

## Moscone Emblidge & Rubens

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March 15, 2023

*Via Hand Delivery*

Rick Swig, President  
Board of Appeals  
49 South Van Ness Avenue, Suite 1475  
San Francisco, California 94013

SCOTT EMBLIDGE  
Partner  
emblidge@mosconelaw.com  
Direct: (415) 362-3591

Re: 146 23rd Avenue

Dear President Swig and Members of the Board of Appeals:

I am writing to let you know the extremely unfortunate way in which the Department of Building Inspection has handled this matter since Appeals 22-076 and 22-077 were before you on December 14, 2022. If recall, the owners of 146 23rd Avenue (the "Monahans") performed work without permits, including excavation work that the DBI determined had undermined at least one of two neighboring properties.

The two neighboring property owners, the Maher family and the Lysenko family, came before you on December 14. They expressed their concerns about the safety of their respective homes. The Board expressed its own concerns about the work done without permits and the need to put steps in place to make sure the neighboring properties are safe.

The Monahans agreed at the hearing to allow the neighbors' engineers to inspect work at the site. The Board then passed a motion granting the appeals, stating:

"the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS** that the **ISSUANCE** of the subject permit by the Department of Building Inspection (DBI) is **UPHELD** on the **CONDITION IT BE REVISED TO REQUIRE:** (1) DBI shall perform a Start Work Inspection prior to work commencing under the appealed permits, (2) the permit holder shall have site monitoring in place for both adjacent properties on or before DBI's Start Work Inspection, (3) the permit holder shall have a soils engineer perform a soil compaction test and prepare a report with the findings of the test; this report shall be shared with DBI and the appellant, and (4) the soil compaction work that must be performed in response to the Notice of Violation must be completed to DBI's satisfaction prior to any work being performed under the permit."

The permit holder and DBI have not adhered to these conditions stipulated by the Board of Appeals. Instead, here is what has happened:

On January 5, there was a site inspection at the Monahan's property, attended by Brett Howard and David Szeto from DBI, the Monahans, the neighbors, the neighbors' engineers, and me. At that meeting it was agreed that (1) a plan would be developed for the removal of soil that covered up the unpermitted excavation work so the parties could determine whether the neighboring foundations were undermined, (2) once it was determined that the foundations were protected, new permits would be obtained to do further work at the site; and (3) before any work would proceed at the site, the Monahans and the neighbors needed to come to written agreement about this work.

Mr. Howard sent all the parties the following email on January 5 (emphasis added):

"I am sending this email to reiterate what was discussed during the meeting this morning that was attended by all three neighbors, the engineer and legal representative for the Maher's, a soils engineer, as well as myself and DBI Associate Engineer David Szeto. **A written agreement signed by all parties must be in place prior to commencing what I shall refer to as Phase 1.** Phase 1 entails excavating (on the Maher side) down to the bottom of the previously poured caissons and removing any loose soil in between ALL poured caissons to expose the condition of the 'native' undisturbed soil. **Once that is done, a meeting between the aggrieved parties and myself shall be scheduled in order to discuss and agree upon the work going forward.**"

Five days later, on January 10, Mr. Howard forwarded to the parties the recommendations of Mr. Szeto, DBI's engineer. Those recommendations included a requirement for a new permit to perform exploratory work, a new underpinning/shoring permit if DBI determines the neighboring properties were undermined, and revised permits and plans for any additional work.

On January 12, I sent a written agreement to the Monahans' attorney, incorporating the language from Mr. Howard's emails and Mr. Szeto's report.

So far so good. Nothing would happen without an agreement of the parties and without further meetings among the parties and DBI.

Over two weeks then went by without word from the Monahans or DBI.

Then, on January 30, the Mahers observed work being done at the Monahan's property. Later that day after extensive work already started, Laura Monahan sent an email to the Mahers stating, "I wanted to let you know we are moving forward with the conditions set by the Board of Appeals. DBI has approved us removing the loose soil, so they can inspect the previous work done. No additional work will be done until DBI performs the inspection. Our soils engineer will do a report, which we will share with you."

This, of course, was a shock. It turns out that DBI issued the Monahans a **new** permit to remove soil on January 27. DBI did so even though:

- there was no written agreement between the parties, as required by Mr. Howard and confirmed in his January 6 email;
- the neighbors' engineers were given no opportunity to inspect the site as soil was being removed to determine whether shoring or underpinning was needed; and
- DBI communicated absolutely nothing about this with me, the Maher family or the Lysenko family.

How could this happen? Why would DBI allow this work to go forward without an agreement and without communicating with the neighbors?

When this came to light on January 30, the neighbors' engineers emailed DBI asking for access to the site, the Maher family filed appeals of the new permit, and I wrote to Mr. Howard, Matt Greene and Joe Duffy stating:

"I'm told that the Monahan's have begun work at the site again even though they have ignored our attempts to negotiate an agreement. I have heard nothing from their attorney since January 12 when I sent them a draft agreement incorporating DBI's requirements. Can you please help stop Monahan from ignoring stop work orders and the requirements Brett and David Szeto told them they had to comply with, especially monitoring by our engineering team."

Having heard nothing in response, I wrote again on January 31, stating:

"Could we please talk about this situation? It appears a permit was issued and work performed yesterday even though no agreement has been reached and without our engineers being able to observe the work. I'm scratching my head about this since that is the opposite of what we all agreed would happen."

I heard nothing from Mr. Howard or Mr. Greene. However, Joe Duffy wrote to me on February 1 asking: "Are DBI staff being responsive to you on your emails? I did not see any replies and want to make sure they are getting back to you." I explained to Mr. Duffy that I had heard nothing.

On February 6, Mr. Greene responded, apologizing for being "remiss in responding." He and I then spoke by phone. Mr. Greene expressed concern about what had transpired but also pointed out that the permit being appealed involved work (removal of soil) that had already been completed so the appeal served no purpose.

Mr. Greene said he looked at the agreement I sent to the Monahans on January 12 and didn't think it was unreasonable. He said he would talk to the Monahans about getting the agreement signed. He also agreed that he would prevent any permits from being issued without his personal review.

I confirmed this in an email stating: "Matt, If we withdraw the appeal can I count on DBI not to issue additional permits until the parties have an agreement and the neighbors' engineers are given access for inspections?" Mr. Greene responded: "I can put an address restriction in our permit tracking system. This would prevent any permit from being issued without my approval."

On February 10, Mr. Green asked me if an agreement was in place. I responded, "I wish. I haven't heard anything from the Monahans or their attorney, but I didn't see the point in going forward with an appeal of a limited permit for dirt removal when the removal has already occurred. If DBI tells them that they can't do additional work until we have an agreement in place, I think that protects the neighbors."

So, despite Mr. Howard not following through on the requirement of a written agreement, and his not communicating with the neighbors about approval of a new permit, the neighbors now had additional assurances that Mr. Greene would make sure no further work would occur until a written agreement was in place. The neighbors knew that additional permits and substantial revisions to prior permits were needed based on Mr. Howard's and Mr. Szeto's emails, and that Mr. Greene would not let that work proceed without his personal review.

Two weeks went by with no word from the Monahan's attorney or from DBI. Then, on February 21, significant new work began at the Monahan property without any notice from the Monahans or DBI.

I wrote the Mr. Howard, Mr. Greene, and Mr. Duffy on February 24, stating:

I do not understand what is going on here. The permit holder performed dangerous work without permits, potentially undermining neighboring foundations. The Board of Appeal understandably threw the book at them. In early January we all agreed on what should happen next. By "we," I mean the permit holders, the impacted neighbors, the neighbors' engineers, and Brett and David Szeto. Brett followed up that meeting with the following email:

"I am sending this email to reiterate what was discussed during the meeting this morning that was attended by all three neighbors, the engineer and legal representative for the Maher's, a soils engineer, as well as myself and DBI Associate Engineer David Szeto. **A written agreement signed by all parties must be in place prior to commencing what I shall**



**refer to as Phase 1.** Phase 1 entails excavating (on the Maher side) down to the bottom of the previously poured caissons and removing any loose soil in between ALL poured caissons to expose the condition of the 'native' undisturbed soil. **Once that is done, a meeting between the aggrieved parties and myself shall be scheduled in order to discuss and agree upon the work going forward.**" (The bold emphasis is mine)

On January 12, I sent an agreement to the attorney for the permit holders the draft agreement Brett asked for. To this day, I have not heard one word back from the permit holders about anything they perceived as wrong/improper with the draft agreement. I tried to make it as simple as possible, incorporating language from Brett's email and a subsequent email from David Szeto.

Despite no agreement being reached, DBI gave the permit holder a new permit to remove soil, the Phase 1 work Brett said that could not take place until a written agreement was in place. This permit was issued without notice to the impacted neighbors or their engineers, so the engineers had no ability to observe this work and make sure the neighboring foundations were protected. WHY?

Now Brett says DBI is going to issue further permits even though there is not agreement between the parties, even though the neighbors apparently are engaging in unpermitted work as I write this, and even though the "meeting between the aggrieved parties" and Brett that Brett required in his email has never taken place. WHY?

All the neighbors want is have their engineers inspect the work and come up with an agreed-upon plan to protect their homes. What is wrong with that? Isn't that how you want neighbors to act, rather than how the permit holders have acted - unilaterally engaging in unpermitted excavation in violation of the Civil Code?

If DBI goes ahead and issues a permit for more work at the site, the neighbors will need to appeal that permit to the Board of Appeal and ask the Board whether it thinks DBI has acted appropriately. Instead of that, why not do what you said you would do in January - get everyone together to agree on a plan of action?

What the heck am I missing here?

Mr. Greene wrote back a few days later, copying Ms. Monahan, saying "I wish to do a site visit to get a straight answer what happening out there." I tried to schedule such a

site visit, including the neighbors' engineers, on February 28. DBI did not respond, and no joint site visit even occurred.

How could this possibly happen? It turns out that DBI agreed to let the Monahans cover up the exposed soil and move forward with their project under previously issued permits. DBI let this happen even though:

- DBI had earlier made clear that a written agreement was required, but no written agreement had been signed;
- DBI had earlier made clear that new permits and/or revised permits would be required, but none had been issued; and
- DBI knew that the Monahans **had not complied with this Board's requirement** to "have a soils engineer perform a soil compaction test and prepare a report with the findings of the test."

And, perhaps worst of all, DBI let all this take place without any communication with the neighbors.

I don't know if this Board has the ability to do anything about this specific situation. DBI has allowed work to proceed without complying with this Board's requirements, and without complying with its own written requirements. Have the neighboring properties been undermined? We don't know because the neighbors' engineers were not given the promised access and no soil compaction tests were ever performed.

What I do know is that DBI has done a grave disservice to the Maher family and the Lysenko family. Think about Ms. Lysenko. She received a Notice of Violation from DBI stating "It has been determined that approx. 20' of your foundation has possible undermine [sic]." I am told that Ms. Lysenko tried repeatedly to contact DBI after the NOV being issued but has heard nothing from their department. She asked this Board for help at the December hearing. Mr. Greene stated he would follow up with Ms. Lysenko during the hearing, but I am told that this promised follow up and help from never happened for the Lysenko family.

I was Deputy City Attorney for 10 years and, rightly or wrongly, I still consider myself part of the City family. I was taught that while we serve an entity call the City and County of San Francisco, one of the privileges and responsibilities of being a City employee is that we also serve the people of this City. In this case, DBI not only failed to serve the neighbors, but it also affirmatively misled them and me.

Members of the Board of Appeals  
March 15, 2023  
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Thank you for taking the time to read this letter.

Sincerely,

*G. Scott Emblidge*

G. Scott Emblidge

ccs: Board of Appeal Members  
Julie Rosenberg  
Matthew Greene  
Joseph Duffy

**RESPONSE LETTER FROM DBI DATED APRIL 4, 2023**



April 4, 2023

Rick Swig, President  
Board of Appeals  
49 South Van Ness Avenue, Suite 1475  
San Francisco, CA 94013

RE: 146 23<sup>rd</sup> Avenue

Dear President Swig and Board Commissioners,

I am writing you today to respond to the allegations made by attorney Scott Emblidge during Public Comment at the March 15, 2023 meeting of the San Francisco Board of Appeals. Mr. Emblidge represents the appellants in Appeal Number 22-076 and Appeal Number 22-077 for permits issued for 146 23<sup>rd</sup> Avenue.

At the March 15, 2023 meeting (and in a letter submitted to the Board that day), Mr. Emblidge stated that he believed that the Department of Building Inspection (DBI) disregarded the conditions that the Board of Appeals attached to building permit application #'s 202209132353 and 202210285449. I disagree and believe that DBI did hold the permit holder to the conditions stipulated by the Board.

As you may recall, the property owner of 146 23<sup>rd</sup> Avenue obtained a permit (application # 202209132353) to reinforce their foundation in October of 2022. The property owners proceeded to exceed the scope of their issued permit, over excavate and undermine the neighbor's foundation. DBI issued a Notice of Violation (NOV) and Stop Work Order on October 20, 2022. Our Notice of Violation required the permit holder to back fill the excavated soil. Coincidentally, Mr. Emblidge's client appealed the building permit and the permit was suspended on the same day. The permit holder obtained a second permit (application # 202210285449) to comply with DBI's NOV on October 31, 2022. This permit was appealed and suspended shortly after issuance.

The December 14, 2022 Board of Appeals hearing on this matter was contentious. In the end, the Board voted to grant both appeals and ordered that permit application #'s 202209132353 and 202210285449 be upheld with the following conditions:

1. DBI shall perform a Start Work inspection prior to work commencing under the appealed permits.
2. The permit holder shall have site monitoring in place for both adjacent properties on or before DBI's Start work inspection.
3. The permit holder shall have a soils engineer perform a soil compaction test and prepare a report with the findings of the test, this report shall be shared with DBI and the appellant.
4. The soils compaction work that must be performed in response to the Notice of Violation must be completed to DBI's satisfaction prior to any work being performed under the permit.

I will address each of these conditions individually to allay any concerns that the Board's conditions were not upheld.



