



The voice of our community

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December 14, 2017

Montecito Planning Commission

123 East Anapamu Street

Santa Barbara, CA 93101

<u>AGENDA ITEMS</u>	
ITEM #:	3
MEETING DATE:	1-3-18

Re: Item No. 4 for MPC Agenda December 20, 2017 - Lighthouse Trust Demo/Rebuild Appeal

Dear Chair Keller and Members of the Montecito Planning Commission,

The Montecito Association would like to submit the following comments on the above-referenced appeal.

Christopher Price, agent for the appellant's attorney in this matter, appeared before the Land Use Committee ("LUC") of the Montecito Association on December 5th. The LUC did not have the benefit of hearing from the applicant, and thus did not receive a balanced presentation. Nevertheless, in the interest of preserving the semi-rural nature of Montecito and to uphold the Montecito Community Plan ("Community Plan"), the Montecito Association requests that the Commission carefully consider the following provisions from our community's guiding documents in its deliberations.

Goal LU-M-1 and the ensuing policy and action items of the Montecito Community Plan provide that in order to protect the semi-rural quality of life, architectural design shall promote neighborhood compatibility with the protection of residential privacy and public views, and, to the maximum extent feasible, private views of the mountains and oceans. Both neighborhood compatibility and view protection are implicated in this appeal. We ask that you consider the following in your deliberations:

Neighborhood Compatibility: The Community Plan (Goal LU-M-1) and the Montecito Architectural Guidelines and Development Standards ("Architectural Guidelines") call for architectural design to consider floor area, site planning, neighbor impacts, and overall project compatibility. The Architectural Guidelines evaluate neighborhood compatibility by considering, among other factors, (1) the "size, mass, bulk and scale of existing and proposed structures in relation to parcel sizes and development on adjacent properties;" and, (2) "setbacks and location of buildings in relation to parcel size and development on adjacent properties." Appellant informed LUC that the massing of the proposed roofline, close to the rear

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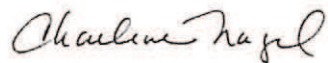
S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

setback adjacent to appellant's residence, contains a ridgeline of nearly 200 feet width-to-width. We ask that the Commission carefully consider the massing of the proposed ridgeline for consistency under the Community Plan and the Architectural Guidelines in terms of both the scale of the massing and site design of the proposed development relative to appellant's residence.

View Protection: The Montecito Community Plan (Goal LU-M-1) calls for architectural design to protect, to the "maximum extent feasible," private views of the ocean. Section IIIC of Architectural Guidelines states that "structures should be located and designed to avoid obstructing views from living areas of adjacent properties." Section IIIC further contains provisions relative to site design, variations in roof mass, changes in setbacks, and use of grading to minimize any view impact on an adjacent property. Appellant has expressed concern that the solid roof ridgeline materially obstructs his private views of the ocean. We ask that the Commission carefully consider the Community Plan's goal to protect, "to the maximum extent feasible" private views of the ocean.

Good Neighbor Policy: The Architectural Guidelines contain Good Neighbor Policies to consider when designing a new project. These policies include the consideration of "mutual neighborhood privacy in all aspects of the house design and site layout, including noise and lighting;" as well as the impact on "neighbors' views and privacy in the placement and architectural appearance of the [proposed development]". We ask that the Commission consider the Good Neighbor Policies in its deliberations.

Very truly yours,



Charlene Nagel

President

Montecito Association

HAND DELIVERED and ELECTRONIC MAIL

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December 15, 2017

Montecito Planning Commission
County of Santa Barbara
123 E Anapamu Street
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RE: Agreement to Continue Agenda Item No. 3/Hearing Date December 20, 2017:
MacElhenny Appeal of MBAR Preliminary Approval [16BAR-00000-00219] and
the Director's Land Use Permit Approval [17LUP-00000-00035] for 1948-1952
Tollis Ave., Santa Barbara, California 93108 (APNs 007-110-001 and 002)
[17APL-00000-00013 and 17APL-00000-014]

Dear Chair Keller and Planning Commissioners:

As you know, Brownstein Hyatt Farber Schreck, LLP represents the Lighthouse Trust
(the **Owner**) with respect to its Montecito parcels at 1948 and 1952 Tollis Avenue (the
Property).

