



**CROSBIE GLINER SCHIFFMAN SOUTHARD & SWANSON LLP**

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July 13, 2018

**VIA E-MAIL**

Chairman Dan Goese and Members,  
La Jolla Shores Planned District Advisory Board

Re: Lookout Lots 4 & 5

Dear Chairman Goese and Members:

On behalf of my client, Susie McKean, who resides at 7809 Lookout Drive (which abuts both Lookout Lots 4 & 5) we submit the following issues of concern regarding the proposed development. Based on the factors set forth below, it is apparent that the proposed project is not consistent with applicable provisions of the La Jolla Shores Planned Development Ordinance ("LJSPDO") and applicable policies in the La Jolla Shores Community Plan ("LJCP") and we therefore recommend that you recommend denial of the requested Coastal Development Permit and Site Development Permit.

**1. The Applicant Intentionally Withheld the Most Recent Version of the Neighborhood Survey from the Neighbors, and Has Admitted to Errors in the Second Version, and There Are Errors in the Most Recent Version**

As your Advisory Board is well aware, the required Neighborhood Survey showing floor area ratios and setbacks is an important tool for evaluating a proposed project's consistency with important provisions of the LJSPDO and the policies of the LJCP. Both contain regulatory and policy language regarding appropriate building and structure relationships, setbacks, character and harmonious transitions between new and existing development. The Residential Element of the LJCP provides as follows: "In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements: Bulk and scale [] with regard to surrounding structures ...." LJCP, at p. 76. And while the LJSPDO does not regulate floor area ratio, it is a relevant metric indicative of bulk and scale.

The applicant and his representatives have prepared at least three different Neighborhood Surveys, the last of which dated June 18, 2018, was intentionally withheld from me when I requested a copy at the meeting on the same day of the La Jolla Shores Permit Review Committee ("LJSPRC"), in violation of the Brown Act, Council Policy 600-24, and the La Jolla CPA's Bylaws. See Exhibit A attached (July 3, 2018 letter to Mr. David Gordon). The third survey was

Chairman Dan Goese and Members,  
La Jolla Planned District Advisory Board  
July 13, 2018  
Page 2

not available for review until late Wednesday, July 11,<sup>1</sup> and we have not had an opportunity to fully analyze the differences between that version and the previous two. But, it is apparent that the applicant is playing fast and loose with the facts, as it added between 500 and 2,500 square feet to the area of each developed parcel to the second version as compared to the first. (See Exhibit B attached (June 18, 2018 letter to the LJSPRC).) When I commented at the June 18, 2018, LJPRC meeting on the discrepancies, the applicant's representative acknowledged there were errors in that survey, including the addition of 2,500 square feet to the alleged size of structures on five parcels, between the first and second version of the Neighborhood Survey. Of course, this error served to increase the apparent FAR of the average developed parcel on the Neighborhood Survey.

Although as noted, because the applicant withheld the third version of the Neighborhood Survey and we did not obtain a copy until it was included with your agenda materials, we have not completed our review of that version. Nevertheless, it is apparent that it contains other errors. For example, the Neighborhood Survey includes a structure for Lot 39, at 7819 Lookout Drive. In fact, however, there is no structure on that lot at all, and the previously issued Coastal Development Permit for that parcel has expired. So, including a structure of 3,806 square feet on a lot of 6,819 square feet, with an FAR of 0.56, has the effect of inflating the actual average FAR for the structures within 300 feet. Another apparent error, one which also has the effect of inflating the actual FAR in the immediate neighborhood, is the applicant's inclusion of Lots 4 & 5 in the neighborhood survey. Both Lot 4 and Lot 5 have FARs above the true average for the neighborhood.<sup>2</sup>

**2. The Project Far Exceeds Average Units Per Acre of Developed Lots in the Applicant's Neighborhood Survey, in Violation of SDMC § 1510.0304(a) and Policies of the LJCP**

The LJSPDO regulates dwelling unit density in single-family zones as follows: “[N]o lot or parcel shall be developed or occupied by more dwelling units than the average dwelling unit

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<sup>1</sup> After the applicant's representative refused to give me a copy of the third version of the Neighborhood Survey on June 18, Mr. Gordon asked Mr. Crisafi to provide me a copy. Mr. Crisafi stated that I could get one from the City after it is submitted to the City. I submitted a Public Records Act request to the City requesting the Neighborhood Survey dated after May 21, 2018, and the City's response, which I received earlier this week, stated that it had no such survey.

<sup>2</sup> Although the third version of the Neighborhood Survey asserts that the average FAR for lots within 300 feet of Lots 4 & 5 is 0.46, this far exceeds the average FAR of 0.34 which the applicant reported in the second version of the Neighborhood Survey. (See Exh. B at page 2.) We have not been afforded sufficient time to fully analyze the third version, but it is apparent that the 0.46 exceeds the actual average FAR for the project's vicinity.

Chairman Dan Goese and Members,  
La Jolla Planned District Advisory Board  
July 13, 2018  
Page 3

density (units per acre) of the developed SF zone within 300 feet of the subject lot or parcel.”  
SDMC § 1510.0304(a).

