EXHIBIT 17-B

RECEIVED
JUL 29 2010
PWMD

MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • http://www/mpwmd.dst.ca.us

Please **PRINT OR TYPE** all information. **Applications must be received within twenty-one (21) days after an appealable decision has been made pursuant to District Rule 70**. To be considered for an appeal hearing, please submit a completed application and include a non-refundable processing fee *($250 for less than half acre-foot of water, $500 for half - one acre-foot of water, and $750 for more than one acre-foot of water, plus $70.00 an hour for more than 10 hours of staff time)*; other information as necessary which may include 5 years of water records from purveyor. The Board will support or deny your appeal based on the pertinent information you have provided. Submission of an incomplete application may constitute grounds for denial of your request.

APPLICATION FOR APPEAL

APPLICANT INFORMATION

1. Applicant's Full Name: RICHARD AND SHARLENE THUM
   Mailing Address: 9606 HUEBNER ROAD
   City: SAN ANTONIO State: TX Zip: 78240
   Phone Number(s): Work (210) 771-3777 ~~Home~~ WORK (210) 771-5777
2. Name of Agent(s) to Represent Applicant: MARGARET THUM MILES, ESQ.
   Mailing Address: P.O. BOX 117683 ~~BURLINGAME~~
   City: BURLINGAME State: CA Zip: 94011
   Phone Number(s): Work (650) 218-1937 Home ( )

PROPERTY INFORMATION

1. Full Name of Property Owner: RICHARD EVANS AND SHARLENE THUM
   Mailing Address: 9606 HUEBNER RD
   City: SAN ANTONIO State: TX Zip: 78240
   Phone Number(s): Work (210) 771-3777 Home (210) 771-5777
2. Property Address: 951 CORAL DRIVE
   City: PEBBLE BEACH State: CA Zip: 93953
3. Assessor's Parcel Number: 007 - 254 - 005 -000
4. Property Area: Acres: .22034 Square Feet: 9598 Other:
5. Past Land Use: RESIDENTIAL
6. Present Land Use: RESIDENTIAL
7. Proposed Land Use: NO CHANGE

   Existing buildings? Yes ✓ No
   Types of uses and square footage: SINGLE FAMILY DWELLING - TOTAL SIZE = 3347 SQ FT

SUBMITTED BY APPLICANT

APPEAL APPLICATION **EXHIBIT 1**

STATEMENT OF APPEAL REQUEST

**If additional space is needed for response to any question, please continue on a separate piece of paper and attach it to the back of this application.*

1. From which rule(s) or staff's decision(s) are you requesting an appeal?

   PLEASE SEE ATTACHED. RULE 20-B; EQUITABLE ESTOPPEL; VESTED RIGHTS

2. Do you feel the rule or staff's decision is applicable in most cases, or do you believe it should be revoked or changed?

   THE STAFF'S DECISION SHOULD BE REVOKED IN THIS INSTANCE, AND ALL OTHER CASES WITH SIMILAR FACTS.

3. What were the circumstances surrounding your decision to appeal?

   PLEASE SEE ATTACHED

4. Please state the special circumstances that distinguish your application from all others which are subject to enforcement of this process.

   PLEASE SEE ATTACHED

5. What difficulties or hardships would result if your appeal request is denied?

   WE WOULD HAVE TO PAY MORE (SIGNIFICANTLY MONEY) THAN WHAT WE BUDGETED FOR THE BATHROOM — WE ESTIMATE THE INCREASE COULD BE 30% MORE THAN WHAT WAS ORIGINALLY BUDGETED.

6. What <u>specific</u> action are you requesting that the Board take?

   THAT THE BOARD REVERSE THE DISTRICT'S DECISION AND ISSUE FINAL APPROVAL OF PERMIT 30234, IN COMPLIANCE WITH MPWMD STANDARDS AND/OR MPWMD WATER PERMIT 30234.
   PLEASE SEE ATTACHED.