First, ***DBI shall perform a Start Work inspection prior to work commencing under the appealed permits.***

DBI performed the Start Work inspection on January 5, 2023. Present at that inspection were Senior Building Inspector Brett Howard, DBI Engineer David Szeto, the permit holders, the neighbors, private engineers retained by the neighbors and Mr. Emblidge. In his field report, Mr. Szeto recommended that "a separate permit shall be obtained to perform exploratory work. Provide plans showing the work performed without a permit and the proposed exploratory excavation locations." To comply with DBI's NOV, the permit holder had backfilled the area of excavation. The third permit was required to re-excavate this area to expose the previously performed work. This permit was issued on January 27, 2023. The neighbors appealed this permit and withdrew their appeal shortly thereafter.

Second, ***the permit holder shall have site monitoring in place for both adjacent properties on or before DBI's Start work inspection.*** Senior Building Inspector Brett Howard verified that the required monitoring was in place at the time of the Start Work inspection. An additional special inspection requirement has been added to both permits. The permit holders will not be able to schedule a final inspection or complete the appealed permits until DBI receives, reviews and accepts the site monitoring report.

Lastly, in regards to the soils engineer (condition 3 and 4), the permit holder retained Geotechnical Engineer Shane Rodacker (license # 2915) of Geocon Consultants who visited the site on January 31, 2023. In his report dated February 14, 2023, Mr. Rodacker recommended ***avoiding*** vibratory compaction and instead pouring a 1500 psi slurry mix instead. The slurry was installed and confirmed by DBI inspection on March 16, 2023. At the time of the hearing, the Board presumed that a compaction test was the best course of action. However, in the interest of safety, DBI has deferred to the recommendations of the trained Geotechnical engineer. The intent of the condition was to ensure the stability of the soil, and Mr. Rodacker's visit and recommended action has met this intent.

Mr. Emblidge asserts that DBI failed our duty by not requiring the neighbors to enter into a written agreement. It is true that Senior Inspector Howard discussed a written agreement between the neighbors during the January 5, 2023 site visit when all parties were present. Senior Inspector Howard did this in good faith with the assumption that all other parties were acting in good faith. Unfortunately, the negotiations fell apart, and DBI has no authority to force neighbors into agreements. Senior Inspector Howard has been counseled that DBI cannot mandate any such written agreements.

Due to the ongoing tensions between the parties involved, I have asked Senior Building Inspector Howard to perform all the required inspections rather than the district inspector. Mr. Howard is well experienced and knowledgeable in construction and the building code, and will ensure that the completed project is safe and code compliant.

Though I believe the permit holders were reckless at the beginning of their construction project, I also believe that they have been cooperative and in compliance since. I do believe that they have met all conditions imposed by the Board and that the project, as proceeding is safe and code compliant.

I would like to assure you, President Swig, that I personally, and DBI as an institution, hold the Board of Appeals in great esteem. We value your important role in permitting and treat your decisions with great



deference and respect. I do not believe that we disregarded the Board's wishes in this matter. In fact, DBI has dedicated a great deal of resources and time over the preceding months ensuring that the Board's conditions were met.

I hope this letter allays any concerns brought up by Mr. Emblidge's testimony and letter. If not, I would be happy to discuss further.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Greene".

Matthew Greene  
Chief Building Inspector  
Inspection Services  
Department of Building Inspection

Ccs: Board of Appeals Member  
Julie Rosenberg  
Patrick O'Riordan  
Joseph Duffy



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**DEPARTMENT OF BUILDING INSPECTION**

**City & County of San Francisco**

**49 South Van Ness Ave, Suite 509, San Francisco, California 94103-2414**

**DBI Main Line: (628) 652-3200**

**FIELD REPORT**

**January 5, 2023**

**Report No.: 20230105**

**Street Address:**

146 23<sup>rd</sup> Ave.  
San Francisco, CA 94121

**Block / Lot:**

1382 / 033

**Date/Time of Visit:**

January 5, 2023 / 10:05 AM; Rainy and Cloudy

**Site Visit:**

Brett Howard, SFDBI Senior Building Inspector  
David Szeto, SFDBI Associate Engineer  
Lauren Monahan, Property Owner of 146 23<sup>rd</sup> Ave.  
Tom Monahan, Architect/Engineer for 146 23<sup>rd</sup> Ave.  
Jim Markovich, Civil Engineer for 144 23<sup>rd</sup> Ave.  
Bernard Adendido, Geotechnical Engineer for 144 23<sup>rd</sup> Ave.  
Scott Emblidge, Attorney for 144 23<sup>rd</sup> Ave.  
Kieran Maher, Property Owner of 144 23<sup>rd</sup> Ave.

**Type of Construction:**

5B

**Occupancy Classification:**

R-3, One-Unit Residential

**No. of Stories:**

3-Story

**Background**

Senior Building Inspector Brett Howard and Associate Engineer David Szeto responded to Compliant Number 20220084, dated December 13, 2022, and 202296964, dated October 11, 2022, regarding potential undermining of the 140 23<sup>rd</sup> Ave. foundation. Foundation work was performed by the property owner of 146 23<sup>rd</sup> Ave. at the property line between 144 23<sup>rd</sup> Ave. and 146 23<sup>rd</sup> Ave. without a permit (complaint number 202296964). Work without a permit included excavation down to an unknown depth in the storage space and installation of 3 concrete stem wall/footing sectional segments at the north, south, and east sides (9 total per Tom Monahan) of the storage space behind the garage space. The north side foundation is at the property line between 144 23<sup>rd</sup> Ave. and 146 23<sup>rd</sup> Ave. The south side foundation is at the property line between 146 23<sup>rd</sup> Ave. and 150 23<sup>rd</sup> Ave. A permit was obtained to perform this work (PA #202209132353) and a subsequent revision to the permit was obtained (PA #202210285449). PA #202210285449 involved relocating the footing work away from the property line towards the interior of the building.





Figure 1: Street View of Subject Property and Neighboring Buildings

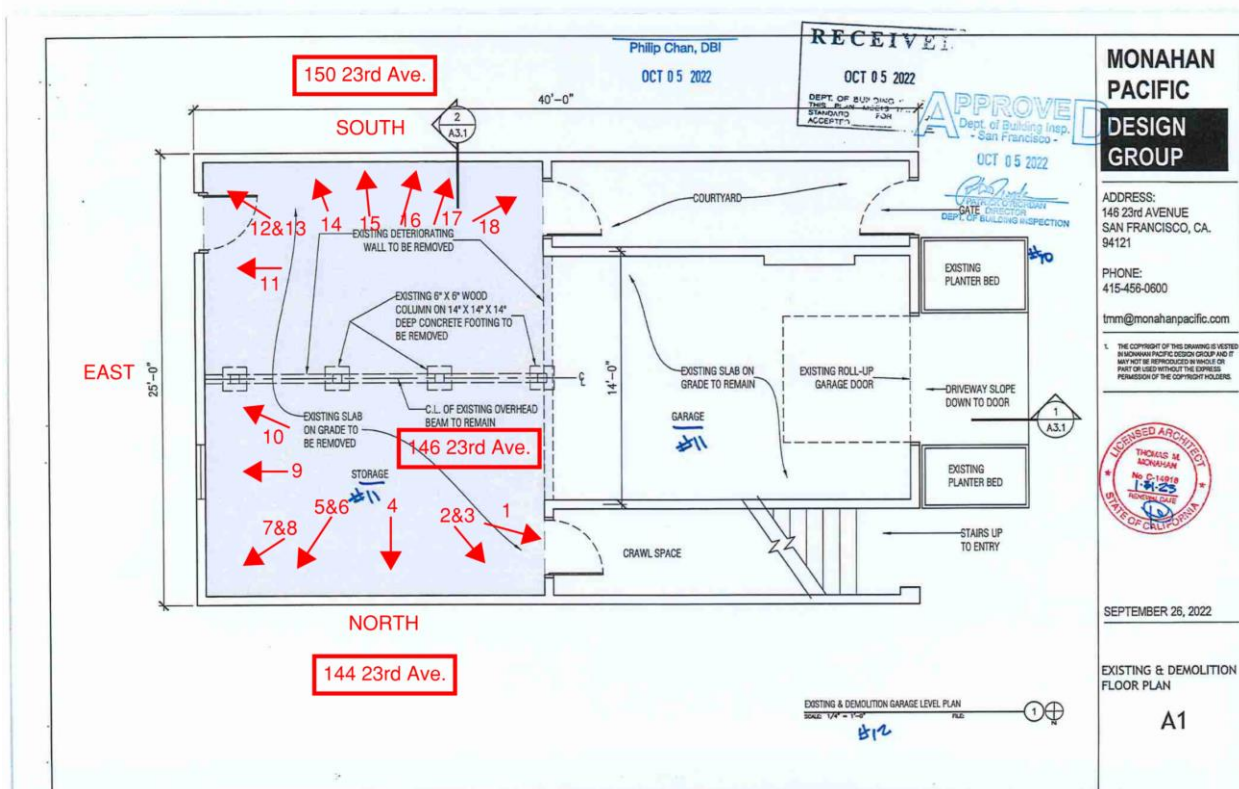


Figure 2: Plan View of Ground Floor (Sheet A1 of PA 202209132353) & Photo Key (Approximate Locations)

### **Structural Observations**

The building at the above-referenced site is an existing 3-story wood-framed structure located on 23<sup>rd</sup> Ave. The scope of these permit applications includes lowering of the slab on grade at the storage room to match the existing garage slab elevation, new foundations on the north, south, and east sides of the storage room, removal of existing walls in the garage and installation of new beams, posts, and footings. PA 202210285449 involved relocating the new footings at the property line on the north and south ends to approximately 4' towards the interior of the building.

During the site visit, the foundation work performed without a permit was not visible. As mentioned in the background summary of the complaint, work performed without a permit consisted of excavation and installation 3 concrete stem wall/footing sectional segments on the north, south, and east sides of the storage room (9 total). The stemwall for 4 of these segments were partially visible – 1 at the north side (see photos 6 & 7), 2 at the east side (see photo 10), and 1 at the south side (see photos 14-15). The footing excavation depth could not be determined anywhere as the space was backfilled as seen in the photos.

The stem wall and footing segments installed without a permit were covered in soil nearly all the way to the top of the wall on the north side as shown in photos 1-7. Thus, the soil underneath the new footing and the existing footing at 144 23<sup>rd</sup> Ave. was not observable. It could not be determined whether the soil caved in at property line footings or not. It was not possible to observe if the footing and stem wall were constructed per detail 1/A4 of PA 202209132353. It was also not possible to observe if the stem wall and footing horizontal reinforcement extended out to lap with the rebar in the adjacent section per detail 1/A6 of PA 202209132353.





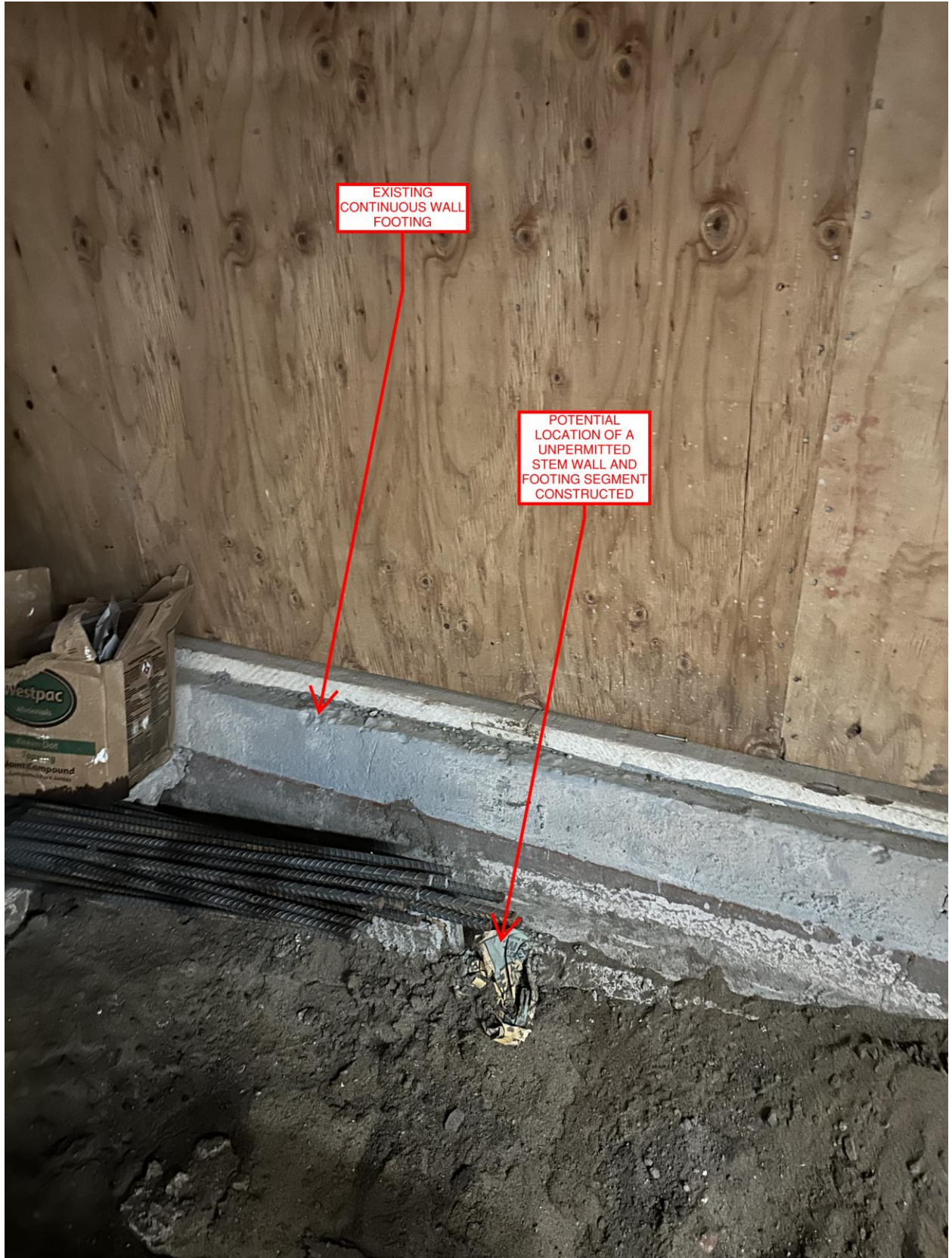
**Photo 1: North side looking into crawl space underneath entry stairs**





