


# STAFF REPORT

## TREES AND VIEWS COMMITTEE

**Project** Salkhi View Claim / 509 Litho Street  
View Claim TRP 11-184

**Public Hearing Date** September 1, 2011

**Staff** Alison Thornberry, Assistant Planner 

### REQUEST

Hold a fact finding meeting and make an advisory decision for restoration of the water view from 509 Litho Street.

### PROJECT INFORMATION

**Claimant/ Address** Arash Salkhi  
509 Litho Street (APN 064-211-38), (see **Exhibit A** for vicinity map)

**Tree Owner/ Address** Shelby Cox  
93 Gerard Avenue (APN 064-211-24), (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

The View Claim was first considered by the Trees and Views Committee on November 18, 2009, with the request for a Fact Finding and Advisory Decision regarding a Strawberry Tree (*Arbutus unedo*) located at 93 Girard Avenue. After discussion, by a vote of 2 to 1, the Committee directed that the tree be trimmed by approximately two feet (see **Exhibit B** for Meeting Minutes).

In April of 2010 the Strawberry Tree was trimmed. The trimming performed in April was not to the satisfaction of the Claimant, and requested additional trimming of the tree, which was not permitted by the Tree Owner. The Claimant and Tree Owner have had months of dialogue regarding the trimming of the tree, with no resolution.

On June 13, 2011 the Claimant filed a new View Claim regarding the previously discussed Strawberry Tree.

On July 14, 2011, the Trees and Views Committee held a noticed, Special Meeting, to view the claim and the subject tree from the Claimant's property and the Tree Owner's property.

### PROJECT DESCRIPTION

#### CLAIMANT

The Claimant would like to provide his tenants, or potential buyer, with a panoramic view of Richardson's Bay, Belvedere, Angel Island, and Raccoon Straits from his primary living areas.

As noted in the materials submitted by the Claimant (see **Exhibit C**), he has undertaken the following steps in an effort to reach a solution for the alleged view obstruction:

- November 18, 2009, a Fact Finding and Advisory Decision was made by the Trees and Views Committee,
- January 2011, the Claimant attempted Initial Reconciliation per Section 10.12.040.B.1, and
- February 2011, the Claimant requested Mediation per Section 10.12.040.B.2.

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

The Claimant is requesting that the tree be topped and/or tapered, annually, which will partially be in line with the recommendations of the Arborist Report (see **Exhibit D**, Gurka Report II for full report). But, if the Committee agrees that a more improved view, not mentioned in the Arborist Reports, is appropriate, the distances would be set from the ground up to a designated height in three sections, the right, middle and left.

The Claimant is also requesting that he and his arborist be informed a minimum of thirty days before the trim is to commence, and the Tree Owner shall have access to the primary living area of the Claimant's residence to view the trim from that perspective. If either parties disagree on all or a portion of the trimming, or as to a related issue, the Tree Owner may complete the task according to his or her wishes, in strict accordance with the Committee's recommendations. At the same time the Claimant could request further advisory opinion from the Trees and Views Committee, or a person designated by the Committee, the cost of which would be divided between the two parties. If additional tree trimming work is to be done, the cost of the additional work shall be at the cost of both parties equally.

#### *Claimant's Arborist Reports*

Arborist Reports have been prepared for the Claimant by Certified Arborist, Ed Gurka, on August 9, 2009, April 14, 2010, June 6, 2011 and July 21, 2011. The Arborist was asked to prepare an arborist report for view pruning of the tree at the Tree Owner's property that would improve the view from the Claimant's property. The Arborist did not have access to the Tree Owner's property, and observed the subject tree from the adjacent property. He observed that the subject tree obstructing the view is located to the north of 509 Litho Street, on the Tree Owner's property. The tree is measured at 17.5 feet in height with an equal spread. The tree had pruning work in 2009. The pruning work consisted of height reduction of approximately two feet in accordance with the November 2009 Trees and Views Committee's determination. The Claimant's understanding was that the tree would require additional pruning work on an annual basis to remove upper canopy growth produced during the growth cycle (see **Exhibit D** for all Arborist Reports). The Arborist's recommendation regarding the suggested pruning, including photographs with exact cut lines are included in the July 21, 2011 report. He has stated that since annual pruning work has not been performed, additional work is needed to remove more foliage beyond the of the November 2009 Trees and Views Committee determination.

#### **TREE OWNER**

Shelby Cox, property owner of 93 Girard Avenue and Tree Owner, submitted a response to the View Claim on August 1, 2011. The Tree Owner states that the Strawberry Tree, as viewed from the Claimant's deck or main living area, limits a very small percentage of the overall view of Richardson's Bay. The Claimant is not entitled to an unobstructed panoramic view, yet the Claimant continues to ignore the City ordinances and push for more. The Tree Owner's response requests that the view claim for additional cuts be denied since the additional cuts requested will not only be harmful to the tree but will also invade privacy to the property.

The Tree Owner has put together a detailed timeline of all events that have occurred since the Committee's ruling in November of 2009. The timeline includes photos of measuring poles before the tree was cut and after. It also includes that they agreed to trim the right hand side of the tree providing the Claimant with an enhanced view of Raccoon Straights and Angel Island, as proposed by Ed Gurka on April 14, 2010, but the Claimant wanted more cut than just the right side (see Tree Owner's submitted material as **Exhibit E**).

#### *Tree Owner's Arborist Report*

On July 13, 2011 an Arborist Report was prepared by Certified Arborist Kent Julin, who was hired by the Tree Owner to review a view obstruction claim from the Claimant relating to the Strawberry Tree and to assess pruning recommendations provided by the Claimant's Arborist, Ed Gurka. The Tree Owner's Arborist Report states that established trees create partial and complete obstructions to both Richardson's Bay and the distant ridges. The obstructions include a Fan Palm at 501 Litho Street, a Deodar Cedar at 403 Bonita Street, a Coast Live Oak located in the public right-of-way, and the subject Strawberry Tree. The Arborist states that the extent of the Strawberry Tree's obstruction when the home was purchased by the Claimant in 2007 should be documented. The Strawberry Tree completely screens the bedroom in the western corner of the Tree Owner's home. It also softens the view of a large portion of the residence from the Claimant's deck (see **Exhibit F** for full report).

The Arborist also states that the Strawberry Tree is exceptionally healthy and well maintained. When standing beneath this tree one can see that its green canopy layer is only two to three feet thick. In 2010 the subject tree was reduced in height by two feet. In order to accomplish the Claimant's view desires, Arborist, Ed Gurka, recommends that an additional two to three feet be cut off the top of the tree. Removing the upper two to three feet of the tree would create a 10 foot wide opening to the center of the tree that would allow direct sunlight to penetrate, making the upper tree branches susceptible to sun scalding. It would reduce the estimated total canopy by 10 to 30 percent, the American National Standards (ANSI) A300 pruning standards recommend that no more than 25 percent of a tree canopy be removed in single year.

The Tree Owner's Arborist concludes by saying that before any work is performed, the Claimant should provide documentation of his view when the property was purchased in May 2007. Strawberry trees grow relatively slow, and once the 2007 height of the Strawberry Tree is established, then the tree should be maintained at that height. Pruning 3 feet from the top of the tree would change the aesthetic appeal of the tree, and no more than one foot of the tree should be removed in a given year. It is a beautiful, symmetrically shaped tree that contributes to the value of both homes. The tree provides critical screening of a bedroom in the Tree Owner's home.

### **PUBLIC NOTICE AND CORRESPONDENCE**

On August 24, 2011, a notice of this proposal was posted at the front of the subject property, visible to the surrounding neighborhood, and the tree has been tagged.

As of the writing of the staff report the City has not received any correspondence.

### **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 Claimant at 509 Litho Street in regard to the tree located on the Tree Owner's property at 93 Girard Avenue. 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 G** 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:

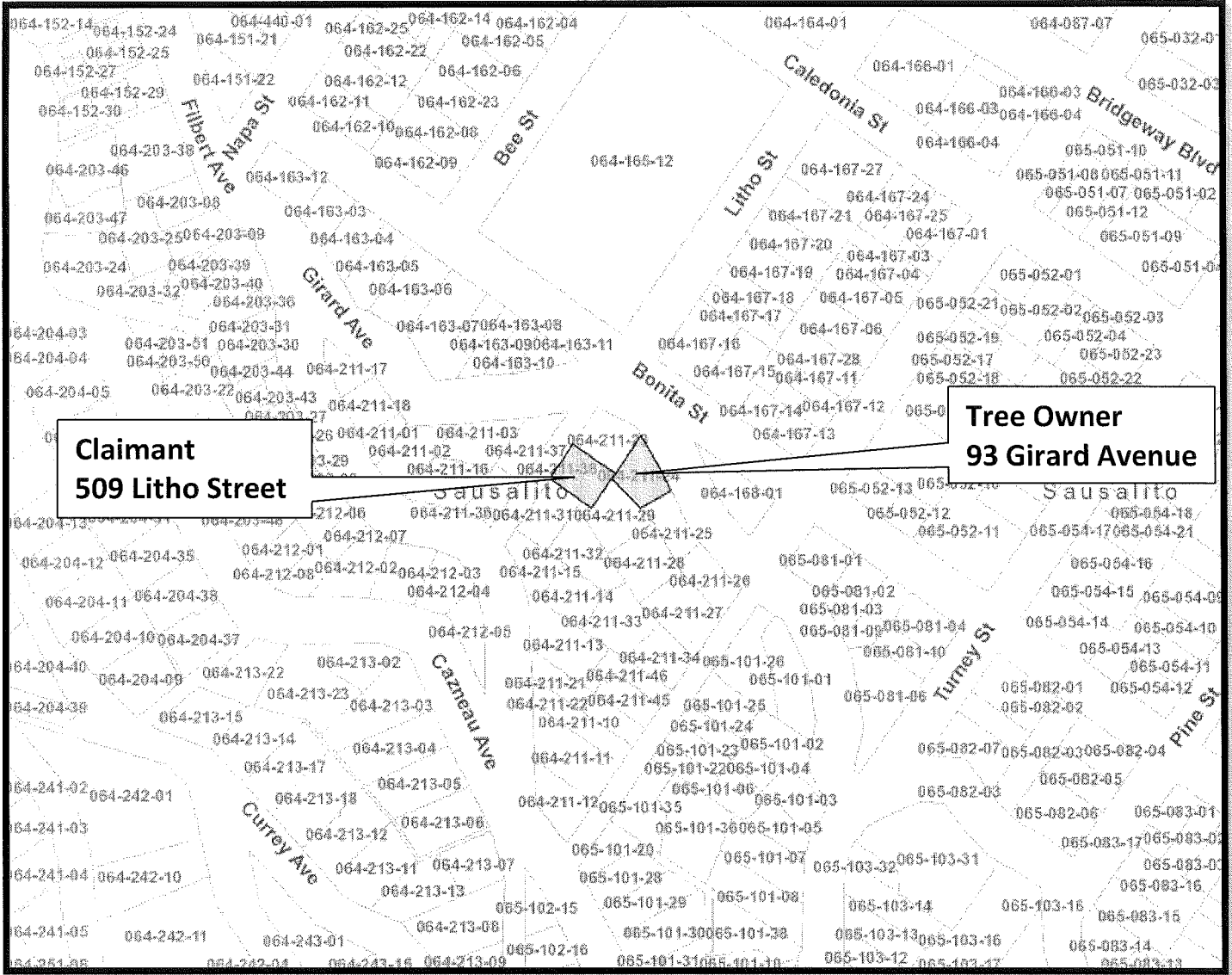
- Recommend the services of other experts either or both of the parties; or
- Continue the public hearing to obtain additional information.

