**MEETING DATE: 05/04/09**
**ITEM NO.**
**DESK ITEM** 10

# COUNCIL AGENDA REPORT

DATE: May 4, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

SUBJECT: ARNERICH ROAD NO. 2 (APNS: 537-11-009, 537-11-030, 537-17-015, 537-07-018, 537-17-020, 537-17-021, 537-17-024, 537-17-027, 537-17-032); FILE #AN08-003.
ADOPT RESOLUTION RESCINDING RESOLUTION NO. 2009-034, TERMINATING ANNEXATION PROCEEDINGS, AND DIRECTING STAFF TO INITIATE NEW PROCEEDINGS.

REMARKS:

An affected property owner, Mr. Kokinos, presented his 'summary of issues' and two emails from Town staff to a Council member. A copy of the summary was not submitted to staff. However, based on a conversation with Mr. Kokinos, the PowerPoint presentation presented to Council on April 6, 2009 provides a summary of his concerns. The presentation is included as Attachment 6. The two emails from staff are included as Attachments 7 and 8.

Staff's comments to Mr. Kokinos's concerns are as follows:

- *Concern: Existing unincorporated area is a peninsula not an island.* Staff Comment: LAFCO does not distinguish peninsulas from islands. Any area of unincorporated land within the Town's Urban Service Area Boundary is considered a county island.
- *Concern: Annexation as proposed creates an island.* Staff Comment: The proposed annexation would create an island. Therefore, staff is recommending the existing proceedings be terminated. Staff will initiate the proceedings once the applicable annexation documents are corrected.
- *Concern: Assessed Tax Role is not correct.* Staff Comment: Assessed value was not correct. Table of Assessed Value was updated (Attachment 5).
- *Concern: No new service benefit will be obtained by residents as a result of annexation.* Staff Comment: The Town of Los Gatos Police Department will respond to the affected territory as opposed to the County Sheriff.

PREPARED BY: WRR Wendie R. Rooney, Director of Community Development

Reviewed by: PSJ Assistant Town Manager OK Town Attorney _____Clerk_____Finance
✓ Community Development

Revised: 5/4/09 4:15 PM

- *Concern: Mine shaff below Hicks Road will collapse and repair responsibility will rest with the Town.* Staff Comment: None.
- *Concern: Annexation will allow the properties to subdivide.* Staff Comment: The existing prezoning does not allow any of the affected properties to subdivide.
- *Concern (communicated verbally; not in presentation): One of the parcels required to be included in the annexation is two parcels, not one.* Staff Comment: Revised map submitted by applicant shall be reviewed and approved by the County Surveyor.

Attachments:

1-5. Previously Submitted.
6. PowerPoint Presentation by Mr. Kokinos (16 pages), received April 6, 2009.
7. Email from Town Staff (one page), sent April 27, 2009.
8. Email from Town Staff (two pages), sent April 27, 2009.

