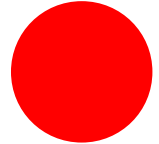


December 30, 2015

**VIA E-MAIL AND HAND DELIVERY**Honorable Mayor Parks and City Councilmembers
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014Re: Design Review, Coastal Development, Land Conservation, and Tree Removal Permits for
City Hall/Town Hall/Plaza Project (DRB15-017, CDP 15-010, LC15-008, TRP15-014)

Dear Mayor Parks and Councilmembers:

On behalf of my clients, Mr. Suren Dutia and Ms. Jas Grewal, I am providing comments on the referenced applications and the associated Environmental Impact Report ("EIR").

Introduction and Background

My clients have owned and resided in their home on 11th Street for more than 25 years. They have been active participants in the public process you instituted in January 2015 to solicit public input, and in particular, neighboring property owners' input, regarding the proposed City Hall/Town Hall/Plaza Project (the "Project"). As they have repeatedly stated both orally and in writing, they recognize the need for a modern and efficient City Hall/Town Hall at the Project site, and are generally supportive of the Project. They have raised concerns about the traffic circulation element of the Project since at least last May, and in large part those concerns have not been addressed by City staff, the architect, the traffic engineer or the EIR consultant (although my clients are grateful that you have met with them in the past week or so to hear their issues). Specifically, their concern is that all the egress from the Project site is proposed to be directed onto 11th Street, despite the fact that both ingress and egress to the current City Hall complex has for decades been balanced between 10th and 11th Streets. One of their neighbors on 11th Street, whose property borders the Project site to the west, has expressed concerns about the impact of the Project, and in particular the Ocean View Terrace component, on her privacy. Those issues have also largely not been addressed.

In contrast, the record shows that the City has gone out of its way to modify the Project significantly in order to address the privacy and other concerns of the residents abutting the Project site on 10th Street.

My clients believe that that the City should be treating the concerns of all of the affected parties in a balanced and fair manner.

Honorable Mayor Parks and City Councilmembers
December 30, 2015
Page 2

Procedural Deficiencies

Two independent deficiencies have apparently caused or contributed to the unbalanced treatment of my clients' concerns as compared to those of the Project's neighbors on 10th Street.

Violations of the Political Reform Act

A member of the Design Review Board ("DRB") who owns property immediately adjacent to the Project site on 10th Street has violated the conflict-of-interest provisions of the Political Reform Act on at least two occasions, both of which are matters of public record. Those provisions apply to public officials, whether elected or appointed, and prohibit a public official from, *inter alia*, participating in a governmental decision in which the official has a financial interest. (Gov't Code §§ 81001(b), 87100.) First, Mr. Rick Ehrenfeld participated in the City Council's decision on the Project by means of at least two ex parte contacts with Councilmembers. One of those contacts is a matter of public record: the Councilmember disclosed the ex parte contact with DRB member Rick Ehrenfeld during the December 7, 2015, Council meeting, at which the Project was on the agenda.¹ Second, although Mr. Ehrenfeld recused himself from the DRB's consideration of the Project at the DRB's November 18, 2015 and December 16, 2015 meetings, Mr. Ehrenfeld not only failed to recuse himself from the August 26, 2015 meeting at which the Project was first presented to the DRB, but he testified during the public hearing. (See Attachment A (Minutes of DRB's August 26, 2015, meeting), at pages 6-9.)

These acts by Mr. Ehrenfeld constitute participation in a governmental decision because he provided information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (See Cal. Code Regs., tit. 2, § 18704(b).) (A copy of Section 18704 is included as Attachment B.) Those acts by Mr. Ehrenfeld were not excepted from the definition of "participating in a decision" because neither was an "appearance ... as a member of the general public before an agency in the course of its prescribed governmental function ..." (*Id.* § 18704(d)(2).) An ex parte contact with a member of City Council is not an appearance as a member of the public before an agency. In opinions in response to requests for advice on the construction of the exception at Section 18704(b) dating back more than 20 years, the Fair Political Practices Commission ("FPPC") has made it clear that a public official's "contact" with public officials or "discussion" with them about the decision may not be made "in anything other than a public forum" if it is to fall within the exception to the prohibition against an official's participating in a decision affecting his or her financial interest. (See FPPC File No. A-95-243, Letter to Supervisor David Blakely, August 29, 1995, a copy of which is included as Attachment C²; see also FPPC File No. A-15-172, Letter to Michael Hansen, September 8, 2015 ("you may not discuss the decision with other officials outside of public comments made at any public meetings"), a copy of which is

¹ The Councilmember's disclosure of the ex parte contact with Mr. Ehrenfeld is documented on the audio/videotape of that meeting, at approximately 1:26 (one hour and 26 minutes after the beginning of the hearing on Item 16). We have been advised of at least one additional ex parte contact with another member of City Council made by Mr. Ehrenfeld that is not yet part of the public record, but which we anticipate will be disclosed at the January 4, 2016 City Council meeting.

² The authenticity of this letter, although unsigned, may be confirmed by reading it on the FPPC's website, www.fppc.ca.gov.

Honorable Mayor Parks and City Councilmembers
 December 30, 2015
 Page 3

included as Attachment D)³. Nor is testimony by a public official to the governmental agency of which he is a member, without that public official having recused himself from the agency's consideration of the matter. Had Mr. Ehrenfeld recused himself from the DRB prior to its taking up the Project on August 26, 2015, his testimony would have been that of a member of the general public before the agency in the course of its function, but the minutes do not reflect any such recusal. (See Attachment A, at pages 6-9.)

Mr. Ehrenfeld's violations of the Political Reform Act taint the City Council's consideration of the Project before you on January 4, 2016, because Mr. Ehrenfeld's efforts to effect changes to the Project to benefit his financial interest (his ownership of immediately adjoining property to the southwest of the Project site) were successful. As a result of Mr. Ehrenfeld's efforts to influence the design of the Project, the concerns he expressed at the initial DRB consideration of the Project have been substantially resolved by changes to the Project. Specifically, he expressed "concerns with the air, light, and noise pollution from the proposed structure and use He additionally said that "a wall being placed on the westerly property line as a buffer to shield his home would be beneficial in terms of the light and noise emittance." (Attachment A, at page 7.) Since August 26, 2015, the Project has evolved to include a wall at the westerly property line of the Project, which wall was initially proposed to be eight feet in height. Subsequent efforts by the Ehrenfelds to extend the wall and increase its height were successful, and now the Project includes a wall ten feet in height. The Ehrenfelds complained that their privacy would be intruded upon, and they would be subject to noise and glare, if the Town Hall Terrace was not removed or substantially reduced in size and accessibility. The Ehrenfelds' complaints were successful, with the Project before you on January 4 having a Town Hall Terrace reduced in size from approximately 2,500 square feet to a mere 300 feet, and with the public having no right to use that Town Hall Terrace. Similarly, the complaints of the Ehrenfelds about the size of the surface parking lot in the southwestern corner of the Project site, adjacent to their home, resulted in a reduction of a significant number of parking spaces at that location, with substantial landscaping being substituted for the parking spaces.

