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File No. 107093

November 19, 2024

VIA ELECTRONIC MAIL ONLY TO: COMMENT@DANAPOINT.ORG

Members, City Council
City of Dana Point
c/o Ms. Shayna Sharke, City Clerk

Re: Item 16, Dana Point City Council, November 19, 2024, Fee Updates

Dear Mayor Federico and Members of the City Council:

We are writing to express our concern with the proposed new fee ordinance the City Council is being asked to consider this evening. On behalf of ST Apartments, LLC, we have seen how unfairly the City can charge fees when there is a lack of transparency and no obligation to justify the fees with a nexus or rough proportionality to the task for which the fees have been charged.

The City has an obligation to ensure its fees—both the fees it charges itself and the fees it charges for third party vendors—are fair to the applicant.

The proposed ordinance does the opposite.

When ST Apartments submitted its SB 330 Preliminary Application in 2023, ST Apartments paid the statutorily capped fee of \$2,500. Somehow, the City ran up a roughly \$70,000 legal fee for the alleged “processing” of the application and sought to exact that fee from ST Apartments as a condition of moving forward with the Application. (A copy of the City’s message to ST Apartments demanding the payment is attached hereto as Exhibit A).

That circumstance is now part of the pending lawsuit against the City, but more fundamentally, it illustrates the need for transparency and fairness in the City’s imposition of fees, whether incurred by its internal staff or third-party vendors. In our case, we have no idea even the rate that the City’s outside counsel charged his firm’s time (we are aware that the firm has two rate structures, a lower one for municipal clients and a higher one for private clients).

Applicants should not be left to guess at what sort disabling third party bills might materialize in the course of an application for approval of a housing project.

Given the state’s focus on the importance of housing, and the need for predictability for project applicants in order to facilitate the production of housing, the proposed ordinance is moving in the wrong direction. In fact, in the context of SB 330 applications for housing, the

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State has imposed new obligations on cities to provide the applicant with a good faith estimate of the fees and exactions the applicant will face. This further demonstrates the State's interest in transparency and predictability for housing development applicants. The City's current proposal is moving in the wrong direction.

We reserve our rights to challenge any such application of this ordinance to ST Apartments' pending project.

Thank you for your attention to this matter.

Sincerely,

Cox, Castle & Nicholson LLP



Andrew B. Sabey

ABS::vm
107093\18184162v1

EXHIBIT A

Monarch Villas Deposit Account

From Brenda Wisneski <BWisneski@DanaPoint.org>

Date Wed 11/1/2023 2:19 PM

To Michael Recupero <mrecupero@recupero.net>; Michael Johnston <mjohnston@recupero.net>

Cc Mike Killebrew <MKILLEBREW@DanaPoint.org>; Kurth Nelson <knelson@DanaPoint.org>

 1 attachment (172 KB)

RE: SB 330 Pre-Application Response;

Good Afternoon,

Invoices received from the City Attorney's office and Jacob Green for work conducted in September 2023 has resulted in the deposit account being in the negative close to \$40,000. Requests for additional funding were made in September (see attached email string). Since funds have not been received and the account is significantly in the negative, at this time we are unable to proceed in working on the project. Anticipating ongoing legal support for the next stage of the project, a deposit of \$80,000 would address the current negative balance and future billings.

Let me know if you have any questions.



Brenda Wisneski

Community Development Director

City of Dana Point – Community Development Department

(949) 248-3560 | bwisneski@danapoint.org

RE: SB 330 Pre-Application Response

From Brenda Wisneski <BWisneski@DanaPoint.org>

Date Mon 2/12/2024 12:03 PM

To Michael Johnston <mjohnston@recupero.net>; Michael Recupero <mrecupero@recupero.net>

Cc Kurth Nelson <knelson@DanaPoint.org>; Mike Killebrew <MKILLEBREW@DanaPoint.org>

 1 attachment (1,015 KB)

Invoice 6246.pdf;

Please see the attached invoice and back-up documentation for an outstanding balance of \$68,539.43 for legal review of the SB330 application submitted on May 18, 2023. This does not include expenditures which may have occurred in January 2024. This application has expired.

On January 31, 2024, the City received a new SB330 application and required filing fee of \$2,500. In addition to the outstanding balance stated above, please remit an additional \$5,000 for legal review of the new application.

