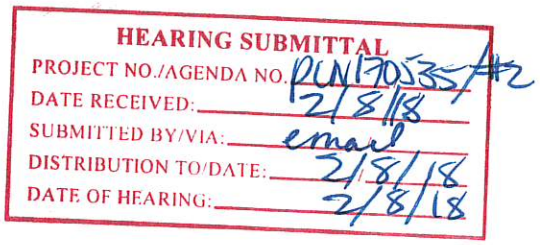

From: Tony Lombardo [mailto:tony@alombardolaw.com]
Sent: Thursday, February 8, 2018 8:12 AM
To: Novo, Mike x5176 <NovoM@co.monterey.ca.us>
Subject: Fwd: PLEASE READ BEFORE TODAY'S HEARING

In the case of Horn v. Ventura the county gave absolutely no notice to the neighboring property owner of its approval of the project which is why the approval was overturned.

Monterey County has followed all legally required notice provisions for this coastal development permit. 1/3 of the content of the staff report Mr. Tichinin refers to is a letter written by him weeks ago complaining about many of the same issues which he now appears to assert that he had no knowledge of until he and his client reviewed the staff report online. As I said yesterday Mr. Tichinin and his client could have reviewed the counties file at anytime over the past 6+ months since the land use advisory committee made it's recommendation.. There's nothing contained in the staff report which could not of been found in the application materials including their request for a variance on the impervious coverage and the request for development on 30% slope.

This application has been stalled long enough by Mr. Gambord and his groundless complaints about the design of the home. We respect fully request that you proceed with the hearing as scheduled today.

Sincerely,

Anthony Lombardo

ANTHONY LOMBARDO & ASSOCIATES
A Professional Corporation
144 W. Gabilan Street
Salinas, CA 93901
Phone (831) 751-2330
Fax (831) 751-2331
Email tony@alombardolaw.com

From: Bruce Tichinin <tichinin@garlic.com>
Date: February 8, 2018 at 6:54:39 AM PST
To: "'Novo, Mike x5176'" <NovoM@co.monterey.ca.us>
Cc: 'Tony Lombardo' <tony@alombardolaw.com>, "'Sidor, Joe (Joseph) x5262'" <SidorJ@co.monterey.ca.us>, 'Joel Gambord' <jgambord@gmail.com>
Subject: PLEASE READ BEFORE TODAY'S HEARING

Dear Mr. Novo:

Please read the attached letter prior to this morning's hearing.

I have copied Mr. Lombardo and Mr. Sidor on this email with the attached letter.

Please give me the opportunity to address the Zoning Administrator briefly to request a continuance of the hearing before it commences.

Thank you for your anticipated courtesy and professionalism, as they would be much appreciated.

Respectfully,

Bruce Tichinin
LAW OFFICES OF BRUCE TICHININ, INC.
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February 8, 2018

VIA EMAIL & HAND-DELIVERED:

'Novo, Mike x5176' <NovoM@co.monterey.ca.us>

Mike Novo, Monterey County Zoning Administrator
168 W. Alisal St., 1st Floor
Salinas, CA 93901

RE: PLN170535 – HERVDEJS

Dear Mr. Novo:

As you are aware, I represent Joel and Dena Gambord, next door neighbors to the proposed project. They oppose the current proposed location of a new residence on the applicant's site because it will destroy their own privacy - whereas moving it only a short distance away will eliminate the privacy-invading line of sight from the proposed Hervdejs residence into the private master bedroom and private outside deck of the Gambords.

I.

DUE PROCESS OF LAW REQUIRES A CONTINUANCE.

For the reasons explained hereafter, my clients have a constitutional right to *prior notice of the issues* involved, and a *meaningful hearing* on those issues *before* a final decision is made by a governmental entity, such as a Zoning Administrator, where, as here, a quasi- judicial decision is involved.

element of due process of law is the right to a hearing before the property deprivation occurs.

