

**CITY OF MANHATTAN BEACH
PARKING AND PUBLIC IMPROVEMENTS COMMISSION
MINUTES OF A REGULAR MEETING
October 28, 2010**

A. CALL TO ORDER

The regular meeting of the Manhattan Beach Parking and Public Improvements Commission was held on the 28th day of October, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, 1400 Highland Avenue, in said City.

D. ROLL CALL

Present: Adami, Gross, Stabile, Vigon and Chairman Silverman.
Absent: None.
Staff Present: Management Analyst Madrid, Lt. Harrod, Acting
Community Development Director Jester and Assistant
Planner Ochoa.

D. APPROVAL OF MINUTES

10/28/10-1 August 26, 2010

The Parking and Public Improvements Commission minutes of August 26, 2010 were unanimously approved as written.

D. AUDIENCE PARTICIPATION

None.

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At this time Management Analyst Madrid introduced the City's new Traffic Engineer, Jack Rydell, of Charles Abbott Associates. Ms. Madrid verified that she will provide the Parking and Public Improvements Commission with Mr. Rydell's resume.

Mr. Rydell said he is looking forward to working with the City and the Commission.

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E. GENERAL BUSINESS

10/28/10-2 Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping over 42 Inches in Height on the Walk Street to Remain – 619 Highland Avenue and 233 7th Street

Noting the extensive amount of written material received on this item immediately prior to the meeting, Chairman Silverman related the Commission's intent to reserve the right to review the information during tonight's discussion.

Parking and Public Improvements Commission
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Acting Community Development Director Jester provided information on standard procedures for conducting the meeting. Due to the large number of speakers present and, in the interest of time, she asked that testimony not be repetitive. An overview of the item provided by Ms. Jester included clarification that Manhattan Beach Municipal Code Chapter 7.36 addresses the private use of public property with an encroachment permit which applies to the subject appeal, and limits landscaping to 42"; Section 7.32 applies to City street trees, not this situation, and street trees are protected. Also, private property trees in the front and street side yard not in the beach area are protected. No permits have been issued for the encroachments at either 619 Highland Avenue or 233 7th Street, grandfathering does not apply to either situation; and all private and public violations such as these are enforced on a complaint basis, unless there is a safety issue. She advised that the landscaping and eucalyptus tree at 619 Highland Avenue impairs views and does not comply with the walk street Code requirements and, therefore, the appeal to maintain and keep all landscaping in the right-of-way should be denied. Acting Director Jester advised that the landscaping in the walk street (palm trees) at 233 7th Street does not impair views and an encroachment permit related thereto must be obtained.

During discussion amongst the Commission and staff, Acting Community Development Director Jester related staff's position that grandfathering does not apply to either location. She explained that both properties have unpermitted encroachments on public property and, at any time, the City could do whatever it wants with the property; that Municipal Code Section 7.36 contains a definition of "non-conforming," which refers to improvements that have been legally permitted and placed in the encroachment area but are inconsistent with the Code requirements; that there are other prior instances where large landscaping existing prior to the enactment of Code Section 7.36 had to be removed; that landscaping is regulated in Code Section 7.36 and it is an "encroachment" within the meaning of Section 7.36; and that the eucalyptus tree at 619 Highland Avenue is approximately 25 to 30 feet high.

Assistant Planner Ochoa summarized the staff report. She explained that the encroachment appeal application was filed by the property owners at 619 Highland Avenue and 233 7th Street and that this matter arose when the neighbors at 300 and 305 7th Street filed a complaint that existing trees and landscaping at the two locations impair their vistas and views. Ms. Ochoa shared information on the encroachment permit previously issued for pine trees and a low-picket fence at 619 Highland Avenue in 1979, but not the eucalyptus tree or landscaping over 42 inches high in the walkstreet; for low landscaping walls and other improvements at 233 7th Street; and on the unsuccessful mediation in which the appellants and the complainants participated. She presented photographs depicting the situation, noting that the eucalyptus tree at 619 Highland was trimmed recently, and reviewed the City's encroachment standards. Assistant Planner Ochoa related the staff recommendations to deny the request for 619 Highland Avenue in that neighbors' vistas are impaired and the landscaping does not comply with current walk street standards and is substantially overgrown and exceeds 42 inches in height; and approve all improvements and landscaping in the public right-of-way at 233 7th Street, with a stipulation that the palm trees shall be maintained and an encroachment permit shall be obtained.