## **EXHIBITS**

- A. Vicinity Map
- B. Meeting Minutes from the November 18, 2009 Trees and Views Committee Meeting, submitted by the Claimant, date stamped received June 13, 2011
- C. Claimant's Materials, date stamped received June 13, 2011
- D. Claimant's Arborist Reports, prepared by Ed Gurka, date stamped received June 13, 2011 and August 2, 2011
- E. Tree Owner's Materials, date stamped received August 1, 2011
- F. Tree Owner's Arborist Report, prepared by Kent Julin, date stamped received August 1, 2011
- G. Findings and Standards for View Claim

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# Vicinity Map



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Exhibit A

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Sausalito Trees and Views Committee Meeting  
November 18, 2009

Board Members:

GC: Grant Colfax  
DC: Dianne Chute  
RR: Ron Reich

Attendees:

ED: Elizabeth Dupar  
JG: Jonathan Goldman  
EG: Ed Gurka  
EN: Eckart Noack  
KR: Kim Rhinehart  
A. Salkhi: Ali Salkhi  
AS: Arash Salkhi  
NS: Nooshin Salkhi  
DZ: Dan Zepponi

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JUN 13 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

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GC: So I'm calling to order the November 18, 2009 meeting of the Sausalito Trees and Views Committee. This is Grant Colfax who is chairing the meeting today. I'm going to ask the other Tree Committee members to state their presence here.

RR: My name is Ron Reich. I'm a member of the Trees and Views Committee.

DC: Dianne Chute, member.

GC: Member, great. And the others who will be present today, we will now go around and just do introductions of people who are --

ED: Okay. I'm Elizabeth Dupar. I live at 107 Girard Avenue also known as 501 Litho. And I border the Salkhis and Girard.

GC: Great.

EN: Eckart Noack, I'm a real estate broker and co-owner of Frank Howard Allen here in Sausalito.

Exhibit B  
[35 pages]

EG: Ed Gurka, consulting arborist, self representing myself.

A. Salkhi: Ali Salkhi.

JG: I'm Jonathan Goldman, Public Works Director, City of Sausalito, staff to the Committee.

AS: Arash Salkhi, owner of 509 Litho.

NS: Nooshin Salkhi, owner of 509 Litho.

SC: Shelby Cox, owner of 93 Girard.

S. Cox: Steve Cox. I'm an attorney, I represent my daughter, Shelby and Kate. The two owners of 93 Girard.

KC: Kathryn Carlsen, owner, co-owner of 93 Girard.

KR: Kim Rhinehart, agent for Frank Howard Allen.

DZ: Dan Zepponi, Sausalito Public Works, Division Manager.

GC: Well, welcome everybody. So I have on the Agenda we'll approve the drafts of the Minutes from last year, October 15, 2008 meeting. Then we'll go to the view obstruction dispute and then have any public comment. Are there any changes to the Agenda? So hearing nothing, we will move on. Do I have a motion from one of the Committee members?

RR: I move to approve the Minutes, the meeting Minutes.

DC: I'm sorry I'm so sensitive about my name. But if my name could always be D-i-a-n-n-e, that would be nice.

GC: Oh, in the Minutes. Okay.

DC: Thank you.

GC: Absolutely. Noted correction. Can I get a second to approve the Minutes with that modification?

DC: Absolutely.



GC: Second. All approve?

(multiple): Aye.

GC: Aye. Okay great. The Minutes of the October 15 meeting are approved. So we have one Agenda item tonight, the view dispute between 509 Litho Street and then Girard Avenue. We have a number of materials that have been sent to the Committee, in addition to some email correspondence that I, as well as all the members, have done due diligence review.

What I would like to propose is that the, that the person, that the Salkhi representation just go first and talk about the view issue. And then we'll have the response from the owners of the property the tree is actually on. And what I would like to ask is, I know there are a lot of people here. I know it's a complex issue but if, I think that brevity would all help us move through this process. I'd like us to maintain a cordial manner.

Our recommendation will be based on what we hear from both parties and, obviously, we'd have to follow the Charter, the City Charter in terms of recommendations for trees and views. I would just ask that we, one, respect each other. We're a small community; that's what makes Sausalito great. And also that we all respect our questions as the Committee members. We're volunteers and we're trying to help bring people together and work this out.

Obviously, we always encourage people to try to work it out among themselves. When it gets to this point, you know, it's our job to try to help arbitrate that. And I would say that 99% of the time, we are able to reach some agreement. So, we're hoping this evening, we'll be able to get there.

So, again, please keep your remarks as accurate and, at the same time, brief as possible. We really appreciate that. And, of course, we want to also be able to hear the whole story. So if the, if the people from the Salkhi, people representing the Salkhis could go first. Am I pronouncing the name?

NS: Yes.

GC: That'll be great. And, again, we'll go 30 minutes on this end, if we need to go that long, and then --

?: I'm hoping not.

GC: Okay. Well, again, and then we'll allow people to respond and then we will have some discussion. At that point, hopefully, we'll be able to vote. And members might interrupt for clarification at this point, but we'll try to hear the whole story first.

?: Grant.

GC: Yes.

?: Can we have people state their name for the record?

GC: Yeah, so when you're speaking, state, before you start speaking, state your name for the record. There is a recording. Just so everybody's clear, this is a public meeting. It is a matter of public record.

AS: Well, my name is Arash Salki, owner of 509 Litho. Before I start off, I did send some emails to Mr. Jonathan Goldman and I'm not sure if they got handed to the Board. So if I may, I made copies that I could pass down to the Board. There're two documentations. One's an affidavit from the previous owner who owned 509 Litho. She actually lives at, I believe, 608 Locust, right up above me still and she is ill. And it's unfortunate, she cannot be here. And she's also sending another letter to Mr. Zepponi and Mr. Goldberg later tonight.

And also, I have another set of documentation. It's from my previous tenant who lived in the unit but also was a previous tenant for the previous owner and he lived there from 2000 to 2008. So he's been an occupant about eight years.

Like I said, I want to keep this short and brief. I know it's late and this is not, keep it brief, again. I bought this property in first quarter of 2007 as an investment property. It was a duplex. And what turned me on about this property, it wasn't because of the 60-year old beat-up house. It was because it was close to Caledonia Street which is very preferred and also the view. And the view is what sold me. And I think we can all agree today, one thing is, Sausalito is a unique city. The view is what makes Sausalito.

And when I bought this property in 2007, like I mentioned, it was a duplex. It was an investment property and I never occupied the units. And when the property was being rented out, only my main issue was make sure the tenants would pay their rents on time and, two, keep, make sure tenants -- it's fully occupied. And during 2008/2009, you know, the house was really deteriorating and my wife and I came to the conclusion, "Hey, let's go see if we can remodel this duplex into a single family house."

And we sent in the documentation with the City I would probably say mid-first quarter of this year. And, as Mr. Jonathan Goldman, would know and other City officials, I've been coming here now, going through all the necessary items to convert this duplex into a single family house.

While this process was going through, 93 Gerard was up for sale. And I don't know the details of this really, I've only been here for three years. I don't know if it was an owner-occupied or rent, or a rental occupied, but the property sold very quickly. And when the property sold, I had my wife approach the owners of 93 Gerard, Ms. Cox and I apologize if I can't remember --

KC: Carlsen.

AS: Ms. Carlsen. When we approached them, we had a very good mutual understanding. They came up to our property, we noticed, you know, we said, hey, this tree is really significant. It blocks, significant blocking our view. And, like I said, I don't want to go back to he said/she said. Unfortunately, we are where we are today. It wasn't resolved. I know Mr. Cox is representing as an attorney. I had to get a, I got an attorney also involved. But I think this is, I want to stick to the facts.

The pictures that were taken by Ms. Cox, it was taken on my deck at an angle. Now, as you can see from my previous owner and my previous tenant who lived there, this property had significant water views from inside the house. Their whole notion is, hey, let me go take a picture at the edge of the deck in the corner of the deck and here's your view. Now, what I've also done, I apologize for making this enormous picture because I thought we were going to meet in the room next door.

Okay. And here's the picture and let's put that on the table here. As I said, I apologize for making it so enormous. Now, please understand, this single family house is only under 1,200 square feet. This is the picture, when you walk into the house, when you come in from our front door, which is this open area. It's a family room/kitchen all-in-one.

So when you come in, first thing you notice is this tree. I'm not a math major. I don't care to what percentage of this is blocking my view but it's a significant impact. Now, when I had Mr. Gurka, an arborist, do a report on this, this tree could grow another 10 to 15 more feet. And if nothing gets done, this will completely block my view. I'm not sure if it might block it 100%, but it will cover it in more than what it is right now. And when I bought, when I purchased the property, this tree was not at this level. It was at a much lower level. And, like I said, and Mr. Gurka will also present himself. My understand from him is this tree is growing about two feet a year. It could grow, like I said, it could grow another significant more amount.

Now, my whole portion and I've been speaking with neighbors here and, like I said, probably miscommunication or whatever you want to call it. I am not asking for the tree to be removed at all. I'm just asking for the tree to get trimmed, maybe three to four feet up to this level. Now I know Ms. Cox and Ms. Carlsen's first complaint letter they wrote to the City is, hey, my privacy and my, and the shade of the property. Even with the trim that I'm requesting, is still, the tree is still above the roofline. It's still, if the tree is still above the roofline, the window's below the roof. That has no issue on their privacy.

Regarding the shade, the same matter. As I said, I want to keep it a very short matter. The view of this property is, of the tree right now, is significantly decreasing my value of my property. And one thing I know, there's a lot of things going on with other properties down in the City. I'm not sure they're happening here today. I know on our street, is it 600?

NS: 600.

AS: 600 Locust is trying to expand their house. And neighbors came, complained and said, hey, you know, that's going to significantly block our view. And they go through all the steps and processes. I'm hoping that the City of Sausalito Trees Committee could take as the

same impact as putting a building up. Because this is just wrong and wrong.

And things that I have learned from being at City Hall and going through files, 93 Gerard, that used to be a carport. I mean, I'm not sure if it was a plan approved or a permit pulled to plant that tree, but there was a carport there and the carport couldn't be more than 10 feet tall. But that's not the issue. The issue is, the City granted and they did the remodel.

But I think the City should also have some rules, I guess, that you guys have that, hey, if you, I mean, planting a tree. You could plant five young redwood trees all there across and in 20 years it's going to grow. Same thing as what's happened on this particular tree. It's been there for 12 years. And I don't think once it's ever been trimmed or pruned. And that is my scenario, there's the, you know, the view is very important. It is irrelevant for me to bring this picture up, but I do want to bring it up to your attention.

This was a picture taken on 93 Gerard one day before they bought the property. This, I'm going to pass this down, this is how their home from their living room looked like. They had a tree. If you could please pass it down to the Committee please.

?: You said they bought their home?

AS: Yeah, before they bought their --

?: You said they bought the home? Who?

AS: Yeah.

?: Who bought the home?

AS: Ms. Cox and Ms. Carlsen bought their home maybe six months --

?: So this is not your home?

AS: This is not my home.

?: This is the view from their home.

AS: I'll bring our views. That tree was there on their property. And after they purchased the property, the first thing they do is chop the tree down. Because for them, the view --

SC: I'm sorry, that's not our tree.

KC: That's not our tree.

AS: I'm sorry.

KC: That's not our property.

SC: That's not our property. It's across the street.

S. Cox: We'll get our turn. We'll get our turn. Let him go on.

AS: Like I said, first thing is when they moved in the cut it, because it might be irrelevant here, but the number one fact, the point is, the tree is a very impact on people's views. And if this tree keeps on growing and without being maintained at any level, you know, it's a huge disadvantage for me as a property owner.

And I also spoken with Betty Ritouf(?), she's the owner of the property next door. She lives in Willits. It's an investment property for her also. She wrote a letter to the City of Sausalito and she wanted me to also take a picture from her angle, from her steps, where now this tree has completely blocked her view. Now she said either way, whatever happens to my case, she'll probably make a claim on her end also. But there has to be some kind of policing. I mean, unfortunately, we could not resolve it ourselves.

All I'm asking, like I said, and not to be redundant, we're trying to just get it trimmed. I'm not trying to get it removed, just trying to get a trim so I could have my view back to where it was. And as you can see in letters, demanding a significant amount of money from me for a one-time trim is extortion. That's just my basic 101. And I'd like to have Mr. Gurka --

?: Do you mind if we ask some questions?

?: What year did you buy the house?

AS: 2007.

?: Okay so that tree --

AS: First quarter.