Horn v. County of Ventura, supra, at 24 Cal. 3rd 613, holds that *"grant of a variance"* (something we have here) is a quasi-judicial decision, and thus invokes due process protections where the proposed development interferes with substantial property interests. In *Horn*, the proposed development allegedly interfered with the adjacent property owner's use of the only access from his parcel to the public streets. As such it was the type of *"land use decision ... which 'substantially affect[s]' the property rights of owners of adjacent parcels [and therefore] may constitute 'deprivations' of property within the context of procedural due process."* (*Horn*, 24 Cal 3rd at 615). The deprivation of the Gambord's privacy in their residence that will be created by the currently-proposed location of the new Hervdejs residence comparably *"substantially affects"* the Gambord's property rights to privacy, and comparably invokes due process protections. Likewise, as was the case in *Horn*, the Gambord's *"complaint, however, is not directed to the fact of the [Hervdejs project] itself, but rather avers that the particular details of the current plan have caused [them] injury."* (*Horn*, 24 Cal 3rd at 615-616.) That is, here, the *"particular details"* are the unnecessary location of the proposed Hervdejs residence so as to invade the privacy of the Gambord residence.

For the above reasons, I respectfully request that you take the fair and constitutional approach, and grant the requested 30 day continuance to allow me time to present a case to you that will enable you to conduct a meaningful hearing, and thereby to make a decision that has been informed by an adequate presentation of my client's position, rather than by allowing yourself merely to be informed of the position of one side to the controversy, i.e. Planning Staff.

"unusual circumstances" that take the project out of the categorical exemption and require preparation of an EIR, but I have not been allowed adequate time to make that review.

B. The Hervdejs Project Does Not Qualify For A Variance From The 9,000 Square Feet Maximum Site Coverage Limit.

Under Government Code Section 65906, variances can be granted only when *"strict application of the zoning ordinance"* deprives the property of *"privileges"* enjoyed by *"other property ... under identical zoning classification."* To meet this standard for a variance from the maximum site coverage provision in the applicable zoning, the Hervdejs must show that it is not possible to build a residence and driveway on only 9,000 square feet of area. No such showing has even been attempted.

C. The Hervdejs Site Has Lost Any "Nonconforming Use" Rights.

Under the Nonconforming Use provisions of the Zoning Ordinance, the Hervdejs site has lost any nonconforming use rights by abandonment, because the existing residence on it has been continuously unoccupied for well over one year.

Respectfully submitted,

BRUCE TICHININ

cc: Tony Lombardo, Esq.
Joel & Dena Gambord

From: Tony Lombardo [mailto:tony@alombardolaw.com]
Sent: Wednesday, February 7, 2018 9:27 AM
To: Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>
Cc: Novo, Mike x5176 <NovoM@co.monterey.ca.us>
Subject: Re: REQUEST FOR CONTINUANCE OF HEARING TOMORROW

On behalf of the applicant we would vehemently oppose a request for a continuance. This is just another attempt by Mr. Gambord to delay the hearing on this project. His last request was that the matter be sent back to the LUAC because the LUAC refused to consider Mr. Gambord's alternate design for the home.. Nothing could be further from the truth Mr. Gambord and his lawyer presented their proposal to the LUAC which was considered and rejected the land-use advisory committee. you were in attendance at the meeting and informed the LUAC and Mr. Gambord that his proposal to push the house down on to 30% slope and construct a circular driveway violated numerous policies in the land-use plan.

Late last week we received a new demand that the Heverdjes house be pushed The opposite direction from Gambord's last proposed redesign, up against the hillside on top of the existing driveway creating additional cut ,additional impervious surface and need for another driveway in front of the house which would undoubtedly be on 30% slope.This proposal is no more consistent with the local coastal plan then Mr. Gambord's last proposal.

Now Mr. Gambord 's attorney is asking for a 30 day continuance because he didn't read the staff report until Tuesday. Mr. Gambord is an experienced real estate developer and is represented by counsel. They could have, but did not, ask staff to send them a copy of the staff report when it was prepared last week. They could also at any time have come to the county and review the file for its contents. This is simply another stalling tactic as was their request to refer the matter back to the LUAC.

You might want to explain to Mr. Tichinin that this is not a court of law and that the lawyers don't cross-examine witnesses.

The purpose of the public hearing is for the applicant and interested members of the public to present testimony to the zoning administrator .