By contrast, the complaints and suggestions made by my clients have gone largely unaddressed, as set forth in the following section. Similarly, the complaints and suggestions made by the neighbor on the northwestern boundary to the Project site, on 11th Street, have for the most part been ignored, also as discussed below.

Design Review Board's Purported "Consideration" of the Project Before Adoption of a Resolution Recommending Its Approval

Another procedural deficiency was the manner in which the City staff pressured the DRB to approve the Project at its meeting held on December 16, 2015. The record shows that an eight-page draft Resolution was presented to the DRB approximately one hour before its meeting. The memorandum by which staff forwarded the draft resolution to the DRB members on December 16 made it clear that staff and City Council **expected** if not **required** the DRB to act to adopt the Resolution at its meeting that evening. Similarly, the several hundred-page Final EIR was released an hour or so before the DRB. That

³ See n.2.

Honorable Mayor Parks and City Councilmembers
 December 30, 2015
 Page 4

memorandum stated bluntly, "Following tonight's meeting, the DRB resolution will be forwarded to City Council for consideration at their January 4, 2016." Staff's direction did not allow for the option for the DRB to continue the matter, so that the DRB could carefully review the eight-page, single-spaced Resolution containing numerous, detailed findings of fact and law.

Perhaps even more egregiously, staff neglected to advise the DRB that City Council, at its December 7, 2015 meeting directed that analysis be undertaken immediately to evaluate two other traffic circulation alternatives. One set of "Regulatory Conclusions" that the DRB is charged with investigating and making findings is "Traffic, Parking and Pedestrian Circulation." (See Del Mar Municipal Code § 23.08.074.) Accordingly, the subject matter of the pending analysis was clearly within the purview of the DRB, but staff apparently intentionally omitted mention of that analysis to the DRB at its meeting nine days following City Council's action requesting that analysis of alternatives.

So staff, presumably reflecting the will of City Council, made it clear that the DRB needed to act that evening, even though there was an important analysis of traffic circulation alternatives pending, and even though there was insufficient time for the DRB members to review the Final EIR, to consider carefully the issues presented by members of the public who testified that evening as well as those who submitted written comments, and to reflect on the findings they were being asked to make in the draft Resolution approving the Project. Simply put, the record reflects that staff, with the assistance of the DRB chair, over the expressed objections of three members of the DRB -- who requested that staff walk the DRB through each of the findings the DRB was being asked to make -- railroaded the DRB into adopting the Resolution.

Council need not be reminded of the important functions served by the DRB, particularly in the case of the project before you on January 4, where the City itself is the applicant and the decision maker. Careful and deliberate consideration of the issues and proposed findings by the DRB was warranted, but did not occur. The charade of DRB's "review" and approval of the Project is clear to all who understand the circumstances and who review the videotape of the DRB meeting. My clients believe that the City deserves better.

Issues Regarding Ingress and Egress to the Project

For at least the past quarter century that my clients have resided on 11th Street, access to City Hall has been balanced between 10th Street and 11th Street. Presently, from 10th Street vehicles can enter and exit from the upper parking lot on a paved driveway approximately 28 feet in width (well more than two lanes). Also from 10th Street, vehicles can enter and exit from the lower parking lot on a roadway that is 24 feet in width (two lanes wide), narrowing slightly to approximately 17 feet (still enabling two-way traffic if drivers are careful), with the driveway widening again to 24 feet as the driveway heads north toward 11th Street. By comparison, access to the Project site from 11th Street is via a single point, a driveway of approximately 14 feet wide to the lower parking lot. Thus, there are **two** points of ingress and egress to City Hall from 10th Street, each of which is wider than the **one** point of ingress and egress to City Hall from 11th Street. There is nothing in the record of the Project to indicate that having two points of ingress and

Honorable Mayor Parks and City Councilmembers
 December 30, 2015
 Page 5

egress to City Hall via 10th Street over the past few decades has caused any traffic safety or other traffic circulation issues.

Notwithstanding the fact that there has been more, and wider, ingress and egress to City Hall from 10th Street than from 11th Street, the Project as initially proposed, and through various changes to multiple components of the Project, changes this pattern. The Project calls for a single ingress point to City Hall/Town Hall from 10th Street, with two points of ingress and egress to City Hall/Town Hall from 11th Street. Thus, **all vehicles exiting City Hall/Town Hall would be directed onto 11th Street**. The staff report to City Council dated December 7, 2015, states that the driveway providing egress onto 10th Street "can only be designed to be a single-lane in width" due to the steep grade of 10th Street. Yet, that report does not address how the current two points of both ingress and egress have functioned, apparently successfully, on 10th Street. And, of course, the grade of 10th Street has not changed over the past 30-40 years.

The result is an unbalanced and dramatic change in the traffic circulation patterns around City Hall, with the disproportionate burden falling on the residents of 11th Street. My clients have raised legitimate safety concerns with respect to this additional burden repeatedly since May 2015, and have proposed alternatives, to no avail at least until December 7, when City Council gave direction to staff to evaluate two alternatives. City Council gave direction to staff and the Project team that the lower level surface parking lot should be key-controlled, such that it will be used only by oversized or emergency vehicles or for special events. Although this change somewhat mitigates the burden on 11th Street and my clients in particular, my clients have advocated a truly balanced access and circulation plan that is represented by Alternative 4A. As of 2:00 p.m. today, the promised analysis of the two alternatives has not been released for public review. We expect to present to City Council at the hearing on January 4 a letter report and oral testimony from a traffic engineering consultant to address that analysis, as well as the previous traffic analyses that have been incorporated into the FEIR.

Issues Regarding Privacy, Noise and Related Impacts on Residents of 11th Streetb

My clients' neighbor on the south side of 11th Street, immediately adjacent to the Project property, is similarly situated to the Ehrenfelds on 10th Street: the Ehrenfelds' home borders the Project site at its southwest corner; my clients' neighbor's home borders the Project site at its northwest corner. She has made complaints to the City in writing, similar to those of the Ehrenfelds, about the privacy, noise and related impacts of the Project, including the Ocean View Terrace, which invade her privacy by allowing the public to look into her yard and home. She requested that a stairway be relocated in order to mitigate that impact, but the City has been unresponsive. The only concession that the City has made to her complaints about the proximity of the surface parking lot and its noise and related impacts is to reduce the number of parking spaces at the northwest corner of the Project site by **one**. The City's minimal response to the identical sorts of concerns by the 11th Street property owner contrasts markedly with the numerous and significant changes to the Project design that the City has made to the southwestern corner of the Project, adjacent to the Ehrenfelds' residence.

