

# STAFF REPORT

## TREES AND VIEWS COMMITTEE

**Project** Kurtzig View Claim / 297 South Street  
View Claim TRP 10-392

**Public Hearing Date** February 3, 2011

**Staff** Alison Thornberry, Assistant Planner

### REQUEST

Hold a fact finding meeting and make an advisory decision for restoration of the water view from 297 South Street.

### PROJECT INFORMATION

**Claimants/ Address** Andy and Sara Kurtzig  
297 South Street (APN 065-293-41), (see **Exhibit A** for vicinity map)

**Tree Owner/ Address** Linda Pfeifer  
211 South Street (APN 065-293-07), (see **Exhibit A** for vicinity map)

**Authority** Section 11.12.040.B.4 of the Municipal Code authorizes the Trees and Views Committee to make a Fact Finding and Advisory Decision regarding view claims.

### BACKGROUND

On January 12, 2011, the Trees and Views Committee held a publically noticed, Special Meeting, to view the claim and the subject trees from the Claimant's property at 297 South Street and from the Tree Owner's property at 297 South Street.

### PROJECT DESCRIPTION

#### ***Claimant***

The Claimants, Andy and Sara Kurtzig, request the Trees and Views Committee to conduct a fact finding meeting and make an advisory decision in favor of the restoration of a water view for their property located at 297 South Street. According to the Claimants, restoration of the view would entail the removal of several Undesirable Trees<sup>1</sup>, including Green Wattle Acacias (*Acacia decurrens*) and a Monterey Pine (*Pinus radiata*) located on the Tree Owner's property at 211 South Street.

As noted in the materials submitted by the Claimants (see **Exhibit B**), they have undertaken the following steps in an effort to reach a solution for the alleged view obstruction:

- January 2010, the Claimant attempted Initial Reconciliation per Section 10.12.040.B.1, and
- July 2010, the Claimant requested Mediation per Section 10.12.040.B.2, and
- August 2010, the Claimant requested Binding Arbitration per Section 10.12.040.B.3.

<sup>1</sup>Undesirable Tree: Is one of the following: 1) Eucalyptus globules (Blue Gum Eucalyptus); 2) Pinus radiata, (Monterey Pine); 3) Cupressus macrocarpa, (Monterey Cypress); 4) Sequoia sempervirens, (Coastal Redwood); 5) Acacia melanoxylon, (Blackwood Acacia); 6) Acacia baileyana, (Bailey Acacia); and 7) Acacia decurrens, (Green Wattle), pursuant to Sausalito Municipal Code Section 11.12.020.

Since these steps have not resulted in a resolution of the alleged view obstruction, the Claimants have requested the Trees and Views Committee to conduct a fact finding meeting and make an advisory finding.

An Arborist Report was prepared by Certified Arborist, Ray Moritz, on March 15, 2010. The Arborist was asked to determine whether the current views from the Claimants' property at 297 South Street had been diminished from established views as a result of the growth of Acacias and a Monterey Pine located on the adjacent Tree Owner's property at 211 South Street. The Arborist did not have access to the Tree Owner's property, and observed the subject trees from the adjacent property. He observed that most of the view obstruction is a result of unrestrained growth of the Green Wattle Acacias located downslope from the shared property line between the 297 and 211 South Street properties. The stand of Acacias is oriented east to west. At the west end and immediately north of the Acacia row, a Monterey Pine creates a redundant obstruction of views. The Arborist recommends removal and replacement of the Acacias and Monterey Pine with more appropriate desirable species for the following reasons:

1. Only removal or heavy topping will restore the views, and the experience since 1998 indicates that height maintenance would be very difficult.
2. Only removal will allow for planting and the restoration of privacy. Removal will provide solar access to the Tree Owner's property. Replanting immediately would be required to create an aesthetic landscape in the Tree Owner's rear yard.
3. The initial and ongoing costs of topping or trimming the Acacias will be very high. Trees must be regularly maintained every one to two years to sustain a desirable view.

The Arborist's report is provided as an attachment to the Claimant's submitted materials (see **Exhibit B**).

#### ***Tree Owner***

Linda Pfeifer, property owner of 211 South Street and Tree Owner, submitted a response to the View Claim on January 21, 2011. The Tree Owner's response requests that the view claim be denied in its entirety and the Committee issue an advisory ruling confirming that the Claimants have no right to the claimed view based on contracts signed by the Kurtzig's in 2002 and by the previous property owners of 211 South Street in 1997. The Tree Owner's submitted documents are attached (see **Exhibit C**)

### **PUBLIC NOTICE AND CORRESPONDENCE**

At least 10 days prior to the public hearing date, on February 3, 2011, notice of this View Claim was posted and was mailed to all residents and property owners within 100 feet of the subject parcel.

Photographs submitted by, Chuck Isen, property owner of 295 South Street (see **Exhibit D**).

### **RECOMMENDATION**

Staff recommends the Trees and Views Committee to conduct a fact finding meeting and make an advisory decision regarding the view claim submitted by the Claimants at 297 South Street in regard to the trees located on the Tree Owner's property at 211 South Street. Following the Trees and Views Committee Advisory Decision, Staff will return at a following meeting with a resolution formalizing the Committee's decision. The decision of the Trees and Views Committee must:

- Address findings with respect to the following standards as detailed in Sections 10.12.040.C.3 and 4 of the Municipal Code (see **Exhibit E** for the full text):
  3. Standards for Resolution of Claims
    - a. The character of the view; and
    - b. The character of the view obstruction; and
    - c. The extent of benefits and/or burdens derived from the growth in question;
    - d. Restorative actions shall be limited to the following; and
    - e. Each type of restorative action shall be evaluated based on the Findings and with consideration given the following factors; and
    - f. All restorative actions shall be undertaken with consideration to the following factors.
  4. Implementation of Decision
- Recommend restorative actions (if necessary)
- Recommend allocation of costs (if necessary)

Alternatively, the Trees and Views Committee may:

- Recommend the services of other experts either or both of the parties; or
- Continue the public hearing to obtain additional information.

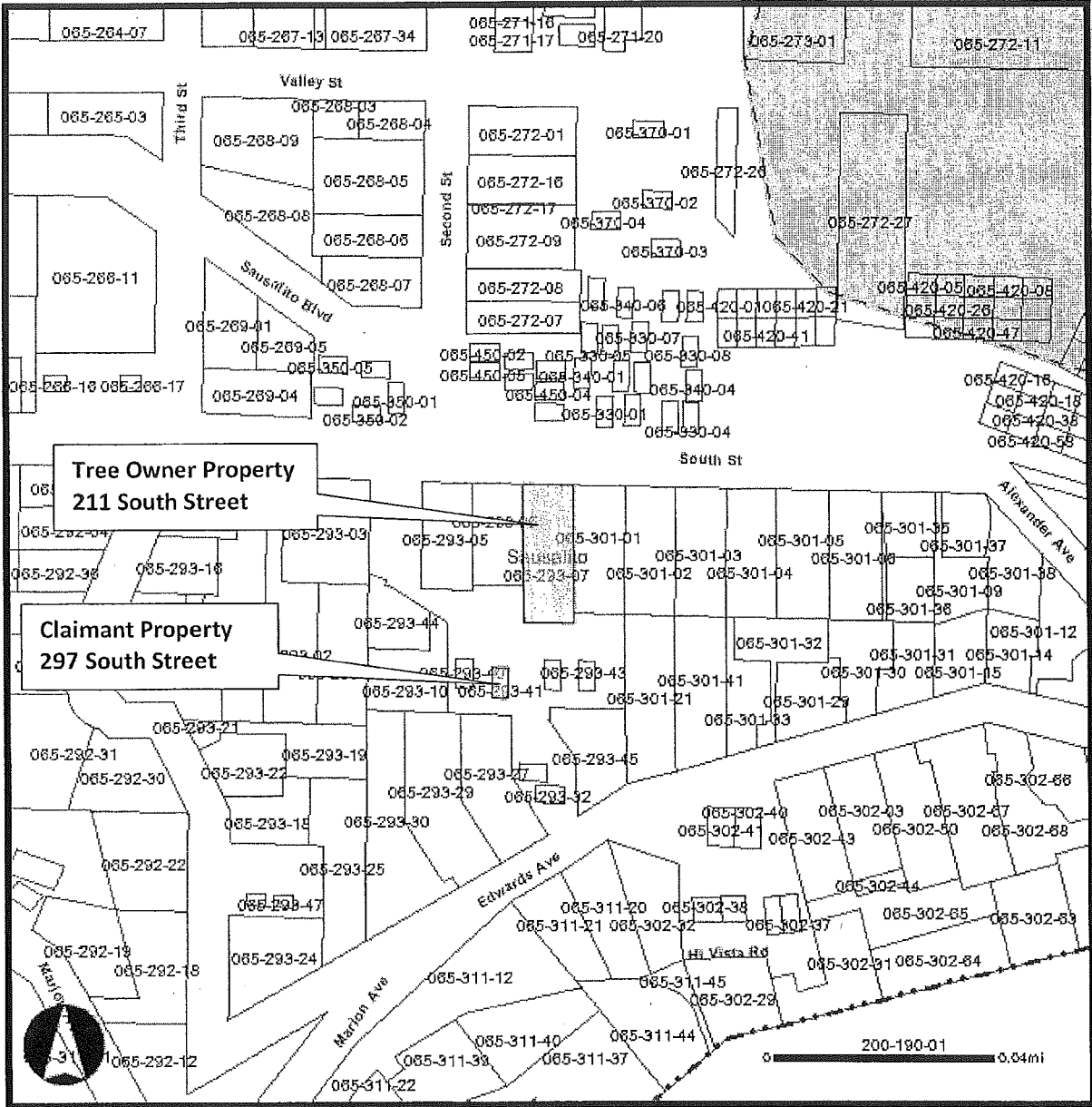
## **EXHIBITS**

- A. Vicinity Map
- B. Claimants' Materials, date stamped December 3, 2010
- C. Tree Owner's Materials, date stamped January 21, 2011
- D. Photographs Submitted – Chuck Isen, date stamped January 18, 2011
- E. Findings and Standards for View Claim

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# Vicinity Map



# Exhibit A

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TR-10-392

CITY OF SAUSALITO  
VIEW CLAIM - REQUEST FOR ADVISORY DECISION

APPLICATION

APPLICANT INFORMATION

Name Sara & Andy Kurtzig  
Address 862 Sir Francis Drake Blvd. #120, San Anselmo, CA 94960  
Day Phone [REDACTED] Email Address [REDACTED]

Mailing Address →

PROPERTY OWNER INFORMATION (If different from applicant)

Name Sara & Andy Kurtzig  
Address 297 South St., Sausalito, CA 94965  
Day Phone [REDACTED] Email Address [REDACTED]

Sausalito Property Address →

TREE OWNER INFORMATION

Name Linda Pfeifer  
Address 211 South St., Sausalito, CA 94965  
Day Phone [REDACTED] Email Address pfeiferlj@hotmail.com

EXPLANATION OF VIEW OBSTRUCTION AND REQUESTED ACTION

Linda's acacia tree has not been trimmed in 2+ years (she had trimmed it annually since we moved in 2002) and it is blocking our view and making it difficult to rent/sell our home for a fair value.

