

BEFORE THE MARIN COUNTY PLANNING COMMISSION

**Appeal from the Deputy Zoning Administrator's Decision re: Timothy Crosby Application for a Coastal Development Permit
Application No. CP09-3**

Hearing Date: February 9, 2009

Argument on behalf of Appellants Richard and Brenda Kohn, Dr. Edward Hyman and Dr. Deborah McDonald

Introduction

The crux of this appeal is whether self interest trumps the public interest when it comes to preserving the scenic coastal views for present and future generations of visitors to Muir Beach, as well as residents of the community.

In Mr. Crosby's Final Planning Statement attached to his Zoning/Development Application dated July 24, 2008, he states: "The 1600 +/- square foot addition is designed to take full advantage of the spectacular coastal view;..." That is very nice for Mr. Crosby. But maximizing Mr. Crosby's views will be at the expense of the public, because his development will permanently block public views from Ahab Drive on both the east and the west sides of the project and, saliently, from the top of the public easement on the west side. Even after modifications ordered by the Deputy Zoning Administrator (DZA), the views of the ocean, beach and other viewsheds in and around Muir Beach will be impaired. This violates the environment and is bad public policy.

This case will set a precedent. If the proposed project is permitted to proceed, it is difficult to see how any future construction in Muir Beach that blocks the historic and scenic viewsheds could be prevented. Our goal is to preserve those viewsheds while allowing the applicant reasonable development of his property. His large lot potentially provides for both, but his current proposal permanently eliminates historic Muir Beach viewsheds.

Our objections are both procedural and substantive in nature. Procedurally, we shall show that the Community Development Agency (CDA) failed to properly apply its governing regulations in processing the application. These deficiencies render the action approving the application void. Substantively, photographs taken after the DZA's decision show that the limited changes that he ordered have not solved the problem, which the DZA himself defined as the public's right to the viewsheds of the Muir Beach cove.

For the reasons stated herein, which amplify and provide authority for the discussion in the appellants' Appendix to our Notice of Appeal, we respectfully urge the Planning Commission to

deny the coastal permit for this development.

Statement of Facts

On Nov. 26, 2008, the Kohn appellants received a Notice of Public Hearing concerning the Crosby Coastal Permit Application. The Kohns live at 5 Ahab Drive, adjacent to 9 Ahab Drive. Despite the fact that the staff report represents that notice was mailed to all property owners within 600 feet of 9 Ahab Drive, the Hyman-McDonald appellants never received such a notice—they learned about it from the Kohns. The Notice informed the Kohns of their right to submit comments and suggested that any comments be submitted two weeks before the hearing date of Dec.11 in order to ensure timely consideration by the DZA. Coincidentally, on the same day that the Kohns received notice, i.e., Nov. 26, story poles and ribbons were erected that, for the first time, showed the outline of the proposed additions to 9 Ahab Drive. Until the story poles were constructed, the impact of the project was unknown to appellants or staff.

The Kohns had a prepaid and nonrefundable vacation that required them to be out of state from Dec. 8 through Dec.18. Because they would not be able to attend the Dec.11 hearing, by letter dated Nov. 28, they requested a postponement of the hearing. Due to the Thanksgiving holiday, the first day the CDA was open was Dec.1. The Kohns hand delivered a request for postponement on that day. By then the staff report had already been completed, erroneously concluding that the proposed development had no visual impact on the public views of the Pacific Ocean or other viewsheds in and around Muir Beach. On Dec. 5, the Kohns filed objections to the permit supported by photographs.

On Friday, Dec.5, the Planner, Mr. Osborne, visited Muir Beach and viewed the story poles. (By then the ribbons that marked the contours of the additions had come down). Fortunately, appellants had taken photographs showing that the proposed additions clearly obstructed public views of the ocean, beach and other viewsheds. On that day, Mr. Osborne advised Brenda Kohn that a postponement was unlikely to be granted.

By letter dated December 7, the Hyman-McDonald appellants submitted objections and photographs objecting to the project.

On Dec. 8, as they were boarding a plane, the Kohns left a telephone message for Mr. Osborne. They stated that in a case where the photographic evidence clearly showed that the staff report's conclusion was erroneous, the appropriate thing to do would be to remand the matter back to the staff to revisit the issues and continue the hearing so that the Kohns could participate.

The hearing took place on Dec.11 as scheduled without the participation of the Kohns. Drs. Hyman and McDonald attended and participated, their request for a postponement having been denied. At the hearing, the DZA asked Mr. Crosby whether he would agree to continue the

hearing. Mr. Crosby refused to consent so no continuance was granted. In response to the objections that had been raised concerning impairment of views, the DZA ordered a reduction of the western roofline by 4 1/2 feet for 33 linear feet. When Mr. Crosby's architect said that they needed the extra height for a staircase, the DZA modified his decision to allow approximately 8 feet at the higher elevation. This was the only physical modification to the development ordered by the DZA. The DZA made a final decision, immediately approving the Coastal Development Permit (CDP) as modified.

Following the decision, by long distance the Kohns insisted that new story poles be erected showing the modification so that the impact could be assessed. As a result, this was done. Photographs taken after the new story poles were erected, show that even with the modification, the proposed development still has an adverse impact on the public views.

A timely Notice of Appeal was filed on Dec. 18.

ARGUMENT

I. PROCEDURAL VIOLATIONS

Chapter 22.110, entitled "Administrative Responsibility", describes the authority and responsibilities of county staff and officials in the administration of the Development Code. Section 22.110.060 states: "Any action by the Agency that is in conflict with any provision of this Development Code shall be void." The many procedural irregularities by the Agency have tainted these proceedings and render the granting of the CDP void.

A. Violations of the public notice provisions render the decision void

Resolution 08-154 approving the Crosby Coastal Permit erroneously states that the DZA held a "duly noticed public hearing on December 11, 2008,..." Sec. I(II). There are two sets of regulations governing notice, 22.118.020 of the Development Code and 22.56.0651 of the Interim Zoning Code.

(1) Chapter 22.118 notice was not properly given

Chapter 22.118.020 implements the notice requirements of the Government Code. Among other things, Chapter 22.118 provides procedures for the scheduling and noticing of public hearings before the Zoning Administrator. Section 118.020 sets forth the contents that must be included in this notice (hereinafter "Notice of Pending Permit" or the "Yellow Notice.") A Yellow Notice dated August 15, 2008 containing the four required disclosures was posted "on or adjacent to the property that is the subject of the permit." 22.118.020(B)(4). Significantly, this notice did not establish a date for a hearing but stated only that the hearing would not take place prior to Oct. 30.

Section 22.118.020(B) requires that at least ten days prior to the decision, this notice be

published in the newspaper or posted in at least three public places in the area of the subject property and that the notice be mailed or delivered to property owners within 300 or 600 feet depending on certain facts. None of this was done at the time the Yellow Notice was posted. If the CDA intended to satisfy the notice requisites under the Ch.22.561 procedures, as discussed below, they failed to do so.

(2) Chapter 22.561 Notice of Public Hearing was not properly given

Additional notice requirements are prescribed in Chapter 22.561 (Interim Zoning Act). The content of this notice, the Notice of Public Hearing, differs from the contents of the "Yellow Notice." For example, the notice must announce the date of the hearing and notify the public of their right to submit comments. The six requirements are set forth in 22.56.0651C.

Pursuant to Sec.22.56.0651(A), these notices must be mailed to "all property owners within 300 feet of the project boundary." The Hyman-McDonald appellants never received written notice under this section. As the aerial photographs submitted by Mr. Crosby's architect show, the Hyman-McDonald property is within 300 feet of 9 Ahab Drive. Thus, the notice requirement was not met.

In addition, the same provision states: "*Additionally, the site of the proposed project shall be posted with a copy of the notice at least ten working days prior to the date of the hearing.*" This was not done. Appellants are submitting photographs showing the "Yellow Notice" posted at the site. This was the only notice that was ever posted at 9 Ahab Drive. As noted above, the Yellow Notice does not contain a hearing date or other important information.

Moreover, any fair minded person would shake her head in disbelief at how notice was handled in this case. It is almost as though the CDA made a calculated effort to follow the form and defeat the whole point of notice. If one deliberately set out to ensure that the public would *not* get meaningful notice, the CDA could not have done a better job.

The CDA chose November 26--the day before the four day Thanksgiving holiday-- to publish a notice in the newspaper. The Kohns also received a copy in the mail on November 26. This was a time when most people would be away or otherwise preoccupied with family. The Notice of Public Hearing (but not the newspaper notice) advised people to get their comments in two weeks before the hearing, a practical impossibility. It was also impossible to submit comments in time to be considered by the staff because, as the Kohns learned on Dec.1, the staff report had already been written. The staff report then had the audacity to state that no public comments had been received! This procedure made a mockery of the regulatory intent that the public have a meaningful opportunity to make informed comment.

The statements that the hearing was "duly noticed" are not true and, therefore, the approval of the CDP is void. Furthermore, the procedures described above resulted in a deprivation of due process pursuant to Calif. Const. Art.1 Sec. 7.

