



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

401 Rosecrans Avenue (4137-001-031) and
3770 Highland Avenue (4137-001-027)

<i>Office Use Only</i>	
Date Submitted:	
Received By:	
F&G Check Submitted:	

Project Address

Not Available. Highrose project

Legal Description

North End Commercial

General Plan Designation

CNE III
Zoning Designation Area District

2022 JUN 17 AM 11:40
CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

RECEIVED

For projects requiring a Coastal Development Permit, select one of the following determinations:

Project located in Appeal Jurisdiction

- Major Development (Public Hearing required)
- Minor Development (Public Hearing, if requested)

Project not located in Appeal Jurisdiction

- Public Hearing Required (due to UP, V, etc.)
- No Public Hearing Required

Submitted Application (check all that apply)

- | | | | | |
|--|------|--------|---|------|
| <input checked="" type="checkbox"/> Appeal to PC/PPIC/BBA/CC | 4225 | APPEAL | <input type="checkbox"/> Use Permit (Residential) | 4330 |
| <input type="checkbox"/> Coastal Development Permit | 4341 | | <input type="checkbox"/> Use Permit (Commercial) | 4330 |
| <input type="checkbox"/> Continuance | 4343 | | <input type="checkbox"/> Use Permit Amendment | 4332 |
| <input type="checkbox"/> Cultural Landmark | 4336 | | <input type="checkbox"/> Variance | 4331 |
| <input type="checkbox"/> Environmental Assessment | 4225 | | <input type="checkbox"/> Park/Rec Quimby Fee | 4425 |
| <input type="checkbox"/> Minor Exception | 4333 | | <input type="checkbox"/> Pre-application meeting | 4425 |
| <input type="checkbox"/> Subdivision (Map Deposit) | 4390 | | <input type="checkbox"/> Public Hearing Notice | 4339 |
| <input type="checkbox"/> Subdivision (Tentative Map) | 4334 | | <input type="checkbox"/> Lot Merger/Adjust./\$15 rec. | 4225 |
| <input type="checkbox"/> Subdivision (Final) | 4334 | | <input type="checkbox"/> Zoning Business Review | 4337 |
| <input type="checkbox"/> Subdivision (Lot Line Adjust.) | 4335 | | <input type="checkbox"/> Zoning Report | 4340 |
| <input type="checkbox"/> Telecom (New or Renewed) | 4338 | | <input type="checkbox"/> Other | |

Fee Summary: (See fees on reverse side)

Total Amount: \$ _____ (less Pre-Application Fee if applied within past 3 months)
Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

Donald McPherson
Name

1014 1st St, Manhattan Beach CA 90266
Mailing Address

Resident
Applicant(s)/Appellant(s) Relationship to Property

Donald McPherson 310 487 0383, dmcphersonla@gmail.com
Contact Person (include relation to applicant/appellant) Phone number / email

1014 1st St, Manhattan Beach CA 90266
Address

Applicant(s)/Appellant(s) Signature Phone number / email

Complete Project Description- including any demolition (attach additional pages as necessary)

Appeal to city council of planning commission decision on 8 June 2022 regarding Highrose project.
See attached appeal report.

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

OWNER'S AFFIDAVIT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I/We Donald McPherson being duly sworn, depose and say that I am/we are the owner(s) of the property involved in this application and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief(s).

Signature of Property Owner(s) – (Not Owner in Escrow or Lessee)

Donald McPherson

Print Name

1014 1st St, Manhattan Beach CA 90266

Mailing Address

310 487 0383, dmcphersonla@gmail.com

Telephone/email

Subscribed and sworn to (or affirmed) before me this 17 day of June, 2022
by [Signature], proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature

Notary Public

SEAL

Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Division for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit

Public hearing – no other discretionary approval required:	\$ 3,948	✉
Public hearing – other discretionary approvals required:	1,940	✉
No public hearing required – administrative:	1,509	✉
Transfer:	155	

Use Permit

Use Permit:	\$ 8,393	✉
Master Use Permit:	10,908	✉
Master Use Permit Amendment:	7,414	✉
Master Use Permit Conversion:	5,035	✉

Variance

Filing Fee:	\$ 8,421	✉
-------------	----------	---

Minor Exception

Without notice:	\$ 353	
With notice:	1,575	✉

Subdivision

Certificate of Compliance:	\$ 1,652	
Final Parcel Map + mapping deposit:	601	
Final Tract Map + mapping deposit:	601	
Mapping Deposit (paid with Final Map application):	500	
Merger of Parcels or Lot Line Adjustment:	1,184	
Quimby (Parks & Recreation) fee (per unit/lot):	1,817	
Tentative Parcel Map (4 or less lots / units) No Public Hearing:	1,397	
Tentative Parcel Map (4 or less lots / units) Public Hearing:	3,546	✉
Tentative Tract Map (5 or more lots / units) No Public Hearing:	4,074	✉

Environmental Review (contact Planning Division for applicable fee)

Environmental Assessment (no Initial Study prepared):	\$ 215	
Environmental Assessment (if Initial Study is prepared):	3,133	

✉ Public Hearing Notice applies to all projects with public hearings and covers the City's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable:

Coastal Permit – 100 ft. Radius	\$ 182	
Large Family Daycare – 100 ft. Radius	56	
Minor Exception – 300 ft. Radius	129	
Other Permits – 300 to 500 ft. Radius	263	
Code, General Plan, Zoning Amendments	588	

MB NORTH HIGHROSE APPEAL TO THE CITY COUNCIL

June 17, 2022

1.0 SUMMARY: HIGHROSE REQUIRES ENVIRONMENTAL REVIEW.

On March 29, 2022, Community Development ministerially approved the Highrose project with a Precise Development Plan, which did not require environmental review, in compliance with the California Environmental Quality Act [“CEQA”], Public Resources Code [“PRC”] § 21080(b)(1).¹

On June 8, 2022, however, the appeal to the planning commission raised the project to a discretionary process that requires environmental review, per the Manhattan Beach Municipal Code [“MBMC”]:

“A project that is not ministerially or categorically exempt from CEQA and is the subject of an application for a discretionary approval, including but not limited to a General Plan amendment, zoning map amendment, use permit, variance, Specific Plan, PD Plan, or NC Plan shall be subject to environmental review and shall be the subject of a Negative Declaration or an Environmental Impact Report (EIR).” [MBMC § 10.80.020]

In violation of the above code provision, the June 8 staff report [“PC Report”] concluded that an environmental review not required because the project ‘ministerial’,

“The City has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that pursuant to Section 21080 of the California Public Resources Code, **CEQA does not apply to ministerial projects approved by public agencies.**”² [Emphasis added]

With the appeals to the planning commission and now to the city council, however, the project no longer ‘ministerial’, but rather discretionary process that requires CEQA review:

“Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.” [CEQA Guidelines § 15268(d)]

Furthermore, the Density Bonus Law [“DBL”] specifically states that environmental review required if the concession or incentive would have a specific, adverse impact on the “physical environment.” [Government Code [“GOV”] § 65915(d)(1)(B)]

At their June 8 appeal hearing, the planning commission failed to consider the mandate by city and state law that Highrose requires environmental review. The Appendix A hearing transcript discloses that staff, the city attorney representative, and the commissioners assiduously failed to address CEQA and its provisions. Staff did state several times that CEQA does not apply, without addressing the provisions cited directly above in city and state law.

The appeal herein requests the City Council to require an EIR for the project. This action lies within the city council discretionary authority, per CEQA Guidelines § 15060(c)(1):

“Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if: (1) **The activity does not involve the exercise of discretionary powers by a public agency.**” [Emphasis added. Please note double negative, which mandates environmental review]

¹ Permit Approving Precise Development Plan and Related Entitlements; City of Manhattan Beach; 29 March 2022

² Staff report, PDF p. 14; Planning Commission, 8 June 2022

MB NORTH HIGHROSE APPEAL TO THE CITY COUNCIL

June 17, 2022

The Highview project constitutes the first major development in the city 6th Housing Element Upgrade [“HEU”] program, which must provide 406 affordable units prior to 2029³. As result, per CEQA, the city must prepare a Single-Program EIR:

“Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare **a single program EIR** for the ultimate project as described in Section 15168.” [CEQA Guidelines § 15165, Emphasis added]

Consequently, the Highrose Single-Program EIR must evaluate cumulative effects⁴ from all projects necessary to fulfill the 406-unit quota for affordable housing by 2029. This involves evaluating cumulative impacts from applicable CEQA factors, such as:

- 1) Aesthetics [50-foot heights]; 2) Geology and Soils [40-ft retaining walls for Highrose];
- 3) Greenhouse Gases; 4) Hazardous Materials [El Segundo refinery for Highrose];
- 5) Land Use and Planning; 6) Public Services; 7) Recreation [Coastal access]; 8) Traffic & Parking⁵; and, 9) Utilities and Service Systems. [CEQA Guidelines Appendix G]

Although Highrose not in the appealable coastal zone, the Court will take note that traffic and parking from the project and other such developments in the 6th HEU program will profoundly impact beach access and recreation, the Coastal Commission’s highest priority. [Appendix B, (Keen v. MB”), *Keen v. City of Manhattan Beach*, No. B307538 (Cal. Ct. App. Apr. 6, 2022),]

In conclusion, each of the municipal code, the Density Bonus Law and CEQA requires the city council to order an environmental review.

2.0 FORTY-FOOT RETAINER WALLS CONCESSION AND FIVE WAIVERS TO ENABLE PROJECT.

The Density Bonus Law permits one or more concessions to the city zoning code, depending upon the number and type of affordable units provided. The project has six very-low-income units, which qualifies it for one concession from the zoning code. [Density Bonus Law § 65915(b)(1)]

For their concession, the applicant chose over-height retaining walls in the setbacks. [PC Report, PDF p. 7] The applicant claims that to build the project, they need the following waivers: 1) Floor Area Factor 2.2 vs 1.5 code; 2) 50-foot height vs 30-ft code; 3) Four stories vs. three required by code; 4) Reduced side-yard setbacks; and 5) Over-height retaining walls. [Ibid.]

The five waivers permitted by the Density Bonus Law. [GOV § 65915(e)(1)] The fifth waiver duplicates the concession.

It will take **nearly 70 four-story projects like Highrose** to eliminate the existing 406-unit shortfall from the affordable-housing quota levied on the city by the state.

The Single Program EIR must consider the cumulative impact from all affordable housing projects identified in the draft HEU and provide alternatives that “would avoid or substantially lessen any of the significant effects”. [CEQA Guidelines § 15064(h)(1) & § 15126.6(a)]

³ Draft HEU, Resolution No. 22-0015, 1 Feb 2022; , 6th Cycle Housing Element [2021-2029.] The draft HEU unapproved by the city council and delinquent in filing with the state. The EIR for the draft HEU invalid.

⁴ ““Effects” and “impacts” as used in these Guidelines are synonymous,” CEQA Guidelines § 15358

⁵ Parking a CEQA factor because it does not comply with municipal code; CEQA Guidelines § 15183

MB NORTH HIGHROSE APPEAL TO THE CITY COUNCIL

June 17, 2022

3.0 ENVIRONMENTAL REVIEW DISCUSSION.

The discussion below addresses: 1) Substantial evidence that the project may have a significant effect on the environment; 2) Alternatives to reduce environmental impacts; and 3) Status of the city unapproved EIR for draft 6th Housing Element Upgrade [“HEU”]

3.1 Substantial Evidence of Environmental Impact.

As established above, CEQA and the Density Bonus Law require environmental review if substantial evidence of environmental impact exists. Significantly, the municipal code requires CEQA review without establishing substantial evidence beforehand. [MBMC § 10.80.020]

The city has not invoked a categorical exemption, so it unnecessary to establish unusual circumstances as an exception to an exemption. [CEQA Guidelines § 15300.2(c)]

Traffic and Parking Impacts.

The applicant prepared a traffic and parking analysis for Highrose. [PC Report Attach. H] The city traffic engineer concurs with the conclusion of no impacts. [PC Report Attach. I]

The applicant and the city have failed, however, to analyze the cumulative traffic and parking impacts from the nearly 70 projects like Highrose necessary to provide the 406-affordable-unit quota, as required by a Single-Program EIR.

This particularly important in the coastal zone where Highrose located, because of traffic and parking impacts on beach access, the Coastal Commission’s highest priority.

Height Impacts and Mitigation.

The DBL waiver of four stories versus three improperly results in a 50-foot height compared to the code maximum 30-foot height. The applicant has overly increased each story height from ten feet to 12.5 feet, which exploits ocean views. Reducing story height to 10-feet will lower the building height from 50 to 40 feet, a substantial reduction in bulk, a CEQA factor.

3.2 Alternative 100% Affordable Options.

CEQA requires alternatives in the Single-Program EIR, such as the two identified in Item 4: 1) A large 100% affordable project on a city-owned 5.4-acre parcel adjoining the MB Mall; and, 2) A 100% affordable Highrose project that complies with the municipal code. This appeal report focuses on the city-owned 5.4-acre lot, because of its low acquisition cost.

Per Exhibit 2, the city owns the two parcels shown in the middle, with the MB Mall on the far left. The city leases the eastern parcel to the Manhattan Country Club. The Marriott Westdrift hotel far right with a golf course and hazard ponds south. Exhibit 3 illustrates that the city 5.4-acre lot essentially unused.

The 5.4-acre lot can accommodate the 406 affordable units mandated by the state. That may, however, result in a development that lacks open space and the low-profile required by the General Plan.

In Exhibit 2, the column of eleven blue and green rectangles west of the Country Club buildings are tennis courts. The city has the right of eminent domain to acquire that area from its tenant, to ensure the affordable housing fits in with the low profile of the adjoining Manhattan Village. The tennis courts not much of a capital improvement so will cost little for the city to acquire the area.

MB NORTH HIGHROSE APPEAL TO THE CITY COUNCIL

June 17, 2022

3.3 Status of 6th Housing Element Upgrade EIR.

In February 2022, the city council denied approval of the 6th Housing Element Upgrade for the period 2021-2029 and its Environmental Impact Report.

The unapproved EIR had two fundamental errors:

- 1) It did not account for cumulative impacts of the many projects that will constitute the 2021-2029 program for implementing the 406 affordable units mandated by the state; and,
- 2) It arbitrarily set a 20-unit per acre maximum density as a “realistic capability.”

The erroneous 20-unit per acre density factor used in the draft 6th HEU EIR penalizes 100% affordable options on large lots such as summarized above. The city-owned 5.4-acre lot can accommodate the 406 affordable units required by the state, but only 108 under the bogus 20-unit per acre standard if it existed, which it does not.

More importantly, the 20-unit per acre density factor would require purchase of three vastly-more expensive properties. The city owns only the one 5.4-acre parcel available for affordable housing, a uniquely advantageous situation compared to other coastal cities.

4.0 Highrose Appeal Conclusions.

- Highrose deviates from the municipal code, as follows: 1) Four stories vs. three code
2) 50-foot height vs 30-ft code; 3) Floor Area Factor 2.2 vs 1.5 code; 4) Reduced setbacks; and, 5) A 51 parking-space reduction from code.
- The required 406 affordable units will require nearly 70 four-story building like Highrose;
- CEQA requires a Single-Program EIR for Highrose that includes cumulative impacts from all individual projects necessary to provide the remaining 406 affordable units required by the state for affordable housing;
- The single-program EIR requires alternatives, with two code-compliant 100% affordable-housing projects considered herein:
 - 1) One large project on one of two sites near Manhattan Mall, as listed in the draft HEU; and,
 - 2) A revised Highrose project with 100% affordable housing;
- The erroneous city density of 20 dwelling units per acre in the draft HEU requires three or four projects in the underused parcels near Manhattan Mall, as listed in HEU Appendix E Table 15. In contrast, parcels with densities of 50 or more dwelling units per acre require only one project to provide most of the units required;
- The city-owned unused 5.4 acre parcel adjoining Manhattan Mall will solve the entire affordable housing problem;
- Substantial evidence of possible environmental effects exists, so the city “may skip further initial review of the project and begin work directly on the EIR process” [CEQA Guidelines § 15060(d)];
- The city council must require a Single-Program EIR for Highrose that encompasses all affordable housing projects required to comply with state-mandated 406-unit quota; and,
- In deliberately misinterpreting the municipal code regarding discretionary projects, the city has once again violated the 6 April 2022 appellate court finding, “We give simple words their obvious meaning. Contrary interpretations are unreasonable.” [Appendix B, Keen v. MB, p. 5]

EXHIBIT 1
5.4 ACRE LOT CAN PROVIDE
CITY AFFORDABLE QUOTA OF 406 UNITS



**EXHIBIT 2.
5.4 ACRE LOT CAN PROVIDE
CITY AFFORDABLE QUOTA OF 406 UNITS**



**MB COUNTRY CLUB
7.5 ACRES**

**LOT BETWEEN
MB COUNTRY CLUB
AND MB MALL
5.4 ACRES**

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Speaker 1: Chair Morton, we are live.

Chair Morton: Great. I would like to call the June 8th, 2022 Planning Commission meeting to order. Can I have a volunteer to, uh, lead us in the flag salute?

Ted F.: [inaudible 00:00:22].

Chair Morton: How about you, Commissioner Dillavou?

Commissioner Di...: [00:00:30] Ready? Begin.

Commission: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

Chair Morton: Great. Thank you very much. Can we call the roll please?

Speaker 1: Yes. Commissioner Sistos?

Commissioner Si...: I'm here.

Speaker 1: Commissioner Dillavou?

Commissioner Di...: Present.

Speaker 1: Commissioner Tokashiki?

Commissioner To...: Here.

Speaker 1: Vice Chair [00:01:00] Ungoco?

Commissioner Un...: Here.

Speaker 1: Chair Morton.

Chair Morton: I am here. Uh, we would like to initiate our annual reorganization of the commission, uh, where I will be stepping down as Chair. Uh, I would like to, uh, nominate, uh, Joseph Ungoco to serve as Vice Chair and Robert Tokashiki, uh ... Excuse me, Joseph Ungoco to serve as Chair following me, and Robert Tokashiki to serve as [00:01:30] Vice Chair in order with, uh ... In line with seniority customs.

Speaker 1: Second. [inaudible 00:01:37]-

Chair Morton: All in favor?

Speaker 1: Mm-hmm. Uh, I'll- I'll call a vote. Uh, Commissioner Sistos.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Commissioner Si...: Aye.

Speaker 1: Commissioner Dillavou.

Commissioner Di...: Yes.

Speaker 1: Commissioner Tokashiki.

Commissioner To...: Yes.

Speaker 1: Vice Chair Ungoco.

Commissioner Un...: Aye.

Speaker 1: Chair Morton.

Chair Morton: Yes.

Speaker 1: Motion-

Chair Morton: Chair Ungoco, the- the gavel is yours.

Commission: (laughs).

Commissioner Un...: [00:02:00] Well, thank you. I brought my own actually.

Commission: (laughs).

Commissioner Un...: Before we begin, I'd like to take a moment to thank Chair Morton for his extended service as Chair, uh, to this commission, giving us time to acclimate, to, uh, moving from Zoom to hybrid. Um, I want to thank him for providing such a fine example of leadership during this time that was so challenging to many of us. Um, [00:02:30] and I think it's really, uh, it's really wonderful to, uh, be taking over the gavel, um, at this point. Um, are there any other comments from the commissioners that they'd like to share with outgoing Chair Morton? I shouldn't say outgoing. He's-

Commission: (laughs).

Commissioner Un...: ... he's still a commission leader. [inaudible 00:02:51]. No, anyone? No.

Commissioner Di...: I'd like to thank [inaudible 00:02:55]-

Chair Morton: I- I- I really appreciate the warm comments. Thank you very much. It- it means a lot to me.

Commission: (laughs).

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Chair Morton: So, thank you very much.

Director Ty: [inaudible 00:03:05].

Commissioner Di...: Oh.

Director Ty: [inaudible 00:03:06].

Commissioner Di...: Yeah, sure. (laughs).

Speaker 1: We ready to proceed?

Director Ty: Yeah, I'm just going to say a few words.

Speaker 1: [00:03:00] Okay.

Commissioner Un...: We'll proceed in a moment. Uh, Director Ty will be, uh, taking the, uh, microphone.

Director Ty: Sorry about that. We were taking care of some logistic. Thank you, uh, uh, Chair Ungoco. Welcome. And Vice Chair Tokashiki and members of the Planning Commission. On behalf of the staff, as well as the Community Development [00:03:30] Department, I would like to thank, um, outgoing chair, but still remaining Commissioner, Jerry Morton for your leadership, um, as chairperson of the Planning Commission, not just for the previous year, but for the previous two years. Um, because we did have a turnover on the commission, uh, Jerry last year graciously offered to serve a second year as chair and I, and we know that the dedication, the time commitment and the leadership, um, that you put in was, uh, was, uh, the pla- Planning Commission [00:04:00] and the department can attribute, uh, the success of the last, uh, two years to you. So, thank you so much, um, on behalf of the staff. Thank you, Chair.

Chair Morton: Thank you very much. I- I appreciate that greatly. Thank you.

Speaker 1: All right. Our first order of business is the approval of the agenda for today's meeting. Um, do the commissioners have any questions or concerns about the agenda as printed? Um, if not, I'll entertain a motion to approve.

Commissioner Di...: Motion to approve.

Commissioner Si...: I'll second.

Speaker 1: All right. We have a motion from [00:04:30] Commissioner Dillavou, and a second by Commissioner Sistos. I'll call roll. Commissioner Morton.

Chair Morton: Yes.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Speaker 1: Commissioner Sistos.

Commissioner Si...: Aye.

Speaker 1: Commissioner Dillavou.

Commissioner Di...: Yes.

Speaker 1: Vice Chair Tokashiki.

