



Katherine Douglas *General Public Comment - Cole Law*

From: Joseph Cole <joe@josephcolelaw.com>
Sent: Monday, September 30, 2024 12:45 PM
To: Joan Hartmann; Laura Capps; Bob Nelson; Das Williams; Steve Lavagnino
Cc: Rachel Van Mullem; Brian Pettit; Wilson, Jeffrey; Plowman, Lisa; sbcob; sbcob
Subject: Public Comment - Miramar Hearing scheduling and processing
Attachments: Cole Letter to BOS Hearing MPC 9-30-24.pdf

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Dear Board of Supervisors, Director Plowman, and County Counsel Van Mullem,

Submitted in the public interest -- attached is my letter concerning the County's planned scheduling and process for review of the Miramar project.

I will also address this issue with you at the public comment portion of tomorrow's meeting.

Clerk – please post this to the record for the Vox Populi public comment portion of the agenda on 10/1.

Thank you for your careful consideration.

Best regards.

Joe

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JOSEPH COLE
COUNSELOR AT LAW

September 30, 2024

By Email: sbcob@co.santa-barbara.ca.us
Chair Steve Lavagnino and Members
Santa Barbara County Board of Supervisors
105 E. Anapamu Street, Fourth Floor
Santa Barbara, California 93101

Caruso Miramar Project: Public Comment October 1, 2024.

Dear Supervisors:

I'm a former Montecito Planning Commissioner who approved the Miramar project 10 years ago. I write in the public interest for many community members with deep concerns about the sudden and seismic shift in County policy last week for regulating mix-use projects in Montecito such as the Miramar's current expansion project.

SUMMARY:

Last week, the County stripped the MPC of its decision-making authority for the Miramar project with an alarming lack of transparency, no public notice or input, and on questionable statutory grounds – thus further eroding the public's trust in County governance.

The unfortunate result of the County's action – unless the Board steps in – is bad policy, a terrible precedent, uncertain procedures involving a massive new loophole for developers, and unintended consequences that could hamstring the County in needless litigation in coming years.

I don't know of anyone who opposes the Miramar developer building apartments onsite and charging employees discounted rents even though such homes are not available to members of the public. I'm also not commenting here on the merits of the project.

But until the Board hears the larger policy question of stripping the MPC of its decision-making authority after public notice and input -- for good governance, ethics, and avoiding long-range unintended consequences with future Montecito projects -- please immediately:

1. Reinstatement of the MPC to full planning authority;
2. Don't burn the CPC's October 9 meeting on the Miramar as one of the five SB 330 hearings, which will substantially degrade the environmental, safety and other regulatory review.

3. Ensure that Supervisor-Elect Roy Lee will hear any appeals to the Board of Supervisors.

BACKGROUND:

In addition to serving on the MPC for three years, I've been a resident of Montecito and a real estate land use lawyer for 40 years. I understand the plain meaning of "countywide" in the governing statute, having served as the publisher of Santa Barbara's two largest newspapers.

Under a non-transparent and controversial legal interpretation of County Code sec. 2-25.2.b.3, the County changed its land use regulation policy in Montecito virtually overnight, with the following outcomes:

1. MPC Can't Approve or Disapprove: The MPC will not be allowed to approve or disapprove the Miramar expansion project; it may only provide recommendations to the County Planning Commission.

-- This policy decision by staff is procedurally and substantively ill-advised for the reasons described in this letter: the MPC must be reinstated to decision-making authority until the County provides notice and the opportunity the public to be heard.

2. MPC Only Allowed One Advisory Meeting: The MPC will be allowed only one meeting for its surprise advisory role, on October 18. Beyond that meeting, the MPC will have no other chance to question the developer, County Staff, or the many agencies and residents. As I described before the CPC last week, two full hearings were required when the MPC heard the developer's original approval.

-- The MPC must be permitted the time it and the community need to address the developer's substantial issues unique to the Montecito planning jurisdiction.

3. County Staff is Burning One of the Five SB 330 Public Meetings: The County has scheduled a largely redundant CPC meeting for October 9. This does the public a major disservice and provides the developer with a major advantage since your staff's action "burns" one of the five regulatory meetings that the County is allowed to hold under Senate Bill 330.

-- The October 9 CPC meeting should be canceled, and a MPC or BOS hearing should be preserved instead if needed since the staff presentation and public comment may be covered at the MPC's October 18 meeting.

