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April 5, 2019

Hon. Bob McCaskill, Mayor
Members of the City Council
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920

Via email and hand-delivery

Re: Artist's View Lane Consideration

Dear Mayor McCaskill and Members of City Council:

This office represents Michael Davis and Jyll Johnstone, of 475 Belvedere Avenue, Belvedere. Mr. Davis and Ms. Johnstone live immediately adjacent to the property commonly referred to as "Artist's View", and would be affected by any proposal to expand use of said property (hereinafter referred to as the "Property").

Please provide the undersigned with any and all notices, agendas, staff reports and/or other written communications considered by the Council in conjunction with any action by the Council to alter existing use of the Property. Reference is made to the record of proceedings on, without limitation, January 10, 2019 and March 14, 2019 by the City's Parks and Open Space Committee (hereinafter referred to as "the Committee").

During the above-referenced proceedings at the Committee, consideration was given to making a recommendation to the City Council that, among other publicly owned properties, Artist's View be considered for an as yet undefined expansion of use involving creation of public access to the Property, including the "beach" at the foot of the Property, bordering Richardson Bay. For reasons set forth below, it is the position of Mr. Davis and Ms. Johnstone that any such proposal is ill-conceived and illegal. It is respectfully requested that the Council, in order to avoid a variety of problems, decline to further pursue funding or any other activity associated with the Property.

Although we understand that no plans or design documents currently exist for expanded use of the Property, such that the precise procedural and legal path to be followed is not yet determined, we observe the following areas, and related impediments:

1. **Fire Concerns:**

Fire concerns are paramount to anyone living in sloped, wooded areas. The Committee's recommendation that the Council explore further development of the Property seemed to have contemplated, without limitation, creating an inviting site for people regularly trespassing upon the nearby Ganz property to legally do that which they are illegally doing at that property.

Many Belvedere Avenue residents have observed people loitering and smoking at the Ganz property. Neighbors of Artist's View are unanimously concerned that this steep, wooded site, combined with the Committee's express intent to draw unlimited numbers of users to the Property and vicinity, exposes the neighbors to fire danger. Mr. Davis and Ms. Johnstone are particularly exposed, given that their property is immediately adjacent to the proposed development, and is also located on a steep slope. We urge you not to exacerbate the fire danger to them.

2. **The City's General Plan Elements Do Not Accommodate Expanded Use:**

Various elements of the City's General Plan must be considered in the context of any expansion of use of the Property. Reference is made to General Plan 2030 adopted by the Belvedere City Council June 9, 2010. The processing of any expanded use at the Property must be consistent with the City's General Plan.

In particular, the General Plan's land use element, transportation and circulation element, sustainability and resource conservation element, parks, recreation and open space element, archaeological, cultural and historic preservation element, community design element and environmental hazards, safety and stability elements all require consideration.

For example, the land use element states, in its purpose clause, that the purpose of the land use element is "to shape the potential physical development of the City and to **preserve, protect and enhance the community's current quality of life consistent with the City's vision** (City of Belvedere General Plan, p. 17). As set forth below, further development of this site would operate to the contrary of this stated purpose.

Of further note is the General Plan's transportation and circulation element. That element states, in part, the City's policy that "there be no substantial changes in the current road network". The particular configuration of the site in question and already untenable traffic and

parking conditions in the 400 block of Belvedere Avenue cannot be reconciled with the General Plans stated purposes of “a balanced circulation system that will promote public health, welfare, and safety, as well as preserve and enhance the quality of life of the community’s environment”. (General Plan 2030, p. 53).

Mr. Davis and Ms. Johnstone, and others in the vicinity, would, if called upon to do so, affirm the extent to which traffic and circulation in the vicinity are, at best, a challenge on any given day. Mr. Davis and Ms. Johnstone are concerned that inviting the public to attempt to park to access Artist’s View, or to drop others off to attempt to do so will exacerbate an already congested situation.

3. The California Environmental Quality Act (“CEQA”) Requires Detailed Review of Any Proposed Increased Use:

Appendix G to current CEQA Guidelines, (the environmental review checklist) contains the following applicable areas of potential environmental impact. A sampling of potential areas to be reviewed in a proper environmental study of any proposed project would include, at minimum, the following:

Aesthetics. The Property is clearly an aesthetic resource. At minimum, environmental review, whether by EIR or negative declaration, would require that this fact be taken into account.

Biological Resources. The Property requires clearing contains habitat for a variety of species, including bald eagles. As such, is required to be considered under the biological resources section of the CEQA guidelines. To the extent the biological resources section of the CEQA guidelines checklist asks whether a substantial adverse effect occurs on “habitat modifications” and other protected interests, it is imperative that a detailed environmental study occur.

Geology and Soils. CEQA review requires consideration of potential impact upon geology and soils. The Artist View site is steep, and challenging when considered in the context of access. Further environmental investigation, in the form of geologic engineering and related review, would be required to determine whether, and to what extent, significant adverse impact pertaining to geology and soils may be generated by the increased intensity of use of the subject properties. Moreover, the safety of those residing in and using the area must be considered.

