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W14a

5-21-0423 (Cole Family Investment Rentals LLP)

MAY 10, 2023

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W14a

May 5, 2023

SENT VIA EMAIL ONLY at SouthCoast@coastal.ca.gov

Chair Donne Brownsey
Honorable Commissioners
California Coastal Commission
South Coast District Office
300 East Ocean Blvd., Suite 300
Long Beach, CA 90802

Re: Application No. 5-21-0423 (Cole Family Investment Rentals LLP)
1880 N. El Camino Real, Space 76, San Clemente, Orange County
Hearing Date: May 10, 2023
Agenda Item: W14a

Dear Chair Brownsey and Honorable Commissioners:

This office represents Cole Family Investment Rentals LLP ("Applicant"), the owner of the above referenced mobile home located in Space 76 within the Capistrano Shores Mobile Home Park at 1880 N. El Camino Real, San Clemente ("Space 76"). The Applicant seeks a Coastal Development Permit ("CDP") to allow the remodel of a 14-foot high mobile home that includes adding a partial second story up to 17-feet, 10-inches high on Space 76.

On May 10, 2023, you will consider the Applicant's CDP No. 5-21-0423 ("Application"). The Applicant objects to Special Condition No. 1 on pages 5-6 of the Staff Report. Special Condition No. 1 limits the height of the remodeled mobile home to 16-feet. The findings which the Staff Report claims to support the imposition of Special Condition No. 1 are found on pages 11-14. The Applicant objects to Special Condition No. 1 because the evidence does not support the finding that the proposed height would result in "significant blue water obstruction". (Staff Report, p. 13) The Staff Report inaccurately describes Space 76 as being "in this centermost portion of the Park". (Staff Report, p. 13) In fact, Space 76 is at the westernmost portion of the park, more than 600 feet west of where the public trails at Marblehead end.

As you are undoubtedly aware, the issues surrounding the replacement and/or rehabilitation of mobile homes within the Capistrano Shores Mobile Home Park ("Park") are not new and/or

precedent setting. At the October 12, 2022 Commission hearing for a mobile home in Space 43, both staff and Commissioners emphasized that each application within the Park for a new or remodeled mobile home would be evaluated on a case-by-case basis. That is exactly what the Applicant requests the Commission to do here.

Staff is asking the Commission to restrict this Applicant to a maximum height of 16-feet despite a lack of evidence to support the finding that the requested height of 17-feet, 10-inches would have a significant impact on public views. On the contrary, a height of 17-feet, 10-inches is consistent with preserving views to and along the shoreline as required by Public Resources Code § 30251. As the following facts, the attached documents, and the photographs in Exhibits 3 and 4 to the Staff Report evidence, Staff's recommendation and position in this matter is wrong.

A. Application Background.

Space 76 at Capistrano Shores Mobile Home Park is substantially identical to the other 89 mobile home spaces, each of which is 40 feet in width. The Park is located along the beach developed with a single row of 90 mobile home spaces parallel to the shoreline. The Applicant owns the existing and proposed mobile/manufactured home but does not own the land under the existing unit. The Park is owned by Capistrano Shores, Inc., a non-profit mutual benefit corporation in which the Applicant holds a 1/90 "membership" interest which allows the Applicant the use of a unit space for mobile home purposes.

The Application was submitted to the Commission for a CDP to remodel an existing 1,289 sq. ft., 14-ft.-high, one-story mobile home with a pitched roof, and to construct a second-story addition resulting in a 2,126 sq. ft., 17-ft.-10-in.-tall, partially flat-roofed mobile home. The Applicant submitted a view study from points in the Marblehead trail system which showed no impact on public views because (1) Space 76 is more than 600 feet west of the west end of the Marblehead trail system, and (2) the lawful house on Space 75 is 25 feet high, making most of the proposed home not visible even from the end of the Marblehead trail system. This view study is pages 1-9 of Exhibit 3 to the Staff Report.

Coastal Staff then asked for additional views from Coast Highway. This view study is pages 10-14 of Exhibit 3 to the Staff Report. Then Coastal Staff sent several pictures which Coastal Staff had taken and asked for a view study from those locations. Coastal Staff could not identify the specific locations so the Applicant's agents used the Coastal Staff photographs to determine the approximate locations. This final view study is Exhibit 4 to the Staff Report.