B. The denial of the Kohn's request for a continuance violated applicable regulations and due process of law

(1) The denial violated Sec. 22.118.030

The Kohn appellants timely sought a continuance of the hearing because they had longstanding nonrefundable plans to be in Hawaii between December 8 and December 18. This made it impossible for them to attend the hearing scheduled for December 11. The DZA held that no continuance could be granted without the applicant's consent. Notice of Decision, DZA Minutes, C1 p. 4. Mr. Crosby refused to consent, so the request was denied.

Section 22.118.030 of the Development Code provides:

The Zoning Administrator, Commission, and Board as applicable may continue any public hearing to a future specific date at the hearing body's discretion, except that continuances *beyond the prescribed final date for action* may only be granted with the agreement of the applicant and/or appellant,..." (Emphasis added)

The DZA erroneously applied this regulation to allow Mr. Crosby to veto a continuance because, in fact, there was no "prescribed final date for action."

Section 22.118.020(A) states:

"Content of Notice. Notices of a public hearing or administrative action shall include the following: 1. The date, time and place of the *hearing or action* (or date before which a hearing or action will not be taken);..." (Emphasis added)

Instead of prescribing a final date for action, the Agency opted for the parenthetical alternative: The "Yellow Notice" posted on Mr. Crosby's property, contains the following statement:

"A decision on this application is expected to be made by the Deputy Zoning Administrator in a public hearing no earlier than October 30, 2008 in Room 328 of the Marin County Civic Center, San Rafael."

This notice does not prescribe a final date for action. It states only that a hearing would not be held prior to October 30, 2008. Nor did the Notice of Public Hearing under Sec.22.56.0651 that the Kohn appellants received on November 26 contain a final date for action. It simply prescribes December 11 as the hearing date. So neither of the official notices of the permit application contains a final date for action. Nor does the notice published in the newspaper on Nov. 26.

In this connection, Section 22.118.040 of the Development Code provides:

“The Zoning Administrator may announce and issue the decision at the conclusion of a scheduled public hearing, refer the matter to the Commission for determination, or defer action and take specified items under advisement and announce and issue the decision at a later date.”

So, in other words, it was not a foregone conclusion that the final action would be taken on December 11.

We understand that neither the staff nor the DZA were opposed to a continuance. But, the DZA erroneously believed that he needed the applicant's permission to continue the hearing. This was based upon a misreading of Section 22.118.030 of the Development Code and constituted an abuse of discretion. The appellants have been prejudiced by this improper application of the regulation because we have had to bear the substantial cost of prosecuting an appeal to the Planning Commission. If a continuance had been granted, the Kohns would have had the opportunity to present their other procedural and substantive arguments to the DZA.

For some reason, this permit application has been handled in a way that prevents the deliberate consideration of the public policy issues that the application requires. This goes beyond the continuance issue. It includes the facts that: (1) given the Thanksgiving holiday, it was impossible for the appellants to submit comments for consideration by the staff before the staff report was written; (2) the story poles were not erected until Nov.26, which made it impossible to assess the impact of the development on critical views; (3) the CDA failed to comply with notice requirements; and (4) it was impossible to address the sufficiency of the modification ordered by the DZA except by taking this appeal.

What is perplexing is that this is not a case where the applicant lacks a roof over his head. The applicant is domiciled in Florida where he spends much of his time. And he himself described the Muir Beach property as a “retreat home” at the hearing. There was no need for a rush to judgement.

(2). Assuming that the DZA properly applied Sec.22.118.030, then that regulation lacks any statutory support and violates the due process clause of Cal. Const. Art. 1 Sec.7.

Assuming, for the sake of argument, that somehow it could be concluded that the notices prescribed a “final date for action”, this provision would be invalid because it is not sanctioned by any California statute and would violate fundamental principles of due process.

The minutes to the Notice of Decision states: “State law (Permit Streamlining Act) and County Code in Title 22 (Interim) require that a decision be made today unless the applicant asks for a

continuance.” This is using the Permit Streamlining Act for a purpose never intended by the Legislature.

The Permit Streamlining Act, Gov’t Code Sec. 659020, which sets out various timelines within which administrative decisions must be made, does provide that when one of those timelines is due to expire, it can be extended one time upon mutual agreement of the project applicant and the public agency. Gov’t Code Sec. 65957. That makes sense because the timelines are for the applicant’s benefit. But there is nothing in the Permit Streamlining Act that even remotely suggests, let alone requires, that continuances such as the one requested in this case, can only be granted with the applicant’s permission. Most likely, the only time the Agency would put a date for final action in the notice is when the timeline for deciding a permit application is about to expire. Neither the Agency nor the DZA has ever stated that that was about to happen.

As applied by the DZA, the regulation would violate due process. Sec. 22.118.030 begins by saying that the DZA has discretion over whether to grant a continuance. The exercise of discretion by a governmental officer is reviewable for abuse of discretion. So, for example, if the DZA were to deny a continuance because the requester is African-American, or Chinese, or has green eyes, that decision could be reviewed. Taking discretion away from the DZA , and reposing it in the applicant, would insulate such a decision from any review.

Furthermore, why should the applicant have a veto power over this decision simply to gain a tactical advantage? Giving any party to a controversy absolute veto power over a reasonable request for a continuance by the other side (even where the DZA would be inclined to grant the request) is arbitrary and capricious and clearly unconstitutional.

Because statutes and regulations should be construed in favor of their constitutionality, the Planning Commission should harmonize the statute and the regulation and adopt the common sense and proper interpretation of the regulation set forth above.

C. These procedural violations render the action below void

Section 22.110.060 provides:”Any action by the Agency that is in conflict with any provision of this Development Code shall be void.” Either singly or taken in combination, the procedural violations render the action granting the permit null and void. The coastal permit should be denied on this ground.

II. SUBSTANTIVE ARGUMENTS

A. The development, even as modified by the DZA, would adversely affect visual resources

(1) Pertinent statutes and governing authority

Sec. 22.56.0951 states that "A coastal project permit shall be approved only upon findings of fact establishing that the project conforms to the requirements and objectives of the local coastal program." The DZA ruled that the governing standards are found in the Marin County Local Coastal Program (LCP) and the Muir Beach Community Plan (MBCP).

The LCP provides, in relevant part:

Visual Resources.

Coastal Act policies on visual quality, found in Section 30251, require the protection of scenic and visual resources of coastal areas. Visual resources, including beaches, wetlands, and other natural as well as manmade features, are vulnerable to degradation through improper location of development, blockage of coastal views,The primary concern of the Coastal Act is to protect views to scenic resources from public roads, beaches, trails, and vista points.

LCP, p.56.

Section 30251 of the California Coastal Act, cited by the LCP, states, in part:

"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas,..."

The LCP further provides,

"21. Existing development standards and the design review ordinance (Chapter 22.82) shall continue to be enforced. The following explicit standards shall apply to selected areas and projects:

* * * * *

To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean,”

LCP p.65.

The Muir Beach Community Plan states:

“We are concerned with the often destructive effects of new construction and remodeling of homes which are not consistent with the small-scale residential character of the old community. Future construction and remodeling should be consistent with surrounding residences and show consideration for neighboring views and privacy. Existing ordinances must be strictly enforced.”

MBCP p. 12.

(2). The staff Report

The staff report inexplicably stated that “The height of the residence would not block any public views of the Pacific Ocean or other significant viewsheds in, and around, Muir Beach. Item. No, C1 p.3. This statement was clearly erroneous. Once story poles were erected on Nov. 26, it was obvious that the development would have a significant adverse impact on visual resources from Ahab Drive and the top of the public easement that parallels the Crosby lands. These visual impairments of the beach, the ocean and other viewsheds are graphically shown in photographs submitted by the appellants.

(3). The DZA decision

The DZA ordered the applicant to eliminate the clerestory windows on the western side thereby lowering the roofline by 4 1/2 feet. Initially, he ordered this for the entire length of the roof addition of 33 feet. When the applicant’s architect said that this would necessitate redesigning an interior stairway, without any independent analysis by staff, the DZA said that he would allow them 8 lineal feet at the higher elevation. However, the minutes to the Notice of Decision state that this was only an “estimated” figure. So, the decision is entirely open ended.

Acting on a request conveyed by the Kohns to the planner, the DZA ordered that new story poles be erected showing the effect of this change. Photographs taken subsequently and submitted with our Notice of Appeal show that public views from Ahab Drive and from the public easement continue to be obstructed. The DZA ordered no changes to the roofline on the east side of the development. Even after the action by the DZA, the development fails to comply with the legal standards set forth above.

B. There are feasible alternatives which, if implemented, could be found consistent with the policies of the Coastal Act, the LCP and the MBCP

There are feasible alternatives. For example, the entire western addition could be set lower into the ground. Or the western addition could be reduced to one story, which would require eliminating or redesigning the huge "music room." Since the DZA ordered the roofline on the western side to be lowered, it is not clear why he did not order a similar reduction on the east side, which also blocks views of the beach and ocean. This oversight is also inexplicable since the DZA expressed his concern that the original design called for a continuous roofline of 100 feet. Eliminating 11 feet on the east side would have addressed this issue as well. In this connection, the room on the east side appears to have 12 or 12 1/2 foot ceilings so this change would not seem to present a problem with minimum height requirements. Also, the enormous master bedroom could be reduced in size.

