

Del Mar City Council Meeting Agenda

VIA TELECONFERENCE ONLY
1050 Camino del Mar, Del Mar, California

October 17, 2022 City Council Meeting

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Melinda Gould

From: K Lare <karen.lare@yahoo.com>
Sent: Thursday, October 13, 2022 9:16 PM
To: City Clerk Mail Box; Dwight Worden; David Druker; Terry TG. Gaasterland; Tracy Martinez; Dan Quirk
Cc: Eddie Lare; Steven Crowe
Subject: Del Mar City Council Meeting 10-18-22 Item 18

Follow Up Flag: Follow up
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Honorable Mayor and City Council Members,

My husband and I write tonight in support of the Crowe's application for an Encroachment Permit at 111 Sea Cliff Way. This application is to plant a hedge along the glass fence that runs along the north side of their property to give them privacy.

We have both lived in Del Mar for over 30 years and have owned 161 Sea Cliff Way (then 526 Stratford Court Unit B) since 1992. In that time, we have seen this alley evolve and go through many changes and the Crowe's home at the end of the street has added significantly to the look of Sea Cliff Way. In fact, the area in question actually used to be a small enclosure along a falling down fence that housed the trash cans for the Proctor Property.

As we understand it, the Crowe's believed that this area was a part of their property or that the builder had gotten approval to put plants on the city property and in fact a berm was built around a planter to allow just that. When it first went in we asked the builder (Jim McMenniman at Zephyr) about it he said they had gotten approval from the City to plant it. It seems now that this was not the case.

We are in support of you agreeing to the de novo hearing on this matter and are also in support of the City Council granting the Crowe's application for an encroachment permit to plant the hedge along the fence line as long as they agree to keep it trimmed to the height of the glass fence that is there now.

We also suggest that the Crowe's work with the neighbors who are impacted by the new tree that has been planted in the sight line of several of the homes on Sea Cliff Way to also keep it trimmed so it is not in the view corridor of the homes. Alternatively the Crowe's can relocate the tree further away from the street thus maintaining views for all of the homes on Sea Cliff Way.

In reading the Staff's report on the application for the encroachment permit, we were surprised at the findings. In contrast to the staff, we feel it will add to the appearance of the alley, not take significant public land and definitely will not change the character of the area as many homes in the neighborhood have hedges.

Thank you for your time on this matter.

Respectfully submitted,

Karen & Eddie Lare
161 Sea Cliff Way



Melinda Gould

From: City Clerk Mail Box
Subject: FW: Item 18, Application for Minor Encroachment Permit, October 17, 2022 City Council hearing

From: shirli.weiss@gmail.com <shirli.weiss@gmail.com>
Sent: Friday, October 14, 2022 9:02 AM
To: City Clerk Mail Box <CityClerk@delmar.ca.us>
Cc: Dwight Worden-Private <dwrightworden@gmail.com>; 'Tracy Martinez' <tmartinezrn@lapbypass.com>; Terry TG. Gaasterland <gaasterland@gmail.com>; David Druker-Private <ddruker@dataskill.com>
Subject: FW: Item 18, Application for Minor Encroachment Permit, October 17, 2022 City Council hearing

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Item 18

Dear Honorable Mayor and other distinguished members of the City Council:

I write in support of the City Council granting a *de novo* hearing on Steven Crowe’s application for an Encroachment Permit to plant a hedge in the 3ft. wide public right of way that is adjacent to the north side of his property located at 111 Sea Cliff Way. I also write in support of that Application.

I have been a resident of Del Mar and have owned homes in Del Mar for over 20 years. I currently reside at and jointly own the home at 551 Stratford Court which is located across the street and close to the entrance on to Sea Cliff Way as well as a home in Del Mar Woods. I walk Sea Cliff Way on my way to the upper bluff in Del Mar which I walk typically several times a week. I write as a resident and property owner in Del Mar and neighbor of the Crowes.

First, I believe the City Council should grant a *de novo* hearing on the Application, which is the only issue currently before the Council. Mr. Crowe’s application concerns the important issue of balancing family privacy in our densely populated city and the public interest in the appearance of a public right-of-way and merits a thoughtful *de novo* review by the City Council. In addition, the City Council should not confirm the staff’s position because the denial letter does not rely on adequate grounds for denial and does not entertain any solution with conditions as permitted by DMMC 23.28.070D which the City Council should consider. Therefore, the Application should be re-considered at a *de novo* public hearing.

The staff’s letter states that the staff cannot make three of the six findings required by DMMC section 23.28.70C for granting the requested Minor Encroachment, specifically findings 3, 4 and 6.

These findings that the staff stated it cannot make are as follows:

- “3. The proposed Encroachment will not have an adverse impact on the welfare of the community or on the community's appearance or aesthetics;
- 4. The proposed Encroachment will not cause an unnecessary change in the character of the community;

6. The proposed Encroachment will not convert significant areas of public property to private use...

I will address each provision in turn:

The proposed Encroachment will not have an adverse impact on the welfare of the community or on the community's appearance or aesthetics;

The staff does not explain how it is that the proposed Encroachment will have an adverse impact on the welfare of the community or the community's appearance or aesthetics, but the finding should be made. First, a hedge *would* improve the appearance and aesthetics of the public right-of-way. Currently the 3ft wide right-of-way is a strip of unimproved dirt to the south side of Sea Cliff Way. When it rains it is unimproved mud. Planting and maintenance of greenery at the expense of the homeowner would improve the appearance and aesthetics of the right-of-way by substituting greenery for mud. A hedge would also improve aesthetics of the area in other ways. Approximately 15 linear feet of the eastern portion of the right-of-way looks onto pool equipment and the interior of the living area of the Crowe's home as well as the pool area. The Crowes have a privacy interest in preventing the viewing of their living spaces of course, but the public also has an interest in having this area shielded from view. A hedge is preferable to viewing pool equipment and the public is not or should not be interested in looking into a private living or pool area of the home. Thus, the hedge would improve the appearance and aesthetics of this strip for all concerned. The hedge could be limited to a height of 6ft. from grade and the encroachment permit could be conditioned on the owner's maintenance of the 6ft. maximum height from grade. Notably, there is not enough room for an interior hedge around the pool equipment.