?: First quarter. Okay so the tree had been in for seven years.

AS: The tree, I believe, was planted in 1998 or 199 --

?: 2000.

AS: Or 2000.

?: Yes, so Mr. Gurka. Thank you for joining us. Would you please point on that tree where this thing probably was in 2000 and when did you buy it?

AS: 2007. First quarter 2007.

?: 2007.

EG: Well I've looked at the specifications for the characteristics of the *arbutus unedo* which is a strawberry tree, and the growth rate on that tree is 12 to 24 inches per year. So those are not, that's information I gleaned from different sites and they all correlate with each other.

?: How high was it in 2007? First quarter. We want first quarter. 2007.

EG: First quarter --

?: 2007.

EG: 2007. It's kind of hard to tell here but they grow in increments. So every time there's a lateral leg put out, that's one year's growth. So that --

?: You haven't been up the tree to count?

EG: I haven't been able, I've taken pictures from the street level, and I do have them in my report. So it would indicate the length of growth is most likely going to be 24 inches.

?: So growth out and up? Is that what you're talking about?

EG: Yes, because the trees going to expand in width and in height, but greater in height because of the fact that these trees have a characteristic where they put up shoots upwards. So the recommendation is that they be trimmed to keep them in a more symmetrical or a more type of silhouette of a tree.

?: For cosmetic purposes?

EG: Correct. Yes.

?: But at any rate that tree in 2007 was clearly noticeable and couldn't miss the tree, you'd know it was there.

EG: In two years, the tree would've grown four feet.

?: In two years. But it was noticeable that that tree was there in 2007?

EG: Yes.

?: Okay. Thank you. That's all.

EG: So Mr. Salkhi asked me to put together some information on how to go about accomplishing a view restoration here. So I've looked at different sites and used the Tree Ordinance to try and put together a method for pruning the tree that would achieve those goals, a compromise that would achieve those types of goals, and still protect the tree.

I've looked at the Sausalito Tree Ordinance that recommended, that has a description for view pruning, what a view is and a view of, and the view that's described in the Tree Ordinance on page one is a vista from the main living area of a home. So looking at that, I went along to the arbitration section of the Ordinance and tried to determine how to, was it possible to accomplish this?

The correlation I put together was that the Tree Ordinance describes thinning as a method for accomplishing not only width spread but also height reduction. I've used that correlation and looked at the ISA, International Society of Arboriculture, Pruning Standards. The pruning standards also indicate thinning as a method for reducing height and reducing spread and width.



So those two pieces, those two, the Sausalito Tree Ordinance and the ISA Standards and the ISA Guidelines give directions on how to accomplish height reduction without causing damage or misshaping the tree. They're similar in Sausalito Tree Ordinance when they describe thinning cuts and they correlate with the ISA standards for doing that.

In my report I put together a photograph, again from the Salkhi property, looking at where the cuts could be made on the tree. If they met, if they held to those guidelines of pruning, the ISA standards and the Sausalito Tree Ordinance recommendations for thinning cuts, the thinning cuts would be made in my report and I describe that the cuts would be made to lateral cuts that would reduce the tree by a minimum of two feet without, two feet of growth could be reduced on the tree without requiring a tree permit. So it's a very basic pruning standard.

GC: Can you show us based on that how far it would come down, based on your estimate?

EG: In two feet?

GC: Yeah, just so we have a --

EG: Well, I don't know if you have my report, arborist report here, but I drew a picture on what I would think the reduction rate should be. And I just drew an indiscriminate line here that would indicate a kind of a reduction that would not be the ultimate standard of it. It would be in increments. So, the thinning cuts I made selectively and selective thinning cuts are made in such a way that some may be deeper cuts and some may be lesser cuts because they're pruned to side-growing limbs. Side-growing limbs that could assume the growth that are at least one-third the size of the parent limb that's being removed.

Those all fall within the ISA Guidelines for pruning standards. Those ANSI A-300 pruning standards are the ones that are used by industry for pruning in this type of thinning cut. They described thinning cuts and a method to do those cuts.

GC: So let me just, so I can understand it from somewhat, so basically you're saying you're not just going to go and shave that line across the tree here. You're going to do some selective cutting --

EG: It may be deeper cuts --

GC: Right.

EG: -- and it may be lesser cuts. It's a selective type of pruning that's used. And it's, the pruning cuts are made in such a way that the limb that it is cut to would be able to assume the growth. It's a different type of method than a heading cut which would just chop off the whole top of the tree and leave it at that.

RR: So although you've drawn that line on it, that really fooled me a little bit when I saw it in your report. You drew that line on there and I wondered what was going on. There would not be a heading cut so that it would be leveled off. There would be sprigs going up.

EG: That's correct.

RR: Okay.

EG: Yeah. That would be the pruning type that refers to in the Ordinance thinning cuts and that's the way, method of thinning cuts that also correlates with the ISA Tree Standards that --

RR: Okay.

EG: -- that suggest how thinning cuts are made.

GC: And can the Salkhis clarify, and I realize you might not be done yet, but just for our clarification, what room is that door opening to your residence? What --

AS: That's my family room, living room and kitchen, all-in-one.

EN: It's the main view quarter of the house. The primary.

AS: And before the remodel for the duplex, that was the one, it was a one bedroom unit over there and, like I said, a letter from my previous tenant will show, that was, the angle of the doors, we didn't change the opening of the door. Everything was same living area as before, but just we just expanded it to one unit.

EG: And in the Sausalito Tree Ordinance it kind of refers to a main living area. That's where they establish a view, from a main living area.

GC: No, no no I was just to clarify for the record what that space is according to them.

EG: So I used those standards and wrote the report and made recommendations on how to achieve that. And those recommendations are in my report.

GC: Okay.

EG: On how that could be accomplished. Given the fact that trees are dynamic, they're not buildings. They grow. So there would have, the site would have to, the pruning cuts would have to be revisited on some type of a schedule. So they wouldn't just be a one-time deal and then grow up. Which, what I suggested in my report is trying to do the minimal amount of pruning, but yet reduce the height enough and then maintain it at a level when new growth grows from inside the tree and creates a new type of canopy that's a little bit lower than the one that's there now. Most tree companies can relate to that and do those kind of pruning cuts on trees.

EN: I'll throw my two cents in. I just think that to me the valuation --

RR: State your name, please.

EN: Eckart Noack. And, to me, views are paramount to property values. And when I look at a main view quarter, i.e., the living room, kitchen, family room and I see a tree report that says that this can grow to 45 feet thus eliminating that view, if you eliminate a primary view, master bedroom or living room, I mean from a valuation standpoint, I count the view at about 5% of the property value.

And so I think it really is important to create an agreement to keep, maintain health of the tree and bring it down to a point where everybody wins. They have a beautiful, healthy tree. The neighbors already agreed to have them choose the arborist, to pay for it. They have their views, you have your privacy, and it just seems like a no-brainer to me.

GC: Thank you. We just want to check with the other Committee members if there's any further questions for Mr. Gurka or we can hold off to the end.

DC: Fine. We need to hear from all.

RR: Yeah, I'd just as soon wait and address those.

GC: That's great.

RR: Okay.

GC: Anybody else from the Salkhis?

AS: I guess I'd like to make one comment. And I do not want to --

GC: Could you state your name, again, just for the record.

AS: Sure. Arash Salkhi, 509 Litho. Just one last comment and I know you guys have the documentation. You know I, like I said, if there was miscommunication, I first apologize right now. I did not want this thing to get to this level it is, how it got escalated. Number two, I offered to pay \$5,000 one-time for a reduction, that's what was value to me. But when they come back and say, pay us \$25,000 for a one-time, two-foot trim, what Mr. Gurka was just, did his presentation, that's all I'm looking for. Just a two feet pruning here so I could kind of, so you could see through, the views of Bay you get, well used to be there.

But asking for \$25,000, you're putting a gun to my head saying it's a one time shot, you know it doesn't sit well. And, if you guys were in my shoes, I think maybe the feelings would be mutual. You'll feel the same way. You know, like I said.

GC: Thank you. And again, we want to hear from the other side. Just with all the materials in here, do you have a picture of the view when you moved in?

A. Salkhi: I do.

GC: You have it?

A. Salkhi: Mmhmm.

GC: It was in the packet?

A. Salkhi: That I did, no.

GC: Did you supply that?

A. Salkhi: No, I did not.

GC: How did you --

?: I have it.

GC: Okay, perfect.

DC: My dog. I do have it.

GC: Okay. So let's hear from, anybody else from the Salkhi? Okay. So let's hear it from the other side.

S. Cox: Maybe I can start?

GC: Yes, please.

S. Cox: I think to help with decision --

GC: State your name for the record.

S. Cox: I'm sorry. I'm Steve Cox and for the record, I have a vested interest here and my daughter is one of the owners. But I'm an attorney and I was brought into this case because Mr. Salkhi saw fit to hire an attorney who wrote a threatening letter to my daughter threatening a lawsuit for a cause of action that is in this packet, and I will show you the operative language.

I have read the cases involved, found out quickly that California is a, well, they call it a "no lights state" which means that you can't bring an action against an adjacent landowner because their tree has obstructed either your view or your light. There's no cause of action in California for that. However, Mr. Salkhi's attorney was threatening that kind of cause of action against Shelby and Kate. That's when I got involved in it.

So I read those cases, I wrote him an email back, you'll see it. It's in this packet of materials saying, you know, I've got problems with that because there may be some ethical issues associated with threatening a lawsuit to try to get your way. And so the tenor that that letter or that exchange brought me into the case. I suddenly, when I started getting into it, realized that there was kind of an effort to kind of bullrush Shelby and Kate in respect to trying to get this tree cut by Mr. Salkhi, by his lawyer and we will document that and Shelby and Kate will tell you about how that went down.

The first thing I wanted to do was I wanted to get into the Ordinance to find out, okay, there is a Tree Ordinance, there are cases that say that City ordinances like this are constitutional, that you can do what you're doing and that's fine and I agree that that's what you should be able to do and that's what you can do. And that's why we're here.

But in reading the Ordinance, there were a couple things that jumped right out at me. And if you look at this, if you look at page number 2, 11.12.040 of the Ordinance, this is your Sausalito Ordinance, it says that a tree, shrub, hedge or other vegetation shall not be maintained in such a manner as to unreasonably obstruct the view or the sunlight reaching the other property.

So the first thing that occurred to me is it's not every obstruction that is objectionable. It is an unreasonable obstruction. And then as I read further, if you'll look at the next page number three, under definitions, it defines the term view in the statute and it says the vista of San Francisco, Richardson Bay, hills, sky, etc., but the last term, the last sentence of the definition says the term view does not mean an unobstructed panorama of all or any of the above.

So it occurred to me right away, well, he's not entitled to an unobstructed view. He's only entitled to have corrected unreasonable obstructions. And so I said to Shelby, here's what we got to do. Go over, take pictures, let's see what his view is, let's see how big a portion of his view is obstructed by this tree and then let's find out what the tree looked like when he got here in 2007.

So what we did is we, and again looking at the Ordinance, one of the factors that is to be considered by you is the extent, and looking at page 4 now, the extent of the alleged view obstruction as a percentage of the total view. So what we did is we went out and Shelby took pictures from their deck. And this collage of photographs shows their

complete view. And that is in the material that you have. And that's, it's not the one right there. We had to paste two pages together. It's following, following page 4.

SC: It's the one that opens up.

S. Cox: Yeah there's one that opens up. So this is the total view. Not that view that's depicted up there. This is the total view from their deck from stem to stern. The portion of the tree that Mr. Gurka wanted to, and his report is referring to, is that block in the center of the picture with the, a red block. And if you measure the total view here in square inches, you end up with about 70 square inches and 1.5 of that 70 square inches is involved here. And so what it ends up is, that portion of the tree obstructs 2.1% of their total view. Much different than what's being shown there.