Given the continuing threat and extraordinary risks to our community arising from the
Thomas Fire, the Owner is in agreement that the above appeals be continued to the
Montecito Planning Commission's January 3, 2018 agenda. This date have been
cleared with the Planning & Development Department staff and the Owner's design
team is in the process of rearranging travel plans for your Commission's first meeting of
the new year.

We look forward to coordinating site visits of the Property for each of the
Commissioners who would like a tour. The process of coordinating convenient times for
the site visits can commence as soon as the neighborhood is re-opened and the
conditions are safe.

Sincerely,


Christopher A. Jacobs

cc: Anne Almy, Supervising Planner
Mark Friedlander, Planner
Brian Banks

1020 State Street
Santa Barbara, CA 93101-2711
main 805.963.7000

Brownstein Hyatt
Farber Schreck

AGENDA ITEMS	
ITEM #:	3
MEETING DATE:	12-20-17

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December 15, 2017

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DEC 15 2017
S.B. COUNTY
PLANNING & DEVELOPMENT
SANTA BARBARA, CA 93101

RE: Agenda Item No. 3/Hearing Date December 20, 2017: MacElhenny Appeal of MBAR Preliminary Approval [16BAR-00000-00219] and the Director's Land Use Permit Approval [17LUP-00000-00035] for 1948-1952 Tollis Ave., Santa Barbara, California 93108 (APNs 007-110-001 and 002) [17APL-00000-00013 and 17APL-00000-014]

Dear Chair Keller and Planning Commissioners:

Brownstein Hyatt Farber Schreck, LLP represents the Lighthouse Trust (the **Owner**) with respect to its Montecito parcels at 1948 and 1952 Tollis Avenue (the **Property**).

Project Background.

The Property is presently configured as two legal parcels, each of which is improved with an existing single family residence. Owner acquired the Property on March 25, 2016, and thereafter carefully studied the land and the neighborhood. The ultimate design decision was to reduce the development density and maximize open space on the site with a new, single-story home being located on a 2.26 acre parcel to be rendered by voluntarily merging the two existing parcels. The Owner's design inspiration for the architectural styling derives from a melding of contemporary and traditional forms and massing. On August 24, 2017 the Montecito Board of Architectural Review (the **MBAR**) unanimously provided preliminary approval of the Owner's plans for a new residence, guesthouse, swimming pool, pool cabana and landscaping (the **Project**, or depending on context, the **Approved Project**). On the same day, the Director of Planning and Development (**P&D**) approved a Land Use Permit (the **LUP**) for the Project.

On September 5, 2017, Michael MacElhenny (the **Appellant**) filed an appeal of the Project and LUP (the **Appeal**) to the Montecito Planning Commission (the **Commission**). The Appellant is a member of Buena Vista 796, LLC, a California limited liability company

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(the **Company**), which acquired the property commonly described as 796 Buena Vista Avenue in March of 2017. The Company's acquisition occurred well after the Owner's first submittal of the Project application on November 4, 2016. The Appellant presently resides at 812 Buena Vista Avenue, a property owned by another limited liability company of which he is a member, Buena Vista 812, LLC.

The Appellant **knowingly acquired** 796 Buena Vista Avenue through the Company with full awareness of its proximity to the Owner's proposed Project and the potential visual and land use implications. There is no escaping the reality that the existing home on the Property and the existing home on the Appellant's property are in relatively close spatial proximity. This arises from the natural and manmade terrain characteristics, and the building location siting designed to capture ocean facing views. The Project does not modify the horizontal separation between the two homes. The Appeal contains all of the typical allegations regarding allegedly unacceptable view impacts, inconsistencies with applicable policies, and the adoption of findings that it asserts were not supported by substantial evidence. Through the Appeal, the Appellant is demanding, among other things, a further structural height reduction of 3 feet on the easterly portion of the Project's approved residence, and a condition of approval (in the form of an easement or perpetual covenant) limiting the height of new landscaping to protect the views from his presently unoccupied property.

The Appellant's Appeal is Lacking in Merit and Should be Denied.