WRR:JS:mdc

# Arnerich Road No. 2
# Annexation Protest Document

Presented by Michael A. Kokinos

Impacted property owner

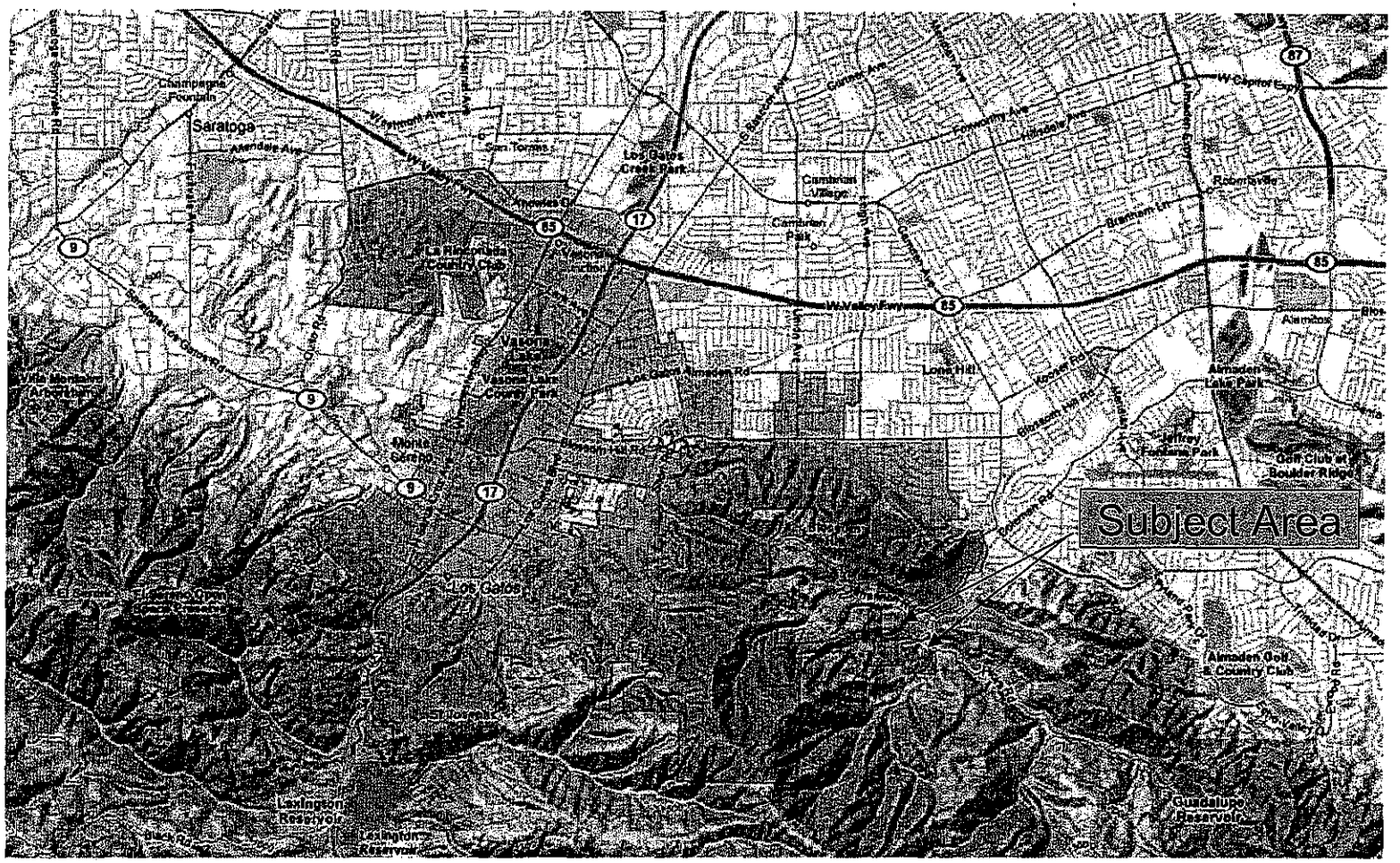
APN 537-17-032

April 6, 2009

Los Gatos Town Council Meeting

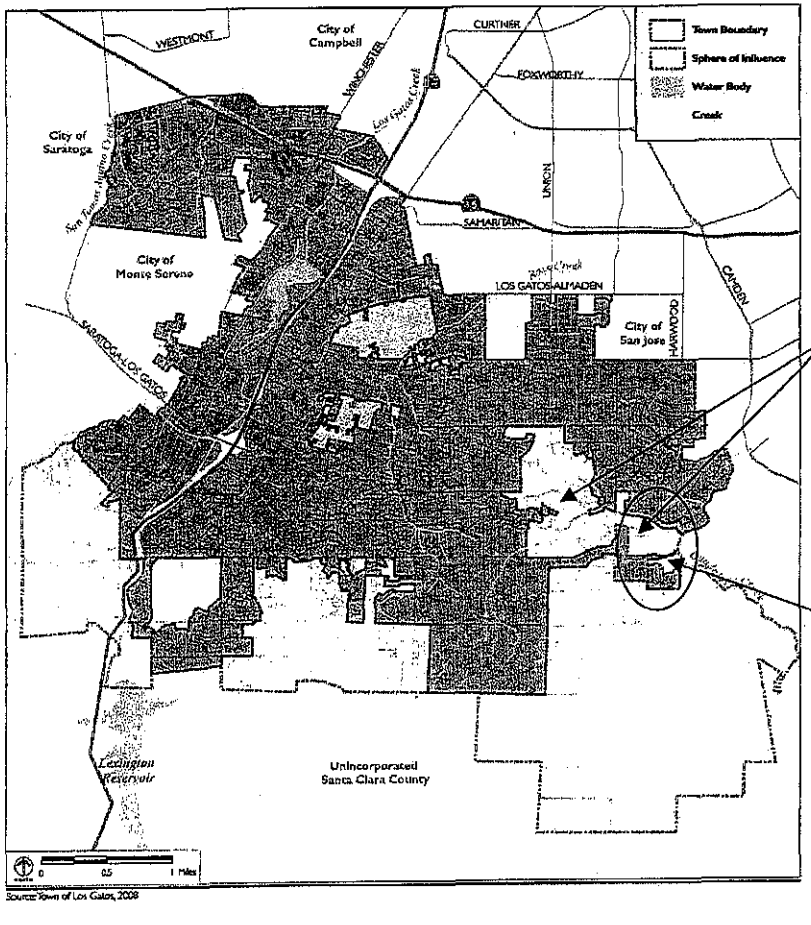
ATTACHMENT 6

# Current Town Boundary



# Town Boundary Map View





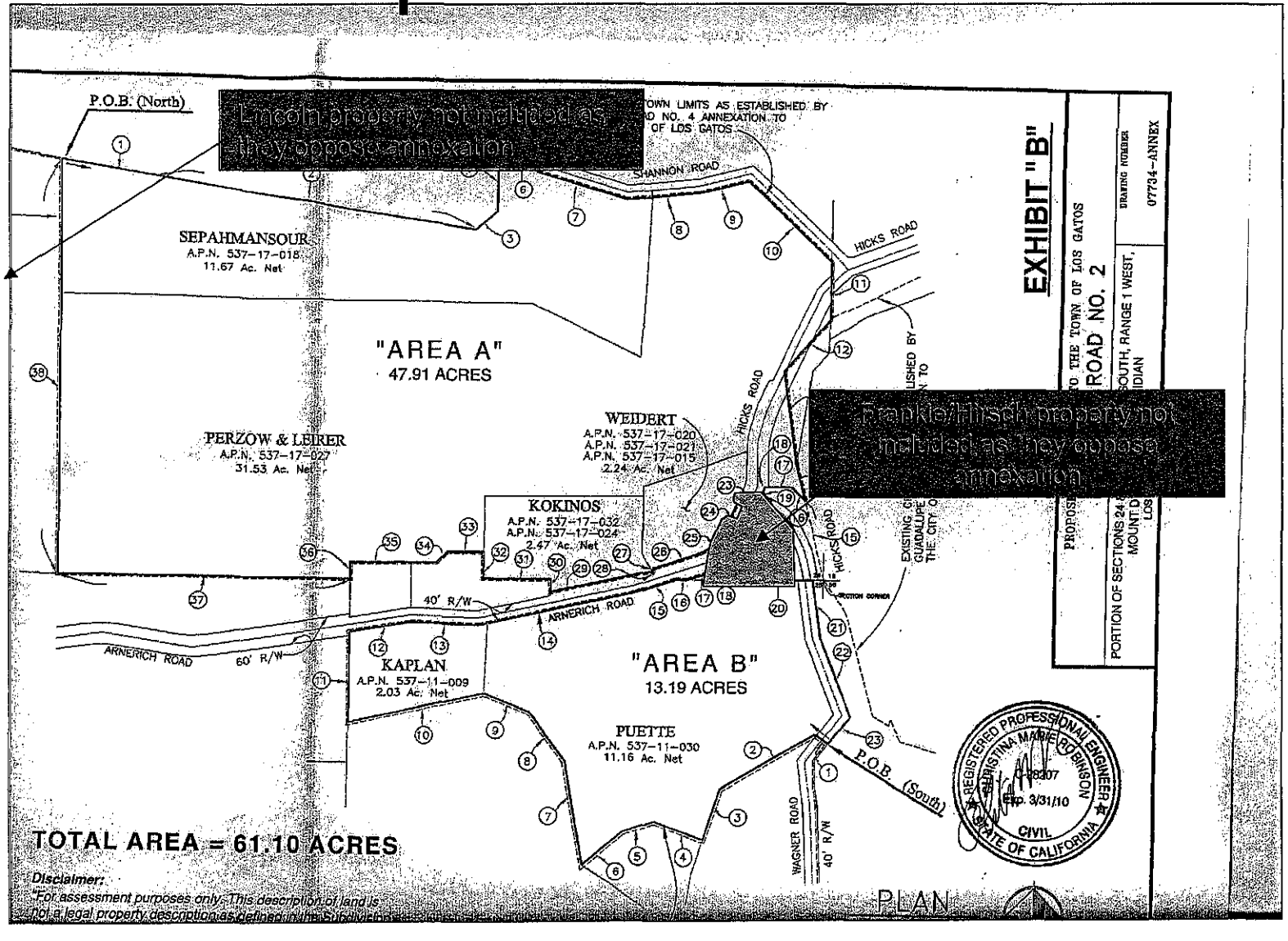

Existing Peninsula of County Land

Proposed Annexation Area

FIGURE 1-2

TOWN BOUNDARY AND SPHERE OF INFLUENCE

# Impacted Area



# LAFCO Policy Violation

- The Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 states that an annexation proposal shall not create islands of one jurisdiction surrounded by another juristiction.
- Section 56757 point A. That the proposal does not create islands.
- Current annexation as proposed unequivocally creates such an island.
- Staff report says proposed annexation are located in an unincorporated "island"of the county. Please provide a map that shows this Island as it currently exists. Page 2 Section B.
- Consequently annexation is in violation of LAFCO Policy and is illegal.

