3" in his report. This additional soil volume is attributable to landscaping activities – the accumulation of duff, tanbark, and the expansion of the soil level as plants mature and root systems expand. Project Sponsor has agreed, per Mr. Shire's recommendation, to remove some of this accumulation in the vicinity of the property line shared with 2701 Green St. It is several inches (not two feet) in depth.

Rationality demands the answers to these questions: 1) Where is there any evidence of the preposterous idea that the original retaining wall was constructed more than two feet higher than the soil it was installed to retain? 2) Are there photographs, permit drawings, or other evidence of that freeboard? 3) What was the methodology for importing several dump truck loads of soil into the landlocked rear yard of 2655 Broderick (hundreds of wheelbarrow loads rolled through the garage and up the stairs to the yard above, or a crane with a scoop soaring over the roof)? And, 4) how did that allegedly raised soil level avoid burying the top of the Project Sponsor's home's rear foundation, and the top of the retaining wall along the Project Sponsor's rear (west) property line, both tops of which are visible today? Were those structures also built, like Appellant apparently believes his retaining wall was, two feet higher than required to retain the soil level original to grading of the lots? DBI experts do not find this to be likely, nor do we.

Appellant's claims are without merit, being unsupported by fact or logic; they have also been examined and refuted repeatedly by the City. In any case, there is no valid CEQA issue regarding a few inches or even the mythical two feet of accumulated fill. Nor is purported site drainage as alleged by Appellant a valid CEQA consideration. This too is under the purview of DBI and the Building Code.