Honorable Mayor Parks and City Councilmembers
 December 30, 2015
 Page 6

My clients share and wish to reiterate the complaints of their neighbor on 11th Street regarding noise and invasion of privacy occasioned by the Ocean View Terrace, from which members of the public can look into their home and yard. They believe that they are entitled to a reduction in size of the Ocean View Terrace, just as City Council, at its December 7 meeting, acted to direct a drastic reduction in the size and circumstances of access to, the Town Hall Terrace in response to the concerns raised by the Ehrenfelds.

Deficiencies in the Project's Traffic Assessment

Any analysis of a project's traffic-related impacts is underpinned by the estimate of the number of trips to be generated by the Project, over the base case. The projected trip generation estimate is the starting point, and if it is erroneous, the entire traffic analysis and its conclusions are suspect. Here, despite contrary evidence in the record, the Final Environmental Impact Report ("FEIR") and its supporting Traffic Analysis and the December 10, 2015 Supplemental Traffic Assessment, inexplicably concludes that the Project will generate no new trips because "the City Hall use is not changing." (December 10, 2015 Supplemental Traffic Analysis, at page 1.) While the net interior floor area of the proposed new City Hall and Town Hall will be only 958 square feet larger (excluding parking) than the existing civic complex (an increase of approximately 10 percent), there is no question that the interior space will permit much larger gatherings than does the existing space – seating up to 250 people, including the breezeway. (See December 16, 2015 PowerPoint presented to the DRB.) With space of that size, many more large community and civic activities can and will be accommodated at City Hall/Town Hall than occur today. Moreover, as set forth in the FEIR, the 15,000-square foot public plaza is intended to be used for large outdoor community and civic events, such as art exhibitions, from early morning until late evening. (See FEIR at RTC-51 ("Special events would be permitted daily from 7:00 a.m. to 10:00 p.m. ...") and FEIR at S-2 and 3-8.⁴

As set forth in the material presented to the DRB at its meeting of December 16, 2015, there are numerous "Additional Components" of the proposed Project that are not now part of City Hall. They are enumerated as follows:

- Town Hall seating up to 150 (250 with breezeway)
- 15,000 sf public plaza with trellis
- New public viewing decks

....

⁴ "The Town Hall would accommodate the City Council chambers, community meeting space, and the Del Mar television studio network offices. **An increase in meeting space would allow for events up to 250 people and more frequent use of the civic facilities by the community for public meetings and workshops.** ... "Outdoor public plazas and spaces are designed to be open areas with flexible space. Specifically, the Del Mar Town Commons, located immediately to the east of City Hall and north of Town Hall, would support uses including but not limited to performances, art exhibits, community gatherings, and farmers' market space, as well as seating areas." FEIR, at S-2 and 3-8 (emphasis supplied).

Honorable Mayor Parks and City Councilmembers
December 30, 2015
Page 7

It defies reason and logic that the admitted *addition* of these components to the new City Hall/Town Hall complex will not result in the generation of additional trips. The FEIR makes it plain that there will be multiple special events, at all hours of the day and night, at the Town Hall, using the exterior spaces (plaza and public viewing decks) as well as the interior space. It is abundantly clear from statements made throughout the EIR that the above-referenced features are specifically intended to allow special events of a size and scope, which cannot now be held at City Hall, to be held in the new City Hall/Town Hall complex. It goes without saying that those special events that will be held at the new City Hall/Town Hall complex that could not be held at the existing City Hall will generate trips in addition to those generated by the existing City Hall. Yet, notwithstanding this obvious fact, the FEIR inexplicably concludes that "the City Hall use is not changing" and accordingly there will be no new trips generated by the Project. This fundamental flaw undermines and casts doubt upon the validity of the subsequent steps in the traffic analysis. As a consequence, the traffic analysis and the FEIR in which it is incorporated are deficient.

Conclusion and Recommendation

Substantively, my clients would like to see the Project modified to provide for the following:

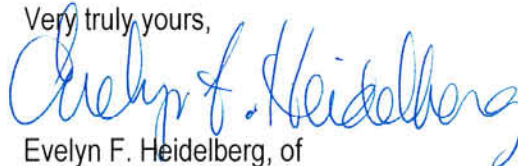
1. Balanced traffic flow and circulation, with one set of ingress and egress on both 10th Street and 11th Street, as set forth in Alternative 4A;
2. Implementation of safety measures on 11th Street (signage restricting turns to right-turns only onto 11th Street from the Project, as well as a median, mirrors, etc.);
3. As the Annex Building which presently shields my clients from the Project site will be demolished, landscape screening of the surface parking lot to provide some noise abatement and privacy; and
4. Reduction in size of the Ocean View Terrace to reduce the Project's intrusion into my clients' privacy (just as the City has done for the Ehrenfelds on 10th Street, by reducing the size of the Town Hall Terrace).

Procedurally, based on all of the above considerations, my clients respectfully request that City Council continue its consideration of the Project, with direction to staff to address my clients' concerns and

Honorable Mayor Parks and City Councilmembers
December 30, 2015
Page 8

requested modifications and to submit a revised Project to the DRB for its deliberate review and consideration before the Project is to be voted upon by City Council.

Very truly yours,



Evelyn F. Heidelberg, of
Procopio, Cory, Hargreaves & Savitch LLP

EFH/pat
Attachments

cc: Leslie Devaney, Esq.
Mr. Scott Huth
Ms. Kathleen A. Garcia

Attachment A



City of Del Mar



Design Review Board

Wednesday, August 26, 2015
Action Minutes

ROLL CALL – 6:01 p.m.

- Present: Chair Curtis, Board Members Michalsky, Macdonald, Ehrenfeld and Haviland, and Ex-Officio Alternate Rissling
- Absent: Vice Chair Bekkar and Board Member Levine
- Staff: Planning Manager Birnbaum, Senior Planner Bator, Senior Planner Smith, Associate Planner Rick Casswell and Assistant Planner McMahon

APPROVAL OF MINUTES

MOVED BY BOARD MEMBER MICHALSKY, SECONDED BY BOARD MEMBER MACDONALD, TO APPROVE THE MINUTES OF THE DESIGN REVIEW BOARD MEETING HELD ON JULY 22, 2015, AS AMENDED.

VOTE: 5-0

(VICE CHAIR BEKKAR AND BOARD MEMBER LEVINE ABSENT)

UPDATE

Planning Manager Birnbaum gave an update on the following:

The Ad-Hoc Development Review Process Citizens' Committee has held four meetings. The meeting schedule is the 1st and 3rd Tuesdays of each month at 6:00 p.m. generally in the City Hall Annex building but occasionally in the Council Chambers, as meeting conflicts arise. The Committee is in the process of preparing a Work Program. Agendas and related information is posted on the City's web site.

Based on requests and discussion at previous DRB meetings, starting in September, the DRB packet will be available on at noon on the Wednesday of the week prior to the DRB meeting.

City Council's conditional approval of DRB15-009 (Lasensky) at 641 Hoska Drive.

HEARING FROM AUDIENCE ON ITEMS NOT LISTED ON THE AGENDA (ORAL COMMUNICATIONS)

None.

DESIGN REVIEW BOARD/STAFF DISCUSSION

None.