In response to inquiries from the Commission, Assistant Planner Ochoa affirmed that the palm trees at 233 7th Street are encroaching into the public right-of-way

(walkstreet); that trees on the sidewalk in front of 305 7th Street (as shown in the presentation) are City trees which, according to Code Section 7.32, must be maintained by property owners; and that the property owners did discuss with the neighbors whether trimming the eucalyptus tree would suffice. She explained the complaint-driven enforcement process.

Community Development Director Jester advised that, even though view impairment from street trees is not addressed in the Code, the City has had no problems with property owners trimming them; that the property owner at 619 Highland Avenue agreed to trim the eucalyptus tree, but the complainant feels it would not be maintained; that staff does not feel the palm trees at 233 7th Street create significant view impairment, but does not have the ability to approve them since they are over 42"; and that, the only City trees on walkstreets are in the Downtown area. She offered input regarding the mediation process, as well as discussion at staff meetings with the property owners.

The Commission agreed that, when possible, speakers would have a three-minute limit.

Audience Participation

Donna Howell, owner of 300 7th Street, and residing in Manhattan Beach, Complainant, expressed interest in building two townhomes on the property in the future. She advised that the entire view from her property is obstructed by the eucalyptus tree at 619 Highland Avenue and the tree is approximately 40 feet high.

Wayne Hoskins, Trust in Trees, Beverly Hills, asked the Commission to view the organization's website, which explains why trees are so valuable. He related his disagreement with staff's position, in that trees are not an encroachment within the definition of Code Section 7.36 and, therefore, an encroachment permit should not be required. Mr. Hoskins contended that a property owner should not be required to remove a tree because a homeowner would like to improve their view.

On behalf of the appellant, Frank Wattles gave an overview of information he provided the Commission, and he asked the Commissioners to read it as well. Mr. Wattles gave a detailed explanation of his viewpoint that landscaping is not an encroachment and that there is no definition of "view." He suggested that the hearing be continued for the Commissioners to read the information he provided and further discuss this matter with the City Attorney and related his impression that the view in this instance appears to be measured from inside the private residence at 300 7th Street, which is inconsistent with the view corridors set up under the Coastal Commission Public Resources' Code.

Mary Boyd advised that the property owner at 619 Highland Avenue trims the eucalyptus tree often and that private property owners are not responsible for maintaining City trees on walk streets. She related her understanding that the residents at 619 Highland Avenue and the tree have been in the City longer than the encroachment requirements.

Miles Essmiller, currently residing in Redondo Beach and previously residing at the property immediately west of 619 Highland Avenue, stated his support of the eucalyptus at 619 Highland Avenue. He related his appreciation that 7th Street is green.

Brigid Desmond, Lomita, mentioned that the City of Los Angeles sees the value of trees and has given them to property owners. She expressed her feeling that this is about money for the property owner at 300 7th Street, and not about the value of a natural environment.

Michael Ruiz, residing west of the eucalyptus tree, voiced his appreciation for the tree and the ecosystem resulting from it.

Joseph Lordeon, living in Redondo Beach and owning property at 612 Highland Avenue, said that his property is not impacted by the eucalyptus tree at 619 Highland Avenue; that the owner of 619 Highland Avenue has made an effort to maintain the tree; that the complainant is an overzealous real estate agent who is trying to maximize profits by removing trees and improving views.

Mike Flaherty, Hermosa Beach, supported the eucalyptus tree which, he indicated, is well maintained, does not affect the sidewalk and is well below the 40 foot height indicated by the complainant. Mr. Flaherty said that the vista was dramatically improved when the tree was recently trimmed and, instead of removing it, the property owner should be required to trim the tree regularly; that the tree was planted long before the current requirements were enacted and it should not have to be removed.

