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35271 Beach Rd.
Capistrano Beach, CA 92624

RECEIVED

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February 13, 2015

Don Russell
Capistrano Bay District
35000 Beach Rd.
Capistrano Beach CA, 92624

Re: Development Impact Fee

Don:

I am in receipt of the District's invoice in the amount of \$1274.97 for the work being done on my home. In that regard, I would like to state that my home is not being "remodeled" in the general sense of the word. In fact, I am merely replacing flooring, counter tops, changing light fixtures, refinishing cabinets and painting the interior and exterior of the home. The only reason why I was required to obtain a building permit is because the city insisted so, due to the reinstall of the dishwasher and garbage disposal. Rather than argue this point with them and delay the completion, I simply paid the fee they determined by way of their cost calculation of \$30,000, making the permit fee the minimal amount of \$1000.

As I understand it Ordinance No. 05-206 put in place several years ago, was done so, to compensate for the wear on the road due to large trucks and equipment used in the building process. In my case, there was no heavy equipment (concrete trucks, drilling rigs, etc). The painters and installers simply arrived in vehicles not unlike many of the vehicles currently used and owned by our residents, typically small pickup trucks and vans.

I also have a few concerns about the fee itself, both, from a cost and legality perspective. I find it somewhat shocking that the impact fee I was sent actually exceeds the building permit fee I was charged by the city (25% greater). I say this because, the District actually incurs zero costs associated with the project while the City of Dana Point had to process the permit application and do the follow-up inspection of the job. Also, I know that there is much work being done on Beach Rd. on a consistent basis (permitted and illegal) and that in many instances, no Developmental Impact fee is charged to the homeowner. This is especially true regarding the work that has been done illegally.

This piqued my curiosity so I did a bit of research on the matter. What I discovered was really quite interesting and you may want our District to re-think not only the procedural aspects of the ordinance, but also its' legality. I suggest you present to the Board some of my concerns:

- 1) The District itself contracts and performs work in the community on a regular basis. however pays no fees to itself for doing so. While this may seem to be a silly argument, it is one that has been tested in court. In the case where no fee was charged it was considered to

be a discriminatory practice. The court determined that no matter who is involved, all fees must be uniform.

- 2) Fees are regulated and determined by the Health and Safety Code and in this case Section 17950 of the code. A read of this code can be paraphrased by saying that "any fees charged must be directly fixed to the costs associated with the receiving entity, and cannot be a source of revenue." Specific language below:

The amount of the fees prescribed pursuant to subdivisions And (b) shall not exceed the amount reasonably required to Administer or process these permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes.

Prior to paying this fee and pursuant to my rights as a resident of CBD I respectfully request the following documents from you:

- 1) A copy of last year's budget that would show the "Development Impact fees.
- 2) Was the income from these fees listed as revenue or reimbursement of damages?
- 3) A copy of the public notification to the homeowners of the proposed fee and evidence of the "time frame requirement (10, 20 or 30 days).
- 4) An executed copy of the ordinance.
- 5) Copy of the "building permits ledger since May 31, 2005 assuring that each and every permit owner was invoiced.

In short and contrary to the ordinance these ^{fees} must be reasonable. They are not. As stated, there were no heavy trucks which may have "caused additional wear and tear beyond normal daily use." The recovery of "cumulative damages" is improvable and arbitrary. This project did not require ANY additional burdens on district staff or security personal, nor did it require "money to repair cumulative damages to its property and facilities". According to my legal counsel, CBD Impact Development Fees would be viewed by the court as "revenue generators" not monies for reimbursement of actual costs incurred. Furthermore, the structure of the Impact Development Fee is not a nexus to damages caused.

Don, I respectfully request that the Development Impact fee I have been invoiced for be waived for the reasons stated above. Kindly get back to me with the District's decision so that I may proceed accordingly.

Sincerely,

Steve Schwartz

