

Canning, Kevin

From: Robert Labbé <rlabbe@labbecompany.com>
Sent: Wednesday, November 30, 2022 12:36 PM
To: Canning, Kevin
Subject: Grover - December 1, 2022 Public Hearing on a CDP and Variance (Planning Application PA22-0104) - Written Objections to Approval dated 11-30-22 w/ Exhibits A & B
Attachments: Grover - OC Public Works - Objections to PA22-0104 - 11-30-22.pdf; Grover - OC Public Works - Objections to PA22-0104 - 11-30-22 - Exhibit "A" - May 3, 2022 Objection Letter to the EBCA Board of Directors.pdf; Grover - OC Public Works - Exhibit "B" - Request for Resolution to EBCA Board - 10-21-22.pdf

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Dear Mr. Canning:

Thank you for returning my telephone call.

Attached as discussed on our call this morning are Neel and Sharlene Grover's written objections to PA22-0104 for your review and consideration on behalf of OC Development Services/Planning ahead of the December 1, 2022 hearing, which my clients and I plan on attending in person.

In the event for any reason the December 1st hearing is continued, kindly let me know via reply email at your earliest possible convenience.

We understand that in the event the hearing is not continued and the Zoning Administrator approves the application, that any party challenging the decision of the Zoning Administrator on this permit may appeal the decision to the OC Planning Commission within 15 calendar days of the decision.

Respectfully submitted on behalf of Neel and Sharlene Grover.

Yours truly,

RLL

Robert L. Labbé, Esq.

Attorney at Law

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<< *Delivered Via Email* >>

Date: November 30, 2022

Re: December 1, 2022 Public Hearing on a Coastal Development Permit and Variance
(Planning Application PA22-0104)

Address: 52 Emerald Bay Dr.
Laguna Beach CA 92651

To: Orange County Zoning Administrator
OC Development Services/Planning
601 N Ross Street
PO BOX 4048, Santa Ana, CA 92702-4048
<https://myoceservices.ocgov.com>
cc. Kevin Canning, Contract Planner
Email: kevin.canning@ocpw.ocgov.com

From: Robert L. Labbe, Esq.
Admitted in California and New York
3309 Via Lido
Newport Beach CA 92663
rlabbe@labbecompany.com
(949) 278.8265

Representing: Neel and Sharlene Grover
31 Emerald Bay
Laguna Beach CA 92651

The following is hereby respectfully submitted to the Orange County Zoning Administrator:

Notice of Objections

The undersigned is the attorney representing Neel and Sharlene Grover (collectively, “client”), Emerald Bay Community Association (“EBCA”) members and adjacent neighbors of the 52 Emerald Bay property residing at 31 Emerald Bay Drive, Laguna Beach CA 92615.

The purpose of this correspondence is to provide formal written notification to the Orange County Zoning Administrator (“OCZA”) that our client has objected to (i) the Preliminary approval by the EBCA Board of Directors of the plans for a new residence submittal for 52 Emerald Bay Dr., Laguna Beach CA 92615 and (ii) opposes the approval by the OCZA of a Coastal Development Permit and Variance (“PA22-010452” or the “52 EB Project”) which is the subject of the December 1, 2022 Public Hearing.

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Basis for Objections (*inter alia*)

May 3, 2022 letter to the EBCA Board of Directors

Our client’s former attorneys, Mokri Vanis & Jones, LLP previously notified the EBCA of certain of our client’s objections to the Board of Directors Preliminary approval of the 52 EB Project in a letter dated May 3, 2022 to the EBCA Board of Directors. A copy of the May 3, 2022 letter is attached as **Exhibit “A”** and incorporated herein by reference as basis for our client’s objections to PA22-010452.

Mediation is Pending Pursuant to a Request for Resolution under Civil Code Section 5935

On October 21, 2022, the undersigned issued on behalf of our client a Request for Resolution pursuant to California Civil Code Section 5935 (the “Request for Resolution”) which objected to the EBCA Board of Directors Preliminary approval of the plans for the 52 EB Project. A copy of the Request for Resolution is attached as **Exhibit “B”** and incorporated herein by reference.

In response to our client’s Request for Resolution, the EBCA’s Board of Directors accepted same through their attorney of record in a letter dated November 7, 2022 and proposed the parties participate in mediation on a mutually-agreeable date with a mutually agreeable mediator within the next ninety (90) days. The parties are currently exchanging available dates for the mediation to take place.

As a result of the EBCA’s Board of Directors Preliminary approval of the 52 EB Project being the subject of upcoming mediation under an accepted Request for Resolution, it is submitted that PA22-010452 is not yet ripe for consideration by OC Development Services/Planning or the OCZA as being premature for determination, since the Emerald Bay Local Coastal Program (“LCP”) requires review and approval by the EBCA prior to your body acting. The foregoing is submitted as grounds for our client’s objections to PA22-010452.

Additional Grounds for Objecting to PA22-010452

Further grounds for objecting to PA22-010452 include, but are not limited to;

Background and Existing Conditions are Ambiguous and Incomplete (Staff Report pp. 2 and 3 of 8)

The Staff Report at p. 2 refers to the recordation of LLA 99-041 (the “Lot Line Adjustment”) of 2002 establishing the subject 52 EB site as Parcel 3 and the two adjacent lots (Parcel 2, #50 EB and Parcel 1, #31 EB, owned by our client) and mentions that: ***“The home on Parcel 2 is served by a narrow access to the street, however there is a parking and access easement recorded over a portion of the subject lot to preserve access to this rear lot.”*** The Staff Report identifies the particular easement to which it is referring as an “Access Easement to Parcel 2” on p. 3 but omits a discussion of the impact of the other easements on the properties affected by the application as

there is more than one easement affecting Parcels 1 (#31), 2 (#50) and 3 (#52). Those easements affect access, egress and parking on the three (3) closely proximate cul-de-sac lots. By way of illustration, Parcel 2 (#50) is only approximately 18 inches in width where it intersects with the street, and Parcel 1 (#31) is directly adjacent. All are affected by access, egress and parking easements. The Staff Report does not discuss whether the parking and access easement it refers to conflicts with and impacts the other easements affecting Parcels 1 and 2, with Parcel 1 (#31), being owned by our client. This omission is material because the applicants parking, as it is currently presented, is impractical, and will likely negatively impact, impede and restrict the use by the neighboring properties (#31 and #50) of their driveways for ingress, egress, and parking purposes.

This ambiguity concerning the easements affecting ingress, egress and parking is an important omission from the Staff Report in its **Background and Existing Conditions** discussion because restrictions affecting on-site parking for the adjoining properties render the limited offsite parking available in the subject cul-de-sac that much more important to the owners of all cul-de-sac and adjacent property owners.

The 52 EB Project plans provide for 3 of the 5 required parking spots to be located on the east end of the lot, adjacent to Parcel 1 (#31) and Parcel 2 (#50). The 3 spots consist of 2 off-street parking spots situated side by side and stacked in front of a single car garage. This parking plan would appear to require encroachment by the owner of #52 onto the driveways of #50 and #31 for ingress and egress maneuvering, and also make the single car garage spot essentially unusable and highly impractical. Again, #50 only has approx. 18 inches of street frontage and #31 is directly adjacent.

The remaining 2 required parking spots are proposed to consist of a 2-car garage at the west end of the subject lot. To accommodate the driveway for this 2-car garage, the 52 EB Project plans propose the elimination of at least one on-street parking spot (and likely reduction of the remaining 2 spots on that side of the street) available to cul-de-sac residents as well as significant landscaping that currently exists. Elimination of an on-street parking spot would result in reducing available street parking for at least 7 cul-de-sac homes by 25% (reducing the street spots from 4 to 3). The various objections to the planned parking are set forth in May 3, 2022 letter to the EBCA Board of Directors attached as **Exhibit "A"**, incorporated herein by reference.

The Staff Report's failure to fully and unambiguously address in its Background and Existing Conditions the impracticality of the parking as proposed when coupled with interplay of the various easements affecting ingress, egress and parking as they related to the subject property and directly adjacent Parcels 1 and 2 is therefore raised as an additional basis for our client's objections to PA22-010452.

Objections to Mass & Scale

Our clients submit that the EBCA Board of Directors erred in finding that the 52 EB Project plans consistent with their local architectural and design criteria. The 52 EB Project is in fact not compatible with surrounding developments in terms of size, design, and massing as set forth in

the Staff Report at p. 4 of 8, which therefore errs on this issue. In terms of mass and scale, the planned development is not consistent with the pattern of development and will negatively impact the overall aesthetics of the neighborhood, and the character of the community, creating an injurious impact to adjacent properties.