Furthermore, the DZA acted arbitrarily when he agreed on the spot to change his order regarding the height of the western addition roof, based upon a representation by the applicant's architect that otherwise they would have to redesign the stairway. Not only was this rushed decision making, but also (as shown by the minutes) the 8 feet he gave them was only an approximate figure. Where coastal views are compromised, no such open ended decision should have been made without an independent review.

We do not wish to be understood as conceding that if the modifications suggested above were made, we would be satisfied. This ill-conceived and enormous development project could and should be re-designed so that the primary concern of the Coastal Act, the LCP and the MBCP to protect scenic resources is vindicated. Also, there could be no more apt example of the concern expressed in the MBCP over "the often destructive effects of new construction and remodeling of homes which are not consistent with the small-scale residential character of the old community." MBCP p.12.

In *LT-WR L.L.C. v. California Coastal Commission*, 60 Cal. Rptr. 3d 417 (Cal. App.2 Dist. 2007), a case upholding a decision by the Coastal Commission that a development project violated Sec. 30251 of the Coastal Act, the Court of Appeals stated: "The Commission is not required to redesign the applicant's project to make it acceptable." Id. 440. The court went on to state, "The denial of the application does not bar the applicant from submitting a new and different proposal." The same is true here.

C. Rebuttal to the Applicant's Arguments

At the Dec.11 hearing, the applicant submitted six arguments in writing. None of them are meritorious. To avoid having to restate them, we have attached the applicant's submission as Exh.

A. Our responses are as follows:

1. The applicant states, in conclusory fashion, that the project complies with all “the planning and coastal regulations.” That is the very question to be decided. For the reasons set forth above, the appellants believe that it does not.

2. The fact that the existing house and development are located on a downslope is beside the point. The issues are (1) whether the development impairs scenic coastal views and (2) whether there are feasible alternatives. *See, LT-WR L.L.C. v. California Coastal Commission, supra.* The car argument is silly. The Kohns do not park four cars along the road. Even if they did, cars do not block views; permanent development does.

3. Whether other buildings and plantings along the length of Ahab Drive intermittently block views is immaterial. Nothing in the applicable statutes and regulations would make it a defense that this development is only one of a number of other houses or plantings that block views. In fact, if there are other obstructions of views, that makes it even more important that this one be disapproved. There is a serious cumulative effect to violations of scenic coastal viewsheds.

Similarly, it is immaterial that the development “constitutes a very insignificant percentage of the public view along Ahab.” It is not a defense that the public can go somewhere else to see coastal views. If it were, the Coastal Act and the LCP would be meaningless. Moreover, the development obscures, in its entirety, the views of the Muir Beach cove from Ahab Drive and from the public access viewshed.

4. This is a version of “but officer, other people were speeding” defense strategy. Even if it were true, it is no answer that houses built in the 1970's or 1980's may block views. The applicant must show that *his* project complies with the law.

5. The applicant seeks to justify the enormous proportions of the development by citing the Green Building Design Guidelines. Obviously, one cannot invoke the Green Building Design Guidelines to justify violating the Coastal Act. Also, the applicant's future plans apparently include a sale of his property, for which he hopes to attract a wider range of buyers. Further, there is no evidence that any of the other future plans the applicant discusses are going to materialize in the foreseeable future, or that all of the rooms and bathrooms are ever going to be used by more than one or two people, or that an elevator will ever be necessary. All of his arguments are sheer speculation.

6. The appellants had nothing to do with removing any branches from the applicant's property.

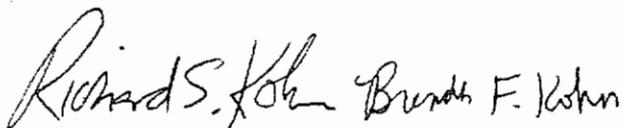
CONCLUSION

Those of us who are fortunate enough to live in Muir Beach must look beyond self indulgence and consider the greater good. We are stewards of a precious trust—this unique, special and historic site. We are here for only a short period of time, but the beauty of the coast is eternal. Because the

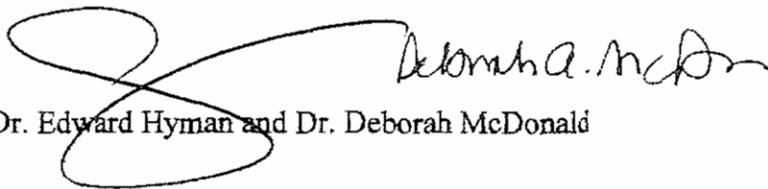
Planning Commission has the power to influence events, you share in that responsibility to ensure that structures created by man do not endanger that trust, as this project does.

While we had hoped to reach a negotiated settlement of this controversy, Mr. Crosby has advised that he is not interested in a joint meeting with the appellants. Therefore, we urge the Planning Commission to determine that the action below granting a coastal permit is void due to procedural violations or to deny the permit application as being incompatible with applicable law.

Respectfully submitted,



Richard and Brenda Kohn



Dr. Edward Hyman and Dr. Deborah McDonald

Dated: Jan.25, 2009

NOTICE OF PENDING PERMIT

A PERMIT APPLICATION FOR DEVELOPMENT ON THIS SITE IS PENDING BEFORE THE MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY PLANNING DIVISION.

PROPOSED DEVELOPMENT: The project is a proposal to construct 1,589 square foot addition to an existing 2,058 square foot single-family residence. The residence would have a maximum height of 25 feet above average finish grade and the following property line setbacks: 30 feet front (north), 28 feet side (east), 20 feet side (west), and 138 feet rear (south). The proposal includes roof-mounted solar panels, a geothermal heat pump system, expanded parking area, and a new septic system with a drip system.

PROJECT LOCATION: 9 Ahab Drive, Muir Beach

ASSESSOR'S PARCEL: 199-283-00

APPLICANT:

200 Crosby Rd. (561) 309-5845

APPLICATION NUMBERS: Coastal Permit (CP 09-3)

DATE NOTICE POSTED: August 15, 2009

A DECISION ON THIS APPLICATION IS EXPECTED TO BE MADE BY THE DEPUTY ZONING ADMINISTRATOR IN A PUBLIC HEARING NO EARLIER THAN OCTOBER 30, 2009 IN ROOM 328 OF THE MARIN CIVIC CENTER, SAN RAFAEL.

FOR ADMINISTRATIVE INFORMATION, PLEASE E-MAIL, TELEPHONE, OR WRITE NEAL OSBORNE AT THE OFFICE LISTED BELOW. ACTIVE E-MAIL ADDRESS: neal@osborne.com

Neal Osborne, Planner
COMMUNITY DEVELOPMENT AGENCY
SAN RAFAEL CIVIC CENTER 328, SUITE 208
SAN RAFAEL, CA 94903-4157
(415) 499-7173
neal@osborne.com

PLEASE DO NOT DISTURB
LOCAL RESIDENTS



DEC 11 2008

December 10, 2008

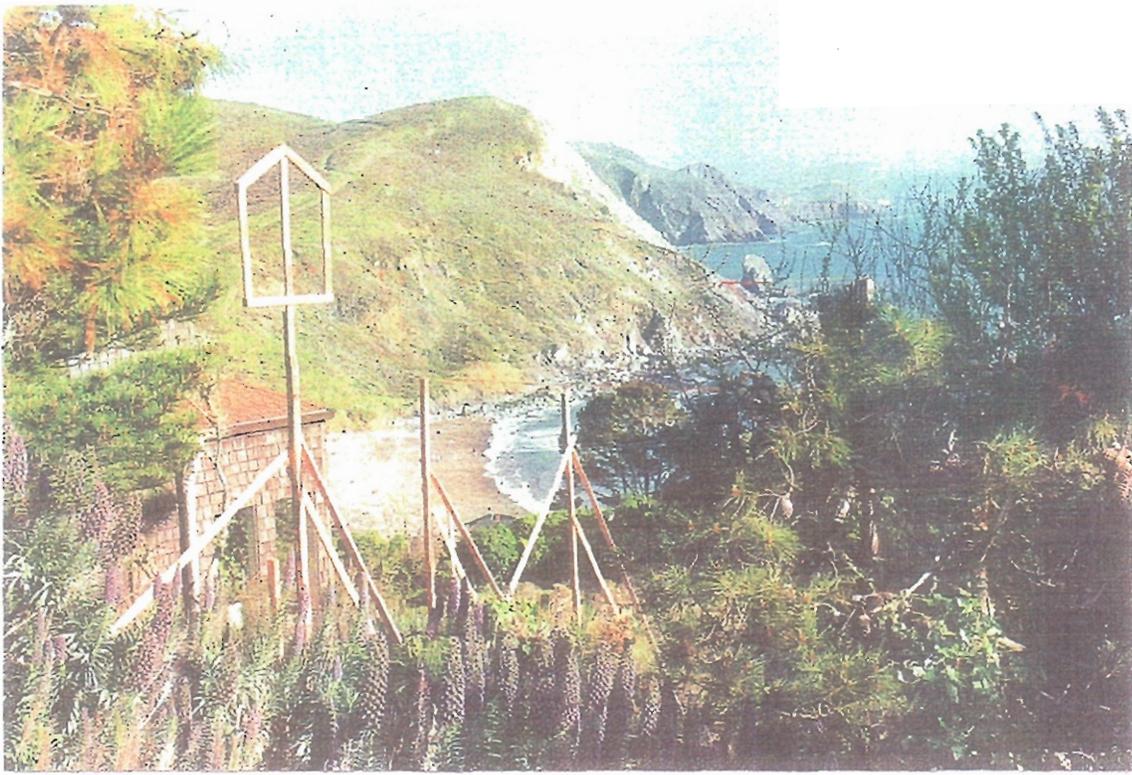
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION**Regarding: Crosby Coastal Permit #CP 09-3 9 Ahab
Drive, Muir Beach, Assessors Parcel #199-283-09**

