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DEC 3 2010

CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

November 20, 2010

Dear Sausalito Trees and Views Committee –

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
415-258-8418
Owners, 297 South Street, Sausalito, Ca 94960
sara@kurtzig.com
andy@kurtzig.com

View - Now



View - 2002



Obstructing Growth Since Last Trimming



Height Growth Since Last Trimming



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.

- 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, this trim does not obligate Linda Pfeifer to cut her trees in a particular way or height in the future.
- 3. 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 ~~per Linda Pfeifer's permission.~~
- 4. 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.
- 5. Andy, Sara and Zandra will not contact/talk to Linda Pfeifer's tree trimmers before, during or after this trim. *up to 1 week*
- 6. 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.
- 7. 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.
- 8. Linda Pfeifer will fax a copy of a tree trimmer's bid to Zandra Frame's office by late Tuesday afternoon 4/30/02.

AK
except as
required by law
SM

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

Full name signatures of Andy, Sara and Caroline with Date

Sara Linn Holland 5/1/02

Andy 5/1/02

Linda J Pfeifer 5-01-02

Tree trim emails

Sara Kurtzig

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

-----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" <andy@justanswer.com>
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: GGGMembersArea@yahoogroups.com

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: andy@justanswer.com
- > To: pfeiferlj@hotmail.com
- > CC: sara@kurtzig.com
- >
- > 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: sara@kurtzig.com
Subject: FW: Spring is in the air...

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...

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: andy@justanswer.com
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
			Total
			\$2,000.00

Did you pay?
If yes, give back to me.

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

mail.

from Linda to us - rejection of
initial reconciliation.

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

> From: sara@kurtzig.com
> To: pfeiferlj@hotmail.com
> CC: DZepponi@ci.sausalito.ca.us; 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
> 415-258-8418
>
>
>
>

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

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 unresponsive 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

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

DAVID B. GAW
NICHOLAS R. VAN MALE
WYTHAN O. SMITH, II
BRUCE A. MYERS
BRUCE A. MIROGLIO
JOYCE L. ELLIOTT
S. SCOTT REYNOLDS
KELLY J. BERRYMAN
CHRISTINE L. CHANG
ROBYN L. BALDWIN
RHONDA L. SAVITCH
OF COUNSEL
MARK A. RYJEK

WINEHOP BUILDING
944 MAIN STREET
NAPA, CALIFORNIA 94559-3045
TELEPHONE (707) 252-8000
FAX (707) 252-0182

OTHER OFFICES

CORPORATE PLAZA
1261 TRAVIS BOULEVARD
SUITE 350
FAIRFIELD, CALIFORNIA 94533-4801
TELEPHONE (707) 425-1250
FAX (707) 425-1256

1997 Agreement

January 13, 1997

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.

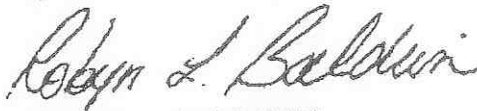
Page 2

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

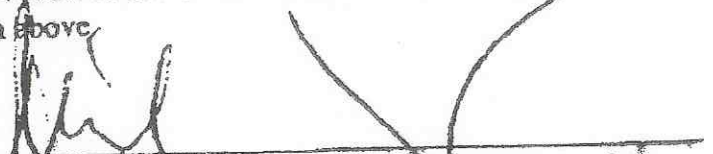
RLB:cjs
Enclosure

cc: Ms. Linda Pfeifer

This agreement does not limit the rights of the Saucito Cove Homeowners 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

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
120 Tarry Road
San Anselmo, CA 94960



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

Final



Urban Forestry Associates
Moritz Arboricultural Consulting

April 30, 2010

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

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

August 26, 2010

Ms. Pfeifer –

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



Linda's rejection of binding arbitration.

Sept. 18, 2010

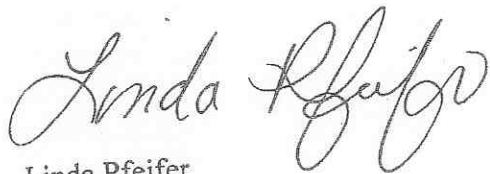
Hello Chuck, Andy, Sara,

As you know I suggested mediation several months ago, and sent the contact information for the mediation service. I requested that all parties at your condominium complex participate so I wouldn't need to go through this process multiple times. You opted against this route, instead choosing to individually escalate this matter to an advisory opinion through the City of Sausalito's Trees and Views Committee.

It seems the most expeditious way to approach this would be for both your parties to go through this together. I have attached Chuck's earlier letter stating he was going to go through this process last year. Frankly I am surprised both your parties have rejected mediation and then dragged this out so long, choosing to take action only now.

I do not want binding arbitration.

Thank you,



Linda Pfeifer
211 South Street
Sausalito CA 94965

July 17, 2009

Linda Pfeifer
217 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,

A handwritten signature in black ink, appearing to read 'Charles Isen', with a large, stylized flourish at the end.

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