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February 24, 2014

FEB 25 2014

Comm. Dev. Dept. Brisbane

To: City of Brisbane Dept of Permit + Bldg.
 Re: #8 Thomas Avenue Property
 From: Joy Avenue Condo Homeowner Assn:

Our concern with development of that Property: could create slippage of soil and drainage which could result in mud slides down to the Joy Avenue Property. If proper drainage is not addressed and a retaining wall is not installed there could be serious consequences.

Joy Condo. HOA 20 Condo Units.
 President: JOHN CICALINA

Treasurer: ~~John J. Cicalina~~
 Donna I. TOBIN 41-A JOY AVE
 Donna J. Tobin BRISBANE QA
 94005

Secretary: LINDA K. DEATOR
 Linda K. Deaton
 John J. Cicalina

Brisbane City Council
City Hall, 50 Park Place
Brisbane, CA 94005

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FEB 19 2014

Comm. Dev. Dept. Brisbane

Subject: City Council Appeal on Planning Commission Resolution for 8 Thomas Ave



Close up view from Bay Trail of 8 Thomas Avenue showing extent that present design blocks San Bruno Mountain

Dear Members of the Brisbane City Council:

Thank you for considering this Appeal of the Planning Commission Resolution on 8 Thomas Avenue. This is the first time the new Ridgeline Ordinance has been applied and we appreciate that the City Council will have this important opportunity to describe how they intend this ordinance to be implemented. The precedent set by this decision will determine how the 12 future homes slated for Thomas Hill as well as other homes on Brisbane Acres ridgeline lots are designed. The house at 8 Thomas will sit on the top of San Bruno Avenue at an entrance to our town. We hope that this home will be designed to fit in with the small town character of Brisbane nestled in the arms of San Bruno Mountain.

We are writing this letter to request that the City Council find that the current design proposed for 8 Thomas Avenue does not 'preserve public views of the San Bruno Mountain State and County Park of community-wide value' as required by ordinance 17.42.020L.

Our town is about working together in good faith. We need to find a delicate balance between the rights and desires of property owners and our responsibility as stewards of the San Bruno Mountain State and County Park. Let's make sure we correctly apply the Ridgeline Ordinance to create a precedent setting development that matches the values of our community. These homes will be forever on Thomas Hill. We ask you to send this back to the Planning Commission for a thorough design review that would require adherence to the Ridgeline Ordinance. We request that the applicant work with the City Development Department to design a house that complies with the ridgeline ordinance by reducing the height and bulk of the building in order to preserve public views of the San Bruno State and County Park.

Summary

- The Ridgeline Ordinance was written to reflect our community's values of preserving vistas of our San Bruno Mountain State and County Park. The Bay Trail is a public trail and all views from the trail are of community wide value. The only way to preserve a vista is to apply requirements to each home so that when the many homes are viewed together, the vista is not largely affected.
- We request that any development on a ridgeline in the Brisbane Acres make every effort to preserve views of the SBMSCP. It is the responsibility of the owner to research the size and height of the home that can fit on each lot while preserving public views and design accordingly.
- The current Ridgeline ordinance is clear, concise, directive and reflects much time and effort taken by the City. It allows some elasticity in consideration of the particular lot and the extent that public views are blocked. Given the nature of this proposed 5,100 square foot home, with a 600 square foot atrium, there should be room for compromise. Given that this is the first time this ordinance will be applied, both the City and the Planning Commission need guidance from the City Council on how to direct this needed compromise.
- We already have a model for the application of this new ordinance if we look at how 88 Thomas was evaluated under the previous ordinance.
- Our private views will be affected by the proposed house at 8 Thomas regardless of what is built there. We are committed to making sure that the Ridgeline Ordinance is enforced because this house represents a key precedent for all future development in the Brisbane Acres. Please consider our arguments and discussions on their own merits.

This letter is divided into five parts.

Section I describes the present ordinance and some of its history. (Figure 1)

Section II discusses how the interpretation taken by the Development Department and the Planning Commission considers only one aspect of public views and will allow homes to block significant portions of the Park and extend above the ridgeline several floors. (Figure 2)

Section III describes how 88 Thomas can act as a good model for how to interpret this ordinance.

Section IV demonstrates how the proposed design does not preserve public views of the SBMSCP. (Figures 3 - 9)

Section V shows a possible alternative design to minimize the impact on public views of the Park. (Figure 10)

Section I. The new Ridgeline ordinance and history

We have been involved with the Ridgeline ordinance for 9 years now and very much want it used in a way that reflects the values of our town. We became involved in this issue because the proposed house at 8 Thomas in 2005 would block our private views. We know that we do not have a right to our personal views. As the discussions around 8 Thomas progressed, we realized that it was a much bigger issue reflecting how our town maintains its small town feel and weighs the private rights of a landowner with Brisbane's sense of being nestled into the mountain. Since the 2005 deliberations over 8 Thomas, we have played active roles in discussions around 88 Thomas, 99 Thomas, San Diego Court, and the new Ridgeline Ordinance. In many ways, it would have been easier if the first application of this new ordinance would have been for a property other than 8 Thomas because our private views will be affected by any home built on the 8 Thomas lot.

We also apologize for the length of this letter. We had thought this would be a relatively simple issue - the ordinance seems straightforward. However, the Planning Commission's hearing veered off the focus of simply applying this ordinance to the development plans for 8 Thomas. The deliberations disintegrated into accusations by a Planning Commissioner that the pictures we presented were obtained by crawling through the muddy lagoon at low tide with the intent to mislead the Commission. Our photos were a near likeness to the ones presented by City Staff. We have attempted here to lay out the discussion that we hope will ensue at the City Council level as clearly as possible. Moreover, we want to capture the delicate balance between owners rights and the desires of the community.

The present and previous Ridgeline ordinances flow from the Policies and Programs of the 1994 General Plan - notably Policy 17 and Policy 19.

Policy 17: Preserve the ridgelines and hilltops in their open state

Program 17a: Prohibit land use changes that would result in development that would break the natural ridgeline.

Program 17b: Adopt hillside development standards that protect against ridgeline development through regulation of the siting of structures, location of access, landscape requirements and other pertinent factors.

Policy 19: In the context of respecting private property rights, make every effort to preserve and enhance public views of the Mountain and Bay.

Program 19a: Identify and map vistas and view corridors of community-wide value to be preserved and enhanced.

Program 19b: Consider amendments to the Zoning Ordinance to provide site plan review to assure that identified vistas and public view corridors remain accessible for public enjoyment. The review should evaluate building placement, height and bulk.

To capture these aspects of the General Plan, a simple one sentence ordinance was previously passed for homes in the Brisbane Acres.

BMC 17.12.040L (previous): Structures shall be located below ridgelines in a manner that will preserve public views of the San Bruno Mountain State and County Park.

Nine years ago when 8 Thomas last came before the City, this old ordinance proved very difficult to interpret. There were concerns that its strict enforcement could cause a ‘take’ in which the owner could not build a home on certain lots. Moreover, the process took almost 2 years to complete for a single home. In 2011, the Planning Department (and Tim Tune particularly) spent considerable effort to provide a much more complete ordinance that balanced the rights of the owner with the community desires described in Policies 17 and 19 above. We have copied the text of this new ordinance in Figure 1 and have called out the key places this ordinance differs from the previous ordinance. It allows the Applicant to build on ridgelines in cases where it doesn’t block views of the County Park, in contrast with the previous ordinance that did not allow construction above a ridgeline. It also notifies the Applicant that there will be a design review and requires that they preserve public views that are of community-wide value. It carefully lays out the process that we all wished would have been in place during the original 8 Thomas proposal. This process was used successfully and quickly - within three months of original proposal - for 88 Thomas.