DATES OF REQUIRED ACTIONS

Applicant's Written Request to Tree Owner for Initial Reconciliation early 2010  
Applicant's Written Request to Tree Owner for Mediation JULY 15, 2010  
Applicant's Written Request to Tree Owner for Binding Arbitration Aug 26, 2010

Requested Action

Per the arborist recommendations we request the removal of Linda's acacia trees.

APPLICANT'S AND PROPERTY OWNER'S AUTHORIZATION AND VERIFICATION

I (We) hereby grant permission for the Trees and Views Committee members and any City Officials to enter the Property Owner's property to inspect the tree(s) for making an advisory decision on this View Claim. If a quorum (three or more members) of the Trees and Views Committee meets on the property, a publicly-noticed meeting is required and interested parties are allowed to enter the property during the publicly-noticed meeting.

I (We) hereby declare under penalty of perjury under the laws of the State of California that the information in this application and the accompanying materials are true, complete, and correct.

SIGNATURES

Applicant [Signature] Date 11-20-10  
Property Owner [Signature] Date 11-20-10

For questions contact:  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965  
415/289-4128 Voice  
415/339-2256 Fax

Permit Fee Paid	<u>\$1075.00</u>
Receipt No.	<u>86711</u>
By (Initials)	<u>AV</u>
Date Stamp	

**RECEIVED**  
DEC - 3 2010  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT DEPT.

Exhibit B  
[27 pages]

November 20, 2010

RECEIVED

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Dear Sausalito Trees and Views Committee –

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Thank you for your time and for helping us.

**Problem:**

The acacia trees at 211 South Street are unreasonably obstructing our view.

**Background:**

We bought our home at 297 South Street in the Spring of 2002, just prior to our wedding. We were living in San Francisco, and not even looking in Marin until one weekend when we spent the day in Sausalito and loved the beautiful town so much that we went to a few open houses. We found Sausalito charming not only because of the people we met, but also because of the beautiful views – certainly one of the important reasons why people choose Sausalito as their home.

We happened upon Peg Copple's company who we chose as our agent - they showed us 297 South Street. Aside from the limited view, we loved the home. The agents explained that the house did have a sweeping Richardson Bay view before Linda Pfeifer's acacia trees at 211 South Street grew so tall to block the view of 297 South Street. Our housing complex was built in 1989 and each of the 4 homes were oriented and built to take advantage of the spectacular bay views. We loved the views and charm of Sausalito so much that we wanted to pursue building our life there and we made an offer on 297 South Street, contingent upon those acacias being trimmed and a neighborly agreement being made for future trimmings. If Ms. Pfeifer agreed to trim them at that point and in the future, then we would buy the home. If not, we would keep looking.

During this escrow period, we invited Ms. Pfeifer over to 297 South Street to show her our lack of view because of her acacias, and she agreed to trim the trees and to work together with us cooperatively to trim the trees in the future. She drafted -a memorandum of understanding for us to sign (See attached) – she trimmed the trees in the Spring of 2002 and we bought our house and moved in. We lived there happily for 7 years and enjoyed a beautiful view as Ms. Pfeifer honored her neighborly agreement and allowed us to trim the trees annually for 7 years in a row.

Every year, from 2002 through 2008, Linda agreed to have her tree trimmed at our expense. She would select the day of the trim and she would manage the tree company. We would pay for it. This worked well until the 2009 expected trim, when Linda refused to allow us to trim her trees. You can imagine our surprise and disappointment at her decision. The last trim was done in the Spring of 2008. It has been 2 ½ years since the last trim or maintenance of the acacias.



This obstructing growth has drastically affected our enjoyment of our home, our property value and our ability to sell our home. (We need to sell it because our daughter has a serious medical condition for which we needed to move to a school in San Anselmo that has a full time school nurse). We understand it has also affected greatly our next door neighbor's (Chuck Isen) ability to sell his home – which has been on the market for half of this year.

We bought our home with a view. We bought our home because it had a spectacular view. We moved to Sausalito because of the joy of the views. We no longer have a view because of the unruly growth of the acacias.

We have tried to talk to Linda directly about our concern. She responded to us by asking us to only contact her by certified mail and not by phone call, in person or email. So, she has forced us to resolve this issue with third party involvement – I called Sausalito City and they advised me how to start and follow the process for a view claim. We are grateful that Sausalito has a committee to help its citizens resolve their tree and view disputes.

**Timeline:**

1989 -- 297 South Street Construction Complete. Sweeping views.

1990 - 1995 -- Cooperative arrangement with 211 South Street homeowner who agreed to trim trees annually at Saucito Cove homeowner's expense. Everyone satisfied. Sweeping views maintained.

10/27/1995 -- Linda Pfeifer purchases 211 South Street.

1996 -- Tree view obstruction begins because Ms. Pfeifer refuses to trim. Beginning of neighborly disagreements.

1/1997 -- Ms. Pfeifer insists that then Saucito Cove owners sign an agreement before she will allow tree trimming. Not wanting to get litigious, Richard Rosenberg (one of the original homeowners) signs agreement (attached) in hopes that it will facilitate a positive neighborly relationship with Ms. Pfeifer. One tree trimming occurs after this.

1998 -- 2002 -- No tree trimming occurs.

4/2002 -- Kurtzigs make an offer on 297 South Street, contingent upon the trimming of Ms. Pfeifer's acacias.

5/2002 -- Kurtzigs and Ms. Pfeifer make an agreement to trim the acacia trees that block view of our pending property

5/2002 -- Ms. Pfeifer trims her acacias and Kurtzigs remove contingency of home purchase. Kurtzigs move in.

2002 -- 2008 -- Ms. Pfeifer trims her acacias annually at our expense. All is well.

2009 -- Ms. Pfeifer refuses to trim her acacia.

1/2010 -- Ms. Pfeifer refuses to trim her acacia. Ms. Pfeifer refuses any communication about her acacias other than certified mail. Initial Reconciliation fails.

1/2010 -- Kurtzigs reach out to Sausalito City to begin to get help and begin to follow tree ordinance; Pfeifer will not mediate without pre-conditions

3/2010 -- Kurtzigs hire arborist to do detailed arborist report -- arborist recommends removal of the "undesirable species" and replacement with more "appropriate" and "desirable species."

7/2010 -- Kurtzigs send certified mail requesting mediation -- no response from Ms. Pfeifer within 30 days after service.

8/2010 -- Kurtzigs send certified mail requesting binding arbitration

9/18/2010 -- Ms. Pfeifer rejects binding arbitration

11/2010 -- Kurtzigs submit Completed Application and Fees to Sausalito Community Development Department

Enclosed, please find our application and our supporting documents to give you a full picture of our issue. Included is:

- 1) Color photos of our view post trim in 2002 and our view now.
- 2) 2002 Agreement – between Linda and ourselves – BEFORE our home purchase in Sausalito
- 3) Emails with Ms. Pfeifer regarding tree trimming during the last 8 years
- 4) Initial Reconciliation attempts (there were many over the last year, but here is one) - early 2010. Ms. Pfeifer will not agree to mediate without pre-conditions including all homeowners in subdivision participate and/or place deed restrictions.
- 5) 1997 Agreement between then homeowners
- 6) Request for mediation via certified mail July 15, 2010 - with arborist report and arborist CD of photos; received by Ms. Pfeifer July 24, 2010 – no response from her within 30 day period – which is a rejection of our mediation request
- 7) Request for binding arbitration - certified mail August 26, 2010
- 8) Response from Ms. Pfeifer Sept 18, 2010 – she rejects binding arbitration. 1997 Agreement – one time agreement in 1997 – pre-dates us – the year the trees grew to block homeowner views
- 9) Request for Fact Finding from the Sausalito Tree and View Committee – (this packet along with application). Check enclosed as well for \$1,075.00 to Sausalito Community Development Department.

We look forward to meeting you ASAP. Please let us know the soonest available date that works for you and we will make ourselves available.

Thank you so much for your assistance.

Sara & Andy Kurtzig

Owners, 297 South Street, Sausalito, Ca 94960

View - Now

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View - 2002

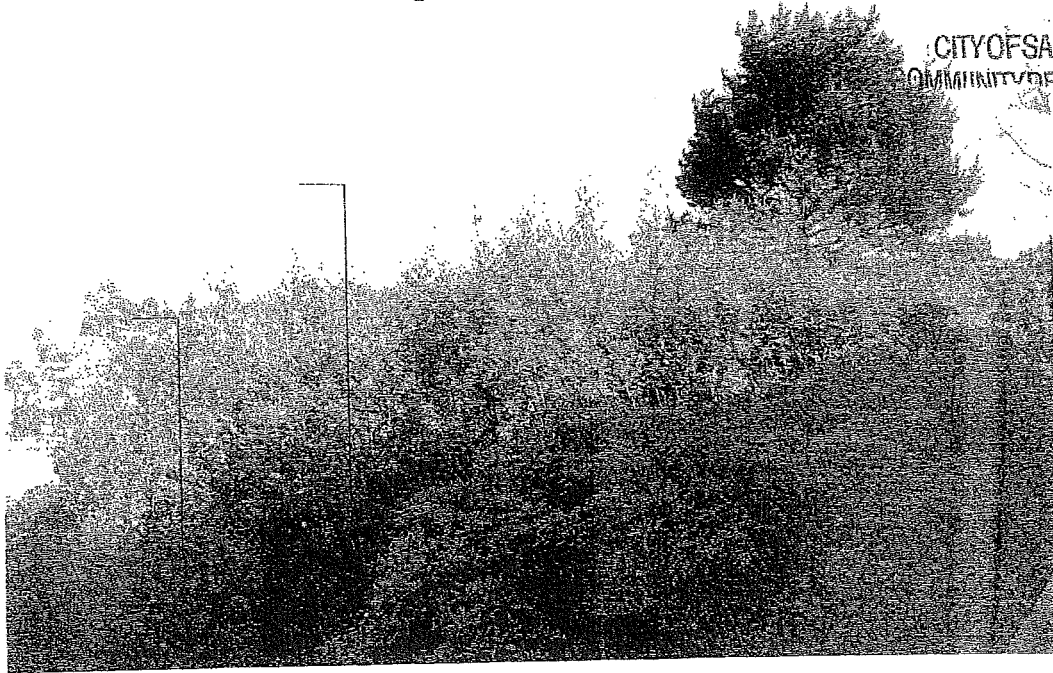


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Obstructing Growth Since Last Trimming



Height Growth Since Last Trimming

New Sprout Growth



# 2002 Agreement between vs Linda

From Linda Pfeifer 211 South Street Sausalito CA 94965 - April 30, 2002.

Please read the following conditions for tree trimming at 211 South Street. Please sign and return this memo to Linda Pfeifer, 211 South Street no later than Wednesday 3:00pm.

Linda Pfeifer has scheduled tree trimmers to come this Thursday 5/02/02 in the morning between 8-9:00am. Trimming should last a few hours.

All trimming Linda Pfeifer does this week is done voluntarily and does not give 297 South Street the right to any view or the right to have that trim in the future. In other words, this trim does not obligate Linda Pfeifer to cut her trees in a particular way or height in the future.

AK  
except as  
required by law  
SM

Andy and Sara, potential buyers of 297 South Street, agree that if they would like the trees trimmed with more frequency than Linda Pfeifer is willing to pay for, that Andy and Sara will pay for the trim per Linda's trimming specifications and professional practices.