Based upon these view studies, Coastal Staff asks the Commission to find that the Applicant's proposed home will "result in significant blue water obstruction". (Staff Report, p. 13) No fair review of the photographs will support this finding. This finding is necessary to support the imposition of Special Condition No. 1 which would require the Applicant to reduce the roofline of the proposed home from 17-feet 10-inches to 16 feet.

B. Staff's Finding that the Proposed Height Will "Significantly" Obstruct Blue Water Views is Not Supported by Evidence.

When evaluating consistency with Section 30251, the Commission should keep in mind the vast ocean views from the Marblehead trail system which extend from the San Clemente Pier to Dana Point. Attached to this letter as Exhibit A is a Google Earth screenshot of the entirety of Capistrano Shores Mobilehome Park and the ocean beyond. From every vantage on the Marblehead trail system, vast ocean views exist to the horizon for 180 degrees. Contrary to the statement on Page 13 of the Staff Report, the Applicant's Space 76 is not in the "centermost portion of the Park". Space 76 is in the most western 20% of the Park, and is more than 600 feet from the western end of the Marblehead trail system.

Attached to this letter as Exhibit B is a copy of Page 1 of Exhibit 4 showing the viewpoint locations chosen by the Coastal Staff. Each location is at the western end of the Marblehead trail system. On this copy the information as to the elevation of each viewpoint and the distance from the center of the proposed home as measured on Google Earth is shown. Also shown is the location of the 25 foot high house on Space 76 and the 18.5 foot high house approved by the Commission on Space 80 in CDP 5-09-179.

The Applicant asks that Commissioners look at Staff Report Exhibits 3 and 4. Commissioners can see on Exhibit 4 that from any of the 6 locations chosen by Coastal Staff, only a small portion of the Applicant's roofline is not obstructed by the existing 25 foot high house on Space 75. The area of the Applicant's proposed roofline at 17-feet 10-inches is visible for only 22 feet from the highest viewpoint no. 1 to only 15 feet at viewpoint no. 5. (No blue water views can be seen from viewpoint no. 6 whether the proposed home is 16 feet or 17-feet 10-inches.) The visible portion of the proposed home diminishes as the angle at which it is viewed becomes sharper.

At the higher elevations in viewpoints 1-4, the proposed home only obstructs the observation of the roofs of the homes on Spaces 77 and 78. This is because at the higher elevations, the observer looks over the small area of the roof of the proposed home not already invisible from view due to the higher house on Space 75. At the angle of view from the higher elevations between 78 and 104 feet, what appears beyond the Applicant's proposed home will be the rooftops of the next two houses. An example of this is attached as Exhibit C showing the architect's depiction of the outline of the Applicant's design as observed in enlarged form from viewpoint 1 where the largest extent of the Applicant's proposed home would be visible. Commissioners should keep in mind that this is an enlargement in order to make the depiction meaningful. It is not what the viewer will see from 730 feet away.

Only from viewpoint 5 (pages 10-11 of Staff Report Exhibit 4) does the Applicant's home rise higher than the houses beyond it. This is because viewpoint 5 is at an elevation of only 39 feet which is not much higher than the elevation of the Applicant's roofline at 32 feet. (Existing grade $\pm 14\text{-feet} + 17\text{-feet } 10\text{-inches} = \pm 32\text{ feet.}$) Page 11 of Staff Report Exhibit 4 shows how the Applicant's home would appear if limited to 16 feet by Special Condition No. 1. The applicant

asks for an additional 22 inches. These 22 inches are only visible for a distance of 15 feet before the roofline disappears behind the home on Space 75.

Attached to this letter as Exhibit D is Page 11 of Staff Report Exhibit 4 which shows how little of Space 76 can be seen from viewpoint 5. The bottom of the eave of the house on Space 75 is approximately 21 feet. So the distance from the 16 foot roofline depicted to the bottom of the eave is 5 feet. The 22 inches of additional height which the Applicant seeks is only 36% of this distance. A red line has been inserted which identifies the increase of 22 inches that the Applicant seeks.

Because the area between the roof at 16 feet and the redline 22 inches above is so small, it is hard to distinguish in a normal naked eye view. Attached as Exhibit E is an enlargement of this viewpoint 5 on which a similar red line has been inserted approximately 22 inches above the depicted 16 foot roofline. The area between the depicted 16 foot roofline and the red line 22 inches above is the entirety of what the Coastal Staff asks you to find to be a “significant blue water obstruction”. Commissioners should keep in mind that Exhibit E is an enlarged view, not an actual naked eye view. It is enlarged only to illustrate the absence of any significant view obstruction.