Commissioner To...: Aye.

Speaker 1: Chair Ungoco.

Commissioner Un...: Aye.

Speaker 1: Motion passes five zero. All right. This is the time for general audience participation. Members of the public are welcome to speak on any item within the subject matter jurisdiction of the Planning Commission for items that are not on the agenda for today. Um, each [00:05:00] speaker is limited to three minutes. Uh, there will be a timer displayed on the screen. Is there anyone that would like to speak on a topic not on today's agenda?

Commissioner Un...: I-

Ted F.: Could we close the curtain so we- we can actually see?

Speaker 1: [inaudible 00:05:20]. We'll tend to that. Thank you. All right. The next order of business is the approval of the minutes for the May 11th, 2022 [00:05:30] meeting. Commissioners, do you have any comments or questions on the minutes?

Commissioner Di...: [inaudible 00:05:37]. Motion to approve.

Speaker 1: We have a motion to approve. Is there a second?

Commissioner To...: Second.

Speaker 1: We have a motion by Commissioner Dillavou and a- a second by Vice Chair, Tokashiki. I'll call roll. Ch-, uh, Commissioner Morton.

Chair Morton: Yes.

Speaker 1: Commissioner Sistos.

Commissioner Si...: Aye.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Speaker 1: Commissioner Dillavou.

Commissioner Di...: Yes.

Speaker 1: Vice Chair Tokashiki.

Commissioner To...: Aye.

Speaker 1: Chair Ungoco.

Commissioner Un...: Aye.

Speaker 1: Motion passes five [00:06:00] zero. And we're sailing right through to item H, general business. Um, the next, the next item to consider is, uh, the consideration of four appeals of the community development director's decision to approve a precise development plan, coastal development permit, and tentative parcel map for the demolition of the banquet facility in multi-use commercial building and subsequent construction of a 96,217 square foot multi-family residential building with [00:06:30] 79 rental dwelling units with the developer utilizing a density bonus pursuant to state law, inclusive of waivers and concessions at 401 Rosecrans Avenue and three, 3770 Highland Avenue. Uh, is there a staff report?

Director Ty: Yes. Thank you. Uh, Chair Ungoco, congratulations and Vice Chair Tokashiki, congratulations. And a quick thank you to Chair Morton for his leadership. I would like to invite Ted [Fitoros 00:06:56], Associate Planner to make a presentation for this item.

Ted F.: [inaudible 00:07:01].

Director Ty: [00:07:00] Ted. One second, please. Uh, we'd like to also invite our Assistant City Attorney, Brendan Kerns for a quick, uh, note.

Brendan Kerns: Thank you. And congrats, new chair. Thank you, outgoing chair. I'm going to say something very briefly that I know is totally unnecessary for this group and this proceeding, but it's sometimes worth just reminding everybody about. Um, the city and its meetings are governed by rules of civility and decorum, uh, that have been adopted by council. [00:07:30] And it's what you'd expect, right? Basically that we don't want to en- have any conduct here that will disrupt the proceedings, a robust debate about the project, any proposal is totally valid, but we want to make sure everyone's voices can be heard. So, we just ask everyone, you know, direct your comments to the Chair, um, avoid having banners or other things that would disrupt other people's ability to view the proceedings, things of that sort. Again, I say this just as a quick reminder, and I'm confident it won't be [00:08:00] an issue.

Commission: [inaudible 00:08:02].

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Chair Morton: Thank you City Attorney Kerns.

Brendan Kerns: And- and that's actually a good test case.

Commission: (laughs).

Brendan Kerns: Um, so we are going to have comments, um, by whoever is speaking. My name is Brendan Kerns. I'm the Assistant City Attorney for Manhattan Beach. But again, um, everyone will get a chance to speak, but we'd encourage you and we ask you to wait until it's your time before the podium. And that way we just make sure everyone's heard and our decision makers have a chance to reflect [00:08:30] in an orderly manner.

Ted F.: Uh, screen share?

Speaker 1: Yeah, go ahead.

Ted F.: Uh, good aftern- good afternoon, uh, Chair Ungoco and members of the Planning Commission. My name is Ted Fitoros, Associate Planner here with the city's Planning Division. [00:09:00] Uh, and I'm here to present the consideration of four appeals for a precise development plan, uh, and associate entitlements for a project located at 401 Rosecrans Avenue and 3770 Highland Avenue. Um, just as a, um, heads up, this is a longer presentation. Um, there's a lot of ground to cover. As always, you will have the opportunity to ask questions at the end of my presentation. So, I appreciate your patience.

Starting [00:09:30] with some background about the project. Uh, the applicant applied for the precise development plan and associate entitlements on March 4th, 2021. And the project was deemed complete on January 6th, 2022. Uh, the Community Development Director issued an approval decision on March 29th, 2022, over a year after the project was submitted. Uh, in April, 2022, four independent appeals were submitted [00:10:00] to the city. And here we are on June 8th, 2022 for the Planning Commission to consider those four appeals.

Some background on the site. So, the site currently is two lots, 401 Rosecrans Avenue right here, this triangle, and 3770 Highland Avenue. The site is located in the C and E, that's north end commercial zone area district [00:10:30] three, and is in the non-applicable portion of the coastal zone. The total site is over 43,000 square feet. Um, and currently located on 401 Rosecrans Avenue is the Veranda's banquet facility. And at 3770 Highland Avenue is the Tradewood Village commercial building.

I'd like to point out a few things about the site. Um, the city parking structure to the West is- is not part of this development, [00:11:00] as is that Northern parking lot that you see outside of the blue triangle. That parking lot is, um, actually in the city of El Segundo and not part of this project. Um, the site is North of Rosecrans Avenue, East of Highland. Um, and again, is surrounded by

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

the public parking to the West, high density residential development, uh, South and [00:11:30] Northwest, and the city of El Segundo to the North and the Northeast.

Um, before getting into some project specifics, I'd like to cover the governing regulations that staff has reviewed the project under. So, um, we considered the general plan and the fifth cycle housing element, uh, state density bonus law, the Manhattan Beach Local Coastal program, and Subdivision [00:12:00] Map Act and chapter 11 of the Manhattan Beach Municipal Code.

So, going through these regulations one by one, uh, we considered the project in light of the general plan and the housing element. Um, the general plan s-, um, calls out this site as a North-end commercial site, which does allow for high density residential uses, such as the proposed project. Um, and also the fifth cycle housing element, which is [00:12:30] part of the general plan has goals, policies, and programs that are meant to facilitate multi-family development in a variety of housing types.

Um, we also reviewed the project in light of state density bonus law. Um, this is a law that is meant to encourage the creation of affordable housing in, uh, in the state. So, the basic idea of it is [00:13:00] if a developer sets aside a certain amount of the units for affordable housing, then the developer's allowed a bonus number of units that are allowed to build on the site that would be otherwise not allowed under traditional zoning regulations. And when it comes to state density bonus law, it is a state law, um, which supersedes local law. The city does have a, um, pa- a part of the local po- coastal program that does discuss [00:13:30] density bonus projects, but the state law supersedes our local ordinances.

So, the way density bonus law works or a project works is that under the traditional zoning code and development standards, you might be able, for instance, in this example to build 32 units, um, and that would meet the development standards. But on a density bonus project, because you're allowed to build extra units or more units [00:14:00] that were, would otherwise be allowed to be built on the site, you can't really fit it in the build-able envelope that's traditionally allowed under the development standards, um, that are part of the normal regulations. So, the density bonus law allows for waivers and concessions, um, to exceed certain development standards, um, in order to fit the number of units in the project and make the project viable.

Um, and that might [00:14:30] raise the question of, what's the difference between a waiver and a concession? Um, a waiver is something that the city grants for, um, a, uh, change to a development standard and without the waiver, it would physically preclude the building of the, of the project. A concession, which is also used interchangeably with the word incentive in the state density bonus law, a concession is given so that, um, otherwise the project, uh, couldn't [00:15:00] be built from a fiscal point of view. It would

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

create additional costs that would make it very difficult if not impossible to build the project.

Uh, the ... Another part of the regulatory framework that we reviewed as part of this project is, uh, the Local Coastal program. So, chapter 8.16 of the Local Coastal program spells out that when you propose a residential use in a commercial zone, like in this project here, you use, [00:15:30] um, you defer to the development standards for the RH high density residential zone. In addition to that, the, um, Local Coastal program states that when you have a density bonus project that has a- a lot consolidation where you merge lots, you get, um, extra units on top of what is normally allowed under the state.

Um, another important part of the Local Coastal program is section 8.84010. So [00:16:00] again, the applicant has applied for a precise development plan, which is used for, um, density bonus projects. And that code states, and I'd like to read it, uh, "Precise development plans are intended to encourage the development of affordable housing through a streamlined permitting process. Projects that qualify for a density bonus pursuant to chapter 8.94 shall be eligible for an administrative non-discretionary precise development plan." We're going to get into tha- what that means in just a few slides. [00:16:30] And then of course, um, chapter 8.94, that's the local, um, uh, density bonus rules that the city has adopted.

So, what is the difference between a discretionary project and a non-discretionary project? Um, the commission has heard many discretionary projects, like use permits, variances, et cetera. This project is not, um, a discretionary project. So, I'd like to read the definition of a discretionary project [00:17:00] from the CEQA guidelines. "Discretionary project means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how [00:17:30] to carry out or approve a project." Again, that's for discretionary projects.

This project is a ministerial project. It requires ministerial review. What is ministerial review? Again, the definition from the state's CEQA guidelines states, "Ministerial describes a government decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented, [00:18:00] but uses no special discretion or judgment to reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements. And the public official cannot use personal subjective, uh, judgment in deciding whether or how the project should be carried out." This is very important as we consider the project and the appeals.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

So, diving in now into some of the specifics of the project and what's proposed. Um, the applicant is provid- [00:18:30] has applied for a precise development plan, a coastal development permit, and also a tentative parcel map. Uh, the project includes the demolition of all the existing structures on the site, the merger of two lots, and then the construction of a new 96,217 square foot multifamily structure.

So, this is the site plan of the proj- of the site. Um, what you can see ... And my mouse cursor, [00:19:00] I don't think is showing up here. But, uh, what you can see is that the, um, main ac- the only actually vehicular access to the site is off Rosecrans Avenue. Um, and that goes to a subterranean parking structure where all the parking is. Um, and as you'll see, and I'll point this out in some of the future slides, most of the structures massing is on the Northern part- part of the project, not on Rosecrans Avenue.

[00:19:30] So, the applicant is proposing 79 units, six of which are set aside for the very low income category. The project is four stories tall, um, and is between 37 and 50 feet in height when measured from the average grade. Uh, there is a mix of studio, one, two and three bedroom units proposed. Um, and the project also incorporates a courtyard that is along, um, that fronts Rosecrans [00:20:00] Avenue. The applicant is proposing 114 parking s- ... Um, I'm sorry, 114 standard size parking spaces, 13 compact size parking spaces, seven motorcycle parking spaces and 27 bicycle parking spaces.

As far as the mechanics of how the affordable units are enforced, um, the applicant would be required to enter into an affordable housing agreement with the city that will allow the city to audit, [00:20:30] um, the- the property manager at any time to ensure the unit, the affordable units are indeed being rented out to people that meet the income standards. Um, and those six, um, units are, um, deed restricted for 55 years as affordable units.

So, here is some renderings of the project. Um, this is looking Northwest, um, from Rosecrans. [00:21:00] Again, you'll see there's some massing along Rosecrans, then the building shifts North, where there's that courtyard and pool. And then the massing comes back towards North ran- towards Rosecrans right above the, uh, vehicular access to the site. Uh, here's another angle looking North, Northeast. Again, you see the massing on Rosecrans, the massing pushed North, the courtyard, the vehicular access. [00:21:30] What- what's not shown in this rendering is to the left of the vehicular access are- are two existing buildings. Again, not part of the project, but, um, the bill, the project is tucked behind those two projects that are on Rosecrans and, of course, the city parking structure.

So, I'd like to talk about the height. Um, so the way we determine, um, the maximum height for any project in the city is [00:22:00] we take an average of the property corners and we go up from that average. Um, so in this case here, and I'm going to zoom in on this particular portion here, the highest point of the

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

building measured from the average grade is 50 feet. And that's from the very top of the elevator shaft on the roof down to the average of the local grade. However, when you look at different segments of the project, it doesn't mean the entire project is 50 feet up from the [00:22:30] average of, um, from the average grade.

Um, the applicant has provided this graphic, which is an attachment to your staff report, that shows different portions of the building measured from Rosecrans Avenue. And you can see different portions of the building are less than 50 feet, somewhere between 34 feet and 50 feet. Um, and especially on this Western part of the building, you'll see there's, um, it's not just one [00:23:00] flat roof line. There's an articulated roof line, um, that gives, um ... So that there's not all the massing is right at that 50 foot, um, level.

And here's another example from, uh, the Eastern part of the site. Again, I'm going to zoom in on this section here. Um, the Eastern most part of the building is 19 feet when measured from Rosecrans Avenue. And then that elevator shaft, you see that white [00:23:30] portion there, that's from there down to the average grade. That's where the 50 foot is taken from.

So, um, as mentioned, this is a density bonus project, which means the applicant has the ability to request waivers, um, from development standards as allowed under state law. So, the applicant has requested waivers from the build-able floor area, the height requirement, uh, the number of stories requirement, [00:24:00] um, the setback requirement just to possibly place an electronic transformer ... I'm sorry, an electrical transformer in side yard setback, and also a setback regarding, um, building height measured over 24 feet. The applicant has also requested a concession for maximum wall height within the setbacks.

So, the ... As mentioned previously, um, the city when reviewing the project looked [00:24:30] at a whole range of different, um, regulations. One of those regulations to check for consistency with the project and these regulations is a general plan. Um, the- the project is a high density residential development, which is allowed in the North end commercial district. Um, the project is compatible with the surrounding properties. Um, many of which are also multi-family residential structures. And the city also, um, uh, states [00:25:00] in the approval decision letter for the project that the project, uh, meets the housing element goals, policies, and programs.

So, some of those, uh, goals, policies and programs that have been highlighted are housing element goal two, which states provide a variety of housing opportunities for all segments of the community, including various economic segments and special needs groups. And then also, uh, housing element program 5A, provide incentives for housing [00:25:30] affordable to low income households and senior housing. And then also, uh, another one I'd like to highlight is housing element program 5B, which states that streamline the

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

development process to the extent feasible. The streamlining comes from the non-discretionary ministerial review.

Another thing we looked for is making sure that the project is consistent with the development standards. So, this is a summary of the development standards, uh, for setbacks, parking, [00:26:00] height, et cetera. Now, because of the waivers and concession granted to the development, um, the project is taller than the 30 foot max height, and also exceeds the maximum floor area and the maximum number of stories. However, because the project has been granted waivers for those items, it can be said that the project still meets the development standards under the code.

[00:26:30] Uh, another thing we looked at is subdivision requirements, as there is a tentative parcel map involved. Um, and that would be, um, to make sure that the project is consistent with applicable general plan policies, that the resulting site is- is physically suitable for development and a few other things. Um, we also wanted to make sure the project is consistent with the Local Coastal program. So, the North [00:27:00] end commercial district that's outlined in the Local Coastal program, um, states that, again, uh, residential development is allowed in the North end commercial zone. And we also wanted to be sure that, um, all the coastal access policies are still followed with the project. So the, um, project does not impact access to the coast. All of the vertical and horizontal access ways to the coast are still, um ... [00:27:30] Sorry, we have a zoom technicality here.

Thank you. Um, all the, um, access to the coast is still, uh, maintained. And in fact, one could say it's enhanced because there's a new segment of sidewalk along 38th Street that previously did not exist. The project, um, is because it is ministerial, CEQA states that ministerial projects are not subject to [00:28:00] st- to- to CEQA, the California Environmental Quality Act. So, um, no environmental review is required for this project.

As previously stated, um, there have been four appeals of the city's decision to approve the project. Um, I'm going to be going through the, some of the points of the appellants. Um, later on you will be addressed by each appellant, um, as well. Um, [00:28:30] and per, uh, the Local Coastal program, the planning commission considers appeals of decisions by the Director of Community Development.

So, before we get into the, uh, substance of the appeals, I'd like to remind the commission that, um, the project is subject to an administrative non-discretionary review, which per the Local Coastal program, which means, um, [00:29:00] the review of the project must be based on compliance with objective and applicable development standards. And also state density bonus law states that the word objective means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark, or criterion available and knowable by both a

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

development applicant or proponent and the public official. [00:29:30] And then the development and ... Or those, um, uniform benchmark criteria we've discussed in, um, previously, in the previous slides.

So, starting with the first appellant, Don McPherson, um, he states that the project is required to have an EIR. Um, and as we stated, because the project is ministerial, um, it is not subject to CEQA. The appellant also states that, um, there are two [00:30:00] alternative sites in the city where affordable housing could be built. Um, but staff only reviews projects that have been submitted, that have paid fees and have gone through the application process. And there are no other applications like that. Um, the appellant also claims or states, rather, that, um, the average unit size without the waivers or concessions would be 871 square feet.

The app- the, um, appellant has not provided any materials, [00:30:30] plans, studies to, um, to support that statement. The applicant, however, has provided s- has provided substantial evidence, um, for the design, what the design would look like without the waivers and concessions, and can show that the resulting units would be 490 square feet, 490.9 square feet. Uh, the second appellant is Susan Bales and Richard McKenzie. Um, [00:31:00] one of their comments is that, um, that they believe, again, environmental review is required. Um, again, because the project is ministerial, it is not subject to CEQA. They also state that there is not enough parking at the site. Um, however, density bonus law has a different set of parking requirements than what is found in the Local Coastal program. Um, and the- the proposed project actually exceeds those minimum parking requirements, um, found in state [00:31:30] law and also offers alternative, uh, parking for motorcycles and bicycles, which is not even ... Which is not required under state law.

Um, yes. Um, they also say that because the project is bringing more residents, that means more traffic and more congestion. The, um, applicant has provided tr- a traffic analysis, um, which shows that fewer trips are generated by the project than compared to what the existing uses would be. Um, [00:32:00] and also, also alternative uses. I do want to point out that a traffic analysis is not required as part of the review of the project, but the applicant has, um, still provided it. The city's traffic engineer has independently reviewed that analysis and confirmed its findings.

Um, and then finally, as far as, um, congestion and safety and traffic and all those things, again, the, um, applicant is proposing to add new sidewalk on 38th Street, which improves pedestrian safety [00:32:30] and is also creating a rounder corner at the intersection of 38th and 29-, and, um, th- Crest and 38th Street, which will allow, um, the city's public safety vehicles to make that turn easier, which, um, makes responses easier for our, um, public safety, um, employees. The, um, appellant also says that ministerial non-discretionary process that the project is subject to undermines local decision making.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

[00:33:00] Um, the state, th- the city, um, is required to follow state density bonus law, which does require expeditious review of density bonus projects.

The city requires, as I, as has been said previously, an administrative non-discretionary review of density projects, um, that that density bonus projects that, um, have, that have, um, been a ... That have applied for precise development plans. And [00:33:30] these, this requirement that a density bonus project be subject to ministerial review was adopted by the city in 2013. The appellant also states that density bonus law is a loophole for developers to overbuild. Again, the city is required to follow all local and state laws. And furthermore, um, the state density bonus law is designed to set a clear criteria, um, on, to encourage affordable housing. Um, [00:34:00] and the city has concluded that the developer has met that criteria.

The third appeal is geor- ... Or- or I'm sorry, the third appeal was filed by George Bordakas. And, um, one of his comments is that granting waivers means ignoring the code. Um, the applicant has provided reasonable documentation to support the waivers granted, um, and specifically the state density bonus law states that in no case may a city, county [00:34:30] or city and county apply any development standard that will have the effect of physically precl- precluding the construction of a development meeting the criteria of subdivision B at the densities or with the concessions or incentives permitted by this section. So again, the applicant has provided quite a lot of support studies to show that, um, not allowing the waivers would physically preclude the development of the project. Um, the appellant [00:35:00] also states that a height waiver is fundamental to the project-

PART 1 OF 6 ENDS [00:35:04]

Ted F.:

Owen also states that a height waiver is fundamental to the project and exceeds, uh, height allowable and should be reduced to meet the 30 foot limit. Um, tha, again the applicant has provided substantial evidence to show that the 30 foot height limit would physically preclude the construction of the building and therefore the waiver is justified.

The appellant also states that the director does not have the authority to review or approve precise devolvment plans [00:35:30] however, the LCP is very explicit that the community development director shall approve, conditionally approve or disapprove applications with minor exceptions and precise development plans. Um, the appellant also states that the director's findings in granting approval does not justify the variances granted. So I want to be very clear that the applicant has not applied for a variance. Um, state density bonus law allows for waivers and concessions from development standards, [00:36:00] waivers and concessions are not variances.

The fourth and final appellant is Andrew Ryan, um, he, uh, has made several points one of which is the project's proximity to Chevron site, creates a quote

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

"adverse impact on public health." So first that term adverse impact is defined in state law and it means a significant, quantifiable, direct and unavoidable impact [00:36:30] based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete.

So the applicant, I'm sorry the appellant Ryan, um, points to an initial study on the neighboring Chevron Site, um, to raise concerns about the environmental impact of the project. Um, however that initial study did not analyze the project site and analyzed [00:37:00] the Chevron Site, and therefore we cannot use that study to determine this project's environmental impacts. The applicant has also provided a phase one environmental side ana- sorry, side assessment that was included as an attachment to the staff report and that showed that no conditions detected on the site pose a threat to human, to the environment or to human health. The appellant also states that a two story deep excavation presents a hazard [00:37:30] and therefore poses a quote "adverse impact on public safety."