A key element of this ordinance is the phrase ‘of community-wide value.’ Without it, the ordinance would be a simple black-and-white determination. We feel that the intent of this phrase was to be able to weigh the desires of the owner with the desires of the community and potentially allow some elasticity for a small portion of a home to extend into public views of the Park only when there are no other options to build a functional home on the lot. This aspect of the ordinance proved problematic for Development Department and the Planning Commission as we discuss in the next section. The City and community clearly need direction from the City Council on how to interpret the boundaries of this elasticity. This direction is perhaps the only guidance from the City Council necessary to complete an otherwise excellent ordinance.

Section II. The interpretation of the present Ridgeline ordinance by the Development Department

The Development Department interpretation of this ordinance diverged sharply from their interpretation of the previous ordinance. Previously they analyzed whether and by how much a proposed home blocked portions of the San Bruno Mountain State and County Park seen from the Bay Trail. Instead, in this case, they argued that the proposed home did not affect the overall vista of the Mountain seen from the Bay Trail.

They argued that the only public view that needs to be considered in evaluating a single-family home is the 65 degree view provided by a 15 mm lens on the City's micro four-thirds camera. Their analysis and the Planning Commission's discussion led the argument off track to a discussion of how the views were photographed.

We believe that the way to preserve a vista is not to evaluate whether the addition of a single individual home significantly affects that vista. Instead, what must be considered is whether the vista will be impacted by that design when multiplied by the number of homes that can be built on the Thomas Hill ridgeline and elsewhere in Brisbane Acres. One way to accomplish this is to permit designs which preserve public views or at most encroach on public views of the SBMSCP by a few feet only if there are no other options to build a viable house.

The effect of using the current method described by the Development Department to evaluate designs is shown approximately in Figure 2. The upper view is Thomas Hill with the approved design for 88 Thomas. The lower view is Thomas Hill with the proposed designs for 8 Thomas and 99 Thomas. We have included the original proposal for 88 Thomas in this lower view since it extends into the Park similarly to the proposed design for 8 Thomas.

There were two other worrisome arguments that the City's Development Department offered to reason that the proposed design preserved public views "of community-wide value." The City argued that San Bruno Mountain has power poles and radio towers so public views of the Mountain are already degraded and not 'of community-wide value.' However, this does not reflect the way the community considers views of the Mountain. The power poles and radio towers are present in any public view we have of San Bruno Mountain. Regardless of their existence, it is the presence of San Bruno mountain and the way that Brisbane folds into its ravines and ridgelines that gives Brisbane its character.

The City also argued that the house blocked views of the SBMSCP for 'only' 700 feet of the Bay Trail and would thus have limited impact relative to the 5000 ft length of the Bay Trail on Sierra Point Parkway. They could equally have argued that the 700 feet is a small portion of the 500 mile full Bay Trail. It is remarkable that a single family home could affect public views from as large a length as two football fields.

We believe that if the reasoning of the City is allowed to become precedent for the application of this ordinance then any design of a single family home will be found to be in accord with the ordinance.

Section III. A model for the application of the new Ridgeline ordinance

The City and Planning Commission already have a model for the successful use of the new Ridgeline Ordinance, though this model occurred under the previous ordinance. 88 Thomas initially came before the Planning Commission on 24 September, 2009. The Development Department described how a portion of the house extended above the Thomas Hill ridgeline and into the SBMSCP behind. At that meeting, the Planning Commission asked the Applicant to reduce the height of the southern portion of the house to minimize impacts to public views. On 11 December, 2009, the Applicant submitted a second design that reduced the height of the southern portion of the house. The stepped design was harmonious with the existing hillside and the design only blocked public views for a few feet at corners of the home. At this meeting, the Planning Commission approved the design. Thus, within 3 months and two Planning Commission meetings, the design proposal was accepted.

We believed that it was this efficient process that the City Council codified in the new Ridgeline ordinance. Each of the elements of the new ordinance were exercised in the 88 Thomas review even though it was done under the previous ordinance. Moreover, some ‘elasticity’ is needed in the ordinance because it gave the Planning Commission the freedom to allow some corners of the design to extend into the SBMSCP. For this reason, we supported Tim Tune’s efforts in rewriting the ordinance which was passed by the Planning Commission and the City Council in 2011. At the time, we agreed with the inclusion of ‘of community-wide value’ to provide some elasticity in the application of the ordinance.

In summary, the new Ridgeline ordinance gives builders significantly more flexibility than the previous ordinance. This freedom must be appropriately leavened with their responsibility to largely maintain public views of the SBMSCP.

Section IV. The existing design for 8 Thomas Ave does not preserve public views of community-wide value

In Figures 3 - 8, we show that the proposed design blocks significant public views of the San Bruno Mountain State and County Park. We took these photos at what we believe is an ‘average’ viewing height of 5’ 2.4” based on an average 5” distance from eye-level to the top of the head and a male average height of 5’ 10.2” and a female average height of 5’ 4.6”. All photos were taken with a simple Canon PowerShot point-and-shoot camera with a 4x zoom. The eye can see much more detail in the Mountain than is possible with this camera. We hope that Council Members will drive down to the Bay Trail at the Lagoon to see the view corridor and existing story poles.

Where possible, we have tried to include an outline of the proposed house at 88 Thomas as described in Figure 9. The modified design of 88 Thomas was approved under the previous ordinance and does not completely preserve public views of the SBMSCP. However, it still has a significantly smaller effect of public views than the present design for 8 Thomas.

Walking from View A to View F, the proposed design of 8 Thomas will block significant portions of the San Bruno Mountain State and County Park. Views A and B (Figures 3 and 4) show that the present design of 8 Thomas blocks views of SBMSCP near the fire trail that runs from the quarry road to the ridge. It is principally the southern part of the design - the portion closer to San Bruno Avenue - that blocks large portions of the Park. The effect of 8 Thomas will be visually double that of the existing apartment building. The southern portion of the house extends ~ 20 feet (about two floors) into the SBMSCP. Views C, D and E (Figures 5, 6 and 7) show that the design of the 8 Thomas extends significantly above the apartment building and blocks public views of the upper portion of the SBMSCP. Indeed in View E, it covers the ridgeline that is visible above the apartment building. In View F, it blocks the uppermost peak of the SBMSCP. The northern portion of the house - the side away from San Bruno Avenue - extends ~ 8 to 10 feet into the Park.

In walking from View A to View F, we have traveled more than the distance of two football fields. This single home will affect views of the SBMSCP from a length along the Bay Trail that is equivalent to the distance from MidTown Market to the community park.

Section V. Possible alternatives to the present design for 8 Thomas

There are several choices in the present design that cause it to block large portions of SBMSCP and could be mitigated. Firstly, the southern portion of the home is not stepped down causing it to extend into the County Park. The upper floor has 11 foot ceilings. The overall visual bulk of the house is significantly increased because it includes a 600 square foot two story atrium that is not included in the floor area ratio.