**Photo 2: North Side Interface at (E) Garage Slab and Excavation**





**Photo 3: North Side**



**Photo 4: North Side**





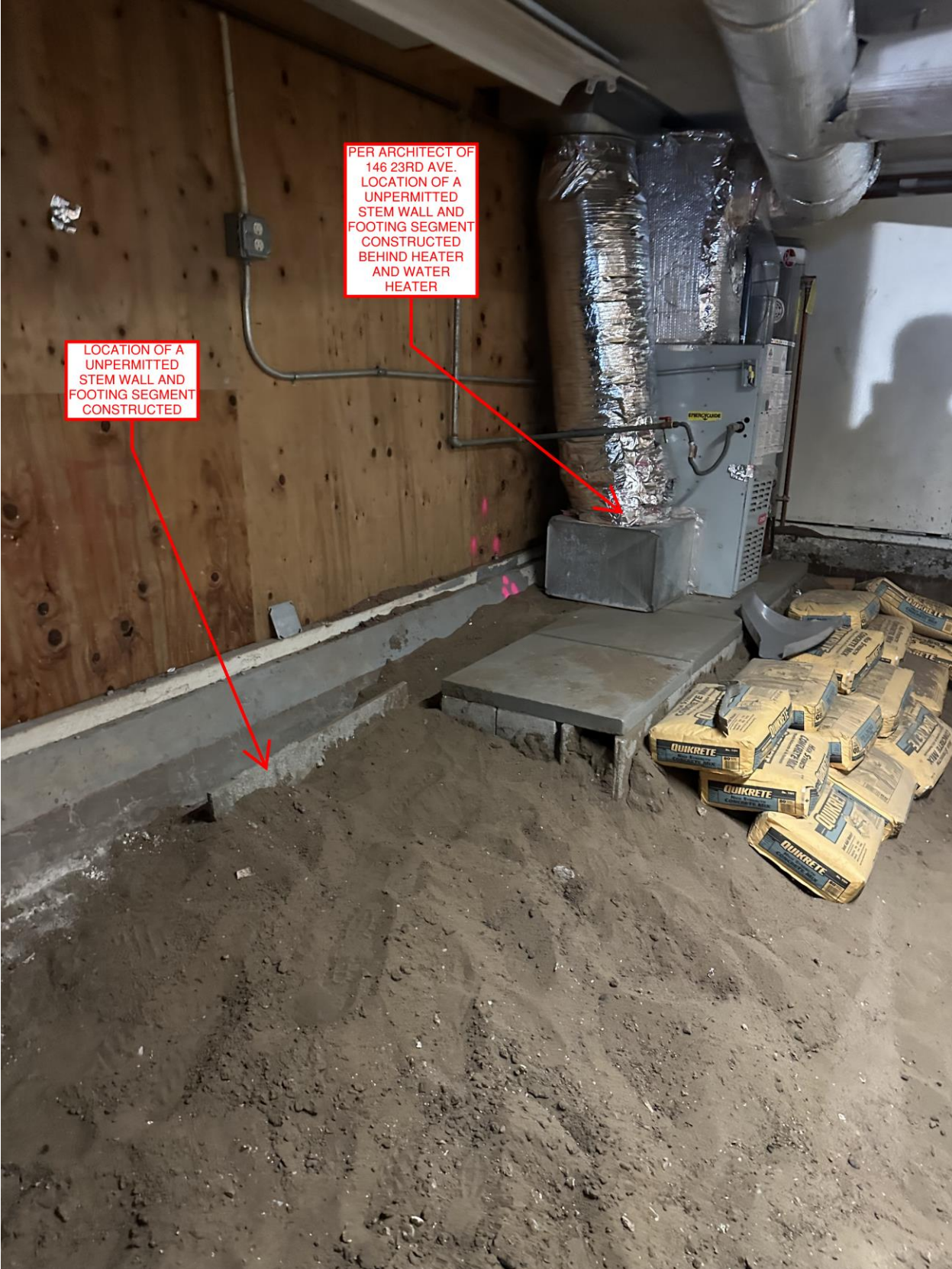
**Photo 5: North Side: Backfilled Excavation at Northern Property Line**



LOCATION OF A  
UNPERMITTED  
STEM WALL AND  
FOOTING SEGMENT  
CONSTRUCTED

**Photo 6: North Side**





PER ARCHITECT OF  
146 23RD AVE.  
LOCATION OF A  
UNPERMITTED  
STEM WALL AND  
FOOTING SEGMENT  
CONSTRUCTED  
BEHIND HEATER  
AND WATER  
HEATER

LOCATION OF A  
UNPERMITTED  
STEM WALL AND  
FOOTING SEGMENT  
CONSTRUCTED

Photo 7: North East Corner

At the east side, the excavation was also backfilled such that the new footing was not visible as shown in photos 8-11. A portion of stem wall constructed was visible as seen in photo 10. No horizontal reinforcement was observed to be protruding out to tie into the adjacent stem wall section as seen in photo 11. The entire length of the storage room on the east side was excavated such that the bottom of the existing wall footing was visible. The exposed soil underneath the existing footing did not appear to be braced. At the southern end of the east side, wood planks were installed as seen in photos 9-10. It is assumed these are used to brace the soil. However, these planks were not in contact with the soil at the time of the site visit.



**Photo 8: North East Corner**





LOCATION OF A  
UNPERMITTED  
STEM WALL AND  
FOOTING SEGMENT  
CONSTRUCTED

WOOD PLANKS  
EMBEDDED INTO  
SOIL; ASSUMED TO  
BE USED TO  
BRACE THE  
EXCAVATION

Photo 9: East Side





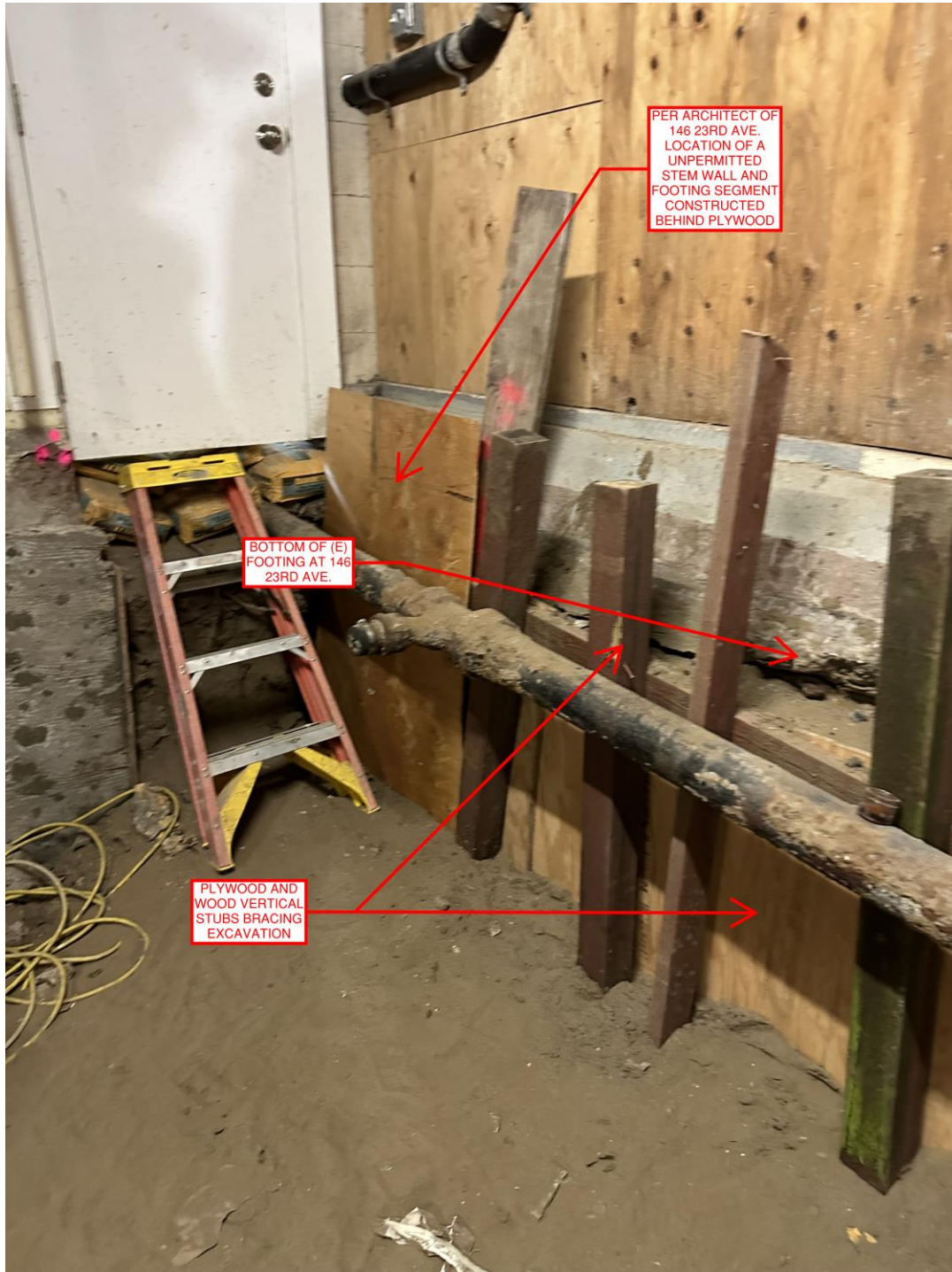
Photo 10: East Side





**Photo 11: South East Corner**

At the south side, the excavation was also backfilled so the new footing was not visible. A portion of the stem wall constructed was visible as shown in photos 14-15. The entire length of the storage room on the south side was excavated such that the bottom of the existing wall footing was visible. The exposed soil underneath the existing footing is braced by formwork and vertical stubs in between the formwork and an existing pipe as seen in photos 12-18.



**Photo 12: South East Corner**





**Photo 13: South East Corner**





**Photo 14: South Side**





Photo 15: South Side





Photo 16: South Side



**Photo 17: South Side**





**Photo 18: South Side**

This report is based on limited observation without measurements of existing conditions nor measurements of proposed conditions as shown on the two referenced permits. The only observation performed was the concrete stem wall and footings installed at the north, south, and east side of the storage room done without a permit as the complaints are only regarding potential undermining of the neighboring footings. As a note, the ceiling height from a visual observation appeared to be less than 9'-0" as specified on the building sections (sheet A3.1) of PA 202209132353 and PA 202210285449.

Towards the end of the site visit, the property owner and neighbor's representative at 144 23<sup>rd</sup> Ave, discussed resolving the matter by excavating down to the bottom of the previously poured footing at each segment poured and in between each segment to allow the neighbor's Civil and Geotechnical engineers to observe the condition of the native soil in an attempt to determine whether undermining occurred.

**Recommended Actions**

The proposed plan of performing exploratory excavation discussed in the last paragraph of the structural observations section is a proper step to determine whether the foundation of the neighboring building has been undermined or not. A separate permit shall be obtained to perform this exploratory work. Provide plans showing the work performed without a permit and the proposed exploratory excavation locations. If it is determined that the neighboring building foundations have been undermined, at either or both of 144 23<sup>rd</sup> Ave. and 150 23<sup>rd</sup> Ave., a separate underpinning/shoring permit shall be obtained for each respective property.

The property owner of 146 23<sup>rd</sup> Ave. shall submit revisions to PA 202209132353 and PA 202210285449 showing the correct existing ceiling height at both the storage space and garage space. The revision shall also show the proposed ceiling height to properly show the appropriate amount of excavation required. The revised plans shall also include a plan and details showing the construction performed without a permit and whether these elements will be left in place or whether they will be demolished and the existing conditions prior to the work performed without a permit will be restored. The plan revision shall include a detail to indicate the maximum elevation difference between the bottom of the new footing constructed without a permit and the bottom of the existing neighboring footing at both neighboring properties.

Report prepared by: \_\_\_\_\_

David Szeto, S.E.  
Associate Engineer,  
Plan Review Services

Report reviewed by: \_\_\_\_\_

Willy Yau, P.E.  
Acting Division Manager,  
Plan Review Services



Project No. E9349-04-01  
February 14, 2023

Ms. Lauren Monahan  
1101 Fifth Avenue, Suite 300  
San Rafael, California 94901

Subject: 146 23<sup>rd</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA  
GEOTECHNICAL CONSULTATION

References: 1. *Geotechnical Consultation, 146 23<sup>rd</sup> Avenue, San Francisco, California*, dated December 6, 2022.  
2. Plans: *146 23<sup>rd</sup> Avenue, San Francisco, CA 94121*, prepared by Monahan Design Group, dated January 24, 2023.

Dear Ms. Monahan:

In accordance with your request, we have prepared this report to summarize our recent site observations and provide recommendations for the proposed phasing of the ongoing structural retrofit project at the subject residence. As outlined in our referenced correspondence, the area between the new pad footings at the building east-west centerline (Grid Line C on referenced plans) and the northern exterior wall was the focus of our site observations and the recommendations herein.

We visited the site on January 31, 2023 and generally found that loose spoils from prior excavations for the centerline pad footings had been removed between the footings and northern wall. The spoils removal exposed dune sands that were observed to be loose to medium dense under hand probe. No overt indications of soil instability or undermining were observed. We understand that the City of San Francisco Department of Building Inspection has requested an opinion regarding soil stability at the neighboring (northern) property line. We have no opinion regarding the soils that underlie the property to the north since those soils are not exposed onsite.

Based on our discussions onsite and review of the referenced plans, we understand the remainder of the retrofit will be phased such that a 1-foot by 1-foot strip keyway and associated benches will be excavated just behind the planned new masonry block retaining wall along Grid Line B. The keyway and benches will then be backfilled with 1,500 psi slurry mix. The face of the slurry mix zone will be sloped to accommodate the construction of a new slab-on-grade with integral edge footing to support the new masonry wall. After the masonry wall is completed, it will be backfilled with slurry and a new slab-on-grade will be constructed atop the slurry retaining wall backfill and 1,500 psi slurry mix. Based on our understanding of the planned retrofit phasing, we recommend the following:

1. Project excavations should not extend below a 1½:1 (horizontal:vertical) plane projected down and outward from the foundation of the existing residence to the north, per the recommendations in our December 6, 2022 correspondence.
2. The 1,500 psi slurry mix should be placed immediately (same day) after keyway and bench excavations.
3. Vibratory compactors or similar construction equipment should be avoided.