Um, so regarding the, um, hazard of construction and the soundness of the structure when any project including this one goes through or applies for a building permit, the city's building safety department, fire department, um, review the project to make sure it meets the building code, the fire code, et cetera. And that's called the plan check process, so a building permit will not be issued [00:38:00] unless, um, it is ensured that the building project meets all the required building codes, safety codes, fire codes. Um, and also in, besides that point the appellant has not met the statutory requirements for demonstrating an adverse impact which was discusses - oops, excuse me - in the previous slide.

Um, another point the appellant makes is that the city cannot grant a quote "incentive" to allow a building site to exceed 20% of the [00:38:30] 30 foot maximum height limit. Um, the applicant has requested a waiver from the height limit, not a concession. Um, and incentives and concessions are not the same thing, as we discussed previously.

The appellant also states that a city wide election is required for a building that exceeds a maximum height limit. So, a referendum is required when we change a development standard for an entire zone, um, specifically the [00:39:00] RH zone, um, this project is not proposing that. This project, er, the referendum requirement does not apply to projects where either the state or local law explicitly allow for an increase in development standards, like a density bonus or a variance. The city is not proposing to change the height limit in the C&E zone and therefore it is not su-, this project is not subject to a referendum.

The appellant also [00:39:30] says that the project does not provide the minimum number of affordable housing units to obtain the 35% density bonus. The city has provided the math of how we calculated the density bonus and the percentage of units that is stipulated by state law is based off the base density

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

of the project. Which is the density, um, allowed with no concessions, or waivers or density bonus. And, that percentage allows for a 35% [00:40:00] density bonus for the very low income category.

Um, the appellant also says that the code only allows for a single incentive, not multiple incentives. Again, the applicant has only requested one incentive, um, even though the, this project was entitled to two incentives under state law. The applicant has requested several waivers from development standards, waivers are not incentives and there is not cap on the number of waivers a project [00:40:30] is allowed to have. The appellant also says that, uh, the project's lot merger with result in a lot that exceeds in the maximum 7,000 square foot lot size. However, the LCP is very clear that density bonus projects are not subject to the maximum lot size requirement.

Um, that concludes the appellants, um, points and you will have the opportunity to hear from all of them. I'd like to talk about the public notification [00:41:00] and outreach for the project, um, a notice was mailed out January 6th 2022 about the direct, that the city was considering the project, a decision was made on March 29th which well exceed the seven day minimum noticing period.

Um, a notice for this meeting was mailed on May 26th and also a courtesy notice was placed in the newspaper. Um, in addition to that, staff has been maintaining a web page on our site for the project and there is a tremendous [00:41:30] amount of information there, lots of frequently asked questions, copies of plans, the applicants materials, appellants materials, public comments, um, and how to get in touch with ci- staff about the project. And, we are also maintaining an interested parties email list which has over 300 email addresses where people are periodically notified about, um, milestones in the project.

Uh, we did receive quite a bit of public comment over [00:42:00] the last several months about the project, so between January and May 25th, we received dozens of public comments - mostly against, some in favor. Um, during the noticing period for the meeting, uh, before, between the meeting and the publication of the staff report we received three public comments, all in favor. And, since the staff report was published last, em, on June 3rd we received 13 public comments - one in favor, 12 opposed.

[00:42:30] So, with that, staff recommends that the commission review the project for compliance with the applicable and objective state in local regulations and adopt the resolution upholding the director's decision to approve the project.

Um, I am available for any questions if you have any.

Speaker 2: Excellent, do any of the commissioners have questions?

Speaker 3: No.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Speaker 2: [00:43:00] Commissioner Morton, do you have any questions?
- Morton: No questions at this time.
- Speaker 2: Thank you. Right is the, uh, applicant present?
- Ted F.: He is, let me pull up his, he does have a presentation, let me pull that up here.
- Speaker 4: [00:43:30] Thank you, Ted, that was great and thank you, um, ex-Chairman Morton and new Chairmen Ungogo and congratulations to Vice-Chair, um, Takashika. We're excited to be here today and thank you for opportunity to share more details [00:44:00] on the project and answer questions and provide some history. By way of background we were initially introduced to the site by a New York developer seeking capital and he was looking to build a 10 plus story luxury hotel. We used to say that we never wanted to do that deal and we, and it never came to fruition thank goodness.
- A year later we put the property into Escrow, with the idea of a more modest boutique hotel, complimented with retail and restaurants much like Matlocks. [00:44:30] After months on analysis it was determined that a mixed use hotel development would not pencil as it would have required developing over the city's parking garage as well as the Chevron easement and furthermore every hotel flag had not interest in the corner. I have a hotel background, we reached out to, um, Bears, to Kimpton, to Viceroy, to Proper, to, um, Marriott. And no one seemed to be as adorned with or in favor [00:45:00] of [add] in the way we were.
- Um, some time later the sellers, having been in and out of Escrow multiple times agreed to sell the property at a number that made sense to me and we acquired the property. Uh, if you can go to slide two. Next slide. Oh, I, I can do it? Is it here? Top arrow, which one?
- Ted F.: Just scroll
- Speaker 4: Oh, just scroll? Great. [00:45:30] Our objectives and considerations were the following, we wanted to develop the tired and legal non-conforming buildings. We wanted to mitigate crime and eliminate the blight that was associated with these buildings and the area. Establish highest and best use, whatever that may be. Build a thoughtfully designed quality project or a longterm hold, optimize public parking, mitigate traffic drips, set back proposed structures [00:46:00] from Rosecrans, and lend to the height fronting Rosecrans.
- Speaker 4: After months of analyzing every possible use case, from mixed use retail to office to hotel, we and our experts concluded that multi-family residential was indeed the highest and best use. Why? Because it helps the city reach its housing goals both market rate and middle class. It optimizes [00:46:30] sustainability, by creating proximity to the labor force, between, between the

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

labor force and the work place. It compliments the restaurants and retail businesses located in El Porto and the North End. It has the least traffic impact when compared to alternative developments, which include mixed use retail, hotel and including existing commercial use. It improves access to public parking and it reduces crime by virtue of the fact that you have [00:47:00] 79 residents or units occupied with residents that are obviously concerned with the, with the neighborhood on the corner the intersection.

There's been frustration over the fact that this project was subject to specific entitlement path that did not require a public hearing or hearings. And therefore resulted in, in less outreach than would be typical. Um, as Ted reviewed this is a ministerial [00:47:30] and non-discretionary process, I didn't write the code, I didn't write the, the, the state density bonus legislation we just simply complied with it. Um, but we did anticipate what we believed to be a concerns that would ultimately be voiced and tried to incorporate those into our design. Upon receipt of the public comments we initiated the following; we developed a project website, um, and concurrently the city developed their own project website that had all our information and schematic design, et cetera.

We [00:48:00] hosted multiple breakfasts, lunches and formal town halls we presented at the rotary club. We asked to present at the chamber in the North End Business Association, we were declined. Um, we made good faith effort to communicate directly with opponents, concerned citizens and appellants. We have listened, we continue listen and will make every effort, every reasonable effort to incorporate comments into the design as we proceed with design development.

Okay, now we get the pretty pictures. These are some [00:48:30] updated renderings viewing the property from the, um, with the, uh, towards the west. The building on the far right there is the fitness center, um, let me move onto the next slide. This is the courtyard that Ted references, you can see how far the building is set back from Rosecrans. And here are some of the slides that kind of inspired or [00:49:00] are inspiring the design. We're very pleased with the feedback we've received from the various folks we've met with, they've appreciated that we did not take full advantage of the State Bonus Density Law allowances. Though the building could have been larger, we did not take advantage of that. Uh, they appreciated we, our quality developers who intend to hold the property long-term, they recognize the thought process that went into the site plan and programming which recesses the property from Rosecrans, maximizes the number of studios. The [00:49:30] unit mix as you all are aware is, has a disproportionate amount of studios and we did that by design as to not have to ask even more build able area and/or height.

Um, we created these California rooms, I'm going to go back one slide, you can see these patios are not the typical balconies that are just attached to the outside of the building that can look a little trashy with the weber and the wet suits and the surf boards. So these are what they call California rooms, they're

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

essentially indoor, outdoor rooms, [00:50:00] um, that, that we think are much more sophisticated and much more useful.

Um, we are proposing, this is, um, some exterior, um, Finnish inspirations which include smooth coat stucco, limestone, uh, natural woods, uh, et cetera. Moving onto the interior, [00:50:30] we are looking at the same thing, you know, very clean coastal, uh, natural light soft tones and what we believe to be kind of a timeless aesthetic.

So, think montage, the miramar, this is going to be a beautiful project. It is going to be, you know, we're focusing on the middle market. Um, but it is Manhattan Beach and we're very sensitive to ultimately what gets built here and [00:51:00] how the property's tenanted and how it's ultimately operated. Um, that concludes my presentation.

Speaker 2: Um, um, tell me do we move directly to the appellants

Speaker 5: That is correct [00:51:30] we can go through the four appellants, uh, based on, uh, when they submitted their appeals and I believe we will be starting with Don McPherson.

Speaker 2: [00:52:00] Appellants, you will have five minutes to speak.

Don McPhearson: Okay, good afternoon, um, let's see, I request that the planning commission requires an environmental impact report, an EIR for the IRS project for the California environmental quality act, CEQA, the planning commission has that discretionary authority. Um, this is not a ministerial process, this is a public hearing and, uh, Staff [00:52:30] makes ministerial decisions but the planning commission exercises its, um, discretion. And in this particular case, CEQA, is absolutely clear that this, uh, this project is subject to environmental review.

Um per item one

Ted F.: You just press space bar

Don McPhearson: Alter, how do I go back?

Ted F.: Just [00:53:00] hit the [inaudible 00:53:02]

Don McPhearson: Oh, those two, okay, fine, okay. So for item one, uh, the project deviates from municipal code, um, by four stories instead of three. 50 foot height increase versus 30, 79 units versus 51 permitted, a 47% increase in floor area and, uh, a 51 parking space reduction, 29% of the total 178. [00:53:30] All these code deviations for just six affordable units, at that rate it will take over 70 over height projects like Highview for the city to meet its 406 affordable unit quote that the state mandates. Developers will build those 70 over height programs in the coastal zone for ocean views. In 1997, I managed a successful voter initiative

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

that restricts residential heights in the city, 30 feet for the coastal zone. If High Rose approves, [00:54:00] commercial heights everywhere in the city will go up but not residential heights. The city does not have an improved EIR for the sixth housing element upgrade with runs from 2021 to 2029, the city does not have a valid housing element upgrade at this time.

Therefore, Highrows per item number three, CEQA requires what's known as a single program EIR that encompasses the total development of the 460 [00:54:30] units. This EIR must consider cumulative impact factors, by all 70 projects such as traffic, parking and bulk. The city will manage a contractor to prepare the EIR, it will take well over a year and cost a million or more. The Highrows applicant must pay the cost. CEQA requires alternatives in the single program EIR such as the two identified in item four.

First, a large [00:55:00] 100% affordable project on the city owned 5.4 acre parcel adjoining the Manhattan Beach mall and second, a 100% Highrows project itself which could provide about 50 spaces. They, one on the mall, well can satisfy the entire required 406 spaces, so let's focus on that first. If I can figure out how to [00:55:30] do this. Hmm. See Highrows.

Okay, so, this is an aerial view in the middle is the city lot 5.4 acres and then the country club, 7.5 acres. On the left, on the west side is Manhattan Mall, on the right side is the, um, hotel [00:56:00] with its golf course and everything. Um. The next, let's see, so, hope this works. So, so this is the 5.4 acre lot, it's unused, every time, I've gone there several times, it's never used more than that so it's basically a vacant lot. Um, so the, the lot can accommodate 608 affordable [00:56:30] units mandated by the state, that may however result in a development that lacks open space and low profile required by the general plan.

So note in the middle, there's this, 11 blue and green rectangles which are, um, tennis courts. The city has the right of domain to acquire that area from its tenant to ensure affordable housing fits with the low profile of the adjoining Manhattan Village. The tennis courts, um, [00:57:00] don't have much capital improvement so that's not going to cost very much. In conclusion the planning commission has the authority to make a finding that Highrows requires a single program EIR so please do it. Thank you.

Speaker 2: Thank you.

Ted F.: Oh, there you go.

Speaker 2: [00:57:30] Uh, George Bordokas, you'll have five minutes to speak George.

George Bordokas: Pardon?

Speaker 2: You'll have five minutes to speak.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

George Bordokas: Not seven and a quarter like, uh.

Speaker 2: He had five minutes.

George Bordokas: No, the previous speaker had seven and a quarter minutes.

Hi, good afternoon, [00:58:00] wonder why we're here. I'm here because I care about Manhattan Beach, I've raised two children here, they've attended public schools here, I take advantage of the beach and of course the dining and nearby fish bar, near this location. Um, I'm also responding to your response to my appeal, in which I asked the developer be held to the 30 feet, 3 story height limit [00:58:30] under the code. Now, um, I know we're under a lot of pressure from the state of California, it isn't like this law is new. It's been around for decades and all of a sudden they're pressuring every city, especially coastal cities to, to, to respond with a plan and also to respond with tangible results.

That's what we're trying to do here, with this, it's a pretty nice development. It's really, looks good, very great, [00:59:00] looks like it will be just really, fit in to the Manhattan Beach style. But, one thing that it doesn't do is that it provides six affordable units and, um, we need 406 as Don just said. And it has 73 very, very, as you say, profitable units for, for the developer. So the developer is paying six units to the state to [00:59:30] make money on 73 units and, um, not abide by local, our local codes.

Now, your response in the staff report to my appeal said, that, uh, uh, I asked and my other question, it wasn't the question up there, whether we could say no to the waivers. And the response was state law does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility [01:00:00] for a requested density bonus. So that's from the code, well then you concluded that they did provide substantial evidence. Well, what was that substantial evidence? They gave it to you, it was their architect, it was there plan. So, did you question them? Did you say, could you possibly fit, uh, 79 in 30 feet requirement? Did you question it at all? Did you ask for a second opinion, I don't believe [01:00:30] you did. Or did you?

Okay, so what is that substantial proof? It's there proof, do they want to low lower their return on investment? Do they want to have, uh, 52 units as opposed to 79? No, they're going to make a lot of money on a differential. That's why they're building here, why, and also why they're building here is because this is a great place. It's an iconic town, it's a beach town, where people can have there families raised here, [01:01:00] where we can enjoy the character of this town and, and the way that we do that is through the code. But, because of the term waiver, we say if they can't build in the 30 foot height, then, that kills the deal. So, we can't kill the deal so we give them the waiver, right? So, they say they can't do it, so then we have to give them the waiver.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Well that's really great and the other thing is, [01:01:30] this is akin to asking the tobacco industry if cigarette smoking is hazardous to your health. You're asking them to prove that they can't do something, and you're asking the tobacco industry if cigarette smoking kills people. What are they going to say? Of course they said for a long time they didn't, why because it hurt their return in investment. Same thing that's going to happen to them if they abide and adhere to the limits. Boeing 737 Max, will it fly? Will it fly without [01:02:00] hurting people? Sure, it's fine but we had a problem with that, right? So now I ask you to reconsider the waiver for height because they are taking advantage of, uh, us of this community, of our right to control the character of our town, of our right to have laws that shape that character and also we have rights. We are not without rights. We have to [01:02:30] be treated equally, you can't give one group advantages that disadvantage us. That's not equal treatment under the law. You can't do that. Thank you very much for your time.

Speaker 2: Appellant Andrew Ryan you will have five minutes to speak. Oh, it was Susan first, [01:03:00] sorry. Um, Andrew we're going to have Susan go first and then I will ask you to weigh in. Thank you very much. Susan Bales, you will have five minutes to speak.

Susan Bales: Is a Doctor Mackenzie is presenting the, our, our presentation. Richard Mackenzie.

Speaker 2: Oh, Richard will be giving the presentation, okay. Thank you very much.

Richard Mackenz...: [01:03:30] I don't have slides to impress you, I'm going to try and hold your attention with a verbal presentation. I'm a physician by training and by practice so all this building stuff which is very concrete is easy for you to discuss and to argue with. But you can't argue with the affect upon human nature and on the human side of the [01:04:00] equation. This appeal process that we submitted was, uh, uh, represented the thoughts of a group of constituents. Uh, residents who would not be, uh, directly affected by the Highrows project. We are all longtime residents of Manhattan Beach, we are all concerned for the impact of the project not only on the present but also on the future infrastructure and ambiance [01:04:30] of the city.

Our appeal then essentially centers on five issues. Lack of bonafide environmental impact report, an evaluation of its ramifications on existing city infrastructure, this raises the important question as to why immediate housing issues trump environmental concerns. Does not the environment have a standing in protecting itself from [01:05:00] undue harm?

The second issues, is the, uh, inappropriate use of existing public resources. Public parking, already scarce issue in Manhattan Beach will be further decreased. This will impact local residents, visitors and potential consumers to local restaurants and merchants while exacerbating already existing safety concerns.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

And the third [01:05:30] issue is the impact on the quality of life. And this is an immeasurable but an assumption, the project will infuse hundreds of new residents into an area of the city that already has limited infrastructure and residential amenities. Imposing this sort of change on existing residents will only detract from the present sense of community and increase subsequent risk for possible criminal activities. [01:06:00] And remember, criminal activities doesn't come from within, it comes from without.

Fourth is an undemocratic process and we raise the question whether Manhattan Beach is not a democracy or is it a democracy. The singular decision of an appointed employee in city government to approve the project undermines the informed and responsive judgment [01:06:30] of our duly elected officials. The voters of Manhattan Beach must have the liberty to determine the character and the future of their city.

And the fifth and final is an unrealistic temporary fix. The California Bonus Density Law was designed to increase affordable dwelling units, not to provide a loop hole for developers [01:07:00] to overbuild the community. This project does not address that problem, while disregarding the existing 30 foot code for a precedent setting 50 foot limit it will have 79 units with only six designed for very low income with the remainder being luxury units. Present market rates in affluent Manhattan Beach are beyond the reach of the average wage earner. Not [01:07:30] only to rent but to address their everyday needs. To truly address the mandate by the state, should not the project have 79 for the very low income and six luxury units.

Finally, this project undermines the very charge authority, and legitimacy of the planning commission. Are its codes and enforcements applicable to only some [01:08:00] projects but not to others? If that is the case, how can you plan for the city's future? How can you legitimize your actions to some and not to others? The very notion of planning is eviscerated by this project and the enabling legislation. In our opinion, the Manhattan Beach planning commission must go on record on standing up for its own jurisdiction. [01:08:30] We are concerned not only for the character of our small beach community but also for the potential aspects of environmental impact on public access and safety.

Speaker 2: Thank you, Richard, your time has expired. Richard your time has expired, thank you very much.

Richard Mackenz...: Thank you.

Speaker 2: Appellant Andrew Ryan you'll have five minutes [01:09:00] to speak.

Andrew Ryan: It says my video has been stopped by the host, um, would you like me on video or

Speaker 2: Audio is fine

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Andrew Ryan: I don't know

Speaker 2: Audio, uh, video is fine, let me grant you access.

Andrew Ryan: Thanks

Speaker 2: [01:09:30] That's not letting me...Yeah, it's not letting me do it. Okay close first, okay. You should be able to start your video now.

Andrew Ryan: Thank you. All right. Members of the planning commission, thank you very much for considering my appeal. My name is Andrew Ryan, I'm an attorney in Manhattan Beach and a life long resident of Manhattan Beach. I appreciate, uh, the city's evaluation of my appeal [01:10:00] and I have a couple comments based on that evaluation that I-

PART 2 OF 6 ENDS [01:10:04]

Andrew: ... and I have a couple of comments, uh, based on that evaluation that I'd like to address to the planning commission. Um, I'm gonna focus mostly on the environmental aspect of this, because I feel that in, in my five minutes that I have, uh, the environmental aspect, uh, should be, uh, considered, uh, uh, most, uh, most, most preferentially. So, uh, on the ministerial exemption versus discretionary exemption, and how we are relying upon, it [01:10:30] appears here that sequel does not apply, because this is a ministerial, uh, project where there's no discretion, uh, provided to the planning commission or to the city in improving this project. Uh, uh, I disagree with that in part.

Uh, I believe that the Government Code, uh, specifically Government Code Section 65589.5, uh, the only provision in that code section that allows for discretionary review deals [01:11:00] with environmental impact. And the section I am relying upon and I'll quote to you is subsection D, which says, "A local agency may, um, evaluate based upon a preponderance of the evidence." And in my world, preponderance of the evidence is when you evaluate the evidence to a 51% degree or higher, uh, probability. So that requires discretion on behalf of the planning commission [01:11:30] or city council. And when you are looking at the preponderance of the evidence and the discretion you're supposed to apply, one of those aspects comes down to whether this project has a, "Specific adverse impact on public health and safety."

And going to that public health and safety aspect, I presented with my appeal, a report from September of 2019, from an independent engineer hired by Chevron, [01:12:00] that was, uh, just... that was hired to prepare a report on the toxic, uh, uh... o- on, on the site, because the site has a refinery, and yearly Chevron has to report to the state of California, environmental EPA, or the EPA, for state of California, the, um, conditions of its site. And I quoted to you this issue with a floating petroleum. And I don't think anyone here is gonna [01:12:30] doubt that petroleum is in itself... I- it's a toxic substance, and it could

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

have an impact on public health and safety. And this was based upon, uh, a pretty extensive review, uh, presented to what I said was California EPA, and this report was f- uh, dated September 9th, 2019, I believe, um... Sep- September 5th, 2019.