In Figure 10, we show one possible concept drawing of how the design could be modified to largely preserve public views of the San Bruno Mountain State and County Park. The portion of the house closest to San Bruno Ave has been stepped down, reducing the impact on public views and echoing the slope of the ridgeline. The roofline is aligned with the public view corridor from the Bay Trail so the impact on public views is reduced. Moreover the roof peak will mimic the crests of San Bruno Mountain. The height of the upper floor has been reduced from 11' to 9'. Because of the gently peaked roof, this upper floor *may be* able to have an 11' vault in the center.

We think these design changes would possibly now largely preserve public views of the Park as seen from the perspective of Figure 10. That would need to be determined with new story poles. In many ways, it is similar to the stepped design of 88 Thomas which also only minimally blocks public views of the Park. Even with the stepped design, the southern portion of the design will

continue to block public views of the Park from perspectives similar to Views A-C. However, the impact will likely be much reduced relative to the current design.

Conclusions

As we discussed above, the new Ridgeline Ordinance does an excellent job of setting out the process of evaluating a potential design for an Applicant and the City. It provides considerably more flexibility to lot owners in the Brisbane Acres, yet leavens that flexibility with the requirement to largely maintain public views of the SBMSCP. We believe that the intent of the phrase ‘of community-wide value’ was to provide some elasticity for lots where it is not possible to build a functional home in a way which completely preserves public views of the Mountain.

We should understand that we are giving developers a significant opportunity to design on spectacular lots with spectacular views. As a town, we value rights of a homeowner to build any home that fits within the ordinances, yet we also want to maintain the feel of Brisbane being surrounded and protected by the Mountain. We would like to keep our ridgelines open of development, but also understand the opportunity and desire of developers to build homes with spectacular views.

The house at 8 Thomas will sit on the top of San Bruno Avenue at an entrance to our town. We hope that this home will fit in with the atmosphere and identity of our small town settled in the arms of San Bruno Mountain. The story poles and images clearly show that the present design does not preserve views the the San Bruno Mountain State and County Park from 700 feet along the Bay Trail. The negative effect of the proposed house is substantially larger than the existing apartment building. We believe that an exquisite house with expansive views of the Bay can be built on this property, but the owner should design a home that agrees with the Ridgeline Ordinance and nestles into the existing hillside.

Thank you for your time in reading this letter,

Yours,

Storrs Hoen and Beth Grossman

715 Sierra Point Road, Brisbane
415 467-1836

Figure 1. The 2011 Ridgeline ordinance for Brisbane Acres

Section 17.42.020 L

Ridgeline. Development on any site through which a ridgeline runs as identified in Figure 17.02.695 shall be subject to design permit approval.

1. In addition to the required contents of application for design permit set forth in [Section 17.42.020\(A\)](#), story poles certified by a licensed architect, surveyor, civil engineer or contractor to represent the height of the proposed building shall be erected at the locations of its outer corners and roof peaks according to a plan pre-approved by the community development director. The upper one foot length of each pole shall be painted OSHA yellow so as to be clearly visible from a distance.

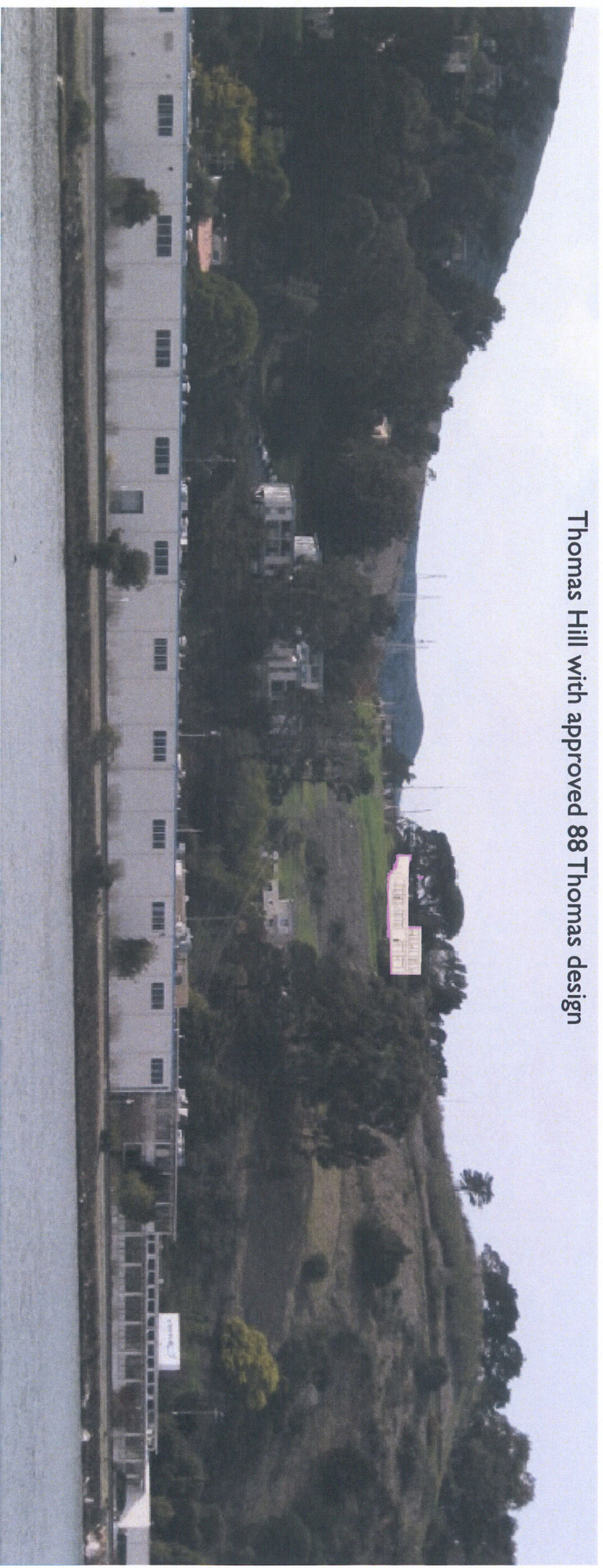
2. In addition to the findings required for issuance of design permits set forth in [Section 17.42.040](#), the planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value. Methods to accomplish this may include varying the building's roofline to reflect the ridgeline's topography, orienting the building to minimize the impact of its profile upon public views, locating the building on the lower elevations of the site, and reducing the building's height below the maximum permitted in the district.

3. An existing structure may be repaired or replaced in accordance with [Section 17.38.090](#) without design permit approval, but any alteration or expansion which raises any portion of the roofline or increases the building's lot coverage shall be subject to design permit approval under this section.