The objectives of the EBCA Design Guidelines take into account factors such as promoting the construction of improvements in a manner aesthetically compatible and harmonious with surrounding properties and other improvements in the neighborhood, potential imposition on neighboring properties, improvement of the overall aesthetics of the neighborhood and consistency with the development of surrounding homes. It is submitted that the 52 EB Project planned development fails to conform to these objectives and provide additional grounds for our client's objections to PA22-010452.

Variance for Front and Rear Setback / No Special Privileges Finding is Erroneous

It is submitted that the Staff Report at p. 5 of 8 errs in indicating that as required by Zoning Code Section 7-9-125.6 there have been "No special privileges" and that approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with. It is submitted that approval of the 52 EB Project application will in fact constitute a grant of special privileges to the applicant since the installation of a 2nd driveway constitutes a prohibited Grant of Exclusive Use to one homeowner, since the removal of the EBCA's street curb and the elimination of a community parking space would grant one EBCA member, the applicant, exclusive use of EBCA property which would deprive the entire ECBA membership of the benefit of the use of the ECBA community parking space. Moreover, certain mandatory procedural requirements were not met by the EBCA Board prior to the grant of exclusive use of EBCA property to the applicant. This erroneous finding as to no special privileges having been granted which are inconsistent with the limitations placed upon other properties in the vicinity is raised as further grounds for our client's objections to PA22-010452.

Objections to Findings (pp. 1 and 2 of 2 of Attachment 1 Findings)

Compatibility. At #3, the Staff Report finds "That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity." We submit this is an erroneous finding as the proposed use would in fact create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity since the 52 EB Project is in fact not compatible with surrounding developments in terms of size, design, and massing and the removal of the EBCA's street curb and the elimination of a community parking space would grant one EBCA member, the applicant, exclusive use of EBCA property which would deprive the entire ECBA membership of the benefit of the use of the ECBA community parking space. This is raised as an additional basis for our client's objections to PA22-010452.

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Variance 2. At #15, the Staff Report finds “That approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with, in that the proposed additions are in conformance with the pattern of development within the community.” We submit this is an erroneous finding as approval would in fact constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties. This is raised as an additional basis for our client’s objections to PA22-010452.

Reservation or Rights. Our client specifically reserves the right to assert any other grounds upon which to object to the approval of PA22-010452 and reserves the right to assert such additional grounds in the future.

Relief Sought. It is respectfully submitted that the Orange County Zoning Administrator should deny application PA22-010452.

Respectfully submitted.

Robert Labbe

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Exhibit List

Exhibit “A”: May 3, 2022 objection letter to the EBCA Board of Directors

Exhibit “B”: October 21, 2022 Request for Resolution to the EBCA Board of Directors

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<<*Via Personal Delivery, Email and Overnight Mail*>>

October 21, 2022

Re: Civil Code Section 5935 Request for Resolution

To: Emerald Bay Community Association
Attention: Ms. Toni Hughes, CCAM-LS, CMCA, Community Manager
Attention: Emerald Bay Board of Directors
600 Emerald Bay
Laguna Beach CA 92651
office@ebca.net

From: Robert L. Labbe, Esq.
3309 Via Lido
Newport Beach CA 92663
rlabbe@labbecompany.com
(949) 278.8265

Representing: Neel and Sharlene Grover
31 Emerald Bay
Laguna Beach CA 92651

Re: Proposed Project #52
52 Emerald Bay Dr.
Laguna Beach CA 92651

cc. Jillisa L. O'Brien, Esq.
Law Office of Jillisa L. O'Brien, P.C.
5 Corporate Park, Suite 260
Irvine, CA 92606-5169 Mr. Steve
jobrien@obrien-law-pc.com

cc. Mr. Steve Olson
1942 Port Bishop Place
Newport Beach CA 92660

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Dear Ms. Hughes and Members of the Emerald Community Association Board:

Notice of Request for Resolution

The undersigned is the attorney representing Neel and Sharlene Grover, Emerald Bay Community Association (“EBCA”) members who reside at 31 Emerald Bay Drive, Laguna Beach CA 92615.

The purpose of this correspondence is to provide formal written notification to the EBCA, its Board of Directors, Manager and attorneys that Mr. & Mrs. Grover object to the Board of Directors Preliminary approval of the plans for a new residence submittal for 52 Emerald Bay Dr., owned by Mr. Steve Olson through a family trust (the “52 Project”).

This letter shall therefore constitute our client’s Request for Resolution pursuant to California Civil Code Section 5935.