Sabine Birkenfeld, Appellant, 619 7th Street, shared information on her enjoyment of the wild life associated with the eucalyptus tree and her preference for views of trees, which enhance ocean views. She provided background information on this issue and affirmed that the eucalyptus tree is trimmed twice a year. Ms. Birkenfeld related her concern that the City is not encouraging protection of trees in the Sand Section and that the City would require the removal of a tree which has been there for many years as a result of a complaint from a property owner who plans to live in the area in the future.

Marti Padilla, 610 Highland Avenue, commented on her enjoyment of ocean vistas on walk streets. She pondered who makes up the "public;" asked the Commission to remember that members of the public other than those owning property on walk streets are also interested in this issue; and stressed the importance of consistency in enforcement.

Frank Wattles Jr., 229 6th Place, supported the eucalyptus tree at 619 Highland Avenue, in that it is a value to the community and the property owner. Mr. Wattles noted that, if the tree was there before the lot, it is not an addition or improvement.

Dr. Peter Shefman, living west of 619 Highland Avenue, expressed his viewpoint that the eucalyptus tree is a great asset and should not be removed; that the complaint-driven nature of the process is deeply flawed; and that requiring the removal of the tree would be abusive and unconstitutional. Dr. Shefman said that, just because there is the ability to do something does not mean it is the right thing to do and he asked the Commission to do the right thing.

Jeannie Grand, 317 7th Street, agreed with the retention of the eucalyptus tree at 619 Highland Avenue. She discussed the wonderful ecosystem associated with the tree and described the loss of her view through the years due to construction and vegetation.

Carlos Ruiz, 228 7th Street, supported the eucalyptus tree. It was his opinion that trees should not be removed just because they are blocking views; that, should the removal of this tree be required, all tall trees on all streets should be evaluated; and that nature should be preserved.

Martha Andreani agreed that the eucalyptus tree at 619 Highland Avenue should be protected because trees are the earth's lungs and very important to the environment. She related her understanding that the complainant does not reside in Manhattan Beach and said that it is frightening to think the removal of a tree can be required as a result of complaints from a non-resident property owner, especially when only the sky view, and not the ocean view, is taken away by the tree.

Jan Dennis gave a historical perspective on tree preservation in Manhattan Beach. She explained that greenery in the City has been destroyed due to construction and that the closest view impairment from her residence is caused by City trees. She agreed that the City's Tree Ordinance should be revised.

Mike Duckworth, owning property at 221 6th Street and living at 109 S. Poinsettia, maintained that these problems result from the ordinance; that individual opinions regarding "view" are subjective; that it is extremely inconsistent to say that eucalyptus trees on one side of a street must be removed, but the palm tree on the other side of the street can be retained; that views are very important, as are nature and trees, and these need to be balanced; and that the Code needs to be revised to take different value systems into account.

Returning to the podium, Frank Wattles asked the Commission to read the ordinance and other written material he provided before making a decision.

John Nelson related his understanding that, according to City records, the eucalyptus tree at 619 Highland Avenue was not there in 1979. He explained that the attorney present at mediation dominated the discussion; that Ms. Howell resides in Manhattan Beach; and has owned the property at 300 7th Street for approximately eight years.

Frank Wattles stated his impression that the eucalyptus tree was planted in 1967.

Coming forward again, **Donna Howell, Complainant**, also related her understanding that, according to City records, the eucalyptus tree at 619 Highland Avenue was not there in 1979; that the Sand Section is about ocean views and the Tree Section is about trees; that she has been trying to work this problem out with the appellant for approximately four years; and that ocean views increase property values in Manhattan Beach by approximately \$500,000.

Also returning to the podium, **Sabine Birkenfeld, Appellant**, insisted that the complainant did not ask her to trim the eucalyptus in 2006 and filed a complaint, but the eucalyptus tree is trimmed twice each year.

On behalf of his deceased father who owned the property at 233 7th Street, **John Ziskin** discussed the value of greenery on the property and his parents' desire to live on the property because of trees and greenery, He agreed that the eucalyptus tree should not be removed.

The public hearing was closed at 8:36 p.m.