DISCUSSION AND BRIEFING

Planning Manager Birnbaum noted that Item #1 (DRB-14-22, CDP-14-10, LC-14-06), Item #2 (DRB-15-010, CDP-15-007, LC-15-006) and Item #5 (DRB15-015, CDP15-004, LC15-007) were not eligible for the consent calendar due to letters of opposition, while Item #3 (DRB15-011) and Item #4 (DRB15-014) are eligible for the consent calendar.

CONSENT CALENDAR

Item #3 (DRB15-011) and Item #4 (DRB15-014) were nominated for the consent calendar.

ITEM 3
DRB15-011

Item was approved on the consent calendar.

APN: 301-021-05
Location: 226 Ocean View Avenue
Applicant/Owner: Harley Sefton
Agent: Bokal and Sneed Architects
Zone: R1-10
Environmental Status: Exempt
Contact Person: Shaun McMahon, Assistant Planner
Description: A request for a *Design Review Permit* to; construct two new additions totaling 430 sq.ft., make modifications to the driveway area and associated hardscape, and to relocate and reduce the size of the existing pool.

ITEM 4
DRB15-014

Item was approved on the consent calendar.

APN: 299-220-42
Location: 340 Serpentine Drive
Applicant/Owner: Tom Tullie
Agent: Richard Sousanes
Zone: R1-10
Environmental Status: Exempt
Contact Person: Rick Casswell, Associate Planner
Description: A request for a *Design Review Permit* to construct a previously approved portion of "main-level" balcony (deck) to connect to an existing balcony located at the rear (west) of the existing single-family residence.

MOVED BY BOARD MEMBER MICHALSKY, SECONDED BY BOARD MEMBER HAVILAND, TO APPROVE THE CONSENT CALENDAR CONSISTING OF ITEM #3 (DRB15-011) SUBJECT TO THE CONDITIONS IN THE STAFF REPORT AND THE ADDED CONDITION THAT THE APPLICANT MAINTAIN THE EXISTING HEDGE ON THE EASTERN PROPERTY LINE AS WELL AS SUPPLEMENT IT WITH ADDITIONAL VEGETATION TO MITIGATE HEADLIGHT LIGHT; AND ITEM #4 (DRB15-014) SUBJECT TO THE CONDITIONS IN THE STAFF REPORT.

VOTE: 5-0
(VICE CHAIR BEKKAR AND BOARD MEMBER LEVINE ABSENT)

TEN DAY RIGHT OF APPEAL

CONTINUED APPLICATION(S)

ITEM 1
DRB-14-22
CDP-14-10
LC-14-06

APN: 299-021-03
Location: 2828 Oceanfront
Applicants/Owners: Matt and Laurie Coleman
Agent: Rich Bokal, Bokal and Sneed Architects
Zone: R1-5B
Environmental Status: Exempt
Contact Person: Adam Birnbaum, Planning Manager
Description: A request for Design Review, Coastal Development, and Land Conservation Permits to demolish a one-story single family residence and detached two-story accessory structure and to construct a new two-story single-family residence, a new two-story detached accessory structure and to install perimeter fences/walls and landscaping with associated grading on an oceanfront lot located immediately south of the 29th Street right-of-way/public beach access path.

Note: This project is located within the Coastal Commission's appeals area.

Planning Manager Birnbaum presented the staff report.

Board Member Michalsky asked about the height of the finished floor.

Planning Manager Birnbaum stated that the applicant could elaborate on that during their report.

Board Member Macdonald asked if the applicant was planning to construct the seawall prior to the construction of the home.

Planning Manager Birnbaum stated that the applicant could build their own seawall but, from an economy-of-scale, it would not be as effective as building one in a joint effort with the neighboring property owner (Gaylord).

Board Member Michalsky asked if the Board could require the applicant to build the seawall prior to the building of the home.

Planning Manager Birnbaum explained that there is not a nexus for the Board to require the completion of the seawall prior to the commencement of residence construction but that there is a nexus to require abatement of the non-conforming Beach Overlay Zone circumstance before the home is given final approval and a condition to that effect has been suggested.

Disclosures

Chair Curtis none.

Board Member Ehrenfeld visited the site and had a brief phone conversation with Bob

Scott.

Board Member Haviland visited the site.

Board Member Michalsky visited the site and spoke with Bob Scott.

Board Member Macdonald visited the site.

Bob Scott, RJS Planning, explained siting and size of the home and pointed out that the current project abates all nonconformities. He then described the setbacks on the property and their correlation to the properties around the subject property. In addition he noted the public views that will be opened up by moving the building as well as more open space. Lastly he explained the applicant's plan to beautify the street end.

Board Member Macdonald asked about the siting of the palm trees that were referred to by a neighbor's Red Dot correspondence.

Rich Bokal, stated that there are 8 palm trees proposed along the northern property line.

Board Member Macdonald asked if the applicant would be willing to place the wall in the location that edge of the home currently exists, which is ten inches further south than what is currently proposed.

Rich Bokal, stated that the applicants would prefer to retain the proposed privacy wall alignment.

Board Member Macdonald asked if the applicant would be willing to keep the same amount of glass panels in the new wall as currently exist at the site on the current wall.

Rich Bokal stated that privacy is of great concern to the applicant so they have proposed three glass panels as opposed to the four that currently exist.

Board Member Haviland asked when the seawall would be built.

Jim Sweig, Sweig Construction, stated that building the seawall first or concurrently with the basement would be the most effective way to go about the project.

Board Member Michalsky asked how tall and how deep the wall will go.

Jim Sweig, Sweig Construction, explained that all of those details depend on the engineering.

Public Hearing Opened

Julie Hamilton, the Gaylord's (southerly property owner's representative), stated her client's concerns are, primarily, with the seawall and the timing of the construction. She also noted that she believes her client's should be granted the ability to review the construction techniques of the seawall so that they can ensure their own home will be protected when the applicants' seawall is taken down to be rebuilt.

Chair Curtis asked Julie Hamilton to reaffirm their concerns with the proposed project.

Julie Hamilton, the Gaylord's representative, reaffirmed that she is concerned about the seawall being approved at a later date without her client's reviewing the techniques that

will be employed to build the wall. She additionally stated that her clients have an issue with a proposed palm tree on the northwest corner of the property.

Board Member Macdonald asked about the process of the submittal and approval of the engineering plans.

Planning Manager Birnbaum explained the process of the engineering and geotechnical review. Additionally, he stated that everything that will be submitted will be of public records and can be viewed by the neighbors.

Public Hearing Closed

Rebuttal

Rich Bokal, stated that he believes that the project is conditioned in a way that will keep the project from negatively affecting the neighbors during construction.

Julie Hamilton stated that the Gaylords wish for the northwestern palm tree to be removed.

Rich Bokal amended the application to remove the pigmy palm from the northwest corner of the property.

Deliberation

Board Member Haviland stated that he has concerns about the bulk and mass of the accessory unit.

