

SAUSALITO TREES & VIEWS COMMITTEE
Thursday, February 3, 2011
Approved Minutes

Call to Order

Chair Colfax called the meeting to order at 6:30 p.m. in the City Council Chambers of City Hall, 420 Litho Street, Sausalito.

Present: Chair Grant Colfax, Vice Chair Mary Lee Bickford,
Committee Member Betsy Elliott, Committee Member Wingham Liddell,
Committee Member Ronald Reich

Staff: Community Development Director Jeremy Graves
Assistant Planner Alison Thornberry, City Attorney Mary Wagner

Approval of Agenda

The agenda was approved by consensus.

Approval of Minutes

January 6, 2011

Committee Member Reich moved and Committee Member Liddell seconded a motion to approve the Minutes as submitted. The motion passed 5-0.

Public Comments

None.

Public Hearings

- 1. TR 10-392, View Claim, Kurtzig, 297 South Street.** View Claim regarding the obstruction of views from the Claimants Sara and Andy Kurtzig's property at 297 South Street (APN 065-293-41) by trees located on Tree Owner Linda Pfeifer's property at 211 South Street (APN 065-293-07). The Claimants seek an advisory decision regarding the restoration of water views from their property at 297 South Street.

The public hearing was opened. Assistant Planner Thornberry presented the Staff Report.

A presentation was made by Claimant Andy Kurtzig and Ray Moritz, the Claimant's arborist. Mr. Moritz distributed a brochure on fire resistant plants and noted the pine tree on neighboring property is scheduled to be removed.

A presentation was made by Bruce Blakely, representing Tree Owner Linda Pfeifer. At the conclusion of his presentation Mr. Blakely submitted a copy of his comments. Mr. Blakely noted the following:

- Trimming or windowing the trees on Ms. Pfeifer's property would remove hundreds of thousands of dollars from Ms. Pfeifer's property value because she would not be able to build on her property.
- Trimming the trees would be a taking.
- The Kurtzigs have declined to record the contract with Ms. Pfeifer.
- This is a civil contract dispute.
- The Kurtzigs have no right to a view.

Committee question to Mr. Blakely:

- Was it the intent of Ms. Pfeifer to create goodwill with the Kurtzigs and to trim the trees provided the Kurtzigs would sign a contract? Is there a real binding contract here? *Mr. Blakely responded, yes, Ms. Pfeifer did intend to develop goodwill with her neighbors by having a contract in place and she continues to honor the contract. The contract in question is binding upon the Kurtzigs because they signed and dated it. The Kurtzigs' copy of the contract is not the same as Ms. Pfeifer's copy and contains suspicious handwriting on it added in after the fact and not initialed by Ms. Pfeifer.*

Staff comment:

- It is not within the Committee's purview to determine the legality of the contract between these two private property owners. The Committee cannot opine on whose version of the contract is correct or whether the contracts are binding on successor property owners.

Committee questions to Mr. Blakely:

- Did the Kurtzigs have full expectations of a view when they purchased their condo? *Mr. Blakely responded, as indicated by the contract, they recognized they were purchasing their condo without a view and that Ms. Pfeifer would trim under various conditions, but they did not have the right to future trimming or any view.*
- Which of the two trees, the pine or the acacia, is the bigger offender? *Mr. Blakely responded none of the trees are offenders, because the Kurtzigs took the property with those trees in place.*
- Which of the trees is more fire prone? *Mr. Blakely responded the arborist has stated the acacia trees can potentially be a fire hazard under improper circumstances. However these acacias do not pose a fire hazard because they have been trimmed, they are trees rather than bushes, and because their branches are not on the ground. The Kurtzigs' complaints regarding fire hazard is a ruse in order to maximize the profits on the sale of their property.*

The public comment period was opened.

Richard Rosenberg indicated the following:

- Ms. Pfeifer has breeched these contracts for years.
- He signed the 1997 agreement, but it was not intended to last in perpetuity.