The applicant’s original Neighborhood Survey Chart submitted to the City included, showed that the proposed development of Lots 4 & 5 is inconsistent with SDMC section 1510.0304(a). The applicant’s original Neighborhood Survey Chart included 48 developed parcels occupying 573,428 square feet, or 13.16 acres. Dividing 48 units by 13.16 acres gives the average of 3.65 units per acre for a portion of the neighborhood within 300 feet of the proposed project.

In contrast, Lots 4 & 5 occupy 12,861 square feet, or 0.29 acres. Two divided by 0.29 is 6.90 units per acre, or almost twice the average units per acre for a portion of the neighborhood within 300 feet of the proposed project.

Thus, the units per acre metric is effectively an alternate measure of residential density under the LJSPDO. These calculations show that the proposed development of Lots 4 & 5 is inconsistent with the LJSPDO and with the mandates under the LJCP to “[m]aintain the existing residential character of La Jolla’s neighborhoods by encouraging buildout of residential areas at the plan density” and “[e]nsure that proposed new development is constructed within the density range identified for the project site on the Residential Densities map.” (LJCP, at pp. 70, 75.) Lots 4 & 5 are within an area designated for Very Low Residential (0-5 units per acre). (LJCP, at p. 73.) The proposed development of Lots 4 & 5, at 6.9 units per acre, significantly exceeds the maximum residential density permitted under the LCJP.

**3. The Project’s Setbacks Are Not in General Conformity with Those in the Vicinity, in Violation of SDMC § 1501.0304(b)(4)**

The proposed project for Lots 4 & 5 are also inconsistent with the requirement for setbacks under the LJSPDO. That requirement is that “[b]uilding and structure setbacks shall be in general conformity with those in the vicinity.”

Here, the proposed structures on Lots 4 & 5 would be separated by the bare minimum setback, four feet, from the rear property lines of those lots, each of which abuts Ms. McKean’s southern property line. It is apparent from reviewing the applicant’s Neighborhood Survey that Ms. McKean’s single-family residence was constructed in close proximity to its southern property line. (See Exhibit A (Ms. McKean’s property is identified as Number 32 (with Lots 4 & 5 identified as Lots 37 and 38, respectively).) In fact, it is the master bedroom of that structure that is located closest to the southern property line abutting Lots 4 & 5.

The four-foot separation of the structures proposed on Lots 4 & 5 from Ms. McKean’s side property line abutting her bedroom is approximately half of the average setback from the side

Chairman Dan Goese and Members,  
La Jolla Planned District Advisory Board  
July 13, 2018  
Page 4

property line in the partial Neighborhood Survey prepared by the applicant. The applicant's Neighborhood Survey shows that the average side setback is seven feet, nine inches. Accordingly, the proposed development of both Lots 4 & 5 is not in general conformity with the building setbacks in the vicinity and thus violates SDMC section 1501.0304(b)(4).

For all of the above-stated reasons, we respectfully request that your Committee not recommend approval of the proposed development plan.

Sincerely,



Evelyn F. Heidelberg

EFH/pat

cc: Mr. Marlon Pangilinan (via email, mpangilinan@sandiego.gov)

# EXHIBIT A



**CROSBIE GLINER SCHIFFMAN SOUTHARD & SWANSON LLP**

Attorneys at Law

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**OUR FILE NO.**  
M0070-003

July 3, 2018

**VIA E-MAIL (dgord@aol.com)**

Mr. David Gordon  
Chair, La Jolla Shores Permit Review Committee

Re: LJSPRC's Violation of the Brown Act, Council Policy 600-24, and the LJCPA's Bylaws in Connection with June 18, 2018 Meeting re Lookout Lots 2, 4 & 5 (Project # 482904 & #589178)

Dear Mr. Gordon:

By this letter, I reply to your email response (attached as Exhibit 1) to my letter to you dated June 29, 2018, on the above matters (Exhibit 2).

Your charge that the statements in my letter “are blatantly false” is belied by the recorded proceedings of the June 18 meeting of the LJSPRC, as well as by implicit admissions in your letter. First, you state that if I “had wanted to review the handout, you had ample opportunity to request so at the meeting and should have done so.” As stated in the second paragraph of my June 29 letter, I did expressly ask Mr. Crisafi, the applicant’s representative, for a copy of the Neighborhood Survey, and he stated that his client did not want me to have a copy and that therefore he would not give me one. Your audio recording of the proceedings of the meeting will confirm this. Second, your response to my letter fails to address the fact that you allowed Mr. Crisafi to collect from the members of the LJSPRC all copies of the Neighborhood Survey that he had distributed to members, in violation of the record retention policies stated in the LJCPA Bylaws, Council Policy 600-24, and the Brown Act. Your failure to address that fact implicitly admits its truth, as does your email request to Mr. Crisafi to provide me with a copy.

You have ignored my request that you, as Chair of the LJSPRC, rectify your failure to abide by the records retention policies referenced in the previous paragraph by requesting Mr. Crisafi to provide the LJSPRC a copy of the Neighborhood Survey. Instead, you merely requested Mr. Crisafi to provide me with a copy of that document. Your failure to ask Mr. Crisafi to provide you with a copy of the Neighborhood Survey evidences your utter disregard of the referenced policies and their reason for being, namely, “to facilitate public participation in local government decisions ....”<sup>1</sup>. Moreover, as noted in the preceding paragraph, Mr. Crisafi rejected my express

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<sup>1</sup> “The Brown Act, Open Meetings for Local Legislative Bodies,” (2003), Office of the Attorney General, Bill Lockyer, Attorney General, at p. 1; *see also id.* at p. 28 (“any other writings ... distributed to all or a majority of the members ... for discussion or consideration at a public

(Continued)

Mr. David Gordon  
July 3, 2018  
Page 2

request for a copy of the Neighborhood Survey at the June 18 meeting, so you had no reasonable expectation that he would after-the-fact provide me with a copy of the Neighborhood Survey.