From the minimum distance of 667 feet, this tiny area of roof in the corner of the ocean viewshed from the Marblehead trails cannot support a finding of “significant blue water obstruction”. As the public walks along the lower trail, it only goes farther away from the Applicant’s Space 76. A finding of “significant blue water obstruction” cannot even be made from a “cumulative” analysis. At this sharp angle of view, the 18.5 foot roofline at Space 80 approved in CDP 5-09-179 will always be higher than any additional house which is 8 inches lower.

C. What is the meaning of “significant”?

The Coastal Act contains no definition of “significant”. However, we can borrow definitions which come from other environmental legislation. Under CEQA, Public Resources Code Section 21068, “‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” Significant requires that the effect be substantial. The effect of the Applicant’s requested roofline on the “views to and along the shoreline” at 17-feet 10-inches is not substantial, and therefore, not significant. To make a finding of “significant blue water obstruction” based on these facts is to mock the meaning of “significant”.

D. The CDP is Consistent with Previous CDPs.

The Application is routine and consistent with prior decisions and findings of the Commission in the following cases:

<u>Space Number</u>	<u>CDP Number</u>	<u>Height</u>
Space #80	CDP No. 5-09-179-A2	18'-6"
Space #81	CDP No. 5-09-180-A1	19'-6"
Space #90	CDP No. 5-10-180-A1	19'8"

In each of the above-referenced cases, the Commission found that a mobile home at varying heights above 16 feet was consistent with Public Resources Code § 30251 which requires that “[p]ermitted development shall be sited and designed to protect views and along the ocean and scenic coastal areas. . .” Examples of these repeated findings are as follows:

CDP 5-09-179

On **June 9, 2010**, the Commission approved **CDP 5-09-179** for the installation of a new 1,256 sq. ft., double-wide, 18.5’ tall mobile home in Space 80. The Commission made the following finding of fact:

“... Views of the mobile home park and white water ocean views can available from proposed public trails along the coastal bluffs inland of El Camino Real at the Marblehead Coastal site. The proposed mobile home meets the structural and deck stringlines and is therefore compatible with the character of the mobile home park. Additionally, as designed, the 18’ 6” height of the proposed single-story mobile home is compatible with the height of the rest of the exclusively single-story mobile homes in the Capistrano Shores Mobile Home Park. As proposed, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.” [Emphasis added.]

CDP 5-09-180

On **June 9, 2010**, the Commission approved **CDP 5-09-180** for the installation of a new 1,345 sq. ft., double-wide, 19.5’ tall mobile home in Space 81. The Commission made the following finding of fact:

“... Views of the mobile home park and white water ocean views can available from proposed public trails along the coastal bluffs inland of El Camino Real at the Marblehead Coastal site. The proposed mobile home meets the structural and deck stringlines and is therefore compatible with the character of the mobile home park. Additionally, as designed, the 18’ 6” (sic) height of the proposed single-story

mobile home is compatible with the height of the rest of the exclusively single-story mobile homes in the Capistrano Shores Mobile Home Park. As proposed, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.” [Emphasis added.]

CDP No. 5-10-180-A1

On **April 14, 2016**, the Commission approved **CDP 5-10-180-A1** for the replacement of an 1,332 sq. ft., 12-13 ft. high one-story mobile home with an approx. 1,569 sq. ft., 19.8 ft. high (with loft) mobile home in Space 90 similar to Applicant’s proposal. The Commission made the following finding of fact:

*“Under CDP No. 5-09-179 and 5-09-108, the Commission approved the installation of mobile homes with heights of 18.5 feet and 19.5 feet at Unit Spaces #80 and 81, respectively, located near the far northern (upcoast) end of the Park, approximately 310 feet south of Unit 90. An increase in height could have a significant impact on public coastal views from the various vantage points depending on the location of the unit within the park and proximity to the public scenic vantage points. Unit 90 is visible from 6 of 19 selected public vantage points, as well as other sections along the trails; however, **because of the location of the project site at the far northern end of the Park and its distance from the public trails, the proposed project will not result in significant obstruction of major coastal views**; see Exhibit 29. Furthermore, the loft is limited to a small area of approximately 130 sq.ft.; therefore, the remainder of the proposed unit is generally at a lower maximum height of approximately 17 feet.” [Emphasis added.]*

The Commission made findings of fact in these three cases that a mobile home at the Park over 16-feet high would not be inconsistent with Section 30251 or adversely impact visual resources. The existing mobile home in Space 75 is 25 feet in height, substantially blocking the visibility of the Applicant’s proposed home from all public vantage points. Depending upon the location within the trails several hundred feet farther to the east, only the front 15 to 22 feet of the proposed mobile home can be seen. Given that Space 76 is similarly situated at the northern end of the Park and at a more than 600 feet from public trails, there is nothing to differentiate the proposal for Space 76 from these previous Commission approvals.

