

STAFF REPORT

TREES AND VIEWS COMMITTEE

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

Public Hearing Date March 3, 2011

Staff Alison Thornberry, Assistant Planner



REQUEST

Approve the resolution for the Fact Finding and Advisory Decision for the restoration of views for 297 South Street.

PROJECT BACKGROUND

At the February 3, 2011 meeting, the Trees and Views Committee made a Fact Finding and Advisory Decision that the Green Wattle Acacias (*Acacia decurrens*) and Monterey Pine (*Pinus radiata*) located on Tree Owner, Linda Pfeifer's, property at 211 South Street be trimmed and reduced in order to restore the views when the Claimants, Sara and Andy Kurtzig, purchased their residence at 297 South Street in 2002.

At the meeting, the Trees and Views Committee Members, were advised by the City Attorney that it was not within their purview to interpret agreements between private parties particularly when the parties appear to disagree about the meaning of the agreement and its application.

Staff has prepared a draft Resolution for the Committee to review and approve. As discussed at the February 3, 2011 meeting, Staff has included two Conditions of Approval. One Condition is in regards to the timing of the tree trimming (see **Exhibit B, Attachment 2**). Condition of Approval 1 states, "Within thirty (30) days of the date of any final agreement, the Tree Owner shall obtain at least three bids for the prescribed work from a Certified Arborist and shall present all bids to the Claimant."

The second Condition of Approval involves the maintenance of the tree's trimming and pruning (see **Exhibit B, Attachment 2**). Condition 4 states in part, "The Tree Owner shall arrange for and conduct annual heading and crown reduction of the subject trees. This work shall be conducted in accordance with these conditions of approval."

The Committee has the ability to approve, modify, or delete these Conditions of Approval.

Correspondence regarding the project is provided in **Exhibit A**.

RECOMMENDATION

Staff recommends the Trees and Views Committee take the following actions regarding the attached resolution to reduce the height of the Green Wattle Acacias and Monterey Pine located at 211 South Street, in order to restore the views when the Claimants, Sara and Andy Kurtzig, purchased their residence at 297 South Street in 2002:

- Review the Draft Resolution; and
- Make any appropriate modifications; and
- Approve the Resolution.

Alternatively, the Trees and Views Committee may:

- Continue the item for additional information and/or project revisions; or
- Modify the Fact Finding and Advisory Decision and direct Staff to return with a modified Resolution.

EXHIBITS

- A. Letter from Bruce Blakely, date-stamped received February 10, 2011
- B. DRAFT Resolution

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FLAXMAN & BLAKELY

(AN ASSOCIATION AND NOT A PARTNERSHIP)

SHELTERPOINT BUSINESS CENTER

591 REDWOOD HIGHWAY, SUITE 2375

MILL VALLEY, CALIFORNIA 94941

PETER FLAXMAN
BRUCE W. BLAKELY

2375

TELEPHONE
(415) 381-6650FACSIMILE
(415) 381-4301

RECEIVED

FEB 10 2011

CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT.

February 4, 2011

Jeremy Graves
Community Development Director
City of Sausalito
420 Litho Street
Sausalito, CA 94965Re: *Kurtzig View Claim No. TRP 10-392 / 297 South Street*
Trees and Views Committee Hearing of February 3, 2011

Dear Mr. Graves:

At the Trees and Views Committee Hearing regarding the Kurtzig View Claim held on Thursday, February 3, 2011, City Attorney Mary Wagner advised the Trees and Views Committee (the "Committee") that it was not to consider the existence of the 1997 contract between Linda Pfeifer and the owners of the real property located on South Street (the Saucito Cove Condominium Association), signed by Robert Rosenberg, attorney for the owners of the condominium association properties, and also was not to consider the 2002 contract signed by Ms. Pfeifer and the Kurtzigs.

In our view, the City Attorney's advice to the Committee was in error. It was incumbent upon the Committee to issue its ruling in light of the historical development of the properties, the agreements previously reached between the property owners, and the parties' contractual admissions.

As I mentioned at the hearing, this entire dispute is about, and revolves around, the 1997 and 2002 contracts. The Kurtzigs were aware of the 1997 contract prior to the time they purchased the property, and the Kurtzigs also executed a contract in which they recognized and acknowledged they had no right to a bay view. The 2002 contract states in part, "All trimming Linda Pfeifer does ... is done voluntarily and does not give 297 South Street the right to any bay view or the right to have that trim in the future."

The Kurtzigs cannot now honestly argue that they had a bay view when they admitted in their signed contract that they did not. It is not possible to issue a meaningful ruling regarding this matter without considering the contracts the Kurtzigs signed, and the admissions of fact contained therein.

Exhibit A
[2 pages]

FLAXMAN & BLAKELY

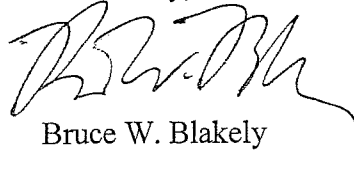
Jeremy Graves
February 4, 2011
Page 2

For these reasons, we would request that the staff report regarding the upcoming hearing, and any decision of the Trees and Views Committee expressly reflect that the Committee was directed not to consider these contracts at issue in its advisory decision.