Board Member Ehrenfeld agreed with concerns about bulk and mass, citing section 23.08.078.E, and would also like to see all of the fireplaces converted to gas instead of wood burning.

Board Member Macdonald explained that believes the northerly privacy wall should be moved back ten inches to so as to align with where the existing home currently sits. He cited section 23.08.077.A of the Design Review Ordinance, regarding public views as justification.

Board Member Ehrenfeld agreed with the suggestion for realignment of the privacy wall but was not sure that moving the entirety of the wall is necessary to keep those public views.

Rich Bokal asked if the applicant could possibly start the realignment of the wall further west instead of the whole length of the property on the north side.

Board Member Ehrenfeld stated that he would like to see the grade of the accessory unit lowered to the existing structure's (first) finished floor elevation, with the a corresponding lowering of the maximum height of the proposed structure by 28 inches (finished first floor lowered from elevation 15.07' to 12.74' and the roof ridge from 37.83' to 35.5' citing section 23.07.078.E of the DRO.

Chair Curtis explained his concern about the size of the buildings in relation to the size of the lot even though the floor area of the basement is exempt.

Board Member Michalsky also noted concerns about the bulk and mass of the accessory unit and stated that he would like to see it lowered to the same grade as the current structure. He also agreed with the removal of the wood burning fire places.

Planning Manager Birnbaum recapped the Board's concerns.

Rich Bokal amended the application to change all of the proposed fireplaces to gas burning.

Board Member Haviland cited section 23.08.076.D of the DRO noting that the topography of the accessory unit does not match the neighboring properties.

Planning Manager Birnbaum explained that with the application amended by the applicant, the Board could now take action on the amended application.

MOTION BY BOARD MEMBER MICHALSKY, SECOND BY BOARD MEMBER MACDONALD, TO APPROVE APPLICATION DRB-14-22, CDP-14-10, AND LC-14-06, AS AMEDNED BY THE APPLICANT WITH REGARD TO THE LOWERING OF THE FINISHED FLOOR AND ROOF HEIGHT OF THE ACCESSORY STRUCTURE AND DELETETION OF THE PALM AT THE NORTHWEST CORNER OF THE SITE; SUBJECT TO THE CONDITIONS CONTAINED IN THE STAFF REPORT; AND THE ADDED CONDITIONS REQUIRING; 1.) A REALIGNMENT OF THE NORTHERLY PRIVACY WALL TO BE CONSISTENT WITH THE FACE OF THE NORTHERLY WALL OF THE EXISTING RESIDENCE; AND 2) THE CHANGE OF WOOD-BURNING FIREPLACES TO GAS-BURNING.

VOTE: 5-0
MOTION APPROVED
(VICE CHAIR BEKKAR AND BOARD MEMBER LEVINE ABSENT)
TEN DAY RIGHT OF APPEAL

NEW APPLICATION(S)

ITEM 6
DRB15-017

TIME CERTAIN - 6:00p.m.

APN: 301-021-05

Location: 1050 Camino del Mar

Applicant/Owner: City of Del Mar

Agent: The Miller Hull Partnership

Zone: PF

Environmental Status: Environmental Impact Report under preparation

Contact Person(s):

Item is scheduled time certain to 6:00p.m.

Kathleen Garcia, Planning and Community Development Director
Joseph Smith, AICP, Senior Planner

Description: A preliminary review of the design progress to date for

constructing new public buildings, including an (approximately) 9,250 sq.ft. City Hall, 3,200 sq.ft. Town Hall, 160 public parking stalls (in structure and surface) and a 15,000 sq.ft. public plaza.

Planning and Community Development Director Garcia presented the staff report.

Mike Jobes, Miller Hull, made a presentation on the proposed building massing and design elements.

Public Hearing Opened

Jim Watkins 1552 Camino del Mar applauded the architect with respect to the layout but stated he has concerns with the aesthetic appearance. He cited the L'Auberge hotel, old Del Mar Hotel, Stratford Square and the Powerhouse as buildings for which town hall and city hall should be modeled after in order to stay in character with the town. He then explained the importance of community input towards aesthetic design.

Kit Leeger 1442 Camino del Mar, shared similar concerns with Jim Watkins but also cited the space for the Farmer's Market as well as future expansion areas. Additionally, she stated a concern with the materials being used for the plaza and well as the interior aesthetic design explaining that the outside aesthetics are much more important than the inside of the buildings.

Tom Seymour, 1011 Camino del Mar, noted his concerns with view blockage created by the proposed buildings. He stated that approximately 90% of his views will be taken by the new buildings if they remain in the location as currently proposed. Also, he asked that the architects consider moving the town hall to the other side of the site or moving it back off of the street so that it will not affect his tenants' views.

Surin Dutia 238 11th Street, said he is in favor of the project due to the need of a new facility for the City Employees. Although he is in favor of the project, he did state he has concerns with the parking and traffic specifically with the ingress and egress on 11th Street. He also expressed a concern with the traffic safety issues that will be created by the new parking entrances and exits. Lastly, he thanked the employees and architects for their efforts and reiterated that he is favor of the project.

Greg Rothnam 9th Street stated that he is appreciative of the efforts of the architects and also agreed with the comments made by Jim Watkins and Kit Leeger pertaining to the aesthetic design. He also cited a concern with the south east corner of the property and the "backside" of the town hall. Additionally he wanted to make sure that people to the east will not be looking down at roofs.

Rick Ehrenfeld 220 10th Street, has concerns with the air, light, and noise pollution from the proposed structures and use. Additionally he cited concerns with the openings of the parking garage and the possible air pollution coming from the structure. He additionally said that a wall being placed on the western property line as a buffer to shield his home would be beneficial in terms of the light and noise emittance.

Dean Meredith 1125 Camino del Mar, noted that the site plan is set up well and in terms of the plaza he feels as if the farmers market may not be a good fit there due to potential spills and stains. He then explained that a better idea would be to have the solid goods

up at the plaza level and the foods down by the parking lot. He also explained that the roof structure could have a bit more articulation but he stressed how difficult the height restrictions are to deal with. Overall he applauded the work of the architects and is in favor of the project mixing both old and new Del Mar to create a progressive design that makes a statement along the west coast.

Monica Meredith 1956 Seaview Avenue, explained that she too believes that the farmers market should be moved down to the parking lot instead of being up in the plaza. She also touched on the design element of the City Hall and thinks that the City Hall should be a landmark of Del Mar which reflects the character of the town.

Ivan Gayler 410 15th Street has concerns about the connection from the village area to town hall and believes some sort of attraction has to be in place to get people down to the City Hall. He also explained that he does not think the plaza will be used unless there is a reason for people to be there, if not, he stated that people will just go to the park for better views. Additionally he stated that he would like to see the height envelope increased and some other rules broken so that the architects could provide some more articulation and interest in the building and site.