- 1). The project, as stated in the staff report is in full compliance with all the requirements of the planning and coastal regulations.
- 2). The existing house and the easterly and westerly additions are situated on a down slope lot with a roof ridge line less than five feet above the grade along Ahab Drive, approximately the height of a parked car. (The neighbor to the east (5 Ahab) always parks their 4 cars along the road). As is currently the case, there are panoramic views above the roof ridge line. The addition will not alter this in any way.
- 3) As stated in the email of December 10, 2008 to Neal Osborne, the views along the 1800 feet or so of the length of Ahab are intermittently blocked and open by constructs and plantings. The 33 foot addition to the West and 11 foot addition to the east, which extends the existing ridge line that lies less than five feet above the road constitute a very insignificant percentage of the public view along Ahab.
- (4) The houses, with expansive ocean views at 5 Ahab and 35 Seacape rise well above the road completely blocking ocean views from the public way as do the very heavy vertical plantings that block the public views along 80% of the property at 39 Seacape.
- 5) The Kohn letter refers to being excessive for no more than two occupants. While such assertions are totally

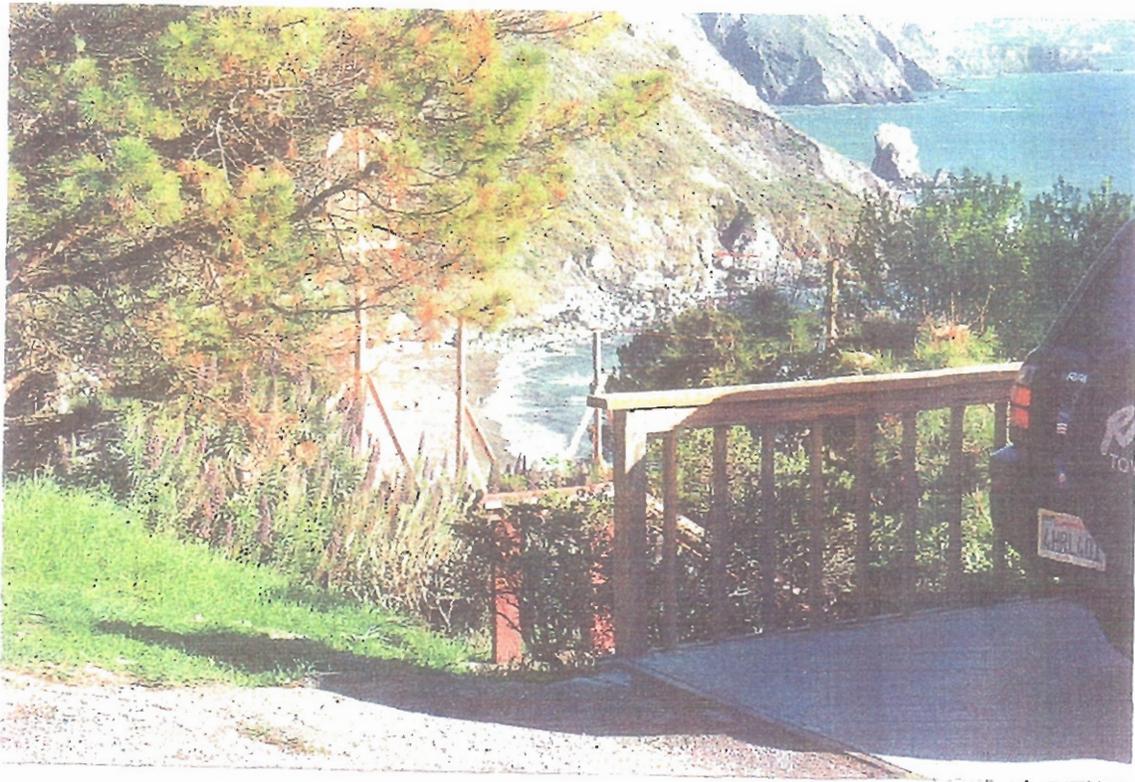
Exh. A

irrelevant to the issues, it completely ignores Mr. Crosby's future plans and is designed to comply with section P 4 of the Green Building Design Guidelines to: "Design for diverse family types to offer a wider range for buyers." The addition of the elevator will provide for a diverse and multi-generational family that would include Mr. Crosby's elderly mother as well as for handicapped access, unlike the present house that was designed for a single woman.

6) Sometime after the 4th and 5th of December 2008 when a series of photos were taken along Ahab, someone trespassed on the Crosby property and cut and removed a number of branches that might have partially obscured the view of the addition from the west.

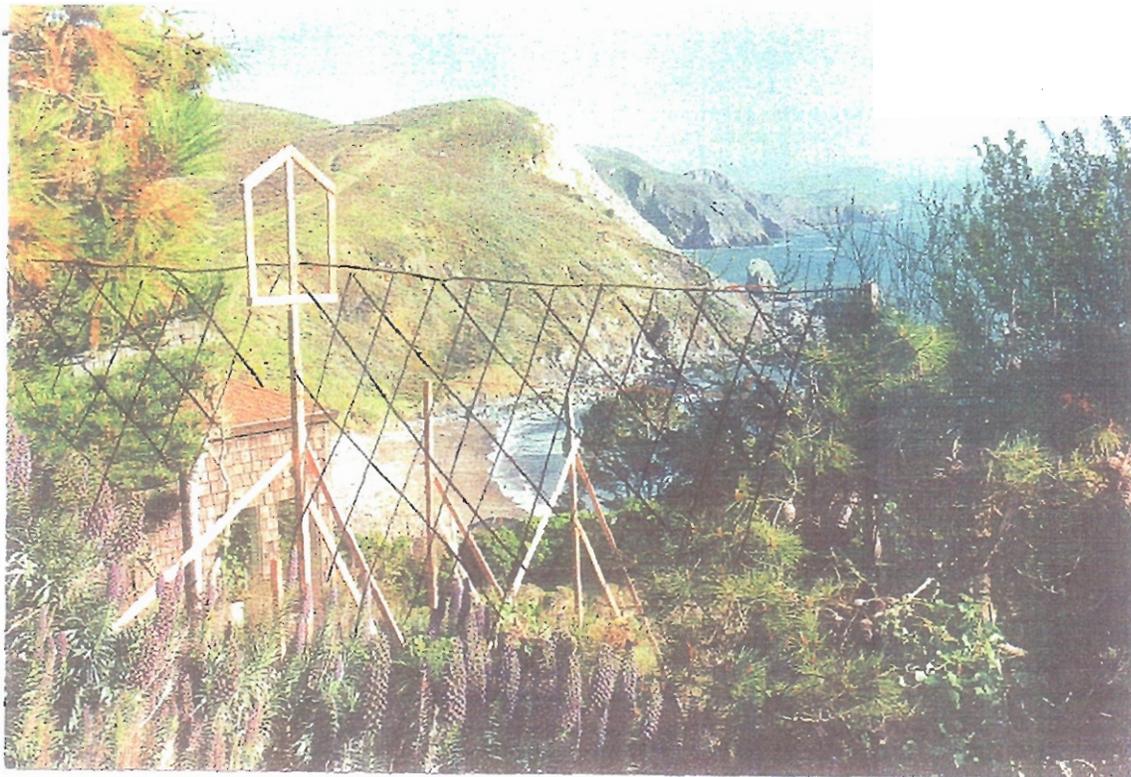


MUIR BEACH COVE FROM THE TOP OF THE EASEMENT



MUIR BEACH COVE FROM Ahab DRIVE

EXH. A-1



EXH. A-2

JUL 29 2009

CALIFORNIA
COASTAL COMMISSION

July 29, 2009

5 Ahab Drive
Muir Beach, CA 94965

To: All Commissioners, Alternates
and non-voting members of the
California Coastal Commission

Re: Timothy Crosby CDP,
Appeal No. A-2-MAR-09-010

Dear Commissioners,

We are the Appellants in the Crosby appeal which is on the Commission's agenda for August 12 to consider whether the appeal raises a substantial question. We herewith submit a brief summation of our issues.

The issues presented by our appeal clearly satisfy the criteria for determining whether a question is "substantial" as summarized by the Commission in *Adams and Boland Mini Storage and Car Wash*, Appeal No. A-3-SLO-09-022, p.2, as follows:

"The term 'substantial issue' is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of the LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance."