So the next thing I said, well, it's not a big obstruction. It certainly doesn't seem unreasonable and he's not entitled to a panoramic view, an unobstructed view according to the Code. So the next thing I wanted to know is the extent that the view existed at the time the claimant purchased the property. That's another provision that is in your Ordinance. And we looked back and we found out that the history was that the tree was planted in 2000. It was replaced, it replaced a parking garage by the previous owner that he had knocked down. So in place of this tree, there was a roof line out there. And I'm not sure where it was, but the tree was brought in. It was brought in as a half-grown tree and planted with a crane.

When the Salkhis purchased the property in 2007, here's the MLS listing for the property at that time. And the tree is shown in the center photograph. This is on page 8. Now you can look at the top of the tree as it relates to the background, that peak over on I guess that's Belvedere over there. And you can see that the tree as shown by these photographs is not significantly larger than it was in 2007.

So to say that this tree has grown four feet in two years just doesn't, the pictorial evidence says that that's not true. There is no four feet of growth on that tree between 2007 and 2009. So whatever the theory may be in the books that you've read, the actual fact is it hasn't grown that much.

RR: When I say --

St.: Go ahead.

RR: So my clarifying question, is this, this was in 2007 that this picture was taken? Do we know that for sure?

S. Cox: Yeah.

SC: It's 2008. That's the listing in 2008.

S. Cox: Oh 2008, excuse me, 2008. So this is, I thought that was seven. This is 2008. I apologize.

SC: Early part of 2008.

S. Cox: This is in May, or February of 2008.

RR: First quarter. Okay first quarter. Is this taken from, it looks like it was taken from the same balcony, doesn't it? Except that I don't see that telephone pole back there. They were probably removed. But I do see that --

S. Cox: This is part of the MLS listing. I don't, I can't tell you where it was taken from for sure. It looks like it was taken from the balcony. That's what it appears to me.

?: We're just asking the City staff here, were the telephone poles, they weren't --

? Put underground

?: Put underground for the wires, right?

?: No.

(overspeaking)

RR: All right. Sorry. Continue.

S. Cox: Yes. So it appears that, it's certainly true the tree was there. It's certainly true the tree was there and substantially the same size that it is now when he bought the property two years ago. As you can see from the submissions, we have a statement from Jason Wherlin(?) who was the person that Shelby and Kate bought the property from and he, you know, his email shows the history here.



He says, it's worth noting this home has been in our family since 1996. Nobody has ever asked us to trim the tree. The tree was planted by my father-in-law. He planted the madrone tree in place of a parking garage that was there at the time. He demolished the garage and replaced it with the tree. Therefore, the parking garage would've prevented them from having any sort of, quote, panoramic bay view.

RR: Madrone tree. Mr. Gurka what kind of tree is that? Is that a madrone?

EG: The correct term for the tree is, the botanical name is *arbutus unedo*, that's called a strawberry tree. That's the common name. The technical name of it, the correct name pronunciation of it, that's the name of the tree. When you get into talking about madrone, strawberry tree, you're talking about common names. So to be specific, you should refer to it as the species. And that's the species I identified it as.

GC: It's the same tree.

EG: Same tree. They have different growth patterns.

S. Cox: Same tree. Okay. And then I think the other thing that we need to find out tonight is from both the real estate agent who is here, as I understand it you represent the Salkhis in the sale of their property?

EN: Yes.

S. Cox: And when did the property go on the market?

EN: Saturday.

S. Cox: And are you in escrow?

EN: We are in escrow.

S. Cox: Was it at full price?

EN: I can't tell you the price.

GC: Let's just, yeah, can we just go --

S. Cox: Well the point is --

(overspeaking)

S. Cox: No, not quite. I want to point out that the claim that this damaged the value of his property needs a little examination. Because what is true is, they put the property on the market on Sunday or Saturday and sold it the next day. They're in escrow right now. So, how did this damage the property?

EN: That's far from selling a property.

S. Cox: How does did this damage the property? Well, then if

EN: One of the key questions he's asked me to --

S. Cox: The other point --

GC: Hold on. We just want to finish the presentation and --

S. Cox: The other thing we asked for is, when this property was purchased in 2007, we wanted to see the appraisal. Because if, in fact, this tree was diminishing the value of that property in any way, shape or form it would show up on the appraisal. They refused to give us the appraisal.

And then I wanted both Shelby and Kate to describe how this whole process unfolded so that you get some flavor for how this bullrush has been going on since August.

GC: Okay, before you do that I just want to ask everybody not to do the cross-talking right now because we're just trying to hear. We really need to facilitate the process. And it's hard for us as the Committee members to be able to focus on the two different stories if people are doing the cross-talking which I know this happened before.

S. Cox: So then I'll step out of the way now and just let the people who were there tell how it came down.

SC: Yeah, I mean they showed up at our house at 9:00 a.m. on a Saturday morning and asked, told us that they were our new neighbors and could we come over and talk about our tree. So we walked up, they showed us the place, it hadn't started the construction. They showed

us the view, they talked about trying to find a happy medium. We were trying to be neighborly.

We said, you know, that we would consider it. We, you know, obviously we're up on their property taking a look at what they wanted to do. We, you know, left that interaction, basically, saying that we would think about the tree cutting and we were happy to have them as new neighbors. We got, we exchanged contact information.

The next interaction was Mrs. Salkhi calling Kate saying that she had hired a person to come over and cut the tree and that he was, you know, we needed to get this done right away. These phone calls were two or three a day. They were every, you know, lasted for about a week. When we finally, we were out of town, we were having guests into town, we kept calling her and saying this wasn't the right time, we were still thinking about it. They were about to start construction. Why would we cut the tree now when they were going into construction?

And that's when sort of the volume started to escalate. She called back and said, you know, I've hired this person, we have to get this done. I've already paid him. And we just, you know, we'd volley back and say, you know, let's hold on here. Like there's no rush. We haven't agreed to do this and, you know, it finally escalated to a phone call from her saying, we have a right to our view. You can't stop us from cutting this tree. We've got to get this taken care of. Read the Trees and Views Committee Ordinance of Sausalito.

She threw it in our mailbox and, you know, the next thing that we knew there were sort of letters going back and forth and copying the City, getting them involved. And then following that, was the letter from their attorney when we, you know, sent a letter back saying that we had talked to our neighbors, the folks who rent behind us. our neighbor Elizabeth. They all enjoy the tree. We're concerned about our privacy.

You know, that's sort of when we got this letter from their attorney saying that they were, you know, threatening substantial damages. And at that point, you know, we were pretty nervous and she's threatening lawsuits. So that's when I called my father, got him involved and, you know, then it sort of escalated into the two attorneys going back and forth.

GC: You know, I'm sorry, I realize we didn't have you state your name. Can you?

SC: Sure, sorry. Shelby Cox.

GC: And how long have you lived in the residence?

SC: Since April. So six months.

GC: Okay.

SC: Six, seven months.

GC: All right.

SC: So the attorney sort of back and forth happened and we finally, you know, kind of got a time that we agreed on where I could go onto the property and take the pictures that you're looking at today. And, you know, this is sort of the point where we started to get extremely uncomfortable because I went up onto the property. Mr. Salkhi was there. You know, at first he was very nice and said, can we just talk about this? We'd really like to, you know.

At that point he had already engaged his attorneys. So my father advised me not to talk to him because, you know, there were attorneys involved. So I went up and said, I don't think we should be talking. Let's let the attorneys talk. I took the pictures. When I turned around from taking the pictures, he's standing in the middle of his house and starts, you know, his voice is escalating. He's telling me that he can't believe we can't come to a conclusion in this and why won't I talk to him. And I said, I'm not interested in engaging right now. Tried to walk back outside and he followed me outside and said, I'm not going to stop. I'm going to sue you. I'm going to take this to the full extent.

And I, at that point was getting pretty nervous so I hightailed it into my house and he stood outside my window and was screaming at, I don't know if he called his attorney or whatever. So much so that Kate came downstairs. You know, he's walking back in forth in front of our house screaming. He's out in front of the street screaming, looking up into our deck.

So it was just, I'm just trying to sort of capture just the tone and the aggressiveness that these people have taken towards this issue. And

they wonder why we have issues with talking to them and trying to find, you know, a common ground here. It's just, I've never, ever been treated this way. So anyway, you know, it was loud enough that our next door neighbor heard him screaming. It's just irrational behavior.

GC: Do you have anything to add?

S. Cox: Kate?

KC: Kathryn Carlsen. I would agree. And he has apologized for his irrational behavior multiple times and yet the apologies don't really seem to do anything because the behavior continues to escalate. He continues to be loud and to be aggressive in his approach. And I would concur with everything Shel said.

GC: Okay. Any follow-up questions before we go --

DC: Well I'm sorry that the two of you went through what you did. I'm totally confused. I don't know why neighbors just can't settle things on most favors. Why did it ever get to this? Why can't you just take two feet off your tree to accommodate somebody who's got a house for sale? I don't understand. You could help somebody make \$50,000 or \$100,000 more on the sale of the property. Why not do it?

SC: Well I think --

DC: This is an ugly tree, I'm sorry. But it's ugly.

?: Thank you.

DC: Cut two feet off of it. I don't, I just don't understand how anything could get to this point. Okay. Sorry, you had a question.

AS: I have a couple comments and I'm going to make it short. What Ms. Cox and Kate are saying, you know, there's always two sides to the story. And, you know, the partners are living together, it's two sides of the story. You have no idea what I've been going through for the last five months during this remodel. I'm being harassed and am put in the middle between the City and my neighbors about all the construction I'm doing.

I had thought, and Mr. Jonathan Goldman knows me pretty well now, unfortunately, or good or not, you know, I had issues with the City of Sausalito. We sat down in the same office with Pat and Mr. Goldman, but we worked them out. I mean, I'm a reasonable person. But when a person comes out and all their side, it's one side of the story. You should come hear the other side of the story of my wife and myself about threatening us. Saying no, we're not going to do that.

And I just want to go back to Mr. Cox. I know he's an attorney and I might not be able to speak his lingo, but going back and the property in 2000, the tree was, is tall. That tree was not that size. And the pictures that he's getting from MLS, you don't know if they were accurate because they weren't taken by him. They could've been Photoshopped or any other version there is. You see the tree as-is. I'm not sure if the Committee, if the Committee were able to come into my home and see it from my angle which is completely opposite of what Mr. Cox is saying. So, like I said, I want to keep it --

GC: I think we understand. And I know that Ron had a question?

RR: I do, on 12. You shade what you want to shade in that, but what room? Is there a room there?

SC: Next to the fence.

RR: That's a backyard?

S. Cox: This is taken from, well, Shelby you took the picture. I think it's taken from the doorway of your --

SC: Guest bedroom.

KC: Guest bedroom.

RR: Okay.

KC: And the shade is the fence on the bottom.

RR: Okay and I'm wondering if there are any complaints. I noticed when I was there and, by the way, I think it's a very pretty tree. And I noticed that it hung off, hung over the fence on the ones -- oh, is that on your side?

ED: Mmhmm.

RR: And do you have, how do you feel about this?

ED: I like it.

RR: About the tree.

ED: Well, in fact, this picture shows. This is my car here and how it's completely been blocked in, just bring that up. The shade goes --

?: (inaudible)

ED: No. No, but what I'm saying is this is my car --

GC: And if you could state your name, sorry.

ED: Oh I'm sorry. Elizabeth Dupar, the neighbor, 107 Gerard Avenue. Essentially before this tree was here, it was really ugly, concrete, lackluster alley. I mean it's just this cul-de-sac. Now the tree actually provides a lot of the shade and a much more feeling of, I don't know, probably oxygen and cleanliness because before my house would get hotter than hell. So the shade in the encroachment I've allowed, ever since Dean Shultz planted the property, the prior owner of 93 Gerard in 2000. I thought it was beautiful.

And so, I like the privacy because this is from Betty's house I guess so they used to be able to look right through into my room, into my home. That way. And there's really not much of a view that, there's never really a view across that way anyway.

?: Can I add something?

ED: From Betty's house.

GC: So I just wanted, for the record, so we're not talking about, nobody's talking about removing the tree.

?: No.

?: No.

GC: We're trying to just --

?: No.