7. Please indicate if you intend to make a statement at the appeal hearing, and list the names of any other individuals who may speak on your behalf.

   WE WOULD LIKE OUR AGENT TO MAKE A STATEMENT AT THE APPEAL HEARING, IF POSSIBLE. OUR AGENT IS MARGARET THUM MILES.

APPLICATION FOR APPEAL **EXHIBIT 2**

PROJECT INFORMATION

**If additional space is needed for response to any questions, please continue on a separate piece of paper and attach it to the back of this application.*

1. Type of Project: _____ New Construction ___✓___ Remodel/Addition

2. Proposed New Use: (Please refer to the District's current Fixture Unit/Use Category sheet for assistance with this question.)

   ___✓___ ResidentialNo. Dwellings ___1___ Total No. Fixture Units (Residential Only)_____

   _____ Commercial/Industrial/Governmental

   Type of Use: _____ Square Footage: _____

   _____ Other (Specify): _____

3. Current Zoning Classification: MDR/B-6-D-RES

4. Name of the water company which services the property: CAL AM

5. Do you feel this project will use less water than that calculated by the District? If so, please explain how much you believe the project will use, and the basis on which you make this assumption. YES. THE PROJECT WILL CONSUME NO MORE WATER THAN THAT CALCULATED AT THE TIME OF ISSUING PERMIT 30234. PLEASE SEE ATTACHED

6. Has this project been approved by the local jurisdiction? If so, please list or attach a copy of all conditions which have been imposed on the project. (Attach a copy of these conditions and approvals received.) YES. PLEASE SEE ATTACHED.

7. Does the applicant intend to obtain a municipal or county building permit for the project within ninety (90) days following the granting of a water connection permit? If not, when will water be needed at the site? YES. PERMIT ISSUED AND FINAL APPROVAL RECEIVED

****

I declare under penalty of perjury that the information in the application and on accompanying attachments is correct to the best of my knowledge and belief.

Signature of Applicant/AGENT

JULY 28, 2010 / REDWOOD CITY, CA
Date/Location

NOTE TO APPLICANT: You may attach written findings for the Board to review and consider in support of the action you have requested.

Official Use Only

Fee Received $250.00 Receipt No. 2580/440
Check No. 338 Bank Routing No. 044000804
Received by

SUBMITTED BY APPLICANT

Richard and Sharlene Thum
9606 Huebner Road
San Antonio, TX 78240

July 28, 2010

Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Monterey, CA 93942-0085

Re: Application to Appeal Decision of Non-Compliance upon Final Inspection for Permit 30234
Property Address: 951 Coral Dr., Pebble Beach, CA 93953
APN: 007-254-005-000

Dear Monterey Peninsula Water Management District Board:

On July 9, 2010, we received a notice of non-compliance with permit 30234 based on a final inspection of 951 Coral Drive, Pebble Beach, CA 93953 (the "Property) performed by Ms. Stevie Kister of the Monterey Peninsula Water Management District (the "District"). We respectfully disagree with the District's decision and kindly request that you, the District Board, review the facts and findings in this case and reverse the District's decision.

Facts

We purchased the Property on June 23, 2009 from Mr. and Mrs. Paul Filice. Because the Property had been substantially rebuilt only a few years before the purchase date, our due diligence for the purchase included confirming that all permits issued in connection with construction of the Property had received their final inspection and approval by each applicable government agency. Through our due diligence, we received confirmation that the District had performed a final inspection and granted approval of the permit issued by the District for this construction, namely permit 24754. Our due diligence also concluded that the Property had sufficient water credits to add another bathroom without purchasing more water credits. In reliance on the District's final approval of permit 24754, we purchased the Property and, at the time of purchase, intended to add another bathroom to the Property without purchasing more water credits.

The final inspection for permit 24754 was performed on August 15, 2007, at which time the District found the permit to be in non-compliance, requiring only that the permit be amended "to reflect bar sink not installed, and 1 additional wash basin installed." The permit was subsequently amended, and the District granted final approval for permit 24754 on January 7, 2008.

Mr. and Mrs. Filice have confirmed that there were no modifications to the water fixtures at the Property from August 15, 2007 (the date the District performed a final inspection for permit 24754) to June 23, 2009 (the date we purchased the Property). Please see the attached letter from Mr. Paul Filice.

On January 26, 2010 and in compliance with the District's Rule 20-B, the District issued permit 30234 that granted permission to add another bathroom to the Property after we paid permit fees of $1,290.03 and amended the deed to the Property pursuant to the District's demand. At

the time it issued permit 30234, the District did not indicate or otherwise notify us that we did not have sufficient water credits to add the bathroom.

In reliance on the District's issuance of permit 30234, we commenced and have subsequently completed construction of the additional bathroom at the Property. Other than the water fixtures installed in the new bathroom constructed in reliance on the issuance of permit 30234, we have not made any modifications to the water fixtures at the Property.

In July 2010, the District performed a final inspection of the Property for permit 30234 that went beyond the scope of permit 30234 and included checking the water fixtures installed pursuant to permit 24754 that the District had previously inspected in 2007. The District representative noticed that two of the showers – one is a standalone shower stall and the other is above a normal-sized bathtub – had both a showerhead and hand held faucet. The representative discovered that both the showerhead and hand held faucet worked at the same time. Because of this, the District has decided that more water credits are now required than available at the time of issuing permit 30234 in order for us to receive the District's final approval for 30234.

Legal Support

We believe the District's decision was in error and should be reversed in light of the principle of vested rights set forth in the California Supreme Court's decision in *Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785 (Avco))*. In *Avco*, the California Supreme Court stated that "[i]t has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.]. Once a landowner has secured a vested right the government may not, by virtue of a change [...], prohibit construction authorized by the permit upon which he relied. (*Avco* p. 791)

This principle of vested rights is a special expression of the doctrine of equitable estoppel. (*Blue Chip Properties v. Permanent Rent Control Bd. (1985) 170 Cal. App.3d 648, 659; Raley v. California Tahoe Regional Planning Agency (1977) 68 Cal. App.3d 965, 977.*) "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (Strong v. County of Santa Cruz (1975) 15 Cal.3d 720, 725.) "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell, 3 Cal.3d 462, 496-497.*)

Conclusion

We obtained a vested right to add the bathroom without additional fees or other requirements once the District issued permit 30234. Before it issued permit 30234, the District required that we pay the permit fee and amend the deed to the Property – both of which requirements we satisfied. When it issued permit 30234, the District did not notify us or otherwise indicate that we would have to purchase more water credits in order to obtain final approval for permit 30234.

In addition, in good faith reliance on the District's issuance of permit 30234, we commenced and completed construction of the bathroom at great expense. According to the California Supreme Court in *Avco*, the District cannot now impose additional requirements not in permit 30234, as we have complied with the permit requirements and were not notified of any additional requirements before we performed the work and incurred substantial costs in adding the new bathroom.

Furthermore, equitable estoppel bars the District from finding that the Property is in non-compliance with the District's rules. First, the District is aware of the facts – that is, the District inspected the Property in 2007 and counted the water fixtures before giving final approval for permit 24754, no changes were made to the water fixtures in the interim before permit 30234 was issued, the District granted permit 30234 in January 2010, and the bathroom construction was performed according to permit 30234. Second, the District understood that we intended to commence construction on the new bathroom once we received permit 30234. Third, we were unaware at anytime before July 9, 2010 (the date of final inspection for permit 30234) that there was an issue with the District's counting of water credits for the Property. That is, we were unaware that the District either incorrectly counted the water fixtures in 2007 or changed its method of counting water fixtures after issuing permit 24754. Furthermore, we would have no experience or background to understand how to count water fixtures pursuant to the District's rules. We have resided in Texas for the past 30 years, do not have water fixture restrictions and rules similar to the District's and were not aware how to count water fixtures pursuant to the District's rules (to be honest, we are still not clear how to count them). We relied on the District's inspection and final approval of permit 24754 that all fixtures had been correctly counted by the District before it issued its final approval. Fourth, we relied on the District's issuance of permit 30234 and have incurred significant expense in constructing the new bathroom.

