

Spediacci, Sheri

From: Michael E. Woods <mewoods@plomew.com>
Sent: Sunday, March 02, 2014 7:41 PM
To: Spediacci, Sheri
Subject: City Council Appeal: 8 Thomas Avenue (Draft)
Signed By: mewoods@plomew.com

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

Dear Brisbane City Council:

On 9 March 2014, my wife Anne Woods and I will have been members of this wonderful community for 2 years. We have only recently become involved in some matters of widespread community interest. One of the first matters that caused us to become involved concern the issues regarding preservation of public views of 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 shoreline in general, and the impact of the proposed site development of 8 Thomas Ave on the various implicated zoning ordinances including the ridgeline ordinance.

My wife and I attended an October 2013 meeting of the Planning Commission and I spoke of our concerns and urged caution and development of a workable regulatory schema to enable the Community to determine appropriateness of various planned site developments, especially in Brisbane Acres.

Our home on Humboldt Road is situated in a location that our personal views of the Bay and hillside will not be impacted by the proposed development. We are new to the community and do not have long-established social connections to others in the community which could sway objectivity in this matter. As I requested of the Planning Commission when I addressed it in October 2013, I plan on being a resident here for a long time and establishing a viable process for evaluation of site development in Brisbane Acres is very important.

I was not able to attend the 14 November 2013 Planning Commission meeting in which the 8 Thomas Avenue project was contingently approved but I watched the recording of the meeting and reviewed the notes and other information.

I understand the Planning Commission had a difficult job to do, and it was clear that the Commissioners thought long and hard about the decision and believed that the decision that they reached was the correct decision.

But I do believe I need to object to the decision, as well as the process, and believe that your careful review of the decision, and process leading up to the decision, will cause you to reach the same conclusion that I have; namely that the Planning Commission made an error and/or followed an improper analysis when approving the current design of 8 Thomas Avenue.

While the record includes a number of deficiencies in addition to those I am highlighting here, I do want to give you reasons why I believe that an error was made.

The Staff Report errs in several respects, the most glaring to me is the apparent idea that some portions of the Bay Trail are more or less important than other parts of the Bay Trail. The Report asserts that the envelope of the home as identified by the story poles would have a limited impact for 700 feet (14% of the Bay Trail segment). Further, the Report asserts, without providing the metric used, that the impacts "were not perceived as significant."

It is first important to note that the Report thereby does acknowledge that the proposed sited development does block views of the State and County Park. The report asserts that the most significance of this blocking is somehow less important because the portions where the parklands are most visible have existing development, including a visible apartment building. Surprisingly the Report suggests that view of elements situated within the parklands (power lines and radio facilities) is somehow reason to advocate for blocking the view of parklands.

These are two reasons of how the Staff Report fails to properly take the ridgeline ordinance into account. The vistas of San Bruno enjoyed by hikers, bikers, fisherfolk, and other manner of Brisbane visitors along the Bay Trail is not consumed at selected disconnected points. Every person (that is 100%) who starts at one end of the trail and ends at the other end of the trail will experience this "14%" degradation. The Ridgeline Ordinance is not written in this way and analyses that include these presumptions and that rely on these data has to be suspect.

That the parklands includes visible power lines and radio facilities is a fact but should not be relevant to the investigation. An observer absorbing the beauty of the San Bruno mountain that includes a portion that may have such a structure is still observing the mountain while having an option to overlook the power lines or the radio facilities. Building a barrier between the observer and the parklands deprives the viewer of the ability to see that part of the mountain obscured by the barrier. There no longer is the option to observe while overlooking. The Report supports such a misguided interpretation of the ordinance.

Several of the Commissioners voiced some position that I did not believe was supported. The Commissioners seem to be of the view that there was some requirement that the owners of 8 Thomas Avenue must be allowed to develop the site. It is my understanding that the burden is on the homeowner to propose a site development plan that meets all the requirements, except those legally excepted, and that the Commission is not under any obligation to accept something that is close because it could not perceive of any other option.

Commissioner Do made many good points in explaining her reasoning and rationale in considering the merits of the proposed development of 8 Thomas Avenue. However in at least one aspect, I believe she erred. Namely, Commissioner Do went through the Ridgeline ordinance and make inquiries of the Staff and Architect whether any of the specifically identified mitigations from the ordinance had been employed. Based upon some anecdotal assertions that there had been some modifications to the design of the house to address some of the mitigation methods of the ordinance, Commissioner Do appeared to conclude that the Homeowner had done everything that could be asked, except perhaps varying the roofline.

This is a plain error in construction of this ordinance and therefore the conclusion is contrary to law. The ordinance is only permissive in identifying 4 mitigation methods that may be employed by the Commission. It does not say that these methods are exhaustive. I believe that it is ultimately up to the Homeowner to find a viable solution, and if none can be found that preserves the public views, then the development project cannot be authorized.