1 Allen Arieff and Patricia Hale Arieff, 299 South Street, submitted photographs and
2 indicated the following:

- 3 • They live one level below the Kurtzigs and strongly support their claim.
- 4 • When Mr. Arieff bought the home in 1989 there were no trees covering the
5 view, which is why he bought the home. Their view has become obscured over
6 time.
- 7 • Mr. Arieff never saw or agreed to a contract in 1997.

8
9 Katherine Booth spoke in favor of the Kurtzig's request.

10
11 Chuck Isen, 295 South Street, displayed a large-size photograph of the former view
12 from his residence and indicated the following:

- 13 • He is the next-door neighbor to the Kurtzigs and finds them to be reasonable
14 and civil people. The Kurtzigs are not asking for anything unreasonable.
- 15 • He had a beautiful view when he bought his home in 2003, but lost the view in
16 2009 when he put his house on the market, at the same time as the Kurtzigs.
17 He has had his residence on the market twice and has had no offers because
18 of the lack of a view and reluctance of buyers to make an offer until the view
19 dispute is resolved.

20
21
22 Andy and Sara Kurtzig submitted photographs and copies of their emails with the prior
23 owner of their property. The Kurtzigs also provided the following rebuttals:

- 24 • Their home had a beautiful view at the time they bought it, but they would
25 never have bought it without the understanding that Ms. Pfeifer would trim the
26 trees regularly.
- 27 • Ms. Pfeifer trimmed the trees annually until they moved out of their home and
28 they do not understand why she stopped.

29
30 Bruce Blakely's rebuttal to public comment:

- 31 • The supporters of the Kurtzigs are not impartial, but are bound by the 1997
32 agreement that Mr. Rosenberg executed on their behalf. They too are
33 attempting to use the precedent of this Committee's ruling as a means of
34 leveraging to get a view they are not entitled to have.
- 35 • Mr. Rosenberg stated Ms. Pfeifer breeched the contract and that she somehow
36 found this contract that was long ago forgotten. Ms. Pfeifer has been relying on
37 this contract since she executed it in 1997, so there are no breeches.
- 38 • Mrs. Kurtzig stated she does not understand why Ms. Pfeifer stopped trimming
39 the trees. The reason is because Ms. Pfeifer asked the Kurtzigs and the Isens
40 to put in their disclosure statements to potential buyers that there was a
41 contract that bound them, and they refused.
- 42 • The contract the Kurtzigs signed indicates they did not have a view and were
43 not entitled to a view. What they are allowed to sell is what they bought. Ms.
44 Pfeifer has trimmed the trees out of generosity and good faith, but the
45 document speaks for itself.

46
47
48 The public comment period was closed.

Committee questions to the Kurtzigs:

- Were the trees were trimmed and the view there prior to you purchasing your house? *Mrs. Kurtzig responded yes, they had a beautiful view when they moved into their house.*
- Was your offer to buy your house contingent upon the view? *Mrs. Kurtzig responded they stated they would not go through with their offer unless they had an agreement about the view.*
- At what time did Ms. Pfeifer decide to build a second story on her home, and is that what this is really all about? *Ms. Kurtzig responded Ms. Pfeifer had talked about it since they bought their home in 2002, but she has not yet applied to the City to do so.*
- How long after you moved in did you have no view? *Mrs. Kurtzig responded they never had a no view while they lived in their home, because Ms. Pfeifer trimmed the trees annually.*

Committee questions to Mr. Blakely:

- The condo owners have stated they had a view until the last two years. Why did Ms. Pfeifer suddenly stop trimming the trees? *Mr. Blakely responded the trimming stopped because the Kurtzigs and Mr. Isen were disputing the validity of the contract.*
- Why would trimming the trees by “windowing” damage Ms. Pfeifer’s interest? *Mr. Blakely responded because Ms. Pfeifer intends to build up her property to the extent allowed by the Sausalito Zoning Ordinance. If the trees were windowed or topped, that would bar her from being allowed to develop her property in conformity with the Zoning Ordinance and the Building Code.*

Staff responded that a second story addition to Ms. Pfeifer’s residence would be judged on its own merits and there are provisions in the Zoning Ordinance which deal with views which are based upon the plans which are submitted.