RECESS AND RECONVENE

At 8:37 p.m., there was a recess until 8:47 p.m., when the meeting reconvened in regular agenda order with all Commissioners present.

Commission Discussion

Following input from the Commission, Acting Community Development Director Jester provided clarification on the lack of height restrictions for trees on private property, except those which form a solid hedge from the ground up, such as bamboo, cannot be more than six feet high, and the lack of view protection restrictions for City street trees. She explained that landscaping is not included in the "encroachment" definition and that it has a separate definition and standards addressed in Section 7.36.150.

The Commission discussed the difficulty of this determination and the idea of revising the City's encroachment ordinance.

Commissioner Gross questioned the fairness of complaint-driven problems with landscaping in the public right-of-way. He discussed that, even though the ordinance applies to all walk streets, there is clearly a different standard for the walk streets east of Crest. The eucalyptus tree at 619 Highland Avenue is unique in terms of its size and view impairment compared to other properties on the walkstreets west of Highland Avenue.

Commissioner Vigon reviewed the progression of landscaping and trees in Manhattan Beach. He observed that there appears to be some inequities in how the law is enforced. Commissioner Vigon said that, as much as he loves nature and trees, the eucalyptus tree at 619 Highland Avenue is on public property and enforcement is, therefore, within the City's purview; that complaint-driven enforcement is a matter of practicality for the City; and that the recommendation made by the Commission will be forwarded to the City Council, which will ultimately make the final decision.

Commissioner Adami commented on the complaint-driven enforcement process. He felt that trees and ocean views should not be considered separately because they are both beautiful and provide wonderful vistas. However, trees enhance the beauty of the City.

Chairman Silverman related his appreciation of the complainant's desire to see the ocean from inside the dwelling she plans to construct on her property. He said that, while trees are special, so are ocean views.

Commissioner Stabile stated his opinion that that there is no need for the Commission to try to find a balance because the issue is the subject of a very comprehensive and detailed statute and Municipal Code Section 7.36.150 must be applied, in that the eucalyptus tree at 619 Highland Avenue exceeds the height limit and is encroaching into the public right-of-way. He contended that, contrary to staff's viewpoint, grandfathering is part of the statute and that this case is relatively simple since both the eucalyptus tree at 619 Highland Avenue and the palm trees at 233 7th Street are clearly subject to Code Section 7.36.150(A)8, which he read aloud as follows: "Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property." Commissioner Stabile explained his position that the only result which will conform to the statute is to vacate the actions of the Community Development Department on the grounds that they exceed the Department's authority; that the Commission should recommend to the City Council that the appeal be dismissed as moot; and that the appeal fees should be returned to appellant since none of this should have ever occurred.

Reading aloud the definition of "non-conforming" in Municipal Code Section 7.36.020, Acting Community Development Director Jester explained staff's opinion that the eucalyptus tree at 619 Highland Avenue and all other improvements, except the pine trees and fence, are non-conforming and unpermitted, which is a critical point in making this determination. In response to questions from the Commission, Acting Community Development Director Jester explained that a number of appeals have been considered since the statute was enacted in 2003 and the City Attorney wrote this ordinance and has supported staff 100% in saying that trees planted prior to this ordinance, as well as those planted before it, are subject to this ordinance. If unpermitted, improvements must be removed; and the City can require the removal of any improvements made after this time frame if they are on City property.

Ms. Jester offered detailed information about the regulations adopted in 2003, including the requirement of an encroachment permit for any improvements in the public right-of-way. She noted that the encroachment permit issued in 1979 for the fence and pine trees at 619 Highland Avenue included nothing about a eucalyptus tree, which the property owner indicated is over 40 years old, and would have been significant in size at the time and difficult to overlook.

Commissioner Stabile related his understanding that a fence is not a major alteration. He questioned if the statute would address this situation if the property were to be sold; discussed the avoidance of statutes which produce absurd results; and maintained the current regulations do not apply to this situation.