The [01:13:00] proposed project here, obviously is, uh, attempting to dig down pretty deep, uh, two stories of subterranean parking. Uh, and I didn't see anything on the plans submitted for city approval, as to how far down the support beams for the project will go. Uh, that has not been presented as far as I can tell, in the public record. Uh the Chevron floating petroleum issue goes down to the groundwater, uh, in the area. Um, [01:13:30] it's unclear if this project is gonna go down that far, but it's gonna go down fairly deep.

And i- in, in, in the city's analysis of my, uh, appeal and the chevron report, it relies upon the report that, uh, Marlin Equity has presented from Citadel E- EHS, which was dated February 20th, 2020. And this February 20th, 2020, uh, of course, reports are only as good as a data they rely... [01:14:00] they, they are [inaudible 01:14:01] upon. And in this report, it talks about performing, um, ground soil sample. And it says on page 20 of this report that a total of nine soil borings were advanced to depths of 20 or 30 feet along the north property border line.

Now, again, let's look at the site. The site is bordered directly on the Chevron site. Uh, there's no subterranean barrier between [01:14:30] the north property line of the site and the Chevron site. Uh, floating petroleum obviously means that the petroleum is moving, uh, it's not stationary. So there's nothing to indicate that the Chevron site is barricading off the floating petroleum from seeping into the site of the proposed development.

Speaker 6: Thank you, Andrew. Your time has expired.

Speaker 8: [01:15:00] Next we'll... Yes, next, we'll allow an opportunity for the applicant, uh, to rebut the appeals.

Speaker 6: Applicants you will have five minutes to speak.

Speaker 7: Uh, thank you. Uh, I'd like to first address public parking. I'm not sure if you're aware that existing [01:15:30] commercial buildings are legal non-conforming, which is to suggest that they have no parking, the TradeWind's property that had tenants and, and customers that visit the tenants f- and, and f- for the most part park in the city parking garage. Um, that garage is about 53 spaces as I've counted. Um, when we acquired the property, the Chevron Easement, which is behind our property between us and the Chevron site is about 150 spaces, and that was controlled exclusively by [01:16:00] Verandas. Verandas unfortunately didn't survive the pandemic. So now it's been utilized by the public.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Um, to the extent that this project goes forward, our parking will be provided subterranean. Um, and it will re- relieve the demand on the city parking garage and free up the 150 spaces that are between us and, and the Chevron site. So there's 200 some odd spaces that effectively get freed up to the extent that this project gets developed. So parking in our opinion gets improved. [01:16:30] Um, in terms of criminal activity, I'm not sure, uh... And I'm not addressing these in any particular order, uh, with respect to the appellants, but just taking down notes here. There was a reference to criminal activity being increased as a function of residential development. Um, I don't know if there's data to support that, but certainly the, the buildings that exist today and the, um... and compare that with a brand new, um, completely occupied residential property with... that's occupied with families and kids, [01:17:00] and one, one would think that would be, uh, a safer environment than, than what exists there today.

Um, there's reference to the sixth affordable not solving the problems. We understand that. We're not looking to solve the state's housing crisis with this, with this single project. But the state also is looking to just generally provide housing stock across the state, it's not just affordable, they're after. They're after moderate and, and middle income and workforce. And, and, and this project provides not just the six units, but 73 units towards much, you [01:17:30] know, desperately needed housing stock. The average price of a home in Manhattan Beach is, is around \$3 million. To rent a home in Manhattan Beach is 5, 8, 10, 12, \$20,000. I have a friend that rents, rents his home in the Tree Section for 23,000 a month. It's getting ridiculous. Um, we need more rental product that's affordable for young families, otherwise, you're gonna end up like Carmel and just have a bunch of old folks living in Manhattan Beach.

Um, as to whether this project is precedent setting. [01:18:00] Um, you know, in the last housing, housing cycle, we were required to build 54 some odd, very low income units, we built zero. And this housing cycle, I suspect, we're gonna build maybe 10, or 15, or 20. We're not gonna build 450. And the reason for that is because for a site to make sense for it to be feasible, and for it to underwrite, you have to have a willing seller. It has to be zoned correctly. It has to have the right geometry that supports a subterranean garage. You have to [01:18:30] ramp these garages. So you can't just do it on any site, it needs to be at least an acre, and it needs to be relatively square. This site is irregular, and it has a 30-foot slope. So it's very expensive to develop not your problem, our problem, but just a d- a data point.

Um, and so for the entire list of properties, Canada properties that are listed in the sixth housing element, eligible for residential development. I don't know f- f- as a fact, but I can assume that none of those properties have traded since that public... that document [01:19:00] went public. Um, and there's developers out there like me that are looking for opportunities to develop in, in the South Bay, and they just can't get the numbers to work, because you have to have a willing seller. It has to be priced right. It has to be unencumbered. Um, it has to be the right size. And it's just there's... The, the moons really have to align. You have to

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

check a lot of boxes. We got very lucky with this property. We think it's a unicorn. Um, and, um, I feel very comfortable with what we're proposing in this location. Would I be comfortable doing this at Highland [01:19:30] and, and, uh, Manhattan Beach Boulevard? No. But this is next to a refinery. It is, you know, upwind from the main intersection, and the views of [inaudible 01:19:41] the refinery in the transmission lines.

So, um, I live, work, and play in that community band for a long time. I'm very sensitive to what gets developed there, and we've taken this into consideration when we put forth this program and the standards proponents, proponents of this project. Thank you.

Speaker 8: [01:20:00] At this point we're going to provide an opportunity for the public to comment on this item. Um, [inaudible 01:20:11] Cortez will be managing, uh... calling on people, if you're in the room and intending to speak you should, should, uh, please fill out one of the... Are they still yellow?

Speaker 9: Uh, they're white. I, I do-

Speaker 8: The forms.

Speaker 9: ... have the yellow one, though.

Speaker 8: Uh, just so that we can have your correct information in the, in the record. Um, [01:20:30] okay.

Speaker 6: Uh, Kevin Culvert. Kevin, you'll have three minutes to speak.

Kevin Culvert: Hi, my name is Kevin Culvert. Uh, thank you for having me today. Uh, as background, I've spent my entire life in the South Bay, in the last 27 years as a resident of Manhattan Beach. I [01:21:00] know the site location very well as I lived in the North San Section for 25 years, until recently moving to the Poet's Section. Uh, I blame my two young kids for that. Uh, I have, um... And, and I've also was a former, uh, environmental engineer. So I'm not an expert, but some, some understanding of the project. I have two toddlers entering Manhattan Beach schools and plan to live the, the rest of my life in Manhattan Beach. Um, perhaps I'll even have the, um, the honor of serving on this commission someday.

[01:21:30] Um, I love Manhattan Beach. Um, even though I, I support this project, I respect everyone's, um, opinion and love seeing my neighbors getting involved. Um, I do realize people tend to show up to oppose more, more than in favor. Um, and I do believe that many of my neighbors who couldn't take off work today to be here feel the same way as I do. As much as I would love Manhattan Beach to stay the same way it is forever, um, I realize it's naive to think that an acre of [01:22:00] relatively undeveloped land near the beach will stay vacant, uh, it will be developed. Uh, after reviewing the various options for

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

the property, I do believe that this project represents the best use and is good for the city.

Um, I've been both a renter and homeowner, uh... homeowner in Manhattan Beach, and very attuned to the, um, the extreme lack of affordable housing. I was lucky enough to take advantage when I was younger and move here and afford it. Um, not only does this project allow younger families and [01:22:30] lower income residents the ability to live in our wonderful city. It also helps address the statewide mandates to add more affordable housing. The push for these types of mandates only seems to be increasing, and I worry at some point that the city will be, um, forced into less desirable ways to address these mandates.

Uh, the proposed residential use seems to have the least negative impact of other uses, particularly new retail. Um, also, I believe one of the key things that's kept Manhattan Beach so special and different from [01:23:00] other cities all these years is that it's maintained its small town family-oriented residential field, which is u- pretty unique. And in this regard, I believe people should... you know, I believe that people should be living, you know, near the beaches, and retail should be limited to select areas and more generally located towards inland towards Sepulveda.

Uh, the project seems to have several additional benefits. It helps existing local businesses, decreases traffic and in... [01:23:30] adds much needed parking. Lastly, it gives me personally a lot of comfort that the developer is a local resident, plans to hold this investment a long time, and is generally aligned with making our city better. Um, I believe [inaudible 01:23:43]-

Speaker 6: Kevin, your, your time has expired.

Kevin Culvert: Great. Thank you much so much.

Speaker 6: Kate Hirsch. You'll have three minutes to speak.

Kate Hirsch: Hello, [01:24:00] commissioners. My name is Kate Hirsch, and I'm here to speak in support of Project Verandas. I've been a South Bay resident for 18 years now, and I've spent 14 of those years as a renter in three different apartments in North Manhattan Beach, close to the Veranda site, first on Manhattan and Marine, next on Rosecrans and Highland, right across from the Veranda site, and most recently at 29th in Manhattan, right by Bruce's Beach. You know, none of those apartments were class A products they were all built in the '60s and '70s, [01:24:30] and not well maintained, and two of them had been taken off the rental market and converted into single family homes. But they were close to the beach, so it was worth the compromise. I was also Nextdoor Middle Strand neighborhood lead until 2019 and helped Nextdoor actually create the boundaries in that section of town. So I'm very familiar, um, with the area.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

I love North Manhattan because not only of the community, but because I've always commuted to work, [01:25:00] and it provides easy access to the 105 and the 405 freeways and the West Side. I'm sensitive to traffic and adding congestion to the neighborhood and fellow commuters. I'm in support of the Verandas Project, because it's providing new high quality rental units in North Manhattan Beach. It's providing the opportunity for people like me to be able to move to Manhattan Beach and enjoy our beach community. It's doing so in a thoughtfully designed way, and it's not creating traffic... increasing traffic. [01:25:30] I worry that if we don't support high quality projects like the Verandas Project, we will not encourage growth and diversity of our population. And if I was moving here today, I would be priced out of this market and due to the lack of availability of rental units and the community that I'm lucky to call home. Thank you.

Speaker 6: Luke Henriksen.

Luke Henriksen: Hello, [01:26:00] my name is Luke Henriksen, and I'm here today in support the project. As a resident of North and Manhattan Beach, I pass by this property every day and see how under utilized this law is, I believe the current use of this land is depriving Manhattan beach's residents and businesses the growth they deserve. We hear so often of the parking crisis and housing shortage crisis is in Manhattan Beach. But if we do nothing about this, then these are just words that are forgotten, and the impact is felt by our [01:26:30] residents. I believe we have the solution in front of us, this project will not only help alleviate the current housing and parking shortage crisis, but do so in an elegant way while elevating Manhattan Beach to a better fu- better future. Thank you.

Speaker 6: Nick Grasu?

Nick Grasu: [01:27:00] Well, I was definitely expecting everybody to be opposed to this project. So a lot less stress for me, knowing that I support and I have some other people that are supporting it as well. So a little bit about myself, uh, moved to Manhattan Beach, uh, actually in El Porto about five years ago, and quickly it became a neighborhood, a community, something that I've never experienced anywhere. I've lived in London, Tokyo, Los Angeles and have not had that same experience. So it really is [01:27:30] all about the people. And, uh, it's not really about what it looks like, the buildings that go up or anything like that.

The fact that we have a program here, that is going to promote investment in our neighborhood that is going to attract young families that can actually become part of our community, I don't even think that we realize how good of an addition that's gonna be in our community, and it's gonna, it's gonna last going into the future. Um, I wish I could say [01:28:00] more about the legal aspects as to what's going on. But I think staff did a pretty killer job with everything. Um, I think you're, uh, you're doing a job here that's pretty much thankless, always, no matter what it's like basically running Yelp, where you're only gonna hear the negatives and nobody will ever be completely satisfied. You

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

won't be thanked ever, but the work that you do is absolutely essential to, to this community. So good job, keep up the good work and, uh, good luck.

Speaker 6: [01:28:30] Gary Horowitz.

Gary Horowitz: Thank you for the opportunity to speak. Um, I recently moved a couple miles south, but for 26 years I lived two blocks south of this, uh... In the Tree Section of the project. So know, [01:29:00] know the site very well. Um, as I think logically about the project, and listen carefully to all the objections raised in online and today, um, I think about the possible uses. I mean, the reality is we can't go back to 1920. It's not gonna be vacant land. I don't see any scenario that this is gonna become a park. Um, it's gonna get developed. And when you think [01:29:30] of the possible uses, besides this one, it's gonna be a hotel. It's gonna be office space. It's gonna be heavily used retail.

So given the fact that it's going to get developed. My conclusion is this is the best and highest use for it and really the least impactful and the least disruptive of every other possible use that I think will make sense from the development perspective. Obviously also serving a need [01:30:00] for housing. Um, so I believe it's gonna be a very positive addition to the community, and absolutely has my support. Thank you. Thank you.

Speaker 6: Ronald Shindel... Shandall.

Ronald Shandall: Thank you. So I've not lived here my whole life, but I've probably lived here all your life.

Audience: (laughs).

Ronald Shandall: (laughs), I moved [01:30:30] here in 1971, and, uh, first place was in El Porto very close, and now I live in a Tree Section, also, uh, very close, walking distance to the property. Uh, I think we need to get a little focused here. The objections to the project are not to kill the project or to have no apartments there. It's the height, which would stick out like a sore thumb. And that's all based [01:31:00] on a waiver, and the only, uh, reason a waiver is was evidence produced by the developer themselves, that the project could not be built within the 30 plus 20% 36 foot height limit. I think it's hogwash, that has to be challenged. Um, the first thing.

The second, uh, point I wanna make was, uh, traffic. The Highland to Vista Del Mar is a major commuter route. And I think we all remember, [01:31:30] when Vista Del Mar went down to one lane, what a disaster that was. So the thing about apartments and all the additional apartments by the additional floor is the traffic being people who live there and go to work. While the average traffic may be less than, say a business or restaurant or whatever, that traffic is exactly during the commuting hours, when it is most impactful, [01:32:00] and the traffic during a commuting hours is gonna be much higher with residential units

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

than it would be with other businesses. So that's another, uh, just aside. The main thing is the height. I think most of the people who are objecting, don't object to apartments being there, and a nice, uh, complex like that being proposed, we just want it within the allowable height limit, and a waiver is just, uh, unsupported. [01:32:30] Thank you.

Speaker 6: John Dumbacher.

John Dumbacher: Good evening, I'm John Dumbacher, and I live in 44th Street in North Manhattan Beach near the proposed project. Let's show our community and those outside of Manhattan Beach that we care. Number one, we care [01:33:00] about our community, valuing reasonable density at current height requirements, versus a community of mega projects. Let's have developers of mega projects, go to Redondo Beach, and other areas, and who wants Redondo Beach in Manhattan Beach. We care about our safety, realizing that proposed [01:33:30] congestion is not safe. Fewer available parking spaces and more traffic accidents. And third, we care enough to keep our height limits in place. More is not always better. We must remain strong, unified, and persistent to protect our community. Yes to development with care. [01:34:00] Let's say no when changes to the height are required. Let's say no, thank you.

Speaker 6: Rod Parsley.

Rod Parsley: I'm gonna see most of my time because most of my comments are completely redundant to those of Garry Horowitz, a prior speaker about this being, [01:34:30] uh, the highest and best use for this property. But, but quickly, um, a- as some of you know, I'm in the agriculture space, and when we evaluate a farm, um, we always ask ourselves that same question, "What's the highest and best use for this property? Do we wanna do something simple and easy like, uh, corn or wheat with re- relatively low returns and mediocre nutritional value, or do we wanna take some risks and deploy some meaningful capital and do something in the super-food space almonds, avocados, [01:35:00] blueberries, uh, potentially generating significantly higher returns, but also generating a product with much higher nutritional value?" So win-win for both us and, and our consumers.

Um, when I think about the highest and best use for this property, "What does this community really need?" And, uh, and I'm truly speaking here with my community hat on. I have no vested interest in this development. Um, but, you know, i- one of the comments earlier was about this community not turning into a Carmel, and it's become harder and [01:35:30] harder to attract young families into this community. If you've been to La Jolla in the last few years, you know, it's very hard to see someone walking down the street who's not over 85 years old.

Um, uh, uh, uh, we need young vibrant communities i- uh, in this c- i- i- in Manhattan Beach, in our school systems. Um, and I think this is a great way to

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

help attract those types of families into our community. And, um, I fully support this initiative. Thank you

Speaker 6: [01:36:00] Mike Janice.

Mike Grannis: Thank you, commission. Uh, my name is Mike Grannis. I've, uh, lived in this community my entire life, not as long as a gentleman, but, (laughs)...

Audience: (laughs).

Mike Grannis: Um, I'm also a local real estate commercial real estate developer and I've been integral in a lot of the projects in the community, [01:36:30] uh, specifically the recently approved Sunrise Senior Living on Sepulveda and the El Torito site, which is now a hotel. Thank you for that. Um, I wanna bring up a couple points. So there's been discussion about alternative uses for the site. Um, having been involved with the site from when it was sold to Maryland, uh, with the previous owner, there was little to no interest from commercial or, um, retail developers. All the interest came from hotel developers and some residential developers.

[01:37:00] So the... that being said, the applicant has decided to work diligently to create a thoughtful, well-thought-out residential plan to create the project that fits within the community and provides much needed housing to the city. In addition, the housing that's being built will offer units that can be more affordable to the average, local, uh, employee or young professional. Uh, in addition, the applicant is working well within the confines of the state density bonus that has been created to help cities find a way to build additional housing, the city is well behind [01:37:30] to develop that goal, and, uh, this will help show the state that the city is serious about reaching these, uh, milestones.

Um, also, there's been a lot of talk about reducing the height and density of this project. Uh, I can share that given the cost of land and the cost of build today it's nearly impossible for development to continue without, uh, allowing some density bonuses. Aside from this project, it wasn't till the council approved the 40-foot height limit on Sepulveda, that it made it financially feasible for the hotel to come through. And the city really [01:38:00] wanted that project, and it's been embraced by the community and had a 5-0 vote by council and planning. So, um, the site's been well designed, it doesn't infringe on any view corridors. It's gonna reduce traffic in comparison to what's there today, and also it'll increase the property tax revenue to provide the city with reliable and sustainable income [inaudible 01:38:19] a general fund. So because of these reasons, I'm asking that the council or the commission support this project and, uh, work with the applicant. Thank you very much.

Speaker 6: [01:38:30] City Attorney [inaudible 01:38:32], uh, the appellant George Bourdakos wants to provide comment as, uh, uh, resident is... are we going to allow for another three minutes?

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Speaker 8: All appellants have had five minutes to speak on the matter. And so that- that's their time for speaking. Thank you very much.

Speaker 6: Uh, Philip Cook.

Philip Cook: Thank you, Philip Cook, uh, resident [01:39:00] of Manhattan Beach 45, almost 50 years. And I built my house here in town. And I built an office building on Manhattan Beach Boulevard, [inaudible 01:39:08] my office and, and some tenants. I would have been embarrassed if I tried to skirt the laws of this city and the rules, the height limits, so I could make a bunch of money. Of course, if... I guess, if it was enough money, I wouldn't mind it, I guess. I guess, I could be less embarrassed. But these guys are private equity, they're venture money. They, uh, uh... I heard him [01:39:30] say that they intend to be long term owners. That's just not gonna happen, because the money that comes from, uh, from their backers, [inaudible 01:39:37] turnaround a, a fairly quick, very nice profit. And so they don't stay, they- they're not gonna be invested in this community.

Now there might find ways to, uh, ways to make it look like they still own the property, but they won't. I can promise you that. Um, uh, 100... 79 units really equals [01:40:00] what, uh? 148, 79, 148, uh, people in the, in the, in the building, a, a minimum of the that. To live in Manhattan Beach, it's expensive. So the way I cut my costs out, I bring in roommates, I bring in spouses, I bring in significant others, I bring in people that will help me afford to live in a place like that. So there won't be just 79 cars, there'll be 150 cars. And, and, uh, I'm shocked at the, [01:40:30] the fact that the city traffic engineer said i- that won't be impacted there, by, by all these cars. That just blows me away. Because, uh, while I'm not a traffic engineer, I can't really say, but it just... it seems contrary to common sense. Because I know how th- pack this, this building is gonna be with individuals, and every one of them has a car. Philip Cook, thank you very much.

Speaker 6: Scott Floyd.

Scott Floyd: How [01:41:00] you doing? Thanks. Uh, so I'm Scott Floyd, um, I have lived in the same house in... on 35th and Poinsettia for 20... 21 years now. Um, I was able to buy that house because I had a little place in Hermosa sold, and luckily, I was able to get that one. Um, so fully get like this is probably the best use for the s- for the space, for the project, right? But here's the problem, and some of the [01:41:30] other folks that said it too. It's like, we hear words like... Sorry, Ted, no, no offense. We hear words like waivers and concessions and acquiesce and do this and do that, like people start going, "Oh, wait, wait. What's going on here? Like, why are we, why are we bending to do a project that's certainly noble?" And certainly, I wish there could be more than six units that we could do for low, uh, income housing.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

But I guess the, the problem like when peo- people hear that and then it goes to like something like this, and it's like, "Oh, well, it's got this, and it's got that, and this is the reason why we're gonna [01:42:00] like kind of give this waiver, but it's not a waiver, it's a concession. Boy, it's not a concession, it's a waiver." And it's like, [inaudible 01:42:06] stop. Can't we just abide by the rules and the code and law that we have here? If that means the project have to... has to be 53 or 59, or whatever it is, why can't that work? Why can't 53, or 59 work and then still use six or still use five or four for the lower, um, income?

