

# Bruzzone Lawsuit Targets Moraga Design Guidelines

By Steve Angelides

The Bruzzone family and their businesses, which own most of the undeveloped land in Moraga, have filed a 27 page lawsuit against the Town in an attempt to invalidate design guidelines adopted by the Town Council on July 11.

The challenged guidelines protect ridgelines from development, protect mature native tree groupings, preserve views of ridgeline landscape, site buildings so as to permit passive solar design, and state that “residences in new subdivisions should meet Build it Green or equivalent requirements for new residences.”

The “Build it Green” guidelines consist of an elaborate point system set forth in 58 pages of text plus a 215 row spreadsheet. The spreadsheet states that to “be considered green” a home must earn a minimum of 50 points, with at least 30 points in energy, 5 points in indoor air quality/health, 6 points in resources, and 9 points in water. Those guidelines are promulgated by the non-profit group Build it Green, and appear on its website [www.builditgreen.org](http://www.builditgreen.org).

The Town Council adopted the challenged guidelines by a 3 to 2 vote as amendments to design guidelines originally adopted by the Planning Commission on June 4. The Council acted after Vice Mayor Lynda Deschambault appealed the Planning Commission’s guidelines to the Council.

Deschambault told the Council she appealed the guidelines because she wanted to add energy efficiency and sustainability. Councilmembers Ken Chew and Dave Trotter also voted for the amendments, while Mayor Mike Metcalf and Councilmember Rochelle Bird dissented.

The Council action in July followed an historic first for Moraga in May when the Council, by the same 3 to 2 vote, made Moraga’s first ever political statement on a national or international issue—global warming—by endorsing the U.S. Mayor’s Climate Protection Agreement.

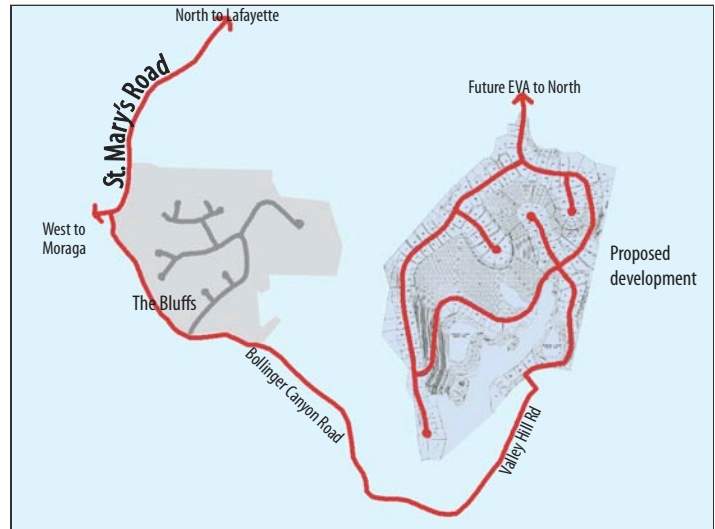
Planning Director Lori Salamack, in her staff report at the July meeting, recommended that the Council either approve or overturn the Planning Commission’s guidelines or send them back for revision before the Council acted on the appeal. Instead, the Council amended and adopted the guidelines on the spot.

The lawsuit claims that was illegal procedure under state law because the Council’s action was “tantamount to the adoption of a zoning ordinance.” California Government Code section 65857, which applies to certain zoning ordinances, provides that “...any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for a report and recommendation...” According to the minutes of the June 4 Planning Commission meeting, protection of ridgelines, mature native trees, and views of ridgelines were mentioned at that meeting, but passive solar design and green building requirements were not.

The Bruzzone lawsuit also claims the Council’s amendment and adoption of the design guidelines was subject to the California Environmental Quality Act (CEQA), based on the “displaced development” theory. The lawsuit claims the guidelines “may be applied to eliminate housing altogether, and/or displace that housing to other areas or communities.” On June 12, 2007, the California Supreme Court issued an opinion which applied CEQA to restrictions on development in the area surrounding Travis Air Force Base in Solano County under the “displaced development” theory.

The lawsuit also claims the design guidelines, as amended by the Council, are inconsistent with the Town’s 2002 General Plan. The “numerous provisions applicable to ‘ridgeline’ development are so vague and ambiguous that persons of ordinary intelligence can only guess at their meaning,” the suit alleges.

The suit further claims the ridgeline development protection and “Build it Green” guidelines violate the Bruzzones’ constitutional rights. It claims the Council “deliberately crafted” the ridgeline development protection “to facilitate and encour-



Bruzzones' Pending 126 Home Bollinger Valley Subdivision

[Source: Page 19 of Revised Notice of Preparation of Draft EIR on Town Website]

edited by Andy Scheck for print result improvement

age the regulation of development on and adjacent to any and all ridgelines,” and “deliberately crafted” the “Build it Green” provision “to limit the application, and economic impact, of this Guideline to Petitioners alone.” It further claims the Council adopted the guidelines “deliberately and with discriminatory intent aimed at frustrating and restricting, if not precluding outright, the pending Bollinger Valley development applications as well as any future development applications associated with Petitioners Indian Valley and Moraga Center Specific Plan Area properties.”

The lawsuit is the latest chapter in the hot and cold relationship between the Town of Moraga and the Bruzzone family, its largest landowner. That relationship was publicly symbolized this March when the Council, at an emotional meeting on a 3 to 2 vote, accepted statues with memorial plaques donated by the Bruzzone family for the Commons and the library.

Meanwhile, behind the scenes the Town staff and a planning consultant hired by the Bruzzone family were working together closely on the details of the Specific Plan for the Moraga Center. But when the Specific Plan came before the Council for its first vote about the scope of the environmental impact report, once again the Council divided 3 to 2 when it decided on the number of housing units to study. That meeting ended bitterly with Deschambault bemoaning the lack of Council unity on the issue, and David Bruzzone arguing with Trotter over the potential location of a gymnasium and community center favored by Trotter.

Mayor Mike Metcalf declined to comment on the legal action, but when asked to speak generally about the Town’s activities preceding the law suit said, “I believe the Town has acted openly and in an appropriate manner.” Trotter and Salamack politely declined to discuss the lawsuit; Town Attorney Michelle Kenyon could not be reached for comment. A call to the office of Bruzzone attorneys Arthur F. Coon and Stephen E. Velyvis was abruptly terminated on that end before any questions could be posed.

The lawsuit seeks a declaration that the challenged design guidelines are illegal and unconstitutional, injunctions against the guidelines, unspecified money damages, attorneys’ fees, and costs.



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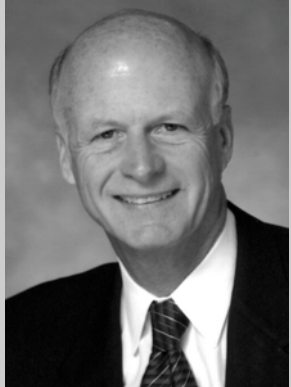
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