Sincerely,

Anthony Lombardo, Esq.
ANTHONY LOMBARDO & ASSOCIATES
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144 W. Gabilan Street
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Sent via I-Phone

From: Bruce Tichinin [mailto:tichinin@garlic.com]
Sent: Wednesday, February 7, 2018 8:01 AM
To: Novo, Mike x5176 <NovoM@co.monterey.ca.us>
Cc: 'Tony Lombardo' <tony@alombardolaw.com>; Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>; 'Joel Gambord' <jgambord@gmail.com>
Subject: REQUEST FOR CONTINUANCE OF HEARING TOMORROW
Importance: High

Dear Mr. Novo:

Ask you know, I represent Joel & Dena Gambord, adjoining landowners/neighbors to the Hervdejs Application, in opposition to that Application.

The *voluminous* Staff Report and related materials prepared by Monterey County Planning Staff in support of their recommendation to the Zoning Administrator to approve the Hervdejs Application at the Zoning Administrator's Hearing tomorrow was not made available to me until it was publicly posted on the Monterey County website on Tuesday morning, giving *only 2 days* for me to prepare a response to the *many* vigorously-disputed legal and factual contentions in the Report and materials that it took Planning Staff approximately *6 months* or more to prepare.

It will be *impossible* for me to for me to prepare and present an adequate, meaningful opposition to the Application by the Hearing tomorrow in the 2 days allowed for such preparation.

In consequence, it will not be for the Zoning Administrator to provide a *meaningful, adequate* hearing to my clients, unless the Hearing tomorrow is continued for a reasonable time to allow preparation and presentation of a meaningful opposition to the Application and the Staff recommendation of approval.

Accordingly, I am requesting a 30 day continuance of the Hearing tomorrow. I further request that, when the Hearing is called tomorrow, you allow me to present this request for a continuance, and that you grant or deny the request, *before the Hearing commences.*

Should the continuance not be granted, then, without waiving any claim that the denial of a continuance was unlawful, I will be calling several witnesses, and will be examining them on cross or direct.

Respectfully,

Bruce Tichinin

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File No: 0309.009

February 1, 2018

VIA HAND DELIVERY

HEARING SUBMITTAL
PROJECT NO./AGENDA NO. PLN170535/#2
DATE RECEIVED 2/2/18
SUBMITTED BY VIA email
DISTRIBUTION TO/DATE: 2/8/18
DATE OF HEARING: 2/8/18

Mike Novo
Monterey County Zoning Administrator
1441 Schilling Place
Salinas, CA 93901

Re: **Hevrdejs (PLN170535)**
ZA Agenda item: February 8, 2018

Dear Mr. Novo:

We are in receipt of the letter dated January 2, 2018 from Bruce Tichinin on behalf of Joel Gambord. Please note the following in response to Mr. Tichinin's demands and claims:

1.) His letter includes a demand that staff return the project application to the Del Monte Forest LUAC and to the Pebble Beach ARB for reconsideration due to "changes" to the project. We note:

a.) This demand was previously asserted by Mr. Tichinin in August 2017, based on a reduction to the front terrace that was made at the request of Mr. Gambord. Although that change was not necessary or required under regulations, Mr. Hevrdejs willingly agreed to Mr. Gambord's request. As was previously noted to Mr. Tichinin, this reduction is not a substantive change and does not require reconsideration by the LUAC. The change is also not as he implied, a change to meet a regulation. It is a change that Mr. Gambord requested. No reconsideration by the LUAC is required.

b.) No failure of due process exists. The LUAC is a recommending body, not a hearing body. Nevertheless, the meeting was open and publicly noticed. Mr Gambord was present and did assert his position. In response, planning clarified for the LUAC members that Mr. Gambord's request that the project include a circular driveway would be inconsistent with Policy 1 of the Del Monte Forest Land Use Plan. This information is correct. Further, the LUAC members had the opportunity to hear Mr. Gambord and the response by planning on this subject.