The Owner has been very careful and deliberate in designing a tasteful home that is sensitive to the site and respectful of the neighborhood. In terms of size, it is less than 110% of the Montecito Architectural Guidelines (the **Guidelines**) recommended FAR, and the voluntary merger of the two existing legal lots dramatically and permanently reduces the total amount of development that would otherwise be allowed on the Property under the Guidelines. Once the Company acquired 796 Buena Vista Avenue and the Appellant started participating in the MBAR process, a number of material Project changes were made by the Owner's design professionals to address the Appellant's stated concerns. From the outset, Appellant's primary concern has been the height of the ridgeline of the new residence. The Owner's architectural design changes altered the structure and materially lowered the ridge in an effort to satisfy the Appellant, but his expectations constantly changed. Appellant has continued his opposition despite the fact that the building's tallest ridgeline height has been decreased by 8 feet during the MBAR process and is **now lower than the ridgeline of the existing residence on the Property**.

The Project has significant and important community benefit. First, by merging the two parcels, the density of development on the site is reduced from the 9,042 square feet

recommended under the Guidelines¹ to 7,037 square feet. In addition to this 22% reduction in development density, the traffic, water and other utility demands will be beneficially impacted having one single family residence with the customary accessory structures/uses as opposed to two single family residences. Second, the Owner reached a sewer service agreement with the Montecito Sanitary District (MSD) which provides substantial community benefit in that Owner advanced funding in the amount of \$197,750 that will allow MSD to expand the scope of a previously approved and funded MSD project on the lower segment of Olive Road. The public sewer mainline will now be constructed for the full length of Olive Road, from East Valley Road to the intersection of Tollis Avenue, and then will cross over on Tollis Avenue in a westerly direction to the Property. The MSD project is being designed and engineered to provide dependable sewer service to a number of property owners on Olive Road who had contacted MSD regarding service availability when their private septic systems began to fail.

The Owner believes the Appellant's Appeal to be lacking in merit, and urges the Commission to deny the Appeal and approve the Project. In providing its approval, the MBAR determined the Project to be consistent with the design review criteria mandated by the Montecito Land Use and Development Code (the Code). Section 35.472.070.A of the Code provides in full:

Purpose and intent. The purpose and intent of Design Review is to encourage development that exemplifies the best professional design practices, to benefit surrounding property values, enhance the visual quality of the environment, and prevent poor quality of design.

The Project Approval was definitely an iterative process that included extensive discussion at the MBAR level. The Owner's design team listened to comments made by various MBAR members, and the Approved Project incorporates meaningful responses to those comments. Architecture and design of buildings of all types, and perhaps particularly personal residences, involve matters of individual style and taste, a fact recognized by the MBAR. The MBAR noted its appreciation of the high quality of the Project's architectural design, acknowledged the Owner's right to select an architectural style that differs from the Mediterranean motif that dominates the neighborhood, and also commented that the home will not be visible from any public viewing areas.

The MBAR appropriately rejected Appellant's request for a condition of approval limiting the height of vegetation on the Property to protect his view. The MBAR does not have regulatory authority to impose or enforce covenants, easements or other agreements between private property owners, and the County certainly does not want to be in the business of policing alleged violations of private land use related agreements. (See section 35.400.040.F.3 of the Code.)

¹ Under the Guidelines the recommended FAR for 1948 Tollis Avenue (1.24 acres) is 4,708 square feet, and the recommended FAR for 1952 Tollis Avenue (1.02 acres) is 4,334 square feet. [4,708 + 4,334 = 9,042]

Substantial Evidence Existed to Support the MBAR's Adoption of the Required Findings for Approval.