Thank you,



Brenda Wisneski

Community Development Director

City of Dana Point – Community Development Department

(949) 248-3560 | bwisneski@danapoint.org

From: Kurth Nelson <knelson@DanaPoint.org>

Sent: Wednesday, September 20, 2023 3:27 PM

To: mjohnston@recupero.net

Cc: 'Michael Recupero' <mrecupero@recupero.net>; Brenda Wisneski <BWisneski@DanaPoint.org>

Subject: RE: SB 330 Pre-Application Response

Hi MJ,

Please find the additional invoice from Jacob Green related to the project.

As far as what has been spent from the original \$10K deposit monies, those monies have only been earmarked for the invoices related to the City Attorney and Jacob Green—no monies have been billed to city staff time.

The deposit will be used for the consultant and any further City Attorney involvement until a formal application is submitted including the issues in Mr. Matsler's recent letter. After that, any portion of the additional deposit monies will be rolled over to cover any third party review of the application (i.e. traffic, soils reports, design

review, etc.). Depending upon the entitlements necessary for the proposed project, no City Staff time will be billed unless a specific entitlement requires a deposit.

Hope that provides you with what you need.

Regards,

KURTH B. NELSON III
PRINCIPAL PLANNER
CITY OF DANA POINT
33282 GOLDEN LANTERN
DANA POINT, CA 92629
PHONE (949) 248-3572
www.danapoint.org

***Please note: City Hall Public Counter hours are Monday–Friday from 8:00 am to 3:30 pm.**

From: mjohnston@recupero.net <mjohnston@recupero.net>
Sent: Wednesday, September 20, 2023 10:58 AM
To: Kurth Nelson <knelson@DanaPoint.org>
Cc: 'Michael Recupero' <mrecupero@recupero.net>; Brenda Wisneski <BWisneski@DanaPoint.org>
Subject: RE: SB 330 Pre-Application Response

?Good morning Kurth,

I believe you said to expect one more invoice, is that still true? I wanted to make sure I had everything before going to the client with the payment request.

Also, as we discussed, can you give me a breakdown of what we've paid to date, how it's been spent (for instance, has there been any staff time billed beyond the CA and consultant), and how you expect the requested \$25k to be spent - I know part will go to reviewing the letter as you mentioned (hours estimated) and part will be to cover other overages beyond the initial deposit. Anything else?

I know your busy and I don't need it to be an elaborate spreadsheet or anything, just a simple email that I can include in my request to my client.

Thank you,

MJ



Mike "MJ" Johnston
Director of Development
Recupero & Associates, Inc.
C: (760)703-6792

From: Kurth Nelson <knelson@DanaPoint.org>
Sent: Wednesday, September 20, 2023 10:50 AM
To: mjohnston@recupero.net
Cc: 'Michael Recupero' <mrecupero@recupero.net>; Brenda Wisneski <BWisneski@DanaPoint.org>
Subject: RE: SB 330 Pre-Application Response

Hi MJ,

As you may know, Sean Matsler forwarded a letter to Brenda last week addressing a couple of issues related to the redevelopment of the Villas at Monarch Beach.

We will need the deposit monies to begin the review of the issues addressed in Mr. Matsler's letter. Can you please provide and update on when the additional deposit monies requested will be forwarded?

Thank you,

KURTH B. NELSON III
PRINCIPAL PLANNER
CITY OF DANA POINT
33282 GOLDEN LANTERN
DANA POINT, CA 92629
PHONE (949) 248-3572
www.danapoint.org

***Please note: City Hall Public Counter hours are Monday–Friday from 8:00 am to 3:30 pm.**

From: Kurth Nelson
Sent: Monday, September 11, 2023 11:39 AM
To: mjohnston@recupero.net
Cc: 'Michael Recupero' <mrecupero@recupero.net>; Brenda Wisneski <BWisneski@danapoint.org>
Subject: RE: SB 330 Pre-Application Response

Hi MJ,

Attached are the back-up invoices requested. I have another one that I need to get finalized from administrative staff and will forward as soon as it is received.

