



Agenda Item # \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Fahey and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Richard Thompson, Director of Community Development  
Rob Osborne, Management Analyst

**DATE:** July 19, 2005

**SUBJECT:** Uphold the Parking and Public Improvements Commission Recommendation to Deny an Encroachment Permit Appeal for 324 25<sup>th</sup> Street and Require Removal of an Olive Tree from the Public Right of Way

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### **RECOMMENDATION:**

It is recommended that the Council pass a motion to approve the Parking and Public Improvements Commission recommendation to deny an Encroachment Permit Appeal for 324 25<sup>th</sup> Street and require that an olive tree be removed from the public right of way.

### **FISCAL IMPLICATION:**

There are no fiscal implications associated with Staff's recommendation.

### **BACKGROUND:**

The City recently received a complaint regarding an olive tree located in the public right of way adjacent to 324 25<sup>th</sup> Street. The owner of 400/402 25<sup>th</sup> Street, which is located approximately 80 feet to the east, feels the tree obstructs the ocean view from his property. The Municipal Code states the following relative to view obstructions caused by vegetation in the public right of way on walkstreets:

*If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to 42-inches maximum. The owner of the property who receives such notice to trim may appeal the decision pursuant to Section 7.36.070 of this chapter.*

Code Enforcement staff inspected the olive tree and concluded that it does present a view obstruction and is in violation of the Encroachment Code. The owner was asked to remove the tree or trim it down to comply with the 42-inch height limit. The owner feels the tree does not present a view obstruction and filed an appeal of staff's decision.

## **DISCUSSION**

The Parking and Public Improvements Commission reviewed the appeal at their meeting on April 28, 2005. The Commission heard testimony from six residents. The appellant and four area residents stated that the olive tree is an asset to the neighborhood and should be preserved. The complainant stated that the tree blocks the view from his property and violates the Encroachment Code. The Commission found that it does not appear the issue can be resolved through a compromise involving trimming the tree. That being the case they concluded that the tree does present a view obstruction. They voted (3-1, Lesser against, Ackland absent) to recommend that the appeal be denied and that the tree be removed from the public right of way.

Meeting notices were sent to all properties within 300 feet of the subject property.

## **ALTERNATIVES:**

1. **APPROVE** the recommendation of the Parking and Public Improvements Commission.
2. **REMOVE** this item from the Consent Calendar and provide staff with direction.

Attachments:

- A. Photos of olive tree
- B. Excerpt from PPIC minutes of 4/28/05
- C. PPIC report dated 4/28/05, with attachments
- D. Additional correspondence
- E. Meeting notice, 7/5/05



Looking west from 400/402 25<sup>th</sup> Street



Looking west from window at 400 25<sup>th</sup> Street



Looking west from street adjacent to 400 25<sup>th</sup> Street



Looking east toward 400/402 25<sup>th</sup> Street

**CITY OF MANHATTAN BEACH  
PARKING AND PUBLIC IMPROVEMENTS COMMISSION  
MINUTES OF REGULAR MEETING  
APRIL 28, 2005**

**3. View Obstruction Appeal - 324 25<sup>th</sup> Street**

Management Analyst Osborne presented the staff report, explaining that the City has received a complaint regarding an olive tree located in the public right-of-way adjacent to 324 25<sup>th</sup> Street. The owner of 400/402 25<sup>th</sup> Street feels the tree obstructs the ocean view from his property. Upon inspection of the olive tree, staff concluded that it does present a view obstruction and is in violation of the Encroachment Code. The owner was asked to remove the tree or trim it down to comply with the 42-inch height limit. The owner feels the tree does not present a view obstruction and filed an appeal of staff's decision.

Management Analyst Osborne stated that staff maintains its original position that the complaint is valid and is recommending that the appeal be denied and that the owner be required to remove the tree from the public right-of-way.

**Audience Participation**

**Kurt Neumann, 25<sup>th</sup> Street**, informed the Commission that he is the owner of the olive tree, explaining that the tree has been in place for more than eight years and this is the first time there has been a complaint. He reviewed the history of the complaint brought forth by Mr. Waggoner, sharing that Mr. Waggoner has submitted similar obstruction complaints against other properties in the area. Mr. Neuman stated that he routinely trims the tree and questions how it obstructs the view of Mr. Waggoner or his tenant.

In response to questions from the Commission, Mr. Neumann stated that he has not trimmed the tree recently because he was waiting to see how this issue was going to proceed; that he does not view the tree as an obstruction, stressing that the tree has been in place for more than eight years with no complaints; and that the tree could be laced/thinned out to the width of the main branches.