Deliberation

Board Member Macdonald commended that architects and City Staff for their work on the project. He stressed the need for the articulation and stated that given the constraints of the municipal code the architects have done a great job. Additionally he stated that maybe some rules might need to be broken to achieve those uses and attractions. Lastly, he agreed with Ivan Gayler with respect to the site needing some mixed uses to attract some people to the site and liven up the southern part of town.

Board Member Haviland asked if the DRO only protects residential views.

Planning Manager Birnbaum stated that the DRO protects view for residential properties with respect to that specific section but there are some other areas in which more views are protected. He then reiterated that the protection of residential views is the main goal of that section of the DRO.

Board Member Haviland asked Ex-Officio Cecil about the use of decomposed granite in the plaza space.

Ex-Officio Cecil stated that decomposed granite is a good medium for permeable spaces but does cause some maintenance concerns.

Board Member Haviland asked Planning and Community Development Director Garcia where they planned to allow the farmers market.

Planning and Community Development Director Garcia explained that the farmers market will have room in the plaza space.

Board Member Michalsky explained that he would like to see some more articulation from the roofs and some change in the massing. He then explained that he likes the idea of seeing through the building and believes the parking structure needs some kind of screening for light. He also thought that design comments from the public should be

listened to and incorporated accordingly. Lastly, he expressed concerns with the farmers market being at the plaza and the ingress and egress of the parking areas.

Chair Curtis noted that the breezeway was one of his favorite parts of the design but also agreed that there needs to be some more articulation. He cited the TV studio as a potential problem as far as a visual impact. Also, he explained that the siting of the buildings was a major strong point in the design with the exception of the potential ingress and egress problems caused by the parking layout and the 11th Street intersection. Lastly, he explained that the public plaza space will be a blank space unless there is some type of attraction or animation use there.

Public Hearing Re-Opened

Ivan Gayler 410 15th Street stated that any plaza needs some sort of animation to attract people and make them use the area, he also said that the Del Mar 2000 plan and the A.M. Stern design for the community center.

ITEM 2
DRB-15-010
CDP-15-007
LC-15-006

APN: 299-280-37
Location: 1525 Luneta Drive
Applicants/Owners: DMIG 1525 Luneta Dr., LLC
Zone: R1-10
Environmental Status: Exempt
Contact Person: Matt Bator, AICP, Senior Planner
Description: A request for *Design Review, Coastal Development, and Land Conservation Permits* to demolish a one-story, single-family residence and construct a new (replacement) two-story, single-family residence with a new pool/spa and associated grading, landscaping and site improvements.

Senior Planner Bator presented the staff report.

Disclosures

Chair Curtis visited the site and met with Ted Shank.

Board Member Ehrenfeld visited the site and met with the applicants.

Board Member Haviland visited the site.

Board Member Michalsky visited the site and spoke with Ted Shank and Ryan Gad.

Board Member Macdonald visited the site and met with the applicant twice and concerned neighbors.

Howard and Ryan Gad, Heritage West Development, played a video describing various aspects of the proposed project including structural siting, massing, neighborhood conformance, views from the Zuni and Luneta Drives as well as the proposed landscape and hardscape for the project.

Public Hearing Opened

Ted Shank 432 15th Street described the history of his home as well as the community character around his home. He then stated that the new home will be devastating to his

property, citing the blockage of his views and infringement on his privacy. He also cited bulk and mass in comparison to other homes in the area as a major concern of his.

Terri Pavelko 1661 Luneta Drive stated that she is in support of the project and feels as if it fits in with the character and size of the homes in the neighborhood.

Robert Freid 2921 Sandy Point explained that he is in support of the proposed home and pointed out that only the views from the primary living area are protected and that all areas of the project need to be considered including the beneficial aspects of the project.

Arthur Olson 550 Avenida Primavera noted that he went to Ted Shanks home and saw first hand the view blockage from the primary living area. He explained that after the story poles were altered there was little to no change of the view blockage from the living room.

Charlie Khoury 581 15th Street stated that he was appalled by the view blockage that will occur due to the proposed structure and believes the second floor should be taken off or the project should be denied.

Dave Olrey 377 13th Street said that he is in opposition to the project and noted that the applicant totally disregarded Ted Shank's concerns. He also talked about his experiences with the applicant and how he disregarded the neighborhood character at that point as well. He concluded that he believes the second floor should be removed from the development.

Ron Prater 442 Zuni Drive stated that he is strongly opposed to the home and cited bulk and mass as his main concern, but also raised issues pertaining to parking.

Greg Rothnam 9th Street, believed that the project does not violate the DRO as proposed and thought that personal attacks and sentiments against the applicants during public testimony need to be filtered out and instead only the objectionable facts should be taken into consideration.

Claire McGowan 436 15th Street, explained that she believes the project is an obstruction of Ted Shanks primary view and is very unreasonable. She also stated that the home that currently exists on the development site has spectacular views to the west and does not need a second story that will block someone else's view to get another view of their own. She concluded by urging the DRB to deny the project due to privacy concerns, view blockage and overall bulk and mass.

Michael Jackson 436 15th Street stated that the proposed development absolutely and unreasonably blocks views from Ted Shank's living area. He added that Mr. Shank's views from the outdoor area around his home are blocked as well. He concluded by wishing that the project be denied.

John Ferrell 1415 Via Alta explained that bullying and strong arming neighbors into signing away their rights to speak against the project should not be occurring. He also cited the DRO sections set forth in the staff report.

Sheela Sharp 442 15th Street stated that she was concerned about the view blockage from Ted Shank's living room, the scale of the home, and its overall proximity to Ted

Shank's home. Additionally she explained that the applicant should not be rewarded for his unsavory actions.

Bud Emerson explained that there are many things that the applicant could do to in order to appease the neighbors due to the fact that they don't know what size family will live there when its done being constructed. Also he explained that letting homes be built at this size is detrimental to the character of the town.

Public Hearing Closed

Rebuttal

Howard and Ryan Gad, Heritage West Development, explained their reasoning for the placement of the second floor bedroom and stated that they will go back to the drawing board and try to come up with a design that is significantly different.

Deliberation

Chair Curtis noted that he was disturbed by, and wanted to comment on the tone of the public testimony the Board had just heard. He explained that testimony should be based on facts and asked the crowd to refrain from side comments about either the applicant's proposal or the Board's comments.

He then moved to deliberation about the application. He noted concerns about view blockage from Ted Shank's living room as unreasonable and cited sections 23.08.077C & H. He believes that, based on the circumstances and the cited DRO section, a second-story bedroom is going to be difficult to include.

Board Member Michalsky agreed that the view blockage is very unreasonable and also pointed out the excessive overhangs. He also cited section 23.08.077.H due to the view blockage and also pointed out potential privacy concerns that the proposed development will cause. Additionally he cited 23.08.077.D for the siting of the home on the lot.

Board Member Macdonald explained that believes the wall should be moved back ten inches to where the home currently sits and cited section 23.08.077.A of the DRO.

