

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed:	9/9/05
49th Day:	N/A
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Staff:	AJP-LB
Staff Report:	10/26/05
Hearing Date:	11/18/05
Commission Action:	

STAFF REPORT: Request for Reconsideration**APPLICATION NUMBER:** 5-90-1041A5-R**APPLICANT:** Mr. and Mrs. Campbell**PROJECT LOCATION:** 433 Paseo de la Playa, City of Torrance (Los Angeles County)

PROJECT DESCRIPTION: Request for after-the-fact approval of unpermitted development consisting of: The construction of a 13-foot high, 480 square-foot shade structure (with 8 10-inch posts and a 8 foot tall retaining wall) with thatched roof on an approximately 680 square foot concrete patio at the toe of the coastal bluff; and a 8-foot high, 12-foot diameter thatched umbrella on an approximately 10-foot in diameter concrete pad at mid bluff located on a 2,744 square foot beach-fronting lot.

COMMISSION ACTION AND DATE:

The Commission denied coastal development permit application no. 5-90-1041A5, on August 9, 2005.

SUMMARY OF STAFF RECOMMENDATION:

At the Commission's August 9, 2005 hearing, the Commission denied coastal development permit application no. 5-90-1041-A5 for the after-the-fact approval of unpermitted development consisting of: the construction of a 13-foot high, 480 square-foot shade structure (with 8 10-inch posts and a 8 foot tall retaining wall) with thatched roof on an approximately 680 square foot concrete patio at the toe of the coastal bluff; and a 8-foot high, 12-foot diameter thatched umbrella on an approximately 10-foot in diameter concrete pad at mid bluff, located on a 2,744 square foot beach-fronting lot. The applicant asserts that there was an error of law in the Commission's decision to deny the proposed development in that the applicant did not receive a written notice of the scheduled Commission hearing [Public Resources Code Section 13063(a)].

Commission Staff concludes that there is no error of law that had the potential of altering the Commission's initial decision, and, therefore, staff recommends that the Commission reach the same conclusion and deny the reconsideration request.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted. Title 14 Cal. Code of Regulations Section 13109.2.

The regulations also state (*id.* at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, *inter alia*:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

Cal. Pub. Res. Code § 30627(b)(3). Section 30627 (b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant submitted a request for reconsideration of the Commission's August 9, 2005 decision on September 9, 2005, stating the grounds within the 30-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for the upcoming hearing, at which the Commission will consider it as a new application. Title 14, Cal. Code of Regs., Section 13109.5(c).

Summary of Applicant's Contentions

The request for reconsideration is based on the assertions that an "error(s) of law" has occurred that could potentially alter the Commission's initial decision. The applicant states:

As I previously informed you, we were in New York during the August 10-12, 2005 hearing. On August 10, I called you for address and time of the hearing to tell my attorney, and you informed me that the hearing was the day before, on August 9. I never received the Public Notice, and was relying solely on the Status Letter for information regarding the hearing.

Please grant us the time to appeal this case in person, after September 15, 2005, so the kids are back in school and we can devote 100% to this situation.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. 5-90-1041A5-R*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. 5-90-1041A5-R on the grounds that no "error of law" occurred which had the potential of altering the Commission's initial decision.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

On August 9, 2005, the Commission denied the proposed development that is subject to this reconsideration request. The proposed development was a request for after-the-fact approval of unpermitted development consisting of: The construction of a 13-foot high, 480 square-foot shade structure (with 8 10-inch posts and a 8 foot tall retaining wall) with thatched roof on an approximately 680 square foot concrete patio at the toe of the coastal bluff; and a 8-foot high, 12-foot diameter thatched umbrella on an approximately 10-foot in diameter concrete pad at mid bluff, located on a 2,744 square foot beach-fronting lot.

The project site is located within an existing residential area at 433 Paseo de la Playa, City of Torrance, Los Angeles County (Exhibits No. 1 & 2). The site is on a coastal bluff top between the first public road, Paseo de la Playa, and the sea (see Exhibit No. 2). The bluff varies in height from approximately 60 feet at the Los Angeles County Torrance Beach Park to the north of the residential lots, to 120 feet near the City boundary of Palos Verdes Estates to the south.

B. Grounds for Reconsideration

Pursuant to Section 30627 (b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall develop procedures that the Commission will use in deciding whether to grant reconsideration of any decision to deny an application for a coastal development permit, and shall follow those procedures in making that decision.

Section 30627 (b)(3) states in relevant part that the valid bases for a request for reconsideration include (1) "that an error of fact or law has occurred" that could alter the Commission's initial decision or (2) that there is "relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter". If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

C. Issues Raised by the Applicant

The applicant asserts that they did not receive a public hearing notice and were unaware of the hearing and did not have the opportunity to address the Commission in person (see Exhibit No. 3, letter from applicant). The applicant asserts that they were going to have a representative at the hearing but was relying on the "Status Letter" for the hearing date, which misled them as to the specific date of the hearing.