Mr. Crisafi's email response to your request to provide me with a copy of the Neighborhood Survey is equally dismissive of the LJCPA Bylaws, Council Policy 600-24 and the Brown Act, particularly since you forwarded to him my letter to you reminding you of those policies and since he is a current member of the LJSPRC and a longtime former chair of the LJCPA. His statement that he will, in the future, provide the Neighborhood Survey to the City, and that I can get it from the City at that [unspecified] time is obviously not in keeping with the letter or the intent of the Brown Act, Council Policy 600-24, and the Bylaws of the LJCPA. As set forth in Government Code section 54957.5, a body subject to the Brown Act must make available to a member of the public documents distributed to all or a majority of the members "upon request and without delay." It is simply unacceptable for you to accept Mr. Crisafi's statement that I can obtain a copy of the Neighborhood Survey from the City after he submits it to the City.

Your continued failure to abide by these authorities and your failure to rectify violations of those provisions when they are brought to your attention subjects you, the LJSPRC, the LJCPA and the City to criminal penalties and civil remedies under the Brown Act. I therefore reiterate my request that you, as chair of the LJSPRC, request Mr. Crisafi to submit the Neighborhood Survey to the LJSPRC so that it can be made available without further delay for copying by members of the public.

Sincerely,

  
Evelyn F. Heidelberg

EFH/pat

cc: Mr. Bob Steck  
Mara Elliott, Esq.  
Ms. Susie McKean

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(continued)

meeting are disclosable to the public upon request, and shall be made available without delay to members of the public upon request, and shall be made available without delay to the public in accordance with the provisions of [Government Code] section 54957.5."

# **EXHIBIT 1**

## Evelyn Heidelberg

---

**From:** Tony Crisafi <tcrisafi@islandarch.com>  
**Sent:** Tuesday, July 3, 2018 7:54 AM  
**To:** David Gordon; Evelyn Heidelberg  
**Cc:** Bob Steck; cityattorney@sandiego.gov; Shannon M. Thomas (SThomas@sandiego.gov); cneuffer@sandiego.gov; Susan McKean; Marlon Pangilinan  
**Subject:** RE: June 29 letter to David Gordon

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Thank you David and it will be filed with the City as I stated in the meeting. The documents will be included as part of the regular cycle issue response.

Tony Crisafi, AIA  
LEED-AP



DIRECT LINE: (858) 869-2831

[tcrisafi@islandarch.com](mailto:tcrisafi@islandarch.com) | [www.islandarch.com](http://www.islandarch.com)

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**From:** David Gordon <dgord@aol.com>  
**Sent:** Monday, July 02, 2018 10:30 PM  
**To:** Evelyn Heidelberg <ehelidelberg@cgs3.com>; Tony Crisafi <tcrisafi@islandarch.com>  
**Cc:** Bob Steck <robert.steck@ml.com>; cityattorney@sandiego.gov; Shannon M. Thomas (SThomas@sandiego.gov) <SThomas@sandiego.gov>; cneuffer@sandiego.gov; Susan McKean <SMcWalden@aol.com>; Marlon Pangilinan <mpangilinan@sandiego.gov>  
**Subject:** Re: June 29 letter to David Gordon

Ms. Heidelberg -

The statements in your letter are blatantly false. When the applicant passed out their handouts, I personally told them that the committee members could share the documents and the remainder could be handed out to the public. If you had wanted to review the handout, you had ample opportunity to request so at the meeting and should have done so.

Tony -

Can you provide a copy of the neighborhood survey to Ms. Heidelberg?

Best Regards,  
David Gordon

Chair, LJSPRC  
(858) 243-2195  
[dqord@aol.com](mailto:dqord@aol.com)

# **EXHIBIT 2**



**CROSBIE GLINER SCHIFFMAN SOUTHARD & SWANSON LLP**

Attorneys at Law

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eheidberg@cgs3.com

WRITER'S DIRECT PHONE NO.  
(858) 779-1718

**OUR FILE NO.**  
M0070-003

June 29, 2018

**VIA E-MAIL (dgord@aol.com)**

Mr. David Gordon  
Chair, La Jolla Shores Permit Review Committee

Re: LJSPRC's Violation of the Brown Act, Council Policy 600-24, and the LJCPA's Bylaws in Connection with June 18, 2018 Meeting re Lookout Lots 2, 4 & 5 (Project # 482904 & #589178)

Dear Mr. Gordon:

At the La Jolla Shores Permit Review Committee ("LJSPRC") meeting of June 18, 2018, the applicant's representatives, architects from Island Architects including LJSPRC member Tony Crisafi, distributed to LJSPRC members an updated Neighborhood Survey. This Neighborhood Survey was updated from the one dated May 21, 2018, and distributed to the LJSPRC at the meeting held on that day. The Neighborhood Survey is, of course, important to neighbors in the vicinity of the proposed project, including my client Ms. Susie McKean whose property borders both Lots 4 & 5, because it presents comparative data on floor area ratios and setbacks, which are highly relevant to a determination as to whether the project is consistent with critical policies for residential development set forth in the La Jolla Community Plan ("LJCP"), and whether the project's setbacks are consistent with requirements of the La Jolla Shores Planned Development Ordinance ("LJSPDO").