Board Member Haviland explained that the proposed house will be much more prominent than the home that is currently there. Also he cited bulk and mass of the decks and overhangs, the parking, and the view blockage of Ted Shank's primary view. He cited 23.08.074.A for adversely affecting the neighborhood.

Board Member Macdonald explained that the primary view blockage is unreasonable and he also asked that the applicant to place some vegetation on Ted's property to mitigate the privacy issue.

Board Member Ehrenfeld stated that there is an unreasonable blockage of views citing sections 23.08.078.E, 23.08072.J, C and D of the DRO.

Chair Curtis explained that he is not in favor of denial but also explained that he would only approve the project if the second floor was removed.

Board Member Michalsky stated that he would have to see substantial change before he was ready for any sort of approval.

The Board offered the applicant a continuance date-certain to the September DRB meeting.

Howard and Ryan Gad accepted the continuance.

ITEM 5
DRB15-015
CDP15-004
LC15-007

APN: 298-421-12

Location: 107 Via de la Valle

Owner/Applicant: Brian Tucker

Owner Agent: Jim Sneed, Bokal & Sneed Architects

Zone: R1-14

Overlay Zone: Bluff, Slope and Canyon; Lagoon

Environmental Status: Exempt

Contact Person: Joseph Smith, AICP, Senior Planner

Description: A request for *Design Review, Coastal Development, and Land Conservation Permits* to demolish a one-story, single-family residence and construct a new two-story single-family residence with basement, grading and retaining walls, fencing, hardscape, landscaping, and associated site improvements located in the Bluff, Slope and Canyon and Lagoon Overlay Zones.

Note: This project is located in the appeal jurisdiction of the California Coastal Commission.

Senior Planner Smith presented the staff report.

Board Member Ehrenfeld asked about the site plans and which specific areas would require a CUP for development.

Board Member Macdonald asked who would determine what elements in the BSC zone would be removed.

Senior Planner Smith explained that the applicants would go to the Planning Commission and they would make that determination.

Planning Manager Birnbaum explained the CUP process specifically relating to this property and the ones surrounding it.

Disclosures

Chair Curtis none.

Board Member Ehrenfeld visited the site, met with the applicants and Mr. Mulvey.

Board Member Haviland visited the site.

Board Member Michalsky visited the site.

Board Member Macdonald visited the site and met with the applicant twice and concerned neighbors.

Bob Scott, RJS Planning, explained the goals of the project, siting and design constraints, as well as the comparison between the subject property and other properties in the Bluff Slope and Canyon Overlay Zone.

Board Member Macdonald asked about the approval that was given to the neighbor to the west.

Planning Manager Birnbaum explained that the height limit is 14ft. in that overlay zone unless there can be findings made by the DRB that an increase of height opens more space.

Board Member Ehrenfeld asked about the problems they encountered by possibly lowering the house.

Bob Scott stated that there might have been some encroachment onto the steep slope setback.

Public Hearing Opened

John Corn the Mulvey's representative explained the comparisons between his client's house and the applicant's proposal, also pointing out that the height limit in the Bluff Slope and Canyon Overlay is 14ft. unless it has less effect on the view shed than something that would conform to that height limit. He also noted that in the BSC overlay there can't be any view blockage unless there are no other alternatives for the siting.

Doug Mulvey 105 Via de la Valle noted the lots that are included in the Bluff, Slope and Canyon Overlay and also explained the heights and conditions that were placed on his house when it was approved.

Public Hearing Closed

Rebuttal

Bob Scott, RJS Planning, explained the goals of the project, siting and design constraints, as well as the comparison between the subject property and other properties in the Bluff Slope and Canyon Overlay Zone.

Board Member Michalsky asked if an arborist report had been performed.

Senior Planner Smith explained that an arborist report was not required because the trees slated for removal are not protected.

Senior Planner Smith clarified that the section of the code was wrongly quoted in the staff report.

Deliberation

Board Member Ehrenfeld cited section 23.08.077.2 of the DRO and explained that due to the siting of the proposed development it creates privacy and light impact concerns. He also explained that he would like to see a hybrid solution as it pertains to the height of the home.

Board Member Macdonald explained that he has a concern with the height given the project being in the Bluff, Slope and Canyon overlay zone. He also noted that he has not

been in any of the Solana Beach homes so it is hard for him to elaborate on the view blockage.

Board Member Haviland agreed with Board Member Macdonald in terms of the height but is also opposed to the basement being proposed.

Board Member Michalsky explained that he too has a concern about height as well as the privacy concerns of the neighbor.

Board Member Ehrenfeld stated that he has no opposition to a basement and stated that he believes the applicant should do something similar to what the neighbors to the west did with their home in terms of height constrictions.

Chair Curtis explained that he is not in favor of denial but also explained that he would only approve the project if the second floor was removed.

Board Member Michalsky stated that he would have to see substantial change before he was ready for any sort of approval.

The Board had offered the applicant a continuance date-certain to the October DRB meeting.

Rich Bokal accepted the continuance.

Adjournment 11:00 p.m.

Attachment B

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18704. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

(b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

(c) Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she:

(1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or

(2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

(d) Exceptions. Making, participating in, or influencing a governmental decision does not include:

(1) Ministerial. Actions by a public official that are solely ministerial, secretarial, or clerical.

(2) Appearances as a Member of the General Public. An appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental

function if the official is appearing on matters related solely to the his or her personal interests, including interests in:

(A) Real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;

(B) A business entity owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family; or

(C) A business entity over which the official, members of his or her immediate family, or the official and members of his or her immediate family solely or jointly exercise full direction and control.

(3) Terms of Employment. Actions by a public official relating to his or her compensation or the terms or conditions of his or her employment or consulting contract. However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or his or her immediate family, or set a salary for the official or his or her immediate family different from salaries paid to other employees of the government agency in the same job classification or position.

(4) Public Speaking. Communications by a public official to the general public or media.

(5) Academic Decisions.

(A) Teaching decisions, including an instructor's selection of books or other educational materials at his or her own school or institution, or other similar decisions incidental to teaching; or

(B) Decisions by a public official who has teaching or research responsibilities at an institution of higher education relating to his or her professional responsibilities, including

applying for funds, allocating resources, and all decisions relating to the manner or methodology with which his or her academic study or research will be conducted. This exception does not apply to a public official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to his or her own work.

(6) Architectural and Engineering Documents.

(A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:

- (i) The work is performed pursuant to the official's profession; and
- (ii) The official does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official.

(B) An official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if:

- (i) The review committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency;
- (ii) The review committee is required by law to include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and
- (iii) The official is a sole practitioner.

(7) Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or consultant's

employer and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87101 and 87302, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 18702 to section 18704, including amendment of section heading and section, filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18). For prior history of section 18704, see Register 2015, No. 6.
2. Repealer and new section and amendment of Note filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26).

Attachment C

August 29, 1995

Supervisor David Blakely
County of San Luis Obispo
Room 370, Government Center
San Luis Obispo, CA 93453

Re: Your Request for Advice
Our File No. A-95-243

Dear Mr. Blakely:

This is in response to your request for assistance under the conflict-of-interest provisions of the Political Reform Act.