Our professional services were performed, our findings obtained, and our recommendations prepared in accordance with generally accepted engineering principles and practices used in this area at this time. We make no warranty, express or implied.

Please contact the undersigned with any questions or if we may be of further service.

Sincerely,

GEOCON CONSULTANTS, INC.



Shane Rodacker, GE  
Senior Engineer

(1/e-mail) Addressee



**From:** [Shane Rodacker](#)  
**To:** [Lauren Monahan](#)  
**Subject:** RE: Clarification - Urgent  
**Date:** Tuesday, March 7, 2023 5:25:38 PM

---

Hi Lauren,

I just saw you trying to call. I'm on Teams meeting.

Flowable backfill or controlled density fill material such as slurry is generally considered self-compacting in this type of application. As such, compaction testing would not be performed.

Thanks.

Shane Rodacker, GE | Vice President  
Geocon Consultants, Inc.  
6671 Brisa Street 2480 Hilborn Road, Suite 240  
Livermore, CA 94550 Fairfield, CA 94534  
D 925.961.5271 M 925.337.9533

-----Original Message-----

From: Lauren Monahan <[lauren@monahanpacific.com](mailto:lauren@monahanpacific.com)>  
Sent: Tuesday, March 7, 2023 12:39 PM  
To: Shane Rodacker <[rodacker@geoconinc.com](mailto:rodacker@geoconinc.com)>  
Subject: RE: Clarification - Urgent

Hi Shane,

I wanted to follow up and see if you could send a clarifying email saying that soil compaction does not need to occur since we're using slurry at your earliest convenience?

Thank you!

Best,  
Lauren

Lauren Monahan  
Monahan Pacific Corp.

1101 Fifth Ave, Ste 300 | San Rafael, CA 94901  
Office: (415) 456-0600 | Cell: (415) 686-3735

-----Original Message-----

From: Lauren Monahan  
Sent: Wednesday, March 1, 2023 6:17 PM  
To: Shane Rodacker <[rodacker@geoconinc.com](mailto:rodacker@geoconinc.com)>  
Subject: Clarification - Urgent

Hi Shane,

DBI is asking for a simple clarification email that soil compaction does not need to occur since we're using slurry. Could you respond with a confirmation?

Thank you!!

Best,



Lauren

5/2/2023

Dear Commissioners,

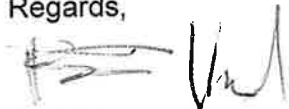
I am unable to attend The Board of Appeals meeting as I will be in Washington DC from May 10<sup>th</sup>-12<sup>th</sup>. However, I would like to provide you with a narrative of my involvement with the project at 146 23<sup>rd</sup> Avenue, hereafter referred to as the Monahan residence.

To the best of my recollection (and review of emails), my first site visit was on October 21<sup>st</sup> along with District Inspector Enrique Argumedo, at which point I directed Mr. Argumedo to write a Notice of Violation on the Monahan property for the possible undermining of the Maher property at 144 23<sup>rd</sup> Avenue. The Monahan's subsequently obtained a permit (PA 202210285449) to address said Notice of Violation. That permit was promptly appealed and then suspended on 11/03/2022.

A meeting was held on site on 1/5/2023 in an attempt to broker an agreement with the Monahans and the neighbors on either side. This meeting was attended by myself, City Engineer David Szeto, and the attorneys and engineers for all entities involved. At this meeting I 'presented' to all my qualifications; Building Inspector for the past 16 years, General Contractor for the previous 15 years, and voiced my professional opinion that the situation we found ourselves in was not dire, nor did it pose a threat to neighboring properties. After this meeting I sent an email requesting that the owners enter into a written agreement on how best to proceed and that the agreement must be in place prior to recommencing work. In retrospect I realize that this was not the ideal way to word my email as I have no authority as a Building Inspector to force property owners into signing a contractual legally binding agreement. My intention was to use my 'authority' as a Building Inspector to get the property owners to work together in a civil fashion (which up to this point hadn't happened), especially since this was not a life or property endangering situation, and was easily remedied.

At some stage the appeals to the permits were rescinded and the permits reinstated. I have since performed the required inspection myself (see attached Inspection History).

Regards,



Brett Howard

Senior Building Inspector

[Type the company name]

Inspector Name	Activity Date	Status Code	Status Description	Comments
ward, Brett	03/31/2023	122	REINFORCING STEEL	Ok to pour low CMU walls.
ward, Brett	03/22/2023	122	REINFORCING STEEL	Slab and footings for CMU walls ok. Ok to pour.
ward, Brett	03/16/2023	111	SITE VERIFICATION	Unannounced site visit. I observed that the slurry on the property lines had been poured ( as agreed ) and drain rock has been laid in preparation for moisture barrier installation. Contractor to call for rebar inspection.

# DECISIONS FOR APPEAL NOS. 22-076 AND 22-077



BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
KIERAN MAHER,
Appellant(s)
vs.
DEPARTMENT OF BUILDING INSPECTION,
Respondent

Appeal No. 22-077

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on November 3, 2022, the above-named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above-named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on October 31, 2022, to Thomas Monahan, of an Alteration Permit (Structural upgrade to beam, add structural piers, replace wood columns and piers, replace existing slab, reinforce the foundation, minor plumbing and electrical work associated; excavation of two feet for additional head height in a middle section; to comply with Complaint No. 202296964) at 146 23rd Avenue.

APPLICATION NO. 2022/10/28/5449

FOR HEARING ON December 14, 2022

Table with 2 columns: Address of Appellant(s) and Address of Other Parties. Appellant: Kieran Maher, Attorney for Appellant(s). Other Parties: Thomas Monahan, Permit Holder(s), Attorney for Permit Holder(s).

NOTICE OF DECISION & ORDER

The hearing on the aforementioned matter came before the Board of Appeals of the City & County of San Francisco on December 14, 2022.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, §14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby GRANTS THE APPEAL AND ORDERS that the ISSUANCE of the subject permit by the Department of Building Inspection (DBI) is UPHELD on the CONDITION IT BE REVISED TO REQUIRE: (1) DBI shall perform a Start Work Inspection prior to work commencing under the appealed permits, (2) the permit holder shall have site monitoring in place for both adjacent properties on or before DBI's Start Work Inspection, (3) the permit holder shall have a soils engineer perform a soil compaction test and prepare a report with the findings of the test; this report shall be shared with DBI and the appellant, and (4) the soil compaction work that must be performed in response to the Notice of Violation must be completed to DBI's satisfaction prior to any work being performed under the permit. This order was made on the basis that these conditions will improve the safety of the project.

REVISED PLANS ARE NOT REQUIRED AND THE SUSPENSION OF THE PERMIT SHALL BE LIFTED.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Last Day to Request Rehearing: December 27, 2022
Rehearing Request: None.
Rehearing: None.
Notice Released: December 28, 2022

Signature of Rick Swig, President

Signature of Julie Rosenberg, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure, §1094.6.

DOCUMENTS SUBMITTED FOR THE HEARING ON  
DECEMBER 14, 2022 FOR APPEAL NOS. 22-076 and 22-077

**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
KIERAN MAHER, \_\_\_\_\_ )  
Appellant(s) )  
vs. )  
DEPARTMENT OF BUILDING INSPECTION, \_\_\_\_\_ )  
Respondent

Appeal No. **22-076**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on October 20, 2022, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on October 5, 2022 to Thomas Monahan, of an Alteration Permit (add structural beam and structural piers; replace existing wood column and piers; replace existing slab and reinforce foundation) at 146 23rd Avenue.

**APPLICATION NO. 2022/09/13/2353**

**FOR HEARING ON December 14, 2022**

Address of Appellant(s):

Address of Other Parties:

Kieran Maher, Appellant(s) c/o Scott Emblidge, Attorney for Appellant(s) Moscone Emblidge & Otis LLP 220 Montgomery Street #2100 San Francisco, CA 94104	Thomas Monahan, Permit Holder(s) 146 23rd Avenue San Francisco, CA 94121
--	--



**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
KIERAN MAHER, \_\_\_\_\_ )  
Appellant(s) )  
vs. )  
DEPARTMENT OF BUILDING INSPECTION, \_\_\_\_\_ )  
Respondent )

Appeal No. **22-077**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on November 3, 2022, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on October 31, 2022 to Thomas Monahan, of an Alteration Permit (Structural upgrade to beam, add structural piers, replace wood columns and piers, replace existing slab, reinforce the foundation, minor plumbing and electrical work associated; excavation of two feet for additional head height in a middle section to comply with Complaint No. 202296964) at 146 23rd Avenue.

**APPLICATION NO. 2022/10/28/5449**

**FOR HEARING ON December 14, 2022**

Address of Appellant(s):

Address of Other Parties:

Kieran Maher, Appellant(s) c/o Scott Emblidge, Attorney for Appellant(s) Moscone Emblidge & Otis LLP 220 Montgomery Street #2100 San Francisco, CA 94104	Thomas Monahan, Permit Holder(s) 146 23rd Avenue San Francisco, CA 94121
--	--



Date Filed: October 20, 2022

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 22-076**

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I / We, **Kieran Maher**, hereby appeal the following departmental action: **ISSUANCE** of **Alteration Permit No. 2022/09/13/2353** by the **Department of Building Inspection** which was issued or became effective on: **October 5, 2022**, to: **Thomas Monahan**, for the property located at: **146 23rd Avenue**.

**BRIEFING SCHEDULE:**

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **November 10, 2022, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org), [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org) and [tmm@monahanpacific.com](mailto:tmm@monahanpacific.com).

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **November 22, 2022, (this is 2 days earlier than the Board's regular briefing schedule due to the Thanksgiving holiday)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [Kieran.d.maher@gmail.com](mailto:Kieran.d.maher@gmail.com).

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, November 30, 2022, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than Tuesday, November 22, 2022 by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa). You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

---

**The reasons for this appeal are as follows:**

See attachment to the preliminary Statement of Appeal

**Appellant filed appeal by email.**

Print Name: \_\_\_\_\_

Hello Board of Appeals,

We would like to formally appeal the construction permit at 146 23rd Avenue San Francisco, CA 94121. The permit in question is Application #202209132353. Please [CLICK HERE](#) or See Email Attached.

**Issues with Construction and Permit #202209132353:**

Many of these issues were called out verbally by Bill Walsh SF DBI inspector on the phone, 3rd party engineer, and 3rd party attorney.

**1) Working without Permit:** Photos / video were taken on Aug 16th, 2022 10:55am which can be provided of 146 23rd Ave working without a permit, inspection, or notify neighbors of the work in August 2022. During this time the workers dug roughly 10ft+ below from the original highest point of concrete and at least 3ft 6in below neighboring foundations, laid additional concrete, and were working in a dangerous manner going below both neighbors' foundations all without a permit.

**2) No Pre-Construction Survey:** Neighbors were never notified of work because they started work without a permit and we were never shown the plans per the DBI inspector's request. Neighbors were not shown the plans so that a pre-construction survey could take place and 3rd party engineers could make sure the neighboring properties' foundations were protected.

**3) Working in a Dangerous Manner -** a lot of construction happened going into foundation and laying concrete without permits or inspection, which is working in a dangerous manner.

**4) Working Beyond Current Scope of Permit:** we notified the construction they needed to do this by the book and get all the necessary permits for the job. From third party feedback we believe they did not follow all the proper code procedure and still do not have all the permits to complete the job safely and properly. Allegedly the construction is currently working beyond the scope of permit and did not follow procedures on inspections or codes.

**5) Permit Job Valuation Cost Too Low:** DPI inspector on the phone said in his opinion the job valuation on the permit was too low at \$36,000. From 3rd party opinions this job could be valued at close to \$200,000 - \$500,000+.

**Thank You – Kieran Maher // 415-730-9514 // [kieran.d.maher@gmail.com](mailto:kieran.d.maher@gmail.com)**



**Permit Details Report**

**Report Date:** 10/5/2022 4:37:39 PM

Application Number: 202209132353  
 Form Number: 8  
 Address(es): 1382 / 033 / 0 146 23RD AV  
 Description: ADD STRUCTURAL BEAM. ADD STRUCTURAL PIERS. REPLACE (E) WOOD COLUMN AND PIERS. REPLACE (E) SLAB, REINFORCE FOUNDATION.  
 Cost: \$36,000.00  
 Occupancy Code: R-3  
 Building Use: 27 - 1 FAMILY DWELLING

**Disposition / Stage:**

Action Date	Stage	Comments
9/13/2022	TRIAGE	
9/13/2022	FILING	
9/13/2022	FILED	
10/5/2022	APPROVED	
10/5/2022	ISSUED	

**Contact Details:**

**Contractor Details:**

License Number: 1044378  
 Name: URIEL SALAZAR  
 Company Name: SALAZAR CONSTRUCTION  
 Address: 215 RADCLIFFE DR \* VALLEJO CA 94589-0000  
 Phone:

**Addenda Details:**

**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	INTAKE	9/13/22	9/13/22			9/13/22	CHAN CHENG	OTC PAPER PLAN
2	PAD-STR	9/13/22	9/13/22	9/13/22	10/5/22	10/5/22	CHAN PHILIP	Approved OTC. 10/5/2022 Comments OTC. 9/13/2022
3	CPB	10/5/22	10/5/22			10/5/22	LEE ERIC	

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking](#) home page.

**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.



Date Filed: November 3, 2022

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 22-077**

I / We, **Kieran Maher**, hereby appeal the following departmental action: **ISSUANCE of Alteration Permit No. 2022/10/28/5449** by the **Department of Building Inspection** which was issued or became effective on: **October 31, 2022**, to: **Thomas Monahan**, for the property located at: **146 23rd Avenue**.

**BRIEFING SCHEDULE:**

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **November 10, 2022, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org), [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org) and [tmm@monahanpacific.com](mailto:tmm@monahanpacific.com).