Acting Community Development Director Jester shared information on City requirements for obtaining encroachment permits when properties are sold. She highlighted the potential liabilities facing the City without the requirements included in encroachment permits for insurance and indemnification. Ms. Jester emphasized the need to focus on the view issue and whether the Commission feels the eucalyptus tree at 619 Highland Avenue is impairing the view or vista. She explained that, in all appeals of this nature, since 2003 the Code has been applied in this manner.

Commissioner Adami commented on the idea of re-examining the ordinance; the Commission's job to utilize common sense and consider what is good for the City; and the importance of citizen input, the ordinance and saving trees. He related his understanding of potential liability issues when property owners do not have encroachment permits.

Chairman Silverman said that the view of the ocean is special and that the question is which takes precedent - - the view of the ocean or the view of the eucalyptus tree. He entertained the idea of requiring the appellant to move the tree.

Commissioner Stabile insisted that the statute cannot be ignored and that the question is what it really means.

Commissioner Vigon agreed to the importance of determining the facts and whether staff has accurately interpreted the ordinance. He related his impression that the pivotal point appears to be if the tree must be permitted. Commissioner Vigon stated his inclination to support the staff recommendation.

Commissioner Gross discussed the difficulty of comparing ocean views and tree views. He voiced his understanding that the ordinance does not specifically address what a view is.

Commissioner Stabile pointed out Municipal Code Section 7.36.150(A)6, "Obstructions to neighboring resident's scenic views shall be avoided" and he said this is different than trees and houses.

Acting Community Development Director Jester advised that, since the ordinance was adopted in 2003, the Council has considered a number of appeals and their interpretation of view has been ocean, waves, skyline, Malibu, Palos Verdes, Catalina, and sand, but not trees.

MOTION: Commissioner Adami moved to recommend that the Council approve the staff recommendation to deny the request at 619 Highland Avenue to maintain and keep all landscaping over 42 inches high in the public right-of-way on the 7th Street walk street and approve all improvements and landscaping in the public right-of-way at 233 7th Street. The motion was seconded by Commissioner Vigon.

Prior to roll call vote, Commissioner Vigon stipulated that he seconded the motion on the basis of staff's determination that the eucalyptus tree at 619 Highland Avenue, like any other structure, was not permitted and, therefore, the protections for

grandfathering as interpreted by Commissioner Stabile do not apply. The motion was eventually defeated by a 3-2 roll call vote.

Reading aloud from Code Sections 7.36.150(A)8 and 7.36.150(B)3, Commissioner Stabile explained that the intent is to cause non-conforming encroachments to be brought into conformity. He said he could not accept the interpretation that it must be a permitted encroachment.

Commissioner Gross entertained amending the motion to include that the appellant and complainant shall make one last effort to resolve the situation without removing the tree and/or that, should there be any change to the property at 619 Highland Avenue requiring any kind of permit, the tree would need to be removed.

Commissioner Adami disagreed with amending the motion as entertained by Commissioner Gross. He related his desire that this be as uncomplicated as possible, as well as his support of an amendment to revise the ordinance or request that staff review it in the future.

The motion was defeated by a 3-2 majority roll call vote as follows:

Ayes:	Adami, Vigon.
Noes:	Stabile, Gross and Chairman Silverman.
Abstain:	None.
Absent:	None.

Commissioner Adami noted the lengthy amount of time this matter has been under consideration. He suggested that the appellant and complainant be required to meet for mediation within thirty days.

Commissioner Gross explained that the intent of the amendment he entertained was to pressure the parties to come up with an interim solution, with the final solution occurring when there is any change to the property.

Acting Community Development Director Jester advised that the triggering of an encroachment permit with any change to the property would be unreasonable.

Donna Howell, Complainant, related her support for requiring the appellant to remove the eucalyptus tree as thinning out the tree does not improve her view. Ms. Howell said the appellant's entire yard is covered in landscaping which cannot be thinned out enough to eliminate her view impairment and she stated her objection to additional mediation, as the first mediation was not productive.

Commissioner Vigon pointed out the probability that, between now and the City Council meeting during which the Commission's recommendation will be considered, the

specifics of the ordinance will be further discussed by the appellant's lawyer and the City Attorney.