For the reasons stated above, we respectfully request this Board to reverse the District's decision and determine that we are in compliance with its rules and grant final approval in compliance with permit 30234.

If the District Board has any questions, please feel free to contact us at the above address, or our Agent, Ms. Margaret Thum Miles at 650-218-1937.

Please note that this letter is written without prejudice to our rights, all of which are hereby expressly reserved.

Respectfully,

Richard Thum Sharlene Thum

Richard and Sharlene Thum

Attachments: Letter from Mr. Paul Filice dated July 26, 2010

Mr. Paul Filice
PO Box 1844
Pebble Beach CA 93953

July 26, 2010

Monterey Peninsula Water Management District
5 Harris court, Bldg. G
PO Box 85
Monterey, CA 93942

Re: Permit Number 24754 (951 Coral Dr., Pebble Beach)

Dear Sirs/Mesdames:

On August 15, 2007, Mr. Michael Boles of the Monterey Peninsula Water Management District (the "MPWMD") performed a final inspection of water fixtures at 951 Coral Drive, Pebble Beach (the "Property) in connection with permit 24754. At that time, the MPWMD determined that there were two paperwork changes that needed to be made to the permit before the MPWMD would agree that the Property was in compliance with permit 24754. These paperwork changes were made and finalized on January 7, 2008.

The Property was sold to Mr. and Ms. Thum in June 2009.

This letter is to confirm that there were not any modifications to the water fixtures at the Property from August 15, 2007 (date of final inspection related to permit 24754) to the date the Property was sold in June 2009.

If you have any questions, I may be reached at the address listed above.

Sincerely,

Paul Filice

JUL 2 9 2010

PWME

Monterey Peninsula Water Management District

DISCLOSURE STATEMENT
(EX PARTE COMMUNICATIONS)

Name or description of project, action, etc.: BATHROOM REMODEL AT 951 CORAL DR, PEBBLE BEACH, CA 93953

Names and addresses of all persons authorized to communicate with the Board of Directors on this matter: (APPEAL)

Name	Address
MARGARET THUM MILES	P.O. BOX 117683, BURLINGAME, CA 94011
JIM LAUGHTON	P.O. BOX 1001, PEBBLE BEACH, CA 93953

This *Disclosure Statement* is completed in my capacity as ☐ the Applicant for matter referenced in the first line, or as ☒ an authorized Agent of the Applicant. My signature evidences I am duly authorized to act on behalf of all individuals and/or entities that have an ownership interest in this matter (exceptions shall be noted by checking this box ☐ and providing a complete explanation as an attachment to this *Disclosure Statement*).

I understand this *Disclosure Statement* is required to list the names and addresses of all persons authorized to communicate with the Directors of the Water Management District on this matter. I further understand and agree to revise and amend this *Disclosure Statement* whenever any other person is authorized to communicate regarding this matter. Oral disclosure of agents shall not satisfy this requirement.

I understand and agree that failure to disclose the name of individuals who shall communicate with the District Board Members on behalf of the applicant shall subject the matter referenced above to immediate review and denial. Further, I understand that if denial is based on failure of either the applicant or of an authorized agent of the applicant to comply with these disclosure requirements, no request for approval of an identical or similar matter shall be granted for a period of twenty-four (24) months from the date this matter is denied.

I declare the foregoing to be true and correct of my own personal knowledge. I have signed this form this 28 day of JULY, 2010. This form is signed in the City of REDWOOD CITY, State of CALIFORNIA.

MARGARET THUM MILES
Name (print)

Signature

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SUBMITTED BY APPLICANT