To me, it seems like there's gotta be some common sense that looks at this project and go, Okay, "We've got a lot of folks here in Manhattan [01:42:30] Beach that wanna keep it, you know, manage, wanna keep things that, you know, uh, a great place to live and be, uh, you know, uh, a good partner or c- you know, with what the state wants us to do for the l- for the low income housing, uh, kind of mandate or, you know, project," if you will.

Um, but I just think that if you look at this from a common sense perspective, and then look at... Like, I've got no dog in this hunt, I don't b- For me, it's just like, I just live here and I drive by that corner every day and the way to my office up in Central City to-and-from, but if you, [01:43:00] if you think about, how can we appease everybody that wants to keep Manhattan Beach an awesome place to live, be accepting and be, um, something for... You know, like, how do we give people like me an opportunity to buy a place here, um, and then, you know, understand what the, the folks over here are trying to do? There's gotta be some middle ground here to make this a winnable situation. So that's what I wanna say. Thanks, guys. Good luck on vote.

Speaker 6: John Wilcox.

John Wilcox: [01:43:30] Good afternoon, commissioners. Uh, my name is John Wilcox. I live at 462 Rosecrans Avenue directly across from the proposed project location. And Scott, thank you for your comments there. Um, but as someone who lives across the street, um, I kind of take to offense to some these comments about, um, view obstruction and that the only views that are [01:44:00] gonna be obstructed are that of the refinery and power lines. Because right now I have a pretty nice view of the ocean from where I live. And when that five storey building goes up, that, that view goes away. Uh, for me and my neighbors, um, the neighbor to the east of me, uh, spent about three and a half million dollars on the home that they just purchased, and she can't be here right now, but, um, that view goes away for them.

Um, so that's just [01:44:30] one issue that I wanted to address, which is the selfish issue. Um, I have concerns about the waiver of the EIR, because, obviously with the... as the one appellant, um, brings up a very valid point about proximity of the Chevron refinery and, um, petroleum. Um, so that- that's a huge concern, that I think... I know it's not required, but I think common sense would state that it should be done for the safety of our community and the

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

health, and the, the one gentleman talked [01:45:00] about healthy products. So it's, you know, it's...

PART 3 OF 6 ENDS [01:45:04]

John Wilcox: ... talked about healthy products that it's, you know, it's the prudent thing to do while let's, let's do, uh, an E- EIR to protect the health of our community. Traffic, um, traffic backs up going westbound all the way to my address in the morning during the commuter hours. So how are people gonna make a left hand turn onto Rosecrans in the morning as they try to get to the 405 southbound. Um, those cars are gonna back up [01:45:30] into the subterranean parking lot because they, they're gonna have to wait, um, you know, uh, uh, who knows how long, but it's solid, it's solid traffic trying to make that left hand turn. And there's not gonna be a traffic light there. So, that, that's another concern I have.

Crime, I've lived at my address. I've owned my property for 20 years. I have no knowledge of any crime that's having take place at the current location. So, um, that, that really isn't a valid point in my mind, uh, because there has been [01:46:00] no crime in the last 20 years on, on record that I know of. And I know that the police department has concerns as well about the, the traffic, um, issue on Rosecrans, 'cause I've talked to someone over there. Um, and then, uh, it's funny in the presentation, it talked about this property being compatible with surrounding properties. There is no such e- existing property in North Manhattan Beach. So [01:46:30] how can that be? Uh, (laughs) and then, uh, last, I wanted to... I have some pictures. Um, there's-

Fel Cortez: John, your time has expired.

John Wilcox: Okay. I'll, I'll-

Fel Cortez: Thank you very much.

John Wilcox: ... present these to the, the project, um developer.

Fel Cortez: Thank you very much.

John Wilcox: Thank you for your time.

Speaker 10: Thank you.

Fel Cortez: Are there any other members of the public that have not gotten a chance to speak? [01:47:00] For the members that are in Zoom, I will be calling you next after we complete everyone in the room here. Okay.

Speaker 11: Um-

Fel Cortez: [inaudible 01:47:07].

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Speaker 11: Resident for 50, 50 years, and, um, the one... a couple of things that came up. And this is, uh, I think the, uh, traffic study is faulted. I think that, uh, I agree with several people that they will be, um, major backups in this area. Oh, there're already backups now and there aren't 179 units. And a, uh, one comparison somebody [01:47:30] made is comparable. There is nothing comparable. I don't even know, what is the largest unit that's in that area, within, uh, five, 10 blocks? I don't know of anything that's 79 units. I don't think there's anything that's over five units. So we're having a... it's a major real re-development. But one of the major things is we haven't even met our housing element approval from the state of California. We didn't get it in, in time. And when, and, there's no, uh, [01:48:00] message that we're going to g- be approved on that. So any decision that's made on this project should be made after our housing element is approved, and that would be per state law.
- So I think that we're precluded from making any more decisions until we do that. I think this is like the wild west, those with the wagon fastest get out there and get the biggest homestead. I think you're going against what the state of California has said and that's a simple matter that we don't even have to consider anymore if all the other things that have already been mentioned. [01:48:30] Thank you.
- Fel Cortez: Any other members of the pu- uh, in person still wanna speak? All right, I will move on to Zoom.
- Speaker 12: Uh, Fel?
- Fel Cortez: Yes.
- Speaker 12: Before we do that, I believe the commissioners would like a little bit of a break.
- Fel Cortez: [inaudible 01:48:47]
- Speaker 12: So if we could take a five minute break? Yes? And we'll resume afterwards. Thank you.
- Audience: [inaudible 01:49:02]
- Speaker 13: Commissioners, there's drinks and snacks in the back.
- Speaker 12: I'm gonna-
- Audience: [inaudible 01:49:09]. You stole my speech from me. (laughs)
- Fel Cortez: Chair, [02:05:00] we're live.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Speaker 12: Okay. At this point I'd like to reconvene the meeting. Um, Fel, would you like to continue with... um, actually, we should check if anybody's arrived to, to speak in person, and if not go ahead and move to the Zoom participants.
- Fel Cortez: Um, sorry. Okay, we're good. Uh, is there any members of the public in person that would [02:05:30] like to speak that has not spoken yet? All righty. We will move on to the Zoom. Dan Stern, please unmute yourself and you can, uh, address the commission.
- Dan Stern: Hi, can you hear me?
- Fel Cortez: Yes, sir.
- Dan Stern: W- can y- I'm sorry, can you hear me?
- Fel Cortez: Yes, Dan, we can hear you.
- Dan Stern: Okay. [02:06:00] So, um, let's see... uh, I'm not sure how it's relevant but, uh, I've lived h- here for 57 years, and having moved to the north end El Porto before it was annexed and now the north end, uh, since '65. Look, and I also served as mayor so I know something about discretionary and ministerial. Ministerial si- addresses open space, [02:06:30] uh, setbacks, things that are quantifiable, not compatibility. The planning department found that the 79-unit building with 50-foot height over the mean, the average height point was compatible because there are lots of duplexes around. El Porto has multifamily, uh, [02:07:00] rental stock but it doesn't... in fact, the city doesn't have any 79-unit apartment buildings. So that seems to me to be a, a judgment, and it's discretionary.
- Um, let's see. I don't object to the building an apartment building there. That's not a problem. But the logic that's being used is flawed, and it can be easily demonstrated. [02:07:30] The, the number of low-income housing units, uh, required is six, independent of the size, because it's based on the base stock, independent of what's proposed. So we could propose a 200-unit apartment building, ten stories, 110 feet and say it has to be... it can't be done. You can't get 200 units without the 10 stories, [02:08:00] so we have to allow it. Uh, it isn't going to play. You would have great views, I might add, from the upper stories. I mean the ocean views would be just ama- amazing.
- Um, the, the big issue is the height. And th- the developer who I don't blame at all for what he's doing, but I would like [02:08:30] to size it down a bit, (laughs) is not showing views from Highland, and the reason he's not showing views from Highland is because it's going to be 50 to 60 feet above Highland. And, and that is not compatible with the, with the city. That it just doesn't work. There's no reason that the, that the project can't go ahead when the 30 or 36-foot height, [02:09:00] three stories-

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Fel Cortez: Thank you, Dan, your, uh, time has expired. Lenie Ramos, please unmute yourself and address the Commission.

Lenie Ramos: Yes, hi, thank you so much for, um, the opportunity to speak. Um, my name is Lenie Ramos. I live on 35th and Bay View, so I am about a block and a half away from the, uh, proposed site. Um, I've been [02:09:30] living here for about 20-plus years. Um, I'm not opposed to a building being cr- , um, created there. I'm opposed to, um, the height of it, and I'm also very, very concerned about the current, the traffic that it's going to create. Currently there is only one way in each direction, uh, north, south, east, west, uh, for traffic to flow. [02:10:00] It is, it... I've, I cross that street, I cross Highland almost every single day, and it is taking my life into my own hands crossing that street.

Um, it is very dangerous because many people, uh, do not see a lot of the traffic signs. Um, it's also very backed up, then people get irritated, aggravated at how long it takes to turn left on to [02:10:30] Rosecrans or, um, just to cross, uh, Rosecrans and to continue on to Highland. Um, I really am concerned about what traffic, uh, study has been done to support, um, the approval of this, uh, building. Um, I'm also concerned that it's not done during rush hour, during the summer times, during weekends when many people are in, um, Manhattan Beach [02:11:00] and populating our streets. Um, I'm also concern if we approve this, what next?

The commercial building that is on the cor- northwest corner of Rosecrans and Highland, is that gonna then be turned into, um, another apartment building that is large and consuming that then has so many, um, low-income housings that meets all the criteria? I'm very concerned about [02:11:30] what it's going to do for the current residents, and how we do not have a voice in the matter. And that's it. Thank you so much for you time.

Fel Cortez: Thank you. Zack Dean, you'll have three minutes to address the Planning Commission.

Zack Dean: Hello, uh, Planning Commission, thank [02:12:00] you for giving me a chance to comment. Uh, I'm just a resident and I, I am calling in to support this project. Uh, a lot of the other people who supporting it are a lot more, were a lot more eloquent than I am, so I'll just make this quick. Um, I've had recently have had a lot of friends move away because there's not enough housing and that really negatively impacts my quality of life. So it has, like, a personal touch to me, as it does for a lot of people.

Um, and, uh, [02:12:30] I'd also say that, uh, we're in the middle of a statewide housing crisis. So, uh, we need all the housing we can get. And, uh, I really think we should be encouraging the developer to add units, not trying to stop the project, but to add even more units to this. Uh, I think that's... um, some people are saying that the height should be reduced. But I mean if you reduce the

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

height then... say you reduce the height by 10 feet, then you're, you're eliminating like 20 homes, right?

[02:13:00] So my question to those folks who want to reduce the height is where are those 20 families supposed to live then? Do, do you have like an alternative plan, an alternative housing plan for those 20 people whose homes that you'd like to eliminate? I mean remember when we're talking about the height, we were talking about how many homes there are. So, you, you're eliminating homes for human beings. I, I think we have to remember there's a human element to this as well. And so, you know, when I, when I walk [02:13:30] around Manhattan Beach I see people building mansions and remodeling mansions, and I don't see, I don't hear a lot of people speaking out against those, or, you know, trying to stop those developments. Why is it just apartments? Uh, why it is housing for people who don't have that much money that we need to try to stop? It seems kind of, like, seems kind of weird to me.

Uh, and, you know, some, some people have brought up that there's only six units of affordable housing, [02:14:00] but then my question is, how, how many other, how many affordable units are there right now? I mean zero, right? So six is still better than zero. So, it may not be perfect, but it's, this building is a lot more, uh, a lot better than the status quo. Um, and so for all of those reasons I would urge the planning commission to support the project. Thank you.

Fel Cortez: [02:14:30] Ray Shapiro, you'll have three minutes to address the Planning Commission.

Marilyn: Hi, I'm, I'm Marilyn, Ray's wife, and thank you for taking our questions. We've owned our house on 38th Place since 2001. I, I have five questions that I just wanted to write down for the record. I don't expect an answer today. Number one, how much more foot traffic is going to be walking down 38th Street? [02:15:00] Number two, if a neighboring property decides to build a four-story building, couldn't they justify it by saying they're going the rent the necessary percentage of it to a low-income resident? What will the rental price be for the units that are being proposed at the, at the corner? Why does the developer feel that families are gonna be, families are going to be moving into studio apartments? And the last one, when Ted gave his presentation at around point slide [02:15:30] 21 or 22, he didn't read what the health issues could potentially be. And could you let us know what specifically those are? Thank you for, for your time.

Fel Cortez: Thank you. Um, Audrey, are you here to speak on today's item? Please unmute yourself. Audrey? [02:16:00] Okay, gonna move on. C. Vargas, are you here to address the Planning Commission on this item? Please unmute yourself.

Dexter Taylor, please unmute yourself. Are you here to address the Planning Commission? [02:16:30] Okay. iPhone guest?

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Audience: (laughs)

Fel Cortez: Are you here to speak about (laughs) today's item? Sorry. No? Jane Guthrie. Okay. Loralie guest?

Audience: [inaudible 02:17:08]

Fel Cortez: [02:17:00] Okay.

Speaker 13: [inaudible 02:17:09].

Fel Cortez: Okay. All right. Oh, someone did raise their hand? Okay, Michael Curran. Michael Curran, you can, uh, you'll have three minutes to address the Planning Commission. Michael Curran, please unmute yourself. You raised your hand.

Speaker 14: [02:17:30] Hi.

Fel Cortez: Hi, you have three minutes to address the Planning Commission.

Michael: Hi, this is Michael Curran. Can you hear me?

Fel Cortez: Yes, sir.

Michael: Yeah?

Fel Cortez: Yes, sir.

Michael: Okay, good. Um, al- a lot of the points have been, uh, confirmed by a lot of people before me, and I put [02:18:00] in an e-mail to, uh, Ted Faturros, um, earlier about the height. You know, Manha- when I moved to Manhattan Beach in 1971, I think the height limit was, uh, 26 feet. And it's since been changed to 30 feet. Um, the article I read about the development originally said that it was going to be five stories and about 50 feet. And so looking at the, uh, photos it looked as if it was going to be four stories, which would suggest 40 feet.

[02:18:30] That still is gonna dominate the landscape for a city that has a height restriction of 30 feet, and, uh, is already one of the densest cities in LA County. You know, it's, uh, 30 by 90 lots, um, 40 by 126 lots, et cetera and a high floor area ratio. So, uh, to bring in that kind of project without an environmental impact report, um, I think is missing the point. And I [02:19:00] unders- the reason why I didn't file a formal appeal was because it was \$500 nonrefundable for the Planning Commission appeal, \$500 nonrefundable if it went to the City Council and it was turned down.

Um, but I think that, uh, this SB9, which is the state that can override the local controls and change the, the nature, uh, of a city like Manhattan Beach, um, is [02:19:30] something that I believe that there are four cities that have filed a

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

class action suit against. And I really think the City of Manhattan Beach ought to consider, uh, joining that class action suit. Um, with all of the things that have been repeated about, uh, the, the parking, the, it's all the dense development, the height, um, the model, bottleneck on Highland going north. Uh, I think one point that has not been mentioned, although, an environmental has been [02:20:00] talked about, is Chevron is-

PART 4 OF 6 ENDS [02:20:04]

- Michael: We talked about is, um, Chevron is right abutting up against the project. It has been a Superfund Site for decades. And I don't know if you know this, but in El Segundo, well, I've worked in El Segundo, so I do know this. Um, the, uh, line from, I believe it's Sepulveda down to Apollo Street, Chevron still holds CC&Rs preventing development that, uh, includes [02:20:30] residential staying overnight. And that's why there haven't been any hotels in that area. Um, and the plume that comes from Chevron, as well as ally chemical, they used to be there now, Honeywell-
- Commissioner Ma...: Thank you, Michael, your time is expired. Are there any other members in the Zoom meeting that wish to speak on this item? Please raise your hand now. [02:21:00] There's no one left to speak.
- Joseph Ungoco: Excellent. Thank you. Um, at this point, do any Commissioners have questions to ask of staff? Or perhaps the applicant or any of the appellants. Um, if we do call up the applicant or the appellants, I do ask that we as Commissioners coordinate our questioning so that they don't go back and forth. They just come up once and answer all of our questions.
- Jim Dillavou: I [02:21:30] have questions. Couple questions for the city attorney. So, I can either ask those now or wait.
- Joseph Ungoco: Go ahead.
- Jim Dillavou: Referral... We- we keep hearing about the law (laughs). Um, and you're the lawyer.
- Crowd: (laughs).
- Brendan Kearns: Correct.
- Jim Dillavou: And yet, and so, I feel like we need to be talking to you a little bit more.
- Brendan Kearns: Sure.
- Jim Dillavou: Um, we're being [02:22:00] told that the city has limited, I'm sorry, the Planning Commission has limited discretion in our review here. Um, we're being told about this difference between a ministerial approval and a discretionary review,

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

and I think the definition was put up on the screen earlier. Um, we're being told that, or we know that there are class action lawsuits against the state. So, it feels like a lot [02:22:30] of, there's a lot of ambiguity around this. So, I'd love your wither clarification, excuse me, and/or feedback on where all of that sits right now. Um, so that we can take that into consideration.

Brendan Kearns: Well, thank you, Commissioner. I was feeling neglected.

Jim Dillavou: (laugh).

Brendan Kearns: So, I appreciate you roping me in. There's been a really wide ranging discussion today. And it's important. It's a big project, right? There, it- it arouses a lot of sentiment, both [02:23:00] favorable and not so favorable. But what we are here as a Commission dealing with is an appeal of a decision that was made by our Community Development Director, right? And that decision is administrative and ministerial. It was explained earlier quite eloquently by one of our planners, Ted Futuros, what that means. And basically what we're gonna look at today is applicable objective [02:23:30] standards. It's a kind of jargony phrase. But what it basically means is, you're looking at things like, that can be measured by you and by I. And we can kind of reach a conclusion on that. It's not the typical type of decision that this Commission makes. Where they're considering things like, does it fit in well with the neighborhood, and- and all that, does it, uh, advance these more subjective policies of the general plan and so forth? [02:24:00] What we're looking at is much more limited objective standards. The conversation has been broader. The staff presentation and materials have been broader. Bot because those are all necessarily part of the decision to be made by this appeal, but because we wanna make sure the Commission and the public is really informed about this project. In so many different ways, staff went above and beyond to make sure everyone is informed.

[02:24:30] One downside of that is that it can seem like, well, we're debating compatibility that was addressed in the staff report, that's discretionary. Well, typically, if you were assessing compatibility, that's a discretionary decision. But that's just something to, that's being shared publicly. What you're looking at is much more narrowly, does this comply with, uh, applicable objective standards of state and local law, right? And so, that's sort of the context I thought was very important to make sure we're on the same page on. [02:25:00] Now, we also talked about a class action lawsuit involving SB9. And I wanna be very clear on this. SB9 is not implicated directly in this project at all, right? The- the laws that we're primarily looking at are the Fifth Cycle Housing Element, the State Subdivision Law, the Coastal Act, and various provisions of both our local, um, coastal plan, and the munic- you know, various municipal code standards to the degree they play [02:25:30] in this area of the city and their objective. So, I've rambled a bit.

Jim Dillavou: What is the State-

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Brendan Kearns: Please, sir, direct me.

Jim Dillavou: Yeah. No, no, that- that's- that's helpful. Thank you. What is the State Law here that is trumping municipal discretion?

Brendan Kearns: Mm-hmm. Well, it's a complicated interplay. But what you wanna look at is, the State Density Bonus Law is a really important factor here. Um, as well as our own housing element, [02:26:00] right? Which is a local standard, but required by State Law. The interplay of these various laws are limiting the city's discretion, right? And that's- that's an important thing. It's a story that dates back nearly a decade with actions at the state level, actions by our Council that were democratically done. And this is the result now with this proposal.

Jim Dillavou: [02:26:30] Okay. Thank you.

Joseph Ungoco: Is that it?

Jim Dillavou: That- that's all- that's all I have for our esteemed attorney.

Joseph Ungoco: Okay.

Jim Dillavou: Uh, if- if you guys don't have anything else, the other question I had for staff was, What feedback we have received from Chevron, as they weren't present here today. And I didn't see any formal comments from them. Um.

Ted: They have not submitted [02:27:00] any comments.

Jim Dillavou: Okay.

Joseph Ungoco: Commissioner [inaudible 02:27:07], do you have any questions?

Kristin Sistos: Oh, I do have a question for the applicant. I don't know of any, if others do. I think you had a couple as well.

Joseph Ungoco: Potentially, yes.

Robert Tokashik...: I do have one question. 'Cause Jim kind of touched up on it. You know, we get these, um, mandates... Mandate's a strong word. We get these directions coming out of Sacramento. Yet, you know, they're not part of the conversation [02:27:30] when staff has to put together an administrative decision. So, is there any way that the state gets word of... You know, it seems like they should be taking a little bit of the heat also.

Kristin Sistos: (laughs).

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Robert Tokashik...: (laughs) That's all. You know, I can see the city staff, we're taking all, you know, they're taking all the heat for making these calls, but really someone from the state should at least feel a little warm.

Crowd: (laughs).

Robert Tokashik...: That's all.

Brendan Kearns: Great.

Robert Tokashik...: You know that, you know (laughs).

Brendan Kearns: Commissioner, you're staring at me. I'm not [02:28:00] sure if- if the, you'd like a response, but I-

Crowd: (laughs).

Robert Tokashik...: No, no. Uh, I'm showing compassion towards Carrie behind you (laughs).

Brendan Kearns: Oh, I see. Okay. [inaudible 02:28:05] Okay.

Robert Tokashik...: Yeah. It's like... So, that's all. I- I just feel like somehow, uh, I don't know how we share that with our state legislators that represent our area, that the decisions you make are impacting the local, you know, people in a- in a way (laughs) that makes them feel [02:28:30] uninvolved. You know, when they're being told, Hey, your city made these codes, but we're gonna pass some sort of piece of legislation that kind of supersedes your local codes. And it makes people feel unempowered. That's all.