In providing the Approval the MBAR made all the findings required by Section 35.472.070.F.1 of the Code [Attachment A to the Staff Report], and we request that the Commission do the same. The specific findings and the evidence in support thereof are as follows:

a. Overall structure shapes, as well as parts of any structure (buildings, fences, screens, signs, towers, or walls) are in proportion to and in scale with other existing or permitted structures on the same site and in the area surrounding the property.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, and in addition to aerial photographs of the surrounding residential development presented to the MBAR at the August 24, 2017 hearing, the Approved Project is consistent with this finding. The MBAR considered the residence directly to the west of the Property and the heights of other buildings in the neighborhood (including but not limited to the improvements on the Appellant's property), and determined that the Approved Project is in proportion to and in scale with the existing developed area surrounding the Property.

b. Electrical and mechanical equipment will be well integrated into the total design concept.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, all proposed electrical and mechanical equipment is concealed or well integrated into the total design concept.

c. There will be harmony of color, composition, and material on all sides of a structure.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, together with the color and material sample boards presented to the MBAR at the August 24, 2017 hearing, the design of the Approved Project's structures incorporates a harmonious integration of color, composition and materials on all sides.

d. There will be a limited number of materials on the exterior face of the structure.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, together with the color and material sample boards presented to the MBAR at the August 24, 2017 hearing, the design of the Approved Project's structures incorporates a limited mix of wood, stone and plaster materials in keeping with the

Project's architectural style which includes a blend of contemporary and rural design inspirations.

e. There will be a harmonious relationship with existing and proposed adjoining developments, avoiding excessive variety and monotonous repetition, but allowing similarity of style, if warranted.

As evidenced by the Project plans presented for Preliminary MBAR and LUP approval, in addition to aerial photographs of the surrounding development presented to the MBAR at the August 24, 2017 hearing, the Approved Project is in harmony with adjoining developments. The MBAR found that the Property is large enough to afford its own architectural style which does not repeat nor does it excessively vary from the style of existing, adjoining developments.

f. Site layout, orientation and location of structures and signs will be in an appropriate and well-designed relationship to one another, and to the environmental qualities, open spaces, and topography of the site with consideration for public views of the hillsides and the ocean and the semi-rural character of the community as viewed from scenic view corridors as shown on Figure 37, Visual Resources Map in the Montecito Community Plan EIR (92-EIR-03).

The Approved Project is designed to take advantage of existing mature trees and vegetation as well as the varying topography of the surrounding area to effectively screen the Project from public views. The MBAR conducted a noticed site visit which was attended by a majority of MBAR members on April 6, 2017. At this meeting the MBAR members viewed story poles and views to and from the Property. In addition, aerial photographs of the surrounding neighborhood were presented to the MBAR at each hearing. The MBAR found the Approved Project to be completely devoid of public view impacts of any kind.

g. Adequate landscaping will be provided in proportion to the project and the site with due regard to preservation of specimen and landmark trees, existing vegetation, selection of plantings that are appropriate to the project and that adequate provisions have been made for the maintenance of all landscaping.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, the Approved Project consists of extensive landscaping which preserves existing specimen oak trees and helps soften the appearance of the approved structures. In addition, extensive attention was paid to the shared property line with the Appellant to provide a mix of planting which would serve to provide privacy screening, but not impair the Appellant's views to the ocean.

h. Grading and development is designed to avoid visible scarring and will be in an appropriate and well-designed relationship to the natural topography with regard to maintaining the natural appearance of the ridgelines and hillsides.

As evidenced by the Project plans presented for preliminary MBAR and LUP approval, the approved grading was designed to soften the existing terraced grading of the Property by using a more organic and natural contouring approach while incorporating the access improvements required by Montecito Fire District.

i. Signs including associated lighting are well designed and will be appropriate in size and location.

No signs are proposed.

j. The proposed development will be consistent with any additional design standards expressly adopted by the Board for a specific local community, area or district in compliance with Subsection G. (Local design standards) below.

Substantial evidence was provided for the MBAR to determine that the Approved Project is consistent with the Montecito Architectural Design Guidelines and Development Standards. In addition to the Project plans presented for Preliminary MBAR and LUP approval, the extensive MBAR review process included noticed MBAR hearings of 12/19/16, 4/6/17, 5/11/17, 6/22/17, and 8/24/17. In addition to the MBAR review of Project plans and photographs at each hearing, the MBAR conducted a site visit on April 6, 2017 to view story poles and analyze the relationship of the Project to adjoining properties. Ultimately, the MBAR provided deliberate and detailed findings to support their Preliminary Approval of the Project on August 24, 2017.

P&D Did Not Act in Excess of Its Authority and Did Not Abuse Its Discretion in Approving the LUP for the Project.