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4. Das Williams Should Not hear any BOS Appeal: There will very likely be an appeal to the BOS. If so, it's anticipated that Das Williams will push it to be heard during the final days of his term.

-- Since Supervisor-Elect Roy Lee will have to deal with the outfall of this failure of good governance and perceived breach of public trust, an appeal to the Board of Supervisors should not be heard within Das Williams's dwindling days left in office.

QUESTIONS THE BOARD SHOULD PLEASE CONSIDER:

There are a host of troubling ethics, governance and practical questions that your Board should ask:

A. How Can the CPC Do As Good a Job in Montecito as the MPC?

As I described at the CPC hearing last week, does anyone believe that the CPC – as good as they are, but missing a key member and having limited experience with Montecito projects – would do as good a job as the MPC in planning for the Caruso project in the public interest? How often do the members of the CPC – particularly from the Fourth and Fifth Districts -- address the complex elements and practices of:

- the Montecito Community Plan,
- the Montecito Architectural Guidelines and Development Standards,
- the Montecito Fire Protection District's regulations and evacuation concerns,
- the Montecito Water District's water use issues,
- the Montecito Sanitary District's concerns,
- the current and planned CalTrans construction issues on the 101 construction in Montecito adjacent to the project,
- the concerns raised 10 years ago with the safety of the southbound 101 San Ysidro onramp which most locals avoid since it abruptly merges into traffic,
- the impact on coastal access through the hotel—luxury apartments—luxury shopping mall – employee housing,
- how has the conjunctive parking strategy worked for all stakeholders during the past 10 years and how will the increased retail parking be handled,
- the blocking of long-standing views,
- the retail space issues,
- the lack so far of environmental review, and

- the complex ingress and egress issues on a narrow site between the ocean and the freeway, with a railroad track running through it?

B. How will the BOS Handle the Precedent of the Massive Loophole the County is Creating?

The County has now created a loophole, as precedent, whereby any Montecito-based project can avoid the MPC by simply designating the caretaker or other quarters, no matter how few, as discounted employee apartments. Most larger projects I heard on the MPC have the scale to add at least a few employee apartments for a caretaker or other worker.

How, when and at what level does the new and unvetted MPC/CPC two-step process apply?

Will P&D/County Counsel make a closed-door determination on each project?

Will the CPC now routinely have to add to its workload and hear the large, complex Montecito projects?

Two developers I spoke with last night are actively considering the new legislative loophole.

C. Where's the Transparency with the County's Legal Analysis?

Where is the copy of the developer's letter to the County that resulted in the MPC being stripped of its decision-making authority? Is a copy available to the public of County Counsel's analysis in approving the developer's request? Why wasn't, in an open meeting, the public allowed to present clarifying legal arguments, interpretation or authority?

Are the project's private employee apartments really "*countywide*" as used under the plain language of Section 2-25.2(b)(3), a legal method of interpreting and construing statutes?

The hotel's new employee apartments will be *private* facilities: not available to anyone in the County except for Miramar employees. They are located on private property.

The *seven* examples in the Section 2-25.2(b)(3) exception are ALL *public* facilities, for the use and direct benefit of all county residents: "**countywide** transportation, airports, waste disposal sites, detention facilities, hospitals, reservoirs, fire facilities." (Bold added).

Did the County look at the County's intent when it passed Section 2-25.2(b)(3) decades ago via the legislative history?

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Affordable is used in a different sense – for projects available to the public, not just private employees.

“[W]hen a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope.” (More v. California State Bd. Of Accountancy (1992) 2 Cal.4th 999, 1011-1012. This is known as *ejusdem generis*. Under that doctrine, “the general term or category is “restricted to those things that are similar to those which are enumerated specifically.” [Citation.]

Are employee apartments really the same as the other examples in the statute, such as “airports,” “waste disposal sites,” “detention facilities,” “hospitals” and the rest? Although no one is against Caruso’s employee apartments, no one knows what authority County Counsel relied up, since her determination was done behind closed doors

D. What Happened to the Culture of Doing the Right Thing at the County?

Is there a problem with an open culture at the County? Why couldn’t the County have an open public process for such a momentous change?

CONCLUSION:

“*Sunlight is said to be the best of disinfectants.*” To retain public trust and good governance, please heed U.S. Supreme Court Justice Louis Brandeis’s 110 year-old prescription.

And reverse your staff’s legislative policy changes from last week.

Sincerely,



Joseph L. Cole

cc: Planning & Development Department; County Counsel.