I. Neither the facts nor the law support the local government's decision

This appeal raises two of the most important questions to be adjudicated under the Coastal Act since its inception in 1976: (1) whether the protections of the Act extend only to scenic views from designated and signed public viewing sites like overlooks and (2) what constitutes a *significant* impairment of a scenic view under the Act and Local Community Plan Unit 1 (LCP) that implements it.

What is at stake in the Crosby case is a view of unparalleled beauty of Muir Beach cove, Big

Beach and the Pacific Ocean. (EXH.A). If permitted, the development will permanently eliminate that view. The ramifications, however, go far beyond that one view. Were Crosby's application for a permit to be approved, any similar issue coming before the Marin County Planning Commission (PC) or the Board of Supervisors (BOS) will be judged by the incorrect standards that were applied in this case, and, incrementally, the coastal views from public rights-of-way will vanish.

There are only three questions to be answered:

- (1) Does the project impair the view from public streets or trails?
- (2) Is the impairment significant?
- (3) Does the design, to the maximum extent feasible, preserve the view?

No one disputes that the Crosby project would impair the view. The appellants contend that an impairment is *significant* if it blocks a scenic coastal viewshed from public rights-of-way such as public roads, beaches and trails, as well as from designated vista points. The PC held that only views from public vantage points, viewing platforms or overlooks are protected. The PC adopted a Resolution which states that views from public-rights-of-way are only transitory and short term as a person proceeds to her ultimate destination and, therefore, are unworthy of protection. The PC also held that a view is not significantly impaired if there are other panoramic viewsheds in the area. Two Commissioners believe that only views of natural resources that have been specifically designated as scenic resources in the LCP are protected. The BOS endorsed this decision, thereby institutionalizing the PC's mistakes. If these standards are not decisively repudiated, the Coastal Act and its purpose of protecting scenic coastal views will be rendered utterly meaningless.

The analysis advocated by your Appellants is the same correct approach that was applied by the Coastal Commission and upheld by the Court of Appeals in *LT-WR, Ltd. v. California Coastal Commission*, 60 Cal. Rptr. 3d 417, 437-440 (Cal. App.2d Dist. 2007). The PC and the BOS applied the wrong legal standards and, therefore, inevitably reached the wrong result.

Section 30625(c) of the California Coastal Act, governing appeals, states: "*Decisions of the Commission, where applicable, shall guide local governments or port governing bodies in their future actions under this division.*" If the correct legal standards were to be applied, the Appellants would prevail and views of unique quality and character will be maintained, producing good public policy that will preserve the scenic coastal views for present and future generations of visitors to and residents of Muir Beach. It will also ensure that future permit applications that interfere with coastal views in Marin County will be properly evaluated applying correct legal standards consistent with prior Commission action.

II. The project as approved is vast in scale

The proposed development would add 1589 square feet of additional floor area to an existing 2058 square foot single family residence. At the hearing before the BOS, Deputy County Counsel David Zaltsman admitted that homes within 600 feet of the Crosby property range in size from 475 sq. feet to 5562 sq. feet; the average is 1768 sq. feet; the median is 1791 sq. feet; and only 9 (12 per cent) of the lots have homes exceeding 3000 sq. feet. Thus, the Crosby project would be larger than 88 per cent of the neighboring dwellings. As recognized by Commissioner Greenberg at the Feb.9 hearing before the PC, the proposed addition is too big and is out of character with the community.

III. The development would wipe out a view of singular beauty from public roads and trails

In addition to its outsized proportions, the Crosby project would completely block a stunning view of Muir Beach cove, Big Beach, the Pacific Ocean and most of the hillside visible from Ahab Drive and the public easement adjacent to the Crosby lands. The view from the top of the easement is one in a million. Indeed, in the very first hearing, the Deputy Zoning Administrator commented on how unique the view was; an opinion shared at all levels of the hearing and review process.

As you go down the easement towards the beach, there is a steep grade. The view from the top is not visible as you descend the steps. Even if there were any credence to the “fleeting moment” theory, this particular viewshed cannot be recaptured as a person moves further along to her destination. There is no other view like it from Ahab Drive. Nor can it be seen from the Muir Beach overlook. One picture is worth a thousand words. (EXH. A). If this development is allowed to proceed, that unique view will forever be gone.

IV. The consequence of allowing this project to proceed is effectively to repeal the Coastal Act and LCP Unit 1 in Marin County

This appeal will determine whether the Coastal Act and the LCP which implements it have effectively been repealed in Marin County. Directly at stake in this case is whether a spectacular coastal view of Muir Beach cove, Big Beach, the Pacific Ocean and adjacent viewsheds visible from public roads and trails will be destroyed forever by the Crosby project. But the crucial underlying issue in this case is what standard of review is required by the Coastal Act and the LCP.

The only legitimate issue in determining whether an impairment is significant is whether the visual coastal resource sought to be protected from the blight of development is visible from public rights-of-way, not whether there are other impressive viewsheds in the vicinity or whether the obstruction is only fleeting in the totality of one’s journey. *LT-WR, Ltd. v. California Coastal Commission*, 60 Cal.Rptr. 3d 417, 438 (Cal. App.2d Dist. 2007). If the same outcome-determinative standards that were adopted by the PC and BOS had been applied by the Coastal

Commission in the *LT-WR* case, the landowner would necessarily have prevailed.

The Marin County Planning Staff invented, out of thin air, illegal and outcome-determinative criteria that thwart, rather than advance, the objectives of the Coastal Act. These standards, adopted by the PC, were then ratified by the BOS. If the correct and lawful criteria are applied, the Crosby permit should be denied because the project has a significant adverse impact on a spectacular view from public roads and trails and because the project has not, to the maximum extent feasible, sought to preserve that view. If the permit is granted, the Coastal Act and the LCP would be toothless and no coastal permit could ever be denied, no matter how destructive of coastal views. This is a landmark case with serious implications for the future of the Coastal Act.

V. The appeal raises issues of statewide concern

The ramifications of this appeal go beyond Marin County because acceptance of the improper standards applied below will become a statewide precedent. A developer can always argue that an obstructed view is only fleeting as one proceeds to one's ultimate destination, or that there are other wonderful views along the California coast. Under this interpretation, the Coastal Act and the LCP will become a dead letter.

Conclusion

Those of us who are fortunate enough to live in Muir Beach must look beyond self-indulgence and consider the greater good. We are stewards of a precious trust, a unique, special and historic site. We are here for only a short period of time, but the beauty of the coast is eternal. Because the California Coastal Commission has the power to enforce the Coastal Act and the LCP, you share in that responsibility to ensure that structures created by man do not endanger that trust, as the Crosby project does. We urge the Commission to find that this appeal raises substantial issues.

This summary, by necessity, cannot cover all of the issues, facts and arguments raised by our appeal. On May 6, 2009, we submitted a twenty-one page brief containing a comprehensive discussion of the issues raised by the appeal with additional exhibits. We would, of course, be happy to provide the May 6 brief to any Commissioner who should request it. Contact: BrendaKohn@AOL.com. Or, it may be obtained from the Commission Staff.

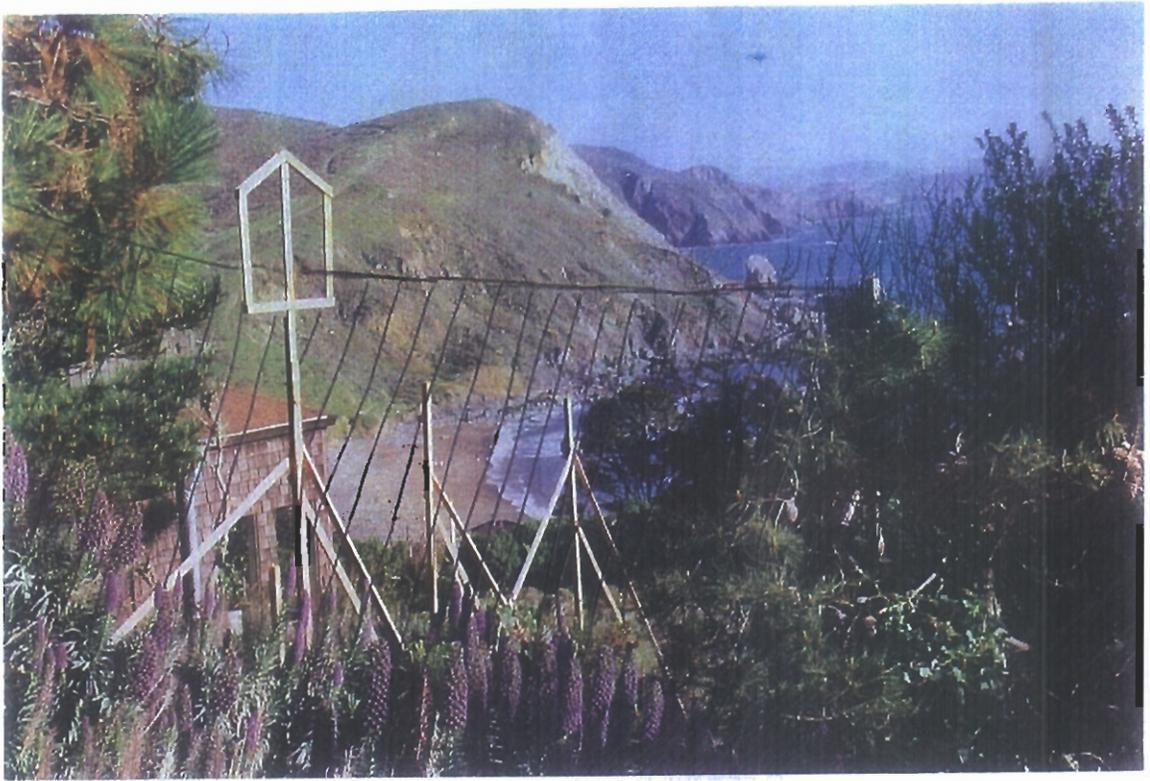
Thank you for your consideration.

