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April 25, 2022

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**VIA E-MAIL PKOHN@RUTAN.COM; SDUPUIS@LAGUNABEACHCITY.NET ;
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City of Laguna Beach
Phil Kohn, City Attorney
Shohreh Dupuis, City Manager
Marc Wiener, Community Development Director
505 Forest Ave
Laguna Beach, CA 92651

Re: Proposed Use of Three Arch Bay Property Without Consent – 44 So. La Senda

Dear Mr. Kohn, Ms. Dupuis, and Mr. Wiener,

This office is litigation counsel to the Three Arch Bay Homeowner's Association ("TAB"). I am writing to address and hopefully resolve City staff's unlawful processing of an application to use and construct improvements upon TAB property without TAB consent. By continuing to process a development application that will infringe on TAB's property rights, City staff is exposing the City to substantial liability.

Laguna Beach Municipal Code (LBMC), section 25.05.015 (A)(2), requires the consent of every property owner involved in processing an application. Here, the project at 44 So. La Senda includes proposed construction on two properties - one is the property at 44 So. La Senda, and the other is the adjacent property owned by TAB. LBMC, section 25.05.015 (A)(2), states:

Each planning and development application shall include verification by at least one of **the owners of property involved** or their authorized agent attesting to the truth and correctness of all facts and maps presented with such application.

Since the 44 So. La Senda application involves two properties, the consent of at least one of the owners (e.g., husband or wife, but not both) of each property is required for the City to accept and process this application. To date, TAB has not consented to the use of its property for the proposed project. Therefore, the City should not have accepted, nor should it be processing the application.

Furthermore, the Applicant proposes to locate two of the project's required parking spaces on the TAB property. LBMC, section 25.44.050 (G), states:

Parking Standards. The provisions of Chapter 25.52 shall apply, unless otherwise provided herein. Four off-street parking spaces are required; two spaces shall be covered and two spaces may be uncovered. The uncovered spaces may be located within the front yard or on Three Arch Bay property which abuts the street **if a license agreement to do so is entered into by the applicant and Three Arch Bay Association.**

Therefore, while it is acceptable to satisfy the code required parking by locating two spaces on the adjacent TAB property, this is only allowable (under the LBMC) if the Applicant and TAB enter into a license agreement. The Applicant has not submitted evidence of such required license agreement, as the Applicant has not even requested such an agreement from TAB. Therefore, the requirement for a license agreement has not been met. As such, the proposed project currently does not comply with the law (i.e., LBMC, § 25.44.050(G)).

This violation has been communicated to the City in the following letters without resolution:

- March 17, 2021 – letter from TAB to City staff and Board members
- October 27, 2021 – letter from TAB to the Design Review Board
- November 30, 2021 - letter from John MacDowell (TAB legal counsel) to Shohreh Dupuis, Phil Kohn, Marc Wiener, Russell Bunim and DRB members
- January 26, 2022 – letter from TAB to DRB members
- March 21, 2022 – letter from Charles Krolkowski (TAB legal counsel) to City staff and City Council members
- March 23, 2022 – letter from Sue Loftin to City Council members

TAB owns the streets known as Bay Dr. and So. La Senda Dr., as well as several feet (approximately 17 feet on La Senda Dr. and four feet on Bay Dr.) on each side of the paved roadway. The project at 44 So. La Senda proposes to encroach onto TAB property (with patio improvements, seating areas, code required parking, fences, walls, walkways, landscape, irrigation, and other improvements) without TAB's permission or consent. Thus, the City's processing of any application that involves the use of TAB property, without the consent of TAB, is a violation of the law. (For additional background and details, please refer to Sue Loftin's letter dated March 23, 2022, which provides additional information on this matter.)

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At this juncture, TAB demands that the City follow and enforce the law (i.e., the LBMC) by requiring the Applicant to obtain a license agreement with TAB before the City continues to process the 44 So. La Senda application (including scheduling of the next Design Review Board hearing).

If you have any questions regarding the above, please do not hesitate to contact me.

Very Truly Yours,



Charles S. Krolikowski

cc: City Council Members:

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