At this time Linda Pfeifer has inspected her trees and has not found any bird's nests. However, should a trimmer find a bird's nest they will skip that branch and return in a few weeks to trim that particular branch.

Andy, Sara and Zandra will not contact/talk to Linda Pfeifer's tree trimmers before, during or after this trim. <sup>up to 1 week</sup>

Linda Pfeifer will receive a \$1250 cashiers check in her name by late Tuesday afternoon 4/30/02 to help subsidize approximately 50% of the cost of trimming.

This payment is not intended in any way to be anything other than an offset of the trimming costs. It is NOT a purchase of a view or a view easement and will NOT at any time be characterized as such.

Linda Pfeifer will fax a copy of a tree trimmer's bid to Zandra Frame's office by late Tuesday afternoon 4/30/02.

Andy, Sara and Carolyn have read these preconditions to trimming and agree to these conditions.

All name signatures of Andy, Sara and Caroline with Date

Sara Mulholland 5/1/02

Andy 5/1/02

Linda J Pfeifer 5-01-02

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COMMUNITY DEVELOPMENT

Tree trim emails

Sara Kurtzig

Subject: FW: Tree/Jamie/Etc...

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COMMUNITY DEVELOPMENT

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

From: LJ pfeifer [mailto:pfeiferlj@hotmail.com]  
Sent: Thursday, February 23, 2006 5:26 PM  
To: Kurtzig, Andy  
Subject: RE: Tree/Jamie/Etc...

Dear Andy,

Hi! I am so sorry to hear about Jamie's condition. I am certain things

will turn out fine. My 5 year old niece and 3 year old nephew have encountered medical issues as well. With parenthood, it is always going to be something, but the important thing is that everything works out in the end. Believe me, it will.

Regarding the trees, if you would like to do some maintenance, I am fine with that. I have a new arborist and I think you will love him. I will get you his contact information. Let me know if you have any trouble reaching him. He's a sweet guy and I feel he will give you a good price. Let me

know what works out, because I would like to be around when you do the trims. Thanks.

Linda

-----Original Message Follows-----

From: "Kurtzig, Andy" [REDACTED]  
To: <pfeiferlj@hotmail.com>  
Subject: Tree/Jamie/Etc...  
Date: Thu, 23 Feb 2006 18:48:41 -0500

Hi Linda,

It was great to see you at our holiday party in December. It's been crazy for us since then, so I'm sorry I haven't followed up with you about the tree trimming sooner. Jamie was diagnosed with Juvenile Diabetes 1 month ago. The good news is that she's feeling better now and feels totally normal... the bad news is that she's got to get a bunch of blood glucose finger pricks and insulin shots every day and night. Crazy how different our lives have become -- At least until we get all of this under control. Anyway, I hope all's going well with you. Let me know what we can do to facilitate the tree trimming. Sara belongs to an online newsgroup called the Golden Gate Mother's Group and they had a discussion about who the good Arborists are in the bay area. Below is the summary of replies that this mom got when she asked if any of the other mom's had Arborist recommendations. Talk to you soon.

Best,  
Andy

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

From: [REDACTED]

Great! See you on the 24th!

Tree trim email

We're happy to pay for and stay careful with the trimming. And, we would have no problem with it if you wanted to expand your home. That would be wonderful for you! I'll talk to Paul about the leaning issue and make sure he works on it up front first. And, I'll send you some dates that work for him so we can find a day that works for you to be there too.

Best,  
Andy

---

**From:** LJ Pfeifer [mailto:pfeiferlj@hotmail.com]  
**Sent:** Wednesday, May 09, 2007 4:09 PM  
**To:** Kurtzig, Andy  
**Subject:** RE: How about this?

Hi Andy,  
Yes, A get together would be nice. May 24 works for me, thanks!

Re: the trees. I just want to iterate that I don't see the tree trimming as annual, although -- as I said last year for the first time, --if you want this trimming to be annual, and you want to fund it every year, and as long as you do not overtrim again or if it is overtrimmed that this does not impede on my ability to build in the future per our prior discussions, then I am OK with this process.

On a side note, I am concerned that the trees seem to be leaning increasingly more downhill each year, and last year I asked Paul to trim up the front first but instead he started his trimmers in the back at the same time as the front. So I am fine with you using Paul again, but I want to be there and I want to ensure he trims the front of the trees first, so that the branches are not leaning far over. This could upset the integrity of the trees' root systems, and the trees provide stability to my hillside in addition to privacy. I'm sure you understand my concern.

Thanks,  
Linda

- > Subject: FW: How about this?
- > Date: Wed, 9 May 2007 17:48:08 -0400
- > From: [REDACTED]
- > To: pfeiferlj@hotmail.com
- > CC: [REDACTED]
- >
- > Linda -
- >
- > Sara saw you briefly as she was coming home from the Spring Fair last weekend and she honked, but I guess you didn't hear her. I hope you
- > enjoyed it! Sara and I were driving shuttles and face painting and
- > bartending most of the weekend! It was so fun. What a gorgeous weekend.
- > We wanted to ask 2 things:
- >
- > 1) Are you available for a neighborhood get together on Thursday May
- > 24th 6:30 - 8 pm - no
- > occasion - just for fun. No other purpose but visiting and snacks.
- > We're including Chuck/Gail, Hennessey/Richard, the Hale's, Catie, the
- > Moscardos and the new white house neighbors and Susan as well...
- >
- > 2) I'd love to organize the annual tree trimming soon. I'm assuming we
- > want to stick with Paul Johnson? If so, I'll give him a call.
- >
- > Hope you are well. Happy Spring.



Emails about trimming.

Sara Kurtzig

---

To: [REDACTED]  
Subject: FW: Spring is in the air...

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From: LJ Pfeifer [mailto:pfeiferlj@hotmail.com]  
Sent: Friday, March 07, 2008 6:47 PM  
To: Andy Kurtzig  
Subject: RE: Spring is in the air...

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Andy, I hope all is well for you and Jamie and Sara. It is beautiful weather for the weekend. I am fairly flexible but would ask it to occur on a Thursday as I work from home. Thanks, Linda

---

From: [REDACTED]  
To: pfeiferlj@hotmail.com  
Date: Fri, 7 Mar 2008 11:17:22 -0800  
Subject: Spring is in the air...

Spring is in the air... I hope you're enjoying the wonderful weather! We're off to Diabetes Camp this weekend, so should be perfect!

I'd like to schedule Paul Johnson to come out, so let's find a day that works for all of us. I'm thinking late-March or April sometime. Let me know what works for you!

Best,  
Andy



# Johnson's Tree & Garden Service



"Complete Care for your Gardens and Trees"

Certified Arborist No. 860  
International Society of Arboriculture, Western Chapter  
CCL #542249 C27 C-61-D49

P.O. Box 432 • Corte Madera, CA 94976 • (415) 456-8125

*our annual  
bill - one example invoice*

BILL TO
Andy Kurtzig 297 South Street Sausalito, CA 94965

DATE	INVOICE #
5/8/2008	10513

P.O. NO.	TERMS	PROJECT
	Due on receipt	

QUANTITY	DESCRIPTION	RATE	AMOUNT
	Trim acacias as per agreement.	2,000.00	2,000.00
			<b>RECEIVED</b> DEC - 3 2010 CITY OF SAUSALITO COMMUNITY DEVELOPMENT
			<i>Did you pay? If yes, give back to me.</i>
<b>Total</b>			<b>\$2,000.00</b>

1 1/2% interest per month on all accounts due over 30 days.

from Linda to us - rejection of  
initial reconciliation.

mail.

I will no longer read or respond to individual emails, because I've tried this for a year with no results. Further communication is welcome via your Home Owner's Association and certified mail, not Email.

I would appreciate it if you would forward this email to your Home Owner Association members so that they understand they will be receiving a letter from me shortly, and that all future communication moving forward will be through certified mail and through the Sauceto Cove Home Owner's Association.

Please know I continue to encourage mediation and welcome mediation through the mediation services I gave Hennessey months ago, and look forward to mediation with the Sauceto Cove Home Owner's Association representing all four condo owners.

Kind Regards,  
Linda

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COMMUNITY DEVELOPMENT

> From: [REDACTED]  
> To: [pfeiferlj@hotmail.com](mailto:pfeiferlj@hotmail.com)  
> CC: [DZepponi@ci.sausalito.ca.us](mailto:DZepponi@ci.sausalito.ca.us); [JGoldman@ci.sausalito.ca.us](mailto:JGoldman@ci.sausalito.ca.us)  
> Subject: TREE  
> Date: Tue, 26 Jan 2010 10:00:26 -0800

> Hi Linda -

> Long time, no talk! Happy Belated Birthday I think. Hope  
> you are well and having a good start to the New Year. Andy,  
> Hennessey, Richard and Chuck have forwarded me all of the  
> recent emails back and forth about your tree/our views. I am  
> hoping to take some of this tree stuff off Andy's plate and  
> step in as a primary contact for you since I have a bit more  
> time at this moment than Andy does.

> Would you be available to meet with me and Dan Zepponi at  
> our house (he said he helps mediate and resolve a lot of  
> these tree/view differences in the City of Sausalito).  
> Jonathan Goldman recommended me to him so I called him and  
> he said he'd be happy to meet with us to listen and try to  
> help us come to a solution - as he so often does.

> Are you available to meet with us any morning next week  
> between 9 and noon? Please let me know at your earliest  
> convenience so I can arrange for babysitting.

> Thanks a bunch.

> Sara Kurtzig

> [REDACTED]  
>  
>  
>  
>

# Initial Reconciliation Failed

To: Sauceto Cove Condominium Property Owners and Sauceto Cove Homeowner's Association  
293 South Street - Richard D. Rosenberg & Hennesley E Knoop  
295 South Street - Chuck & Gail Isen  
297 South Street - Andrew Kurtzig & Sara Mulholland  
299 South Street - Allen I. Arieff

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CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

From: Linda Pfeifer, 211 South Street, Sausalito, CA 94965

Feb. 24, 2010

Dear Sauceto Cove Property Owners and Sauceto Cove Homeowner's Association,

Hello, this is Linda Pfeifer, your downhill neighbor at 211 South Street.

Around early 2009 I learned that two units at Sauceto Cove were for sale. I asked both parties to disclose our long-standing 1997 tree trimming contract (attached) to prospective buyers. I was dismayed to find both parties unreceptive to my request. This marked yet another incident where a Sauceto Cove unit was placed on the market and I had to push for disclosure of our mutual contract. Frustrated, I asked that our contract be placed on the deed of Sauceto Cove because this would mandate full disclosure of our 1997 contract at point of sale for the current units on the market as well as future units, sparing me future harassment. When my request was rebuffed, I refused to trim my trees until the contract was placed on the Sauceto Cove deed.

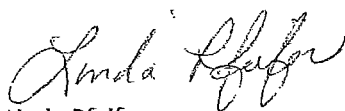
Through last year I have repeatedly told the Homeowner's Association as well as individual property owners that I would welcome mediation with Sauceto Cove Homeowners Association (all property owners). However, I was told that of the four units at Sauceto Cove, only two units had problems with my trees and that therefore I should mediate only with those two property owners, and that this mediation should also occur separately. My response is that if the other two units have no problems with my trees, they should have no problem placing our contract on deed. As for mediating with unit owners separately, this seems counterproductive and a means to harass me, for I would be forced to go through mediation with one property owner, then mediation with another, and later possibly the other two units who currently say they have no issues with my trees, when in fact Sauceto Cove is a condominium complex of four units with a homeowner association for governance matters. With only four units at Sauceto Cove, the four property owners should compromise to work together and go through mediation with me as one group under their Homeowner's Association.