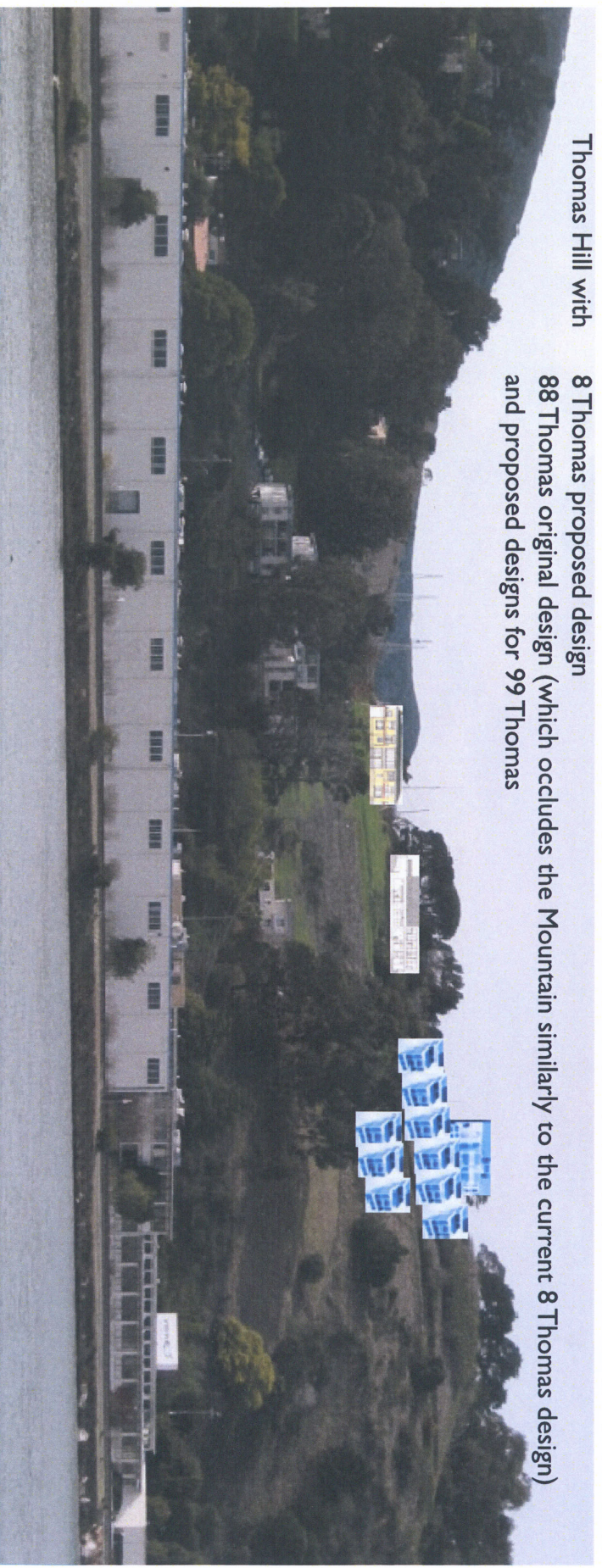
The important additions

- The Applicant may build on a ridgeline.
- Ridgelines clearly identified in a drawing.
- Applicant is notified that there will be a design permit required
- Story poles will be used to evaluate the effect of the house
- Planning Commission shall find building preserves public views of the Park
- From Bay Trail views that are found to be of community-wide value
- Applicant is notified that among other options
 - (a) the roofline may be varied to reflect the ridgeline topography
 - (b) the building orientation may be altered
 - (c) the building location may be shifted
 - (d) the buildings overall height may be reduced.
- **Also**
Existing structures can be rebuilt or replaced to their existing shape

Figure 2. What Thomas Hill could look like under City's current interpretation



Thomas Hill with approved 88 Thomas design



Thomas Hill with 8 Thomas proposed design
88 Thomas original design (which occludes the Mountain similarly to the current 8 Thomas design)
and proposed designs for 99 Thomas

Figure 3. View A - 5' 2.4" above Bay Trail, GPS Location (37.68036,-122.389235)

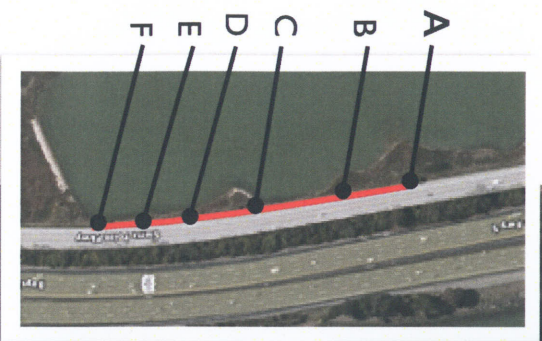


Figure 4. View B - 5' 2.4" above Bay Trail, GPS Location (37.679935,-122.38913)

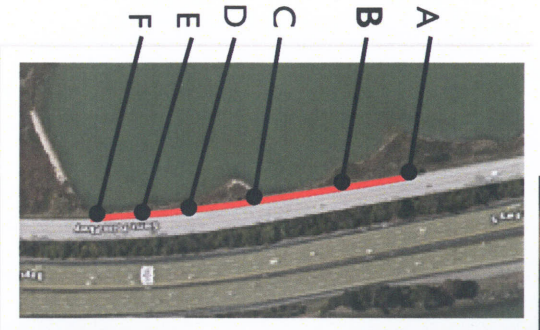


Figure 5. View C - 5' 2.4" above Bay Trail, GPS Location (37.67939,-122.38901)

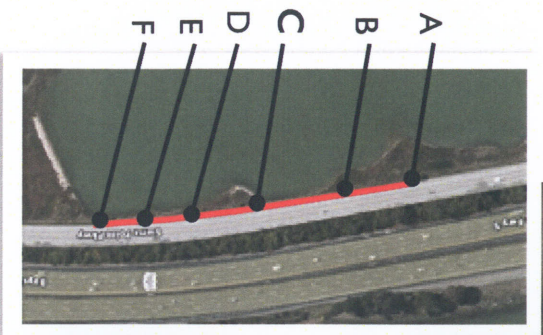


Figure 6. View D - 5' 2.4" above Bay Trail, GPS Location (37.678982,-122.388945)

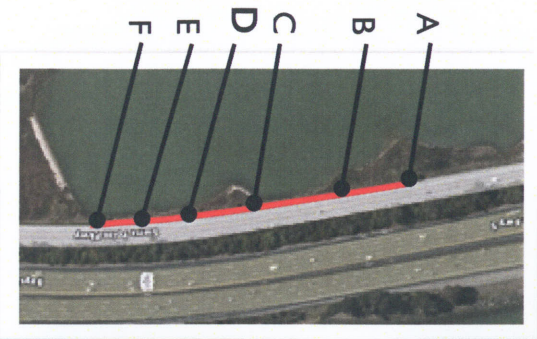


Figure 7. View E - 5' 2.4" above Bay Trail, GPS Location (37.678692,-122.38891)

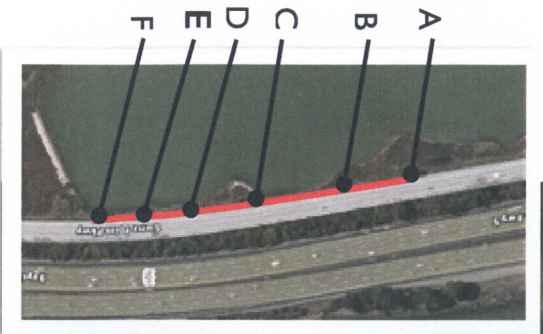


Figure 8. View F - 5' 2.4" above Bay Trail, GPS Location (37.678432,-122.388925)