At the conclusion of my oral comments to the LJSPRC summarizing the points in my June 18 letter to the LJSPRC (which focused on the proposed project's inconsistency with the referenced provisions of the LJCP and the LJSPDO), I remarked that members of the public had not had an opportunity to review the most recent Neighborhood Survey provided by Island Architects, i.e., the survey given to LJSPRC members at the June 18 meeting, and I asked Mr. Crisafi for a copy. He stated that his client did not want me to have a copy of the updated Neighborhood Survey and that therefore he would not give me one. Following the meeting, we inquired of a member of the LJSPRC whether they had a copy of the updated Neighborhood Survey so that we might copy it. That member advised us that Mr. Crisafi had collected from LJSPRC members all of the copies of the updated Neighborhood Survey that he had distributed.

By not requiring the applicant to provide copies of the updated Neighborhood Survey for members of the public and allowing the applicant to take back from LJSPRC members all copies of the updated Neighborhood Survey, the LJSPRC violated its own practices and procedures, the Bylaws of the LJCPA, Council Policy 600-24, and provisions of the Brown Act. Each of these violations is explained below.

Mr. David Gordon  
June 29, 2018  
Page 2

**1. Violation of the stated practices and procedures of the LJSPRC**

In your email to me dated May 19, 2018, you articulated your practice, consistent with your understanding of the Brown Act, of not circulating to members of the LJSPRC communications received on a matter on the agenda prior to the meeting, because you had no means to make those communications available to the public in advance of the meeting. (See Attachment A.) Although your statement was with reference to a communication received from a member of the public, we trust that it applies as well to communications and documents received from the applicant. In that same email, you asked me to bring copies of my letter for the applicant and the general public, as well as for the members of the LJSPRC. (See *id.*)

At the meeting on June 18, however, the applicant did not make copies of the updated Neighborhood Survey available to members of the public present at that meeting, nor did you ask the applicant to make copies of the updated Neighborhood Survey available to members of the public at that meeting. Nor did you object to Mr. Crisafi's denial of my request for a copy of the updated Neighborhood Survey when I asked him for same on June 18 at the conclusion of my remarks to the LJSPRC.

**2. Violations of the Bylaws of the LJCPA**

The LJCPA's Corporate Bylaws (approved February 29, 2016 by City Council Resolution R-310254 (hereinafter "Bylaws")) require that "[a]ny written documentation, prepared or provided by ... applicants ... that is distributed at the LJCPA meeting shall be made available upon request for public inspection without delay. If such material is distributed at the LJCPA meeting, then it shall be made available upon request at the meeting." (See Bylaws, Article VI, Section 1.E(2).) As noted above, at the meeting the applicant made available an updated Neighborhood Survey to members of the LJSPRC, but did not make them available to the general public at the meeting, or upon my request. Nor did you, as Chairman of the LJSPRC tell Mr. Crisafi to make a copy available to me when I requested same.

Your allowing Mr. Crisafi to collect from LJSPRC members the copies of the updated Neighborhood Survey that he distributed only to LJSPRC members also violated the record retention provision of the Bylaws. Specifically, the Bylaws provide that "The LJCPA records must be retained for public review utilizing the City staff records retention schedule and method for collection and storage of materials utilized by all planning groups. Community planning group records are meeting agendas and any other writings that are distributed to at least a majority of the group members in connection with a matter subject to consideration at an open meeting of the group." (Bylaws, Article VI, Section 1.E.(4).)

Mr. David Gordon  
June 29, 2018  
Page 3

### **3. Violation of Council Policy 600-24**

Because the Bylaws were based in large part on, and intended to implement, Council Policy 600-24, it is not surprising that the LJSPRC's failure to require the applicant to make the updated Neighborhood Survey available to members of the public at the June 18 meeting, its allowing Mr. Crisafi to refuse my specific request for a copy of the updated Neighborhood Survey and its allowing Mr. Crisafi to collect all copies of the updated Neighborhood Survey from LJSPRC members at the conclusion of the June 18 meeting, also violate provisions of Council Policy 600-24 and its implementing Administrative Regulations.

The relevant policies of Council Policy 600-24 are as follows:

"In accordance with Brown Act section 54957.5, any written documentation, prepared or provided by City staff, applicants, or community planning group members that is distributed at a community planning group meeting shall be made available upon request for public inspection without delay. If such material is distributed at a community planning group meeting, then it shall be made available upon request at the meeting...." (Council Policy 600-24, Article VI, Section 2(d)(2).<sup>1</sup>)

**Records Retention.** In accordance with Brown Act section 54957.5, community planning group records, as described below, must be retained for public review. Community planning group records are meeting agendas and any other writings that are distributed to at least a majority of the group members in connection with a matter subject to consideration at an open meeting of the community planning group...." (*Id.* Article VI, Section 2(d)(4).)

