

HAND DELIVERED and ELECTRONIC MAIL

Christopher A. Jacobs
Attorney at Law
805.882.1412 tel
805.965.4333 fax
CJacobs@bhfs.com

May 10, 2018

Santa Barbara County Board of Supervisors
Attention: Clerk of the Board
105 East Anapamu Street
Santa Barbara, CA 93101-2058
dvillalo@countyofsb.org
sbcob@co.santa-barbara.ca.us

RE: Agenda Item No. 5/Hearing Date May 15, 2018 [18APL-00000-00003]: MacElhenny Appeal of the Montecito Planning Commission's Denial of the Lighthouse Trust Demo/Rebuild Project [17APL-00000-00013 and 17APL-00000-014] and De Novo Approval of the Lighthouse Trust Demo/Rebuild Project [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)

Dear Chair Williams and Members of the Board:

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 Owner is not a developer and the acquisition and studies were undertaken relative to construction of a new residence for Owner's personal and family use. The ultimate design decision was to reduce the development density and maximize open space on the site with a new, primarily 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. The Owner's plans for a new residence, attached garage, guesthouse, swimming pool, pool cabana and landscaping (the **Project**, or depending on context, the **Approved Project**) were unanimously approved by the Montecito Board of Architectural Review (the MBAR) on August 24, 2017. On the same day, the Director of Planning and Development (**P&D**) approved a Land Use Permit (the **LUP**) for the Project.

Michael MacElhenny (the **Appellant**) is an individual who is affiliated with a limited liability company that owns an adjoining parcel and dilapidated structure, and he appealed the Project and LUP to the Montecito Planning Commission (the **MPC**). The MPC considered the Project and the LUP for the Project in a public

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

hearing on January 3, 2018. After considering the testimony and evidence before it, the MPC voted 3:0 to (i) deny the appeals, and (ii) grant de novo approval of the Project.

As noted above, the Appellant is a member and the manager of Buena Vista 796, LLC, a California limited liability company (the **Company**), however, he filed the Appeal in his own name. The Company's stated business in its Secretary of State filing is "Real Estate Investment." Based on its name, the Company was formed specifically for the acquisition of the land commonly described as 796 Buena Vista Avenue which is situated immediately to the north of the Project. The Company completed its acquisition on March 28 of 2017, 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 in the real estate business of which he is a member, Buena Vista 812, LLC.

The Appellant is a sophisticated real estate businessman who **knowingly acquired** 796 Buena Vista Avenue through the Company **for business purposes** 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 increases the horizontal separation between the two homes by at least 12 feet which is mutually beneficial.

The Appeal contains all of the same allegations that were included in the MBAR appeal to the MPC regarding allegedly unacceptable view impacts, inconsistencies with applicable policies, and the adoption of findings that the Appellant asserts were not supported by substantial evidence. **The MPC unanimously rejected the Appeal and granted de novo approval of the Project.** Through this Appeal, the Appellant is again 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 the presently unoccupied and dilapidated structure on the Company's property. It is no secret that the Company intends to redevelop its property, which redevelopment may entail the demolition of some or all of the existing structures. It is after all, a real estate investment company.

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 stated concern has been the height of the ridgeline of the new residence. The Owner's architectural design changed during the MBAR process – altering the structural massing of the home and materially lowering the ridge in an effort to satisfy the Appellant. This failed as the Appellants expectations and demands 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 and is lower than the ground-level finished floor on the structure on the Appellant's property.**

The Project has significant and important community benefit. First, by merging the two existing 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 by 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**. Specifically, the Owner advanced funding in the amount of \$197,750 that will allow MSD to expand the scope of a previously approved and funded MSD mainline extension 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 under Tollis Avenue in a westerly direction to connect to the Owner's Property. The MSD project is being designed and engineered to provide **dependable and environmentally superior** waste water disposal service not only to the Property, but also to a number of property owners on Olive Road in the immediate vicinity of the Project who had contacted MSD regarding public sewer service availability when their private septic systems began to fail.

The Owner believes the Appellant's Appeal to be lacking in merit, and urges your Board to (i) accept staff's recommendations, and (ii) follow in the footsteps of the MPC by denying the Appeal and approving the Project. In providing their approvals, the MPC and the MBAR both unanimously determined the Project to be consistent with the design review criteria mandated by the Montecito Land Use and Development Code (the **Code**). Your planning staff concurs. 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 at the MBAR level was definitely an iterative process that included extensive discussions. 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 and the MPC. The design professionals appointed to the MBAR noted their appreciation for 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 and the MPC both appropriately and unanimously rejected Appellant's request for a condition of approval limiting the height of vegetation on the Property to protect his view. The County does not have regulatory authority to impose or enforce involuntary 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.)

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

In providing the Approval the MPC considered the evidence and 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 Board do the same. The specific findings and the evidence in support thereof are as follows:

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]

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 and the MPC in their public hearing processes, the Approved Project is consistent with this finding. The MBAR and the MPC 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 approval by the MBAR and de novo approval by the MPC, 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 approval by the MBAR and de novo approval by the MPC, 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 approval by the MBAR and de novo approval by the MPC, 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 approval by the MBAR and de novo approval by the MPC, 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 MPC commissioners also conducted site visits to view accurate story poles from both the Project property and the Appellant's property. The MBAR and MPC 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 approval by the MBAR and de novo approval by the MPC, 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 approval by the MBAR and de novo approval by the MPC, 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 and the MPC 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 approval by the MBAR and de novo approval by the MPC, the rigorous MBAR review process included public hearings on 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. After its own consideration of the evidence and public hearing deliberations, the MPC adopted the same detailed findings in support of its de novo approval of the Project.

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.*** The MPC concurred on January 3, 2018 when it denied the Appellant's MBAR appeal and granted de novo appeal of the Project.

Thank you for considering the foregoing.

Sincerely,



Christopher A. Jacobs

cc: Anne Almy, Supervising Planner
Brian Banks