In July of this year, you were advised by Daniel E. Muallem of our staff that your residence, which is located within 300 feet of the Santa Margarita Ranch, precluded your participation in decisions regarding development of the Santa Margarita Ranch project. (Blakely Advice Letter, No. A-95-202.)

You are now asking what you can do as a citizen in regards to actively working to advocate a position on the potential development of the Santa Margarita Ranch. You are also asking what limitations, if any, does the Commission impose on working on this issue while in your office at the county courthouse. Specifically you are asking if you can use the county mail system, the county computer, your secretary or your aide.

In addition, you are contemplating selling your residence, and desire to know what limitations the Commission may have on this activity.

QUESTIONS

1. What can you do as a private citizen in advocating your position on the Santa Margarita Ranch project?
2. What limitations are imposed on your ability to use county resources to advocate your position?
3. If you sell your home in Santa Margarita, will this eliminate the conflict of interest?

CONCLUSIONS

1. You may represent your personal economic interests before the board of supervisors in the same manner as any other member of the general public before your agency in the course of its prescribed governmental function solely to represent yourself on a matter which is related to your personal interests.

2. The Act does not address this issue. You may want to direct the misappropriation of public resources to the Office of the Attorney General.

3. If you sell your home, you would be precluded from participating in governmental decisions which would affect the purchaser of your home for 12 months following payment on your home.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision which they know or have reason to know they have a financial interest.

A public official is financially interested in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of the official's immediate family, or on:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifth dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Sections 87103(b) and (c).

You were previously advised that your principal place of residence, located within 300 feet of the Santa Margarita Ranch project, was an economic interest which would prevent you from making, participating in the making or using your official position to influence any decisions regarding the project.

By using your official position, we mean that you may not use your official position to influence a governmental decision which is within or before your agency or an agency appointed by or subject to the budgetary control of your agency, for the purpose of trying to influence the decision you contact, or appear before, or otherwise attempt to influence, any member, officer, employee or consultant of the board of supervisors. Attempts to influence, include, but are not limited to, appearance or contacts on behalf of a business entity, client, or customer. (Regulation 18700.1(a).)

However, you are not attempting to use your official position to influence a governmental decision if you appear in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent yourself on a matter which is related to your personal interests, or communicate with the general public or the press.
(Regulation 18700.1(b)(1) and (2).)

You could not, of course, make such presentations purporting to represent the voice and views as a member of the board of supervisors. Moreover, you may not act in a representative capacity, rather your representation must be limited to your own interests in real property.

In addition, you could not make contact with fellow board members or discuss issues concerning the Santa Margarita Ranch development project in anything other than a public forum.

With regard to your ability to participate in decisions if you sold your residence, the Commission does not prohibit public officials from disposing of their assets to enable them to participate in governmental decisions. If you should sell your home, the purchaser will become a source of income to you. The Act prohibits you from participating in decisions which would have a material financial effect on any source of income, aggregating \$250 or more in value provided to, received by or promised to you within 12 months prior to the time when a decision is made. (Section 87103(c).)

Accordingly, if you were to sell your home, you would still be precluded from participating in decisions regarding the Santa Margarita Ranch project for a 12-month period following final payment on your home.

I trust this answers your questions sufficiently. If you have any other questions, or need assistance, please contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel

By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

SGC/JET/jt

Attachment D



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

September 8, 2015

Michael Hansen
602 W First, Unit 106
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-15-172

Dear Mr. Hansen:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

FACTS

You are currently an employee of the City of San Diego and subject to the Act as a policy advisor to the Mayor of San Diego with the title of Director of Land Use and Environmental Policy. You recently received a notice of a proposed action of Civic San Diego ("CivicSD") on an application for a Process Two Neighborhood Use Permit No. 2015-41. This permit is for an expansion of a previously conforming structure and rooftop outdoor use area associated with an eating and drinking establishment. The project is located at 1909 India Street, which is immediately adjacent to your primary residence in Downtown San Diego. You have a leasehold interest in this property.

CivicSD is a non-profit public benefit corporation wholly owned by the City of San Diego. CivicSD carries out certain land use permitting functions for Downtown San Diego under consulting agreements with the City. In your capacity as a policy advisor to the Mayor, you routinely work on CivicSD issues. CivicSD's decision-making body is a Board of Directors appointed by the Mayor and City Council. The proposed action is a staff decision without a public hearing, but is appealable to the Board of Directors.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

ANALYSIS

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “[p]ublic officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) In furtherance of this goal, Section 87100 of the Act prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Your question concerns an exception to the conflict of interest rules set forth in Regulation 18704. Regulation 18704(d) provides:

“Making, participating in, or influencing a governmental decision does not include:

“(2) Appearances as a Member of the General Public. An appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental function if the official is appearing on matters related solely to the his or her personal interests, including interests in:

“(A) Real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;

“(B) A business entity owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;
or

“(C) A business entity over which the official, members of his or her immediate family, or the official and members of his or her immediate family solely or jointly exercise full direction and control.”

1. May you address the staff of Civic San Diego, Civic San Diego Board of Directors, and the City of San Diego City Council as a private citizen regarding a proposed outdoor bar and restaurant immediately abutting your primary residence?

As noted above, the Act does not prohibit public officials from representing their personal interests in their private capacity. Even if a conflict of interest is present, a public official may appear before his or her agency as any other member of the general public in the course of its prescribed governmental function in order to represent himself or herself on matters related solely to his or her personal interest, including an interest in real property which is wholly owned by the official or members of his or her immediate family. Such an appearance, properly made, does not constitute making, participating in making, or influencing a governmental decision.

While not explicitly listed in the examples in the regulation, we conclude this exception would also apply to your leasehold interest in your primary residence. “Real property” includes leaseholds of more than a month-to-month basis. (Section 82033; Regulation 18233.)

Under this exception, however, you must limit your comments to your personal interests and make clear that you are not speaking in the interest of any other person or group, or acting in your official capacity. (*Mitchell* Advice Letter, No. A-12-011.) Similarly, you may not discuss the decision with other officials outside of public comments made at any public meetings.

2. May your boyfriend, who has no association with the City of San Diego or Civic San Diego, express his views regarding the proposed project to the same parties?

The Act's conflict of interest rules only apply to "public officials." A "public official" is defined as every member, officer, employee, or consultant of a state or local government agency. (Section 82048.) Assuming your boyfriend is not a public official, the conflict of interest rules would not apply to him.

3. May either of you engage professional consultants to advocate for your interests as private citizens, such as noise experts or government affairs consultants?

Within the limitations set forth in Regulation 18704(d)(2), you may appear in the same manner as any other member of the public. Thus, if public members can appear with experts, you may as well. Or you may consult experts outside of the public meeting in preparation of your comments. With respect to your boyfriend, since he is not a public official, his conduct is not limited by the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl