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JUN 14 2019

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June 14, 2019

The Honorable David Druker
Mayor of Del Mar
Del Mar City Council
City of Del Mar
1050 Camino Del Mar
Del Mar, California 92014

Dear Mayor Druker and City Council Members:

In 2007 the Del Mar Shores Campaign was initiated. It was a joint effort of the Friends of Del Mar Parks and the Winston School and the City of Del Mar. The purpose of the Campaign was to purchase the 5.3-acre Shores property that covers two entire city blocks in the heart of Del Mar bounded by Camino Del Mar and 9th Street and Stratford Court. The property contained the community's only school, playing fields and was the last available recreational open space in the city. The property was owned by the Del Mar Union School District.

In July 2007, the Del Mar Union School District agreed to sell the property to the City and a public campaign to raise \$8.5M in seven months was initiated.

In connection with those fundraising efforts the City adopted Resolution 2007-35 on August 6, 2007. The Resolution is attached. The purpose of the Resolution was to assist the Del Mar Shores Campaign in raising funds. The City knew that this Resolution was to be included in the packet of information sent by the Campaign to all prospective donors.

The relevant portions of the Resolution are as follows:

2. The purpose of the acquisition is to preserve the current open space and recreational uses of the property, including the ball field, and to permit the continued operation of the private Winston School, in keeping with the original dedicated intention. The Purchase Agreement includes a deed restriction which limits rezoning the property to a more intensive use.
4. The City's long-term goal is to maximize the open space and recreational uses on the property. Although other public facilities are permitted under current zoning, the City Council has no intention of pursuing other uses not consistent with the purpose of the acquisition such as a new fire station or city hall.

Note that the "original dedicated intention" refers to the widely publicized Kerckhoff deed restriction that the property be used for "school purposes only" with a prohibition against commercial or residential development. This restriction was a condition of the gift of the property to the School District in 1946 by the William G. Kerckhoff Company, then owned by his widow, Louise E. Kerckhoff.

On December 20, 2018, the City sent a letter to Winston School discussing its lease renewal. As part of that negotiation, the City is demanding that the Winston School "build and manage affordable housing" on the Shores property. This requirement is fundamentally inconsistent with the City's Resolution 2007-35 and is in direct violation of applicable California's Civil and Criminal Codes regarding solicitation for charitable purposes and prohibition against false advertising.

Specifically, I direct your attention to the California and Business and Professional Code, Section 17510, et seq. (Charitable Solicitation Disclosures), and Section 17500 (False Advertising).

The City knew that Resolution 2007-35 was to be used in connection with solicitation of funds for a charitable purpose, namely to secure the Shores property for the public, and is within the purview of the Charitable Solicitation Disclosures Code. That Resolution is also within the purview of Section 17500 that provides for prohibition on making a false statement "of any nature whatsoever to induce the public to enter into an obligation" ... "which is untrue or misleading."

In accordance with California Business and Professional Code §§ 17535, anyone who violates or "proposes to violate" the Charitable Solicitation Disclosure Code or the False Advertising Code may be enjoined by the Court.

I was a donor to the fundraising efforts to purchase the Shores' property. I have standing to seek injunctive relief.

In making my donation I specifically relied upon the statements in Resolution 2007-35 as quoted above.

I demand that you immediately cease and desist any further discussions with anyone concerning development of housing on the Shores' site. Furthermore, you must enter into good faith negotiations with the non-profit Winston School on their lease that contains realistic terms that allows the school to improve its facilities and occupy the property. This was also the goal of the charitable solicitation.

I assure you that your failure to do so will result in a lawsuit against the City be me, a donor, for what is commonly called "donor fraud." I cannot imagine a worse situation from a public relations standpoint for a City to blatantly ignore its commitment to its citizens and charitable donors who donated millions of dollars to acquire property for the betterment of the community which you now blatantly ignore by even beginning discussions about redeveloping the property for housing.

Shame on you.

Sincerely,



Robert J. Hajek

Enclosure

RESOLUTION 2007- 35

RESOLUTION OF THE CITY COUNCIL ANNOUNCING THE
ACQUISITION OF THE SHORES PROPERTY AND THE CITY'S
COMMITMENT TO MAINTAINING THE PRESENT USES

WHEREAS, the City of Del Mar and the Del Mar Union School District have worked for more than four years to negotiate the disposition/acquisition of the District's surplus school site at Camino del Mar and 9th Street, commonly known as the Del Mar Shores Property; and

WHEREAS, on July 25, 2007, the District and the City agreed upon the general terms of sale for the 5.3 acre parcel; and

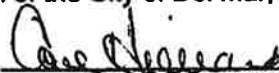
WHEREAS, the City of Del Mar is unable to finance the acquisition. Thus, the purchase of the site will be made possible by funds raised in part by the private Winston School, the long term tenant of the site, and in part by community fundraising efforts led by the Friends of Del Mar Parks Committee of the Del Mar Foundation. Escrow must be completed by February 28, 2008; and

WHEREAS, the City desires to support and encourage those fundraising efforts through its commitment to preserve the present uses of the property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DEL MAR DOES HEREBY DETERMINE AS FOLLOWS:

1. The City of Del Mar is committed to purchase the property under the terms and conditions of that Purchase Agreement signed July 30, 2007, for the amount of \$8,500,000. The City has until February 28, 2008 to acquire the funds through the joint fundraising efforts of the Winston School and the community.
2. The purpose of the acquisition is to preserve the current open space and recreational uses of the property, including the ball field, and to permit the continued operation of the private Winston School, in keeping with the original dedicated intention. The Purchase Agreement includes a deed restriction which limits rezoning the property to a more intensive use.
3. The City Council expects that the property will remain status quo in use, condition, and operation, for at least a three year period.
4. The City's long term goal is to maximize the open space and recreational uses on the property. Although other public facilities are permitted under current zoning, the City Council has no intention of pursuing other uses not consistent with the purpose of the acquisition such as a new fire station or city hall.
5. The City entered into a Memorandum of Understanding with the Winston School dated February 21, 2006, to permit the School's continued operation for a 55 year period after acquisition.
6. Following purchase of the property, and in furtherance of the City's long term goal, the City will schedule public meetings to create a master planning process for the property. The master planning process will occur prior to any substantive changes to the status quo of the property.

PASSED AND ADOPTED by the City Council of the City of Del Mar, this 6th day August, 2007.



CARL HILLIARD, MAYOR
City of Del Mar

ATTEST AND CERTIFICATION:

I, Mercedes Martin, City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution 2007- 35, adopted by the City Council of the City of Del Mar, California at a Regular Meeting held the 6th day of August, 2007, by the following vote:

AYES: Councilmembers Abarbanel, Crawford; Mayor Hilliard
NOES: None
ABSENT: Councilmember Earnest and Deputy Mayor Druker
ABSTAIN: None



MERCEDES MARTIN, CITY CLERK