Joseph Ungoco: Thanks. Um, Commissioner Martin, do you have any questions for staff?

Commissioner Ma...: I do not right now.

Joseph Ungoco: Excellent.

Commissioner Ma...: Thank you, [02:29:00] chair.

Joseph Ungoco: At this point, I'm gonna ask some questions of staff before we ask the, uh, applicant to come up. Um, before I do that, I wanna say that generally speaking, I shouldn't have any questions at this point. The reason that I do, is because we have... Because staff is very clear. It's very clear in terms of what our responsibility is as Commissioners, to make a decision about regarding the appeals today. My questions aren't about that. My questions are because [02:29:30] I think we have an opportunity, if not a responsibility, to the members of this community, to address some of the confusion and questions that they have out there, as so much of this beautifully crafted report did, in terms, you know it went above and beyond in terms of doing that. So, there's

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

just a couple of things that came up that I wanted to ask, uh, of staff. Should I just run through the laund- laundry list? Um, number one, can we confirm that we have no... These are in no particular order. That we have no ordinances regarding protecting views.

Ted: Correct. [02:30:00] We do not have any view protection ordinance.

Joseph Ungoco: Um, and did we receive any official communication from the Chamber of Commerce, North Manhattan Beach BID MVPD MB FD regarding this project?

Ted: Um, there was no communication from the Chamber of Commerce, or the North bed.

Joseph Ungoco: Mm-hmm.

Ted: Um, the- there was no... From the Police Department, there were a few emails exchanged, um, but [02:30:30] no official thing that would be shared or-

Joseph Ungoco: Okay.

Ted: No- no statement about the project that-

Joseph Ungoco: Perfect.

Ted: Yeah.

Joseph Ungoco: I just wanted to confirm that. Um, we mentioned, um, affordable housing agreements. Um, are there- are there existing ones? Is there an infrastructure or bureaucracy that needs to be created to- to manage that going forward or? Go ahead.

Talyn Mirzakhani...: The- the Affordable Housing Agreement is one that staff will work with the applicant [02:31:00] to prepare in conjunction with our city attorney's review and their attorney's review, of course. Um, and it would... It will outline the procedures for certification and compliance, um, and annual reviews.

Joseph Ungoco: And that's all handled within- within the planning department as it now?

Talyn Mirzakhani...: That's c- City... Planning Department, as well as the city attorneys.

Joseph Ungoco: Okay.

Ted: Also, that agreement is recorded on the property. So, if the property were to change hands, the new owner would be aware, become aware of it during escrow, and would have to abide by the agreement.

Joseph Ungoco: Okay.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Brendan Kearns: [02:31:30] And, uh, chair just one additional. The requirement that was approved by Community Development Director included that as one of the standard requirements at the back.
- Joseph Ungoco: Good. Thank you. Um, I heard it mentioned that, you know, this, that this proposal was essentially offering six units to get 73. If you wouldn't mind, Talyn, going through the example of what could be built there without the- the, uh, just the numbers. I think you had that slide.
- Talyn Mirzakhani...: [inaudible 02:31:59].
- Brendan Kearns: Sure.
- Talyn Mirzakhani...: If- if [02:32:00] you can go. It's just a [inaudible 02:32:04] second rule.
- Joseph Ungoco: Of course.
- Talyn Mirzakhani...: Going back to the table that we had in the [inaudible 02:32:07]. About the breakdown of how, uh, [inaudible 02:32:11] was able to get to that total number of 79. Um, and I will, uh, just reiterate a point that Ted made during the presentation, which is, it is, um, it is the lot consolidation, local lot consolidation bonus in addition to the density bonus, uh, by the state. And [02:32:30] so, here's... Uh, Ted, would you like to walk us through one more time?
- Ted: Sure. So to answer your immediate question. If there were no density bonus of whatsoever, just the, um, local coast- coastal program says you're allowed to build 51 units there.
- Joseph Ungoco: Right.
- Ted: Um, with the 10% lot consolidate, so 50 to be, if you were to divide the lot area by, um, 850, which is what the code says you're allowed to have per unit, you get 51.23. So, that's [02:33:00] 51 units under the code. However, state density bonus, uh, law says you always round up when determining state density bonus. So, we go up to 52 units on the right end column. Then we have a 10% lot consolidation bonus. Um, and that gets us to 57.2, which we round up to 58. Then we go with a 35% density bonus, um, which is because the applicant has set aside, I believe it's 11% of the original [02:33:30] 51 units aside for very low income per state law. That means you got 35% density bonus. That's how we get from a 58 to 78.3. And again, we must roundup per state law, and that's how we get to 79 units.
- Joseph Ungoco: Excellent.
- Talyn Mirzakhani...: And I'll- I'll just add to that. Um, sorry to, for, to interrupt, but state law's very clear in that every component of the calculation, every piece of the calculation gets rounded up. It's just not the first one or the last one. It's every part of that.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Joseph Ungoco: Right.

Talyn Mirzakhani...: [02:34:00] It also specifies that if there is an additional local bonus involved, that also gets rounded up.

Joseph Ungoco: Right.

Talyn Mirzakhani...: And so, those, the criteria is very clearly spelled out in the density bonus law.

Joseph Ungoco: Okay. So, given this example, the more accurate way to describe that would be that the six units account for the difference between the 58 and the 79, right?

Talyn Mirzakhani...: Yes. 52 and 79, yeah.

Ted: Well, so the- the [02:34:30] six units would be, the density bonus law says if you, um, if you have 11% of your base density, so in this case that's 51.

Joseph Ungoco: Okay.

Ted: Uh, if 11% of those are very low income, you get a 35% density bonus.

Joseph Ungoco: There you go. Okay.

Ted: That's how you get to that number.

Joseph Ungoco: Excellent. Excellent. Um, traffic mitigation[inaudible 02:35:00]. [02:35:00] I think- I think that's it for my questions for staff. Um.

Jim Dillavou: You were gonna call the applicant up?

Joseph Ungoco: Yes.

Jim Dillavou: Okay.

Joseph Ungoco: Yes.

Speaker 15: Thank you.

Joseph Ungoco: Hi. Would you like to begin?

Kristin Sistos: Sure. Um, thank you. So, one question that I had was around the concession for wall height, and wondering if you could explain a little [02:35:30] more why you need such a high wall where that wall will be, if you could help provide some context for that concession request.

Speaker 15: (laughs) That's a great question. Can I refer to my architect? (laughs).

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Kristin Sistos: Absolutely.

Speaker 15: This is Jim Williams from Matthew, uh, or from, uh, Withee Malcolm.

Kristin Sistos: If you don't mind, I'd like to pull up a view from Rosecrans to help, uh, su- su-support the discussion.

Ted: While we're doing that, just one question [02:36:00] for the, another question for the city attorney. Uh, typically the developers indemnify a city when they submit an application. Um, to the extent there're appeals litigation, what have you. Is that process different in this situation, or is that- that that's the same situation here?

Brendan Kearns: No. Well, each situation is unique. There are protections in place for the city.

Ted: Okay.

Jim Williams: So, again, Jim Williams, [02:36:30] Withee Malcolm architect. So, the reason for the wall height, the- the retaining wall white- wall height issue is really the same reason that when you look at these renderings, especially our height exhibits, that you're like, Hey, uh, this building I heard is super tall. Why doesn't it look that tall? It's 'cause Rosecrans is way above the level, where this building sits down in a little bit of a hole, if you will. So, we need a big retaining wall to do that. Or we- we tear the site. So, that's- that's the [02:37:00] gist of it. Especially on the east side, where the, about where the pool is, you can see Rosecrans going up, up, up, up, up, up, up, and our building staying down, down, down, down, down. Which is how we keep it looking so low. So, that's- that's where we get with the retaining wall.

Talyn Mirzakhani...: I'll- I'll just add to that Commissioner [inaudible 02:37:18], that, um, the- the height of the wall is, uh, is visible from the courtyard. However, what you see from Rosecrans, from the public view is that only about 42 inches.

Kristin Sistos: [02:37:30] I see. That makes sense. Yeah. I was trying to picture where the 24 foot wall was gonna be, but it makes sense. And you can see the depth-

Talyn Mirzakhani...: Oh, it's not a 24 foot wall. No, no, no. Just to clarify, uh, to clarify.

Kristin Sistos: [inaudible 02:37:42] wall.

Talyn Mirzakhani...: It- that wall is only about nine feet. So, the requirement is six. Ted can correct me if I'm wrong. But it's about nine- nine feet or so from the inside of the courtyard. The- the, I think we might be referring to the, uh, 24... The- the set back requirement that applies to walls o- [02:38:00] building walls over 24. And that's part of the waiver request. Uh, but that's that- that s- set back is, if you have a building wall that's over 24 feet in height, um, so part of the actual structure.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Kristin Sistos: Right.
- Talyn Mirzakhani...: Then you have to have a wider set back. So that's a different requirement than this particular wall, uh, for which they're asking a- a concession. Um, and that wall that's along Rosecrans, it's a retaining wall. And T- Uh, they can correct me if I'm wrong, but it's app- approximately nice feet in [02:38:30] height, and the requirement is six.
- Ted: Just one-
- Kristin Sistos: Okay. So, in the- in the ph- photo you can't see there's a wall, but if you're walking down the sidewalk, there will be a wall with some landscaping, presumably along there, but it's not... There isn't a [inaudible 02:38:45].
- Ted: Correct. So, what the code says, is that in the front step back you shouldn't have a wall over 42 inches. When you walk along Rosecrans on the sidewalk, the rail and the shrubs are gonna be 42 inches. The wall height is, [02:39:00] as was mentioned, when you're down in the courtyard and you look up towards the sidewalk, that's where you're gonna see the wall. The pedestrian is just gonna see a 42 inch hedge.
- Kristin Sistos: Hmm. Okay. Thank you.
- Jim Dillavou: Sir, it was brought up by one of the... Sorry. I'm just jumping in. 'Cause we have the applicant up here. It was brought up by someone that we haven't seen a rendering from, um, Highland. Does that exist? Was that done by you guys anywhere?
- Speaker 15: I- [02:39:30] I can get you some slides. Sure.
- Jim Dillavou: Okay. That- that would be helpful. 'Cause I think that scale is one that we've heard today is concerning. So, I'd love to see what that looks like. Thanks.
- Kristin Sistos: [inaudible 02:39:44].
- Jim Dillavou: Um, yeah, last question, then I'll be quiet. Uh, you had mentioned in your presentation that, um... And by the way, I-
- Speaker 15: Jim, just, sorry to interrupt. But there- there is a- there is a- there is a rendering, [inaudible 02:39:59]. There's a SketchUp [02:40:00] model in- in the submitted plans and schematic design of the Highland.
- Jim Dillavou: Okay. Oh, Highland looking straight back?
- Speaker 15: Correct.
- Jim Dillavou: And does it include the-

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Joseph Ungoco: Parking structure.
- Jim Dillavou: Parking structure, or is it ignore the parking structure, and go straight to the building?
- Speaker 15: Uh, I don't know. I don't recall.
- Jim Dillavou: Okay. Um, I think the question earlier was, What is it, kind of, all look like put together? 'Cause I think the renderings are, um, great, but they don't necessarily include [02:40:30] either the commercial building, the residential building, or the parking structure. And so, I think it- it's a beautiful building. I think it is gonna be a little more fragmented than it looks. So, I think if there is... If their architect has put together some sort of rendering that, um, uh, can show that, that would be helpful, just casually.
- Speaker 15: Yeah.
- Jim Dillavou: Uh, the only other question I had was, you said something important during your presentation. Um, and I wanna back up for a second. I think you guys have done, [02:41:00] um... I mean, it's a tough piece property (laughs). Um, got a lot of interests. Um, I think the second part of the last... The part of your process leading up to this meeting, you guys, you especially, um, have just been out meeting with everyone you can, and getting community feedback. And I actually think a lot of that's been incorporated into the project. So, I commend you for that. You've said during your presentation that you continue to be open to feedback. Um, and I just wanted to ask you [02:41:30] whether, um, that is still the case, and that's true to the extent that there's consensus around, um, feedback that's been given today, and that may be given by the Planning Commission.
- Speaker 15: Sure. Um, well, let me answer it this way. We, you know, we've yet to engage a landscape architect, um, or interior designer. So, clearly in terms of finishes and final aesthetic, that is all, these are all placeholders. Um, you- you saw the, you know, the image- the image board that kind of gives you an idea of the direction [02:42:00] we're trying to go. Uh, in terms of these- the unit, the unit mix, the- the buildable area. You know, uh, we believe... And we- we, now again, we've been involved in this project for four or five years. We submitted application little over a year ago, but prior to that we were in- in internal discussion and analysis for almost 18 months.
- So, we have taken this Rubik's Cube and twisted and turned it, and tried every single way to make this thing work, and to make it feasible. And- and this is, this... [02:42:30] What we're proposing is where we ended up. Um, but we continue to look at it and take, um, you know, comments into consideration of course. And we'll continue to try to, you know, squeeze this thing in every possible way. But, um, I can assure you that this is, this was not, uh, a quick process. And I think we had seven, um, rounds with the city. And they- they've

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

done an amazing job. That took us (laughs). It was quite a gauntlet that we had to run to get to this process, to- to get where we- where [02:43:00] we are today. Um, so, um, the [inaudible 02:43:04] the long answer is, yes, we will continue to take, you know, comments and take them into consideration.

Jim Dillavou: Okay. Thank you.

Kristin Sistos: And I think to- to reiterate something that was said earlier is that, you- you have not asked for all the concessions that you could have had. You have not gone to the maximum of the waivers that you could have gone to. So, you have been thoughtful about the design. It's not that you have gone to the max. Because there's certainly degrees and ways that you could have done more. You could have gone [02:43:30] higher, um, and still been within the bounds of what the state allows. So.

Speaker 15: That's right.

Kristin Sistos: Um, I did have another question that wasn't addressed in your response to the appellants. Um, and that's specifically around, uh, Mr. Ryan and the groundwater floating petroleum concern, from my perspective. If I think about... That's my- That's my biggest concern at this point, is sort of thinking about the public health and safety. And I think he did a nice job of pitching that up, um, because there wasn't anything specifically done [02:44:00] with this location. He shared the Chevron site, and some information about air quality and those types of concerns. But it wasn't specific to this site. And it was- it was dismissed a bit, and you didn't address it in the response. So, I wanted to just hear from you, um, your thoughts and perspective on some of the concerns, um, on that.

Speaker 15: Sure.

Kristin Sistos: And then, my other question is, how deep will you dig in order to- to build? 'Cause that will, that ties into the same question.

Speaker 15: I'm glad you asked both questions. And I happen to have an expert here, Tim Wood [02:44:30] with GSI. Tim, can you come up and answer that question?

Tim Wood: Thank you. Um, my name is Tim Wood. I'm a principal hydrogeologist, uh, with GSI Environmental. And, uh, your question about the groundwater. Uh, the Chevron site is a very regulated. It's a highly regulated site by the, uh, State Water Board. And there is a free product plume [02:45:00] under the, uh, parts of the refinery. And, um, there was a comment made that, uh, there's nothing to stop it from coming this way, but there is a product recovery system in place. Uh, and- and the wells on the refinery along this border, uh, do not have product in them. And so, there is not... Uh, the product plume does not extend off site in this area. And, um, and, uh, that's summarized. It's all [02:45:30] readily available online as you're aware through the Water Board's website. And I worked with the group and reviewed those recent reports as well as the, um,

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

site investigation work that's been done on site. And there were nine borings, not just along the border, but they- they did cross the entire site. And there were also geotechnical borings, uh, exploratory borings. And there were no indications of impact, including the- the chemical testing, as well as observations. And the- and the presence of the plume being [02:46:00] monitored by them is- is also is under- under the site in this area.

Kristin Sistos: And so, to what depth will you need to dig in order to build this subterranean garage?

Tim Wood: I believe they're maxed up, is about 45 feet for- for footings and such. Uh, the garage is probably gonna be like 30.

Jim Williams: Yeah. On the... It- it varies. It's really more the building stays flat, right? And the site gets bigger. So, on the far west side, the hole, including for foundations and such, is only, like, 13 feet. It's like a residential garage. And then [02:46:30] the hill gets higher as the building stays where it's at. And on the very far side, being very conservative, we don't actually have a garage directly under the very far point. But if we did, it'd be about 45 feet. So, less than 45 feet is the maximum depth. So, 13 on one side, 40, 45 all the way to the east side of the site.

Kristin Sistos: Okay.

Tim Wood: And so, uh, the depth of groundwater, uh, under the site is in excess of 90.

Kristin Sistos: Okay.

Tim Wood: Uh, that those exploratory holes went to 90 [02:47:00] and they were dry. And so.

Kristin Sistos: That was in the geotechnical borings, 'cause that's not mentioned in this essay.

Tim Wood: That's- that's correct. Those were the geotechnical.

Kristin Sistos: Okay.

Tim Wood: The maximum depth of the geotechnical borings.

Kristin Sistos: And it looks like the borings went to 30 feet, and you're saying possibly 45, but you're saying they're [inaudible 02:47:14]

Tim Wood: There were three geotechnical borings that were space, kind of, triangulated across the site.

Kristin Sistos: Okay.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Tim Wood: And they- they get that information for, uh, providing to the structural engineers with about the physical properties of the soil. But they also provide, uh, a visual log [02:47:30] as the environmental, uh, geologist do as well, review for obvious signs of impact. There were no obvious signs visual screening, and there were no chemical test impacts either. So.

Kristin Sistos: What is the soil in that? Is it sand? Is it some mixture of-

Tim Wood: Uh, I think it's very sandy.

Kristin Sistos: Right.

Tim Wood: I don't, uh, have the boring log handy. But yeah, it's very sandy in this zone.

Kristin Sistos: So, is there-

Tim Wood: [inaudible 02:47:52]. Uh, I- I'm sorry. I just wanna make one other comment there. Uh, the groundwater is not used in this area, not because of the impact of- of Chevron. [02:48:00] Um, the groundwater resources are- are deep where we- where we pump our drinking water. And in this area, you'd be drinking salt water.

Kristin Sistos: Right.

Tim Wood: So, there's- there's actually see water barriers as you are all probably familiar with in this area.

Kristin Sistos: Thank you. So, is there any concern given it being, sort of, sandy that with the excavation, kind of, trying to keep the building obviously level, you're gonna have to take a lot of that out? Or are there any concerns geotechnically speaking?

Tim Wood: That's, uh, that's structural, yeah. That's a geo [inaudible 02:48:28].

Jim Williams: I- I- I can- I can speak to some extent [02:48:30] for a structural engineer. That's not my department, but I coordinate with them. I've looked at his drawings. They are actually some of the best I've seen. Um, Nelson Structural Engineers. Look him up online. He's now in the company for 20 years. The- the owner's been doing the- the actual work so far. Uh, I've worked with him before. And he's been doing it for, I think, 30, 35 years. Does these kind of buildings all the time. All types of soil. We often do three story subterranean zero lot line, meaning the whole street down right next to our neighbor. In this case, [02:49:00] you know, if we're thinking of neighbor's properties, we have a 20 foot alley separating them. It's- And at that end, it's a 13 foot hole, not a 40 foot hole. So, the soil type is a concern. It's a conce-... But no more than a concern it is on every single project. When- when are shoring engineer does the shoring, one of the first things he has to look at is, what's the soil? Where's the water?

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

So, and we've got one of the best in the field doing it. And we've done it with him many times.

Kristin Sistos: Thank you. I mean, my concern is that it's, we're not just talking about a residence, but we're talking about [02:49:30] Chevron. And if you look at the map, you can see some of those holding tanks are, you know, maybe 100 feet from the site. And we just wanna make sure before we dig that all out, that it wouldn't have any impact to any of the operations within Chevron that could cause a problem that could create- create a concern there. So, okay.

Jim Williams: Yeah, not- not a concern.

Kristin Sistos: Okay. Thank you.

Jim Dillavou: Uh, while we've got the applicant up here. What- Can you talk about the outreach that was done to the owner of the residential property and [02:50:00] commercial properties that sit right there that seem like they should be part of this project, but clearly are not?

Speaker 15: Yeah. Well, we- we tried to buy the office building, but- but, um, Andrew Ryan beat us to it. Like, we- we couldn't put a deal together, and Andrew came and bought it. And, uh, I had not met Andrew until he filed an appeal. And then he and I had a brief conversation, very cordial. Um, and, um, plan to get together and- and - and provide him some more detail on- on shoring and construction impact etc. Um, as to the residential property owner, I had a friend [02:50:30] who's a tenant in that building. And he introduced us, and we also had a conversation. And we kind of explained what- what it is that we're doing. And- and, um, I've- I've yet to follow up with him. And nor has he followed up with me.

Jim Dillavou: Okay.

Ted: Um, just real quick, uh, Commissioner Dillavou. You had a question about the, uh, elevation from Highland looking [02:51:00] east. In the plan, which I'd like to pull up now, there is an elevation. Bear with me for a sec here. What- what page is it on to Talyn?

Brendan Kearns: 10. Um, change screen so that you can [inaudible 02:51:24] see this [inaudible 02:51:24].

Ted: Oh. Yeah. [02:51:30] What was it?

Talyn Mirzakhani...: [inaudible 02:51:35].

Ted: So, let me zoom in here. Yeah. So, that's an elevation. It doesn't have the parking structure imposed. [02:52:00] Um, the thing about when an applicant

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

proposes elevations like that with other structures impose, it's very hard for staff to verify scale and stuff.

Jim Dillavou: Yeah, understood.