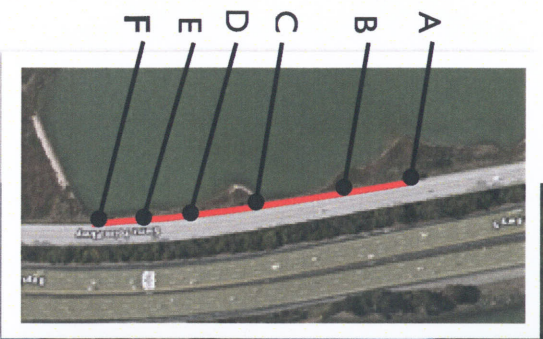
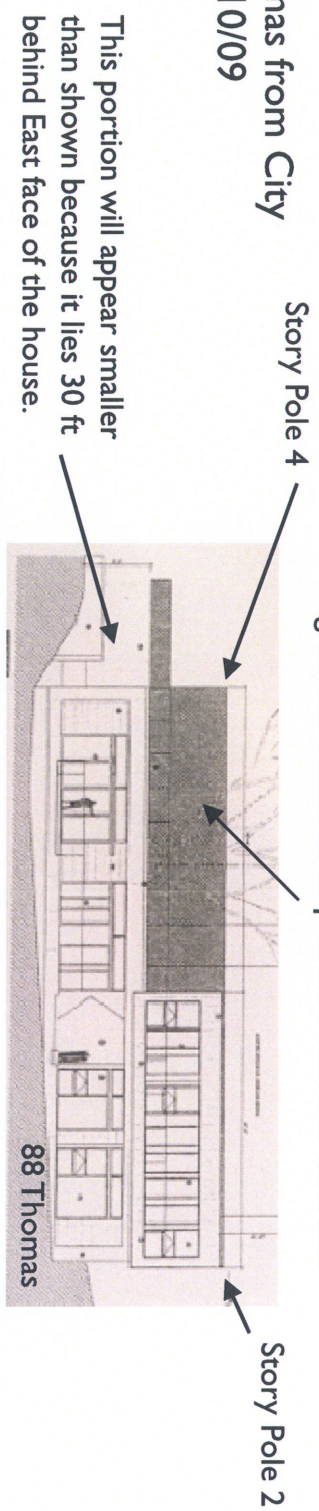


Figure 9. How we put 88 Thomas in the photos

Step A.

Use East View of 88 Thomas from City Agenda Report from 12/10/09



The original design was modified and the shaded region was removed to preserve views of the Park.

Step B.
Locate Story Poles 2 and 4 in photo



Step C.
Scale 88 Thomas image, rough out shaded region and place according to the locations of Story Poles 2 and 4.

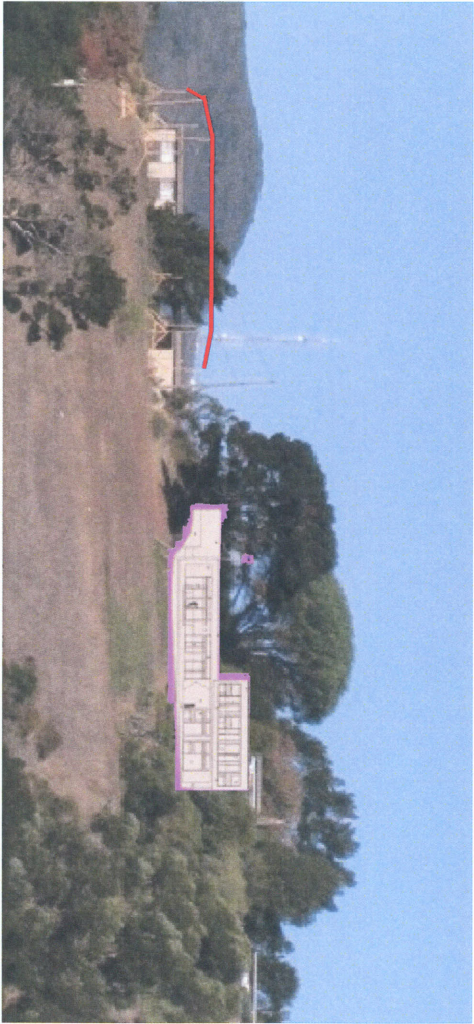
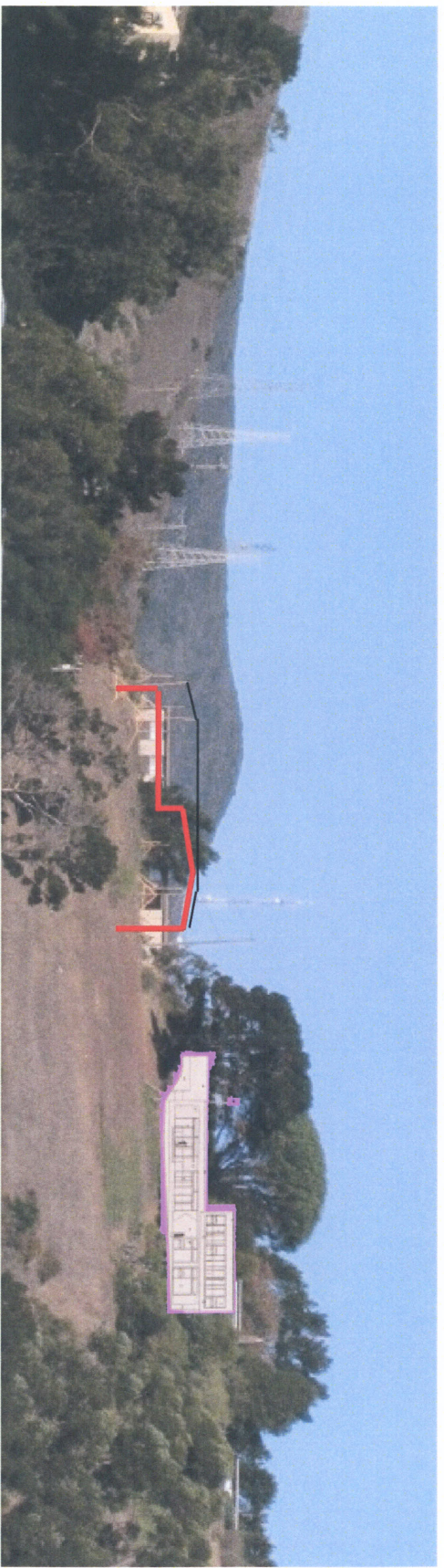
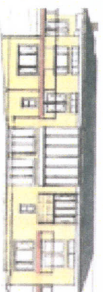


Figure 10. A concept for modifications to preserve public views



East view



Current design



Concept outline

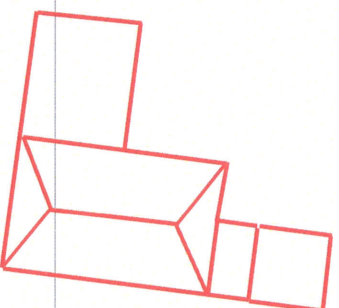
Key points

- Southern portion of home is stepped down (portion near San Bruno Ave)
- Height of top floor reduced to 9 feet and keeps vaulted ceilings (11' vault)
- Roofline is aligned with public view corridor
- Garage reduced to two cars to allow house to expand toward Thomas Avenue
- As seen from View A, southern portion of house will still extend into SBMSCP by several feet

Top view



Current design



Concept outline

Brisbane, 18 December 2013

Council of the City of Brisbane
50 Park Place
Brisbane, CA
94005

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DEC 18 2013

Comm. Dev. Dept. Brisbane

DP-1-13 appeal

Dear City of Brisbane Councilmembers

This letter pertains to the appeal process underway, on the decision by the planning commission to approve a design permit, DP-1-13, for the property located at 8 Thomas.

On 25 November 2013, Councilmember Terry O'Connell voiced her desire to appeal the decision taken by the planning commission on 14 November 2013. The reasons cited are:

1. *"concerns regarding the application of Brisbane Ridgeline ordinance 17.12.040.L.2 and how it applies and how it is measured"*
2. *"concerns about the FAR in regards to the open courtyard"*
3. *"[hearing] that there were some procedural inconsistenc[ies] with the inclusion to the record of public comments"*

Councilmember Raymond Miller co-signed the appeal form.