Outline of Dispute

We understand that our client’s former attorneys, Mokri Vanis & Jones, LLP have previously notified the EBCA of certain of our client’s objections to the Board of Directors Preliminary approval of the 52 Project in a letter dated May 3, 2022 to the EBCA Board of Directors c/o Community Manager Toni Hughes. While we have not yet had sufficient time to review all of those objections, with a view to expediting the process for the purposes of this Request for Resolution, the same are incorporated herein by reference.

We believe further grounds for objecting to the Board’s Preliminary approval of the 52 Project exist, including but not limited to the 52 Project’s mass and scale, and lack of consistency with the development of surrounding homes, and its injurious impact thereon. In addition, the 52 Project parking is not practical, and the scarcity of beach side on-street parking makes the potential elimination of a significant percentage of same from the cul-de-sac a tangible burden and negative imposition on neighboring property owners and the members of the EBCA at large. Moreover, we believe, *inter alia*, that there have been material errors committed in the approval process at the submission level, the Architectural Committee level and at the Board level which invalidate and nullify the Board of Directors Preliminary approval of the 52 Project.

Relief Sought

For the EBCA Board’s Preliminary approval of the 52 Project to be reversed and withdrawn for all purposes and that the submittal of the 52 Project be returned to the Architectural Committee for review of alternative designs submitted by the property owner which are in conformity with the EBCA Architectural Regulations and the Declaration of Covenants, Conditions and Restrictions (“CC&Rs”), with such submittal being less injurious to our client, the neighboring properties and to the members of the EBCA.

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Thirty (30) Day Response Period

As you know, we are required to provide notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected.

ADR Code Sections

If any recipient hereof requires a copy of the Alternative Dispute Resolution Civil Code Sections please advise the undersigned in writing and same will be provided.

Thank you for your consideration and we look forward to next steps.

Please advise the undersigned at your earliest convenience should you have any questions or comments.

Sincerely,

Robert Labbe

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RICHARD W. VANIS, JR.
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May 3, 2022

VIA EMAIL – thughes@ebca.net

Emerald Bay Community Association Board of Directors
c/o Toni Hughes, CCAM-LS, CMCA, Community Manager
600 Emerald Bay
Laguna Beach, CA 92651

jobrien@obrien-law-pc.com
c/o Jillisa L. O'Brien, Esq.
Law Office of Jillisa L. O'Brien, P.C.
5 Corporate Park, Suite 260
Irvine, CA 92606-5169

Re: Objections to the Olson Proposed Project #52

Dear Members of the Emerald Community Association Board:

We write on behalf of our client and EBCA members, Neel and Sharlene Grover, to object to the Board of Directors voting to approve the new residence submittal for 52 Emerald Bay Dr. (submitted by Steve Olson).

As currently proposed, the Olson plan requires five (5) parking spaces (1 per 1k sq. ft.) which is designed to include two driveways, one of which will be a new driveway and the existing driveway will be enlarged. The installation of the new driveway will require curb cuts and the elimination of an Association community parking space.

On April 5, 2022, the Board deferred a vote to approve the Olson plans and directed the applicant to return to the Architectural Committee for further discussion on the alternative designs to accommodate the parking space without the addition of the second driveway. At the Architectural Committee meeting held on April 26, 2022, Olson did not provide any alternative design plans saying his architects could not figure out how to fit four parking spots without the additional driveway. Thereafter, the Architectural Committee approved the previously submitted

plan for submission to the Board for final approval **without any revision or modification to the proposed design.**

We understand that the Board will vote on the approval of the Olson remodel submission at the Board of Directors meeting currently scheduled for Tuesday, May 3, 2022. However, the **EBCA governing documents and California law do not authorize or allow the Board to approve plans that require the grant of exclusive use of Association Property to one member. The curb and Association community parking space are Association Property. As such, the Board approval of Architectural Plans that call for the removal of the curb, the grant of an Encroachment Permit or the elimination of the parking space for the benefit of and exclusive use of one member requires Notice to the Membership and a two-thirds vote of approval of that conveyance. (California Civil Code § 4600.)**

I. Approval of the Olson plans that Propose the Installation of a Second Driveway is the prohibited Grant of Exclusive Use

The proposed Olson plans call for the installation of a driveway that will require the **removal of the Associations' Street curb and the elimination of a community parking space, which are both Association common area property.¹ Board approval of the Olson plans would grant one EBCA member, Olson, with exclusive use of the Association property.**

California Civil Code §4145 defines “Exclusive Use Common Area” as a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests. *See Also, Dover Village Assn. v. Jennison* (2010) 191 Cal.App.4th 123,127.