### **4. Violation of the Brown Act**

As noted in Council Policy 500-24, the Brown Act requires that any written documentation provided by an applicant at a meeting subject to its requirements be made available upon request for public inspection without delay, and that if such material is distributed at a community planning group meeting, it must be made available upon request at the meeting. (Gov't Code § 54957.5.)

In conclusion, the LJSPRC's failure to require Island Architects to provide copies of the updated Neighborhood Survey for public review at the meeting on June 18, 2018, at which the

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<sup>1</sup> Although this policy applies by its terms to "community planning groups," elsewhere in Council Policy 600-24, it is made clear that it applies not only to the community planning group *per se* (e.g., the LJCPA), but to its standing committees and subcommittees as well. See Council Policy 600-24, Article VI, Section 2(b)(1) ("all standing subcommittees of a community planning group are subject to Brown Act public noticing and meeting requirements as set forth in Article VI, Section 2(a) of this Policy.")

Mr. David Gordon  
June 29, 2018  
Page 4

above-referenced projects were considered by the LJSPRC, its allowing Mr. Crisafi to deny my specific request at the meeting to review the Neighborhood Survey, and its allowing Mr. Crisafi to collect all copies of the updated Neighborhood Survey from members of the LJSPRC to whom it had been distributed all constitute violations of the LJSPRC's practices and policies, the LJCPA's Bylaws, Council Policy 600-24 and the Brown Act. These violations are particularly egregious as they were committed by Mr. Crisafi, who is not only a member of the LJSPRC, but a former chairman of the Trustees of the LJCPA. By virtue of his current membership on the LJSPRC, however, Mr. Crisafi can be expected to readily comply with a request from you as chairman of the LJSPRC to provide the updated Neighborhood Survey so that the LJSPRC may belatedly comply with its record retention obligations and its obligations to allow members of the public to copy documents provided by applicants to the LJSPRC for its consideration in connection with a matter on the LJSPRC's agenda.

We therefore request that you ask Mr. Crisafi to provide a copy of the referenced updated Neighborhood Survey for the LJSPRC's records, and that you notify me when that document is available for copying. Thanks in advance for your anticipated cooperation.

Sincerely,



Evelyn F. Heidelberg

EFH/pat

cc: Mr. Bob Steck  
Mara Elliott, Esq.  
Ms. Susie McKean

# **EXHIBIT A**

## Evelyn Heidelberg

---

**From:** David Gordon <dgord@aol.com>  
**Sent:** Saturday, May 19, 2018 10:53 PM  
**To:** Evelyn Heidelberg  
**Subject:** Re: May 21 Meeting of LJSPRC: request for additional time to address Lookout Lots 4 & 5  
**Attachments:** LJSPRC\_AGENDA\_21May2018\_rv1.pdf  
**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Ms. Heidelberg -

Please also see my email response to your client.

Our committee is required to abide by the Brown Act and as such we are required to discuss all project details in a public forum. If I forward a letter to all of the committee members prior to the public meeting, that can be considered a violation of the Brown Act unless I also make those materials available to the public. Since the LJSPRC does not have a method available to distribute those materials to the public, we refrain from distributing anything ahead of time to the committee members other than those materials that are available to the public from the City. Typically, this is limited to the Assessment Letter and Cycle Issues from DSD.

To be consistent and fair to all, I recommend to members of the public that if they want to submit a letter or other documents to the LJSPRC, that they do so during the meeting and also provide copies to the applicant and other members of the public. We have eight committee members, so if you provide four copies to the committee, that would be sufficient (we can share).

With respect to scheduling time for formal presentations on the agenda, I require that because we have had other paid professionals show up at our meeting with a 30 - 45 minute formal presentation with no fair warning. One particular individual, basically hijacked the meeting so he could present his views. However, in my opinion, his only goal was to disrupt the meeting and cost the applicant time and money. Our committee has the interest of the community in mind and while we have differing opinions on interpretation of the PDO and other regulations, we try to be fair to both the applicants and the neighbors. I will do my best to allow Ms McKean an appropriate amount of time to present her concerns.

We did have one other "consultant" request a 15 minute period on the agenda to present her clients' concerns. She related that she is representing a group of neighbors. Since she made the request in time to meet the 72 hour rule, I was able to revise the agenda and distribute it. Perhaps you or your client might want to contact her. Her contact info is on the attached agenda.

Best Regards,  
David Gordon  
Chair, LJSPRC  
(858) 243-2195  
[dgord@aol.com](mailto:dgord@aol.com)

On May 18, 2018, at 1:12 PM, Evelyn Heidelberg <[eheidelberg@cgs3.com](mailto:eheidelberg@cgs3.com)> wrote:

Hello, Mr. Gordon

I represent Susie McKean, who resides and owns property at 7809 Lookout Drive. Her property borders on the northern boundary of both Lots 4 & 5. As such, she is uniquely interested in the proposed development, as no other resident is similarly situated (i.e., sharing a boundary with both Lots 4 & 5). I will be submitting, on Sunday or Monday, a letter to you via email outlining some of our concerns with that proposal vis-à-vis its noncompliance with the LJSPDO and the La Jolla Community Plan.

It is my understanding that in the normal course, each person submitting a request to speak to the LJSPRC is allocated two minutes. Given Ms. McKean's unique interest in the proposed project, I request that the Committee provide 10 minutes in order to present Ms. McKean's issues.