GC: Just we're balancing, and this is what we always work with, is balancing the view piece with the tree piece. And we're the Trees and Views Committee, so neither one has a priority. But we're also looking at sort of reasonable intent. And one thing that, following on what Dianne was saying, I appreciate the fact that people are worried that neighbors were fighting and that it sounds like a terrible situation. And I appreciate that presentation.

What I didn't hear was why two feet or whatever couldn't come off the tree. And I just don't understand that. It seems, just to, I understand there are privacy concerns, shade concerns. I think all of us are on the Tree Committee because we love trees, most trees anyway. And I like the tree. I think it's a pretty tree.

I can see that it adds benefit to the neighborhood. I just don't understand why the two feet can't come off. So I think, I'd really like, in the interest of being fair, I'd like to hear specifically around that much coming off because it's like, I just don't, I haven't heard that yet. So --

S. Cox: Go ahead.

GC: -- could one of you respond?

SC: This is Shelby Cox. The problem is is that the deck that they built, which is now the one and only deck, is looking right down into our guest bedroom. And if you don't have this protection, there is going to be a direct view not only into our backyard but right into our guest bedroom. I mean, if you stand and I'm so happy for anyone to come stand on our porch and look, it's very close. They're going to look right into our room.

EN: Can I throw a couple of things in there?

GC: Yes.

EN: Eckart Noack calling, speaking rather. And Shelby, first of all, I gotta disagree with that because they're talking about only trimming above the roofline. And the real issue is to reach some agreement where that



top canopy is maintained by a professional manner so you do have your privacy and where they still have their view.

And to me it's like a, it's really no-brainer. And I called your agent when I heard. I got involved in this kind of late then I heard things were escalating and I said, and I called up to try to reach a, you know, win-win situation. And I said, you know, maybe just detail out that you could pick the arborist, you could be there for it, you know? Give them \$1,000 to have a nice weekend in Napa and let's put the hatchets down 'cause this is ridiculous.

And secondly, Mr. Cox, your picture is from standing on the front of the deck, and not from sitting in the living room or the kitchen or the dining room. If that tree is allowed to grow unattended to, it is going to eliminate not 1.5 inches on a panoramic view from the edge of the deck. From inside the house, it's going to eliminate the primary view of this property. So this is, I think this was not right either.

S. Cox: Well, maybe the new owners might have a different view than you have. They may like the tree. Now maybe --

A. Salkhi: My name is Ali Salkhi.

(overspeaking)

S. Cox: I mean, you sold the property. You won't tell us what you got to verify that you --

EN: It's not sold yet. It's an offer on the property.

NS: Can I say something?

RR: No, not yet. I want to just --

?: -- hear from some other speaker.

RR: -- not interrupting each other. It's just not asking more than that. Yes ma'm?

NS: Yes my name is Nooshin Salkhi. I'm also the owner and also the designer/architect of our property. I'd just like to clarify some of the issues right here. As for your shade, that view is on the southern, so the sun's going, the direction that's going and the reason is that I

usually, as an architect, I notice the architectural details. And your windows are located at the back almost, they are very located up high so the, as for the shade, as the sun is going down, that tree barely provides any shade. And there is the opening of 10 feet for your carport and that's for that.

And also, is that people's needs and what they see couple years back, what they want couple years later, it varies. Maybe you notice something today and you might not have seen it long time before. And for that picture that that's there as the house was sold, maybe it was taken at a different angle.

Now the door is bigger. The views definitely has changed and the room angle, the room layout has changed. So that directs attention to that view. And that is the main view.

And also as for the phone calls, I have a full-time job as well as an infant. And since they have their attorneys here when they state such comments that there were multiple phone calls during the day, a) I don't have the time for that, b) if they're saying something like that and they have their attorney right here, they should have the phone call records stating that, reviewing that there was so many phone calls made in the same day or during the same week.

And the tree is also like, it's not a clean tree. It has so many leaves that runs all over the place. So just maintaining it is, and as for the view, as for the privacy, we have the roofline. And as you, as our arborist here is presenting is that incremental trimming. So the privacy will never be taken away.

AS: My name is Arash Salkhi. And like I say, I hate to be redundant here. The tree will still be above the roofline. I mean, when they're talking about shade and privacy, that's completely irrelevant because, even if you trim or prune the tree, their window is still covered. The tree is still above the roofline. And like I said the whole point of this whole, there used to be a carport. The carport was not above the roofline. The carport was not a garage, it was a carport.

So I mean, like I said, I mean, I'm trying to get some sympathy here. All I'm trying to get is a two feet or three feet reduction. Nothing about getting the tree trim. Like I think my wife mentioned, this tree is a mess. I'm pretty sure you guys have seen it. There is weeds growing all around the sides of Ms. Elizabeth Dupar's house and also

of their homes. And it doesn't get maintained and I'm the one cleaning the mess.

GC: So, that's fine, we appreciate what you're trying to say but we also don't want to focus on --

AS: Sure. I understand.

GC: -- on whether or not people are maintaining other parts around --

AS: I understand.

GC: -- weeding and so forth. I know there was a gentleman who wanted to say something.

A. Salkhi: No. Only my name is Ali Salkhi. Because he's saying the trees doesn't grow two feet every year or two years. He's not the expert. He's the lawyer. Expert is here and he say. If you have another expert that says that there is not, I understand. But he's the lawyer. Cannot make a judgment about the trees growing two feet or not, you know. Bring that picture and show it to us and say that time their tree was this size and this here is the tree at that size. He's not there. He can not judge for that. He's the lawyer and he can discuss about --

GC: Yeah I think we --

A. Salkhi: Yes. In the court, he can go on to say. But he shall not judge about the tree.

?: So I just want to check in --

GC: -- I will let you. I just want to say that I think that, you know, over the last 15 minutes or so, the information that's being presented is largely stuff that's being repeated. And I think that we have that information so I want to really focus on, you know, responding to just some of the questions that the members have. And if there are other things that people feel like haven't been represented, it would be really good to hear from that.

But, also maybe just the fact that we have to make a decision. We need to look at the facts and weigh them and if we can just keep our remarks to new and pertinent information and respond to the members' questions that would be great. Yes, ma'm?

- KC: Kathryn Carlsen. I'm talking about the arborist report.
- GC: Yes.
- KC: I don't know if we've referred to this page, page 2 of 3. Talks about the cuts, the potential cuts. And I was out there looking today at the tree, in addition to try to correspond the branches and the cuts. And even in the picture here, you can see that it looks like it's a lot more than two feet that they're going to be cutting off the tree. The leaves are on the top of the trees so when you actually cut the top and the leaves off, all that is left are the branches.
- GC: Do you have any response to that, in terms of the cuts --
- EG: Yes, I can. I have that. Again, I go back to looking, to defining the type of cut and the thinning cut. It's made to a parent, a branch that will assume the growth. And those branches aren't symmetrical. They're at different heights throughout the tree. So it's true that the tree could be just topped at a certain height. I don't prefer doing that type of a method. I'm trying to follow the Tree Ordinance guidelines and correlate it with the ISA standards for pruning practices, and those are industry standards that everyone recognizes. So I'm trying to do this in such a way and present my report in suggesting where the cuts would be made that are made in a careful way that doesn't open up the tree that much and doesn't create big holes in it and expose it.
- GC: And from your view in looking at that tree and where you would make the cuts, do you feel that would impede on the privacy of the property?
- EG: I don't have that information, 'cause I haven't been in there. What I'm looking at is how the tree will regrow after the cuts are made. Those cuts will grow and they'll fully, they'll produce foliage in one year and that foliage will be at the length of 12 to 24 inches which is the information that I've got from my sources, one of which is the San Luis Obispo website and also the U.S. Department of Forestry.
- Those both correlate to the fact that this particular tree will grow 12 to 24 inches and the variation on the height is judged by where the plant is growing. If it's growing in a desert location with limited water sources, you're going to get that 12 foot (sic) growth. If it's growing in an area that has abundant water supply, high rainfall, you're going to get that 24 inches of growth.

If I could just explain that a little bit to everyone. I think that Sausalito has a type of climate that's a Mediterranean climate where this tree is a native plant, and you're going to see that amount of growth on the tree per year.

GC: Any questions?

RR: I have one thing that just hasn't been addressed and that is, in looking at your picture, I see a huge difference in the, my interpretation of what this view is, from looking to the left of that tree and looking at the tree. I see, I see a bunch of rooflines.

?: Yeah.

RR: Can you please address that? Is it better to have rooflines, or better to have trees? And are there any, what other trees are on the block? Are there a lot of trees on the block?

AS: The roofline belongs to the person next door to you, who is sitting next to you. That's Elizabeth's house. Now the one thing is, at least the roofline won't grow. At least when we bought the property, it was there at, it is what it is.

RR: I know a roofline won't grow. But thank you for that. I'm wondering if it is more preferable to have these roofs show versus a tree? And I haven't heard anything about that.

EN: Can I just say, I don't think, they're not looking to drop the tree below the roofline. The tree is up above the roofline now. Taking two or three feet off that tree is not going to open up the roofline. It's still up above their view.

NS: And that roof --

EN: So they're not looking to take it all the way down.

NS: My name is Nooshin Salkhi. And that roofline that you're talking about, the view is only, if you stand to that corner all the way to the right, all the way to the right towards this window, then you see the roof.

RR: Okay. I understand. I hear what you're saying. But you're looking at rooflines. That's what that view is, rooflines and water. And you'd rather not have that tree?

NS: We never said that we wanted to cut out the tree. That was never a question.

RR: Okay. Thank you very much.

NS: Or the request.

RR: Okay.

DC: Excuse me. I'd rather look at a roofline in an unobstructed view.

RR: That's your choice, I understand that. Thank you.

DC: You sit at the Casa Madrona and you look out and you see the roofline. You see the incredible expanses of San Francisco Bay. And you don't even think about the rooflines.

?: Okay. Let's go on.

GC: So, can I just ask one more, okay. Sounds like we're going, but I just wanted to ask for one more clarification because I didn't quite understand it. Do you have any documentation that, again, with the tree being trimmed by two feet, how that would harm the privacy of your guest room? Is there any --

KC: I guess --

(overspeaking)

SC: But the only thing that we know is taking a look at proposed cuts, taking a look at what we think is two feet and standing on our deck looking up in the tree. And what we think is going to happen is a donut hole that's going to look right down into our guest room. So that's what we're trying to prevent.

S. Cox: All right. And the other thing I would say is that, you know, the burden here is to show that this tree is an unreasonable obstruction. That's what the Code says. And I think our view and my view of just reading the Code. Of course, it obstructs to some extent. The

question is how much and is it unreasonable? You're asking one property owner to be able to cause another property owner to cut their tree in any way. And so the threshold question, is it an unreasonable obstruction? And I think by looking at the photograph, it isn't.

GC: Okay.

S. Cox: Oh and the last thing. This is new. The last page, this number 17 you haven't seen that before. This is the report that shows that the house is in escrow, whatever that, the gentleman wants to talk about what that means. It's in escrow. So any question or any argument that this diminished the value of the property I think is --

RR: Are you going to explain?

GC: So let's just, I think we, as a Committee, we're not here to determine whether the house sold or not and how much it sold for and whether it was sold for less because of that. I think as a Committee, I feel comfortable that we're ready to move to a vote.

RR: Yes.

GC: Do you guys?

RR: Yes.

GC: Okay. So, I guess, in summarizing, I and other members should also speak as they see fit. I feel like this is a really terrible situation. You all, having been up there, you all live in very close quarters like most of us do in Sausalito. And I wish that, again, it didn't come to this point of having to spend our evening here to try to work out what I perceive is a fairly simple issue. I understand that you all felt very much harassed by the neighbors. I also understand that there's another point of view there.

I think in looking at the Ordinance and balancing this view as a Committee, what, the right to a view, the right to privacy, the fact that you know trees do grow, the fact that some people feel, might not feel that that's a lovely tree, but that's sort of beside the point I think.