The Commission should treat this Application as it treated CDP 5-10-180-A1 in 2016. The 19’ 8” structure was approved because it did not “result in significant obstruction of major coastal views”. The Applicant does not deny that a small portion of the proposed home not obscured by the 25 foot home on Space 76 is visible from the trails. But the Applicant denies that there is any significant obstruction of any major coastal views. The view of the shoreline from the Marblehead trails is expansive, extending from the San Clemente Pier to Dana Point. The closest vantage points on the trails which are cited by the Staff Report are more than 600 to 800 feet away. The trails end opposite Space 60, 600 feet from Space 76. Although you can certainly look at the edge

of the view and with some effort find the location of Space 76, it is not a significant location in relation to the shoreline views observed from the trails, and the Applicant's requested roofline is not a significant obstruction to the view.

E. Although the Commission has claimed to treat Capistrano Shores applications on a case by case basis, the Applicant cannot avoid the conclusion that she is being punished because of the Commission's loss of the case against the two story homes.

We recognize that the Commission was not pleased with the Court of Appeal decision in the Linovitz Capo Shores case which allowed the two story mobile home remodels that had taken place at Capistrano Shores to remain. *Linovitz Capo Shores, LLC v. California Coastal Commission* (2021) 65 Cal.App.5th 1106. This included the 25 foot high house at Space 75 which obscures the Applicant's proposed home at Space 76. But the Applicant, an LLC owned by Edna Cole, had no role in that decision. The Commission should not punish Edna Cole because other owners were successful in protecting their interests from the Commission's desired outcome.

If the Commission truly assesses each home on a case by case basis, then the Commission should find the Applicant's requested roofline height to be consistent with Section 30251.

F. The San Clemente Land Use Plan does not apply as Capistrano Shores is an area of deferred certification.

Pages 11 and 12 of the Staff Report cite several policies of the San Clemente certified Land Use Plan. However, these policies are not applicable to Capistrano Shores. Capistrano Shores is an area of deferred certification under the LUP. Further, these LUP policies say little that is not contained in Public Resources Code Section 30251.

G. Conclusion.

The Applicant simply requests that the Commission treat her as it has treated her neighbors and grant her the ability to rehabilitate her property. This Commission has approved at least three separate applications for mobile homes at the west end of the, all of which have been approved and recommended for approval with a height of greater than the Applicant seeks. The reason for these prior approvals remain consistent for the Applicant's approval as submitted. There is no inconsistency with Section 30251. There is no significant view obstruction, either alone or cumulatively.

As stated above, the Applicant is simply requesting that the Commission treat her in the same manner that it has treated her neighbors and grant her the ability to update her aging mobile home. The federal equal protection clause and its California counterpart provide that persons who are similarly situated with respect to the legitimate purpose of a law must be treated alike under the law. Since the relevant sections of the Coastal Act have not changed, if the Commission was able

Chair Donne Brownsey
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to make the appropriate findings of Coastal Act consistency for the above referenced CDPs, then the Commission must make the same findings for this CDP.

We respectfully urge you to approve the CDP as proposed in Application No. 5-21-0423, up to a height of 17-feet, 10-inches. An amending motion to delete Special Condition No. 1 is requested. The remaining Special Conditions are acceptable to the Applicant.

Thank you for your attention and cooperation in reviewing this matter.

Sincerely,

GAINES & STACEY, LLP

Sherman L. Stacey

By

SHERMAN L. STACEY

Enclosures

cc: by email
Shahar Amitay
Edna Cole

5/4/23, 11:05 PM

Google Earth



Exhibit A

Points:

West end of Marblehead trails

Elev 104 ft
Distance 730 ft

Elev 97.5 ft
Distance 790 ft.

Elev. 94.25 ft.
Distance 830 ft.

Elev. 78 ft.
Distance 780 ft.

Elev. 39 ft.
Distance 667 ft.