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **November 22, 2022, (this is 2 days earlier than the Board's regular briefing schedule due to the Thanksgiving holiday)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [Kieran.d.maher@gmail.com](mailto:Kieran.d.maher@gmail.com).

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, November 30, 2022, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than Tuesday, November 22, 2022 by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa). You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

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**The reasons for this appeal are as follows:**

See attachment to the preliminary Statement of Appeal.

**Appellant filed appeal by email.**

Print Name: Kieran Maher, appellant

Hello Board of Appeals,

We would like to formally appeal the construction permit at 146 23rd Avenue San Francisco, CA 94121. The permit in question is Application #202210285449. Please [CLICK HERE](#) or See Email Attached.

**Issues with Construction and Permit #202210285449:**

Many of these issues were called out verbally by Bill Walsh SF DBI inspector on the phone, 3rd party engineer, and 3rd party attorney.

**1) Working without Permit:** Photos / video were taken on Aug 16th, 2022 10:55am which can be provided of 146 23rd Ave working without a permit, inspection, or notify neighbors of the work in August 2022. During this time the workers dug at least 3ft 6in below neighboring foundations, laid additional concrete, and were working in a dangerous manner going below both neighbors' foundations all without a permit.

**2) No Pre-Construction Survey:** Neighbors were never notified of work because they started work without a permit and we were never shown the plans per the DBI inspector's request. Neighbors were not shown the plans so that a pre-construction survey could take place and 3rd party engineers could make sure the neighboring properties' foundations were protected.

**3) Working in a Dangerous Manner -** a lot of construction happened going into foundation and laying concrete without permits or inspection, which is working in a dangerous manner.

**4) Working Beyond Current Scope of Permit:** we notified the construction they needed to do this by the book and get all the necessary permits for the job. From third party feedback we believe they did not follow all the proper code procedure and still do not have all the permits to complete the job safely and properly. Allegedly the construction is currently working beyond the scope of permit and did not follow procedures on inspections or codes.

**5) Permit Job Valuation Cost Too Low:** DPI inspector on the phone said in his opinion the job valuation on the permit was too low at \$36,000. From 3rd party opinions this job could be valued at close to \$200,000 - \$500,000+.

**Thank You – Kieran Maher // 415-730-9514 // [kieran.d.maher@gmail.com](mailto:kieran.d.maher@gmail.com)**



**Permit Details Report**

**Report Date:** 11/2/2022 4:16:54 PM

Application Number: 202210285449  
 Form Number: 8  
 Address(es): 1382 / 033 / 0 146 23RD AV  
 Description: STRUCTURAL UPGRADE TO BEAM, ADD STRUCTURAL PIERS, REPLACE WOOD COLUMNS AND PIERS, REPLACE EXISTING SLAB, REINFORNCE FOUNDATION, MINOR PLUMBING AND ELECTRCIAL WORK ASSOCIATED. EXCAVATION OF 2FT FOR ADDITIONAL HEAD HT IN MIDDLE SECTION AWAY FROM PL. TO COMPLY WITH COMPLAINT # 202296964.  
 Cost: \$30,000.00  
 Occupancy Code: R-3  
 Building Use: 27 - 1 FAMILY DWELLING

**Disposition / Stage:**

Action Date	Stage	Comments
10/28/2022	TRIAGE	
10/28/2022	FILING	
10/28/2022	FILED	
10/31/2022	APPROVED	
10/31/2022	ISSUED	

**Contact Details:**

**Contractor Details:**

License Number: 1044378  
 Name: URIEL SALAZAR  
 Company Name: SALAZAR CONSTRUCTION  
 Address: 215 RADCLIFFE DR \* VALLEJO CA 94589-0000  
 Phone:

**Addenda Details:**

**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	BID-INSP	10/28/22	10/28/22			10/28/22		D.HELMINIAK
2	INTAKE	10/28/22	10/28/22			10/28/22	YU ZHANG REN	
3	BLDG	10/28/22	10/28/22			10/28/22	HOM CALVIN	APPROVED OTC
4	PAD-STR	10/28/22	10/28/22			10/28/22	HOM CALVIN	APPROVED OTC
5	DPW-BSM	10/31/22	10/31/22			10/31/22	THEO DEVINE DAVID	APPROVED 10/31/22: No alteration or reconstruction of City Right-of-Way under this permit. -TD
6	CPB	10/31/22	10/31/22			10/31/22	WU TIFFANY	

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking home page.](#)

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# BRIEF SUBMITTED BY THE APPELLANT(S)

G. SCOTT EMBLIDGE, State Bar No. 121613  
MOSCONE EMBLIDGE & RUBENS LLP  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104  
Telephone: (415) 362-3599  
Email: [emblidge@mosconelaw.com](mailto:emblidge@mosconelaw.com)

Attorneys for Appellants Kieran, Ann, and Patrick Maher

## **SAN FRANCISCO BOARD OF APPEALS**

KIERAN, ANN, AND PATRICK MAHER,

Appellant,  
vs.

DEPARTMENT OF BUILDING INSPECTION,

Respondent.

**Case Nos. 22-076 and 22-077**

Hearing Date: December 14, 2022



## **I. INTRODUCTION**

The Maher family needs the Board's help, and the help of the Department of Building Inspection, to protect their home from a developer who has undermined their foundation and performed substantial work without permits. Once high-level DBI officials were made aware of this situation, they stepped in and issued Notices of Violation, but not until after the Mahers filed these appeals about the developer's permits and misconduct. The Mahers' simple plea is this: please do not let a scofflaw developer proceed with his project until he (a) has come up with a plan satisfactory to DBI and the Mahers' engineer to address his previous unpermitted work that undermined the Mahers' foundation, and (b) has come up with a plan acceptable to DBI and the Mahers' engineer for work going forward that will stabilize the site and monitor the Mahers' property for any further movement or damage.

These requests are modest and form the basis of countless good-neighbor agreements that trustworthy developers and neighboring property owners have entered into. But this developer, despite being caught red-handed, has refused to agree to these simple terms.

## **II. THE PARTIES**

The Mahers are homeowners, living at 144 23<sup>rd</sup> Avenue. They have done nothing wrong. They are victims of a developer who has shown contempt for the permitting process and the Mahers' rights as neighboring property owners.

The developer is Tom Monahan. He claims to be developing a property at 146 23<sup>rd</sup> Avenue for his daughter. Mr. Monahan is listed in various documents as an architect, real estate developer, and contractor. His track record is astonishing. He and his company have been involved in no fewer than 91 lawsuits (yes, 91!) in Marin, San Francisco, and Sonoma counties alone. As to one of Monahan's developments, the United States Bankruptcy Court for the Northern District of California found that "Monahan was manipulating the books and records of

both [his companies] in order to avoid enforcement efforts of a judgment creditor.” Monahan appealed this finding to the Ninth Circuit because it implied that he had engaged in fraud. The Ninth Circuit affirmed the bankruptcy court’s finding. *In re MC2 Capital Partners*, 2015 WL 777649 (9th Cir. 2015).

### **III. THE PERMITS**

On August 16, 2022, the Mahers observed significant construction and excavation occurring at the Monahan property. (See the video accompanying this brief as **Exhibit A**.) The Mahers reached out to Monahan and his contractors to make sure Monahan was performing the work with proper permits and in a manner that would not damage their home. In fact, Monahan had no permits.

It was not until October 5, 2022, that Monahan applied for Permit No. 202209132353 to “Add Structural Beam, Add Structural Piers, Replace Wood Colum and Piers, Replace Slab, and Reinforce Foundation.” In the guise of strengthening an existing foundation, Monahan excavated the lower level and created a new foundation. He did not obtain an excavation permit.

Even worse, Monahan engaged in excavation below the foundations of the Mahers’ home.

When the Mahers’ pleas to Monahan fell on deaf ears the Mahers turned to DBI, filing a complaint on October 11, 2022. Unfortunately, the district building inspector did nothing to address the improper work, forcing the Mahers on October 20, 2022, to appeal this permit and get work stopped by this Board so that the dangerous, unauthorized construction could be addressed. Three days later, the district building inspector issued an NOV, stating that the “scope of work was misrepresented on the plans.” The NOV notes that excavation “has undermined the footing of 150 23<sup>rd</sup> Avenue,” but by this time Monahan had piled a large quantity of dirt along the property line adjacent to the Mahers’ home so the inspector could not

see what work had been done at that location. (See **Exhibit A**, a video showing the piling of dirt along the Maher property line.)

But, Monahan's misconduct did not stop there. Eight days after work stopped, he somehow convinced someone at DBI on October 28 to issue him a new permit (No. 202210285449) for almost the exact same scope of work and began work again – despite the stop work order of the Board of Appeals.

The Mahers appealed this second permit on November 2. Fortunately, the Mahers were able to elevate this issue to more senior DBI personnel (Joe Duffy, Matthew Greene, and Brett Howard). Mr. Howard visited the site on November 3 and read Monahan the riot act for doing work outside the scope of permits and violating stop work orders. He acknowledged to the Mahers that the second permit never should have been issued.

#### **IV. ONGOING CONCERNS**

As the Board is likely aware, California law (Civil Code section 832) requires a property owner intending to engage in excavation to “give reasonable notice to the owner or owners of adjoining lands. . . .” It goes on to require that if “the excavation is to be of a greater depth than are the walls or foundations of any adjoining building or other structure, and is to be so close as to endanger the building or other structure in any way, then the owner of the building or other structure must be allowed at least 30 days, if he so desires, in which to take measures to protect the same from any damage. . . .”

Monahan did nothing to comply with this legal requirement. He provided no notice to the Mahers before engaging in unpermitted excavation, much less the 30 days' notice required for the type of excavation in which he engaged.

The Mahers have been forced to retain engineers to look into what Monahan has done and how it may have damaged their home. The engineers' report is attached as **Exhibit B**. The reports states, among other things:

- “The soil excavations that we observed during our own site visit and through the photos and videos provided to us by the Mahers indicates that the Mahers property line footing may have been compromised (i.e. undermined) by the work at 146 23rd Avenue.”
- “[T]he excavations at 146 23rd Avenue . . . were performed without the involvement of a geotechnical design engineer and the project lacks a geotechnical report to identify how to protect neighboring properties, such as 144 23rd Avenue.”
- “The San Francisco Building Department's (SF DBI) Notice of Violation also indicates that the original project drawings did not properly notify SF DBI of the foundation work and its effect on the neighboring properties.”

The Mahers' engineers seek access to Monahan's property to assess “the north property line footing and any underpinning that has been performed.” The engineers sensibly recommend that Monahan produce “a geotechnical report prepared by a qualified, licensed geotechnical engineer”; that the report “identify the existing soils conditions and a safe manner of construction at the project site, including recommendations to protect the neighboring property at 144 23rd Avenue”; and that the report “specifically identify what affect, if any, the project to date and future work at 146 23rd Avenue has or will have on 144 23rd Avenue, including the soils excavations and reported underpinning below the north property line foundation adjacent to 144 23rd Avenue.”



Monahan may argue that this is a private dispute between property owners in which this Board should not be involved. That is false. Monahan violated the Building Code by not obtaining permits for his excavation and other work. As a result, his work was not inspected to ensure compliance with the Building Code and reasonable excavation and construction practices. This violation (by an experienced builder) enabled Monahan to literally cover up his wrongdoing so that neither DBI nor the Mahers can see what work Monahan performed under the Mahers' foundation or evaluate the steps Monahan took to remedy the condition he created. Neither DBI nor this Board should allow Monahan's work to proceed until DBI and the Mahers' engineers are provided sufficient access to investigate the scope and nature of the work Monahan performed without permits or required inspections.

The Mahers are not asking the Board or DBI to step into the role of a civil court and award the Mahers damages for Monahan's misconduct. Rather, the Mahers are simply asking the Board and DBI to not let Monahan proceed with work and further cover up the work he has done with permits or inspections until he has provided DBI and the Mahers' engineers with the access they need to assess the existing conditions and what needs to be done to remedy any problems caused by Monahan's unpermitted work.

Dated: November 23, 2022

MOSCONE EMBLIDGE & RUBENS LLP

By: *G. Scott Emblidge*  
G. Scott Emblidge

Attorneys for Permit Holder

Exhibit A

Video Provided via Dropbox

<https://www.dropbox.com/s/wyx7atupz9l3y3r/1%29%20VIDEO%20%28Non-Permitted%20Construction%20Aug%2016th%2C%202022%2010-55am%29%20-%20146%2023rd%20Avenue%20-%20Complaint%20%23202296964.mp4?dl=0>

**Exhibit B**  
**Engineers' Report**



16 November 2022

VIA EMAIL [emblidge@mosconelaw.com](mailto:emblidge@mosconelaw.com)

Kieran Maher  
c/o Scott Emblidge  
Moscone Emblidge & Rubens  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

Re: **144 23rd Avenue, San Francisco - #22127**  
Subj: **Report on Neighboring Construction Work at 146 23rd Avenue**

Dear Scott:

At the request of Kieran Maher, Ferrari Moe, LLP (Ferrari Moe) is providing this report to document the recent construction activity at 146 23rd Avenue and its effect on 144 23rd Avenue. The Maher's are the owners of 144 23rd Avenue and we understand that 146 23rd Avenue is under construction by the Monahan Pacific Design Group (MPDG). We understand that MPDG is also the Owner/Developer of 146 23rd Avenue. Ferrari Moe is providing this letter report to summarize our findings.

**Background and Information from 144 23rd Ave. Owner (Kieren Maher, son of Owners Patrick and Ann Maher)**

144 23rd Avenue is a 3-story, wood framed building, including 2 floors of residential space over a grade-level garage and storage space. We understand that 146 23rd Avenue and 150 23rd Avenue have similar construction with 150 23rd Avenue being the property to the south of 146 23rd Avenue and 144 23rd Avenue is the property to the north of 146 23rd Ave.