Regardless, Mr. Tichinin asserts that Mr. Gambord has been denied due process, invoking the United States Supreme Court case of *Mathews v. Eldridge* (1976) 424 U.S. 319 and the California Supreme Court case of *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541. Careful reading of these cases demonstrates that Mr. Gambord was afforded due process under the law. In *Mathews*, the plaintiff had been denied a hearing prior to the termination of his Social Security benefits, a statutorily created property right. We need not progress to the due process elements in comparing *Mathews* to the present case because Mr. Gambord was in fact afforded a hearing to express his concerns as an abutting property owner. In *Scott*, the plaintiff in that case received, only by mistake, a notice in the mail that a neighboring property owner was developing a large planned development (including two golf courses, 675 condominiums and 90 individual lots). No other abutting property owner outside the City limits was sent a public notice, and when the plaintiff showed up to voice his disapproval on behalf of himself and the abutting landowners, he was ignored at both the Planning Commission and the City Council hearings. The Court held that the City owed the abutting landowners who were not notified of the project an opportunity to voice their concerns. As stated above, in the present case, Mr. Gambord was notified of the project, was notified of the public meeting at the LUAC, and presented his alternative proposal for the driveway at the LUAC. In response, the planner for the project, Joe Sidor, correctly explained that the circular driveway proposal would be inconsistent with the Del Monte Forest Land Use Plan. Mr. Gambord had a right to voice his opposition, which he did, however the neither the LUAC or the County is required to agree with such opposition. Mr. Gambord was not denied his right to procedural due process under the Constitution.

Mr. Tichinin makes a further argument that Joe Sidor's factual statements regarding circular driveways violated Mr. Gambord's right to substantive due process. This argument is untenable. The Fourteenth Amendment of the Constitution reads: "...nor shall any state deprive any person of life, liberty, or property, without due process of law," and no such deprivation is alleged by Mr. Tichinin. Instead, he cites to a Ninth Circuit Court of Appeals case, *Sinaloa Lake Owners Association v. City of Simi Valley* (9th Cir. 1989) 828 F.2nd 1398, which centers around actual physical damage (i.e. deprivation of property under the 14th amendment) caused to the plaintiffs property as a result of a governmental action to lower the water level in a dam owned by the plaintiff[1]. Here, Mr. Gambord has been deprived of neither life, liberty nor property as a result of Mr. Sidor's factual representation that the circular driveway alternative is not supported by the Del Monte Land Use Plan. Therefore there has

[1] Mr. Tichinin's cite to the *Sinaloa* case at page 14 regarding the meaning of the word "deliberate" is highly misleading. The court in that case makes no statement on whether the word "deliberate" would apply to a statement of fact, as Mr. Tichinin has stated here.

been no violation of Mr. Gambord's right to substantive due process under the Constitution.

c.) The Del Monte Forest ARB is not an agency or committee of the County. Referral to this community body is not in the control of the County. Furthermore, Mr. Tichinin is incorrect regarding the review and approval by this body. The ARB in fact continued the decision on this project until after the front terrace was reduced. The approval by the ARB is based on the current design with the reduction included.

2.) As in the August correspondence, Mr. Tichinin is asserting protection of privacy for the Gambord property. Monterey County regulations do not protect privacy or private views. In addition, the lack of screening vegetation between the two properties which Mr. Tichinin asserts "will take time to grow" is absent due to recent substantial removal of vegetation by the Gambords on their own property. The Gambords in fact have the ability to properly screen their property as it was before the tree removals. They are not entitled to redesign the Hevrdejs project contrary to several policies and regulations to offset conditions that they caused or that are within their control to overcome.

3.) The project design meets the requirements of the Pebble Beach Fire Department and the California Department of Forestry for protection of structures and property. This is clear and evident via the review and approval of the project design by Fire on 07/19/2017. Expansion of the driveway to a circular driveway is not necessary for adequate fire protection and is inconsistent with Policy 1 of the Del Monte Forest LUP which requires "simple and direct access".

4.) Mr. Tichinin asserts that planning staff has "refused to give Mr. Gambord a circular driveway" on the Hevrdejs property. Mr. Gambord is not entitled to apply for any project on the Hevrdejs property. The Hevrdejs are not requesting a circular driveway, and oppose that option as it is inappropriate to the topography of the site and is not necessary for any reason. Furthermore, relocation of the structure off the previously disturbed building envelope and construction of an extended (circular driveway) would not comply with Title 21 protections of slopes, where feasible alternatives exist. In this case, the appropriate location for the house and driveway is within the areas previously disturbed by the existing house and the existing driveway.