We would like to offer the following for consideration by City Council as this question is being reviewed.

On reason #1

The planning commission's purview includes the process by which any project situated on a ridgeline¹ must be subjected to a review where *"the planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value."*²

The BMC does not offer a **definition** of the public views that are of community-wide value, nor does it offer a guideline on how the planning commission is to find such views. More notably, the BMC does not offer a **test** by which the preservation (or lack thereof) of those views is to be found.

¹ as defined in BMC 17.02.695

² BMC 17.12.040.L.2. (Emphasis added here, not in the BMC).

The planning commission is thus left with two subjective judgment calls to make: of all the views from the community park, the bay trail along the Brisbane lagoon and Sierra Point shorelines:

- which are of community-wide value
- how to evaluate whether those views are preserved or spoiled by a particular project.

During the meeting, Senior Planner Kenneth Johnson presented some context on the applicable BMC provisions governing the issue. One element of the context is important: the application of BMC 17.12.040.L.2 is not based on an absolute threshold: "... *the ordinance does not establish a bright-line threshold as to what is permitted or not permitted on those parcels.*"³. In other words, there is not an objective, documented line which, if crossed, would constitute an automated finding of violation of BMC 17.12.040.L.2.

By contrast, Ms. Grossman and Mr. Hoen wrote in the conclusion of their 14 November letter that "*the images clearly show that the present design does not preserve views [of] ... the San Bruno Mountain State and County park*". We find, upon review of their letter, they make no case to demonstrate the community-wide value of the views they present. It appears to us that their conclusion is predicated on an "absolute threshold" interpretation of the so-called ridgeline ordinance, such interpretation being at odds with City staff and, in our opinion, common sense.

It is simply factual that should the proposed project's approval by the planning commission be upheld by City Council, the erected structure would, from a fraction of the vistas listed in BMC 17.12.040.L.2, be impeding some views of some portions the SBMSCP. We contend that the impeded views documented by Ms. Grossman and Mr. Hoen⁴ are not pervasive enough to be considered of community-wide value. In the views listed as C through F, the impedance consists of incremental obstruction to those views already affected by the pre-existing apartment building to the west of 8 Thomas, as well as power transmission towers and telecommunications transmission towers seen in the distance. In our opinion, these do not constitute "public views of community-wide value".

Further, we contend that the vantage points from which those views were taken offer *spectacular* views of the SBMSCP, views which remain un-affected by the proposed project, and go un-documented in the Grossman-Hoen letter. To literally zoom-in only those obstructed views is, in our opinion, again literally presenting a partial picture of what the true impact of the proposed project will be. It would no more be acceptable to present only an un-affected view than it is to only show the obstructed views. We contend that only a total view can offer a sense of relative

³ City of Brisbane; Planning Commission Agenda Report for the meeting of 11/14/2013, Ken Johnson, Senior Planner, via John A. Swiecki, Community Development Director, page 2, last paragraph.

⁴ And also documented in our letter of 14 November 2013.

impact of the obstructed views vis-à-vis the un-affected views. Let us again consider that this evaluation is not a so-called litmus test and that the subjectivity of it has been placed in the purview of the planning commission.

We contend that a view which approximates the total view available to a community member enjoying the lagoon trail⁵ is a better starting point for the subjective evaluation of the impact of the proposed project at 8 Thomas. In such panoramic views, we contend that the community-wide valuable views are preserved, in that the quasi-totality of the currently un-obstructed views of SBMSCP remain un-obstructed, and that their relative importance in the naked eye field of view simply dwarfs the incremental obstruction of SBMSCP that the projected building would produce. And though there is no definition of the public views of community-wide value, and no test to gauge the preservation of said views, we have never seen community members aggregate on the lagoon trail with a 12x telescope trained on the site of 8 Thomas!

The imperative to proceed with caution

The City attorney, along with the members of the planning commission, have discussed the need to balance the property rights of the applicant with the community-wide interest as expressed in BMC 17.12.040.L.2.

We must again stress that since the “ridgeline ordinance” does not offer a definition of “community-wide value”, nor does it offer a test to establish the preservation (or lack thereof) of the views, any project denial could be legally challenged by the applicant, and we contend, with cause. The applicant’s property rights are protected in no less than the American Constitution, and the state’s taking of any rights cannot come without clear, objectively established cause. Our city should not create a situation tantamount to a regulatory taking.

City council should consider that:

- The applicant owns the lot.
- The applicant’s lot was declared “legally buildable” in 1970 by the BMC.
- The applicant’s project respects all applicable requirements: no variance is being sought in connection with the proposed structure.
- The allowable lot coverage, height, setbacks, etc... are objectively documented and measurable, and the proposed project respects them all.
- The applicant is not proposing a structure at the limit of the allowable height envelope for the zoning district; it stands at ~20ft, well short of the allowable maximum of 30ft.
- The currently-proposed project is more modest than the preceding, approved project on the same site. A legally-significant precedent for the same lot in the same applicable jurisdiction thus exists, one which was approved by City.

⁵ We offer such views in our letter from 14 November, in appendix 1.

- BMC 17.12.040.L.2 is found to be vague and difficult to evaluate by the city's own planning commission members. In particular, Commissioner Munir's comments on the matter are part of the public record via the recordings of the planning commission available on the city's website.
- It could be argued that **any** structure built on the site would block views of SBMSCP, no matter how minimal the structure's height would be (as allowed by applicable standards).
- City Staff's report recommended the conditional approval of the project. This includes the City Engineer as well as Senior Planner Johnson.
- The planning commission unanimously approved the project.

To be clear: we contend that the planning commission's approval of the project should stand primarily because the public views of community-wide interest **are preserved** and that it is the right thing to do, not because there could be a legal challenge should the decision be made to overturn the planning commission's finding.

On reason #2

During the planning commission meeting of 14 November 2013, Brisbane Resident Michele Salmon did publicly ask City staff whether the "atrium" located at the center of the proposed structure should be considered as floor area counting toward the calculation of the lot coverage. Senior Planner Johnson answered that since the "atrium" is an un-covered part of the project, it does not count toward the calculation of lot coverage. We believe that Senior Planner Johnson's answer is based on BMC 17.02.495 - Lot coverage, which reads:

*"Lot coverage" means that percentage of a lot that is covered or occupied by structures. Lot coverage includes any finished surface, such as a slab or deck, **which is covered by a roof** or other solid covering with at least seven (7) feet of clearance, other than an eave or overhang, and includes also cantilevered bays and other enclosed architectural projections which contain floor or seating area."*

Note that the emphasis is ours.

Absent evidence that City Staff's answer was incorrect as per Brisbane Municipal Code, we contend that this issue is orthogonal to the current question at hand, and should be dismissed. If an argument is to be made that un-covered areas *should* be considered when calculating lot coverage, the argument should be brought up as a code modification. Such a modification being only *potential*, and therefore *in the future*, it should not be considered for this project. Only currently applicable BMC requirements should be applied to this project. This is a matter of logic and of legal principle.

On reason #3

Councilmember O'Connel is making mention of inconsistencies on the inclusion of public comments in the record of the planning commission hearing of 25 November 2013. We presume this may pertain to letters from the public which may only have been read in private by the planning commission members, and not read aloud for inclusion into the public record. If this is the case, then we offer that the planning commissioners had awareness of those letters when they took their decision, and that remedy should be to read these letters into the record. Note that one of these letters not read into the public record came from us.