To me in the living space that this is, this is clearly obstructing, a significant obstruction of the view. It's not from the deck that the decisions are made. It's from the primary living space. So --

- RR: Should we be discussing and voting with them here?
- GC: We have to. It's a public meeting so we do discuss and vote. So I will just put that out there and then other people should say anything else that they'd like to say. And we'll move to a vote.
- RR: Okay would you like to go first? Or would you like to make a liar out of me?
- DC: Go ahead.
- RR: Okay. I am very strongly opposed to anybody telling these ladies that they have to trim or cut their tree in any way without their preference, without it being their preference to do so. It is not anybody else's to prune and that is an outrageous view. That is a fabulous view. Unless this was sold contingent on that tree being cut down or trimmed --
- EN: Nobody is saying --
- RR: -- I see no reason, I see no reason to ask the owners of the tree to cut it. I think it is important to the neighborhood that the tree be there. There aren't, I've been there and there aren't many trees on that road. We have no comments from anybody until somebody wanted to make a profit off of it. And I'm very much against asking anybody to trim that tree. Now, I'll be quiet.
- \* DC: Well, first of all, there are a lot of trees, palms, lots of trees there. That is one ugly tree. It shouldn't, first of all, why would anybody plant something like that, I don't know. But, why not be a good neighbor and just top it? Take two feet off of it and another two feet in another two years or whatever. I can't believe that you people have all gone to this trouble, this time, and all it is, is just be good neighbors and cut the damn tree down two feet. It's a horrible tree. Sorry.
- GC: So, shall we vote?
- RR: Dan, Dan are you voting?
- GC: Dan is not a voting member.
- DZ: No.



GC: So it's the three of us.

DC: Three of us.

GC: So I think that, I move that we vote on, I make the motion that we recommend that the owners of --

DC: Right.

\* GC: -- at the 93 Gerard residence trim within reason the two feet recommendation per Ed Gurka, the tree to reduce the growth of the tree. To reduce the growth of the tree and improve the view at 509 Litho Street. Do I have second?

DC: I will second.

GC: Okay. All in favor?

DC: Aye.

GC: Aye.

RR: No, absolutely not.

\* GC: So the vote is two to one and the motion is carried to make a recommendation that the tree is trimmed.

DC: Very good.

?: Thank you guys for your time.

?: Thanks for your time.

AS: Mr. Goldman, thank you as always, thank you very much.

(end of recording)

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Stephen A. Fraser  
Attorney and Counselor at Law  
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(415) 332-2421 (O) (415) 332-3049 (F) (415) 328-2152 (C)  
safraserlaw@sbcglobal.net

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JUN 13 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

June 8, 2011

Jeremy Graves  
Allison Thornberry, Asso. Planner  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965

Re: Trees and Views Committee Application for Hearing  
509-11 Litho Street vs. 93 Girard  
Arash Salkhi vs. Shelby Cox, et al.

Dear Mr. Graves:

This letter sets forth the present Arborist's Report of Mr. Ed Gurka regarding a long-standing tree dispute between the owners of 93 Girard Avenue (situs of the tree) and 509-11 Litho Street, Sausalito, California. Mr. Gurka's report is attached as Exhibit A. An explication of this Application and the accompanying attachments is presented below.

#### BACKGROUND

This tree and views issue arose initially on or about August 16, 2009. (See Exhibit C). Mr. Salkhi wanted to provide his tenants, or a potential buyer, with a panoramic view of Richardson Bay, Belvedere Island, Angel Island, and Raccoon Straits from his "primary living areas" (living room in this case). A young "Strawberry Tree" was (and is still) growing on the rearmost portion of an adjacent lot at 93 Girard Avenue which blocked a substantial portion of the water views of Richardson Bay, Angel Island, and Raccoon Straits, and of a portion of Belvedere Island. (See illustrations in the accompanying initial report of Ed Gurka (Gurka Report I, Exhibit C), an arborist engaged by my client.

1

ITEM NO. 2 PAGE 43

Exhibit C  
[16 pages]

Mr. Gurka was a former City arborist. The photograph was shot from a table in the living room, the perspective recommended in the City's guidelines).

Mr. Salkhi approached his neighbor with a request to trim the tree to allow the water views mentioned above. The neighbor refused, claiming that this was inconsistent with what they viewed as their owner's rights. They claimed their privacy would be invaded. No agreement could be reached. Mr. Salkhi engaged a respected arborist, Mr. Ed Gurka, who on August 16, 2009 wrote a report suggesting that the tree could be trimmed to the water view without endangering the tree or interfering with privacy. (See Gurka Report I attached as Exhibit C with a photograph of the tree on page one taken on August 13, 2009). The neighbor still refused to go along with Mr. Gurka's recommendation.

On November 18, 2009, the parties went before the Trees and Views Committee ("Committee") for an Advisory Opinion on the matter. After extended discussion, by a vote of 2 to 1, the Committee agreed that the tree could be trimmed by approximately two feet ("within reason"). (See Transcript of Committee hearing attached, at page 35). (Exhibit D).

For some reason which is still unclear to this writer, the tree was not trimmed until approximately mid-April of 2010. **Neither Mr. Salkhi nor Mr. Gurka was notified of the date and time of the trimming.** The now-retired Asst. Public Works Director, Mr. Zamboni, undertook the task of supervising the tree trim. In practical effect, the timing of the cut meant that the tree had **nine full months** of growth (two growth periods) from the time Mr. Gurka made his initial written recommendations on August 16, 2009. Naturally, the tree had grown significantly by some two to four feet during this interim period. In particular, a twiggy branch above the basic tree canopy had grown by two additional feet, in addition to the growth of the main portions of the tree canopy. (See photograph on first page of Gurka Report I, Exhibit C). The two feet cut authorized by the Trees and Views Committee on November 18, 2009, was, by the time of the mid-April attempted reduction, measured from the tree's highest point, **the tip of the extra shoot or twiggy branch**, which meant that no benefit was derived by Mr. Salkhi at all from the cut, and he was in fact arguably in much worse position from the perspective of view preservation than he was before the Committee took its vote on November 18, 2009, let alone from August 13, 2009 (the time of the first photograph taken by Mr. Gurka).

On or about April 14, 2010, Mr. Gurka returned to the 509-511 site—he was not allowed by the owners to enter the 93 Girard Avenue property—and took a photograph (Exhibit B) from the same location as the photograph on page one of the Gurka Report I (August 16, 2009, Exhibit A). (Following the site location recommendation of the Trees and Views Ordinance, both photographs were shot at table height from the living room). Based on this review and perspective, Mr. Gurka issued a supplement report which is referred to as Gurka Report II, Exhibit B).

Recognizing that an error or misunderstanding had occurred, the City offered to trim the tree again to accurately reflect the intention of the Committee to allow an expanded view of Richardson Bay, Angel Island, and Raccoon Straits. The neighbor refused access. The tree kept growing.

After months of dialogue and the filing of a lawsuit (since dismissed without prejudice) by Mr. Salkhi, the parties agreed to meet and confer to try to work out a fix. The history of these discussions from the perspective of both sides is set out in Exhibits E, F, G, in chronological order. The meeting on site occurred on Friday, January 28, 2011. Mr. Salkhi was represented by this writer, and Ms. Cox was represented by Mr. Steve Cox, her attorney (and father). Both attorneys gained access to the deck of 509-511 Litho Street. A measuring pole, actually the same pole used by Mr. Zamboni almost a year earlier at the time of the trim, was held by Ms. Cox to confirm the height of the trim from the ground.

The first measurement was of the right one-third of the tree (looking down from 509-11 Litho Street), and the parties rapidly **agreed** on a height of 13'11" from the ground. This provided an enhanced view of Raccoon Straits and Angel Island.

The next measurement, of the center height of the proposed trim (view of Belvedere Island and Richardson Bay), proved more difficult. Mr. Cox wanted a tapered height of 21" above the 13'11". Mr. Fraser proposed 4" above the 13'11". Eventually, Mr. Fraser proposed to split the difference, meaning that a taper extending at its apex to 10'5" above the 13'11", or 15'4" in total height for this segment of the tree would be acceptable. Mr. Cox refused, claiming that the tree's branches would be harmed. Ms. Cox contended that her privacy rights would be disturbed. The parties never did get to the left third of the tree.

Both parties determined to take the matter back to the Trees and Views Committee for a de novo hearing, and a rather more lucid and precise decision by the Committee based on the height of the tree from the ground, measured in three segments—right, middle, and left. The right side of the tree trim is probably not an issue anymore, at least from Mr. Salkhi's viewpoint, although without waiver to a more improved view than the parties had agreed in their January 28, 2011 meeting.

It must be clearly stated and stressed that the agreed-on 13'11" height of the one-third right-hand side of the tree was based on a view standing on the deck looking outward to the bay, the heights of Mr. Cox and Mr. Fraser being 6'1" and 5'10", respectively, not from the living area of 509 Litho Street, from whence the proposed views in the Gurka Report II were taken. Obviously, if the parties were sitting on chairs in the living room or the deck or at table height, instead of standing outside on the deck, the situation might suggest a more substantial cut of the tree. Since we are asking for a de novo review, the issue of which view(s) and from what vantagepoint a view should be allowed

is an open one, in our opinion, but should correspond closely to the Trees and Views Ordinance.

#### VIEW OBSTRUCTION

Applicant defers to Mr. Gurka's Reports I and II (Exhibits C and B) on the percentage of total view obstructed, as augmented by the present Gurka Report III (Exhibit A). It is virtually 100% of Raccoon Straits, 50% of Angel Island, 25% of Richardson Bay, in our opinion. It all depends, of course, on where one is located when looking to the water. Another full year of uninterrupted tree growth will have occurred by the time this Committee review is completed. Even the southern end of Belvedere Island is 40% or more obstructed.

#### BENEFITS DERIVED FROM TREE

The tree seems to provide some shade in the rearmost portion of the back area of 93 Girard, and substantive privacy for the same area. The trims envisioned do not affect either the shade or privacy right, seen from the perspective of 509-511, and if affected, the screening lost would be de minimus. There will be no impact whatsoever on the tree's health. It is a very common tree. It is not a protected tree. It was not there when Mr. Salkhi purchased his house. Originally, the view from 509 Litho Street was of all of Richardson Bay, much of Angel Island, most of Raccoon Straits, a panoramic view of Belvedere, and perhaps a view of a portion of San Francisco Bay, as well. From the "primary living areas" of 509 Litho Street (See page 3, third paragraph, of the "definitions section" of Tree and View Preservation Ordinance), all of these perspective have been effectively destroyed by the growth of the Strawberry tree in question. That is unacceptable. From the same perspective, given the thickness of the foliage of the Strawberry tree that would remain after remedial trimming, there will be no disruption of the neighbor's privacy. An outdoor screen would further preserve any privacy at nominal cost, not to mention blinds and curtains on any living areas claimed adversely affected.

#### BURDENS CREATED BY TREE

The tree presently interferes substantially with the use and enjoyment of the 509-511 property. It restricts and obstructs substantial and significant previously existing views of Belvedere, Richardson Bay, Raccoon Straits and Angel Island. Because it blocks substantial views, it will lower the economic value of this property by at least \$50,000.00, according to the opinion of a local real estate broker. Open water and hillside views are a reason people like to buy Sausalito property. In fact, for just that reason, the owners of 93 Girard have in recent years expanded their decks and reduced

foliage to give themselves a greater view of Richardson Bay, Belvedere, Angel Island, and Raccoon Straits, while at the same time they have sought assiduously to deny the same right to their uphill neighbor, which hardly seem fair or . . . neighborly.

#### REQUESTED ACTION

Applicant wishes the members of the Trees and Views Committee to inspect the subject sites and render an advisory opinion to guide the parties. The tree should be topped and/or tapered which will be partially in line with the recommendations of Mr. Gurka as shown in the Gurka Report II, **but this time**, if the Committee agrees that a more improved view—not just confined to the Gurka Reports I and II—is appropriate, the distances shall be set from the ground up to a designated height, in three segments—right, middle, left—covering the full perspective of Belvedere, Richardson Bay, Angel Island, and Raccoon Straits. A diagram shall be prepared by the Committee to guide the tree trimmer, and shall consist of a straight or tapered line drawn on a photograph of the tree taken from the primary living areas of 509-511 Litho Street. This trim shall be annual or before April 1, of each year. The costs will be borne by the owner of 509-511 Litho Street. The work shall be performed by a trimmer designated by the owner of 93 Girard, who shall first consult with the owner of 509-511, or his representative, on the price to be charged by the trimmer, who shall be a licensed professional.