# Property Selection

- Hirsch/Frankle registered their opposition to annexation effort by Mr. Puette. The property was not included in original proposal, but must be because of LAFCO Road Annexation Policy Guidelines.
- Not including Hirsch/Frankle property results in area being categorized as "uninhabited." Including property changes registered voter count to >12 therefore changing area designation to "inhabited" and changing annexation criteria.

# Staff Report Errors

- Page 2 Discussion Paragraph B. Location and Property
- Staff report characterizes subject area as an unincorporated Island. Clearly, the subject area is a penninsula of County Land, extending up Shannon Road. This characterization is error and subject to legal review.
- Resolution: County surveyor has found map and complies with Lafco's road annexation policies is innaccurate and subject to legal review.
- Assessed Tax role is clearly wrong. Percentage of Kokinos Ownership is significantly greater.

# Corrected Tax Assessment

**Office of the Assessor**
County of Santa Clara

County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1771
(408) 299-5500 www.sccassessor.org

NOTICE OF PROPOSED ESCAPE ASSESSMENT

Lawrence E. Stone, Assessor

MAIL DATE: DECEMBER 26, 2008

KOKINOS, POLYXENE G & MICHAEL A

14075 ARNERICH RD
LOS GATOS CA 95032-6601

Dear Property Owner,

Due to an escaped assessment, incorrect values were enrolled on one or more recent Assessment Rolls for property located at:
14075 ARNERICH RD
LOS GATOS CA 95032-6601
Ten days from the date of this notice, this office will process a value correction to each of these Assessment Rolls. The corrected values for each of the affected roll years are summarized below.

The values shown (plus any taxable business fixtures and personal property and minus any exemptions for which you may qualify) will be the basis for your corrected tax bill(s).

You may not file an appeal based on this notice. After this proposed escape assessment has been processed and enrolled, you will be advised by a Notice of Enrollment of Escape Assessment. You will also be provided with information regarding your right to appeal either (1) the enrollment of the escape assessment or (2) the value established for the escape assessment. For more information, please contact Stephen Buckley at (408)299-5354.