**1. Working without a Permit (16 August 2022):**

- A. Mahers observed on 16 August 2022 excavations of approximately 40" depth below the north and south property line foundations/footings at 146 23rd Avenue (i.e. adjacent to the Maher's foundation to the north and the 150 23rd Avenue foundation to the south). Mahers have photos and videos showing construction excavations underway in the garage/grade level area. Ferrari Moe assumes, but has not field verified that all three properties have footings at approximately the same elevation.
- B. Mahers told Ferrari Moe (FM) that they had several conversations with Tom Monahan of MPDG both before and after their observations of the 16 August construction activity requesting that MPDG perform work at 146 23rd Avenue with appropriate permits and to ensure that 144 23rd Avenue be underpinned before performing any excavations at 146 23rd Ave.
- C. SF DBI (San Francisco Division of Building & Inspections (Building Department)) issued a permit (Permit #2022-10-28-5449) to 146 23rd Avenue dated 5 October 2022. Mahers and FM do not have copies of the approved plans.
- D. The Mahers said that they filed a complaint with SF DBI (Complaint # 022-96964 on 11 October 2022) when it appeared that MPDG was not complying with their requests. The Mahers told FM



Kieran Maher  
c/o Scott Emblidge  
16 November 2022  
#22127 - Page 2 of 4

that they were not told that construction was proceeding and MPDG had not contacted the Mahers to arrange for underpinning their foundation.

- E. FM asked Patrick Maher specifically what he saw with respect to MPDG undermining the Mahers footing since Patrick does not have photos or videos of the excavations. Patrick indicated that he saw 3'6" deep excavations that were approximately 4 ft wide cut into the existing soil and being infilled with hand mixed bags of concrete. The concrete was held in place by plywood forms against the foundation/footing. Patrick recalls seeing three of these excavations separated by existing areas of sand/soil that were approximately 4 ft wide between the three areas that were infilled with concrete. We understand that the above-noted sand between the concrete infill is the native soil/foundation. Patrick indicated that the excavations were believed to be below the Maher's footing at 144 23rd Avenue, but Kieren Maher raised the question of whether this concrete work may have been performed below the footing of 146 23rd Avenue, rather than below the Maher's footing.
- F. SF DBI issued a NOV (Notice of Violation) dated 20 October 2022 noting that excavations at 146 23rd Avenue were undermining the neighboring property to the south and the scope of work was misrepresented on the 146 23rd Avenue plans. Mahers said that they contacted SF DBI to have SF DBI document that their foundation to the north of 146 23rd Avenue was also undermined. Neither Mahers nor FM have the original construction plans.
- G. FM met with Kieran Maher and Tom Monahan at 146 23rd Avenue on 2 November 2022. Tom Monahan provided us with an updated set of plans dated 26 October 2022, labeled Delta 1, with SF DBI approval date 31 October 2022.
- H. Kieran Maher and Tom Monahan met with SF DBI, Brett Howard, at 146 23rd Avenue on 3 November 2022. FM understands that Brett Howard noted that SF DBI's stop work order and NOV (Notice of Violation) dictates that work will not proceed until the NOV is resolved and SF DBI should not have approved updated permit drawings until the NOV is resolved.

### Observations

As noted above, Ferrari Moe (FM) met with Kieran Maher and Tom Monahan at 146 23rd Avenue on 2 November 2022. The following is a summary of FM's observations at 146 23rd Avenue on 2 November before the meeting between SF DBI (Brett Howard), Kieran Maher and Tom Monahan.

1. Excavated/disturbed soil along the north property line adjacent to 144 23rd Avenue extending from the north foundation wall to approximately the middle of the room. The referenced area is bounded by Gridlines A, C, 1 and 6 on the MPDG Drawing A2.2. Drawing A3.2 Section 2 shows the relation of the footings at 146 23rd Avenue and the two neighboring properties. However, the MPDG Drawing A3.2 Section 2 shows the footings at neighboring properties at 144 and 150 23rd Avenue to be lower than the original footings at 146 Avenue and we expect that that they are likely at the same elevation, but this has not been field verified. Both drawings are attached.
2. Excavation removed soil along the south property line adjacent to 150 23rd Avenue. The excavation measured approximately 40" below the 146 23rd Avenue south property line footing. The excavated area generally occurred at the south half of the garage, excluding a few feet at the east end of the garage and was generally bounded by Gridlines C, E, 3 and 6.

Kieran Maher  
c/o Scott Emblidge  
16 November 2022  
#22127 - Page 3 of 4

3. New concrete placed below the east (rear) footing (i.e. concrete underpinning of the existing east/rear footing at 146 23rd Avenue).
4. Disturbed and loose sandy soil adjacent to the new concrete placement under the east/rear footing.
5. Excavations and concrete underpinning below the garage footing along Gridline B, between Grids 6 and 7.5. Concrete underpinning had been performed between approximately Grids 6 and 7 along Gridline B and the excavation continued west to approximately Gridline 7.5.

Refer to Appendix A for photographs.

#### Conclusions/Commentary

The following is a summary of our conclusions and commentary following our brief review of the excavation at the neighboring property at 146 23rd Avenue.

1. The Mahers did not agree to allow work to proceed at the neighboring property, which would potentially have an impact on their building and footing at 144 23rd Avenue.
2. The soil excavations that we observed during our own site visit and through the photos and videos provided to us by the Mahers indicates that the Mahers property line footing may have been compromised (i.e. undermined) by the work at 146 23rd Avenue.
3. Patrick Maher believes that he observed the construction of three locations of underpinning below the property line footing at 144/146 23rd Avenue and Patrick Maher also believes that this soil excavation and concrete underpinning may have been directly below the Maher's footing at 144 23rd Avenue.
4. Ferrari Moe understands that the excavations at 146 23rd Avenue (and possibly 144 23rd Avenue per Item 3 comments above) were performed without the involvement of a geotechnical design engineer and the project lacks a geotechnical report to identify how to protect neighboring properties, such as 144 23rd Avenue.
5. Ferrari Moe understands that property line work at foundations that may potentially affect neighboring properties requires appropriate notification of neighbors and proper identification on foundation drawings per California Civil Code §832 (see Appendix C).
  - A. We understand that this was not provided by Monahan Pacific Design Group (MPDG) to the Mahers.
  - B. The San Francisco Building Department's (SF DBI) Notice of Violation also indicates that the original project drawings did not properly notify SF DBI of the foundation work and its effect on the neighboring properties.
6. The Mahers request access to the neighboring property at 146 23rd Avenue including full review of the north property line footing and any underpinning that has been performed. It is preferred that this review by the Maher's engineer will be performed in coordination with the MPDG's geotechnical engineer during their review of the north property line footing so that both parties can observe and document the same conditions.

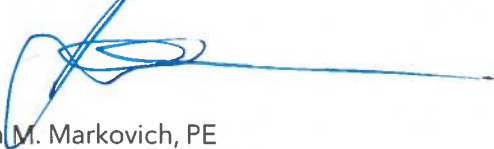
Kieran Maher  
c/o Scott Emblidge  
16 November 2022  
#22127 - Page 4 of 4

- A. The intent is to assess the soil and footing conditions in the vicinity of the Maher's footing following the work at 146 23rd Avenue.
  - B. It is expected that the soil that is currently piled along the north footing will need to be removed to identify the full depth and width of the work performed along this footing.
  - C. The Mahers also request the the foundation work at the neighboring property include a geotechnical report prepared by a qualified, licensed geotechnical engineer.
    1. The report should identify the existing soils conditions and a safe manner of construction at the project site, including recommendations to protect the neighboring property at 144 23rd Avenue.
    2. The report should specifically identify what affect, if any, the project to date and future work at 146 23rd Avenue has or will have on 144 23rd Avenue, including the soils excavations and reported underpinning below the north property line foundation adjacent to 144 23rd Avenue.
7. Ferrari Moe recommends that the Mahers retain their own geotechnical engineer to assist them with assessment of how their footing has been affected by the work at 146 23rd Avenue.

If you have any questions, please do not hesitate to call.

Sincerely,

FERRARI MOE, LLP



Jim M. Markovich, PE

Enclosures

Appendix A - Photos

Appendix B - Monahan Pacific Design Group Drawings A2.2 & A3.2, dated Delta 1, 26 October 2022

Appendix C - State of California Civil Cod Section 832

cc: Brett Ferrari, S.E., Ferrari Moe, LLP - [brett@ferrarimoe.com](mailto:brett@ferrarimoe.com)  
Kieran Maher, [kieran.d.maher@gmail.com](mailto:kieran.d.maher@gmail.com)



**Photo 1 - 146 23rd Avenue**

Overview of 146 23rd Avenue (center) with 144 23rd Avenue at left and 150 23rd Avenue to right of photo.



**Photo 2 - 146 23rd Avenue**

Overview of garage excavation underway at 146 23rd Avenue looking towards excavation by north foundation wall by 144 23rd Avenue.





**Photo 3 - 146 23rd Avenue**

Overview of excavation approximately 40" below south footing at 146 23rd Avenue.



**Photo 4 - 146 23rd Avenue**

Close-up of excavation approximately 40" below south footing at 146 23rd Avenue.



**Photo 5 - 146 23rd Avenue**

Sand piled along north wall footing concealed much of footing during Ferrari Moe site visit.



**Photo 6 - 146 23rd Avenue**

New concrete underpinning (pier) below east footing at 146 23rd Avenue. Arrow points to loose, disturbed soil contained by plywood and timber brace adjacent to new concrete pier.



**MONAHAN  
PACIFIC  
DESIGN  
GROUP**

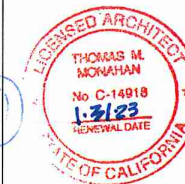
ADDRESS:  
146 23rd AVENUE  
SAN FRANCISCO, CA.  
94121

PHONE:  
415-456-0600

tmm@monahanpacific.com

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ADDENDUM 1 10/27/2022

SEPTEMBER 26, 2022

NEW CONSTRUCTION  
FRAMING PLAN

**A2.2**



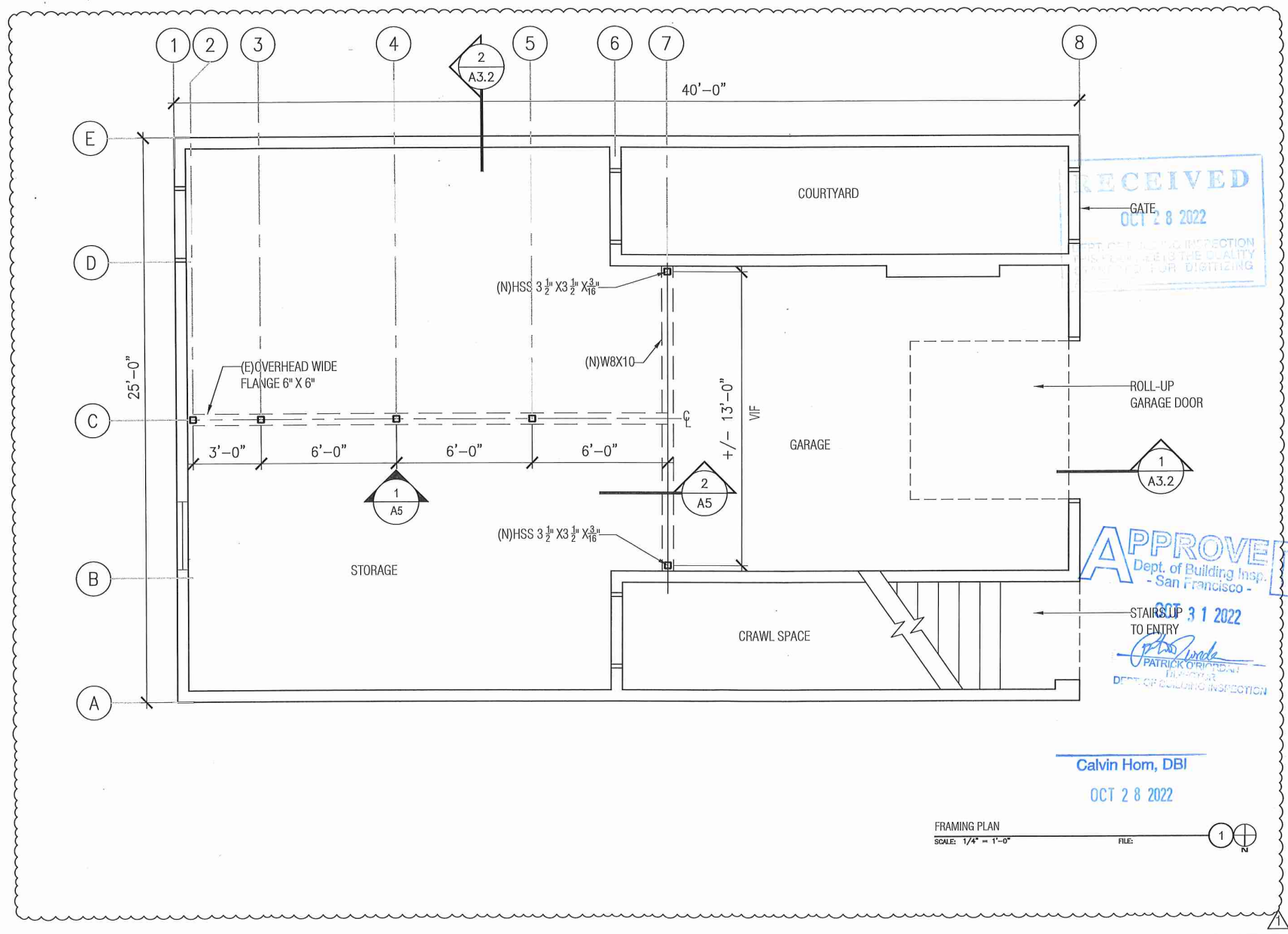
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Calvin Hom, DBI