Ted: Um, so just wanted to also make that point.

Jim Dillavou: Yeah, I think the other comments we've heard today, not all, a lot of their comments we've heard today just around scale and compatibility. And so, um, this is all very helpful [02:52:30] in all of the renderings showing. And maybe the challenging part of the site is- is the fall, right? From the top to the bottom. Is, that doesn't exist. That exists in very few places around Manhattan Beach. So, when you hear big huge numbers like 50, um that's scary. 'Cause that's- that's not right. Um, and that's something that everyone, I think uniformly would not agree with, but really the 50s [inaudible 02:52:54], you know, quite a misnomer when you look at the section that I think the architect put together showing [02:53:00] why someone was saying 50, um, and what it is in various places.

What it all comes down to, though, is how it all works together, and how the- how the pedestrian connectivity works, and how the traffic works. And so, partial renderings, um, you know, they're helpful. 'Cause it shows the building, which is great. But, you know, I look at this, I think, you know, what's gonna be visible from Highland? How- Where- How are the pedestrians gonna walk? I [02:53:30] think I figured that out from the- from the architectural set. Um, but what's gonna be visible, right? 'Cause we wanna, at the end of the day, we want everything to be aesthetically pleasing, and- and, um, and that- that that was the reason for my questions about the- the other two buildings. 'Cause I think every single person would agree that the project would be a better project, including you, with those buildings as part of them, but we don't own the property.

Speaker 15: Yeah.

Jim Dillavou: Uh, I know there have been comments around that. And probably not for lack of trying.

Speaker 15: Right.

Jim Dillavou: So, you know, it is what it is. Um, [02:54:00] so that- that was the reason. So, I- I get that it's challenging, Ted, to put that together. Um, and I guess you're not gonna have building plans anyway, so it arguably impossible, but something might help alleviate some of the concerns around the scale. Because I think when you put the parking garage in front of this building, and you, it shows how far back it's set from the street. Right now, it looks like it's, you're gonna be walking along the building, and there's gonna be 50 feet straight up Highland. That's just not the case.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Speaker 15: Right.

Jim Dillavou: This is set back 150 feet-

Speaker 15: We're about 90- We're [02:54:30] about 90 feet from- from Highland.

Jim Dillavou: Yeah. So. Right.

Speaker 15: And we're 80 feet from Rosecrans.

Jim Dillavou: Yeah.

Speaker 15: That- that particular structure.

Jim Dillavou: Uh, and then my last question for you, just 'cause my, probably, predominant concern coming into this was just around Chevron. Um, so, I'd love to hear, since they didn't, um, submit any formal comments, um, I'd wanna ask you what, if any, interactions you've had with them, and what their feedback has been on the project.

Speaker 15: We did communicate with Chevron about six, [02:55:00] nine months ago. Um, and gave them a heads up that we're working-

PART 5 OF 6 ENDS [02:55:04]

Speaker 16: ... six, nine months ago, um, and gave him a heads up that we're working with the city on schematic design, um, and I have yet to have a conversation with him, um, since then. But they, they, they did not express concern at the time, and, and seemed to be supportive.

Jim Dillavou: And, and staff can confirm they were notified?

Speaker 17: Um, I will, the staff was not cc'd on any emails or part-

Jim Dillavou: No, sorry, I meant the city would have, as a matter of due course, notified-

Speaker 17: [02:55:30] Oh.

Jim Dillavou: ... the neighbors including Chevron of the project.

Speaker 17: Oh, yeah, so all, all property owners and residents within 100 feet of the site, which is obviously the Chevron, got a notice, both in January when the director was considering the project and also for this hearing.

Jim Dillavou: And, and, ch- and does Chevron have a city liaison who would normally interact with the City of Manhattan Beach and be attentive to projects like this?

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Speaker 17: I can't speak to, um, that.
- Carrie Tai: Uh, chair and members of the commission, yes, there is a government of farers [02:56:00] representative at, um, Chevron, Jeff Wilson, um, and we personally connected them with, uh, the applicant, so, um, and I have confirmation of that.
- Jim Dillavou: Okay. Okay. Thank you.
- Kristin Sistos: Uh, one of the residents mentioned, and I, I just wasn't familiar, but mentioned, um, that maybe it's just on the El Segundo side, something about not allowing hotels, or not allowing overnight because of proximity to the refinery. Is that something that [02:56:30] anyone is aware of or verifiable? I know it's, it's El Segundo so it may not be something that we're aware of, but is that...
- Speaker 17: So I have heard from a representative continental development which owns a lot of Rosecrans, east of Sepulveda, that there are some sites on there, whether they're on that El Segundo side or the Manhattan Beach side, that there's covenants that restrict residences. Now, what those properties are, which side of the city [02:57:00] they are, I do not know.
- Kristin Sistos: Thank you.
- Chair Ungoco: Did the commissioners have any more questions for the applicant?
- Jim Dillavou: Thank you.
- Kristin Sistos: I'm going to check with Gerry.
- Speaker 17: I wanted to make one point of clarification. There was a, a reference earlier to this being a, a private equity project, and is absolutely not a private equity project. It's individually owned, and we intend to own this [02:57:30] long term for generations, so.
- Chair Ungoco: Thank you. Um, Com- Commissioner Morton, just to check to see if you have any questions for the applicant.
- Jim Dillavou: You still awake, Commissioner Morton?
- Commissioner Mo...: I'm here, no further, uh, questions.
- Chair Ungoco: Brilliant.
- Commissioner Mo...: Thank you very much, you guys have been very thorough.
- Chair Ungoco: Do commissioners have any further questions for staff, or any of the opponents? [02:58:00] If not, we can proceed, oh, go ahead. Oh, yes.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Talyn: Thank, thank you, Chair Ungoco. Um, if I may, I just wanted to go on record, clarifying, uh, we heard a lot of things, and act- I very much appreciate all the public comment we received tonight. I did want to go on record, clarifying two points that I heard a few times. So, the first is about the traffics, uh, traffic, uh, study that was prepared, um, by the applicant, and independently reviewed by the city. Um, so first I'll [02:58:30] reiterate the point that that was not required, um, but that the applicant did produce that, uh, in response to hearing the concerns from the community. Uh, but more importantly, I wanted to denote that the traffic study did in fact study the peak hours, so not just any hours, um, they were required to study peak hours and that is how the study was performed, um, just as we do with any other project.

Um, and then the second point of clarification I wanted to make, [02:59:00] uh, was in relation to material submitted by the applicant. Um, so I think Ted demonstrated in one of his earlier slides, um, in the presentation, that the applicant submitted in March of 2021. This is after we had done a preliminary pre-application review, and that the review process went on for a little over a year, um, and for what the code said was supposed to be a streamlined process. Um, a year is a long time. And so what happens within that year [02:59:30] is that staff is thoroughly reviewing and vetting all of the materials that are submitted by the applicant, including all of the materials that we requested, because we're not allowed to require, but we did request that they present substantial evidence to support a number of things that they're asking for, in terms of waivers and concessions. Um, and they did, they produced that, we reviewed it. Sometimes we sent them back, we said start over. Um, and that, all of that review and evaluation and vetting [03:00:00] contributes to the year long process of review that, um, the project was subjected to. Um, and so to clarify, the applicant submitted, staff vetted, none of that gets produced to the planning commission or any decision maker if it is not vetted by the staff. Thank you.

Kristin Sistos: So with regards to the traffic study, I know there was some concern brought up about being able to make a left turn out of the complex, like onto Rosecrans. Was that something that the traffic [03:00:30] study specifically addressed? Because I, that is going to be a challenge, right? They won't be forced to turn right, there will be an opening that will allow them to turn left, it's just a question of whether they can actually get that opening to go.

Talyn: The, the traffic study did not study that. It just studied the t- traffic generation rates, as that was demonstrated as the highest concern of the community. Um, uh, that is something that the applicant will continue to work with, uh, through our, uh, traffic engineering team if [03:01:00] the project gets to the point where they submit to plan check.

Kristin Sistos: Whether or not to have like the left turn option, you mean, or...

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

- Talyn: And, and the city can ultimately, you know, through, through our own internal review processes, uh, pre- or post-development, evaluate that safety, uh, matter and address it as necessary.
- Kristin Sistos: Okay. Thank you. Yeah, the traffic safety seemed to be a big concern, not only the volume, which I think is a concern in and of itself, but also the, the safety, both for drivers and for pedestrians.
- Jim Dillavou: [03:01:30] When the project, when and if the project comes to the city for formal review, will, and I know this is a little bit of a different process, will there be conditions of approval issued by staff on that project, or no?
- Talyn: No, there will be no conditions of approval. Um, they are required to meet all municipal code requirements and our standard review processes and requirements, as any other project would. Um, and, uh, t- just as any other [03:02:00] administrative non-discretionary project, there are no conditions of approval associated. But we did include standard conditions as a part of our original decision letter. Um, just to reiterate some things that are required by the municipal code as it is, um, on local coastal program, and, um, our application requirements for the next level of review.
- Jim Dillavou: The, the example that was just brought up though, how would that be handled? For example, [03:02:30] left-hand turn exiting the parking garage onto Rosecrans. Normally, the city would look at that and Eric would study that, and he'd say, "There's no way that's going to work," and we put a condition on our project saying no left-hand turn. So how does that little... That's one, a great example, how does that get handled?
- Carrie Tai: Uh, chair members of the commission, just to clarify a couple of points. Um, if, for example, [03:03:00] uh, the project, uh, as any project, not just particularly this, this one. But if a project were proposed where, um, there were, uh, only one kind of access, so for example, it's, let's say it's already a right turn only, only a right turn right, right out, and there's not that level of reassurance, that would be vetted at the get-go. However, in this case, we know the, the proposed project driveway is on, um, Rosecrans, um, and at the time, and, and, and so [03:03:30] you already know that they can go right in, right out. They have access, period, And a project just has to have access. A project does not guaranteed full access. And so in an independent review of traffic, um, of traffic, of roadway segments, I'm sorry, and intersections, if it- if there cannot be safe line of sight established, the city will not allow for a left out. It just won't happen. Um, the, so all intersections-
- Jim Dillavou: There will be a condition then?
- Carrie Tai: It would [03:04:00] not be a condition, it would simply just not be allowed and-
- Jim Dillavou: Not be allowed.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Carrie Tai: Correct, correct.

Jim Dillavou: Okay. Got it. [inaudible 03:04:04].

Carrie Tai: And, um, and so I, I just want to clarify, yes, that so the review of roadway movements, roadway segments, is done on an ongoing basis, and yes, in conjunction with any proposed development, but even when development is not ha- occurring. Uh, the city traffic engineer, um, which is part of community development, continually evaluates whether turns can be allowed, cannot be allowed, um, you know, and so that's a, it's a constant, uh, possible [03:04:30] modification, and it-

Jim Dillavou: Well someone has to-

Carrie Tai: ... does not have to be tied to the project.

Jim Dillavou: But someone has to stamp the plans at the end of the day, and they're going to go out and build something, and so the question is...

Carrie Tai: Correct. The-

Jim Dillavou: At what point, what, what plans get stamped? 'Cause then, then they're going to go build it.

Carrie Tai: The plans that are stamped are the, the, on private property, and the driveway apron.

Jim Dillavou: Okay. Not the public driveway.

Carrie Tai: So, yes, the construction of our project does not guarantee a, a roadway modification.

Jim Dillavou: And, and, and in, in the same vein then, a normal project [03:05:00] that might have off-site, um, requirements of a developer, this will not, because this is purely within the four corners within the real estate that's own, there would be no off-site conditions?

Carrie Tai: Unless it was a municipal code requirement, and-

Jim Dillavou: Unless it was a code requirement. Okay.

Carrie Tai: I think Talyn wants to speak. Thank you.

Talyn: That's correct, unless it was a muni- municipal code requirement, I was going to say that in theory, that's, that's accurate. Um, however, as a part of our internal review processes where we route the plans, uh, for review by public [03:05:30] works, by fire department, by police department, uh, by traffic engineering, the,

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

uh, Ted did mention that they are making some pedestrian improvements, uh, in the s- in the sidewalk, which is in the right of way, and that was something that the applicant, uh, worked with the city staff on. They were not required to do that, but they did agree to do that.

Kristin Sistos: Are we, I don't, yeah. We will get to that point when we get to it, but to me, if you think about it, the left turn could potentially [03:06:00] be dangerous, the right turn is gonna be a complete mess, right? Because people are gonna turn right and then right on Highland and then have to make a U-turn, or turn into the neighborhood in order to get back around, to get back out to go to the 405, which I think was something one of the residents brought up, so it does, there's definitely some traffic logistics (laughs) that are going to create some challenges, hopefully you all thought through.

Speaker 16: Yeah. Um, legitimate concern, I just want to put your minds at ease a bit, and that's, the Chevron parking lot's about 150 spaces, [03:06:30] and about half of it has been leased to the city for the undergrounding of the telephone poles. The balance is being used daily. Um, Verandas parking lot has 42 some odd spaces, so there's, you know, even prior to the city getting involved, there was 200 some odd cars coming in and out, out of that lot daily, and there continues to be. And they're not exiting down 38, they're coming out of Rosecrans because they can cut through Verandas, now that Verandas is, is, is derelict. [03:07:00] They can exit through Rosecrans and they go left, they go right, they go wherever they want to go. So it's not as if we're going from 0 to 100 in terms of impact. There's traffic in and out of that driveway continuously. Um, doesn't seem to be a major issue today, um, and we're going from 200 some odd spaces to 127 with our project, exiting onto Rosecrans, so we're reducing the amount of cars that are coming in and off of Rosecrans, relative to what's happening today.

Kristin Sistos: [03:07:30] But today, there aren't active businesses with traffic coming in and out, right? I mean, Verandas-

Speaker 16: There are, there are active businesses.

Kristin Sistos: There are?

Speaker 16: Yep. Yeah. The [inaudible 03:07:37], the [inaudible 03:07:38] building is full and, and, uh, and the park- and we do have a, a subtenant utilizing, uh, Verandas currently.

Kristin Sistos: Okay.

Speaker 16: So.

Kristin Sistos: Thank you.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Chair Ungoco: If the commissioners don't have any more questions, we can proceed. Yes.

Vice Chair Toka...: No questions.

Chair Ungoco: Lost [03:08:00] my place. So now is the time for commissioner discussion. Um, I think it might be useful at this point to return to the original, um, agenda item, and, or perhaps ask staff to, uh, clarify the, the recommendation at the end of the staff report. Yes.

Talyn: Su- [03:08:30] sure. Ted, do you mind pulling up the recommendation? So the recommendation is that p- the planning commission conduct a review of applicable objective development standards and regulations, uh, that do apply to this project, um, and to adopt a resolution upholding the director's decision. That is staff's recommendation.

Chair Ungoco: And our topic of discussion, thank you. [03:09:00] Right. Uh, commissioner, who would like to begin?

Jim Dillavou: Do we need to close the [inaudible 03:09:04] hearing first or has that been done?

Chair Ungoco: It wasn't a hearing.

Kristin Sistos: It's not technically a hearing.

Chair Ungoco: We never opened it.

Jim Dillavou: Ah. That's right.

Chair Ungoco: It was a meeting in public.

Jim Dillavou: (laughs). There you go. Thank you.

Chair Ungoco: Um, Commissioner Morton, you always like to jump in.

Commissioner Mo...: I do. This is a, uh, topic. It's, uh, certainly a project that's more dense than, um, many people would like to see, as evidenced by the extensive comment that we've seen, which I totally appreciate, uh, everybody [03:09:30] coming out and, and voicing their, their concerns. Um, I, I think as planning commissioners, uh, as has been mentioned by, by many of my fellow commissioners in [inaudible 03:09:40], we're really limited, uh, in what we can do here, since this isn't your typical de novo hearing that we, that we look at, um, sort of building a general plan and a number of other elements, um, with regard to, uh, impact on neighbors. Uh, we're really looking at this, uh, this appeal and, [03:10:00] um, how the project complies with, uh, the density bonus of that land and, um, the legislation out at Sacramento.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

I mean if people don't, um, don't like certain legislation, they can make their, um, their voice known there, but, but we have to work with what we're given, and, uh, and looking at this, uh, it appears, uh, as I reviewed the four appeals, I've looked through the project, uh, in detail, [03:10:30] I've looked for ways in which this does not comport with the law, and I've yet to find any. Uh, so given that, I can't, um, personally vote in any way other than to, um, reject the appeal and, and support the director's decision to, to move forward with the project. If the law was different or if we had more latitude, uh, then, um, you know, perhaps, you know, we could look at it a different way. But the, the amount [03:11:00] of density of the project is, is exactly what's allowed, uh, by the law, and so we don't have the ability to reject it based on density, uh, alone or, uh, many of the other, um, critiques that have been brought up with regard to the project. So, um, for that reason and others, uh, I'm in, in full support and will vote to, uh, deny the appeal and support the director's, um, original approval of its project.

Chair Ungoco: [03:11:30] Thank you, Commissioner Morton. Um, Commissioner Sistos, would you like to?

Kristin Sistos: Sure. Um, so I think it's incredibly important that we do our due diligence, even though we don't have the discretion that we wish we had, and so thank you for being patient with all of our questions and working through it. Um, the only way to deny the waiver, which is what a lot of the residents have been requesting that we do, if we had it within our power to do, specifically the waiver around height seems to be the one of most concern. [03:12:00] The only way to do that would be to create a finding, and I'll read it just verbatim so I'm not making it up, but, uh, would be to have a specific, that, that the waivers themselves would have a specific adverse impact upon public health or safety, or the physical environment.

And there's no feasible way or method to mitigate or avoid that adverse impact without rendering, uh, without rendering the development unaffordable to the low and moderate income households. And [03:12:30] so, I, my, a lot of my questions are focused around the environmental impact and whether or not there is impact to having it being right next to Chevron, um, both with the soil, with the ground water, quality, with the air quality. Those would represent potentially a specific adverse impact on the public health or safety of the community. That is the only circumstance that I can see through reading through all of this under which we could, as a commission, deny the waivers moving forward. [03:13:00] Um, there is some data, there is not as much data as I would like to see. Um, I don't think that we could say 100% that there would not be a potential adverse impact, um, but in order to make that finding, we would require more time, we would need to create a written finding, it would be needed to be supported by substantial amount of evidence that we don't currently have at our disposal.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Um, we do have the environmental site assessment. We do have Mr. Wood's, um, information. We know that soil [03:13:30] borings have been done. We know their soil samples have been monitored, analyzed. So I think for me, again, pointing back to appellate, uh, Mr. Ryan with the groundwater concern, that, that is where the basis of my concern is, and, and that is really truly the only finding that we could make, um, that would allow us to approve or deny the waiver. So, um, with that being said, you know, we must render our decision solely based on whether the project meets the objective and applicable development [03:14:00] standards. Um, so at this point in time, we are meeting those standards, right? The question for the commission would just be if we had concern about public health and safety, with regards to the environmental concern, and that's something that we needed to look into further. Um, outside of that, um, we are, in a sense, required, because it is an administrative project, to approve the project as, as it's laid out and move forward with it, so.

Chair Ungoco: Thank you. Uh, [03:14:30] Commissioner Dillavou, would you like to?

Jim Dillavou: Yeah, I don't, um, I don't think any of us are happy with the position we're in, and that's why I keep asking the city attorney questions. I don't think staff's happy. Um, I don't think city attorney's happy, I don't think planning commission's happy. Um, because normally what would happen, setting state law aside, is we would have kind of a similar dialogue [03:15:00] that we had today, but probably get a little bit more into the details of the project, and be able to incorporate a little bit more of the community feedback, um, and that's what the community clearly wants, based on the comments that were submitted. Um, that's what we want.

Um, so I think it's safe to say it's, we're all sitting in a very kind of frustrated position. On the other hand, the developer's done nothing wrong whatsoever, other than do [03:15:30] exactly what they're supposed to do. They colored right between the lines. Um, they developed a project that is legal. Um, and so, I think the discomfort in the room and from the, you know, correspondence from the community's a reflection of that. Um, that dichotomy, and, which I don't think, I don't think anybody's, um, I don't think anyone's wrong, um, and I think this is a super unique situation [03:16:00] and I think that it was really well-said earlier, that if you don't like the laws coming out of Sacramento, then change the laws coming out of Sacramento. Um, but the only thing we could do here is, um, potentially set the city up for significant litigation by, um, deciding not to follow the law, which is just painful, expensive, and a waste of everybody's [03:16:30] time and money, because this issue has been litigated a number of times, and, um, has been upheld repeatedly.

And so, um, I think we can try to puff our chests out and say that we're Manhattan Beach and we're different, and we're not going to follow the rules because we don't have to, but after two years of fighting that, I think we'd lose, um, one way or the [03:17:00] other, um, because I think it's been, been pretty clear at the state level. Um, so I do like the way you articulated your concern,

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

the one concern I had coming in here was relative to Chevron, hence my questions. Um, I do know that the developer talked to Chevron, uh, I do know Chevron is a very active, um, participant in both El Segundo and Manhattan Beach, because they'll be the fir- first ones to tell you they operate a highly [03:17:30] combustibile dangerous plant next to a bunch of residences, and so they're very sensitive to that. Um, and the fact that they didn't submit any negative comments on this project leads me to only conclude that they're going to take a neutral position on it, because I think they're well aware of it, um, which means they're not going to oppose it.

Um, so they're aw- they are aware of their environmental conditions better than [03:18:00] anybody. Um, they have, I don't know how many people over there that just focus on that. Um, so I had a number of concerns coming into this, um, and having listened to all of this, um, I feel like I'm kind of in a corner where, um, my concerns have been addressed and I've gone through the record in detail as well, um, and I can't see anything that [03:18:30] wouldn't subject the city to protracted litigation if we didn't approve the project, so that's kind of where I sit at this point.