In its August 22, 2017 Memorandum to the MBAR, P&D advised the decision makers that, subject to certain conditions, the Project was:

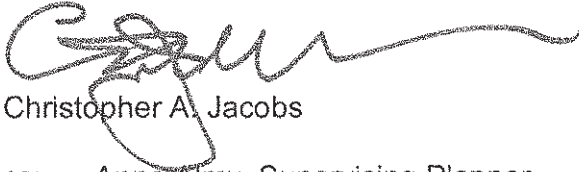
- In compliance with all the requirements of the 2-E-1 zone district;
- Compatible with the requirements of the Code; and
- Compatible with the policies of the Comprehensive Plan, including the Montecito Community Plan.

The P&D Memorandum gave the MBAR authority to consider the Project for preliminary approval, which consideration occurred during the August 24, 2017 meeting. P&D completed their review of the project and was ready to approve the LUP contingent upon the Project receiving preliminary MBAR approval, as required by the Code. As a matter of administrative efficiency, P&D prepared the LUP in advance of the August 24, 2017 MBAR meeting. Mark Friedlander, the P&D planner assigned to the Project was present during the meeting and witnessed the MBAR considering the evidence and adopting the findings in support of granting preliminary approval. Because that approval was made based precisely on the Project plans as submitted, P&D's action in approving the LUP was purely ministerial. The goal in acting expeditiously was simple—having a concurrent

appeal period for the MBAR preliminary approval and the LUP approval, as it was clear that an appeal was likely. ***The ministerial approval of the LUP on August 24, 2017 was clearly an appropriate action that was well within the bounds of P&D's administrative authority.***

Thank you for considering the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Jacobs', with a long horizontal flourish extending to the right.

Christopher A. Jacobs

cc: Anne Almy, Supervising Planner
Mark Friedlander, Planner
Brian Banks

16138141

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Our File Number: 23539-1

AGENDA ITEMS	
ITEM #:	3
MEETING DATE:	12-20-17

December 14, 2017

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VIA HAND DELIVERY

Chair Susan Keller
and Members of Montecito Planning Commission
County of Santa Barbara
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DEC 14 2017

S B COUNTY
PLANNING & DEVELOPMENT

Re: Request for Continuance
17APL-00000-00013 and 17APL-00000-00014
Appeals of 16BAR-00000-00219 and 17LUP-00000-00035
Lighthouse Trust Demolition and New Single Family Dwelling
1948 and 1952 Tollis Avenue

Dear Chair Keller and Members:

On December 20, 2017, the Montecito Planning Commission is scheduled to consider the above-referenced appeals of our client, Michael MacElhenny. Because of the Thomas Fire and emergency conditions in Montecito with no end in sight, we respectfully request that this hearing be continued to February 21, 2018.

The subject property on Tollis Avenue and Mr. MacElhenny's adjacent property at 796 Buena Vista Avenue are both within the mandatory evacuation area and have been inaccessible for site visits since December 10, well before the agenda and staff report were posted. As of today, Mr. MacElhenny has been informed that the fire is burning less than a mile from his property, so it is difficult to imagine life returning to some semblance of normal before

Chair Susan Keller and MPC Members
December 14, 2017
Page 2

December 20. Even if the evacuation order were lifted before December 20, our opportunity to conduct site visits and your Board's opportunity to prepare thoroughly for the hearing are already severely compromised. We have conferred with Planning and Development staff, who are in agreement that a continuance is warranted under the circumstances, and staff has recommended the new date based on various scheduling considerations.

We understand that representatives of the Lighthouse Trust prefer to have the hearing go forward on December 20. Their position is not surprising. However, Mr. MacElhenny is entitled to due process on his appeal, and we strongly suggest that a brief continuance to ensure that his interests are not compromised by forces beyond his control should be the higher priority.

We will attend the hearing on December 20 to answer any questions you may have concerning this request, and we and will be prepared to proceed if your Board does not approve the continuance as requested. Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink that reads "Susan M. Basham". The signature is fluid and cursive, with the first name "Susan" being the most prominent part.

Susan M. Basham
for PRICE, POSTEL & PARMA LLP

cc: Michael MacElhenny