Thank you,

KURTH B. NELSON III
PRINCIPAL PLANNER
CITY OF DANA POINT
33282 GOLDEN LANTERN
DANA POINT, CA 92629
PHONE (949) 248-3572
www.danapoint.org

***Please note: City Hall Public Counter hours are Monday–Friday from 8:00 am to 3:30 pm.**

From: mjohnston@recupero.net <mjohnston@recupero.net>
Sent: Monday, September 11, 2023 11:13 AM
To: Kurth Nelson <knelson@DanaPoint.org>
Cc: 'Michael Recupero' <mrecupero@recupero.net>; Brenda Wisneski <BWisneski@DanaPoint.org>
Subject: RE: SB 330 Pre-Application Response

Kurth,

Thanks for your time on the phone a moment ago. I look forward to seeing the back-up info and will work with my client on your request.

-MJ



Mike "MJ" Johnston
Director of Development
Recuperero & Associates, Inc.
C: (760)703-6792

From: Kurth Nelson <knelson@DanaPoint.org>
Sent: Monday, September 11, 2023 10:42 AM
To: Mike Johnston <mjohnston@recuperero.net>
Cc: Michael Recuperero <mrecuperero@recuperero.net>; Brenda Wisneski <BWisneski@DanaPoint.org>
Subject: RE: SB 330 Pre-Application Response

Good morning MJ,

The City has incurred review fees exceeding the initial \$10,000 deposit provided in May at the initial submittal of your SB 330 Preliminary Application. Please provide an additional deposit amount of \$25,000 to cover the most recent invoice and so that deposit monies are available as the project moves toward formal submittal.

Also, we understand you are reviewing technical issues related to the project, and as you inquired at initial submittal, we want to encourage you to submit the project for preliminary review by staff as the project plans are further developed. This is a no fee review by various in-house staff that would focus on high level issues prior to formal submittal and would also assist staff in determining the entitlement fees applicable to the project.

Please bring or forward a check to my attention for the deposit as soon as you are able.

Thank you,

KURTH B. NELSON III
PRINCIPAL PLANNER
CITY OF DANA POINT
33282 GOLDEN LANTERN
DANA POINT, CA 92629
PHONE (949) 248-3572
www.danapoint.org

***Please note: City Hall Public Counter hours are Monday–Friday from 8:00 am to 3:30 pm.**

From: Brenda Wisneski <BWisneski@DanaPoint.org>
Sent: Wednesday, September 6, 2023 1:44 PM
To: Mike Johnston <mjohnston@recuperero.net>
Cc: Cindy Nelson <cjnc54@gmail.com>; Kurth Nelson <knelson@DanaPoint.org>; Farrell, Jennifer <jfarrell@rutan.com>; Michael Recuperero <mrecuperero@recuperero.net>; Matsler, Sean <smatsler@coxcastle.com>; Mike Killebrew <MKILLEBREW@DanaPoint.org>; Kelly Reenders <KREENDERS@DanaPoint.org>
Subject: RE: SB 330 Pre-Application Response

Hi MJ,

Thank you for the resubmittal. Attached is the City's determination that Preliminary Application vests the existing regulations in effect on August 4, 2023.

Brenda Wisneski
Community Development Director

Phone 949-248-3560

From: Mike Johnston <mjohnston@recupero.net>

Sent: Friday, August 4, 2023 2:46 PM

To: Brenda Wisneski <BWisneski@DanaPoint.org>

Cc: Cindy Nelson <cjnc54@gmail.com>; Kurth Nelson <knelson@DanaPoint.org>; Farrell, Jennifer <jfarrell@rutan.com>; Michael Recupero <mrecupero@recupero.net>; Matsler, Sean <smatsler@coxcastle.com>

Subject: RE: SB 330 Pre-Application Response

Good afternoon Brenda,

In response to your letter from 6/14/23, please see the attached memo and corresponding exhibits. In addition to the response regarding our SB 330 pre-application, I have included a view simulation which shows our proposed building in comparison to the existing tree line. We believe this exhibit will prove helpful when considering the project.

When you have a chance, please kindly confirm receipt.