Chair Ungoco: Excellent. Thank you. Uh, Vice Chair Tokashiki.

Vice Chair Toka...: I think, uh, Carrie did a wonderful job, so, um, and I don't see any in her analysis and her directions, so I'm with, uh, with, uh, uh, Commissioner Morton, [03:19:00] and I think that the, uh, applicant has done his due diligence, a- a- above and beyond.

Chair Ungoco: Excellent. Well, one of the things that Commissioner Morton failed to warn me about, sitting in the chair, is that all of the good ideas have already been spoken.

Jim Dillavou: (laughs).

Kristin Sistos: (laughs).

Chair Ungoco: So it's always a challenge speaking last. Um, you may have noticed that I asked staff to sort of redirect us so that we could go back to the original question, since we've gone around [03:19:30] the world at least twice, uh, since we first read out the agenda item. Um, and, you know, as a resident of Manhattan Beach, I'm concerned about, about confusion anxiety in the community. And I, you know, I think that staff did an excellent job of dispelling that, you know. There's a certain degree of fear of change and, you know, how that opens a door to future changes, and the mind reels at people's im- imaginations when it comes to the unknown, so [03:20:00] I think staff and the applicant did a wonderful job of bringing us back to the concrete, here, here's exactly what we're talking about. You know, we're not talking about a 10, 10-story tower in the middle of downtown. You know, we're talking about this particular project on this site, this site has such tremendous challenges, uh, and yet the applicant was still able to come up with a model that works for him.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Um, going back to the applicable and objective state and local regulations, you know, I, in following [03:20:30] staff's argument, I can't find a spot where, where they don't, where the application doesn't meet those, um, those regulations. Um, so I'm inclined to, to support adopting the resolution upholding the director's decision to, to approve the project. Um, I think communication will have to continue, you know, as the, as the applicant knows, uh, and will need to participate in those things. Um, [03:21:00] I'd like specifically to ask staff and Talyn, you know, or thank you for addressing certain issues and, you know, misrepresentations, or misinformation that was out in the community so that, uh, we can help to alleviate some of the fears of the residents.

There is one, uh, sort of line of argument, uh, being taken by the opposition to this project, uh, which is that, um, the, if you live there, you would, you would know this, um, argument, right? Um, [03:21:30] so full disclosure, I live on Kelp Street. I won't tell you how long because I feel that's a cudgel that sometimes people use. Uh, but I do live on Kelp Street, I'm the, um, area coordinator for Neighborhood Watch for all of El Porto, so, um, so I do have concerns about the community, and I do have deep connections with members, with residents in the community, and, um, and it was very interesting to see in a post-Zoom, post-co- post-fully Zoom world, like how discussions like this are changing.

You know, it wasn't that many years [03:22:00] ago that we'd have hundreds of people in the room, um, and, you know, one side more organized than the other. Um, I think it's wonderful that the members of the community, you know, participated, uh, whether they Zoomed in or they came, came to the room, and, uh, it's a testament that people with opposing views feel comfortable enough in a physical space to express those views, so, uh, kudos to the community. Um, I guess that, [03:22:30] that's the end of- Was Gerry speaking? (laughs) Commissioner Morton, are you...

Commissioner Mo...: I'm ready to make a motion if, uh, if, if, if you're ready.

Chair Ungoco: Ah, I was, I was just, ah, I was going to say I'll entertain a motion, but City Attorney Kearns is, uh, calling for my attention.

City Attorney K...: And just a clarification for the record. It's my understanding that your interest in real property is not within 500 feet...

Chair Ungoco: Correct.

City Attorney K...: ... of the project.

Chair Ungoco: Correct. Kelp, Kelp Street is significantly further away.

City Attorney K...: Good.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Chair Ungoco: [03:23:00] Thank you for clarifying.

City Attorney K...: Just thought I was [inaudible 03:23:01] float in. Thank you.

Vice Chair Toka...: (laughs).

Chair Ungoco: (laughs). All right. At this point-

Commissioner Mo...: So I would, I would, I would, I would go ahead and move to, uh, reject the appeal and, um, approve the director's decision on Highrose project.

Chair Ungoco: Uh, point of order, City, City Attorney Kearns. Is, are, are we actually rejecting the appeal, or are we just upholding...

City Attorney K...: That's a great question. I'd recommend [03:23:30] if the motion be to adopt a resolution affirming the decision of the community development director.

Chair Ungoco: Commissioner Morton, do you, h- do we have to amend his... It hasn't been seconded.

Commissioner Mo...: Please amend my... Please amend my resolution to match with the city attorney's verbiage.

Chair Ungoco: Excellent.

Vice Chair Toka...: I second.

City Attorney K...: We have a motion by Commissioner Morton and a second by Vice Chair Tokashiki. I'll take a roll. [03:24:00] Commissioner Morton.

Commissioner Mo...: Yes.

City Attorney K...: Commissioner Sistos.

Kristin Sistos: Aye.

City Attorney K...: Commissioner Dillavou.

Jim Dillavou: Yes.

City Attorney K...: Vice Chair Tokashiki.

Vice Chair Toka...: Aye.

City Attorney K...: Chair Ungoco.

Chair Ungoco: Aye.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

City Attorney K...: Motion passes, 5-0.

Carrie Tai: Okay. [03:24:30] Thank you. Uh, good. Before, before we move on, um, I just wanted to mention for the item that the planning commission just took action on. Uh, the planning commission's action is, um, appealable to the City Council. It is a 15 day appeal period. We do not start counting until tomorrow, and the expiration of that appeal period will be the close [03:25:00] of city business, um, on June 23rd. Thank you. Um, and moving on to, uh, just director's item, just a brief update that the planning commission had approved, um, use permit for a, uh, the 7-Eleven to upgrade their alcohol license. That was appealed to the City Council. The City Council did uphold the planning commission's decision, and we will be taking a resolution back to the City Council. Um, it is the next meeting, June 21. [03:25:30] Other than that, um, I just wanted to extend my thank you to, uh, Commissioner Morton for his two years of chair. Congratulations to Chair Ungoco and Vice Chair Tokashiki. I look forward to a very productive and busy year with you. Thank you.

Chair Ungoco: Um, so I guess the next item is planning commission items, or was that the update?

Kristin Sistos: Director's items.

Carrie Tai: Yeah, so if any... Uh, normally [03:26:00] in this section, um, the chair would ask whether any planning commissioners have anything to report, so if there were any, um, normally if you went to a conference or there was an issue that you would like to bring to, uh, to our attention or announce it, that would, this would be the appropriate time.

Chair Ungoco: Okay. Commissioners, are, is there anything you would like to...

Jim Dillavou: Nothing from me.

Chair Ungoco: All right. Um, Director Tai, do we have a tentiv- tentative agenda for June 22nd?

Carrie Tai: I do not believe we currently have any items. I know we are, later on in the summer, lining [03:26:30] up some training for you, uh, but I don't believe that will be the next meeting, and if we don't, it's productive training.

Chair Ungoco: (laughs).

Carrie Tai: You'll enjoy it, and then if we don't have items, we will be canceling the next meeting accordingly.

Chair Ungoco: Okay.

Carrie Tai: Thank you.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

Chair Ungoco: Excellent. And I guess, uh...

Vice Chair Toka...: Make a motion to adjourn.

Chair Ungoco: Do we, do we move to adjourn or do I just adjourn?

City Attorney K...: In recent practice, we have made a motion and then a vote.

Chair Ungoco: Ah.

City Attorney K...: But as the new chair, I'll leave it at your discretion.

Chair Ungoco: I would like a motion.

Vice Chair Toka...: I'm sorry, I overruled [03:27:00] you (laughs).

Chair Ungoco: No, that's all right. So we have a, a motion.

Vice Chair Toka...: A motion to adjourn.

Kristin Sistos: I'll second a motion to adjourn.

Jim Dillavou: Third.

Chair Ungoco: (laughs).

Vice Chair Toka...: (laughs).

Kristin Sistos: (laughs).

City Attorney K...: We have a motion by, uh... We have a motion by, uh, Vice Chair Tokashiki and a second by Commissioner Sistos and a third by Commissioner Dillavou.

Jim Dillavou: (laughs).

City Attorney K...: I'll take roll. Commissioner Morton.

Commissioner Mo...: Yes.

City Attorney K...: Commissioner Sistos.

Kristin Sistos: Aye.

City Attorney K...: Commissioner Dillavou.

Jim Dillavou: Yes.

APPENDIX A. UNCERTIFIED TRANSCRIPT, PC, 8 JUNE 2022

This transcript was exported on Jun 16, 2022 - view latest version [here](#).

City Attorney K...: Vice Chair Tokashiki.

Vice Chair Toka...: Aye.

City Attorney K...: Chair Ungoco.

Chair Ungoco: Aye.

City Attorney K...: We are adjourned.

Chair Ungoco: Adjourned.

Kristin Sistos: Yeah, [03:27:30] the gavel.

Chair Ungoco: Yes.

Commissioner Mo...: Great guys, thanks.

Carrie Tai: Thanks.

PART 6 OF 6 ENDS [03:27:59]

APPENDIX B. KEEN v. CITY OF MANHATTAN BEACH

No. B307538

California Court of Appeals, Second District, Eighth Division

Keen v. City of Manhattan Beach

Decided Apr 6, 2022

B307538

04-06-2022

DARBY T. KEEN, as Trustee, etc., Plaintiff and Respondent, v. CITY OF MANHATTAN BEACH et al., Defendants and Appellants.

Richards, Watson & Gershon, Quinn M. Barrow, Ginetta L. Giovinco and Marvin E. Bonilla for Defendants and Appellants. Angel Law, Frank P. Angel and Talia E. Nimmer for Plaintiff and Respondent.

WILEY, J.

APPEAL from a judgment of the Superior Court of Los Angeles County, No. 19STCP02984 James C. Chalfant, Judge. Affirmed.

Richards, Watson & Gershon, Quinn M. Barrow, Ginetta L. Giovinco and Marvin E. Bonilla for Defendants and Appellants.

Angel Law, Frank P. Angel and Talia E. Nimmer for Plaintiff and Respondent.

1 WILEY, J. *1

This case is about getting a room near the beach. By law, public access to the beach is a California priority. The California Coastal Commission enforces this priority by reviewing amendments beach towns make in municipal laws affecting coastal areas. Amendments require approval. The legal question here is whether there *was* an amendment.

In 1994, the City of Manhattan Beach enacted zoning ordinances, which the Coastal Commission then certified. Did these old ordinances permit rentals of a residential property for fewer than 30 days? The popularity of Airbnb and similar platforms has made the question acute.

The trial court rightly ruled the City's old ordinances *did* permit short-term rentals. This means the City's recent laws against platforms like Airbnb indeed are amendments requiring Commission approval, which the City never got. We affirm. Our statutory references are to the Public Resources Code.

I

We begin with legal, factual, and procedural background. This section recaps the California Coastal Act, describes local battles over short-term rentals, and recounts the case's posture.

A

The California Coastal Act of 1976 defined the Coastal Commission's mission to protect the coast and to maximize public access to it. (§§ 30001.5, 30330.) We liberally construe the Act to achieve these ends. (*Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896, 898 (*Greenfield*).

The Commission works with local governments to ensure they take adequate account of state interests. (§ 30004, subs. (a) & (b); *City of Dana Point v. California Coastal Com.* (2013) 217

2 Cal.App.4th 170, 186.) *2

APPENDIX B. KEEN v. CITY OF MANHATTAN BEACH

In this endeavor, the Act's main tool is the local coastal program. (§ 30500 et seq.; *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 489.) Each coastal government must develop one. (§ 30500, subd. (a).) Local coastal programs have two parts: the land use plan and the local implementing program. The latter consists of zoning ordinances, zoning maps, and other possible actions. (§§ 30512, subd. (a), 30513, subd. (a).) The Commission reviews the local coastal program. (§§ 30200, 30512, 30512.2, 30513.) If it conforms to the Act's policies, the Commission certifies the program. (§§ 30512, subd. (a), 30513, subd. (b).)

In accord with these provisions, the City submitted its local coastal program to the Commission years ago. The Commission certified the City's land use plan in 1981 and its local implementing program in 1994. This local implementing program included zoning ordinances.

Once the local program is approved, it can be amended, but the local government must submit amendments to the Commission for approval. Absent approval, amendments have no force. (§ 30514, subd. (a).)

Throughout this case, the City has not disputed it would need Commission approval to enact a *new* prohibition on short-term rentals within the coastal zone. That would be an "amendment." But the City has stoutly maintained there has been no amendment, because its *old* ordinances always prohibited short-term rentals. Keen disagrees, and that frames the issue in this case: whether the City amended its program when it clamped down on short-term rentals, or whether the prohibition was not an amendment because it merely continued the legal status quo. *3

B

We now recount how the City banned short-term rentals.

For quite some time, people rented residential units in Manhattan Beach on both long- and short-term bases. The City knew about the practice and occasionally got complaints about a rental property, including about one "party house" in 2005.

Things changed leading up to 2015. Online platforms like Airbnb became popular, which increased short-term rentals. The City had not received a "tremendous" number of complaints, but it sought an active stance on the issue.

After hearing from the public, the Council passed two ordinances "reiterating" the City's supposedly existing ban on short-term rentals. The Council claimed its existing ordinances, including those enacted with the local coastal program, already prohibited short-term rentals implicitly.

We call these the 2015 ordinances.

When the City Council enacted the 2015 ordinances, it resolved to submit the one about the coastal zone for Commission certification.

City staff met with Commission staff. The Commission staff, however, recommended the City allow at least some short-term rentals to facilitate visitor access to the coastal zone. Then, in 2016, the Commission wrote to all coastal cities, saying municipal regulation of short-term rentals would have to be in cooperation with the Commission. The Commission emphasized that "vacation rentals provide an important source of visitor accommodations in the coastal zone" and that blanket bans would rarely be appropriate.

After the Commission made clear its support for some level of short-term renting, the City withdrew its 2015 request for *4 Commission approval. The City tells us its withdrawal was because the 2015 ordinance worked no change in the law and hence never required Commission certification.

The City Council continued to grapple with how to regulate short-term rentals.

3

4

APPENDIX B. KEEN v. CITY OF MANHATTAN BEACH

In 2019, the Council adopted an ordinance creating an enforcement mechanism for its short-term rental ban. This required platforms like Airbnb to tell the City who was renting out what. The ordinance also prohibited platforms from collecting fees for booking transactions.

We call this the 2019 ordinance.

The 2019 ordinance had a pronounced effect: by June 2019, short-term rentals dropped, in round numbers, from 250 to 50. The ban was markedly, although not completely, effective.

In July 2019, the City hired Host Compliance, a company specializing in helping cities enforce short-term rental regulation.

Bewilderingly, the City tells us there is no evidence its ordinances reduced the number of short-term rentals in the City. The record contradicts this.

C

Darby Keen owns property in the City's coastal zone. He rented it on a short-term basis. The City sent Keen a Notice of Violation on July 16, 2019. Keen petitioned for a writ of mandate to enjoin the City from enforcing the 2015 and 2019 ordinances.

The trial court issued a 19-page single-spaced tentative decision: a model of careful analysis. The court noted what the City did not dispute: the City would have to obtain Commission approval if it were to enact a *new* prohibition on short-term rentals. The City's position, however, was the prohibition was not new but rather was to be found in its old zoning laws that the *5 Commission had approved years before. The court disagreed, ruling the City had not identified any zoning provision to support its conclusion that rentals for fewer than 30 days were barred but longer rentals were permitted. The court concluded the City was wrong to say it had always banned short-term rentals. Rather, the court ruled the ban was new, it was an amendment, and it thus

required Commission approval, which it did not have. The court therefore enjoined enforcement of the ban on short-term rentals pending Commission approval.

The City appealed.

II

The City's argument boils down to this: the trial court was wrong to think the City has always allowed short-term rentals. The trial court was right, however, and the plain language of the City's ordinances proves it.

Our review is independent. (*Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 896.)

A

The trial court correctly interpreted the City's ordinances: they always permitted short-term, as well as long-term, residential rentals. The City's ban on short-term rentals thus amended the status quo. This amendment required Commission approval, which the City never got. So the City's ban was not valid.

The issue reduces to whether the City's old ordinances permitted short-term rentals. The following analysis demonstrates they did.

The City always has allowed people to rent apartments and homes in the City on a long-term basis. In other words, it always has been legal to
6 live in Manhattan Beach as a renter. No one *6 disputes this. One would be rather surprised to discover a community anywhere that banned renting completely.

Because rentals that are *long-term* have always been permissible under the City's ordinances, however, the City has been forced to distinguish between *long-term* residential rentals the City allows and *short-term* residential rentals the platforms promote and the City dislikes.

APPENDIX B. KEEN v. CITY OF MANHATTAN BEACH

Unfortunately for the City, its old residential zoning ordinances contain no long-term/short-term distinction.

Absent some distinction in the law, then, the law must treat long-term rentals the same as short-term rentals. If long-term rentals are legal, so too are short-term rentals. The ordinances offer no textual basis for a temporal distinction about the duration of rentals. The City could have enacted a distinction like that, but it never did.

Because its ordinances say nothing about the duration of rentals, the City cannot credibly insist its ordinances permit long-term residential rentals but have always banned short-term rentals. That interpretation makes no sense.

The crucial text is ordinance A.08, which defines "Use Classifications" for the City's zoning code. One use is "Single-Family Residential," defined as "[b]uildings containing one dwelling unit located on a single lot." A second use is "Multi-family Residential," which is defined as "[t]wo or more dwelling units on a site." This ordinance contains a chart that shows the City permits both uses in residential areas.

In other words, it is legal to build a residential house or an apartment building in the City's residential zones. Once it is built, you can reside there. Anyone can. This all makes sense. It would be surprising if it were otherwise. *7

The reasonable interpretation of permitting a "Single-Family Residential" building in a residential area is that people are allowed to reside in that building, whether they are owners or renters.

Why, under the text of the ordinance, are renters allowed in? Because residential renters are common in cities, as everyone knows, and nothing in the ordinance takes the unusual step of banning all renting in the residential areas of the City.

Use of the word "residence" does not imply some minimum length of occupancy. (Cf. *People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 726 (*Venice Suites*) ["A 'residential building' is used for human habitation without regard to length of occupancy"]; *Greenfield, supra*, 21 Cal.App.5th at p. 899 [the city in question historically treated short term rentals as a "residential" activity].)

It is possible to reside somewhere for a night, a week, or a lifetime. The City points to no legally precedented way to draw a line between the number of days that makes some place a "residence" and the number that shows it is not. (Cf. *Venice Suites, supra*, 71 Cal.App.5th at p. 732 ["the dictionary definitions for apartment house do not indicate a required length of occupancy"].)

The same analysis applies to "Multi-family Residential," where the common form of a multi-family building is an apartment building. Apartment dwellers commonly rent.

The City's zoning thus permits you to rent a house or an apartment in Manhattan Beach, which accords with common experience. The City's zoning does not regulate how long your stay can be. *8

The City's proposed distinction between long- and short-term rentals-the former always allowed, and the latter always forbidden-has no textual or logical basis. The City thus loses this appeal as a matter of textual interpretation.

The City incorrectly argues short-term rentals are more similar to, and therefore fall under the definition of, "Hotels, Motels, and Time-Share Facilities." With our emphasis, the ordinances define these facilities as "[e]stablishments offering lodging on a weekly or less than weekly basis, and having kitchens in no more than 60 percent of guest units." The short-term rentals the City is trying to prohibit are of single- and multi-family

APPENDIX B. KEEN v. CITY OF MANHATTAN BEACH

residences in residential neighborhoods. Houses and apartments conventionally have kitchens. This argument is untenable.

The City asks us to take judicial notice of a 1964 ordinance that defines a hotel a particular way. The City argues we should import this definition into the ordinance in the local coastal program. This is illogical. The different definition from decades before cannot prevail over the definition enacted by the City and certified by the Commission in the ordinance at issue. The older document is not relevant. We deny this request.

The zoning ordinances certified by the Commission thus allow rentals of single- and multi-family residences in residential zones for any duration, including short-term rentals of the Airbnb variety. The City's new ban on short-term rentals was an amendment requiring Commission approval.

B

9 The City's other arguments are invalid. *9

1

The City relies heavily on the principle of permissive zoning. It argues California has adopted this doctrine: zoning ordinances prohibit any use they do not permit. But the City's ordinances *do* permit short-term rentals in residential zones. That is the only reasonable interpretation of the ordinances, as we have shown. This interpretation is not an affront to permissive zoning.

2

The City argues we should defer to its reasonable interpretation of its own ordinances because it is the local agency with responsibility for implementing them. Our analysis does not involve

or require deference. We give simple words their obvious meaning. Contrary interpretations are unreasonable.

3

The City notes recent California statutes, in 2019, characterized short-term rentals as commercial uses. The City says this shows that short-term rentals are inappropriate in residential zones. These state statutes, however, deal with different issues than the municipal ordinances here. The 2019 statutes are not germane.

4

The City argues the trial court erred in interpreting the Coastal Act to require it to provide short-term rentals in residential areas. This is incorrect. The key provision is the one requiring Commission approval of amended laws. The Commission has not required the City to allow short-term rentals. The Commission has not reviewed the City's ban because the City, incorrectly, has been maintaining its ban is *10 nothing new. There was no erroneous interpretation of the Coastal Act.

5

The City argues Keen's reliance on *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 is misplaced. Our analysis does not involve *Kracke*.

DISPOSITION

We affirm the judgment and award costs to Keen.

WE CONCUR: STRATTON, ACTING P. J.,
11 HARUTUNIAN, J. [*] *11

[*] Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).