Applicant's Assertion of Error of Law

1. Commission did not provide a "Public Hearing Notice" that would have provided the specific time and date of the hearing in which the applicants' project would have been heard, therefore, the Commission's decision to deny the CDP constitutes an error of law.

Staff Analysis

Section 13063(a) provides, in part, as follows:

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall mail written notice to each applicant...The notice shall contain the following elements:

- (1) The number assigned to the application;*
- (2) A description of the development and its proposed location;*
- (3) The date, time and place at which the application will be heard by the commission;*
- (4) The general procedures of the commission concerning hearings and action on applications;...*

Commission staff provides applicants two notices prior to a Commission hearing. The first notice is a "Status Letter". The "Status Letter" is mailed to all applicants once an application is determined to be complete or incomplete. If the application is incomplete, the "Status letter" is accompanied by a request listing additional information that is needed to complete the application. Once an application is determined to be complete the "Status Letter" is mailed stating the application is complete and provides the applicant with the tentative date and place of the hearing. The "Status Letter" specifically states that the information is "tentative" and is subject to change and that the information is provided for their convenience and that final scheduling of the hearing would be subsequently mailed. The second notice is the "Public Hearing Notice". This notice provides the applicant with the specific date, time and location of the hearing, along with procedural information, consistent with Section 13603(a).

The proposed application was originally scheduled for hearing in April 2005, in Santa Barbara. After receiving the "Status Letter", with the tentative date and location of the hearing, and prior to final scheduling of the application on the April hearing, the applicant requested a hearing that was geographically closer to their residence in Torrance.

In response to the applicant's request, the application was then scheduled for the June 2005 hearing, in San Pedro, and the applicant was sent a second "Status Letter", with the tentative dates and location of the hearing. Subsequently, on May 20, 2005, a "Public Hearing Notice" and a copy of the staff report, was mailed to the applicant's address. Then, on June 6, 2005, the South Coast District Office received a fax from the applicant, requesting a postponement due to medical reasons until August, which was the next available hearing located in southern California. The Executive Director granted the postponement to August.

On July 12, 2005, the South Coast District staff sent a third "Status Letter" listing the tentative hearing date of August 10-12, 2005 and location for the August hearing. On July 21, 2005, the applicant faxed a letter to the South Coast District office stating that they would be out of town during the August hearing and wanted a later hearing. After receiving the fax, Commission staff called the applicant and explained to them that the Executive Director could only give one postponement to an application that was scheduled for hearing, and that any subsequent requests for postponement would need to be granted by the Commission. Title 14 Cal. Code of Regulations Section 13073 states in part:

- (a) *Where an applicant for a coastal development permit determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the applicant is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting...*
- (b) *An applicant's request for postponement, not made as a matter of right pursuant to section 13073(a), shall be granted at the commission's discretion.*

Subsequently, on July 27, 2005, a "Public Notice" was mailed to the applicant and to all residents and/or tenants within 100 feet of the property. The notice stated the specific date (August 9, 2005) the applicant's item was to be heard and the location (The Westin South Coast Plaza, Costa Mesa).

Prior to the August 9, 2005 hearing, Commission staff telephoned the applicant on two separate days and left messages on their answering machine stating the date and location of the hearing, and if there were any questions or concerns regarding the staff report and recommendation, they should contact staff. The applicant did not return any of the calls prior to the August 9, 2005 hearing.

On the morning of August 10, 2005, the applicant called to inquire about the hearing time and location, which according to them, they understood as being scheduled for the 10th. The applicant states that they did not receive the "Public Hearing Notice", and based their understanding of the date of the hearing on the "Status Letter" which listed the hearing as August 10-12, 2005.

As stated, the "Status Letter" is sent out with the tentative dates and location of the hearing. The "Status Letter" specifically states that the information is "tentative" and is subject to change. The information is provided for their convenience and that final scheduling of the hearing would be subsequently mailed. There is no evidence (i.e., mailed notice returned by Postal Service) that the applicant did not receive the "Public Hearing Notice". Furthermore, messages were left on the applicant's answering machine on two separate occasions prior to the hearing informing them of the pending hearing. Therefore, Commission staff made every effort to inform the applicant of the hearing in order to provide them an opportunity to attend the hearing or have a representative attend the hearing.

Although the applicant may or may not have received a written notice prior to the August hearing, Section 30627 (b)(3) states in relevant part that the valid bases for a request for reconsideration include (1) "that an error of fact or law has occurred" that could alter the Commission's initial decision. In the applicant's letter requesting an appeal (reconsideration) of the Commission's action, the applicant does not provide any information, or raise any issue, that could have altered the commission's initial decision. Therefore, the Commission committed no error of law that could alter the Commission's initial decision.