5.) Mr. Tichinin notes several prior actions by the County in prior years for projects including existing or new circular driveways. We note that for those projects that included existing circular driveways, the County likely lacked the jurisdictional authority to require removal of the existing condition and/or in each case individually the access to the existing structures and property may have required this condition, as no feasible alternative existed. The

present fact remains that this project with its existing building pad and driveway do not necessitate replacement with a circular driveway. To request or require it would be inconsistent with the policies of the coastal plan and inconsistent with historical procedures and decisions by Planning on similar projects and sites.

Mr. Tichinin here again invokes a Constitutional argument, claiming that the County's explanation regarding the circular driveway violated the Equal Protection Clause of the United States Constitution. Mr. Tichinin fundamentally misapplies this clause, which guarantees all citizens within a jurisdiction "equal protection of the laws" within that jurisdiction. This principle is well demonstrated in the case to which Mr. Tichinin cites, the Supreme Court case of *Village of Willowbrook v. Olech* (2000) 528 U.S. 562. In that case, the plaintiff applied to connect her property to the Village's municipal water supply. The Village granted the request, on the condition that the plaintiff grant a 33 foot easement to the Village for the infrastructure. The plaintiff sued, providing evidence that all other connections to the water supply required just a 15 foot easement and that there was no rational basis for the additional burden placed upon her property for the same service. Here, as Mr. Tichinin points out, Mr. Gambord is not the applicant, and the County is therefore not requiring anything of him. The *Willowbrook* court stated that there have been successful equal protection claims "where the ***plaintiff*** alleges that ***she*** has been intentionally treated differently from others similarly situated." *Id* at 564 (emphasis added). Here, Mr. Tichinin states that a circular driveway should be required because "similarly situated" ***developments*** have been approved with circular driveways. Mr. Tichinin is mixing apples and oranges as Mr. Gambord is not the party proposing the development (leaving behind for a moment the disputed question of whether the other developments referenced by Mr. Tichinin are in fact similarly situated). Mr. Gambord therefore has no argument under the Equal Protection clause because he has no standing for such a claim.

As outlined above, Mr. Tichinin's assertions and claims on behalf of Mr. Gambord are without merit or basis, and his suggested modifications to the project are not compliant with the regulations and policies of the County of Monterey.

In addition to the Tichinin letter noted above, we have received a copy of an email from Mr. Gambord to Planning. In the email, he cites again his desire to see the project moved downhill in to native slopes with a circular driveway. From the discussion in the email he notes having gone as far as having an engineer design a building pad and circular driveway plan for presentation to Planning for review. As support for his concept, he notes that development in 30% slopes is already a part of the proposed project, and therefore his proposal should not be denied for this reason.

In response to Mr. Gambord's comments, we note two clear points in County regulation that Mr. Gambord refuses to acknowledge:

1.) We again note that Policy 1 of the Del Monte Forest Plan requires "simple & direct" access to the site/residence, and also discourages circular driveways and/or multiple access points. In addition, the regulations do not support a proposal for a modified driveway as proposed by him, where it is clear that a compliant "simple and direct" driveway already exists.
2.) The project as proposed is sited on an existing building pad with minor changes to the footprint entirely within the originally disturbed areas of the site. The minimal area of 30% slope that the proposed project impacts is a man-made slope. As you are aware, the County regulations allow for some minor disturbance and small modifications within man-made slopes. Alternatively, Mr. Gambord's plan proposes abandonment of the entirety of the existing building pad and man-made area to move the structure and proposed "circular" driveway entirely into natural slopes well in excess of 30%. His proposal is simply not acceptable and is inconsistent with the regulations. It is clear there is an existing alternative to his request that undisturbed natural areas of the property be altered substantially (the existing building pad).

We appreciate your review and support of this project, and look forward to the hearing on this matter on February 8th. Please feel free to contact me, if you have any questions or need additional information prior to the hearing.

Sincerely,

R. Gail Hatter,
Sr. Land Use Specialist

cc. Joe Sidor
Client