ASSESSOR'S PARCEL NUMBER (A.P.N.): 537-17-032

PETITION NUMBER: H12182

YEAR: 2008-2009

| PREVIOUS VALUES: | |
|---|---|
| LAND | 716,454 |
| *IMPROVEMENTS | 420,146 |
| TOTAL VALUE | 1,136,600 |

| VALUES AS CORRECTED: | |
|---|---|
| LAND | 716,454 |
| *IMPROVEMENTS | 3,649,794 |
| TOTAL VALUE | 4,366,248 |

Net Change: 3,229,648

Assessor's Office Mission: Produce an annual assessment roll including all assessable property in accordance with legal mandates in a timely, accurate, & efficient manner; & provide current assessment-related information to the public and governmental agencies in a timely & responsive way.

-IMPROVEMENTS - This is the value of any BUILDINGS or STRUCTURES existing on the land whether NEW or OLD

# Inaccurate 2009 Tax Roll

ARNERICH ROAD NO. 2
TOTAL ASSESSED VALUE
2008-2009 TAX ROLL

| CNT | % OWN | SITE ADDRESS | APN | TOTAL VALUE |
|---|---|---|---|---|
| 1. | 100 | 14100 Arnerich Rd | 537-11-009 | $ 965,059.00 |
| 2. | 100 | 17505 Shannon Rd | 537-11-030 | $ 1,311,877.00 |
| 3. | 100 | Arnerich Rd | 537-17-015 | $ 138.00 |
| 4. | 100 | 14090 Arnerich Rd | 537-17-018 | $ 1,775,733.00 |
| 5. | 100 | 14065 Arnerich Rd | 537-17-020 | $ 1,360,128.00 |
| 6. | 100 | Arnerich Rd | 537-17-021 | $ 46,116.00 |
| 7. | 100 | 14075 Arnerich Rd | 537-17-024 | $ 12,961.00 |
| 8. | 100 | 14050 Shannon Road | 537-17-027 | $ 4,134,899.00 |
| 9. | 100 | Arnerich Rd | 537-17-032 | $ 1,136,600.00 |
| | | | TOTAL: | $ 10,743,511.00 |

ATTACHMENT 4

N:\DEV\JENNIFER S\Annexation\Arnerich No 2\Total Assessed Value.xls

Printed: 3/26/2009 12:48 PM

As presented in Staff Report Attachment 4

# Annexation Petition

- Petition states the reason for annexation is to "obtain high quality services to the residences of the area and allow them a full voice in local government.

# Effect on Services

- Water service is provided by San Jose Water Company. This will not change
- Sewer service is not provided; All properties are on fairly new septic systems( except Puette, which is not yet improved. This will not change.
- Electricity is provided by PG&E. This will not change.
- Gas is provided by truck and is propane. This will not change.
- Fire protection is provided by SCCFD. This will not change. Recent annexation into fire Central Fire protection District should have been done during Arnerich 1, yet due to insufficient oversight, a significant problem was overlooked
- School Districts will not change
- West Valley Sanitation will not change
- Public Safety will change from County Sheriff to Town Police…In increase in cost to the Town of LG
- Road maintenance will change, thus shifting the liability of an unstable road to LG from County with significant liability issues.
- Library service will change from county to town

- NET RESULT: No new service benefit will be obtained by residents as a result of annexation

