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February 26, 2013

**ORIGINAL BY U.S. MAIL**

**VIA E-MAIL: CityCouncil@citymb.info  
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City Council and City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: Project No.: CA 12-25  
Property: 301/303 25th Street  
**City Council Hearing – March 6, 2013**  
**Support for Project Approval/Denial of Appeal**

Dear Honorable Council Members and City Manager:

This office represents Joe Paunovich, the owner of 301/303 25<sup>th</sup> Street (the "Property"), which is the subject of the approved project referenced above. This letter is written in response to Rosario Armato's ("the appellant") appeal of the Planning Commission's unanimous February 13, 2013 decision to deny his prior appeal and uphold the Community Development Department's determination of maximum allowable height for Mr. Paunovich's Property.

On February 6, 2013, this office sent a detailed letter to the Planning Commission in connection with the appellant's appeal to the Planning Commission setting forth the reasons the appeal should be denied. On February 12, 2013, Mr. Paunovich supplemented the record by sending a second detailed letter in response to new materials submitted by the appellant only a few days before the appeal to the Planning Commission. All references to exhibits in the instant letter refer to exhibits attached to the February 6 and 12 letters, which we understand are included in your Staff Report.

**The present appeal of the Planning Commission's decision to the City Council should be denied for the same reasons set forth in the February 6 and 12 letters and as explained further below.**

**Brief Summary of the Issue on Appeal to the City Council**

The present appeal is limited by law to the subject of appellant's appeal to the Planning Commission, i.e., the Community Development Department's determination of maximum allowable height for Mr. Paunovich's Property.<sup>1</sup> This issue was fully considered during a nearly 3-hour public hearing before the Planning Commission on February 13, 2013. The Planning Commission rejected each of appellant's arguments because they lacked any factual or legal support and were generally irrelevant to the issue before the Planning Commission. The appellant has not submitted any new evidence or reason to alter this analysis.

By way of background, on December 19, 2012, a Coastal Development Permit was granted to Mr. Paunovich to permit demolition of the dilapidated 1966 duplex located on the subject Property, and to construct in its place a new three story single family residence with an attached two car garage which he intends to live in with his family. Mr. Paunovich's approved home complies with all applicable provisions of the City's Municipal Code and Local Coastal Program, including among others the strict requirements of Manhattan Beach Municipal Code ("MBMC") § 10.60.050 relating to maximum allowable height.

The appellant owns the adjacent property immediately to the east, located at 2501 Crest Drive, and claims to be aggrieved by the City's determination of the maximum allowable height for Mr. Paunovich's approved residence. The Coastal Development Permit for Mr. Paunovich's property was approved based on a survey Mr. Paunovich commissioned in 2012 and reviewed with the City before he purchased the property for the express purpose of building the home that is now approved. The Coastal Development Permit was also approved based on a survey the appellant commissioned in 1989 on the same disputed property corners in order to build his home to its current height. In the lead up to the Planning Commission appeal hearing, the City also found other historical evidence that unequivocally demonstrates that the elevations of the disputed property corners have not materially changed for more than 100 years.

As explained below, Mr. Paunovich's proposed residence complies with the letter and spirit of the City's restrictions with regard to height, and in fact is consistent with the size and height of adjacent homes (including appellant's own home).

**As a result, our client respectfully requests that the City Council deny the pending appeal and affirm the Community Development Department's approval of the Coastal Development Permit.**

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<sup>1</sup> The appellant did not appeal the square footage or the number of "stories" of the approved project within 15 days of issuance of the Coastal Development Permit and has thus waived any right to appeal. MBMC § 10.100.030. Nevertheless, the Planning Commission considered these issues at length during the February 13, 2013 hearing and rejected appellant's arguments since Mr. Paunovich's approved project is below the maximum allowed square footage and has only 3 "stories" as defined by the Code and explained further below. See Section C below.

**A. The Project Complies With All Required Zoning Restrictions**

The Property is located within Area District III (Beach Area) and is Zoned Residential High Density (RH-3) coastal non-appealable. The approved project fully complies with each of the following required zoning restrictions:

- Front yard setback: 5 feet
- Side yard setback: 10% of lot width
- Corner side yard setback: 1 foot
- Rear yard setback: 5 feet
- Height: 30 feet, 3 story maximum
- Maximum Square Footage: 2,985

MBMC § 10.12.030.

**B. The Project is Below the Maximum Allowable Height on the Property**

MBMC § 10.60.050 is the applicable ordinance for determining compliance with the City's maximum building height limits. The ordinance requires a two step process: first the reference elevation, defined as the average of the elevation at the four corners on the lot, is determined and then a second limit is imposed to ensure that no building exceeds the maximum allowable height above existing grade or finished grade, whichever is lower, by more than twenty percent (20%). Mr. Paunovich's proposed residence is unquestionably below the height limit prescribed by these restrictions.