Very truly yours,

Richard S. Kohn, Brenda F. Kohn, Dr. Edward J. Hyman, Dr. Deborah A. McDonald,
Appellants

Signature on File

By, _____
Richard S. Kohn



Taken from the top of the public easement



Taken from Ahab Drive

RECEIVED

AUG 03 2009

CALIFORNIA
COASTAL COMMISSION

Aug. 3, 2009

5 Ahab Drive
Muir Beach, CA 94965

To all Commissioners, Alternates,
and non-voting members of the
California Coastal Commission

Re: Timothy Crosby CDP
Appeal No. A-2-MAR-09-010

Dear Commissioners,

On July 30, the Staff Recommendation was posted on the internet. Mr. Macmillan has invited us to submit any additional comments which we may have to the Commissioners. We are writing to urge you to reject the staff recommendation that this appeal does not raise substantial issues. It is important to recognize that "*The Coastal Act presumes that an appeal raises a substantial issue.*" California Coastal Commission publication "Frequently Asked Questions: The Coastal Commission Permit Appeal Process", p.3. This means that the burden is on the Applicant to overcome that presumption with concrete evidence or legal authority. The Staff Recommendation contains many conclusions but few verifiable facts or analysis.

The Recommendation is fundamentally flawed in three respects:

First, Staff Note 2 that states "The photographs included with the appellants submittal (Exhibit 2), shows the story poles *before the latest revisions to the design which lowered the western roof height*" is wrong and undermines the entire validity of the Recommendation. Exhibit 2, the same photograph that we provided as an exhibit to our July 29 letter and as Exhibit A to this letter, accurately shows the roofline in black ink.

Originally, the diamond shaped structure (depicting clerestory windows) was all the way out at the end and the roofline was 4 ½ *higher* than shown in the photographs. The DZA ordered a reduction of 4 ½ feet but allowed the Applicant to have 8 feet at the higher elevation based upon a representation that they needed that clearance for a stairway. The Applicant re-erected the story poles to reflect the DZA's decision and they have remained that way except as noted below. The Planning Commission affirmed the DZA decision lowering the roofline but put the burden on the Applicant to justify how much space at the higher elevation would be needed for the staircase. That issue has never been decided. So, the black line on our photographs shows the roofline according to the latest revisions. The only thing that has changed is that very recently the *diamond shaped structures* disappeared. The height of the roofline as shown in our photographs

has not changed and the adverse impact of the proposed development is exactly as shown in the photographs.

The Staff apparently did not understand this and never met with the Appellants. Staff Note 2 is incorrect and must be deleted. Unless rectified, this error creates the impression that the Appellants are trying to mislead the Commissioners. The Staff owes it to the Commissioners and to the Appellants to clear up this misconception prior to the August 12 meeting because otherwise the Commission will be proceeding on a critical misapprehension of a material fact.

Second, the assertion that the view in question is not significant or unique is demonstrably wrong. The photograph attached to Appellants' July 29 letter (and again as **EXH. A** hereto) is proof to the contrary. (We have no idea what the Recommendation means when it says that 'the view from this location is intermittent at best.')

Even the Marin County Planning Commissioners were effusive in describing the singular beauty of the view. (**EXH.B**) Supervisor Kinsey referred to it as a "jewel of a view." (**EXH.C**) Mr. Crosby has himself stated that "The 1600+/-square foot addition is designed to take full advantage of the spectacular coastal view;" Final Planning Statement, 7/24/08. Members of the public agree. (**EXH. D**). *This is the first time that anyone has denied that the view in question is special and spectacular.* What basis is there for the Staff to disagree with Planning Commission members Theran, Holland, Greenberg, Lubamersky and Crecelius, Supervisor Kinsey, Mr. Crosby, members of the public and the photographic evidence on this point?

Third, the statement that "no significant view from either the pathway or the street would be completely obstructed" is baffling. As shown by the photograph, the project wipes out the view of the cove, Big Beach, and much of the adjacent hillside. It is perfectly clear that there is a *significant* impairment of this view. The test which the Coastal Commission should apply, as set forth in *LT-WR, Ltd. v. California Coastal Commission*, 60 Cal.Rptr. 3d 417, 437-440 (Cal. App.2d Dist.2007), is (1) Is the view impaired?, (2) Is the impairment significant?, and (3) does the design, to the maximum extent feasible, preserve the view? Based upon the plain photographic evidence, the Recommendation is wrong.

In this connection, why is there no mention of the *LT-WR* case, an important recent precedent applying the visual coastal resource provisions of the Coastal Act, in the Recommendation? The inconvenient truth is that it cannot be squared with the Recommendation, so better to ignore it.

If the Coastal Commission were to adopt the Recommendation, it would create a disastrous precedent, both on a regional and statewide basis. If the Coastal Act and the LCP do not protect a visual coastal resource of this quality, what is the point of having a Coastal Act? What coastal view could ever qualify as unique and how would that be determined? Acceptance of the Recommendation would mean open season on coastal development This raises a substantial issue.

The Recommendation is otherwise flawed in its conclusions. Chief among them are the

following:

1. The possibility that there may be other “overall panoramic views visible from the street or trail” is not a legitimate consideration. First, there are no views on Ahab Drive or the public easement that match the unique view that will be destroyed if the project is allowed to proceed. Moreover, Marin County is justly famous for its coastal views. A developer can always claim that there are other panoramic views in the vicinity. The Coastal Act must be interpreted in a manner to further, not to thwart, its objectives. Accepting this argument would make the Coastal Act meaningless. The only legitimate question is whether the view in question is significantly impaired and, if so, can the design be changed to avoid the adverse impact. This raises a substantial issue.

2. The reliance on Zoning Section 22.56.130(o)(3) is improper because it directly conflicts with the visual resource provision in the LCP, p.56. The improper application of this section led the Planning Commission to hold erroneously that only views from designated viewing places like overlooks are protected by the Coastal Act. The Recommendation states that the public easement is not identified by signs, therefore perpetuating the erroneous belief that only designated viewing areas are protected by the Coastal Act. Not only is this wrong as a matter of law but it would remove most visual coastal resources from the protection of the Coastal Act. This issue was thoroughly addressed in the Appellants’ May 6 brief, pp. 8-11, and raises a substantial issue.

3. Neither of the two conditions imposed on the project are adequate to ameliorate the destructive effect of the project on the view of Muir Beach cove. Lowering the roofline by 4 1/2 feet does not appreciably reduce the adverse impact on the view, as can be seen from the photograph. And, no amount of landscaping can recapture the view from Ahab Drive and the top of the public easement. As we pointed out in our July 29 letter, that is because of the steep dropoff from the top of the public easement as you descend to Muir Beach. This statement is supported by Planning Commissioner Theran, who stated: “You walk down four or five steps and you get to the stairway and you say “WOW.” And go down four steps and its gone.”(EXH. B)

4.. The conclusory statement that the project is “modest” and “does not raise significant concerns with respect to compatibility with the surrounding built environment” is in direct conflict with the statistics offered by the Deputy County Counsel at the BOS hearing showing that the completed structure would be larger than 88 per cent of the surrounding structures. This evidence, which the Recommendation ignores, raises a substantial question.

5. The Recommendation’s repeated references to “wooden stairs” or “pathway”when describing the public easement adjacent to the Crosby lands minimizes the fact that the it is a dedicated public easement that has been in use for about forty years. The Coastal Act and LCP protect visual scenic resources visible from “public roads, trails, beaches and vista points.” LCP p.56. The Legislature has made a judgement that views from such trails are to be protected. In any event, the same view, which would be lost if the project is approved, is visible from Ahab Drive, a public road.

6. The Recommendation states that the rejection of this appeal will not create an adverse precedent and “does not raise issues of regional or statewide significance.” As noted above, if this view is not considered significant or unique enough to be deserving of the protections of the Coastal Act, it is hard to imagine what coastal view would be protected. If adopted, the Recommendation will create a precedent that a unique and spectacular view of the coast may be completely eclipsed by development if there are other panoramic views in the area. This would render the Coastal Act and LCP meaningless in a county like Marin that is famous for its coastal views.

It is noteworthy that the Recommendation is silent with respect to the “fleeting moment” theory that was central to the decisions by the Marin County Planning Commission and the BOS. Does this mean that the Commission is being asked to disavow this theory? As we pointed out in our July 29 letter, one of the statutory roles of the Coastal Commission is to give guidance to local governments concerning implementation of the Coastal Act and the LCP. The Commission should make a clear decision concerning the validity of that theory, otherwise how are the local governments to know that it is an inappropriate standard? This raises a substantial issue.