The owner of 509-511 Litho Street and his arborist shall be informed a minimum of thirty (30) days before the trim is to commence, they shall have access to the rear garden of 93 Girard to inspect the trim, and may make their comments in a civil manner to the owner and/or her representative, and considered by the latter in an equally civil manner. The owner of 93 Girard and/or his or her representative shall have access to the primary living areas of 509-511 Litho Street to view the trim from that perspective. The then occupants of 509-511 Litho Street shall not be unreasonably disturbed.

If the parties disagree on all or a portion of the trimming, or as to a related issue, for example the frequency of trimming necessary to preserve the views thus created, notwithstanding the disagreement, the owner of 93 Litho Street may complete the task according to his or her wishes in strict accordance with the Committee's recommendations, and the owner of 509-511 Litho Street may at the same time request a further advisory opinion from the Trees and Views Committee, or a person designated by said Committee, e.g. City staff, a professional Marin County arborist, the cost of whom will be divided between the parties. If additional tree trimming work is to be done, the cost of the additional work shall be at the cost of both parties equally. If the parties still disagree, they can go to court.

#### PROPOSED ALLOCATION OF COSTS

The costs of the Trees and Views Committee shall be borne in equal measure by the parties. The cost of the annual tree trimming shall be borne by the owner of 509-511 Litho Street. The cost of a further advisory opinion, either by the City or by an arborist designated by the Committee or Community Development Department, shall be borne in equal parts by the parties.

Respectively Submitted,

A handwritten signature in cursive script, appearing to read "Stephen A. Fraser".

Stephen Fraser,  
Attorney for Arash Salkhi



Steve Fraser

**From:** Arash Salkhi <asalkhi@hotmail.com>  
**Sent:** Friday, January 28, 2011 1:18 PM  
**To:** 'Steve Fraser'  
**Subject:** RE: 93 .rard

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JUN 13 2011  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Hi Steve,

I'm sorry the settlement was not able to be accomplished and I solely agree we move forward to another Tree and View hearing. Please do want ever necessary to set this hearing as soon as possible.

Thanks,  
Arash

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**From:** Steve Fraser [mailto:safraserlaw@sbcglobal.net]  
**Sent:** Friday, January 28, 2011 12:37 PM  
**To:** asalkhi@hotmail.com  
**Subject:** 93 .rard

Dear Arash:

I went to your property this morning to meet with Steve Cox and his daughter, Shelby, to try privately to settle the trees and view issue. I did not bother you since Ms. Cox is on good terms with your tenants, and was able to arrange access for me and her father. Since we were having a helpful dialogue, I felt this effort made sense.

As you are aware, I had previously sent Mr. Cox an email stating that the Trees and Views Committee was very flawed, and that the follow-up by the City of Sausalito was also poorly and improperly handled. Mr. Cox confirmed to me this morning that two feet was measured from the highest twig, which itself was almost four feet above Gurka's recommendation, or even higher perhaps. So you had two problems: first, the cut was made four or five months after the hearing, during which time the tree grew considerably, and second, the tree was trimmed from an errant twig, which made the cut meaningless. You were left with nothing.

This morning, Mr. Cox and I, were able to quickly agree on a cut to the first third of the tree on its right side facing the bay. Mr. Cox had agreed to trim this in an earlier conversation, you may recall. Measured from the ground, with Shelby holding the City's measuring pole, the height of a new, permanent cut of the tree's right side came to 13'11", measured from just right of the Cox garden gate, which pole then Shelby marked with a piece of red tape. It look fine to me and in line with the point where the roof met the stack riser; the difference between that point and the roof peak which we had discussed was insignificant. These were the City's poles, by the way, divided into three segments.

Then, however, Mr. Cox didn't agreed to a straight line cut across the tree starting at the 13'11" point, but wanted the tree canopy to be bowed. I thought a straight line cut would be easier to accomplish, but did agree, subject to your approval, to look at a slightly upward slope in the middle of the tree. Cox took the position that a piece of gray tape on the measuring pole, done by the City at the time of the initial trim from the highest point of the tree, should be the height of the cut at that point. This was 21" higher than the 13'11" start point on the right side. I thought that was unreasonable, because it left you with no bay view, standing on the deck at my height, 5'10" inches. I suggested splitting the difference to 10.5" from the 21" that Cox wanted (having started with only a four inch compromise upward from the 13'11" tape mark). But, Mr. Cox balked, stating that the tree would be injured, that the City had approved the earlier cut, and that it was therefore set in stone. I had thought we were done with the Trees and Views Committee's

original decision and were starting arresh. Additionally, Shelby complained that a cut of 11" would invade her privacy. Both of the Cox's points are unsupported by any facts or by an arborist.

Cox said that the gray tape was what the City staff person, Mr. Zamboni, had measured in performing the first cut, therefore it was in compliance with the Trees and Views Committee's decision of a two foot trim only, which In turn was made without consideration of any twig or branch suddenly outgrowing the rest of the canopy by about another two feet. I said the whole City cut was, and is, in my opinion completely meaningless. The gray tape mark was fallacious from the start. The 13'11" red tape mark determined today was made without reference to the gray tape mark. Cox condemned the whole review process, which he said was incompetent, but then, when we got down to it, he wanted to stick with the decision, except for the right hand side of the tree. He thought he was doing you a favor by agreeing to trim the right side. He is a very unreasonable man and neither a practical lawyer nor possessed of plain common sense.

In the end, therefore, we couldn't reach an agreement, and I said we will take it to the Trees and Views Committee. At least we got one-third of the way there. The way I see it is that the long delay in implementing the trim of two feet approved by the Trees and Views Committee resulted in the top twig growing about four feet, the City then erroneously measured from that twig, and the end result of the false starting point was that you never came close to Gurka's recommendation, and therefore gained no view.

The reason I dropped the lawsuit, without prejudice (meaning we can reinstitute a lawsuit any time we choose), was that I felt that there was some merit to the argument that the erroneous trim conducted by the City was grossly in error, required a new hearing, and that it would be the better and cheaper approach, now that we had at least got them to start talking with us, to go back to the Trees and Views Committee and get an amended, firm, enforceable, and lucid decision from that body, because their first decision was in effect a non-decision because of vagueness and subsequent events, e.g. the tree grew in height.

The right side trim the parties agreed to today--but only if there was a complete settlement, which did not occur--would leave you with a partially improved view of Racoon Straits for all time. The rest of your view of the Bay would be blocked across the middle of the tree, and probably somewhat blocked from along the left side of the tree. I didn't think this would be acceptable to you, since it would have the effect of accepting the original Trees and Views Committee decision, which was based on an entirely different tree crown, one that hardly existed when they made their decision back in November, 2009.

I recommend that I be allowed to demand a new Trees and Views Committee review of the problem, the sooner the better.

Very truly yours,

Stephen A. Fraser

**Steve Fraser**

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**To:** Steve Cox (velsteve97@aol.com)  
**Subject:** FW: Tree Trimming

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JUN 13 2011

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

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**From:** Steve Fraser [mailto:safraserlaw@sbcglobal.net]  
**Sent:** Wednesday, December 22, 2010 1:24 PM  
**To:** asalkhi@hotmail.com  
**Subject:** Tree Trimming

"Dear Steve:

I have dismissed the lawsuit without prejudice, as promised. Give me your mailing address and I will send you a copy.

I have reviewed the Trees and Views Committee minutes of the hearing on November 18, 2009, the original report of Mr. Gurka, your comparison photographs and proposed additional trimming. I have also revisited the site and viewed the tree and view again from the vantage point of the deck. My height is 5'10 3/4", and is probably relatively normal for someone standing on the deck to take in the view.

The Trees and Views Committee statement is somewhat clear, "... at the 93 Girard residence trim within reason the two feet recommendation per Ed Gurka, the tree to reduce the growth of the tree. To reduce the growth of the tree and improve the view at 509 Litho Street . . ." I can reasonably infer that the base date point on which the decision was made was circa August – October, 2009.

I am not certain what the two feet referred to. It could be the Gurka Report, which is dated August 16, 2009. It could be from the foliage tip at the top of the tree growth shown in the photo at page one of the Gurka Report. It could be from the tree coverage below the "tip" I have mentioned. The tree trimming was not done until on or about April 1, 2010, which was eight to nine months after the Gurka Report was written, and five months approximately after the Trees and Views Committee decision on November 18, 2009. No one evaluated the difference in the height of the tree during either of these periods, but I don't think anyone would argue that the tree stopped growing during the hiatus. All of this was imprecision at its best. This process tended to make the eventual cut less than desirable for my client, hence the later argument. Since branches of a tree have an individual life of their own, the caveats of "reasonable" and "approximately" are necessary, but they cannot help but be insufficient in some cases, such as the one at issue here. I think something more precise is necessary.

Fortunately, one baseline of precision against which a future tree trimming can be measured is present: the roofline of the upper portion of 93 Girard which tends to run parallel to the waterview of Richardson Bay and Raccoon Straits. Please see the Gurka photograph in his initial report dated August 16, 2009, in which the trim line is in fact parallel with the peak of the upper roof of 93 Girard Avenue.

It is impossible to use the height from the ground up because that will always be changing, the tree cap always growing unevenly, the trims occurring at varying times, giving rise to annual or more frequent disputes about which branch(s) and which leaves to trim.

Steve Fraser

**From:** Steve Cox <velsteve97@aol.com>  
**Sent:** Thursday, December 02, 2010 9:07 PM  
**To:** Steve Fraser; Shelby (2K) Cox  
**Subject:** Fwd: City of Sausalito's pictures of tree cutting  
**Attachments:** 93 Girard Tree Cutting\_Pictures from City of Sausalito Public Works Department.pdf;  
Untitled attachment 00052.txt

RECEIVED

JUN 13 2011

CITY OF SAUSALITO  
PUBLIC WORKS DEPARTMENT  
PLANNING & DEVELOPMENT

Dear Steve:

Here are the pictures of the process of cutting the tree which was monitored and directed by Dan Zapponi, from the City of Sausalito Dept. of Public Works. When he supervised the pruning of the tree, he said the cuts were what was required by the Trees and Views Committee decision. The fact that Mr. Gerka wasn't there is irrelevant. Mr. Gerka wasn't empowered by the Tree and Views Committee to direct the nature and amount of pruning. Their ruling was that approximately two feet be cut off the top of the tree. That is what was done, under the supervision of Mr. Zapponi, an employee of the City, who was at the hearing, and was involved in the entire process from the beginning. The photos bear that out.

It is therefore difficult to reconcile your complaint, which alleges we didn't follow the order of the Trees and Views Committee, with the facts. We did exactly what the City told us to do, in a timely fashion, and under the City's supervision. Your client's wanting something more, is outside the ruling of the Trees and View Committee's ruling. Dan Gerka's new report is irrelevant to the issue. It draws a new line which cuts off much more off the tree than the cut that was in his initial report, and which was before the T and V committee. Thus this new demand of Salkhi is contrary to the ruling of the Tree and Views committee, and is contrary to California law.

The way we see it, we did exactly what the City told us to do. Your client, wanting another bite at the apple, went whining to the Dept of Public Works to try to get more cut than the Tree and Views Committee ordered. He failed to bring his new complaint before the Tree and Views Committee, which was the remedy available to him. Now, through this current law suit, he is trying to establish an easement in perpetuity over Shelby and Kate's property for the light and view for his property that suits his liking. As you know, such an easement can only be established by an agreement of the owners of the serviant estate. Shelby and Kate have not agreed to such an easement. Salkhi has no right to demand such an easement under California law, and I think a judge will understand that.

We need to get this resolved. If Shelby and Kate have to spend money defending this frivolous law suit, we will do so. Then, at the conclusion we will definitely come after Salkhi and you for malicious prosecution. Salkhi's claim is a claim that is frivolous, is without legal basis. It is contrary to well settled California law, ignores the administratively remedy involved, and doesn't conform with the facts.