OCT 28 2022

FRAMING PLAN  
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94121

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415-456-0600

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*October 26, 2022*



ADDENDUM 1 10/27/2022

SEPTEMBER 26, 2022

BUILDING SECTION

**A3.2**

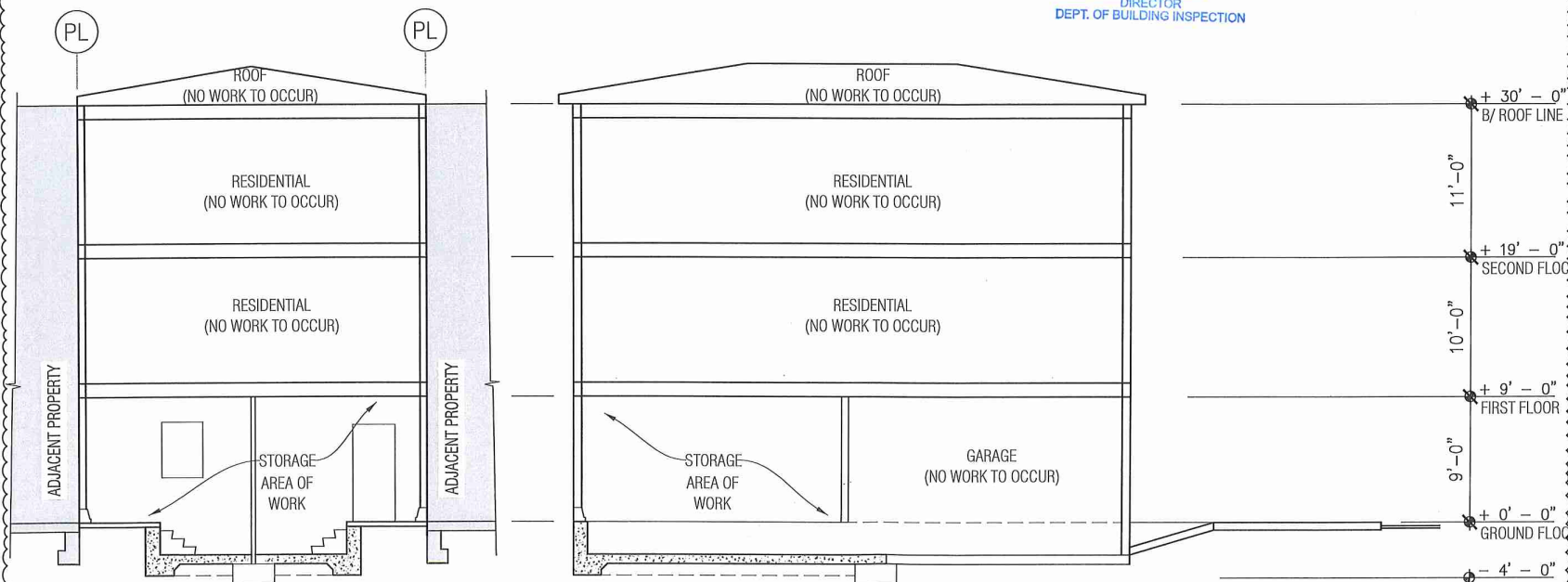
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Dept. of Building Insp.  
- San Francisco -

OCT 31 2022

*Patrick Jordan*  
PATRICK JORDAN  
DIRECTOR  
DEPT. OF BUILDING INSPECTION

OCT 28 2022

DEPT. OF BUILDING INSPECTION  
THIS STAMP MEETS THE QUALITY  
STANDARDS FOR DIGITIZING



NEW CONSTRUCTION SHORT SECTION  
SCALE: 1/8" = 1'-0"  
FILE: ②

NEW CONSTRUCTION LONG SECTION  
SCALE: 1/8" = 1'-0"  
FILE: ①

*Calvin Horn, DBI*  
OCT 28 2022



**State of California**

**CIVIL CODE**

**Section 832**

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832. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement, under the following conditions:

1. Any owner of land or his lessee intending to make or to permit an excavation shall give reasonable notice to the owner or owners of adjoining lands and of buildings or other structures, stating the depth to which such excavation is intended to be made, and when the excavating will begin.

2. In making any excavation, ordinary care and skill shall be used, and reasonable precautions taken to sustain the adjoining land as such, without regard to any building or other structure which may be thereon, and there shall be no liability for damage done to any such building or other structure by reason of the excavation, except as otherwise provided or allowed by law.

3. If at any time it appears that the excavation is to be of a greater depth than are the walls or foundations of any adjoining building or other structure, and is to be so close as to endanger the building or other structure in any way, then the owner of the building or other structure must be allowed at least 30 days, if he so desires, in which to take measures to protect the same from any damage, or in which to extend the foundations thereof, and he must be given for the same purposes reasonable license to enter on the land on which the excavation is to be or is being made.

4. If the excavation is intended to be or is deeper than the standard depth of foundations, which depth is defined to be a depth of nine feet below the adjacent curb level, at the point where the joint property line intersects the curb and if on the land of the coterminous owner there is any building or other structure the wall or foundation of which goes to standard depth or deeper then the owner of the land on which the excavation is being made shall, if given the necessary license to enter on the adjoining land, protect the said adjoining land and any such building or other structure thereon without cost to the owner thereof, from any damage by reason of the excavation, and shall be liable to the owner of such property for any such damage, excepting only for minor settlement cracks in buildings or other structures.

(Amended by Stats. 1968, Ch. 835.)

## **BRIEF SUBMITTED BY THE PERMIT HOLDER(S)**

1 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
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6

7 Attorneys for Property Owner  
Lauren Monahan

8 BOARD OF APPEALS

9 CITY AND COUNTY OF SAN FRANCISCO

10  
11 KIERAN, ANN, AND PATRICK MAHER,

12 Appellants,

13 v.

14 DEPARTMENT OF BUILDING  
INSPECTION,

15 Respondent.  
16

Case Nos. 22-076 and 22-077

**BRIEF BY THE PROPERTY OWNER AND  
EXHIBITS**

Hearing Date: December 14, 2022

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**LIST OF EXHIBITS**

- Exhibit A Curriculum vitae for John Egan, licensed architect, Egan | Simon Architecture, Peter Erdelyi, licensed structural engineer, Peter Erdelyi & Associates, Inc., and Shane Rodacker, licensed geotechnical and civil engineer, Geocon Consultants, Inc.
- Exhibit B Letter from Peter Erdelyi, licensed structural engineer, Peter Erdelyi & Associates, Inc.
- Exhibit C Letter from Shane Rodacker, licensed geotechnical and civil engineer, Geocon Consultants, Inc.

1 **I. INTRODUCTION**

2 Lauren Monahan needs this Board’s help to protect her safety. Earlier this year, Lauren, a  
3 Bay Area native, purchased her single-family home at 146 23<sup>rd</sup> Avenue, which is her primary  
4 residence. The home was built in 1916 and unfortunately, the home inspection report provided by  
5 the seller failed to disclose the fact that the over 100-year-old foundation is failing. A new roof  
6 and repair of dry rot was also required. Lauren merely wants to make improvements so she can  
7 live safely in her aged home, and has been shocked by the negative actions taken by her  
8 disgruntled neighbors. She is perplexed by the fact that they apparently do not want her to  
9 complete this structural retrofit project and seriously questions their motives. The nature of the  
10 proposed work is routine under these circumstances and in the interest of safety.

11 Lauren is a young, hard-working woman who has already faced substantial financial  
12 consequences and, more importantly, a risk to her life and home, as a result of the appeals. We  
13 respectfully urge that this Board deny the appeals and allow Lauren to proceed with the critical  
14 structural improvements authorized under the Revised Building Permit (defined below), which  
15 was approved by qualified professionals at the City and County of San Francisco Department of  
16 Building Inspection (“DBI”). There has already been one significant earthquake since the first  
17 appeal was filed and Lauren deserves to live in a safe home without fear. Furthermore, the  
18 structural improvements will not only protect Lauren, but also her neighbors.

19 Although not relevant to the appeals, Lauren’s father, Thomas Monahan, is in fact a well-  
20 respected developer and licensed architect. He is President and CEO of Monahan Pacific  
21 Corporation, which has developed an array of office, mixed-use and residential projects  
22 throughout the Bay Area, including first-class offices and multi-million-dollar high-rises in San  
23 Francisco. It appears far more likely that the appellants are actually interested in his involvement  
24 because of his financial resources. Their attempt to disparage Lauren’s father in a public forum is  
25 despicable. Thomas is a caring and loving father and of course wants his daughter to be safe in  
26 her home. He has stepped in, as any good father would, to assist her in that process.

27  
28

1 **II. BACKGROUND**

2 After Lauren moved into her new home, she discovered significant cracking in the  
3 perimeter foundation and in the concrete slab in the basement parking garage, which is located  
4 under the structural columns supporting her home. Initially, the proposed solution was to patch  
5 and repair the concrete slab. However, when Lauren discovered that the concrete slab did not  
6 contain any supporting rebar, the next appropriate step was to remove the non-structural concrete  
7 pad, approximately two inches thick. To her surprise, the existing footings were not supported,  
8 only being held up by unreinforced concrete. It became clear that additional work and an  
9 associated building permit would be required. Limited investigatory work was conducted to  
10 determine the scope of work the permit would need to include.

11 Lauren retained the services of qualified professionals, including (i) John Egan, licensed  
12 architect, Egan | Simon Architecture; (ii) Peter Erdelyi, licensed structural engineer, Peter Erdelyi  
13 & Associates, Inc.; and (iii) Shane Rodacker, licensed geotechnical and civil engineer, Geocon  
14 Consultants, Inc. See the curriculum vitae attached hereto as Exhibit A. Those qualified  
15 professionals prepared plans and structural calculations for a building permit to provide the  
16 requisite structural support for her home, which was issued by DBI on October 5, 2022 (Building  
17 Permit No. 2022-09-13-2353) (the “Initial Building Permit”).

18 The appellants became concerned – not about Lauren’s safety – but supposedly due to the  
19 proximity of the work to their property, notwithstanding the fact that none of the work would  
20 encroach onto their property. To address those purported concerns, DBI inspector, Enrique  
21 Argumedo, conducted an on-site inspection to confirm that the work being performed was in  
22 compliance with the Initial Building Permit. Even so, much to Lauren’s surprise, her disgruntled  
23 neighbors filed a complaint with DBI and an appeal of the Initial Building permit to this Board.

24 To further address the appellants’ purported concerns, Thomas Monahan, also a licensed  
25 architect, revised the plans and a new building permit was issued by DBI on October 31, 2022  
26 (Building Permit No. 2022-10-28-5449) (the “Revised Building Permit”), which does not include  
27 any work within five feet of the north and south property lines. As explained by Lauren’s licensed  
28 structural engineer, that setback should result in the work being located far enough from the shared

1 property line to avoid any undermining of the appellants' foundation vertically and laterally. See  
2 Exhibit B, attached hereto. As explained by Lauren's licensed geotechnical and civil engineer,  
3 foundation movement at the adjacent building due to forthcoming excavations is unlikely and,  
4 from a geotechnical standpoint, the retrofit project can resume. See Exhibit C, attached hereto.  
5 DBI clearly agreed with those conclusions in issuing the Revised Building Permit. Accordingly,  
6 Lauren was shocked to learn that the Revised Building Permit was also appealed to this Board.

7 The appellants then further jeopardized Lauren's safety by requesting an extension of the  
8 originally scheduled hearing before this Board by one month. What ultimately resulted from that  
9 threat and related delay was an agreement prepared by opposing counsel, seemingly in an attempt  
10 to extort Lauren for significant sums of money in the guise of a "settlement" agreement.

11 Opposing counsel has assured this Board that the terms of the proposed "settlement" agreement  
12 are standard and within reason, but the opposite is true. To wit: the proposed agreement would,  
13 among other things, require Lauren to pay the appellants fifty thousand dollars (\$50,000), possibly  
14 more, and require her to pay her contractors and subcontractors to maintain commercial general  
15 liability insurance in the amount of at least ten million dollars (\$10,000,000) when the DBI  
16 requirement, which has been met, is one million dollars (\$1,000,000).

17 We understand from Lauren that one or more of the appellants have also used intimidation  
18 tactics, including but not limited to:

- 19 • A threat to "lawyer up" on Lauren with an "influential" attorney (see above);
- 20 • A threat to jeopardize Lauren's reputation and relationship with other neighbors;
- 21 • A threat to "keep this going" for multiple years to prohibit Lauren from making  
22 structural improvements if she does not enter into the "settlement" agreement;
- 23 • Repeatedly taking unnecessary photographs of Lauren's home during unrelated  
24 work (painting and landscaping) and refusing to stop when workers ask not to be  
25 personally photographed; and
- 26 • Moving paint buckets from Lauren's driveway and blocking her driveway while  
27 painters were working at her home.

28

1 Lauren is understandably rattled by these continued intimidation tactics, which have  
2 arguably risen to the level of harassment by the appellants and further highlight the true purpose of  
3 the appeals.

### 4 **III. ARGUMENT**

#### 5 **A. The concerns raised by the appellants have already been addressed**

6 Again, the plans were revised and the Revised Building Permit was issued by DBI to  
7 address the appellants' concerns about the proximity of the work to their property line. No other  
8 concerns related to the Revised Building Permit were raised by the appellants until after a second  
9 appeal was filed with this Board, notwithstanding multiple in-person meetings between the parties.  
10 That leads Lauren to believe that the actual purpose of the second appeal is extortionary in nature.

#### 11 **B. No supporting evidence has been provided by the appellants**

12 The appellants have provided no evidence to support the granting of the appeals. A few  
13 examples include:

- 14 • The appellants appealed the Revised Building Permit but provide no evidence for  
15 why the work proposed under that permit should not have been approved by DBI.
- 16 • As acknowledged in their brief to this Board, the appellants have not bothered to  
17 perform any field verifications on their own property.
- 18 • The appellants claim that their foundation has been undermined, but provide no  
19 related evidence.

20 Furthermore, to the extent that the appellants have attempted to provide evidence, it is  
21 misleading. For example, some of the photographs attached to the appellants' brief are not  
22 accurately described.

#### 23 **C. Inaccurate and misleading statements have been made by the appellants**

24 The appellants have also included inaccurate and misleading statements in their brief to  
25 this Board. A few examples include:

- 26 • The appellants suggest that this is a new "development" project. However, the  
27 proposed work only affects approximately 400 square feet inside the existing  
28 building perimeter.