Considering this issue in its entirety, we contend that the decision of the planning commission should stand.

It should stand not based on procedural context, or some possibility, however real, that another decision could be legally challenged; rather, we contend that a member of our community has patiently waited long enough, at great cost of time and treasure, to make his home, indeed his extended family's home, in our city. This man has engaged a professional architect and other professionals to design a home suitable to his needs as well as all community needs expressed in the applicable sections of the Brisbane Municipal Code. This man has made a choice to join us; this man has a name: Manh Quach. It is the right thing to do to welcome the Quach family into our city. They view our City as a desirable place to live. This, it seems, is a view of community-wide interest worth preserving!

With kind regards,

Luc Bouchard
Brisbane Resident

Brisbane, 14 November 2013.

To the members of the Brisbane Planning Commission

Re: 8 Thomas Avenue; Design Permit DP-1-13

The endeavor to evaluate the visual impact of a construction project on public views is inherently a subjective matter. In the case at hand, the applicant's *legal and buildable* lot is situated on a ridge line as per BMC_section 17.12.040.L. This does not violate anything: it merely *triggers* the application of a portion of the bylaws that govern our City. Namely: "the planning commission shall find that the building's placement, height, bulk and landscaping **will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value.**" *Emphasis not in BMC code.*

One topic of considerable discussion during the planning commission's meeting of 10 October 2013 pertains to the photographic representation of the visual impact of the proposed structure on those public views. Senior Planner Johnson, as well as Brisbane residents Grossman and Hoen offered photographs taken at various points alongside the lagoon trail, in an effort to share the visual impact of the proposed structure at 8 Thomas street.

Commissioner Cuningham did note that the photographs as presented did not do justice to the visual impact of the proposed structure that would be experienced by a human standing on the trail, observing the view with *the naked eye*. She herself took some photographs, which I understand will be made available at some point.

I believe that all parties who provided photographs had a common intent: to support the discussion inherent to the process of reaching a decision in the matter at hand.

I would like to offer, below, the method I used to photographically represent the visual impact of the proposed structure. I would contend that any photograph is by nature a mere facsimile of the reality of what it means to look at the awesome sight that is San Bruno Mountain when viewed from across the lagoon or the shoreline trails, but I think that by following the following guidelines, one can approach a *fair* and *representative* photographic record of the in situ experience.

- The total Field of View for the human naked eye(s) (FOV) affords simultaneous visual perception in an area of about $160^{\circ} \times 175^{\circ}$.⁶ The stereoscopic portion of the field of view where both eyes are seeing is about 90° .
- By using a DSLR camera, adjusted the magnification factor of the lens such that an object viewed by the naked eye appeared to be the same size as when viewed from the DSLR's optical view finder.
- Understanding that a single photograph cannot capture the field of view of 175° , multiple photographs were taken to cover at least 175° in "width". These multiple snapshots were then be "stitched" together to approach the panoramic "single view" experience of the naked eye.

This approach offers an important aspect that, respectfully, was lacking in the photographic documents offered during the meeting of 10 October, namely a relative sense of scale of what proportion of the *total* view the proposed project of 8 Thomas has an impact on.

The Google Earth included below illustrates the location of a few points from which I took photographs. A tight group of points, located on the property at 8 Thomas, mark the location of each of the story poles erected by the applicant as per BMC 17.12.040.L.1.

Pt 1 is the point at which any portion of the proposed structure comes into view when traveling along the lagoon trail, on the west side of the road, in a southerly direction. In other words, north of that point, the structure can simply not be seen from the lagoon trail.

Pts 2 through 5 indicate where various pictures were taken, with the proposed structure visible to the naked eye.

Pts 7 through 9 indicate points from which pictures were taken along the shoreline.

Points AAA and BBB mark the southern and northern points, respectively, between which the proposed structure's outline would be in front of San Bruno Mountain State and County park. Outside of those two points, the proposed structure does not block the park.

For each one of the points 1 through 9, I have produced a composite picture assembled from the cylindrical projection of all the pictures taken from the same point. This offers a wide field of view approximating the maximum naked eye field of view of a human being looking towards the proposed structure.

⁶ Wandell, B. (1995). "Foundations of Vision." Sinauer, Sunderland, MA as cited in Neurobiology of Attention. (2005). Eds. Laurent Itti, Geraint Rees, and John K., Tsotos. Chapter 102, Elder, J.H. et al. Elsevier, Inc.

These composite pictures are best experienced on a computer with the ability to zoom in/out on a large screen. They each offer a good view of what portion of the naked eye field of view is occupied by the proposed structure *in relation* to the other visual elements such as San Bruno Mountain State and County park.

These photographs are available for anyone to see at:

<https://www.dropbox.com/sh/u8kue1d013kfy6v/OR0VuQfFlr>

Note that it is best to download the pictures and then view them with a photo preview program such as preview (mac OS) or Windows Photo Viewer (Windows)

The test to be applied by the Planning Commission is a subjective one: “the planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value”.

From the community park, the views of the mountain are un-affected by the proposed structure as it is not visible.

From the shoreline, the views presented by photographs taken at points 7,8 and 9 show that the new proposed structure would not obstruct San Bruno Mountain significantly more than the apartment building located to the west of the site. Also, the photographs show that when taken in total, with particular respect paid to the naked eye field of view, there is a great portion of the total view occupied by San Bruno mountain with no encumbrance caused by the proposed structure. In other words, the visual impact is minor.

From the Bay Trail along the Brisbane Lagoon, we can see views where the proposed structure would partially obstruct some part of the naked eye view of San Bruno Mountain; it must be noted that the obstruction is incremental to the obstruction from the apartment building located to the west of the proposed structure, and that in relation to the total unencumbered views of San Bruno mountain, the total obstruction is minimal.

In the end, this question is a matter of subjectivity; by any other measure than an absolute interdiction of any obstruction of any view of San Bruno mountain, the subjective evaluation of the planning commission *must* take into account the portion of the naked eye field of view NOT affected at all by the proposed structure. This unaffected portion is far more visually present in the total view than any structure built within the applicable allowable maxima of height, width, coverage, etc.. ever could.

I respectfully submit that the planning commission has all the information it needs to render a decision, and offer but one resident's opinion in the matter: the applicant's project should be conditionally approved to go forward pursuant to the recommendation of City Staff.

With kind regards,

Luc Bouchard
Brisbane resident



Johnson, Kenneth

From: Spediacci, Sheri
Sent: Friday, January 17, 2014 10:16 AM
To: Conway, Clarke; Holstine, Clay
Cc: Swiecki, John; Johnson, Kenneth
Subject: FW: 8 Thomas Ave DP-1-13 Appeal Meeting Request

From: Manh quach [<mailto:manhquach21@gmail.com>]
Sent: Friday, January 17, 2014 10:08 AM
To: Spediacci, Sheri
Subject: Re: 8 Thomas Ave DP-1-13 Appeal Meeting Request

01/16/2014

To: Mayor Conway and City Manager

From: Manh Quach

415-370-9935

Re: 8 Thomas Ave Appeals Process DP-1-13

Dear Mayor Conway,

I am one of the owners planning to build on 8 Thomas Ave and I would like to request that the appeals process for DP-1-13 be expedited by having it be placed on the agenda for the February 3rd City Council meeting or as soon as possible.