•

Vice-Chair Bickford moved and Committee Member Liddell seconded a motion to require routine trimming of the stated trees in order to restore the view to that documented in the 2002 photographs when the Claimants purchased their property, with the continued trimming to be paid for by the requesting party residing at 297 South Street. The motion passed 5-0.

Old Business

2. Review of Procedures for Removal of Trees on Public Property, 1 San Carlos Avenue. Oral report by City Attorney Mary Wagner.

City Attorney Wagner presented the Staff Report.

Committee comments:

- Perhaps two arborist reports should be required regarding protected and heritage trees.

- The City should not contract with an arborist who benefits financially from the removal of a tree.

Committee questions to Public Works Director Jonathan Goldman and Ms. Wagner:

- In the future can Public Works let the Trees & Views Committee know when it intends to take action on a protected tree? *PW Director Goldman responded yes.*
- Will a tree believed to be an imminent danger come before the Trees & Views Committee before being removed? *Ms. Wager responded no, it will not.*
- Regarding what happened to the oak at 1 San Carlos, there is an additional process put into place that would change that outcome in terms of current procedures? *Ms. Wagner responded from a legal perspective, if the City is aware of a dangerous condition on public property it is advisable to do something about it to avoid injury and property damage.*
- Having a neutral arborist make the decision regarding whether a tree needs to be removed and whether it is an imminent threat would help mitigate some of the concerns of the Committee. How do we move forward on that? *PW Director Goldman responded the process that was followed at 1 San Carlos is exactly the process that would be followed in the future. The City retains a certified arborist and would not remove a tree without an arborist's report. What will change in the future is the Trees & Views Committee will now be informed when a dangerous tree is to be removed.*
- Is there a clear understanding that the arborist who makes the determination that a tree should be removed does not in any way financially benefit from removing the tree? *PW Director Goldman responded, that is correct.*
- Is there any update with regard to replacing the oak tree at 1 San Carlos? *PW Director Goldman responded the adjacent property owner is not interested in having the oak tree replaced at that location. PW Director suggested the Trees & Views Committee and the community work to identify a suitable alternate location. Protocols for dealing with Sudden Oak Death recommend not grinding the stump because of the risk of spreading the disease.*
- Is there policy that a property owner who is adjacent to where a tree was removed on public property makes a decision as to whether the tree gets replaced or not? *PW Director Goldman responded no, but the property owner is opposed to replacing the tree at that location. Ms. Wagner responded because of the nature of Sudden Oak Death that is not the best location to install replacement tree. It would be beneficial to consult the Woman's Club regarding a suitable location for a replacement tree. Staff has indicated it will provide the funds to plant a replacement tree.*

Committee comments:

- The Committee recommends the City get an opinion from Ed Gurka or another qualified arborist about grinding the stump at 1 San Carlos. As giant oaks fall to Sudden Oak Death or die naturally, the community will have pockmarked public areas with large stumps that are visually unpleasant and detrimental to the character of the community.

1 **New Business**

2 None.

3
4 **Staff Communications**

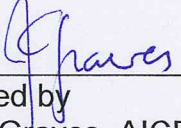
- 5 • Staff has posted a link on City's web site regarding information on Sudden Oak
6 Death Syndrome.
7

8 **Committee Communications**

- 9 • The following items should be placed March or April agenda for discussion:
10 ○ A provision that trees that are removed that did not die of Sudden Oak
11 Death have their stumps ground out after removal.
12 ○ How are the City's current trees being protected so they can reach
13 Heritage status?
14

15 **Adjournment**

16 The meeting was adjourned at 9:26 p.m.

17
18
19
20 
21 Submitted by
22 Jeremy Graves, AICP
23 Community Development Director

24 
25 Approved by
26 Grant Colfax
27 Chair

28 I:\CDD\Boards & Committees\TVC\Minutes\2011\02-03-Approved.doc