Last year I sent the contact information for a mediation service in Marin. I would be happy to participate in mediation with the Sauceto Cove Homeowner's Association representing all four units. The information is as follows:

Marin Mediation Services • SUITE 170  
Address 30 North San Pedro Road, Suite 170  
Phone 415.499.7454 - Fax 415.499.3673  
Website [www.co.marin.ca.us](http://www.co.marin.ca.us)

Please let me know your thoughts, via regular mail. I am no longer accepting emails on this matter from Sauceto Cove property owners because I became flooded with multiple emails from multiple owners, and it became very confusing for me.

Best Regards,



Linda Pfeifer  
211 South Street, Sausalito CA 94965

LAW OFFICES  
GAW, VAN MALE, SMITH, MYERS & MIROGLIO

JOHN F. NOLAN  
11/25/1992

DAVID B. GAW  
NICHOLAS R. VAN MALE  
WYMAN G. SMITH, II  
BRUCE A. MYERS  
BRUCE A. MIROGLIO  
JOYCE L. ELLIOTT  
S. SCOTT REYNOLDS  
KELLY J. BERRYMAN  
CHRISTINE L. CHANG  
ROBYN L. BALDWIN  
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OF COUNSEL  
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A PROFESSIONAL LAW CORPORATION

WINEHIP BUILDING  
244 MAIN STREET  
NAPA, CALIFORNIA 94952-2045  
TELEPHONE (707) 252-9000  
FAX (707) 252-0782

OTHER OFFICES

CORPORATE PLAZA  
1261 TRAVIS BOULEVARD  
SUITE 350  
FAIRFIELD, CALIFORNIA 94533-4201  
TELEPHONE (707) 425-1250  
FAX (707) 425-1256

1997 Agreement

January 13, 1997

RECEIVED

DEC - 3 2010

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Richard Rosenberg, Esq.  
Carroll, Burdick & McDonough  
44 Montgomery Street, Suite 400  
San Francisco, California 94104-4606

Re: *Pfeifer Property, 211 South Street*

Dear Mr. Rosenberg:

As a gesture of neighborly goodwill, Ms. Pfeifer is willing to permit the trimming of acacia trees on her property located at 211 South Street, Sausalito, California under the following conditions:

1. The scheduling will be coordinated so that Ms. Pfeifer or her representative be on site at the time of trimming;
2. Ms. Pfeifer or her representative will be directing the trimmers regarding the amount to be trimmed from trees on the Pfeifer property. The trimmers will be instructed not to trim more than they are permitted to trim by Ms. Pfeifer or her representative;
3. The trimming is to be done at your clients' expense;
4. Your clients agree that they and any agents or employees involved in the trimming are solely responsible for any damage caused by the trimming;
5. Your clients agree to defend, indemnify and hold Ms. Pfeifer harmless should the trimming or the activities of the trimmers cause any damage or injury to persons or property;
6. Your clients acknowledge that they have no view easement, and such trimming is done solely at the permission of Ms. Pfeifer. Your clients further acknowledge that Ms. Pfeifer is not under any obligation to allow 293, 295, 297 and 299 South Street a bay view.

I trust that these conditions will not be problematic for you or your clients. If your clients are agreeable to these terms, please have them execute page 2 of this letter.

Richard Rosenberg, Esq.

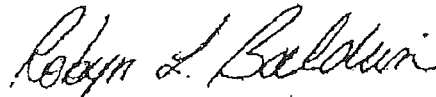
Page 2

January 13, 1997

At this time, I know Ms. Pfeifer's representative is available on Monday, January 20th. If this date is not convenient, or if you have additional dates in mind, please let me know as soon as possible so I can coordinate the scheduling.

Very truly yours,

GAW, VAN MALE, SMITH,  
MYERS & MIROGLIO



ROBYN L. BALDWIN


RLB:cjs  
Enclosure

cc: Ms. Linda Pfeifer

*This agreement does not limit the rights of the Saucito Cove Home owners to seek mediation and/or arbitration*

I declare under penalty of perjury under the laws of the State of California that I am authorized to enter into this agreement on behalf of the owners of 293, 295, 297 and 299 South Street. I hereby agree to the terms set forth above.

Date: 1/17/97

  
Representative for 293, 295, 297 and 299 South Street

TOTAL P.03

# Request for Mediation + Arborist Report

July 15, 2010

Ms. Pfeifer -

As initial reconciliation has been unsuccessful between us, I am following up on the tree dispute with regard to your undesirable acacias blocking our property's view at 297 South Street in Sausalito. I am following the Sausalito City Ordinance with this certified letter. Attached please find the recent arborist's report. I am formally requesting/proposing mediation so that we can resolve this issue (SMC Section 11.12.040B2). You have up to 30 days to respond to this written request for mediation. If mediation is accepted, we are to agree to a mediator within 10 days. I suggest that we mediate with professionals at Marin County Mediation Services in San Rafael.

As Mary Wagner let us know, Sausalito Municipal Code Section 11.12.040 provides that "A tree, shrub, hedge or other vegetation shall not be maintained in such a manner as to unreasonably obstruct the view from or the sunlight reaching other property." Section 11.12.040B1 goes on to provide that any "claimant" who has a good faith belief that the growth, maintenance, location of any tree ... on another person's property unreasonably diminishes ... enjoyment of the view from the claimant's property shall notify the tree owner in writing of the concern (we have done this). The notice is to include an arborist's report (attached) which should include a feasible solution to the view problem (included). This section also recommends personal discussions if possible to attempt to reach a mutually agreeable solution (have tried, though we are respectfully resorting to certified mail communications with you at your request). If any tree involved is a protected tree, a tree removal/alteration permit must be obtained prior to work being done (your tree is not protected).

Should this invitation for mediation be declined, we will follow the Sausalito code and make an offer for binding arbitration in conformance with SMC Section 11.12.040 (B)(3). You would then have 30 days within which to accept the offer of binding arbitration or it is assumed to have been rejected.

If rejection of binding arbitration occurs, we will then apply for a fact-finding and an advisory decision of the City of Sausalito Trees and Views Committee. On the date that our application and payment is made, the City is obligated to hold a Noticed Public Hearing as provided for in Section 11.12.040 (B)(4) within forty-five (45) days. The City's decision can then be used in civil litigation if need be.

We hope to come to an agreement with you before civil litigation.

Please respond to us within the specified period of time. Our mailing address/contact info is as follows:

Sara & Andy Kurtzig



Thank you,  
Sara & Andy Kurtzig of 297 South Street, Sausalito

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DEC - 3 2010

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

April 30, 2010

Sara & Andy Kurtzig  
[REDACTED]



Urban Forestry Associates  
Moritz Arboricultural Consulting

Final

RECEIVED

DEC - 3 2010

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT DEPARTMENT

## ARBORICULTURAL REPORT ON VIEW OBSTRUCTION

### PURPOSE

On March 15, 2010, Urban Forestry Associates, Inc. (UFA) inspected and photographed the view obstructions and available views from the vantage points of the Kurtzig residence at 297 South Street in Sausalito, California to assess the nature and extent of view obstructions resulting from the growth of Acacia and Monterey pine trees located on Linda Pfeifer's property at 211 South Street.

UFA also assessed the benefits of the subject trees to the tree owners under various management strategies. The Kurtzig's view complaint is based on the Sausalito Tree & View Preservation Ordinance (Sections 11.12.010 - 11.12.050).

### LOCATION

The Kurtzig home is at 297 South Street. The subject trees are in the rear yard of the 211 South Street property, which is to the northeast and immediately below the Kurtzig home.

### SCOPE OF WORK / LIMITATIONS

Information regarding property boundaries, land, or tree ownership were determined by fences and survey stakes. All observations and conclusions regarding tree, shrubs, and site conditions in this report were made by Urban Forestry Associates, Inc., independently, based on our education, experience, and inspection of the site. UFA at no time entered onto the Linda Pfeifer property at 211 South Street. All maps, tree descriptions, and photography were done from the adjacent property.

### BACKGROUND / HISTORY

The Kurtzig home was previously owned by Carolyn Davis Corbino, who had sought restoration of her views from Linda Pfeifer in 2001, but sold her home to the Kurtzigs prior to achieving a view agreement with Ms. Pfeifer. It is my understanding that an agreement between the Kurtzigs and Ms Pfeifer was signed during the Kurtzig escrow period in 2002.

Most of the view obstruction is a result of unrestrained growth of Green Wattle Acacia (*Acacia decurrens*) located below the shared property line between the 297 and 211 properties. The stand of Acacia is oriented east to west. The Kurtzig's provided UFA with photography that was taken shortly after a 2002 vista pruning agreement was made between Linda Pfeifer and the Kurtzig's (See CD, Vantage Point #4, 2002 Post trim Photos 14 & 15).



At the west end and immediately north of the Acacia row, there is a Monterey pine that is now a redundant obstruction of views (See Companion CD, Vantage (Stand Growth, Photo 1).

### SPECIES CHARACTERISTICS

The species at issue in this view obstruction are Green Wattle Acacia (*Acacia decurrens*) and Monterey pine (*Pinus radiata*). Both species are listed as "Undesirable Species" in the Ordinance (for their rapid, flammable growth) (Section 11.12.020 DEFINITIONS).

Green Wattle Acacia (*Acacia decurrens*) is one of the most invasive, non-native species in both wild and urban landscape of Marin County. It is one of the fastest growing species invading Marin landscapes. It is one of the most fire hazardous species in Marin County. Acacia ignites easily and burns intensely. (Moritz, R. 1997. *Pyrophytic vs. Fire Resistant Plants*, UC Cooperative Extension). When ignited by a house fire or other source it readily sustains a canopy fire that produces an abundance of fire brands and embers that ignite surrounding vegetation and homes. The pollen of Green Wattle also is hyper allergenic causing respiratory and headache problems for susceptible people (See CD, Stand & Growth Conditions, Photo 6).

Monterey pine (*Pinus radiata*) is also one of Marin County's problematic species. A juvenile size Monterey pine is located on the Pfeifer 211 property at the northwest corner of her acacia stand. It is now a redundant obstruction of views. However, it is growing very rapidly and can become a primary obstruction because it can grow at a rate of three feet per year, or if and when the Acacias are removed or topped. It will undergo a growth spurt if the Acacias are removed because it will have access to more light, nutrients, and water. Monterey pine also ignites easily and burns intensely. (Moritz, R. 1997. *Pyrophytic vs. Fire Resistant Plants*, UC Cooperative Extension). When ignited by a house fire or other source it can support an intense canopy fire that produces an abundance of fire brands and embers that may ignite surrounding vegetation and homes. It is subject to Pine Pitch Canker and most of its species will die from it.