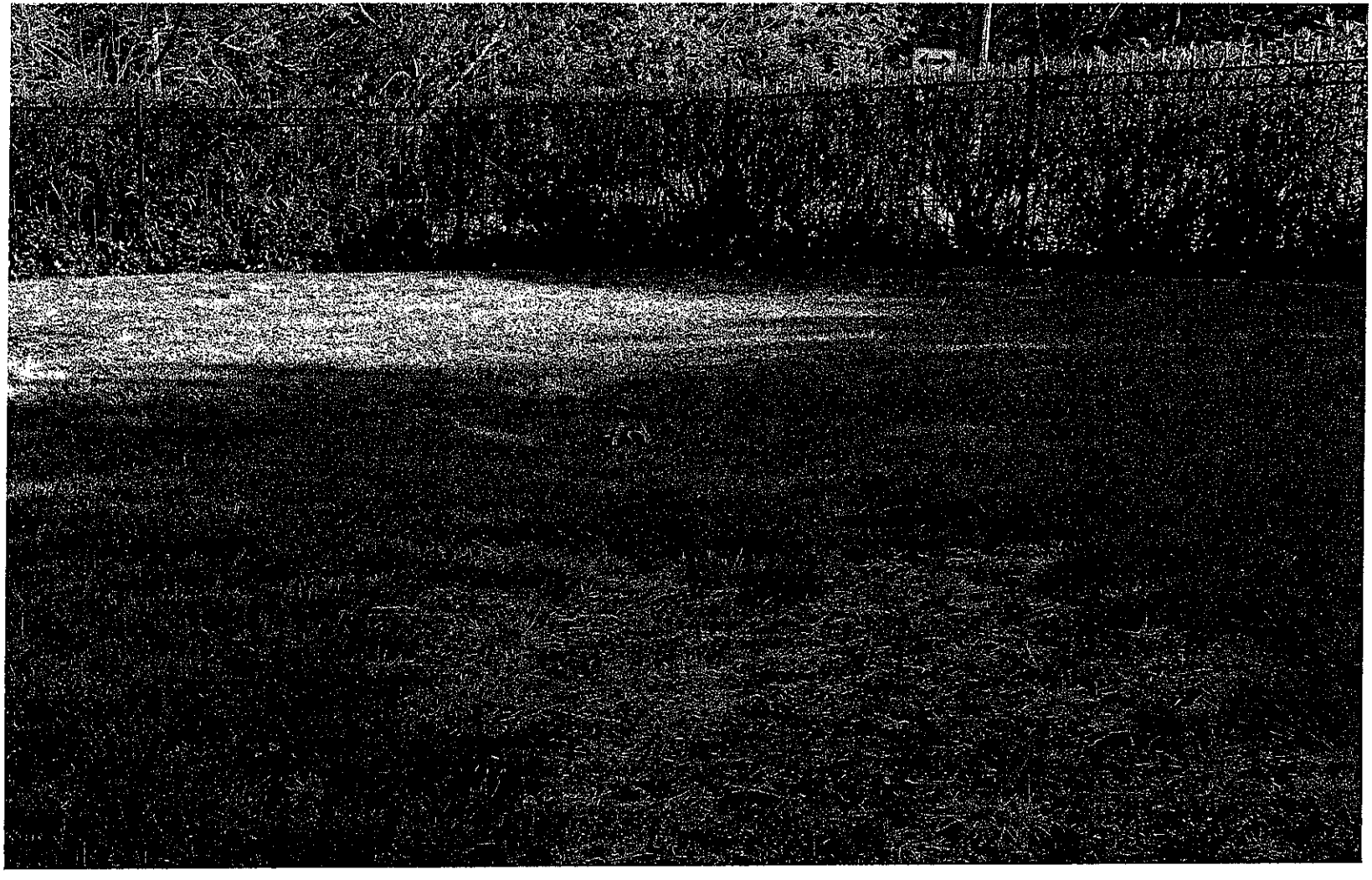
# Road Liability Issue

- Passing under Hicks road in the subject annexation area is an old Mine Shaft. Shaft is approximately 8 feet high by 6 feet wide.
- Mine shaft is rapidly collapsing and will result in total collapse of Hicks road in the near future.
- Annexation shifts liability of fixing this collapse (estimated > 100K) from county to town
- Additionally, a private water system exists under road that will need to be replaced at Town's expense should road collapse and destroy this system
- Significant riparian impact will create jurisdictional delays in fixing road between Los Gatos Town and Army Corp of Engineers who have jurisdiction over Guadalupe Creek in this area.