The appellant contends that an exception to this standard method of height determination should apply because the corners of Mr. Paunovich's property that are shared with the appellant on a common property line are purportedly not consistent with the natural property topo graphy. Pursuant to MBMC § 10.60.050.A, "[i]n situations where the elevation of existing grade at a lot corner is not clearly representative of a site' topography (because, for example, of the existence of such structures as retaining walls, property-line walls, or planters) the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties."

Here, the Community Development Director and his staff visited the Property a number of times to assess the conditions and investigate the natural topography. From their investigation, as well as by reference to historical GIS data and two historical land surveys, the Director correctly concluded that the surveyed corners in question are clearly representative of the natural site topography and have been for more than 100 years. See Gaines & Stacey LLP Letter dated February 6, 2013, Exhibit B (Mr. Paunovich's land survey); Exhibit E (contour plot of historical GIS data and two historical surveys). Pursuant to the City's Municipal Code, the maximum allowable height of Mr. Paunovich's proposed residence is therefore properly measured as set

forth above, from a horizontal plane established by determining the average elevation of existing grade at all four corners of the lot.

To demonstrate that the appellant is being treated fairly, the Director nevertheless reduced the surveyed elevation of the natural topography on the northeast corner of Mr. Paunovich's property so that the elevation change between the northeast and southeast corners would be consistent with the elevation change shown on a 1989 survey that the appellant commissioned on the same disputed corners in order to build his home to its present height. The net effect of the reduced elevation is that the Director actually reduced the maximum allowable height on Mr. Paunovich's property. This determination is described in detail in our February 6, 2013 letter and in the Staff Report.

In bringing this appeal, the appellant again claims that the Director's attempt to encourage consistency in the maximum height limit for the appellant and Mr. Paunovich was done in error. In essence, the appellant contends that the Director should have ignored multiple surveys of the disputed common property corner elevations and forced Mr. Paunovich to build more than 6 feet lower than he is allowed to under the Municipal Code so that the appellant would have absolutely no adverse impact on his view from a lower level of his house. This contention was rejected by the Planning Commission and has no basis in the Municipal Code.

The appellant has also made the claim that a historical 1966 land survey for Mr. Paunovich's property shows fill in the rear yard to raise the natural site topography. This is unequivocally and verifiably false and the argument was correctly rejected by the Planning Commission. See Gaines & Stacey LLP Letter dated February 6, 2013, Exhibit E (historical 1966 land survey for the Property); Mr. Paunovich Letter dated February 12, 2013, Exhibit H (contour plot of the 1966 and 2012 survey North and South elevations). The 1966 survey shows property corner elevations that are essentially identical to the property corner elevations on the 2012 land survey and thus further supports the Director's determination of maximum height on the Property.

**C. Appellant Has No New Evidence or Legal Reason to Alter the Community Development Department's Determination of Maximum Allowable Height**

As explained above, the present appeal is limited by law to the Community Development Department's determination of maximum allowable height. The Planning Commission rejected each of appellant's arguments because they lacked any factual or legal support and were generally irrelevant to the determination of maximum allowable height. The appellant has not submitted any new evidence or reason to alter this analysis.

With nothing new to present to City Council, the appellant falsely claims in his February 20, 2013 letter to City Council that the Planning Commission "imposed restrictive limitations to the scope of the deliberations" and did not fully address the number of stories and density of Mr. Paunovich's approved project which were raised for the first time at the hearing. Nothing could be further from the truth. These issues, among others, were given full and complete

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consideration before being rejected by the Planning Commission because they are not based on anything other than the appellant's personal disagreement with the current Municipal Code.

The maximum square footage prescribed by the Municipal Code for Mr. Paunovich's property is 2,985. The appellant and a member of the public raised a question regarding square footage for the first time at the Planning Commission hearing. In response, the Staff confirmed for the Planning Commission that Mr. Paunovich's approved project is below the maximum at only 2,864 square feet and that the property provides open space in excess of the City's requirements.

The maximum number of "stories" prescribed by the Municipal Code for Mr. Paunovich's property is three (3) stories. A member of the public raised a question regarding the number of "stories" of Mr. Paunovich's approved project for the first time at the Planning Commission hearing. In response, the Staff provided a detailed explanation for the Planning Commission of how the Code defines a "story" and confirmed that Mr. Paunovich's approved project is in fact three (3) stories as defined by the Municipal Code. See MBMC §10.04.030 [definitions of "Basement," "Story" and "Story, First"].

In sum, Mr. Paunovich's approved project meets all requirements of the Manhattan Beach Municipal Code, and this appeal must be denied.

### **Conclusion**

**Based upon the foregoing, our client respectfully requests that the City Council deny the pending appeal and affirm the City's approval of the subject Coastal Development Permit.**

Thank you for your consideration of these issues. Please do not hesitate to contact me at any time with any questions that you may have.

Sincerely,

GAINES & STACEY LLP

By



FRED GAINES

cc: Richard Thompson, Community Development Director  
Laurie Jester, Planning Manager  
Angelica Ochoa, Assistant Planner