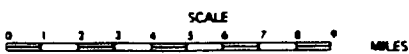
D. Conclusion

The applicant has not pointed to any error of fact or law that could have altered the Commission's initial decision, nor have they presented any relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. Consequently, there is no basis for reconsideration, and the applicant's request for reconsideration must be denied. Moreover, pursuant to Section 30627(b)(4) of

the Coastal Act, even if the applicant meets the criteria for reconsideration, the Commission has the discretion to grant or deny the request. In this case the applicant has not met the criteria for reconsideration and the Commission denies the request.



LOS ANGELES AREA



RECEIVED
 South Coast Region
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HUNTINGTON BI

EXHIBIT NO. 1
 APPLICATION NO.
 5-90-1041A5-R
Regional Map
 California Coastal Commission

View Enlarged Map View Print Instructions

County of Los Angeles Rick Auerbach, Assessor

7512 3
SCALE 1" = 100'

2004

Subject Property



PARCEL MAP

P.M. 73-6

TRACT NO. 10307

M. B. 165-15-17

CODE 9359

FOR PREV. ASS'NT. SER. 709-231 & 232

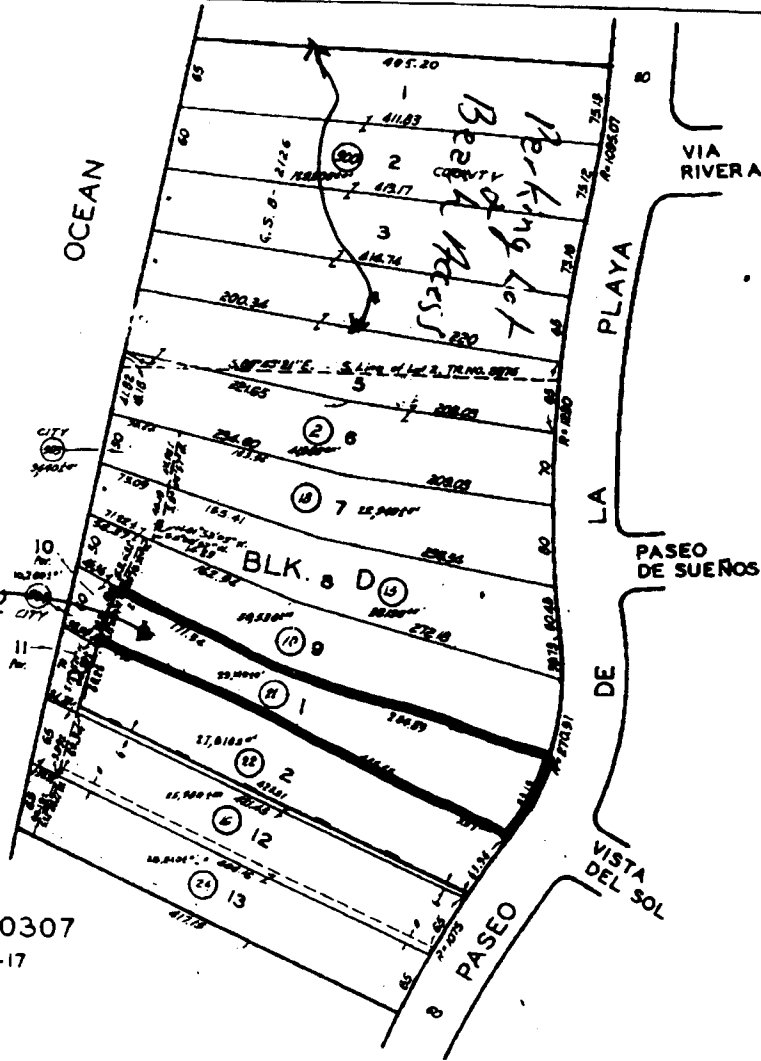


EXHIBIT NO. 2
Application Number 5-90-1041A5-R
Parcel Map
California Coastal Commission

August 29, 2005

Al Padilla
California Coastal Commission
PO Box 1450
Long Beach, CA 90802

Re: 433 Paseo de la Playa, Torrance, CA
#: 5-90-10941-A5

RECEIVED
South Coast Region

SEP 8 2005

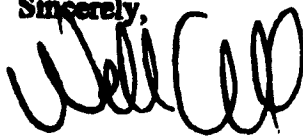
CALIFORNIA
COASTAL COMMISSION

Dear Al,


As I previously informed you, we were in New York during the August 10-12, 2005 hearing. On August 10, I called you for address and time of the hearing to tell my attorney, and you informed me that the hearing was the day before, on August 9. I never received the Public Hearing Notice, and was relying solely on the Status Letter for information regarding the hearing.

Please grant us the time to appeal this case in person, after September 15, 2005, so the kids are back in school and we can devote 100% to this situation.

Sincerely,



William Campbell

EXHIBIT NO. 3
APPLICATION NO. 5-90-1041A5-R
Letter From Applicant
 California Coastal Commission