The City Attorney similarly advised the Committee not to consider the property right of Ms. Pfeifer to be able to build up her property vertically, which is a right granted to her by the Sausalito zoning ordinances. For the same reason, the Committee's findings should reflect that the Committee was directed by the City Attorney not to consider this issue in rendering its decision.

Thank you in advance for assisting us in making sure that these points are reflected in the staff's report and in any decision of the Committee.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. W. Blakely', with a long, sweeping horizontal line extending to the right.

Bruce W. Blakely

BWB/ah

cc: Mary Wagner, City Attorney
Andy and Sara Kurtzig
Linda Pfeifer

**SAUSALITO TREES AND VIEWS COMMITTEE
RESOLUTION NO. 2011-XX**

**FACT FINDING AND ADVISORY DECISION FOR RESTORATION
OF VIEWS FROM THE RESIDENCE AT 297 SOUTH STREET (TRP 10-392)**

WHEREAS, on December 3, 2010 an application was filed by the Claimants Andy and Sara Kurtzig, requesting the Trees and Views Committee to make a Fact Finding and Advisory Decision on restoration of views from their residence at 297 South Street (APN 065-293-41) that entails the removal of the Green Wattle Acacia's (*Acacia decurrens*) and a Monterey Pine (*Pinus radiata*) located on property owned by Tree Owner Linda Pfeifer at 211 South Street (APN 065-293-07); and

WHEREAS, the Trees and Views Committee conducted a site visit to both properties on January 12, 2011; and

WHEREAS, the Trees and Views Committee conducted a duly-noticed public hearing on February 3, 2011 and March 3, 2011 at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Trees and Views Committee considered all oral and written testimony on the subject application; and

WHEREAS, the Trees and Views Committee reviewed and considered the information contained in the staff report dated February 3, 2011; and

WHEREAS, the Trees and Views Committee finds that the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines.

NOW, THEREFORE, THE TREES AND VIEWS COMMITTEE HEREBY RESOLVES:

SECTION 1. The Green Wattle Acacias (*Acacia decurrens*) and the Monterey Pine (*Pinus radiata*) located on the Tree Owner's property at 211 South Street shall be trimmed by reducing the crown of the trees to the height of the trees in 2002 when the claimants purchased their property at 297 South Street.

SECTION 2. The Committee is not interpreting or rendering an opinion on the private agreement(s) between the Claimants and the Tree Owner.

SECTION 3. This decision is based upon the Findings provided in Attachment 1 and subject to the conditions of approval provided in Attachment 2.

Exhibit B
[6 pages]

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Trees and Views Committee on the ___ day of _____, 2011, by the following vote:

AYES: Committee Member:
NOES: Committee Member:
ABSENT: Committee Member:
ABSTAIN: Committee Member:

Jeremy Graves, AICP
Community Development Director

ATTACHMENTS

- 1- Findings
- 2- Conditions of Approval

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TREES AND VIEWS COMMITTEE RESOLUTION

March 3, 2011

TRP 10-392

297 South Street

ATTACHMENT 1: FINDINGS

In accordance with Municipal Code Section 11.12.040.B.4, the Trees and Views Committee makes the following findings with respect to the view claim of 297 South Street (Claimant's residence) regarding the trees located at 211 South Street (Tree Owner's property).

11.12.040.C.3 Standards for Resolution of Claims

A. Character of View

1. *The views from the Claimant's residence include the Sausalito hills, waterfront and marinas, Richardson's Bay, Tiburon, Belvedere, Angel Island, and the San Francisco Bay. The Claimant seeks restoration of these views, or portions thereof, from the following vantage points of the Claimant's residence: front entrance, front deck, living room, and master bedroom.*
2. *There are no obstructions to the above described views other than the Acacias and Monterey Pine located on the Tree Owner's property, with the exception of a small portion of the views of the Sausalito hills blocked by two Monterey Pines, an Oak tree and a Bay tree located on the property at 205 South Street.*
3. *When the Claimants purchased and moved into their residence in 2002, the Tree Owner's trees had been pruned, providing the Claimant's residence with views of the Sausalito hills, waterfront and marinas, Richardson Bay, Tiburon, Belvedere, Angel Island, and the San Francisco Bay.*

The Claimants request the trees on the Tree Owner's property be trimmed to restore the views that existed when the Claimants purchased and moved into their residence in 2002.