Storm water drainage, both surface and sub-surface, must be considered. Mr. Davis and Ms. Johnstone are concerned with the extent to which said waters may affect their safety. (See, for example, *Locklin v. City of Lafayette* (1994) 7 Cal. 4th 327).

In responding to the question set forth in CEQA guidelines as to whether the Project would “substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on – or off – site”, careful scrutiny is required to determine whether and how the Project proponent can manage storm water associated with projects of the proposed density.

Land Use and Planning.

Potential conflict with applicable land use plans and policies in the area requires that this question be addressed in an EIR or mitigated negative declaration. As summarized above, it is doubtful that the action proposed by the Committee would comport with the City’s land use objectives, as stated in the General Plan.

4. Jurisdictional issues.

In addition to the above, we note that several other agencies likely have jurisdiction to review any proposed expanded use of the Property. For example, an application to the Bay Conservation and Development Commission (“BCDC”) is required. As defined in Government Code Sections 66000, et seq, BCDCs jurisdiction includes San Francisco Bay itself, as well as a shoreline band of land extending inland 100 feet from the Bay. The Property clearly falls within such definition.

In addition, depending upon the scope of any project ultimately pursued by the City, Army Corps of Engineers may also have jurisdiction.

5. Nuisance Concerns

Again, we recognize that the City has not defined a project at the Property; rather, the Committee provided a number of observations regarding the benefits of opening the Property to the public, including a place for people to gather. To the extent the Property, and the City’s potential invitation to the public to access a steep hillside and the Bay, via the property, create circumstances by which hillside and water-related injuries can occur, exposure to common law and statutory theories of attractive nuisance exist, for any injuries arising from such uses.

6. The Property Is Historically Deed Restricted

Attached please find a parcel map for the Property, recorded July 15, 1971 in the Office of the Marin County Recorder. The Property is shown as “Parcel A-2”. Note that the recorded map confirms that the parcel is “not a legal building site under the present ordinance”. While this document does not definitively establish the historic intent of prior owners with respect to use of the property, the City should examine the history of title, in order to assure that the law is being followed with regard to any future proposed development.

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Conclusion:

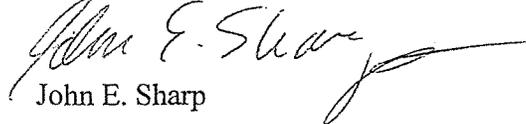
Artist's View is a highly sensitive piece of property, unique among properties in the City of Belvedere. Its character is such that attempts to improve the Property can only result in damage to quality of life values of those residing in this area of Belvedere Avenue. As has been demonstrated, any application process, to any entity having jurisdiction must lead to a level of environmental review fraught with negative impacts associated with bringing more people to this traffic and resource challenged stretch of Belvedere Avenue. Artist View, as described by the Committee, maintains its unique and aesthetically valuable character precisely because it has, to date, been left alone as expressed in the intent of the grantor, who granted it to the City. On behalf of Mr. Davis and Ms. Johnstone, it is respectfully requested that the City Council decline to further pursue any project at Artist's View.

Mr. Davis and Ms. Johnstone, and the undersigned will be present at your meeting of April 8, 2019 to further comment and to respond to any questions the Council may have.

Thank you for your attention to these matters.

Very truly yours,

LAW OFFICES OF JOHN E. SHARP


John E. Sharp

JES/kh

cc: Craig Middleton, City Manager
Emily Longfellow, City Attorney

RECORDER'S CERTIFICATE

24261

FILED FOR RECORD THIS 15 DAY OF July 1971 AT 9:40
A.M. IN BOOK 6 OF PARCEL MAPS AT PAGE 15
AT THE REQUEST OF CITY OF BELVEDERE
Fees \$