### VIEW ASSESSMENT

#### Vantage Point #1: Front Entrance

Perspective	This vantage point is on the first landing of the front stairs, as one approaches or exits the front door of the house (See V. Pt. 1, Photos 1 & 2).
Current Condition	From this perspective, the Acacias completely block the view of east Sausalito Hill, Sausalito waterfront, the Richardson Bay and boats, Tiburon Hills and Point, Belvedere, Raccoon Strait, Angel Island, and San Francisco Bay. The growth has been rank and deliberately neglected.
Desired View	View of Sausalito Hill, Sausalito waterfront, boats, Richardson Bay, Tiburon Hills and Point, Belvedere Island, (and to the east: the Raccoon Strait and Angel Island (See CD, Vantage Point #4, Photo 14 - photo from

2002 post tree trimming).  
Percent Obstruction 45% of landmark views (based on percent of landmark views obstructed  
(See Vantage Pt. 1, Photo 3).

Vantage Point #2: Front Deck

Perspective This vantage point is the front, entrance level deck of the Kurtzig home  
(See Vantage Pt. 2, Photo 4).  
Current Condition From this perspective, the Acacia completely blocks the view of the east  
Sausalito Hill, Sausalito waterfront, San Francisco Bay and boats, Tiburon  
Point, Belvedere Island, Raccoon Strait, and Angel Island. The growth has  
been unkept and not maintained (See Stand Growth and Cond. Photos 1-5)  
Desired View View of Sausalito Hill, Sausalito waterfront and anchorage (boats),  
Richardson Bay, Tiburon Hills and Point, Belvedere Island, Raccoon  
Strait, Angel Island, and the San Francisco Bay.  
Percent Obstruction 60% of landmark views (based on percent of landmark views obstructed)  
(See Vantage Pt. 2, Photo 5).

Vantage Point #3: Living Room

Perspective This room has a large three-pane picture window that makes up one entire  
wall (See CD, Vantage Pt #3, Photo 7).  
Current Condition The row of Acacia and the Monterey pine tree substantially block the  
desired views from the living room (See Photo: 8, 9).  
Desired View View of Sausalito Hill, Sausalito waterfront and anchorage (boats),  
Richardson Bay, Tiburon Hills and Point, Belvedere Island, Raccoon  
Strait, Angel Island, and the San Francisco Bay. The portion of tree  
crowns obstructing the views do not contribute to the privacy of the tree  
owner or other neighbors.  
Percent Obstruction 50% of landmark views obstructed (based on percent of landmark views  
obstructed).

Vantage Point #4: Master Bedroom

Perspective This vantage point is from a five-pane window wall. The important  
perspectives from inside this room are from the bed and standing  
positions. This higher elevation vantage point shows many of the views  
that previously were enjoyed from the living room elevation, and the  
entrance and deck vantage points.  
Current Condition A significant portion of the Kurtzig's desired view is obstructed by the  
overgrowth of the Acacia and Monterey pines (See Vantage Pt. #4, Photos:  
12, and 13).  
Desired View View of Sausalito Hill, Sausalito waterfront and anchorage (boats),  
Richardson Bay, Tiburon Hills, and Belvedere Island. When the trees are

pruned the view from this vantage point are as illustrated in Photos 14 and 15. The Chorneau pine to the right in #15 is now windowed for view.  
Percent Obstruction 25% of landmark views (based on percent of landmark views obstructed).

**a. The Character of the View:**

The valued views from this vantage in Sausalito include ten (10) landmarks: Sausalito Hill, the Sausalito waterfront and anchorage (boats), Richardson Bay, the Tiburon Hills and Point, Belvedere Island, Raccoon Strait, Angel Island, and the San Francisco Bay. These are the landmarks potentially available to the viewer from the vantage points on the Kurtzig property and in their home.

- 1) The specific character of the potential landmark views, relative to each vantage point is described and photographically illustrated in the above VIEW ASSESSMENT section.
- 2) There are no obstructions to the above described views other than the Acacias and pine at 211 South Street and a lesser obstruction by two Monterey pines an oak and a Bay tree at 205 South Street.
- 3) It is UFA's understanding that the Kurtzig's purchased their home on 2002 and at the time of the purchase the subject trees had been recently vista pruned. The Kurtzigs had views of Sausalito Hill, the Sausalito waterfront, Richardson Bay and anchorage (boats), Tiburon Hills and Point Tiburon, Belvedere Island, Raccoon Strait, and Angel Island.

The Kurtzigs wish to have views restored to the following vantage points:

- The entrance way and decks on the north side of the home.
- The primary use areas of their homes': living room, dining area and master bedroom.

**b. The Character of the View Obstruction**

- 1) The percentages of obstruction for each of the four vantage points are discussed in the VIEW ASSESSMENT section. A summary of the percent obstructions follows:
  - Vantage Point #1: Front Entrance = 45%
  - Vantage Point #2: Front Deck = 60%
  - Vantage Point #3: Living Room = 50%
  - Vantage Point #4: Master Bedroom = 25%
- 2) The views are extremely important to the use and enjoyment of the property. The Kurtzig home was designed to highlight the described views. It is also evident that the views are a major factor in determining the value of the home.

- 3) The view obstruction is not only an obstruction of landmark views but also a serious hazard and a highly fast-growing, invasive "undesirable" species.

**c. The extent of benefits and/or burdens derived from the growth in question:**

- 1) The visual quality is extremely low due to ill-advised species selection and deliberate neglect. There is no apparent use of the understory of the Acacia/pine grove for leisure, recreation or other purposes (See Growth and Condition/Stand Use - Photo 7). The tops of the Acacia trees are leggy and unstable (See Stand Growth and Condition - Photos 1, 2 and 7). The pine tree is surrounded by Acacias leaving only the lower trunk visible to the tree owner. The lower trunks of the pine have no foliage or particular aesthetic value (See Stand Growth and Condition Photos 4 and 7). The top of the Acacias and pine on the 211 property are not particularly aesthetic (See Stand Growth and Condition 1 and 5).

The subject species are listed as 'undesirable species' (Sausalito Tree and View Preservation Ordinance, Sections 11.12.010 - 11.12.050) by the City of Sausalito and many other jurisdictions, and have many more burdens than benefits (See SPECIES CHARACTERISTICS above). Acacia, particularly, is subject to developing poor form. The two Monterey pines often do not have good form. Both species exhibit extremely fast growth rates. Acacia can grow three or more feet per year and is very invasive. Monterey pine can grow equally as fast. It is said to be the "fastest growing pine on the planet" (International Paper Corporation).

- 2) The trees are located up a steep slope to the south of the tree owner's home at the rear of their property. The trees obstruct the sun from the owner's home, increase energy consumption and have grown to the extent that they no longer provide the privacy that lower foliage would afford (See Stand Growth and Condition - Photo 7).
- 3) The portions of the tree canopy that obstruct the desired views have no significant impact on the privacy and/or enjoyment of the tree owner's property. Only the lower ten feet of growth (above adjacent 295/297 sidewalk elevation) screens the backyard and the north-extending canopy (toward the 211 house). The privacy screening between the claimant's property and the tree owner's property have failed due to the dominance of the Acacias.
- 4) The vegetation in question is over-topping and crowding out neighboring landscaping. Attempts to grow privacy screening between the claimant's property and the tree owner's property have failed due to the dominance of the Acacia.
- 5) The trees at issue exclude solar access and create an unsightly condition in the tree owner's back yard. It is apparent that the tree owners do not use their backyard to its potential. The vegetation appears to have a negative impact on the use, enjoyment, and

value of their property.

## RECOMMENDATIONS FOR RESTORATIVE ACTION

### d. Options

- 1) No action will result in rapid, on-going diminishment of the little view remaining for the Claimant. It may also prevent the potential sale of their home, as it was a major factor in their purchase of their home.
- 2) Thinning to reduce density, e.g. opening "windows" in the trees would have no effect on the Acacia obstruction.
- 3) Shaping to reduce height and spread, using thinning cuts only may be effective to create a filtered view through and around the pine in conjunction with crown containment but would not "restore" the view and would have no significant effect on the Acacia obstruction.
- 4) Heading or topping is an inferior alternative to removal to restore views and maintain privacy. It is the opinion of the most respected arboricultural authorities that it is better to remove and replace undesirable species than to top them (see Harris and Shigo). If the Committee decides that topping is the preferred alternative, the trees should be topped to a maximum height of eight feet (8') above the adjacent 295/297 sidewalk elevation and strict annual maintenance program must be provided.
- 5) Tree removal of this "undesirable species" and replacement will allow for restoration with recommended species that will provide the privacy now made impossible by the dominance of the Acacias. It would dramatically reduce the fire and structural failure hazards, and abate the allergenic problems connected with these trees.


### e. Evaluation

UFA strongly recommends the removal and replacement of the vegetation in question with more appropriate desirable species for the following reasons:

- 1) Only removal or heavy topping will restore the views, and the experience since 1998 indicates that height maintenance would be very difficult and would engender new ongoing disputes.
- 2) Only removal will allow for planting and the restoration of privacy. Removal will provide solar access to the tree owner's property. Replanting immediately would be required to create an aesthetic landscape in the tree owner's back yard.
- 3) The initial and ongoing costs of topping or trimming the Acacias will be very high and very high costs may arise if maintenance disputes come up in the future. Trees must be

regularly maintained every year to two years to sustain a desired view. This is an expensive and intrusive resolution.

- 4) It is a myth that trees provide noise mitigation. Research has clearly shown that a tree thicket of less than 200 feet has no effect on the amplitude of sound coming from adjacent properties (David Goodwin, Senior Acoustics Specialist and Federal Highway Administration (FHWA)). The thicket would have to be dense enough to prevent sight under, over, or through them. The stand would have to be wide enough to prevent flanking noise and high enough to prevent noise from moving over the trees. There has been extensive research on this subject by highway agencies. On this site, the dominating noise source is the road on the opposite side of the tree owner's home. As discussed earlier, the subject trees in their current condition do not provide significant privacy screening, and in fact, preclude the establishment and growth of an effective privacy screen.



Ray Moritz  
Certified Forester #241

Request for Binding Arbitration  
RECEIVED

August 26, 2010

DEC - 3 2010

Ms. Pfeifer --

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

We sent you a letter dated July 15, 2010 that you received by certified mail over 30 days ago requesting mediation. You did not respond within the specified time period which is a rejection of our request. Since Initial Reconciliation and Mediation attempts have failed, we are continuing to follow the Sausalito City Code process. We are now requesting that we submit the matter to binding arbitration in front of the Trees and Views Committee (SMC 11.12.040). This certified letter serves as our executed agreement to you -- requesting this binding arbitration. You will have 30 days within which to accept the offer of binding arbitration or it is assumed to have been rejected.

If you accept this request for binding arbitration, then we will submit a view claim to the city of Sausalito Community Development Department (City Council to determine filing fee) and the Trees and Views Committee will serve as a board of arbitration at a noticed public meeting which shall be held within 45 days of the date of our filing.

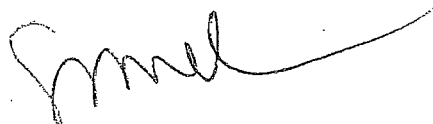
If you reject this request for binding arbitration, then we will elect fact-finding and an advisory decision of the City of Sausalito Trees and Views Committee. The City's decision can then be used in civil litigation if need be.

We hope to come to an agreement with you before civil litigation.