The location of the proposed private driveway in front of 52 Emerald Bay Dr. property is currently a designated community parking space, intended for the benefit of the entire EBCA membership, whereas the **proposed driveway would serve the exclusive use of Olson** and the successors in interest to Olson. Any easement conveyed to Olson would grant the owners of 52 Emerald Bay with the right to ingress and egress without interference from any vehicle parked on the street at the proposed driveway entrance from Emerald Bay Dr., effectively eliminating the parking space.

¹ EBCA Architectural Regulations, Appendix A, p. 36, defines Association Property as areas including beach Lots, park and recreational areas, streets, walkways, and all easements in all of the Emerald Bay owned by Emerald Bay Community Association, and all facilities and improvements thereon. (CC&R's, ARTICLE I, Number 5)

II. Board Approval of the Olson Plan Grants an Exclusive use Easement without a Membership Vote of Approval violates the provisions of the Davis Stirling Common Interest Development Act

The Olson's proposed driveway requires the grant of Association property for exclusive use. As such, the Board cannot merely vote to approve the Olson Architectural submittal. The creation of the driveway must be approved by a vote of two-thirds of the Membership.

The Emerald Bay Community is governed by a Declaration of Covenants, Conditions and Restrictions ("CC&Rs"). The community, being a common interest development operates subject to the Davis-Stirling Act. *Cal. Civ Code. §§ 4000, 4200*. Further, the CC&Rs expressly state that the EBCA is empowered "to do things that a corporation under the laws of the State of California may lawfully do which are necessary and proper. To the extent there is any conflict between EBCA's governing documents (CC&Rs, by-laws, operating rules, etc.) and the law, the law prevails. *Cal. Civ. Code §§ 4150, 4205*.

California Civil Code §4600(a) states:

"Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member".

By its express language, section 4600 was enacted to prevent association boards from giving away common area without a vote. *Cal. Civ. Code § 4600(a)*. As for the Davis-Stirling Common Interest Development Act (the "CID Act"), it was enacted by the Legislature to "promote[] stability and predictability" and to "provide[] various protections to help ensure that condominium purchasers know what they are buying into." *Pinnacle Museum Tower Assn. v. Pinnacle Market Dev. (US), LLC (2012) 55 Cal.4th 223, 238*. See also *McArthur v. McArthur (2014) 224 Cal.App.4th 651, 660* (the CID Act's statutory scheme includes "consumer protection elements"). Ensuring that common area (defined as "Association Property" in the CC&R's remains for all of the homeowners' use promotes stability, ensures that the homeowners retain what they purchased, and protects the homeowners as consumers. *Cal. Civ. Code § 4200*.

The Board has not provided the requisite notice to the EBCA Membership of the grant of exclusive use of Association property to Olson nor has there been an affirmative vote of the members owning at least 67% of EBCA membership. Without an approval of the Membership, the Olson plans proposing the installation of the driveway cannot be approved by this Board.

III. EBCA Architectural Regulations Prohibits the Board Granting an Encroachment Permit for the proposed Olson Driveway

The Board cannot grant the Encroachment Permit or Easement Agreement which is necessary for the Board approval of the Olsen plans. **The proposed easement does not satisfy any one of the three different conditions (Architectural Regulation E.13.5 (a)-(c)) that would enable the grant of an easement on Association property by the Board.**

The Association Board of Directors will not grant Encroachment Permits or Easement Agreements for proposed improvements that impair the use and enjoyment of the Emerald Bay Common Areas by the Association Membership. **EBCA Architectural Regulations E.13.7 (c)**

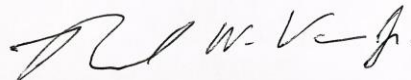
The Board approval of the Olson Plan, calling for the installation of the second driveway, **is the impermissible grant of exclusive use to Olson which undoubtedly deprives the entire ECBA membership of the benefit of the use of the ECBA community parking space.**

Mr. and Mrs. Neel Grover respectfully request that the Board decline any vote to approve the Olson plans for 52 Emerald Bay Dr. as currently submitted to the Board for approval.

Thank you for your consideration.

Very truly yours,

MOKRI VANIS & JONES, LLP



Richard W. Vanis, Jr.

RWV/bn