**Tom Courtney, Alma Avenue**, voiced his support of Mr. Neumann's appeal to maintain the olive tree, stating that Mr. Neumann is a great neighbor and takes wonderful care of the tree and his property. He shared that he also received a complaint regarding the height of his landscaping and questioned the status of the five other obstruction complaints filed by Mr. Waggoner. Mr. Courtney also mentioned that Mr. Waggoner has set up a video camera to "catch" neighborhood dogs urinating on his property.

**Brian Dunne, Crest Drive**, stated that he has lived in the area for three years and finds this complaint without merit. He talked of the numerous trees in the area and questioned if any have received similar complaints or will be held to the same standard. Mr. Dunne further

stated that Mr. Neuman is a well-respected member of the community and is an excellent neighbor who takes wonderful care of his home and property.

**Hal Licht, 27<sup>th</sup> Street**, shared that he has lived in the City for more than 25 year and has seen the area change dramatically. He stated that he admires those who have beautified their properties while maintaining, even building around existing trees. He talked of tree owners who don't always take proper care of their property, letting trees and other landscaping intrude on neighbors' properties, sidewalks, etc. and that Mr. Neuman's tree is always maintained and his property neat and clean.

**Marty Friedman, 24<sup>th</sup> Street**, voiced his support of Mr. Neumann's appeal, stating that the tree actually enhances the view and without it one will just see a continuous row of stucco and cement. He questioned Mr. Waggoner's motives, why his tenant is now involved in this issue, and whether this is "a personal vendetta" against Mr. Neumann, adding that Mr. Waggoner has taken drastic measures to prevent dogs on his property. Mr. Friedman talked of the many other trees in the area which exceed the 42-inch height limit and stated that if the City enforces the limit for Mr. Waggoner they must enforce these other situations as well.

**Earl Waggoner, 25<sup>th</sup> Street**, shared that he takes serious exception to how he has been portrayed on this issue. He stated that there is no vindictiveness on his part, he did not decide overnight to proceed with the complaint and has talked of this issue in the past, and that he has in fact used a video camera to see who is vandalizing his lawn. He talked of the broad expansion of ocean he used to be able to see and how plantings and overgrown landscaping have continually diminished his view. Mr. Waggoner referenced his submitted pictures that depict the aggregate amount of obstructions, stating that the issue is not about personalities but about the City enforcing the Code and protecting these view corridors of the City.

In response to questions from the Commission, Mr. Waggoner stated that at this point trimming the tree is not an acceptable solution as the tree is part of the aggregate combination of obstructions along the view corridor. He stated that he does see the water but cannot see the surf and sand which is part of an "ocean view." He reiterated that he is only trying to preserve his views in accordance with the City's established Code.

**Mr. Neumann** addressed the Commission again, stating that he finds the entire situation very sad. He talked of the changes the City has experienced due to the incredible amount of construction and how back yards and patios have become a bad word. Mr. Neumann concluded by stating that he hopes the City can reach a balance, whereby we have the ocean, but also something in between.

## **Discussion**

Referencing the City's Code section pertaining to encroachments, Commissioner Lesser stated that the issue for him is determining whether Mr. Waggoner's view is "impaired,"



questioning the possibility of lacing/thinning out the tree to eliminate bulk and improve Mr. Waggoner's view. He believes the tree adds to the landscape and would like to give the tree's owner an opportunity to see if trimming the tree can resolve this issue.

Commissioner Lang clarified with staff that there is no time statute involved in the complaint process. He stated that he appreciates the residents who came to speak on this issue and support Mr. Neuman, but would have liked to have seen less characterizations of Mr. Waggoner. Commissioner Lang further stated that it is clear from the photos that the tree does impact Mr. Waggoner's views and that the value of property is based on ocean view. He conveyed that he hates to see any tree come down, but in this instance finds the removal justified.

Commissioner Osterhout also commented that he is saddened by the apparent animosity within this neighborhood and hopes it can be repaired. He stated that he speaks for the perseverance of trees and always will. In this case he will support removal as he believes Mr. Waggoner's view is impaired by the tree and that he is acting within his rights and has brought forth a legitimate complaint.

Chairman Saunders stated that he viewed the property and is not convinced that the removal of the tree will significantly improve Mr. Waggoner's view, adding that he is struck with the fact that this tree has been present for eight years. He stated that his tendency is to allow the tree to remain but instruct the owner to trim it as much as possible and see if the view issue can be alleviated.

Commissioner Lang remarked that if he felt these parties could work together and reach a mutual solution it would be great, however, due to tonight's testimony he questions the possibility of these parties resolving this issue. Commissioner Lang stated that the Code is in place to preserve the vastness of ocean views and in this case the tree clearly impairs that view.