SIGNED M.T. GIBSON H. Humphrey
MARIN COUNTY RECORDER DEPUTY RECORDER

CITY ENGINEER'S CERTIFICATE

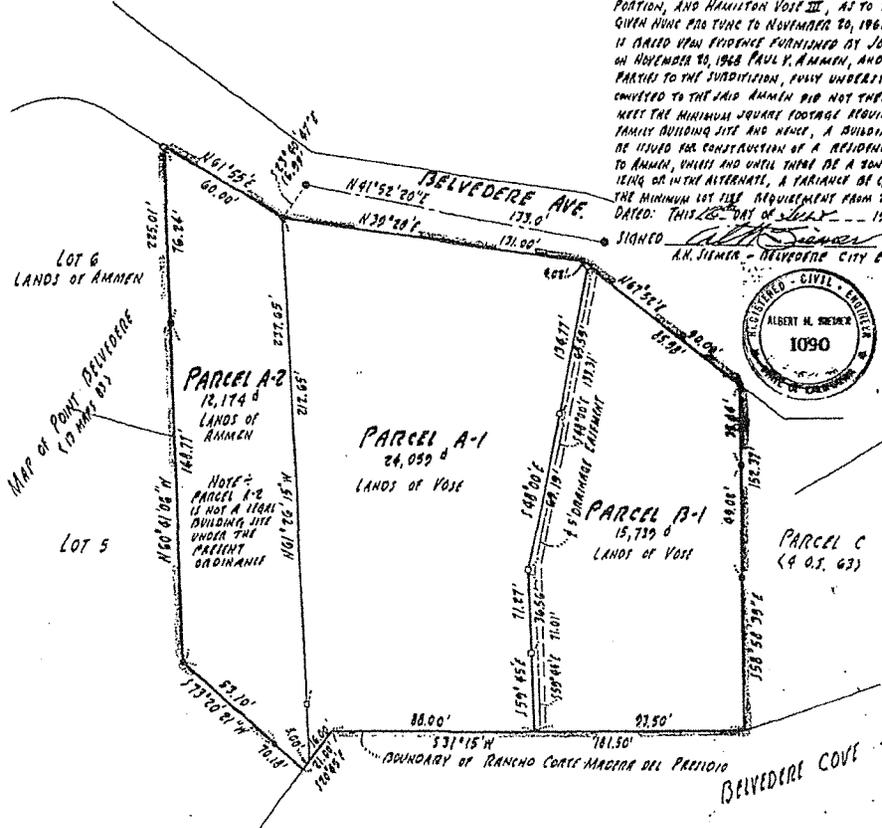
THIS MAP HAS BEEN EXAMINED THIS 12th DAY OF
July 1971, FOR CONFORMANCE WITH SECTION
11575 OF THE SUBDIVISION MAP ACT, THAT THE RESOLUTION
OF APPROVAL BY THE CITY COUNCIL CONTAINED THE FOLLOWING
LANGUAGE: "THAT THE APPROVAL OF THE MINOR SUBDIVISION OF
JOHN L. WILLIAMS OR PROPERTIES OWNED BY JOHN L. WILLIAMS ON
FEBRUARY 16, 1968 AND NOW OWNED BY PAUL V. AMMEN, AS TO A
PORTION, AND HAMILTON VOSE III, AS TO THE OTHER PORTION, IS
GIVEN HUNG PRO TUNC TO NOVEMBER 30, 1968. THAT THIS APPROVAL
IS BASED UPON EVIDENCE FURNISHED BY JOHN L. WILLIAMS THAT
ON NOVEMBER 30, 1968 PAUL V. AMMEN, AND JOHN L. WILLIAMS AS
PARTIES TO THE SUBDIVISION, FULLY UNDERSTOOD THAT THE PARCEL
CONVEYED TO THE SAID AMMEN DID NOT THEN AND DOES NOT NOW
MEET THE MINIMUM SQUARE FOOTAGE REQUIREMENTS FOR A SINGLE
FAMILY BUILDING SITE AND HENCE, A BUILDING PERMIT COULD NOT
BE ISSUED FOR CONSTRUCTION OF A RESIDENCE ON SUCH SITE CONVEYED
TO AMMEN, UNLESS AND UNTIL THERE BE A zoning change in ADJAC-
ENT OR IN THE ALTERNATE, A VARIANCE BE GIVEN BY THE CITY FROM
THE MINIMUM LOT SIZE REQUIREMENT FROM THE zoning ordinance."
DATED: THIS 12th DAY OF July 1971

SIGNED Albert M. Bremer
A.M. BREMER - BELVEDERE CITY ENGINEER



NOTES:

- INDICATES 2" x 2" RND. HUD, TRAC (ARMS DISK STAMPED 11 1158, SET
 - INDICATES 2" x 2" RND. HUD & TRAC FOUND.
 - INDICATES 2" IRON PIPE, NAIL & DISK STAMPED L51794, FOUND.
 - INDICATES CITY MONUMENT FOUND.
- MERIDIAN BASED ON N41°58'20"E 133.0' CORNER IN BELVEDERE
AVE. AS DEFINED BY FOUND CITY MONUMENTS.
- EXTERIOR BOUNDARY OF THE LANDS SUBDIVIDED BY THIS MAP
IS ENCLOSED BY BLUE BORDER.



SURVEYORS CERTIFICATE

THIS MAP WAS PREPARED BY US
AND IS BASED UPON A FIELD SURVEY
IN CONFORMANCE WITH THE REQUIRE-
MENTS OF THE SUBDIVISION MAP
ACT AT THE REQUEST OF JOHN L.
WILLIAMS AND HAMILTON VOSE III
IN JUNE 1971. WE HEREBY CERTIFY
THAT IT CONFORMS TO THE APPROVED
TENTATIVE MAP AND THE CONDITIONS
OF APPROVAL; THAT ALL PROVISIONS
OF APPLICABLE STATE LAW AND LOCAL
ORDINANCES HAVE BEEN COMPLIED
WITH.

SIGNED William G. Lockett, Jr.
William G. Lockett, Jr. - C.I. 2738

**PARCEL MAP OF
DIVISION OF PARCELS A & B
AS SHOWN ON
RECORD OF SURVEY OF
LANDS OF MARY McGUINNESS
(4 D.S. 63)
BELVEDERE - CALIF.
SCALE - 1" = 30'
JULY 1971
HOOB & LOCKETT
LIC. LAND SURVEYORS**

Case 24261