Thanks in advance for your consideration of this request, and I look forward to your response.

Respectfully submitted,

- Evelyn

**Evelyn F. Heidelberg**

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San Diego, California 92130  
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[eheidelberg@cgs3.com](mailto:eheidelberg@cgs3.com)

<image001.jpg>

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# EXHIBIT B



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June 18, 2018

**VIA HAND DELIVERY**

Chairman David Gordon and Members,  
La Jolla Shores Permit Review Committee

Re: Lookout Lots 4 & 5 (PTS No. 482904)

Dear Chairman Gordon and Members:

On behalf of my client, Susie McKean who resides at 7809 Lookout Drive (which abuts Lookout Lots 4 & 5) we submit the following issues of concern regarding the proposed development. This letter supplements my letter to the Committee dated May 21, 2018.

**Applicant's Revised "300-Foot Radius Information" Added 500 or 2,500 Square Feet to the Floor Area of Most Area Properties, and Excluded Almost 3,500 Feet from the Actual Floor Area of the Project, but Even if Valid, the Project's FAR Is 35 Percent Higher Than the Revised Average FAR for Development Within 300 Feet**

At the conclusion of the Committee's consideration of this proposed project on May 21, 2018, the Committee gave the applicant a list of approximately ten issues that it should address when it returns to the Committee. Among those issues was a request to address discrepancies between the applicant's "300-Foot Radius Information" as to floor area and floor area ratios ("FARs") for developed properties within 300 feet of the project site that it presented to the Committee on May 21, on the one hand, and my presentation of floor area, lot size, and FARs as set forth in Exhibit B to my letter dated May 21, on the other hand. Exhibit B to my letter used the information the applicant provided to the City in 2015, on its chart entitled "Properties Within a 300' Radius" as well as information provided in the City's Cycle Issues Report dated March 13, 2018, as to the proposed project. Exhibit B to my May 21 letter found that the average FAR for properties within 300 feet of the center of the project was 0.31, as compared to 0.73 for Lots 4 & 5 combined.

As noted, the applicant presented to the Committee on May 21 a chart and map labeled "300' Radius Information," which had entirely different numbers for the floor area of existing structures in the vicinity of the project as compared to the chart it submitted to the City in December 2015 entitled "Properties Within a 300' Radius." Included as Exhibit A hereto is the December 2015 applicant submittal, with the handwritten notations adjacent to entries for "Building" reflecting the addition to floor area for all the properties within the vicinity reflected in the May 21, 2018 "300' Radius Information" as compared to the floor area reported to the City in December 2015. You will note that the applicant has added to most of the parcels floor area of 500 square feet, although the applicant added 2,500 square feet to six parcels. All of the additions to floor area (with the exception of those parcels that had been vacant in 2015 but which have since

Chairman David Gordon and Members,  
La Jolla Shores Permit Review Committee  
June 18, 2018  
Page 2

been developed) are round numbers: 250, 500, 750, and 2,500 square feet. These round number additions to floor area of surrounding development is certainly suspect. The applicant's "300' Radius Information" states that "Sq. Ft. obtained from San Diego Public Records Dept and/or Realty Websites." There is no Public Records Department at the City of San Diego, or the County of San Diego, for that matter. And the accuracy of realtors' websites is certainly not a given.

Yet, despite these unsubstantiated, suspect additions to floor area for surrounding development, the applicant concludes that the average FAR in the vicinity is 0.34, not much higher than the 0.31 I calculated based on the applicant's 2015 submittal to the City.

Comparing the applicant's stated FAR for Lots 4 and 5 to that presented in my Exhibit B, I used the gross floor area presented in the City's March 13 Cycle Issues Report, as well as the applicant's statement of lot areas, to find that for Lots 4 and 5 the FAR is 0.73. In contrast, the applicant represented on its May 21 "300' Radius Information" that the FAR for Lot 4 is 0.43 and for Lot 5, 0.74. The applicant apparently got these much lower FARs by excluding from its statement of floor area almost 3,500 square feet of floor area due to purported allowed exclusions from gross floor area under City regulations. Specifically, comparing the applicant's plans – which show the actual gross floor area – to the "building w/ garage" figures for Lots 4 and 5 as presented in its "300' Radius Information," it is apparent that the applicant has excluded 1,996 square feet from the actual gross floor area for Lot 4 and 1,501 square feet from the actual gross floor area for Lot 5. Even if these exclusions from floor area were validly calculated under the City's regulations, the FAR for Lots 4 and 5 combined is 0.46, which is 35 percent higher than the applicant's calculated neighborhood average FAR of 0.34. If one includes Lot 2 in the FAR calculation, as the applicant has done on its "300' Radius Information," the three-lot FAR is 0.65, or just about double the applicant's calculated neighborhood average FAR of 0.34.

In summary, even accepting the applicant's revised representations of both floor area of developed properties and of the proposed project – each of which is of questionable accuracy – the average FAR for the proposed project far exceeds the average FAR for surrounding development. As such, since FAR is one measure of bulk and scale, the proposed project is not consistent with the La Jolla Community Plan's requirement that the existing neighborhood character be maintained and enhanced by ensuring that new development preserves bulk and scale with regard to surrounding structures. See La Jolla Community Plan, at p. 76.