Elev. 16.25 ft.
Distance 640 ft.

Space 80
Height 18.5 ft.
CDP 5-09-179

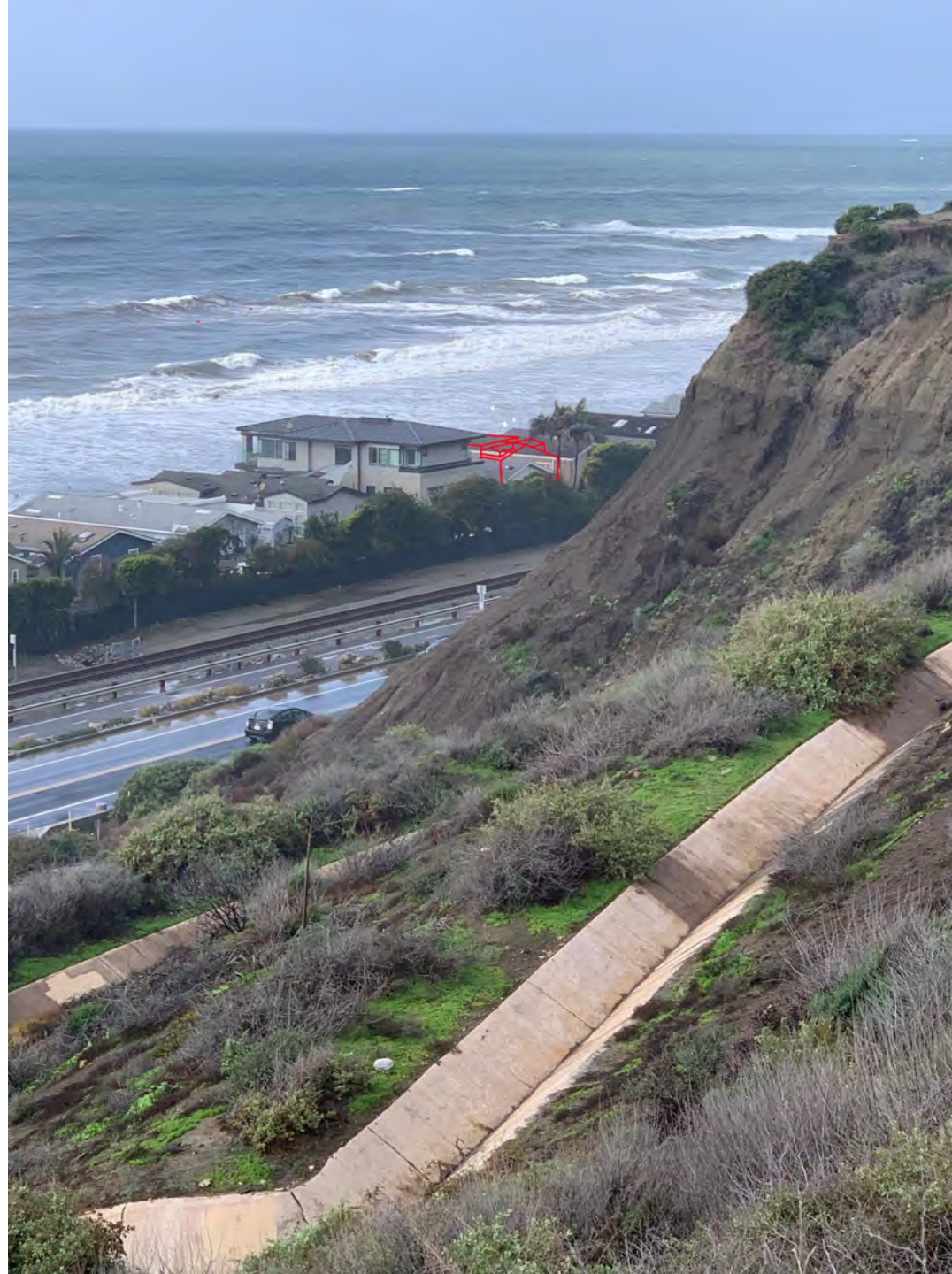
Space 75
Height 25 ft.

Subject Property – Unit 76

Image Landsat / Copernicus

Exhibit B





Architect's Depiction
of Space 76 requested
Design from viewpoint 6

Exhibit C



Roofline illustrated at 16 feet.
Red line shows where roofline
At 17 feet 10 inches would be

Space 76

View 5 - Proposed Project



Exhibit E