As to the portion of the right of way that is west of the pool equipment area and approximately 40 ft. long, a 6ft. hedge along the right of way would address the mud problem, shield the view into the Crowe's pool area (which benefits the public as well as the Crowes) and is preferable to a higher hedge that the Crowes could erect on their ' property. For the same reasons, there is no basis for the finding that a hedge along the right of way would "have an adverse impact on the welfare of the community" and the staff either does not place or explain its reliance on this part of the provision.

The proposed Encroachment will not cause an unnecessary change in the character of the community

The staff cites no reason for its failure to make this finding and this finding would be amply supported. There is no credible argument that the proposed Encroachment will cause any change to the character of the community, rather, it would conform to the character of the community. Across Sea Cliff Way directly north of the Crowes' residence is a property that has a 6ft. hedge and wall which protects the public from having to see into the owners' property as they walk down to the upper bluff and protects the property owners' privacy with no expense to anyone's views of the ocean, which is steps away from Sea Cliff Way. North of the hedged property on the north side of Sea Cliff Way, there are just a string of garages facing Sea Cliff Way and the right-of-way and so no neighbor's view would be affected by a 6 ft. hedge on the Crowes' property. On the south side (the side where the hedge is proposed), the permission to plant and maintain the hedge could easily be conditioned on its continued maintenance at 6ft. or less under DMMC 23.28.070D, enforceable through a summary no-fee procedure at the city. Thus, no south side views would be impacted. There are many hedges in Del Mar. Some of them impinge on peoples' views. The proposed Encroachment would not, it would instead just improve the area.

The proposed Encroachment will not convert significant areas of public property to private use.

The staff does not explain how it is that the proposed Encroachment would convert "significant areas" of public property to private use. The area of the right of way in question is not "significant" in size or public use. It is a small narrow area to the south of the path along Sea Cliff Way that leads to the upper bluff. No one walks on it as there is enough room on the concrete portion of the path of Sea Cliff Way to walk to and from the upper bluff.

Thus, there is no basis for the staff's failure to make the findings in DMMC section 23.28.70C that it states it cannot make.

The staff's reliance on DMMC 23.28.040 and City Council Policy #110 is also inappropriate.

DMMC 23.28.40 provides:

DMMC 23.28.040 – PROHIBITED ENCROACHMENTS (B.3) Any Encroachment that would convey an impression or appearance that the encroached upon area is owned by or reserved solely for the private use of the adjacent property **with no associated public benefit to the community**. (emphasis added).

For all the reasons stated above, the planting of a hedge kept at limited height would have a number of “associated public benefit[s] to the community” and that area in particular. This renders 23.28.040 inapplicable.

City Council Policy #110 “Private Encroachments into Public Rights-of-Way,” is also inapplicable. It provides in pertinent part:

“Examples of such inappropriate encroachments include: fences, hedges, or vegetation that **would create the impression that the “walled-off” area is private vs. public property;**” (emphasis added).

City Council Policy #110 is completely inapplicable. It applies when the area behind a hedge (so called “walled off area”) is public. **Here the area behind the hedge is the private home of the Crowes.** The policy by its terms does not relate to the hedge itself and no one really cares who owns the hedge as long as it is maintained at an appropriate height.

Finally, the staff’s apparent dismissal of DMMC 23.28.070D should be revisited by the City Council in a *de novo* hearing. It provides:

“.....

D. The decision maker may impose conditions of approval on the Encroachment Permit as deemed necessary to protect the public health, safety and welfare and to preserve the intended use of the City Right-of-Way or Easement, and to ensure compliance with the findings supporting such approval”

The City Council can easily condition the erection of a hedge at its continued maintenance at a maximum of 6 ft. from grade and allow a summary, no fee procedure for its enforcement, or impose any conditions that will protect the public interest and at the same time support a citizen’s privacy.

For all the reasons stated, I urge the City Council to grant a *de novo* review and then to grant Mr. Crowe’s application at a *de novo* hearing.

Respectfully submitted,

Shirli Weiss

551 Stratford Ct.

Del Mar, CA 92014

858.449.4850



Melinda Gould

From: Camilla Rang <camillarang@yahoo.com>
Sent: Thursday, October 13, 2022 12:33 PM
To: City Clerk Mail Box
Subject: Supporting Item 20, City Council meeting 10.17.22

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Dear City Council,

I want to express my strongest support for you writing a letter to NCTD opposing their planned request to SANDAG to get to use the \$300 million for other things but making the tunnel proposal go forward. I suggest that letter should also be cc'd to SANDAG and the California State Agency/Department that granted the money and also make Mike Levin aware of the shameful -and I guess even illegal, act that NCTD is planning by using state funds for other things than they were meant for. It all seems very fishy and corrupt.

Thank you for defending Del Mar!

Sincerely,

Camilla Rang
Cell: 858 353 1948