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- The appellants suggest that work was done without a required excavation permit. However, as DBI is aware, no excavation permit is required where, as applicable here, fewer than 50 cubic yards of soil will be disturbed.
- The appellants argue that a geotechnical report should be prepared, in part to identify the existing soil conditions. However, those soil conditions (native dune sand deposits) are known, as acknowledged in their brief to this Board. As explained by Lauren’s licensed structural engineer, structural calculations were made using a bearing pressure associated to native soils at the site based on the California Building Code. See Exhibit B.
- The appellants suggest that underpinning is required below the north property line. However, as explained by Lauren’s licensed geotechnical and civil engineer, an underpinning system to support the adjacent structure is not expected given the limited extent of the excavations. See Exhibit C.
- The appellants claim that 30-day notice was required. That requirement only applies where the depth of the excavation is greater than the walls or foundations of the adjoining building. We also note that the appellants had actual notice at least 76 days prior to the excavation work proposed under the Initial Building Permit. Furthermore, as recognized by the appellants, the purpose of the notice requirement is to provide an adjacent property owner with the opportunity to take measures to protect their building from potential damage “if he so desires.” We understand that the appellants have not shown any interest in making any repairs or improvements to their circa 1913 foundation, which is likely also failing, presenting a potential safety hazard.
- Contrary to the appellants’ claims, all work has been completed safely. Lauren understands that the appellants were concerned about work within close proximity to their property line and obtained the Revised Building Permit to address those concerns.

1 **IV. CONCLUSION**

2 Again, Lauren has already faced substantial financial consequences and more importantly,  
3 a risk to her life and home, as a result of the appeals. We respectfully urge that this Board deny  
4 the appeals and allow Lauren to proceed with the critical structural improvements authorized  
5 under the Revised Building Permit. There has already been one significant earthquake since the  
6 first appeal was filed and Lauren deserves to live in a safe home without fear. Furthermore, the  
7 proposed structural improvements will not only protect Lauren, but also her neighbors. As  
8 explained by Enrique Argumedo at DBI, upgrading an old unreinforced foundation is advisable  
9 and more homeowners should do the same. We suggest that the appellants follow Lauren's lead  
10 and make structural improvements to their home to ensure their safety and the safety of their  
11 neighbors. That would be a far wiser use of their time and financial resources.

12 This Board should not be persuaded by the appellants' unsupported, inaccurate, and often  
13 irrelevant claims. To do so would allow the appellants to continue to jeopardize Lauren's safety  
14 and would give them the opportunity to continue to use intimidation tactics, including threats of  
15 additional appeals, in an attempt to force Lauren into a "settlement" agreement for their personal  
16 gain. We question the appellants' motives in light of their intimidation tactics and the second  
17 appeal. Again, the Revised Building Permit addresses their stated concerns and their purported  
18 concerns continue to change.


19 We understand that this Board reviews building permit appeals "de novo" but we  
20 respectfully urge that this Board defer to the expertise of the professionals at DBI as that pertains  
21 to the adequacy of the plans and structural calculations prepared for and approved by DBI  
22 pursuant to the Revised Building Permit. Accordingly, we respectfully urge this Board to deny the  
23 appeals and uphold the Revised Building Permit so the critical structural improvements authorized  
24 under that permit can proceed without further delay.

25 We also note that after reviewing this Board's hearing agendas over the past year, there is a  
26 notable lack of appeals of this nature. Rather, the majority of permit appeals heard by this Board  
27 are appropriately limited to alteration permits issued by DBI and approved by the Planning  
28 Department, which typically involve a significant remodel, addition and/or construction of a new

1 ADU. We understand and appreciate the appeal process, particularly under such  
2 circumstances. However, we also recognize that the appeal process provides an opportunity for  
3 the abuse of that process. We urge that you not let that happen here, where an interior structural  
4 retrofit is required to make a home livable. Lauren deserves to live in a safe home without fearing  
5 for her life.

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7  
8 Dated: December 8, 2022

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
MICHAEL J. BETZ  
CAROLINE G. CHASE

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15 CAROLINE G. CHASE  
16 Attorneys for Property Owner  
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# **EXHIBIT A**



## JOHN S. EGAN

As Principal of Egan | Simon Architecture, John provides experience-based leadership in design and construction techniques. He believes in environmentally responsible architecture as evident by his award-winning environmental projects. His team's practice borrows from past and current technologies to create a progressive architecture that brings balance, harmony and thoughtfulness to the solutions they bring to life.

John attended the prestigious University of Southern California's School of Architecture. His early influences include endless summer swimming, biking the Mt. Vernon Trail with the cherry blossoms in bloom, observing the Space Shuttle Challenger launch, shortcuts through the lobbies in the Chicago Loop to avoid the winter chill, and being a runner at the commodity pits at the Chicago Board of Trade.

John's passion for design has manifested in successful architectural works both private and community based. He believes by identifying, considering and responding to the influences of memory, thought, and the experience presented, the solution to most challenges are created.

During his collegiate years, John worked within a grassroots movement seeking a solution to the Southern California Homeless Crisis. Throughout his career, he has continued his efforts to provide socially based architectural solutions for those in need. Notable projects include the Project Angel Food Kitchen, which in 2021 served one million meals to individuals in need; Step-Up on Vine, which offers housing for homeless individuals with persistent and severe mental illness and was architecturally recognized by the U.S. Green Building Council and by the Clinton Global Initiative; the Calvet Kitchen on the West Los Angeles Veterans Campus, which serves meals to over 390 veterans in care; and the Rise Apartments, which provides homes for previously homeless Veterans, and is distinguished by the America Institute of Architect Los Angeles for design excellence.

John's work in the private sector has been equally well established and recognized. Soon after opening his office, John was selected for the renovation of the prestigious Hotel Bel-Air. The experience of working with a world class team on a legendary property was profound. From meeting expectations to material usage to the attention every detail deserved, the project served as an ideal foundation for the multiple private works he was awarded that followed, including numerous prestigious private residences in Southern California.

John is a past Board member of the USCGBC-LA; a past Board member of the American Institute of Architects Los Angeles, as a representative to the California AIA; a licensed Architect in California and Florida; a Leadership in Energy and Environmental Design (LEED) Accredited Professional and registered with the National Council of Architectural Registration Board (NCARB). He is currently participating with the Rotary Club of Downtown Los Angeles Satellite Club Homelessness dedicated to helping provide solutions to those experiencing homelessness.





**PETER T. ERDELYI &  
ASSOCIATES, INC.**

## **Architectural engineering Structural design**

# Peter T. Erdelyi

## Professional Engineer

### Overview of Qualifications

Structural Designer and Engineer of residential (including condominium) and commercial enterprises. In excess of 15,000 structures designed to date, working with over 800 architects and designers. Involved in projects related to earthquake repairs, house bolting, condominium conversions, and structural observations for homeowners, financial institutions, real estate brokers, and law firms. Performs peer reviews for the City of Culver City's Department of Building & Safety and is a member of the City of Culver City Board of Appeals. Involved in forensic work, numerous depositions and has qualified and testified as a structural engineering expert in many Los Angeles Superior Court lawsuits.

### Education

- Polytechnical University of Budapest; B.S. degree 1968; M.S. degree 1969;
- Major field: Civil and Construction Engineering

### Professional experience

- 1988 – Present: Owner, Peter T. Erdelyi & Associates, Inc., Los Angeles, CA.
- 1978 – 88: Co-Founder and owner, Erdelyi, Moon, Mezey & Associates, Los Angeles, CA; name subsequently changed to Erdelyi-Mezey & Associates
- 1975 – 78: Design Engineer, Vincent Kevin Kelly Consulting Structural Engineers, Santa Monica, CA.
- 1974 – 75: Design Engineer, Beven Herron, Buena Park, CA.
- 1970 – 74: Staff Engineer, Dyckerhoff & Weidman, Munich - Design Engineer
- Nicholas Sprangler, Munich - Chief Supervising Engineer, Furst Co.,

### Licenses

- 1976 Professional Engineering, CA License # 26962
- Also holds Professional Engineering Licenses in Nevada, New Mexico, Oregon, Washington and Texas.
- Professional Engineering (Structures) License, 1971, Germany
- Professional Engineering (Structures) License, 1969, Hungary

**1950 Sawtelle Blvd., Ste 175 Los Angeles, CA 90025 | Tel: (310) 553-9339 | [www.erdelyi.com](http://www.erdelyi.com)**





# Shane Rodacker, GE

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**Title**

Vice President  
Senior Engineer

**Office**

Livermore  
Fairfield

**Professional Organizations**

ASCE  
CalGeo  
Geoprofessional Business Association  
ACEC

Mr. Rodacker has 20+ years of geotechnical engineering experience with a wide range of projects in California and Nevada. He has conducted hundreds of geotechnical investigations and provided practical recommendations and solutions during the design and construction of major transportation and infrastructure projects, low- to high-rise mixed-use developments, and educational and essential services facilities. A variety of public agencies, design engineers and architects, and private sector clientele rely on Shane's experience and wider project perspective when making decisions regarding project feasibility, foundation systems and site development. He has been the geotechnical engineer of record for large-scale land development projects with millions of cubic yards of earthwork and remedial grading involving massive buttresses, shear keys and subsurface drainage systems.

Shane manages Geocon's geotechnical services in the greater Bay Area. He is a registered Geotechnical Engineer in California and registered Civil Engineer in California and Nevada.

# **EXHIBIT B**



December 6, 2022

Thomas Monahan  
146 23<sup>rd</sup> Ave,  
San Francisco, CA 94121

RE: 146 23<sup>rd</sup> Avenue Street, San Francisco, CA 94121

To Whom It May Concern:

It is our understanding that the scope of work associated to the permit issued for the work at 146 23<sup>rd</sup> Avenue Street has not been installed, and that the project permit has been placed on hold by the Department of Building Inspection.

It is our understanding that the Department of Building Inspection placed the permit on hold in order to allow for the neighbor's concerns to be reviewed. We are writing this letter to be of assistance to the Department of Building Inspection in their effort to resolve these concerns and allow the project as designed to proceed.

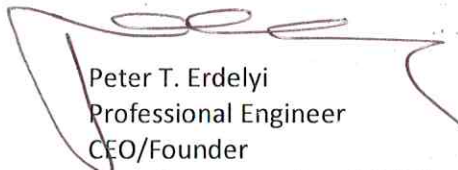
Our office assisted Lauren Monahan by providing design calculations for the proposed foundation design and support post replacement. The support posts occur in the center of the basement and should not be of any concern to the neighbor. The new support posts replace the existing support posts, and the new support posts are far better than the older existing system. In reviewing the concrete foundation design we provided structural calculations using a bearing pressure associated to native soils described at the site, cemented sand, based on the California Building Code.

We understand that to appease the neighbor's concerns, the drawings have been updated to move the foundation work 5'-0" away from the shared property line. This should result in the work being located far enough from the shared property line to avoid any undermining of the neighbors foundation vertically and laterally.

At the request of the Monahan's we have talked with the neighbor's engineer, Jim Markovich, and we are under the impression that all concerns have been resolved.

It is our hope that this letter allow for the project to continue and that Lauren can complete her project and enjoy her new home.

Sincerely,

  
Peter T. Erdelyi  
Professional Engineer  
CEO/Founder  
State license number C26962



# **EXHIBIT C**





Project No. E9349-04-01  
December 6, 2022

Ms. Lauren Monahan  
1101 Fifth Avenue, Suite 300  
San Rafael, California 94901

Subject: 146 23<sup>rd</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA  
GEOTECHNICAL CONSULTATION

Reference: Structural Plans: *146 23<sup>rd</sup> Avenue, San Francisco, CA 94121*, prepared by Monahan Design Group, Addendum 1 dated October 27, 2022.

Dear Ms. Monahan:

In accordance with your request, we have prepared this correspondence to provide geotechnical engineering input relative to an ongoing structural retrofit project at the subject residential property in San Francisco. The information herein is based on our observations at the site and our review of the referenced structural plans and relevant geologic mapping. The subject property is a three-story (two stories over tuck-under garage) wood-framed home that was constructed in 1916.

Based on the referenced structural plans and onsite discussions with the project contractor, the project will construct three new isolated pad footings in the crawl space behind the garage, generally along the east-west axis of the residence. The project will also construct two short masonry block retaining walls parallel to the east-west axis, each approximately 7 feet to the north or south of the axis and supported by new strip footings. New concrete slabs-on-grade are proposed atop the masonry block walls, between the walls and the building perimeter. New slab-on-grade is also planned between the new block walls. We note that the zone of soil-slurry mix below the northern exterior wall, as shown on Detail 1 on Sheet A4 of the referenced plans, will not be constructed.

It should be understood that the area between the planned new pad footings and the northern exterior wall was our focus as we understand the adjacent property owner to the north has expressed concerns regarding foundation movement that could potentially be caused by construction activities. We understand that retrofit construction has been halted by the City and County of San Francisco's Department of Building Inspection in response to the concerns brought forth by the property owner.

At the time of our November 18, 2022 site visit, excavations for the aforementioned pad footings were partially completed and soils were exposed throughout the crawl space. Based on our observations onsite, the building is underlain by native dune sand deposits that are prevalent in the project area and consistent with various geologic mapping. Where the dune sands were undisturbed, the materials were dense and competent under hand probe. Loose excavation spoils were noted atop the native sands in some areas.

We understand that excavations for the new footings discussed above will not extend below a 1½:1 (horizontal:vertical) plane projected down and outward from the foundation of the existing residence to the north. Given the discussion herein, it is our opinion that foundation movement at the adjacent building due to forthcoming excavations for the retrofit project at 146 23<sup>rd</sup> Avenue is unlikely and, from a geotechnical standpoint, the retrofit project discussed herein can resume. Additionally, we would not expect to see an

underpinning system used to support the adjacent structure given the extent of the excavations discussed herein.

As discussed onsite with the project contractor, we recommend that, after construction of the planned masonry block walls, loose spoils in the overlying area to receive new slab-on-grade be removed to expose competent dune sand deposits and promptly replaced with flowable sand slurry to establish finished subgrade for the new slabs. The thickness of the loose spoils was generally less than 1 foot based on our observations onsite. Project excavations should not extend below the 1 ½:1 plane discussed above.

Our professional services were performed, our findings obtained, and our recommendations prepared in accordance with generally accepted engineering principles and practices used in this area at this time. We make no warranty, express or implied.

Please contact the undersigned with any questions or if we may be of further service.

Sincerely,

**GEOCON CONSULTANTS, INC.**



Shane Rodacker, GE  
Senior Engineer



(1/e-mail) Addressee  
(1/email) Monahan Pacific Design Group  
Attention: Mr. Tom Monahan