Also, the Recommendation makes only passing reference to the issue of whether the Coastal Act and the LCP only protect views from “designating viewing platforms” such as overlooks. It states that “The stairway path is not designated by signs.” Rec. P.2. This was also central to the Planning Commission’s decision ratified by the BOS. Both the “fleeting moment” theory and the “designated viewing platform” theories, if not clearly repudiated, presumably will continue to be applied by the Planning Commission and the BOS.

7. Without any analysis, the Recommendation states that the Muir Beach Community Plan (MBCP) is not part of the LCP. This is inconsistent with the fact that in another case from Muir Beach, *Beverly Biondi*, Application No.2-MAR 8-066, Local Permit CPO7-34, CPO8-24, the MBCP was central to the case and no one suggested that it was not applicable. At the BOS hearing, Deputy County Counsel David Zaltsman asserted that the MBCP was incorporated in the LCP but only for design review. Whatever the answer, the bald statement in the Recommendation is completely unsatisfactory.

8. Finally, the photographs submitted by the Staff do not accurately reflect the view from Ahab Drive and the top of the trail. We refer you to the accurate photographs that we have submitted.

Conclusion

The Recommendation does not overcome the presumption that this appeal raises a substantial issue. Mr. Macmillan graciously has proposed to make a copy of the Appellants’ May 6 brief submitted in opposition to the project available to all the Commissioners on a disk. We

respectfully request that you take the time to read our brief and form your own opinion as to whether this appeal raises a substantial issue.

Thank you for your consideration.

Richard S. Kohn, Brenda F. Kohn, Dr. Edward J. Hyman, Dr. Deborah A. McDonald, Appellants

Signature on File

By, 
Richard S. Kohn

LIST OF EXHIBITS

- EXH. A. Photograph of Muir Beach Cove from Public Easement and Ahab Drive**
- EXH. B. Page 8 of Appellants' May 6 Brief to the California Coastal Commission**
- EXH.C. Page 18 of Appellants' May 6 Brief to the California Coastal Commission**
- EXH. D. Letters in Opposition to the Crosby project submitted by James A. Auchincloss, Jeffrey Roven and Iosif Caza**



Taken from the top of the public easement



Taken from Ahab Drive

demonstrate this clearly and we sincerely hope that Coastal Commission staff will visit the site to see for themselves. Even though, for reasons to be discussed below, the Planning Commissioners did not believe that the Coastal Act required that the permit be denied, several were effusive in describing the view in question.

Commissioner Theran said: "I stood at the top of those stairs. And, you know, you can't see it from the street. You walk down four or five steps and you get to the stairway and you say 'WOW.' And go down four steps and it's gone. But I've never been down those steps before and I wouldn't have walked right by because the view is there. I haven't completely thought through this...I wonder if we have the opportunity to mitigate the view loss."

Commissioner Holland said: "There's no question in my mind that a view is obstructed. Anybody who stands at the top of the steps... I walked all the way down...It was a marvelous thing to do. And there is that view there and it's undeniable and it's a wonderful view down to big beach, the hillside and the waves and the ant-like people walking down on the strand below. I loved it."

Commissioner Greenberg said: "I don't like the size of the house. In my view, it's clearly inconsistent-it will set a new standard and next time we have an application, a problem, an appeal here we'll be told the one down the street is this big...This one is out of character. So the question is if this was consistent with neighborhood standards would there be a view impact? There is a view impact."

Commissioner Lubamersky said: "It's a hard call. I think what it comes down to is the 'maximum extent feasible' in that I think significant views are being lost. I never walked down the streets before in Muir Beach. And, really, it is stunning. I'm reluctant to rely on landscaping cause trees grow. With a coastal view once it's gone with the building you don't get it back. So, I don't want to redesign the house. I don't think that's our job. But I do think there are other ways this can be addressed that would reasonably keep that valuable view out there because once it's gone you don't get it back."

Commissioner Crecelius said: "There is an impact and everyone agrees to that."

Despite these sentiments, the Commissioners went astray in applying the governing law when determining whether the view was protected or whether the impairment was significant or not. If you apply the wrong legal principles, you are bound to reach a wrong result. That is what happened here.

(B) The Planning Commission erroneously applied the Interim Zoning Ordinance which conflicts with the LCP

The Commissioners made two fundamental errors in applying the governing law. The first was that the Coastal Act and the LCP only provide protection from designated viewing platforms such as the Muir Beach Overlook. They fell into this error because they did not follow the advice of their own staff, Deputy Director of Planning Services Tom Lai. The Commissioners believed that

For example, Supervisor Kinsey voiced his concern that the Applicant should not be held accountable even though his architect, Richard Beckman, had “missed an opportunity to protect this jewel of a view” and that a “sensitive architect should have done that.” First of all, the record does not reflect who is at fault: it may be that the Applicant’s architect(s) advised him that the project would run afoul of the Coastal Act and he chose to ignore that advice. So, Supervisor Kinsey was making an assumption. Second, assuming the architects were at fault, the fact that the Applicant might have legal recourse against them has absolutely nothing to do with whether the project violates the Coastal Act and the LCP. Potential liability would be an issue for the architect’s malpractice carrier and the courts to determine. It was not the BOS’s job to resolve issues of liability between Mr. Crosby and his architects or to insulate Mr. Crosby from the consequences of bad advice. There are other remedies for that.

Supervisor Kinsey thought it significant that other projects in Muir Beach, cited by the Applicant, had been approved in recent years. In fact, none of these projects eclipsed a stunning view of the coast, as the Crosby project does. In any event, this highlights why it is important that the Crosby permit be denied: if it is allowed, in future years developers will be citing the Crosby project as the benchmark. The Coastal Act would be eviscerated. The root of the problem is that Supervisor Kinsey believes that decisions such as this one should be decided by the Muir Beach community in the context of its Community Plan (which the BOS erroneously thinks was never incorporated into the LCP), totally ignoring the fact that the Coastal Act has declared the preservation of California’s scenic coastal resources to be a matter of statewide and nationwide concern. Calif. Coastal Act Sec. 30001(b). Allowing such factors to influence the outcome constitutes arbitrary and capricious decision-making at its worst.

More disturbing is Supervisor Kinsey’s belief, not stated at the hearing but subsequently published, that neither the Coastal Act nor the LCP protects what he termed ‘micro’ views. Or so he told the West Marin Citizen in an interview about this case a few days after the BOS decision. In a revealing statement, published by the Citizen on April 9, 2009, Supervisor Kinsey stated that “[t]he language of the law did not provide for the protection of ‘micro’ views.” EXH. G. What is the legal authority for this astonishing statement? Neither the Coastal Act nor the LCP distinguish between ‘micro’ views and ‘macro’ views: they protect all views to scenic resources within the coastal zone.

B. The Applicants’ *ad hominem* attacks should be ignored

There is an adage in the legal profession that “if the law is against you argue the facts; if the facts are against you argue the law; and if both the law and the facts are against you put your adversary on trial.” Because both the law and the facts are against the Applicant, regrettably he has resorted to arguments of a personal nature designed to divert attention away from the issues raised by this appeal.

The Applicant’s argument before the BOS was punctuated by irrelevant and *ad hominem* attacks on the Appellants. These include his belief that the Appellants are not “entitled to a life free of any change.” Applicant Crosby’s Statement Before the BOS, March 24, 2009. In addition to accusing the Appellants of various transgressions, he argued that the fact that the Appellants have not

JAN 29 2009 PM 12:30 Planning

707 Benjamin Court
Ashland, OR 95720-1699
January 21, 2009

Marin County Planning Commission
MARIN COUNTY CIVIC CENTER
3501 Civic Center Drive, Room 308
San Rafael, CA 94901

Re: Crosby Application Coastal Development Permit CPO9-3

Dear Sirs and Madams:

As a member of the public, I need to share with the Commission my strongest opposition to the Crosby proposal.

A resident of Oregon, I have stayed at Muir Beach once or twice a year for most years since I relocated to the Pacific Coast from Washington, D.C. a decade and a half ago.

As a member of the public, I value maintenance of the special and quite striking views at Muir Beach. When at Muir Beach, I stay with friends on Seacape Drive, and go to Muir Beach by the public access from Ahab Drive to the ocean. I was shocked to learn that the Crosby project would block forever the remarkable views of the Muir Beach cove from the top of the public access at Ahab Drive.

When I moved to Ashland, I built my home. I appreciate the difficulties someone applying for a permit must confront, but I also understand that I and other applicants must learn to conform to community standards providing for the needs of others as well as our own narrowly defined needs.

To live responsibly in society, none of us can so impose ourselves on the rights of others that we leave them permanently impaired. The Crosby project would eliminate any view of the Muir Beach cove for the public.

This project is narrowly conceived to prosper the rights of Mr. Crosby over those of the public in a Coastal Region dedicated to the public by nature, history, public law and by the public will. This application is wrong-headed.