**Numerous Significant Issues Remain Open (Not "Cleared") in the City's Most Recent Cycle Issues Report**

The Committee noted, in its comments to the applicant at the close of the Committee's May 21 meeting, that it wants the applicant to address the major "open" issues in the latest version of the City's Cycle Issues Report.

Chairman David Gordon and Members,  
La Jolla Shores Permit Review Committee  
June 18, 2018  
Page 3

As shown in Exhibit B hereto, the City's March 13 Cycle Issues Report included numerous open issues that had not been "cleared."<sup>1</sup> Looking at page 1 of that Cycle Issues Report, it is apparent that the applicant simply ignored a "request" from City planning staff to address at least one open issue in the applicant's subsequent submittal in May. Specifically, Issue Number 26 states as follows: "Please update the Neighborhood Survey Chart (within the neighborhood survey packet) by changing the "FAR" to "Lot Coverage...." The applicant's May submittal failed to comply with this "request": it retained the FAR figures instead of substituting them with lot coverage figures for each of the parcels within 300 feet of the project site. When I presented this issue to the Committee on May 21, Mr. Crisafi's "response" to this point was completely non-responsive: he stated that the revised plans included lot coverage information, for Lots 2, 4 & 5 of the proposed project.

Apparently the City's planning staff believes that comparing the proposed project's lot coverage with that of the parcels covered by the Neighborhood Survey Chart is important. This is not surprising, given that FAR is not a development standard under the LJSPDO. But, as the Committee is well aware, LJSPDO and the La Jolla Community Plan both contain regulatory and policy language regarding appropriate building and structure relationships, setbacks, character and harmonious transitions between new and existing development. Regulating bulk and scale of new development relative to surrounding structures is an important bellwether in that regard, and lot coverage of proposed development vis-à-vis nearby structures in the neighborhood is one important point of comparison.

Accordingly, we submit that until the applicant complies with the City's request to update its neighborhood survey to include comparative lot coverage information in its neighborhood survey, as well as addresses other significant "open" issues identified in the City's most recent Cycle Issues Report, it would be premature for the Committee to vote on its recommendation as to the proposed project.

**As Set Forth in Our May 21 Letter to the Committee, the Project Far Exceeds Average Units Per Acre of Developed Lots in Neighborhood Survey, in Violation of SDMC § 1510.0304(a) and Policies of the LJCP, and the Project's Setbacks Are Not in General Conformity with Those in the Vicinity, in Violation of SDMC § 1501.0304(b)(4)**

If the Committee were to decide to depart from its past practice in deferring a vote on a proposed project until after the significant City staff-identified issues are "cleared," then based on information presented in our May 21 letter, we respectfully submit that the Committee should vote

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<sup>1</sup> It should be noted that although the applicant submitted a revised set of plans to the City in May 2018, supposedly to address the issues not yet "cleared" in the March 13 Cycle Issues Report, the City has not yet issued a subsequent Cycle Issues Report on those plan changes.

Chairman David Gordon and Members,  
La Jolla Shores Permit Review Committee  
June 18, 2018  
Page 4

against recommending approval of the proposed project, as it is inconsistent two important provisions of the LJSPDO.

The first provision of the LJSPDO with which the proposed project is inconsistent is SDMC Section 1510.030.0304(a), which regulates dwelling unit density in single-family zones as follows: “[N]o lot or parcel shall be developed or occupied by more dwelling units than the average dwelling unit density (units per acre) of the developed SF zone within 300 feet of the subject lot or parcel.” As set forth in our May 21 letter, and on Exhibit B thereto, the average units per acre for developed parcels as set forth on the applicant’s neighborhood survey is 3.65 units per acre. In contrast, for Lots 4 & 5 combined, the average units per acre is 6.90 units per acre, or almost twice the average units per acre for the neighborhood.

The second provision with which the proposed project is inconsistent is SDMC Section 1501.0304(b)(4), which requires that “[b]uilding and structure setbacks shall be in general conformity with those in the vicinity.” As the applicant’s survey (both the 2015 version as well as the May 21, 2018, version) confirms, the average side yard setback in the neighborhood is 7 feet, 9 inches. In contrast, the proposed project’s side yard setbacks against Ms. McKean’s property is half of that, at 4 feet.

For all of the above-stated reasons, we respectfully request that your Committee not take a vote on the proposed project until the applicant resolves, to the satisfaction of the City, the major “open” issues, which in this case would require among other matters that the applicant revise its neighborhood survey to include lot coverage figures for each developed parcel. If the Committee chooses to depart from its stated precedent and vote on the proposed project before those major “open” issues are resolved to the City’s satisfaction, we submit that based on the above inconsistencies with LJSPDO mandates and LJCPA policies and those noted in our May 21, 2018 letter, you should vote to recommend denial.