Please respond to us via certified mail within the specified period of time. Our mailing address/contact info is as follows:

Sara & Andy Kurtzig  
120 Tarry Road  
San Anselmo, CA 94960

Thank you,  
Sara & Andy Kurtzig of 297 South Street, Sausalito



# Request for Binding Arbitration

RECEIVED

August 26, 2010

DEC - 3 2010

Ms. Pfeifer -

CITY OF SAUSALITO

We sent you a letter dated July 15, 2010 that you received by certified mail over 30 days ago requesting mediation. You did not respond within the specified time period which is a rejection of our request. Since Initial Reconciliation and Mediation attempts have failed, we are continuing to follow the Sausalito City Code process. We are now requesting that we submit the matter to binding arbitration in front of the Trees and Views Committee (SMC 11.12.040). This certified letter serves as our executed agreement to you - requesting this binding arbitration. You will have 30 days within which to accept the offer of binding arbitration or it is assumed to have been rejected.

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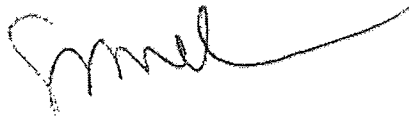
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We hope to come to an agreement with you before civil litigation.

Please respond to us via certified mail within the specified period of time. Our mailing address/contact info is as follows:

Sara & Andy Kurtzig

Thank you,  
Sara & Andy Kurtzig of 297 South Street, Sausalito





RECEIVED

DEC - 3 2010

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

July 17, 2009

Linda Pfeifer  
211 South Street  
Sausalito, CA 94965


Dear Linda,

Given that our negotiations over the last few months have not produced a resolution to the issue of trimming the Acacia bushes on your property that are obscuring the view of 295 South Street, this letter is a formal request that we move forward to formal mediation, using a mediator that we mutually agree upon.

This request follows the procedures of the Tree & View Preservation Ordinance of the Sausalito Planning Division. According to the ordinance, you have no more than 30 days from service of this written request for mediation to accept or reject the offer of mediation.

I look forward to your response to this request.

Sincerely,



Charles Isen  
Owner, 295 South Street, Sausalito, CA 94965

BLANK

Linda J. Pfeifer  
211 South Street  
Sausalito, CA 94925

RECEIVED

JAN 21 2011

January 20, 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

TO THE COMMISSIONERS OF THE CITY OF  
SAUSALITO TREES AND VIEWS COMMISSION

420 Litho Street  
Sausalito CA 94965

VIA HAND DELIVERY

**Response to Sara and Andy Kurtzig View Claim**

Linda Pfeifer, the owner of a home located at 211 South Street, Sausalito, hereby responds to the View Claim and Request for Advisory Decision filed by Sara and Andy Kurtzig on or about November 20, 2010.

Ms. Pfeifer asks the Sausalito Trees and Views Committee to deny the Kurtzig's application for a view claim for the following reasons:

1. Before the Kurtzigs closed escrow on the purchase of their home in 2002, they asked Ms. Pfeifer to trim her trees for a view. Before agreeing to trim, Ms. Pfeifer secured...
  - (A) ...the Kurtzig's acceptance of the terms of a 1997 contract stating the Kurtzig's property had no right to a view, and that all current and future trimming by Ms. Pfeifer would be voluntary (Exhibit A), and
  - (B) ...the Kurtzig's signature on a new 2002 contract (Exhibit B) stating the Kurtzig property had no right to a view and stating the Sausalito Trees and Views Ordinance Section 3(a)3 would not apply to the Kurtzig's property.

Given that Section 3(a)3 refers to a homeowner's right to the view they had at time of purchase, and given the Kurtzigs voluntarily signed a contract dismissing Section 3(a)3 as a condition to Ms Pfeifer's trimming, and given the contract signed by the Kurtzigs agreed their property had no right to a view, it is Ms. Pfeifer's position that the Trees and Views Committee has no option but to deny the Kurtzig's view claim.

1

It is also Ms. Pfeifer's position that the Trees and Views Committee does not have the jurisdiction to overrule a contractual agreement that the Kurtzigs voluntarily entered before buying their property.

2. In this present claim filed on or about November 20, 2010, the Kurtzigs are attempting to lead this Committee into the mistaken belief that the Kurtzigs have a right to a view from 297 South Street. This is not the case. Two contracts, both acknowledged by the Kurtzigs when they purchased 297 South Street, stipulate their property has no right to a view. These two contracts are described in Paragraphs 3 and 4 herein.
3. Ms. Pfeifer has a contract with Saucito Cove condominium association (the Kurtzig's property, 297 South Street, is part of this association), dated on or about January 13, 1997 (Exhibit A). The 1997 agreement states the conditions under which Ms. Pfeifer trims her trees, specifically stating that "Ms. Pfeifer is not under any obligation to allow 293, 295, 297 and 299 South Street a bay view."
4. In the May 1, 2002 agreement with the Kurtzigs, described in Paragraph 1 above, the claimants Sara and Andy Kurtzig expressly acknowledged that the anticipated 2002 trimming and all future trimming would be done voluntarily, and did not give the Kurtzigs any right to any view or the right to have Ms. Pfeifer's trees trimmed in the future. The Kurtzigs, who are now petitioning this Committee, expressly acknowledged back in 2002 that they had no right to a view.
5. The Kurtzigs and their arborist suggest that they are somehow losing value of their house due to changed circumstances since they have lost the view they had at the time they purchased their property. This is untrue.

The true facts are that the Kurtzig property was put on the market in 2002 without a view - which is why the Kurtzigs wanted Ms. Pfeifer to trim - and the 2002 price reflected that there was no view or right to a view.

The Kurtzigs are now attempting to profit at Ms. Pfeifer's expense by claiming that they have a right to a view, which they acknowledged they did not / would not have when they signed the 2002 contract with Ms. Pfeifer, and by attempting to sell a view to which they have no right.

The Kurtzigs should not be allowed to use this Commission's process as a means of earning a profit based on an asserted property (view) right when they voluntarily acknowledged they had no right to a view via signing a contract with Ms. Pfeifer at time of purchase.

6. Following the signing of the 1997 contract as well as the Kurtzig 2002 supplementary contract, Ms. Pfeifer voluntarily trimmed the trees on her property which are downhill from the Kurtzigs. She was under no obligation to do so since the Kurtzigs' predecessors and the Kurtzigs themselves both recognized and

acknowledged by contract that the owners of 297 South Street had no right to a view. All trimming was done – and since then has been done - as a sign of good faith and with the mutual understanding that Saucito Cove owners (including the Kurtzigs) would honor their mutual contracts with Ms. Pfeifer.

7. In 2008, when the Kurtzigs listed their property for sale, Ms. Pfeifer asked the Kurtzigs to disclose the 1997 contract and 2002 contract to prospective buyers. The Kurtzigs said they no longer had a copy of the 2002 contract.

Ms. Pfeifer wrote the Kurtzigs' then-real estate agent, Camara Scremin of Melissa Bradley Real Estate, to confirm that Ms. Pfeifer had previously entered into contracts in 1997 and 2002 confirming that the Kurtzig property at 297 South Street had no right to a view. Ms. Pfeifer supplied Ms. Scremin with copies of both contracts (a copy of Ms. Pfeifer's letter to Ms. Scremin is attached hereto as Exhibit C.) Ms. Pfeifer advised Ms. Scremin that copies of the two contracts should be included with the Kurtzigs' real property disclosure packet.

This was a burdensome process for Ms. Pfeifer, requiring the composition of the letter and copying both contracts for the Kurtzigs who did not have their copies, and driving to Ms. Scremin's office. After years of struggling to ensure contract disclosure when Saucito Cove Condos were put on the market for sale, Ms. Pfeifer told the Kurtzigs and the Isens (the Isens' property was also listed for sale at the Saucito Cove complex) that all view contracts must be listed on their deed/title before Ms. Pfeifer would trim again, because this would ensure current and future disclosure, and would not require Ms. Pfeifer to scramble and push for contract disclosure whenever a Saucito Cove condo was placed for sale.

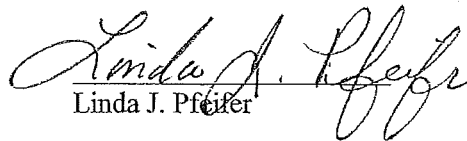
At first the Kurtzigs and Isens were amenable to putting the contracts on the deed/title. They asked Ms. Pfeifer to trim her trees first, before placing the contracts on title/deed, because they said it was hard to get everyone organized to sign a notarized copy of the contract. When Ms. Pfeifer refused to trim until the notarized copy of the contract was signed, the Kurtzigs and Isens changed their story, and they refused to place the contracts on deed/title. At that point Ms. Pfeifer refused further trimming.

8. The Kurtzigs true intent is a view. These acacias are not a fire hazard, but rather the Kurtzig's "fire hazard" argument is a smoke screen.
9. Saucito Cove condo owners are supporting the Kurtzigs because they would like to see the 1997 contract nullified because it also impacts the value of their condominiums. This entire matter is a contract issue between Ms. Pfeifer and the Kurtzigs and other condominium owners of Saucito Cove.
10. This matter is a dispute whose resolution is dictated by contract.

Any trimming dictated by the Trees and Views Committee without requiring the placement of these contracts on the title/deed of 297 Saucito Cove would greatly devalue Ms. Pfeifer's property by hundreds of thousands of dollars because it would compromise her right to build up and would destroy her privacy and her backyard. It would also nullify the thousands of dollars in legal fees that Ms. Pfeifer has spent since 1995 in defending her privacy and her right to build up.

Based upon the foregoing facts, Respondent Linda Pfeifer hereby requests that the Kurtzigs' claim be denied in its entirety, and that this Commission issue an advisory ruling confirming that 297 South Street has no right to the claimed view based on the contract the Kurtzigs themselves signed in 2002 at time of purchase, as well as the 1997 contract the Kurtzigs acknowledged at time of purchase, and that both of these contracts be placed on the title of 297 South Street.

Thank You,

  
Linda J. Pfeifer

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(1951-1983)

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January 13, 1997

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ADMINISTRATIVE DEPARTMENT

Exhibit A

pg. 1 of 2

Richard Rosenberg, Esq.  
Carroll, Burdick & McDonough  
44 Montgomery Street, Suite 400  
San Francisco, California 94104-4606

Re: Pfeifer Property, 211 South Street

Dear Mr. Rosenberg:

As a gesture of neighborly goodwill, Ms. Pfeifer is willing to permit the trimming of acacia trees on her property located at 211 South Street, Sausalito, California under the following conditions:

1. The scheduling will be coordinated so that Ms. Pfeifer or her representative be on site at the time of trimming;
2. Ms. Pfeifer or her representative will be directing the trimmers regarding the amount to be trimmed from trees on the Pfeifer property. The trimmers will be instructed not to trim more than they are permitted to trim by Ms. Pfeifer or her representative;
3. The trimming is to be done at your clients' expense;
4. Your clients agree that they and any agents or employees involved in the trimming are solely responsible for any damage caused by the trimming;
5. Your clients agree to defend, indemnify and hold Ms. Pfeifer harmless should the trimming or the activities of the trimmers cause any damage or injury to persons or property;
6. Your clients acknowledge that they have no view easement, and such trimming is done solely at the permission of Ms. Pfeifer. Your clients further acknowledge that Ms. Pfeifer is not under any obligation to allow 293, 295, 297 and 299 South Street a bay view.