Thank you,

MJ



Mike "MJ" Johnston
Director of Development
Recupero & Associates, Inc.
C: (760)703-6792

From: Holly Martino <HMartino@DanaPoint.org>

Sent: Wednesday, June 14, 2023 11:55 AM

To: mjohnston@recupero.net

Cc: Cindy Nelson (cjnc54@gmail.com) <cjnc54@gmail.com>; Kurth Nelson <knelson@DanaPoint.org>; Farrell, Jennifer <jfarrell@rutan.com>

Subject: SB 330 Pre-Application Response

Dear Mr. Johnston,

Kindly see the attached letter in response to The SB 330 Pre-Application.

Warmest Regards,

Holly Martino

Executive Assistant

City of Dana Point

(949) 248-3513 | hmartino@danapoint.org

33282 Golden Lantern | Dana Point | CA 92629

"Harboring the Good Life"





BUILDING INDUSTRY OF SOUTHERN CALIFORNIA, INC.

ORANGE COUNTY CHAPTER

November 19, 2024

Mayor Jamey Federico
City of Dana Point
33282 Golden Lantern #203
Dana Point, CA 92629

Re: File Item 16 – Electronic Payment Processing Services and Fee Updates

Dear Mayor and Council,

On behalf of the Building Industry Association of Southern California - Orange County Chapter (BIA/OC), I write to express our significant concerns regarding the proposed pass-through fees related to development projects.

The Housing Crisis Act of 2019 and Housing Accountability Act (HAA) make clear that a lack of housing is a critical problem threatening the economic, environmental, and social quality of life in California. Government Code 65589.5 states that it is “the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” Further that it “is the policy of the state that a local government not reject or make infeasible housing development projects” that contribute to meeting the need for housing without detailed findings. Further, as you are fully aware, the Mitigation Fee Act (Gov. Code § 66000 et seq.) requires development fees to be proportionate to the actual impacts of a project and requires transparency.

The proposed action before the Council in Item 16 ***provides the City with unfettered discretion to charge applicants for City services with no accountability and becomes a seemingly powerful tool for deterring those who wish to develop housing.***

Simply stated, transparency is lacking in this proposed process. This shortfall can be used to disproportionately affect those applying for new housing developments, an ADU—or even conduct business in the City. Specifically, we are concerned that:

- The City provides no detail as to what third party services it currently builds into its published Application fees.
- The City does not offer to make proposed rates of any third-party consultants or attorneys publicly available.
- There is no review of any proposed rates by the City Council or staff.

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- The current Planning Division *Schedule of Fees* makes clear that some charges are fixed “fees” while others are “deposits,” but this latest effort suggests that there are no set fees and the City intends on charging applicants whatever it wishes.¹
- The City eliminates the applicant’s ability to review or object to charges.
- There is no obligation of the City to share invoices or illustrate the nature of the charges before requiring payment.

We urge the City Council to reconsider this resolution and engage in transparent dialogue with stakeholders and citizens of Dana Point to:

1. Make clear what an Application Fee is intended to cover with an emphasis on clarifying what assessments are deposits and what are in fact fees;
2. Clearly state if the Application Fees are only part, or the entirety of the applicant’s burden;
3. Inform the applicant with a) a schedule of reimbursement rates, and b) likely reimbursement costs associated with their project *in the application*;
4. Require a clear consent from the applicant that he or she is required to reimburse third parties for costs that the City may decide to impose;
5. Publicly publish all potential rates, fees and charges which the City intends to charge, prior to allowing third parties to charge fees;
6. Consistent with AB1820, within 30 business days of submitting an SB330 application, provide a good faith estimate of the total sum amount of all fees and exactions that will apply to the applicant’s project;
7. Provide all applicants a detailed bill of all hourly charges describing work product; and
8. Annually report to the City Council and public how much “add on” costs the City is charging those who wish to build housing.

We support the concept of individuals and developers paying their fair share for the necessary costs associated with the review of their project but the City’s efforts at imposing unlimited, unreviewable fees for housing violates the spirit and intent of the law, exacerbates the current housing crisis and may subject the City to further exposure.

Thank you for your attention to this crucial matter. We hope to work together towards a more equitable approach to fees, housing and development in Dana Point.

Sincerely,



Adam Wood
Sr. Vice President
BIA/SC – Orange County Chapter

¹ For example, an ADU permit is \$5,422, but the City seems to be reserving the right for third party consultants or the City Attorney to charge whatever he or she wants in association with the project with no guardrails or predictability of process.