Commissioner Osterhout stated that the City's ordinance was not drafted adequately, however, its ambiguity does not mean the Commission should side with resident majority. He wants to interpret the Code correctly and believes removal of the tree is justified.

### **Action**

A motion was MADE and SECONDED (Osterhout/Lang) to approve staff's recommendation to deny the view obstruction appeal for 324 25<sup>th</sup> Street and that the olive tree be removed from the public right of way.

AYES: Lang, Osterhout, Chairman Saunders  
NOES: Lesser  
ABSENT: Ackland  
ABSTAIN: None

**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Rob Osborne, Management Analyst

**DATE:** April 28, 2005

**SUBJECT:** View Obstruction Appeal – 324 25<sup>th</sup> Street

**RECOMMENDATION**

That the Commission recommend denial of the view obstruction appeal for 324 25<sup>th</sup> Street and that the olive tree be removed from the public right of way.

**BACKGROUND**

The City recently received a complaint regarding an olive tree located in the public right of way adjacent to 324 25<sup>th</sup> Street. The owner of 400/402 25<sup>th</sup> Street, which is located approximately 80 feet to the east, feels the tree obstructs the ocean view from his property. The Municipal Code states the following relative to view obstructions caused by vegetation in the public right of way on walkstreets:

*If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to 42-inches maximum. The owner of the property who receives such notice to trim may appeal the decision pursuant to Section 7.36.070 of this chapter.*

Code Enforcement staff inspected the olive tree and concluded that it does present a view obstruction and is in violation of the Encroachment Code. The owner was asked to remove the tree or trim it down to comply with the 42-inch height limit. The owner feels the tree does not present a view obstruction and filed an appeal of staff's decision.

An encroachment permit was issued for 324 25<sup>th</sup> Street in 1996. The approved plan did not include any trees and stipulated that landscaping in the public right of way should not exceed 42 inches in height.

**DISCUSSION**

The code section described above governs the administrative process followed by staff when such complaints are received. As this issue has now reached the appeal level, the Commission and Council can use their best judgment in making a decision. The general issue before the Commission is whether or not the tree represents an appropriate use of the public right of way. More specifically, does it present a problem that warrants either trimming or removal?

The attached photos illustrate the view from the property at 400 25<sup>th</sup> Street. Staff maintains its original



position that the complaint is valid. The tree does obstruct a portion of the complainant's ocean view and is therefore in violation of the Encroachment Code. The Encroachment Permit issued for the subject property in 1996 did not include the tree and clearly established a 42-inch height limit for vegetation. While the appellant has submitted a number of letters from area residents in support of maintaining the tree, staff does not feel there is justification for an exception from the Encroachment Code.

It is recommended that the appeal be denied and that the owner be required to remove the tree from the public right of way.

### **ALTERNATIVES**

1. Recommend denial of the view obstruction appeal for 324 25<sup>th</sup> Street and require removal of the olive tree.
2. Recommend approval of the appeal.

### **Attachments**

Photos of tree  
Complaint submittal  
Letter from appellant  
Letters in support of appeal  
Meeting notice, 4/14/05



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5000 FAX (310) 802-5001

July 5, 2005

\*\*\*\*\* PUBLIC MEETING NOTICE \*\*\*\*\*

Re: Encroachment Appeal – 324 25<sup>th</sup> Street

Dear Resident:

On April 28, 2005, the Parking and Public Improvements Commission reviewed a complaint that an olive tree in the public right of way adjacent to 324 25<sup>th</sup> Street exceeds the allowable height limit for vegetation on public property and obstructs the ocean view of a neighbor to the east. The Commission concluded that the tree does present a view obstruction and voted to recommend that it be removed from the public right of way.

The City Council will review this recommendation at a public meeting on Tuesday, July 19, 2005. The meeting will be held in the City Council Chamber, 1400 Highland Avenue, and will begin at 6:30 p.m. Any comments you might like to make at the meeting would be welcomed.

The issue will be on the portion of the agenda known as the “Consent Calendar”, meaning that it will not automatically be discussed. If it is not requested to be discussed by either a member of the audience, a City staff person or a Councilmember, the recommended action will be approved without discussion. At a point at the beginning of the meeting the Mayor will ask the audience if they would like any items to be removed from the Consent Calendar. If you do not agree with the recommended action for this item, be sure to request that it be removed at that time. It will then be discussed during the portion of the agenda entitled “Items Removed from the Consent Calendar”, toward the end of the meeting.

If you have any questions or would like any additional information, please call me at 802-5540.

Sincerely,

Rob Osborne  
Management Analyst  
Community Development Department