I trust that these conditions will not be problematic for you or your clients. If your clients are agreeable to these terms, please have them execute page 2 of this letter.

Richard Rosenberg, Esq.  
Page 2  
January 13, 1997

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Exhibit A  
JAN 21 2011  
pg. 2 of 2  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

At this time, I know Ms. Pfeifer's representative is available on Monday, January 20th. If this date is not convenient, or if you have additional dates in mind, please let me know as soon as possible so I can coordinate the scheduling.

Very truly yours,

GAW, VAN MALE, SMITH,  
MYERS & MIROGLIO

*Robyn L. Baldwin*  
ROBYN L. BALDWIN

RLB:cjs  
Enclosure

cc: Ms. Linda Pfeifer

*This agreement does not limit the rights of  
the Sausalito Core Home owners to seek mediation and/or arbitration*

I declare under penalty of perjury under the laws of the State of California that I am authorized to enter into this agreement on behalf of the owners of 293, 295, 297 and 299 South Street. I hereby agree to the terms set forth above.

Date: 1/17/97

*[Signature]*  
\_\_\_\_\_  
Representative for 293, 295, 297 and 299 South Street



Exhibit B

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Memorandum between Linda Pfeifer and Andy and Sara, acknowledged by Carolyn.

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

- 1. Linda Pfeifer has scheduled tree trimmers to come this Thursday 5/02/02 in the morning between 8-9:00am. Trimming should last a few hours.
- 2. All trimming Linda Pfeifer does this week is done voluntarily and does not give 297 South Street the right to any view or the right to have that trim in the future. In other words, the Sausalito Trees and Views ordinance section 3a3 will not apply in this context.
- 3. Linda Pfeifer intends to trim in good faith regularly to maintain the trees at a reasonable level, and wishes to act in good faith as a neighbor and work towards a long-term relationship of trust and understanding with Andy and Sara rather than just a short-term relationship.
- 4. Andy and Sara, potential buyers of 297 South Street, agree that if they would like the trees trimmed with more frequency than Linda Pfeifer is willing to pay for, that Andy and Sara will pay for the trim per Linda's trimming specifications and given her written permission.
- 5. At this time Linda Pfeifer has inspected her trees and has not found any bird's nests. However, should a trimmer find a bird's nest they will skip that branch and return in a few weeks to trim that particular branch.
- 6. Linda Pfeifer will receive a \$1250 cashier's check in her name by late Tuesday afternoon 4/30/02 to help subsidize approximately 50% of the cost of trimming. This payment is not intended in any way to be anything other than an offset of the trimming costs. It is not a purchase of a view or a view easement and will not at any time be characterized as such.



Andy and Sara have read these preconditions to trimming and agree to these conditions.

LINDA

Full name signatures of Andy, Sara and Carolyn with Date.

Sara Mulholland 5/1/02

Andy 5/1/02

Linda J Pfeifer 5-1-02

Camara Scremin  
Melissa Bradley Real Estate  
Camara@bradleyrealestate.com (415)902-7183

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JAN 21 2011

CC: Bruce Blakely  
bruce@brucewblakely.com  
591 Redwood Hwy, Mill Valley 94941 - 381-6650

Exhibit CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

From: Linda Pfeifer  
211 South Street Sausalito CA 94965 - pfeiferlj@hotmail.com

Oct. 17, 2008

Dear Ms. Scremin,

I understand that my neighbors, Sara Mulholland and Andy Kurtzig, are selling their townhome at 297 South Street, Sausalito, and that you are their listing agent. In light of this, I am writing to advise you of the status of the trees on my property, and to inform you that any prospective buyer should be told of this condition which affects the use and value of the property. This letter should be included in the seller's disclosure packet which is given to any prospective purchaser of the house pursuant to Civil Code Section 1102, et. seq.

On January 13, 1997, I entered into a written contract with Saucito Cove townhome properties, Units 293, 295, 297 and 299 South Street, including Sara and Andy's predecessors. In that contract, which was signed by Richard Rosenberg, the lawyer acting on behalf of the property owners, I agreed to allow the trimming of trees on the upper (southerly) portion of my property at my neighbors' expense. In that contract, the owners of 297 South Street acknowledged that I was allowing the trimming solely as a gesture of neighborly goodwill; that they had no right to a view from their property; and that they had no view easement. The owners also agreed that I had the exclusive right to direct trimming and to decide on the amount of trimming to be performed. This agreement dictated the standards under which any future tree trimming would occur. The contract specifically stated that the owners of the properties "acknowledge that Ms. Pfeifer is not under any obligation to allow 293, 295, 297 and 299 South Street a bay view."

In 2002, I also agreed to trim the trees on my property at the request of Andy and Sara, who had entered escrow on the property, but I agreed to do so only under the condition that they had read and recognized the valid earlier contract, and in addition would sign another contract further highlighting this fact. At that time, Sara and Andy acknowledged that I was trimming the trees solely as a voluntary courtesy, they recognized the earlier contract as valid, and that I was not under any obligation to trim but was doing so as a courtesy. Sara and Andy also confirmed that they did not have a right to any view or any right to require trimming in the future. Copies of the two contracts, dated January 13, 1997 and May 1, 2002, are enclosed for your convenience.

Please confirm to me in writing that a copy of this letter, and the two contracts attached hereto, will be included in your disclosure packet.

Yours truly, Linda J. Pfeifer

*Linda Pfeifer* 10/17/08

PHOTO TAKEN FROM LIVING ROOM - 295 SOUTH ST.  
DATE: MAY 15, 2010

SUBMITTED BY CHUCK ISEN

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CITY OF SAULITO  
COMMUNITY DEVELOPMENT

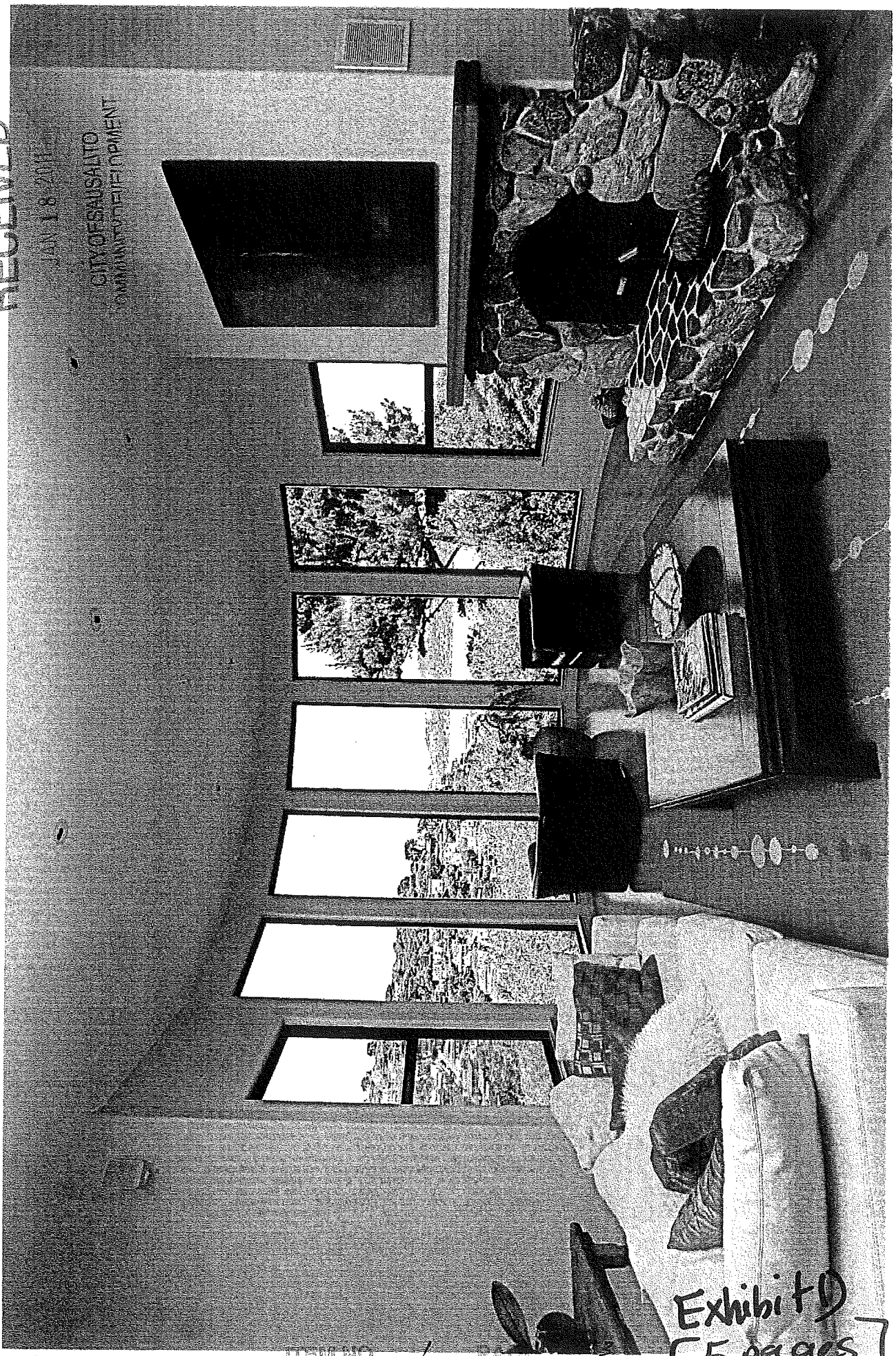


Exhibit D  
[5 pages]

ITEM NO. /



PHOTO TAKEN FROM  
LIVING ROOM - 295 South  
ST.