# Unstable Mine Shaft Underlying Hicks Road

# Private Water System

# Existing Sink Hole in Ajlouny Front Yard due to Below Ground Infrastructure Failure



# Summary

- We oppose annexation of this area to town
- Area is rural, residents are fairly self sufficient, level of services from County is good.
- Jurisdictional boundaries as they exist are well known and do not lead to confusion in communicating with various governmental agencies.
- Annexation presents unknown changes and challenges especially in light of current budget constraints facing town of Los Gatos.
- Petitioner is not and has never lived in subject area.
- Petitioner has been unable to sell land for past 4 years. Obviously if leaving area, voice in local government is minimal.
- Largest land owner in area Leirer/Perzow, have likewise been unable to sell property. Their property has been on the market for a similar time frame.
- Application is inaccurate and filled with errors likely leading to costly legal challenges.
- Annexation if done correctly, would incorporate entire Shannon Road corridor, not simply a small section for property owners interested in marketing their homes differently and attempting to further subdivide properties for sale; currently unable to subdivide properties due to HR 20 Zoning for both Puette and Leirer/Perzow.

# Jennifer Savage - Arnerich No. 2

**From:** Jennifer Savage
**To:** Mason-Sulic
**Date:** 4/27/2009 12:06 PM
**Subject:** Arnerich No. 2
**CC:** Michael Kokinos

Dear Velimir,

This e-mail is to provide the status of Arnerich Road No. 2. After the initiation hearing on April 6, 2009, Town staff contacted LAFCO regarding information requested by the Town Council. When discussing the information, LAFCO staff informed Town staff that the property located to the east of the subject annexation did indeed need to be part of the subject application. (LAFCO staff had previously determined that the land east of the subject application did not need to be included.)

The additional property requires the map to be revised. The annexation hearing cannot be continued because of the required noticing and time limits under annexation regulations. Therefore, at the hearing on May 4, 2009, staff will recommend that the annexation process be terminated as the annexation is currently proposed. You will receive a copy of the staff report making the recommendation to stop the current process. The next steps are the map revision, noticing, and the initiation hearing.

If you have any questions, please let me know.

Sincerely,

*Jennifer L. Savage*
Assistant Planner
Community Development Department
Town of Los Gatos
phone: 408.399.5702
email: jsavage@losgatosca.gov
website: www.losgatosca.gov/planning

IMPORTANT NOTICE: Effective March 16, 2009, Planning, Building, and Business License counter hours will be Monday through Friday 8:00 am to 1:00 pm.

**ATTACHMENT 7**

# Jennifer Savage - Re: Arnerich No. 2

**From:** Jennifer Savage
**To:** Mason-Sulic
**Date:** 4/27/2009 12:50 PM
**Subject:** Re: Arnerich No. 2
**CC:** Michael Kokinos

See revisions below.

*Jennifer L. Savage*
Assistant Planner
Community Development Department
Town of Los Gatos
phone: 408.399.5702
email: jsavage@losgatosca.gov
website: www.losgatosca.gov/planning

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The additional property requires the county-approved annexation map to be revised. The annexation hearing cannot be continued because of the required noticing and time limits under annexation regulations. Annexation regulations do not allow protest proceedings to be continued for more than sixty days. Additionally, the original notices (both the initiation and the protest proceeding) did not include the description of the additional required property; the noticing must be redone. Annexation notification requires four weeks of lead time and the sixty day limitation does not allow sufficient time for notification required by annexation regulations.

At the hearing on May 4, 2009, staff will recommend that the annexation *process* be terminated as the annexation is currently proposed. Only the protest proceedings will be terminated at this time; the application will remain active to allow the required revision to be made. The proceedings will continue with a revised map. You will receive a copy of the staff report making the recommendation to stop the current process. The next steps are the map revision, noticing, and the initiation hearing.

The Town will not collect additional annexation fees. Town staff was told that LAFCO would work with the county surveyor to eliminate fees incurred from the county surveyor's review.

If you have any questions, please let me know.

Sincerely,

**ATTACHMENT 8**

*Jennifer L. Savage*
Assistant Planner
Community Development Department
Town of Los Gatos
phone: 408.399.5702
email: jsavage@losgatosca.gov
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