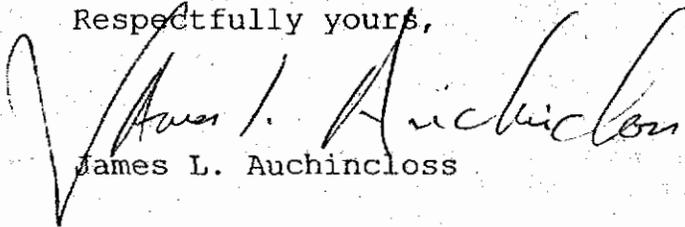
Exh. D

PC ATTACHMENT #21

Having grown up and spent most of my life in Washington, ^{D.C.} I ⁿ try to comprehend public policy. Approval of this project in its current form, without substantial revision, would be irresponsible and malfeasant, and would constitute poor public policy.

I urge your rejection of this project.

Respectfully yours,

James L. Auchincloss

P.S. Please just do the right thing ... do good.

Jeffrey Roven
780 Crystal Lane
Santa Cruz, CA 95062

JAN 29 2009 PM 12:31 Planning

Marin County Planning Commission
Marin County Civic Center
3501 Civic Center Drive, Room 308
San Rafael, CA 94901

January 23, 2009

Re: Appeal from DZA's Decision
on Timothy Crosby Application
for a Coastal Development Permit
Application # CPO9-3

Dear Commissioners:

I am writing to express my strongest opposition to the Crosby project.

I've spent the last four decades as a real estate developer in California and New York, and am currently retired to Santa Cruz. However, I frequently visit West Marin, because of my many friends residing there and due to the pristine beauty of the natural environs and my lengthy attachment to it, and particularly to Muir Beach, for which I have a love dating back to my early years in the East Bay.

Scrutinizing the proposal of the applicant, I am reviled as a member of the public who often seeks the solitude and beauty of Muir Beach.

When I journey to Muir Beach, I park on Ahab Drive and spend time there appreciating the Muir Beach cove. Older and disabled, I can no longer walk down to Muir Beach itself, nor can I view the Muir Beach cove from the Muir Beach overlook, as its promontory too is not accessible to the handicapped. Hence, I frequent the area at the top of the public access pathway at its intersection with Ahab Dr.

I was appalled two weeks ago, after walking with my cane from my car to the landing at the top of the public access path stairs, to view the Crosby storey poles revealing that the proposed project would forever preclude me and other handicapped individuals from viewing the Muir Beach Cove.

Mr. Crosby's proposal would block the views both from the top of the path.

As a developer who has stood before many Planning Commissions advocating project after project, I view this project as abusive of the common legal guidelines we all employ in development in the coastal region. The Crosby proposal undermines the public's right to visual and physical access to the Pacific coast. This project entirely precludes visual access of Muir Beach cove for the disabled population visiting the Seacape subdivision.

This project expresses a blatant disregard for the public and its access to a viewshed that I, as someone who has lived in Europe and Africa as well as my native U.S., believe is particularly worthy of your protection. This is a world-class natural phenomenon, a distinctive and exceptionally important viewshed that beckons your proper protection, which can be accomplished only by your rejection of this project.

I thank you for your consideration of my letter and my heart-felt love for Muir Beach, which would be unalterably undermined for eternity if this project were to be approved.

Thank you again -


Jeffrey Roven

January 26, 2009

Marin County Planning Commission
3504 Civic Center Drive, Room 308
San Rafael, CA 94901

Re: Crosby Coastal Development Permit CPO9-3

Dear Commission Members:

I come before you as a public citizen. As a developer who has become wealthy from appropriate development, I oppose the Crosby Coastal Development permit.

My wife and I came to the United States from Romania several decades ago, have raised a family in this remarkable country, and am president of the largest organization of Romanians who have immigrated to this country. Coming from the former Soviet Union block, Romania, where public policy created the Chernobyl disaster and perpetuated similar violations of the rights of nature and of the average citizen, I value the experience I and other members of the public have when visiting Muir Beach, as I have three times in the last year.

I am entranced by Muir Beach, and most often have brought four or five friends with me to visit the area. When there, I hike on Mt. Tamalpais and descend to Muir Beach.

Imagine how aghast I was last week when I found that my favorite route to Muir Beach from Mt. Tamalpais, down Seacape Drive to Ahab Drive, and then down the path to the ocean would be obstructed by Mr. Crosby's project.

As a developer, I understand the need for development, but this development proposal does not adequately balance the needs of the public with Mr. Crosby's.

Having traveled the world, I consider incomparable the view of the cove at Muir Beach from the top of the public path. Please protect it and reject the Crosby proposal.

Your servant,



Iosif Caza
President, Organization of Romanian Americans

JC:nm

Address: 1767 Tribute Road, SUITE F
Sacramento, CA, 95815
Phone: (916) 541 - 3751
Email: ora.rousia@yahoo.com
Website: www.oranow.com

RECEIVED

AUG 06 2009

CALIFORNIA
 COASTAL COMMISSION
 Agenda # ~~W-19~~
 Application # A-2-MAR-09-010
 Jeffrey Roven
 OPPOSE

California Coastal Commission
 North Central Coast District Office
 45 Fremont Street, Suite 2000
 San Francisco, CA 94105-2219
 By Facsimile (415) 904-5400

August 5, 2009

Dear Commissioners:

I am a frequent visitor to Muir Beach and have been for several decades. Now disabled, I can no longer go down to the beach, but spend endless hours pickinicking and enjoying the view of Muir Beach cove in the area where I used to park before going down to the beach, Ahab Drive. The view of Muir Beach from there is nearly spectacular enough to compensate for my inability to reach the seacoast itself.

I have been tracking this matter since I first sent a letter to the Marin Planning Commission staff last year, and must admit I was astounded to read in the Coastal Commission staff report that only a few Muir Beachers use the trail. It is used by those of us who can no longer reach the beach, as well as by dozens of people from all over the world who go down it every day that the weather is decent, and even on some days when it is more inclement.

I am a developer, and have been so all my adult life. I am not opposed to sensible development. As a matter of fact, I have made a living and brought up my children by developing California property. However, the Crosby project as currently conceived is not appropriate to this coastal location, and should be rejected by the Commission and re-designed. Mr. Crosby can have a magnificent home on this location without disturbing, much less destroying, this unique view.

I was further aghast to read in the Commission staff recommendation that staff believe the view of the Muir Beach cove at the trailhead would not be obscured thoroughly. If Crosby's project as currently designed were affirmed, the view would be eternally obliterated.

This is a particularly unique view, one that has brought me time and again to Muir Beach, one that the Commission must preserve.

I ask that the Commission reject the Crosby project and allow the Applicant to redesign it to preserve this view. I have reviewed the plans and site, and such changes that would preserve the view can readily be accomplished architecturally and geotechnically.

Respectfully,
 Signature on File
 Jeffrey Roven

AUG 06 2009

CALIFORNIA
COASTAL COMMISSION

Agenda #W19a
Application # A-2-Mar-09-010
Hank Gehman
OPPOSE

California Coastal Commission
North Central Coast District Office
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

To Whom It May Concern:

I don't live at Muir Beach so I don't have any neighbor axe to grind. I come regularly from the East Bay to go to the "Little Beach" at Muir Beach. Like others who drive to Muir Beach, I park on Ahab Dr and take the steps down to "Little Beach". It is truly one of the most beautiful hiking trails that I have ever been on (and I have been on many).

The highlight of the walk is right at the top of the stairs on Ahab Dr. The view from there is, in my opinion, the single most beautiful view of Muir Beach. I always stop there and just marvel at the totality of the view. My eye goes down the hill, struck by the magical integration of man's impact with the natural setting, on to the beach and the surf and continues up to the hills beyond. It's not just the various elements of the view that strikes me and the people that I bring with me, but how these parts are woven together by God and man into this perfect, painterly composition.

I was so disheartened when, one day, I saw the story poles marking out the new building being proposed by Mr. Crosby. Maybe as much as one half of that perfect picture would be blocked. That view soars in the heart because so much is brought together at once. How can the view survive if a large part is obstructed? It can't. It will be forever gone with no hope ever being enjoyed again.

That is, enjoyed by me and others from the public. Mr. Crosby could have expanded his house by building down the hill where he has a lot of land. But Mr. Crosby said that he preferred to extend his house across the top of the hillcrest because he wanted to maximize his view. He knows how special that view is.

So, at the end of the day, Mr. Crosby is asking the Coastal Commission for the right to privatize a view that until now had been preserved for the public at large to enjoy. But isn't the fundamental goal of the Coastal Act to resist this privatization of the natural beauty of our California coast?

I also believe that this application for development should be denied because it will open the floodgates to further encroachments to the public appreciation of the beauty and uniqueness of Muir Beach. A Marin County Supervisor himself said at the end of their hearing that the Muir Beach community would have to quickly get together and tighten their restrictions on development because without those restrictions the approval of this project would unleash a wave of development that would destroy the unique beauty of Muir Beach.

I ask the Commission to step forward, deny this application and defend everyone's right to enjoy our coastal beauty.

Thank you for your consideration.

Sincerely,

Signature on File

✓ Hank Gehman
5 Canyon Rd
Berkeley, Ca 94704