Commissioner Munir on the record of the video represented that he believed that the Ordinance was not subject to interpretation, that it was illegal, and I understood him to say that he was ignoring it. I do not believe that is a correct interpretation; it certainly should not be an

interpretation of a member of the Planning Commission in failing to try to uphold a relevant ordinance.

Commissioner Cunningham discounted the people who spent hours at the various meetings for an opportunity to be heard on this important issue. Particularly in the October 2013 meeting I attended she stated that people opposed to the development were only doing so because of a personal interest unrelated to the merits of the enforcement of the ordinance. These ad hominem attacks ultimately fail to address the merits of the argument: that the proposed development negatively impacts views of San Bruno from the Bay Trail.

Further, she inquired about the composition of the substratum under the 8 Thomas Avenue property, believing it to be shale. She suggested that the composition of the hill made one or more of the methods identified in the ordinance inapplicable. The inquiry should not have stopped simply because the Commission was unable to determine how to preserve the public views of San Bruno; other methods are available and the burden could have been placed back on the homeowner.

The Staff Report acknowledges that the proposed development impacts those views yet asserts those impacts to be insignificant for reasons I believe to be invalid. The Commissioners acknowledge that the proposed development impacts the view, but were unable to articulate a workable process for evaluating whether the proposed building of 8 Thomas 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.

The Commissioners, and the Staff Report implicitly also acknowledge that the public views of San Bruno from the Bay Trail are of community-wide value. I do not recall any of their comments, or anything in the report to suggest otherwise.

A very important question did not appear to be asked by the Planning Commission after accepting that the building would have an impact on public views of San Bruno that are of community-wide value; namely does the building preserve those public views. I don't believe that the Planning Commission addressed the concept of preservation of these public views. In one sense, perhaps a negative of this was investigated: whether anyone opposing the development could prove that the development would degrade the public view. The Staff Report does this by asserting on Page 5 (PD-1-13/EX-1-13 – 10/10/13 Meeting) – Because the views impacts were not considered significant the public views are **SUBSTANTIALLY** preserved (emphasis added). The report further takes a too-limited mitigation set in representing that the placement, height, bulk, and landscaping take adequate measures to preserve the public view.

In one representative point, the Staff confirmed to a questioner that the 8 Thomas Avenue development plan included an interior, exposed, atrium. This atrium was criticized by many as unfairly allowing the exterior envelope of the house to be much larger than necessary while technically meeting the lot coverage limitation. Commissioner Cunningham lamented that this atrium, being an interior "structure" would necessarily not impact the public views. The use of this atrium does inflate the exterior envelope and at least in this regard the design of the house (e.g., its bulk) could be changed to reduce the impact of this large house on the public views.

The Planning Commission, the ordinance, and the Staff did not propose a mechanism by which one would evaluate this. There was an unexpressed, but ultimately faulty, conclusion that the burden should be on the Planning Commission, the Staff of the Planning Commission, the public/community, that the development must proceed unless someone was able to "prove" that the public views would be significantly degraded.

The ordinance is not written this way. The ordinance appears to require that the Planning Commission affirmatively find that the proposed development would preserve the public views; not substantially preserve. The Planning Commission at a minimum needs to clarify for the record how substantially preserves equates with preservation. As the Commissioners acknowledged, there are no bright lines for evaluating this; but whatever lines they are using need to be proper lines, and we have a right to understand how those lines are drawn and evaluated.

I don't profess to know where the lines should be drawn or how to balance the legitimate competing rights of a homeowner and the community. The current homeowner was advised that the previous design approval had lapsed and that the rules would be different. The homeowner cannot credibly assert some type of reliance on the previous approval to demand approval of a similar house.

Regarding viewing angles and viewing impact. I believe it is simple physics to understand that the closer an object is to a viewer, the larger the viewing angle that is obstructed by the object becomes. The larger the object at the same viewing distance will similarly have a larger impact. That 8 Thomas Avenue is close to the viewing locations from the public venues at least makes its potential contribution to negatively impact a view of San Bruno Mountain as compared to other properties that may be further away. This position near to public viewing locations increases the scrutiny that should be used. A reduction in the exterior envelope, e.g., removal of the interior atrium and reduction of roof height, is but one possible method by which the bulk of the project would reduce the obstruction of the public views and should be investigated before approving the development.

In the end, while many hours were invested in the meetings, and considerable resources and energy spent on evaluating the plans, the Planning Commission failed to use the proper standard in authorizing the development of 8 Thomas Ave, and therefore its decision to approve the development should be reversed.

Thank you for your consideration.

Sincerely,

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