The design permit's approval process, and now the appeals process, has already caused significant delays to my family's plans to construct our house. These delays have already started causing stressful hardships upon my family's situation. Financially, we still have to continue paying a mortgage for an empty plot of land on top of the mortgage for the house we currently live in. Every month that passes means we have to pay just to wait. Additionally, my sister, another owner of this planned house, has recently lost her job while this approvals process has been drawn out, hindering her ability to contribute by applying for a construction loan. Financially, we just can't afford to keep waiting.

Most importantly however, is that even if we were approved to build *today*, it would still take approximately *two years* before this house is ready move in. One of my major motivations to have this house built quickly is so my parents can enjoy the final years of their lives in it. My parents are well into their 80s. With their history of health problems recently, every month wasted waiting is costly.

Please, I implore you to help us by scheduling this hearing for February 3rd. Thank you.

Sincerely,

Manh Quach and the Quach Family

RECEIVED

JAN 22 2014

Comm. Dev. Dept. Brisbane

January 21, 2014

David Stull
c/o 251 Shady Glen Road
Walnut Creek, Ca. 94596
Ph./fax 209-962-6826

To Ken Johnson, Associate Planner
City of Brisbane
Planning and Community Development
50 Park Place, Brisbane, Ca. 94005

Dear Ken,
Please read this letter, feel free to annotate it for accuracy, or clarity, and forward it to the Mayor, and copies of it to City Council and Planning Commission members.

The City of Brisbane is not unfamiliar with this project. The proposal before you is the third consecutive attempt to play by the rules and build a home in the community at the north-east corner of Thomas and San Bruno Avenues.


After the initial attempt of a large, voluminous modern home was denied, Planning drew a line, cutting the height limit from 35 ft. to 15 ft. Owners chose a classical Chinese style of home, deformed enough that approval and a building-permit ensued. The recession curtailed that project.

Early this year the property was sold with those plans. New owners were made aware that the previous approval was not automatic the second time around, and that there were changes to zoning requirements, (area and set-back changes, along with the ambiguous view clause that justifies why we are here now).

The current proposal, reviewed and approved by the Planning Department and the Planning Commission, has conformed to revised restrictions, removed perceived offending elements, and provides tremendous Public support in the form of curb, gutter and sidewalk along both San Bruno and Thomas Avenue adjacencies, handicap access and bus stop at the intersection, and a landscape plan and agreement that exceeds Habitat Conservation Plan requirements. The landscape is both personal and native, drought-tolerant and water-conserving, the home with many energy-conserving features.

Please do not delay this project: please have your public hearing as soon as possible. Interest on borrowed money, labor and material costs, and the anguish of uncertainty take heavy tolls on a family. The Mann Quach family deserves your quick attention.

Thank you for your time and consideration,

Sincerely, 

David Stull

November 18, 2013

To: Brisbane City Council
Raymond C. Miller, W. Clarke Conway, Clifford R. Lentz, and Terry O'Connell

From: Manh Quach
683 S. Mayfair Ave
Daly City, CA 94015
(415) 370 – 9935

Re: 8 Thomas Avenue Design Permit DP-1-13 & Grading Permit EX-1-13 Appeals Process

Dear City Councilors,

My name is Manh Quach and my family and I intend to build a home for ourselves at 8 Thomas Avenue. I am writing to let you know how grateful and relieved we are that our house design was approved for construction by the planning commissioners. It really does mean the world to us to finally be able to move on with the project and be able to build in Brisbane.

During the planning commission meeting on November 14, 2013, all 4 present commissioners, Jameel Munir, Karen Cunningham, TuongVan Do, and Carolyn Parker, *approved* my house's design 4 ayes to 0 nays. We completely understand and agree with the facts and decisions the commission made regarding what the key issues were. We already altered our house's design multiple times in attempts to appease our neighbors. The impact the house will have on the mountain will be minimal at most, if at all. The house follows all current guidelines and regulations set by city code, requiring no variances. We already have a landscaping plan in place that we intend to uphold and maintain in order to appease the requests of the commissioners and also mask much of the house. And most importantly, the true underlying issue at hand involved the matter of the house possibly obstructing private views of some neighbors, which are not legally protected by law as it would infringe on our constitutional rights as a potential homeowner. Ms. Cunningham made it very clear that the plan cannot be denied on the basis of private view obstruction.

The current concerns we have are with the appeals process. We are aware that any opposition will have the right to appeal the approval decision handed down on Thursday, November 14. We were also informed that to appeal, there is a fee. However, we also heard that with the approval of the councilors, that fee can be waived, which troubles us greatly.

We implore you to **not** waive this fee for anyone who would like to appeal the commission's decision. Every new design for the house costs my family about \$50000 just in architectural fees. After that, we would have to re-submit the new plan and have to go through this entire meeting and review process again, which will use up an additional 10-12 months. Every month that goes by waiting for a meeting is a valuable month off of my parents' lives. My parents are on the wrong side of 80 years old and I want them to be able to comfortably live in this house before their time is up.

Right now, we agree with everything the commission has ruled. We find no fault in any statements issued by the commission. Any appeal process, any further meetings and complaints: we can only see as a stall tactic by the opposing party to drain us of our desire and financial ability to build. We believe that if they truly feel they can win an appeal, they will not object in the slightest to paying for it. Every change they demand of us to implement to our design costs us both time and money. It would be unfair if they did not have to shell out a single dollar of their own in this fight.

We have already listened to and tried to implement as many changes as we could. The house is already at its minimum in order to stay true to the design. As our architect, David, mentioned in the meeting, any changes to the house would be an entirely new design. Any lowering of the house into the ground would cause run-off problems. Any lowering of the roof would bring about other issues as well. Also, having David completely redesign the house in this way would again cost us tens of thousands of dollars.

We have listened to our neighbors' requests, including the requests of Beth and Storrs Hoen, two of the opposing party's frontrunners in the planning commission meetings. Prior to the first meeting, Beth and Storrs invited my family, my architect, and me to their house to introduce ourselves and discuss the potential impact of our design. We listened, and we did implement changes such as the removal of the chimney and to work the landscaping to mask the house from their view as much as possible. During the hour or so we spent at Beth and Storrs' home, not *once* did they mention any worry about our design potentially impacting public views of San Bruno Mountain, which they used as their primary argument during the planning commission meetings. The only concern they expressed, over and over, was that our design would block their own private view of the bay.

We refrained from mentioning this story at either of the two meetings because, out of respect for our neighbors, we did not want to make this fight personal. Any appeals going forward are, as Ms. Cunningham has mentioned, either a matter of our house's impacts on **private views** or just someone's **general distaste** for larger houses. If personal preference and private views were to be a determining factor in a design application, it would essentially be the same as saying one family's ability to enjoy a nice view takes priority over an applicant's **constitutional right** to build a home to his/her liking.

Again, we implore you, as the City Council, to continue doing a wonderful job staying impartial and **not** agree to waive the appeal fee. With every passing day and every change demanded of our design, it consumes valuable time and money we just cannot afford to reallocate. If they are going to demand these changes of us, it is only fair that they have to pay for their own ticket to this fight.

Thank you, and if our worries are for naught and either no appeal is filed or the fee was going to be upheld anyway, then we want you to know how much we appreciate you taking the time to hear us out.

Sincerely,

Manh Quach
And the Quach Family