Review these photographs, talk to your client, and get back to me. The longer this goes on, the madder Shelby and Kate get, and the madder I get. We will defend this frivolous claim, and when it is dismissed, Salkhi will have to answer for his over bearing conduct.

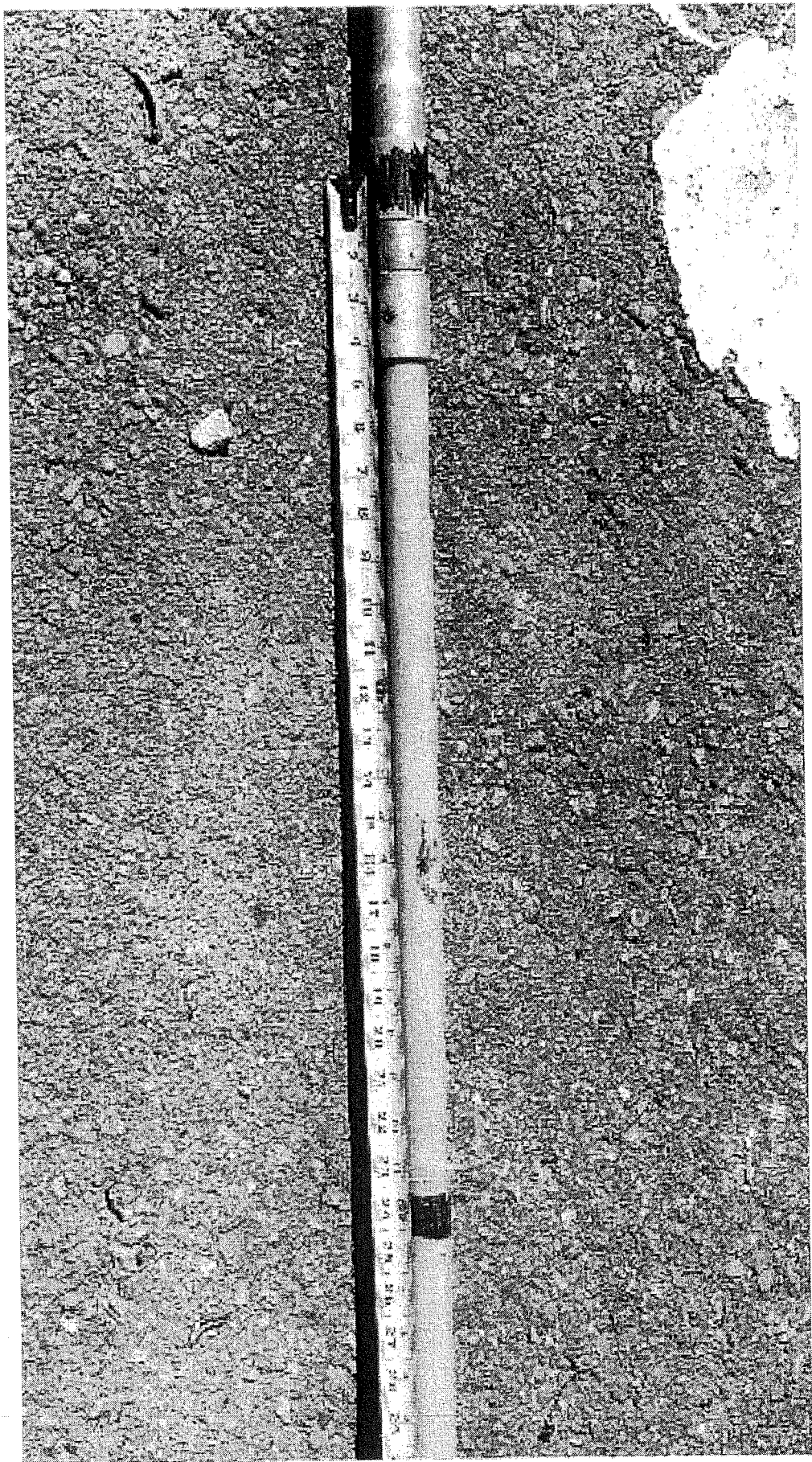
Steve Cox

Begin forwarded message:

Dan Zepponi, City of Sausalito Supervisor of Public Works, standing at base of Strawberry tree with measuring pole during the cut.



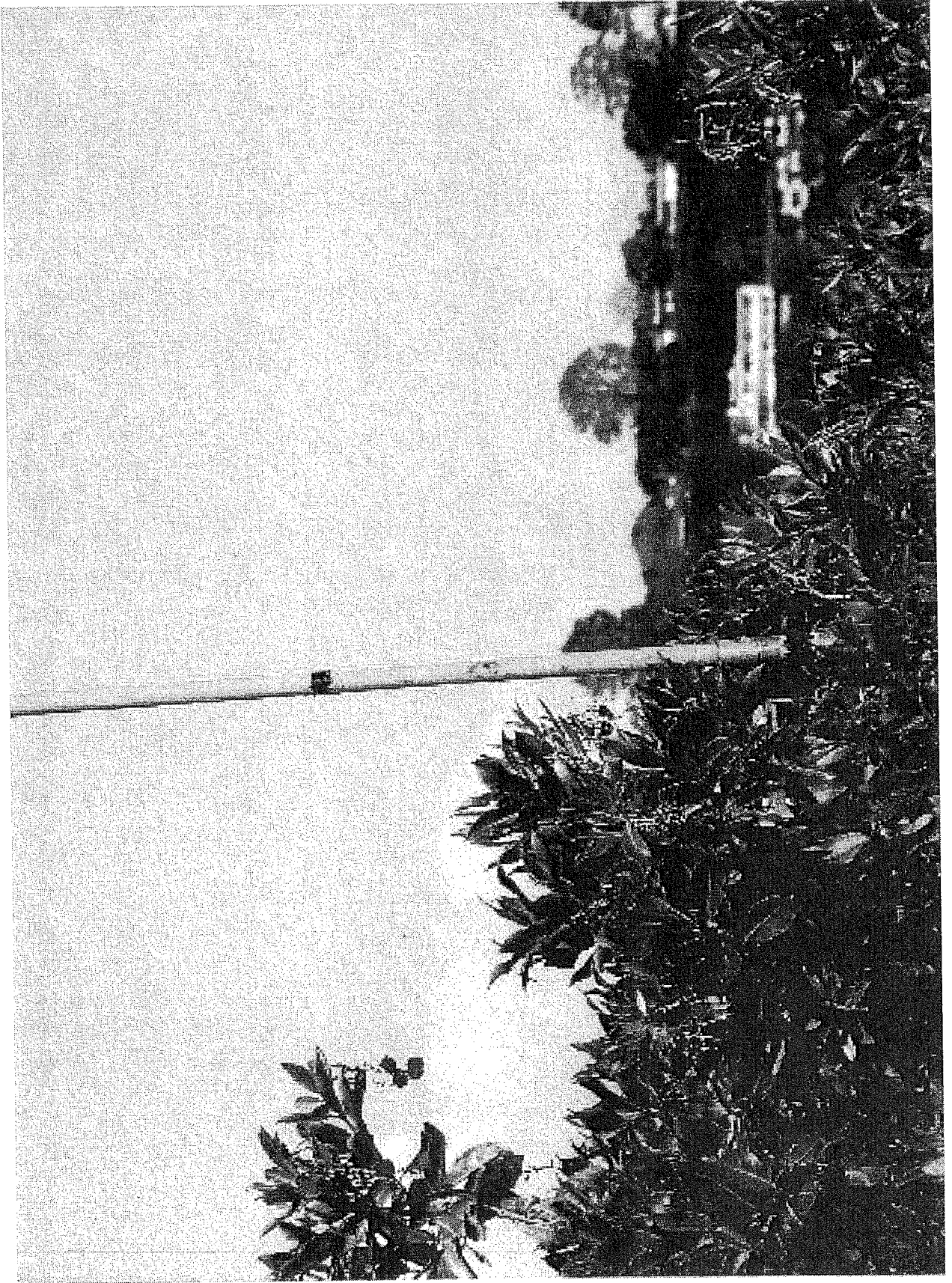
# 2 Ft Measurement on Pole



# Before the Cut

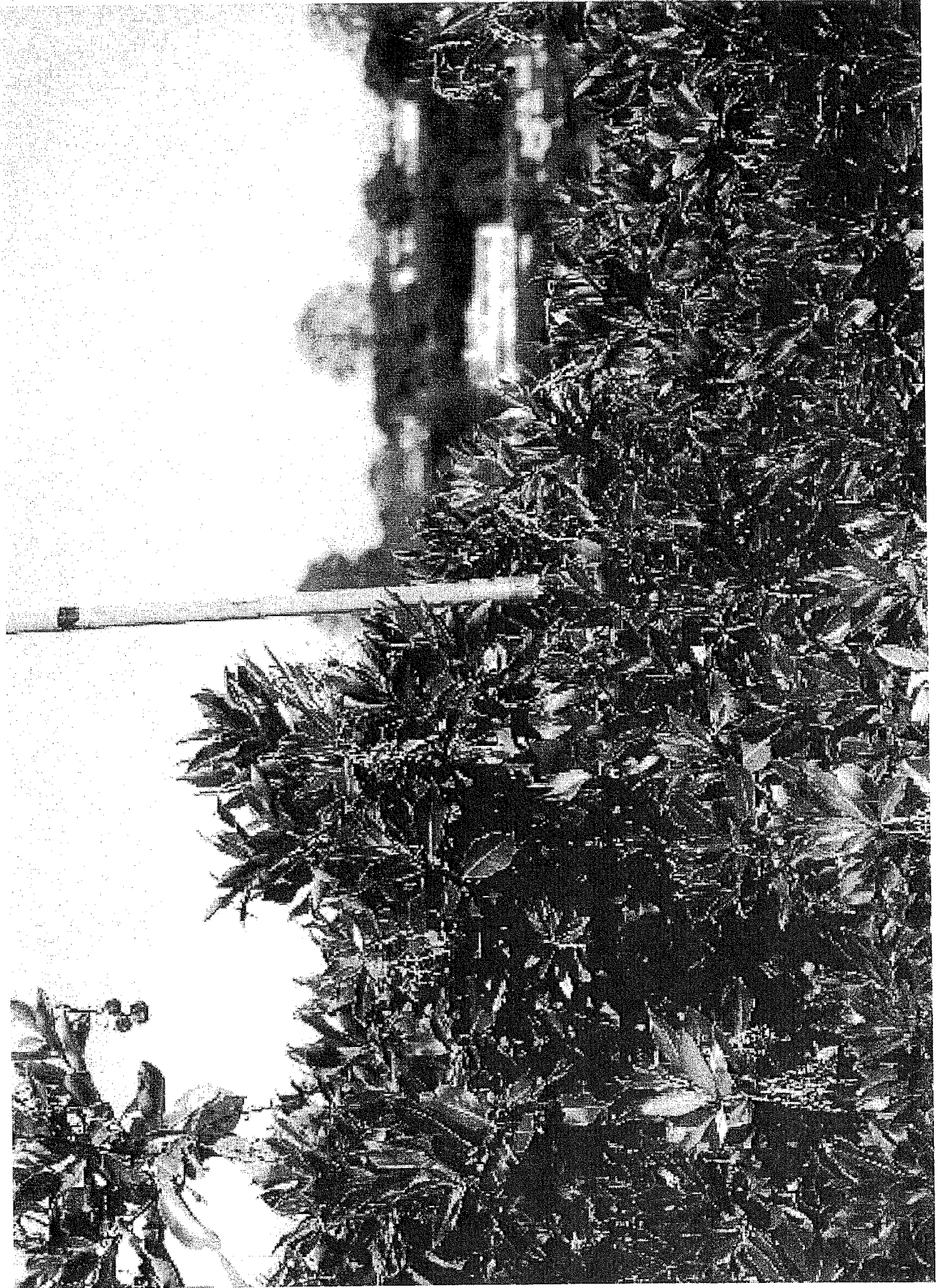


# Before the Cut





# Before the Cut



# After the Cut