DATE: JANUARY 17, 2011

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JAN 18 2011

CITY OF SAUSALITO  
ADMINISTRATIVE DEPARTMENT

PHOTO TAKEN FROM 3RD FL. BALCONY - 295 SOUTH ST.  
DATE: MAR 15, 2010

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JAN 18 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

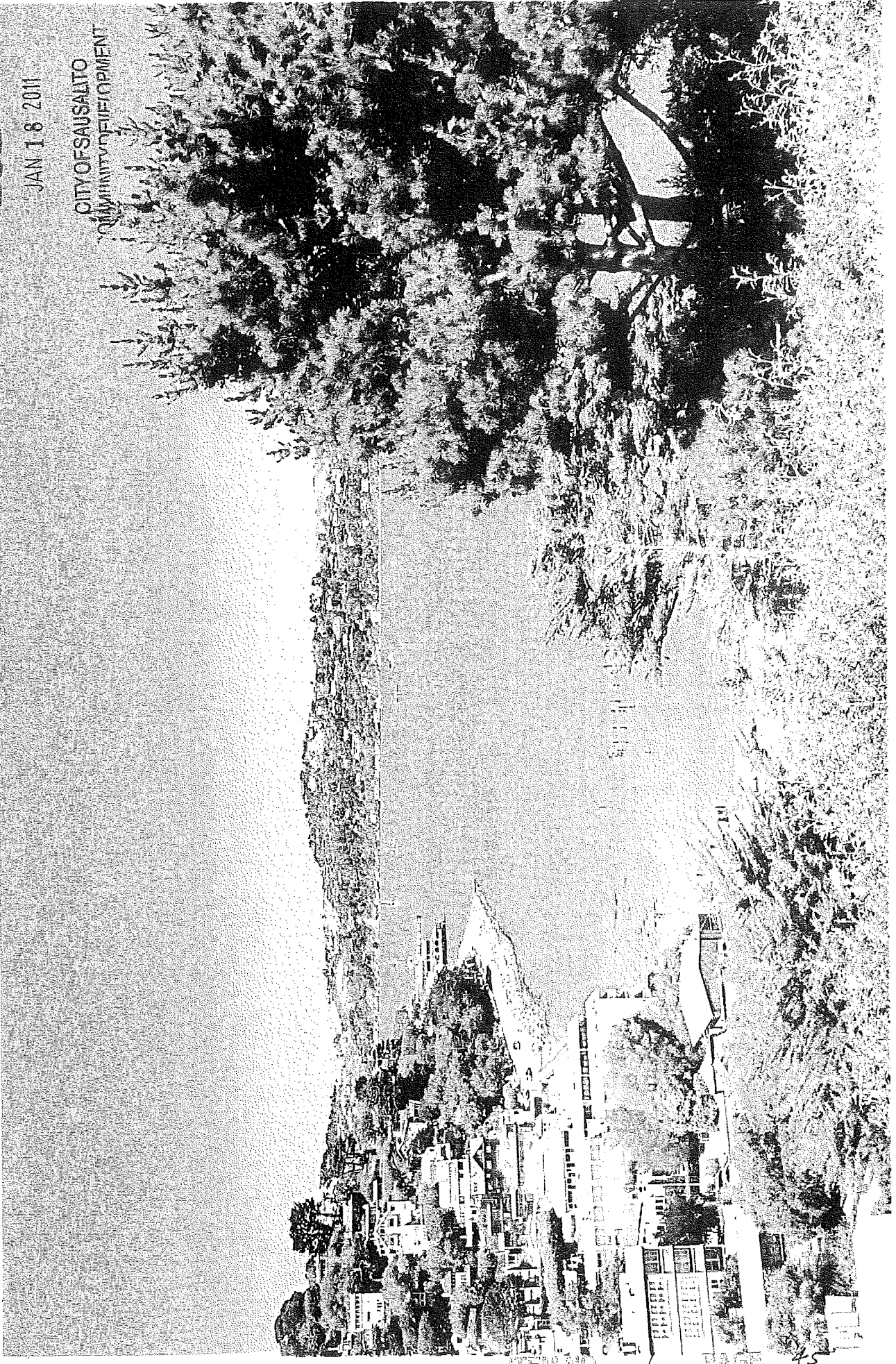


PHOTO TAKEN FROM 3<sup>RD</sup> FLOOR BALCONY - 2015 SOUTH ST.  
DATE: JANUARY 17, 2011

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JAN 18 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

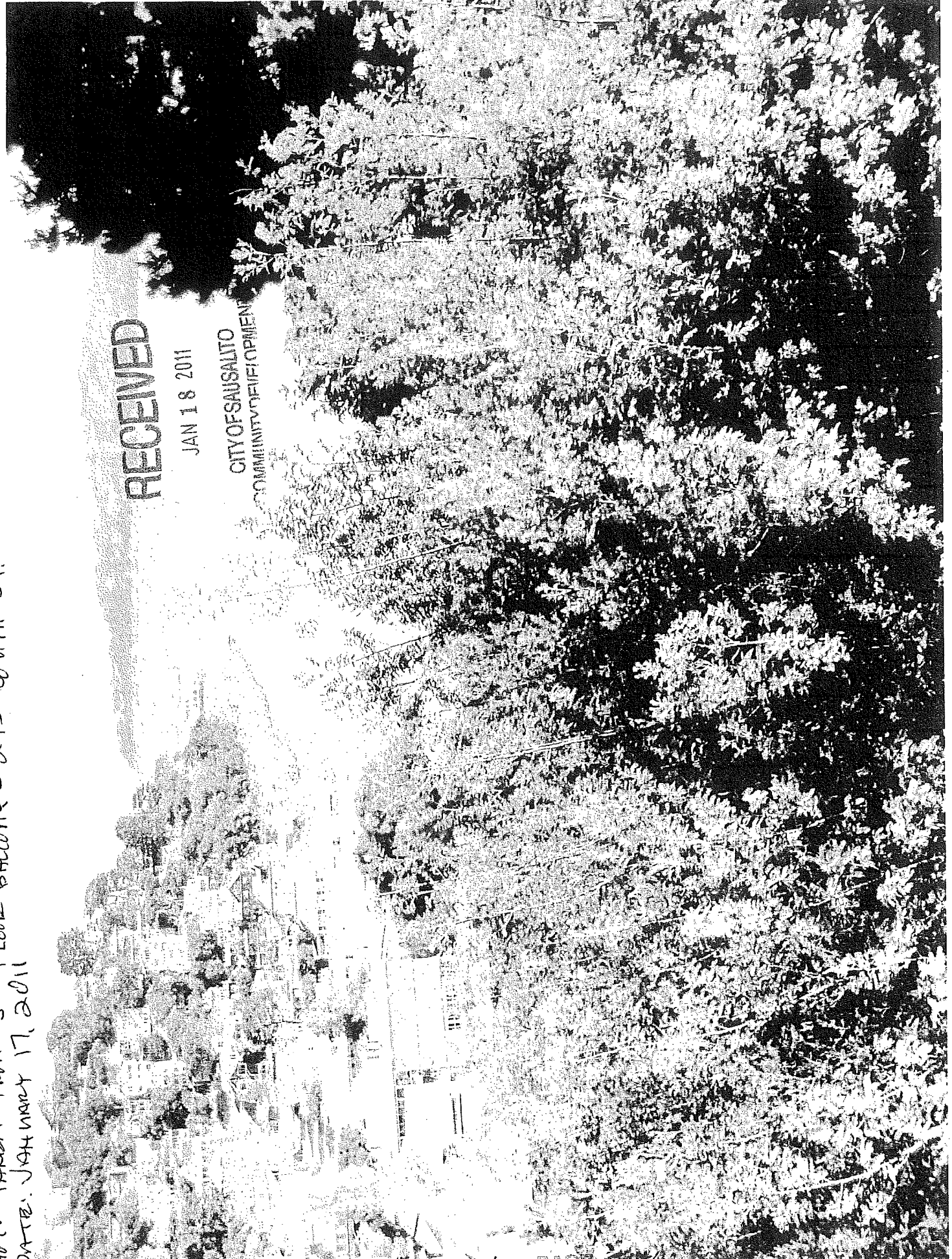


PHOTO TAKEN FROM 2ND FLOOR BALCONY - 2015 SANTA ST. DATE: JANUARY 17, 2011



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## Findings and Standards for View Claims

### Municipal Code Sections 11.12.040.B.4 and C.3-4

#### Section 11.12.040.B.4 of the Sausalito Municipal Code

... "The Trees and Views Committee shall submit a written Advisory Decision to the parties. The Decision shall include the Trees and Views Committee's findings with respect to the Standards listed in subsection C-3 and 4 of this Section [11.12.040] and recommended restorative actions as well recommending allocation of costs for the same." ...

#### Section 11.12.040.C.3-4 of the Sausalito Municipal Code

##### **"3. Standards for Resolution of Claims in Arbitration**

The Tree Committee shall, as a group, inspect the premises of both claimant(s) and tree owner(s) to verify the nature and extent of the alleged view obstruction. For purposes of this section, the Tree Committee and/or any involved Arborist may enter upon the property of either or both parties. The Tree Committee shall evaluate the Standards set forth below based on the site visit, the property file on record at City Hall, the submitted data and the public meeting.

- a. The character of the view:
  - 1) The vantage point from which the view is sought.
  - 2) The extent to which the view might be diminished by factors other than growth involved in the claim.
  - 3) The extent of the view that existed at the time claimant(s) purchased the property. (Is the party attempting to create, enhance or restore a view?).
  
- b. The character of the view obstruction:
  - 1) The extent of the alleged view obstruction as a percentage of the total view (estimate).
  - 2) The impact on the beneficial use, economic value and enjoyment of the claimant's property caused by the growth.
  
- c. The extent of benefits and/or burdens derived from the growth in question:
  - 1) The visual quality, including but not limited to species, size, growth, form and vigor.
  - 2) Location with respect to overall appearance, design and/or use of the tree owner's property.
  - 3) Visual, auditory, wind screening and privacy provided by the growth to the owner and the neighbors.
  - 4) Effects on neighboring vegetation provided by the growth.
  - 5) The impact of the beneficial use, economic value and enjoyment of the tree owner's property caused by the growth.
  
- d. Restorative actions shall be limited to the following:
  - 1) No action.
  - 2) Thinning to reduce density e.g., open windows.
  - 3) Shaping to reduce height or spread, using thinning cuts only (drop crotch).
  - 4) Heading or topping.
  - 5) Tree removal with necessary replacement planting.

- e. Each type of restorative action shall be evaluated based on the above findings and with consideration given the following factors:
  - 1) The effectiveness of the restorative action in restoring the view.
  - 2) Any adverse impact of the restorative action on the benefits derived from the growth in question.
  - 3) The cost of the restorative action as obtained from the view claim. The Tree Committee may determine that additional estimates are required.
  - 4) The effects upon privacy of the tree owner. Values of quiet and privacy should receive equal consideration with values of view and sunlight.
  
- f. All restorative actions shall be undertaken with consideration given to the following factors:
  - 1) All restorative actions must be consistent with subsection C-3, subparagraphs "d" and "e" of this Section.
  - 2) Restorative actions shall be limited to shaping, thinning, and/or heading of branches where possible.
  - 3) When shaping and/or thinning of branches is not a feasible solution, heading or topping shall be preferable to tree removal if it is determined that the impact of topping does not destroy the visual proportions of the tree, growth pattern or health, or otherwise constitute a detriment to the tree in question (arborist's advice required).
  - 4) Tree removal shall only be considered when all other restorative actions are judged to be ineffective. Replacement planting can be required on the property of the parties.
  - 5) An Arborist's report is required in determining the nature and cost of replacement plant materials, installation of such plant materials, and time required for such plant materials to become well established.
  - 6) In those cases where tree removal eliminates or significantly reduces the tree owner's benefits of visual screening, wind screening or privacy, replacement screen plantings shall, at the tree owner's option, be established prior to removal; notwithstanding the provisions of subparagraph "e" above, the tree owner may elect tree removal with replacement planting as an alternative to shaping, thinning, heading or topping.
  - 7) All shaping, thinning, heading, topping and tree removal required under this Chapter must be performed under the daily supervision of an Arborist.

#### **4. Implementation of Decision**

Within thirty (30) days of the arbitration decision, the tree owner will obtain at least three bids for the prescribed work from Arborists and shall present all bids to claimant. Within fifteen (15) days after presentation of the bids, the claimant shall deposit with the tree owner an amount equal to the percentage of the lowest bid deemed appropriate by the Tree Committee. The tree owner shall, at his sole discretion, choose the company by which he wishes the work done and shall order the work done within fifteen (15) days after receiving the claimant's deposit. The tree owner shall pay the difference between the deposit amount and the bid amount of the company he has chosen. The authorized work of correction shall be done by an Arborist under the sole direction and control of the tree owner.

I:\CDD\Boards & Committees\TVC\Admin\View Claim Findings for SR's