Sincerely,



Evelyn F. Heidelberg

EFH/pat  
Exhibits

cc: Ms. Susie McKean  
Mr. Glenn Gargas

Number	Parcel Number	Site Address	Building	Lot Size	FAR	Front	Side	Set Back	Rear
1	346-484-06-00	2035 TORREY PINES RD	+500	35,580	0.12	32'-10"	14'-2"	9'-6"	4'-11"
2	346-484-07-00	*NO SITE ADDRESS*	0	5,619	0.00				
3	346-484-13-00	TORREY PINES RD	+500	0	0.00	6'-0"	0'-5"	11'-4"	25'-10"
4	350-162-08-00	7811 HILLSIDE DR	+500	7,396	0.30	33'-3"	34'-8"	28'-2"	19'-1"
5	350-280-05-00	7740 HILLSIDE DR	+500	21,092	0.14	9'-9"	5'-2"	2'-9"	11'-8"
6	350-280-06-00	7734 HILLSIDE DR	+800	8,451	0.49				
7	352-010-02-00	HILLSIDE DR	0	10,202	0.00				
8	352-010-03-00	7719 HILLSIDE DR	+2500	10,202	0.23	10'-8"	3'-0"	10'-1"	26'-10"
9	352-010-04-00	7721 HILLSIDE DR	+2500	9,601	0.44	11'-0"	1'-5"	3'-10"	53'-5"
10	352-010-05-00	7711 HILLSIDE DR	+2500	9,601	0.22	17'-7"	2'-0"	3'-1"	54'-1"
11	352-010-06-00	7705 HILLSIDE DR	+2500	8,281	0.26	15'-4"	7'-0"	1'-5"	41'-0"
12	352-010-07-00	1940 SOLEDAD AVE	+500	9,901	0.19	19'-2"	0'-0"	18'-1"	1'-10"
13	352-010-08-00	7716 LOOKOUT DR	+250	13,839	0.20	14'-0"	1'-4"	21'-3"	66'-11"
14	352-010-09-00	7728 LOOKOUT DR	+250	5,624	0.53	11'-3"	10'-10"	2'-10"	23'-9"
15	352-010-13-00	7788 LOOKOUT DR	+500	8,830	0.23	7'-2"	5'-11"	2'-1"	67'-1"
16	352-010-14-00	7794 LOOKOUT DR	+500	14,867	0.17	7'-5"	3'-2"	2'-1"	58'-9"
17	352-010-15-00	7796 LOOKOUT DR	+500	13,338	0.26	11'-8"	11'-6"	3'-11"	51'-2"
18	352-010-16-00	7801 HILLSIDE DR	+500	15,359	0.30	9'-8"	31'-9"	2'-7"	44'-3"
19	346-610-13-00	7762 LOOKOUT DR	+500	33,977	0.16	0'-0"	28'-3"	22'-3"	88'-0"
20	352-010-20-00	7772 LOOKOUT DR	+500	20,600	0.17	122'-0"	4'-4"	3'-11"	100'-7"
21	352-010-21-00	7780 LOOKOUT DR	+500	12,663	0.26	52'-10"	3'-7"	7'-0"	43'-10"
22	352-010-29-00	7782 LOOKOUT DR	+500	6,098	0.65	9'-9"	5'-1"	9'-0"	38'-0"
23	352-010-30-00	7784 LOOKOUT DR	+500	6,098	0.59	12'-8"	3'-6"	5'-8"	26'-10"
24	352-010-31-00	7732 LOOKOUT DR	+500	8,530	0.39	5'-7"	7'-5"	43'-9"	17'-7"
25	352-010-33-00	7750 LOOKOUT DR	+500	8,821	0.00				
26	352-012-01-00	7777 LOOKOUT DR	+250	8,438	0.33	15'-0"	11'-11"	4'-9"	8'-0"
27	352-012-02-00	7741 LOOKOUT DR	+250	7,950	0.20	29'-6"	6'-8"	3'-3"	31'-0"
28	352-012-03-00	7737 LOOKOUT DR	+500	8,773	0.36	13'-11"	6'-3"	2'-6"	38'-9"
29	352-012-06-00	7717 LOOKOUT DR	+500	9,039	0.21	13'-0"	9'-6"	3'-3"	28'-9"
30	352-012-07-00	7711 LOOKOUT DR	+500	10,045	0.31	14'-3"	6'-0"	15'-2"	6'-5"
31	352-012-08-00	7847 LOOKOUT DR	+500	3,764	0.60	7'-0"	3'-2"	0'-0"	31'-11"
32	352-012-10-00	7809 LOOKOUT DR	+500	6,168	0.33	12'-8"	11'-11"	5'-3"	5'-8"
33	352-012-11-00	7801 LOOKOUT DR	+500	5,702	0.69	11'-5"	10'-7"	8'-5"	3'-2"
34	352-012-16-00	7727 LOOKOUT DR	+500	18,077	0.17	132'-9"	1'-11"	3'-3"	18'-8"
35	352-012-17-00	PARCEL 2 (PROPOSED)	+894	5,155	0.62	6'-3"	4'-0"	4'-0"	6'-0"
36	352-012-18-00	7731 LOOKOUT DR	+500	5,097	0.65	18'-0"	1'-3"	9'-11"	8'-1"

REFERENCE:  
 WESTERN RESOURCES TITLE  
 BUILDING RECORDS DEPARTMENT - CITY OF SAN DIEGO  
 COFFEY ENGINEERING SURVEY

LEGEND:  
 PROPOSED PROPERTIES  
 LESS THAN OR EQUAL SETBACK  
 DISTANCES

**PROPERTIES WITHIN A 300' RADIUS**

**LOOKOUT MASTER PLAN**  
 LOOKOUT DR, LA JOLLA, CA 92037  
 DATE: 12/02/2015



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