B. Character of View Obstruction

1. *The subject trees on the Tree Owner's property obstruct the views from the four vantage points of the Claimant's residence as listed below:*
 - a. *Front Entrance: Approximately 45% of the total view is obstructed.*
 - b. *Front Deck: Approximately 60% of the total view is obstructed.*
 - c. *Living Room: Approximately 100% of the water view and 50% of the additional view areas are obstructed.*
 - d. *Master Bedroom: Approximately 25% of the total view is obstructed.*
2. *The views are extremely important to the use and enjoyment of the Claimant's residence. The Claimant's residence was designed to highlight the existing views. The obstruction of the views by the trees on the Tree Owner's property decrease the Claimant's property value, decrease light available to the Claimant's residence, and decrease the views available to the Claimant.*

C. Extent of Benefits and/or Burdens Derived from the Growth.

1. *The quality of the views from the Claimant's residence is diminished by the unruly growth of the Acacias and Pine on the Tree Owner's property. The tops of the Acacias are leggy and unstable. The Monterey Pine is surrounded by Acacias, leaving the tops of the trees on the Tree Owner's property aesthetically unpleasing. The subject Acacias and Monterey Pine are defined Municipal Code Section 11.12.020 as "Undesirable Trees," and are seen to have more burdens than benefits. Acacias are subject to developing poor form and have an extremely fast growth rate, growing three or more feet per year. In addition, the Acacias are a fire hazard, as documented in the University of California Cooperative Extension publication "Pyrophytic Vs. Fire Resistive Plants" (1998).*
2. *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. The trees block the sunlight to the Tree Owner's property. The Tree Owner's privacy will be maintained when the trees are trimmed back to their 2002 height.*
3. *The subject trees provide privacy and screening to the Tree Owner's property from the Claimant's property. However, this privacy and screening is provided by the lower portions of the tree canopy. Trimming of the upper portions of the tree canopy that obstruct the 2002 views from the Claimant's residence will have no significant effect on the screening or privacy of the Tree Owner's property.*
4. *The Acacias and Monterey Pine located on the Tree Owner's property have large canopies and are crowding out neighboring landscaping. The shade from the large trees makes the area less desirable for neighboring landscaping to grow.*
5. *The subject trees block access to sunlight and create a shaded area in the rear yard of the Tree Owner's property. The trees also provide screening and privacy for the Tree Owner. Trimming of the upper portions of the tree canopy that obstruct the 2002 views from the Claimant's residence will have no significant effect on the screening or privacy of the Tree Owner's property.*

D. Appropriate Restorative Actions

Heading and crown reduction of all Green Wattle Acacias and the Monterey Pine on the Tree Owner's property is the appropriate restorative action. The crown shall be reduced to the historic height of the trees when the Claimant purchased their property in 2002. Based upon the Claimant's arborist report prepared by Ray Moritz of Urban Forestry Associates (date stamped December 3, 2010), a heading or crown reduction of the trees should establish a maximum tree height of eight (8) feet above the sidewalk elevation adjacent to the residences at 295/297 South Street.

E. Factors Determining Restorative Action

The heading and crown reduction of the Green Wattle Acacias and Monterey Pine to their height in 2002 would restore the views for the Claimant, while not significantly affecting the screening or privacy of the Tree Owner property due to the factors stated above.

The property owner at 297 South Street shall pay the full cost of the heading and crown reduction of the Green Wattle Acacias and Monterey Pine. In accordance with the arborist report, the heading and crown reduction should be conducted on an annual basis.

TREES AND VIEWS COMMITTEE RESOLUTION

March 3, 2011

TRP 10-392

297 South Street

ATTACHMENT 2: CONDITIONS OF APPROVAL

1. Within thirty (30) days of the date of any final agreement, the Tree Owner shall obtain at least three bids for the prescribed work from a Certified Arborist and shall present all bids to the Claimant.
2. The Tree Owner will, at his/her sole discretion, select the company by which he/she wishes the work to be done. The Claimant shall be responsible for paying the costs of the lowest bid. The Tree Owner shall pay the difference, if any, between the lowest bid and the bid amount of the selected company.
3. The Green Wattle Acacias and Monterey Pine shall be reduced to a maximum height of eight (8) feet above the sidewalk elevation adjacent to the residences at 295/297 South Street, and all work shall be performed under the daily supervision of a Certified Arborist under the sole direction of the Tree Owner.
4. The Tree Owner shall arrange for and conduct annual heading and crown reduction of the subject trees. This work shall be conducted in accordance with these conditions of approval.

Advisory Notes

Advisory notes are provided to inform affected parties of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

1. Pursuant to Municipal Code Section 11.12.040.B, in the event litigation is required to enforce the decision of the Trees and Views Committee the party bringing any private civil action must promptly notify the City of Sausalito's Community Development Department in writing of such action.
2. An encroachment permit shall be obtained from the Department of Public Works prior to use of the public right-of-way for non-public purposes (e.g., materials storage, debris box storage) including any and all tree removal activities.
3. Pursuant to Municipal Code Section 12.16.140, the operation of construction, demolition, excavation, alteration, or repair devices and equipment within all residential zones and areas within a 500 foot radius of residential zones shall only take place during the following hours:
Weekdays – Between 8:00 a.m. and 6:00 p.m.
Saturdays – Between 9:00 a.m. and 5:00 p.m.
Sundays – Prohibited
City holidays (not including Sundays) – Between 9:00 a.m. and 7:00 p.m.