MOTION: Commissioner Adami moved to recommend that the City Council approve the staff recommendation to deny the request at 619 Highland Avenue to maintain and keep all landscaping over 42 inches high in the public right-of-way on the 7th Street walk street and approve all improvements and landscaping in the public right-of-way at 233 7th Street. The motion was seconded by Commissioner Gross.

Prior to roll call vote, Commissioner Gross explained that he seconded the motion in that he was persuaded by Commissioner Vigon's comments regarding the probability of further discussion between the appellant's lawyer and the City Attorney. He said that this is a unique situation since there is no other tree west of Highland Avenue which obstructs views anything like this; that, even though the ordinance applies to all walk streets, there is clearly a different standard for the walk streets east of Crest; and that ocean views should be a priority.

The motion passed by a 4-1 majority roll call vote as reflected below:

Ayes:	Adami, Gross, Vigon and Chairman Silverman.
Noes:	Stabile.
Abstain:	None.
Absent:	None.

Commissioner Gross thanked speakers for their testimony.

Marti Padilla expressed her strong objection to the Commission's recommendation.

Acting Community Development Director Jester advised that, unless appealed within ten days, the Commission's recommendation will be presented for the City Council's consideration on the Consent Calendar at the meeting of November 16, 2010; and, if appealed, there will be a public hearing.

F. COMMISSION ITEMS

F1. Commissioner Gross invited the Commission and staff to his annual Holiday party on Sunday, December 12th.

F2. Commissioner Gross shared input on discussion of the Hermosa Beach Bicycle Plan at a Hermosa Beach Public Works' Commission meeting he attended.

Information about the South Bay Bicycle Coalition's Master Bike Plan was offered by Acting Community Development Director Jester.

F3. At the request of Commissioner Vigon, Management Analyst Madrid and Acting Community Development Director Jester related information about the property owners' basic compliance with the conditions of the encroachment permit at 441 2nd Street.

F4. Management Analyst Madrid explained for Commissioner Adami that his idea of constructing a sidewalk on Manhattan Beach Boulevard south of Target was not funded as part of the Capital Improvements Program (CIP). At Commissioner Adami's request, Ms. Madrid affirmed that this idea will be re-submitted to the Public Works Department.

F5. Commissioner Vigon noted the need for a study of pedestrian paths in Manhattan Beach.

F6. Chairman Silverman mentioned that a commercial establishment went out of business at 41st Street and Highland Avenue and he suggested that a 24-minute commercial parking be converted to a regular parking space.

Management Analyst Madrid verified that staff will look into doing so.

F7. In answer to an inquiry from Commissioner Adami, Management Analyst Madrid shared information on the City's previous consideration of parking meter technology which texts drivers when the meter in which they are parked expires. She indicated that this will be further examined.

F8. Chairman Silverman voiced his understanding of delays in parking meter credit card authorizations.

Management Analyst Madrid asked for the related parking meter numbers so staff can examine the parking meters with which there appears to be a problem.

F9. Management Analyst Madrid advised Commissioner Gross that there are no plans at this time to install new parking meters on the south side of the Pier.

F10. To encourage car pooling, Chairman Silverman considered the idea of installing parking meters at Manhattan Village Mall.

F11. Chairman Silverman noted the Downtown Open House on November 17, 2010, 6:00 to 9:00 p.m.

F12. Chairman Silverman announced the Foundation of Local Artists' Fund Raiser on November 13th at Manhattan Beach Country Club.

F13. Commissioner Adami called attention to the financial difficulties facing the Roundhouse on Manhattan Beach Pier and the need to promote fund raising related thereto.

G. STAFF ITEMS

10/28/10-3 July 2010 Monthly Revenue and Expenditure Report

Received and filed.

10/28/10-4 August 2010 Monthly Revenue and Expenditure Report

Received and filed.

Management Analyst Madrid provided updated information on the completion of the No Parking prohibitions along the west side of Sepulveda Boulevard, and the progress of the the installation of parking meters along Parkview Avenue.

H. ADJOURNMENT

At 10:30 p.m., the meeting was adjourned to Thursday, December 2, 2010.