

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

TO: Parking and Public Improvements Commission (PPIC)

FROM: Richard Thompson, Director of Community Development *USDJ FOR P.T.*
Nhung Madrid, Management Analyst *NM*

BY: Angelica Ochoa, Assistant Planner *AO*

DATE: December 1, 2011

SUBJECT: Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees Over 42" in Height on the Public Walkstreet to Remain- 228 7th Street

RECOMMENDATION:

Staff recommends that the Commission **DENY** the request at 228 7th Street to maintain and keep Yucca trees in the public right of way, on 7th Street (walkstreet), over the 42 inch maximum allowed height limit.

BACKGROUND:

This item was continued from September 22, 2011 to October 27, 2011, then to the December 1, 2011 PPIC meeting at the request of the property owner/appellant. (Exhibit A) Attached is the staff report and attachments from September 22, 2011 and October 27, 2011 as Exhibit B. Staff informed the appellant that this would be the last continuance granted and that the appeal would be heard at the PPIC meeting of December 1, 2011. The PPIC recommendation will then be forwarded to the City Council for final action.

Staff received documentation from the appellant and his tenant on November 18, 2011 and it is attached as Exhibit C. Previous staff reports address the items discussed in the appellants' submittal.

FRANK WATTLES
P. O. Box 3514
MANHATTAN BEACH, CALIFORNIA 90266
TELEPHONE (310) 372-0454

EXHIBIT A
PPIC Meeting 12/1/11

October 26, 2011

Laurie B. Jester, Planning Manager
City of Manhattan Beach
Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266
HAND DELIVERED

EP

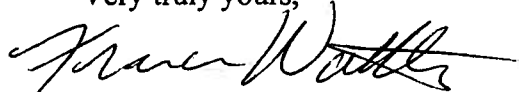
Encroachment Permit
appeal - continuance

Re: Appeal of Owner of 228 Seventh Street to PPIC
Request for Continuance

Dear Ms. Jester:

Please find enclosed my check in the amount of \$380.00 to cover the continuance fee.. A continuance is necessary for the reason that a expert witness statement has not been received and I am required to appear in a case of Videricksen v. McAuley in the Ventura Superior Court. The court case prevents my appearance at the PPIC hearing tomorrow .

Very truly yours,


Frank Wattles

cc: Wayne Hunkins, Esq.

Continue to December 1st, 2011
PPIC

Account # 4225

PAID
CAI/001-01293653
10-26-2011

EXHIBIT B
PAC Meeting 12/1/11

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

TO: Parking and Public Improvements Commission (PPIC)

FROM: Richard Thompson, Director of Community Development
Clay Curtin, Management Analyst *CC* *RT* FOR RT.

BY: Angelica Ochoa, Assistant Planner *AO*

DATE: October 27, 2011

SUBJECT: Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees Over 42" in Height on the Public Walkstreet to Remain- 228 7th Street

RECOMMENDATION:


Staff recommends that the Commission **DENY** the request at 228 7th Street to maintain and keep Yucca trees in the public right of way, on 7th Street (walkstreet), over the 42 inch maximum allowed height limit.


BACKGROUND:

This item was continued from the September 22, 2011 PPIC meeting at the request of the property owner (Exhibit C) and was re-noticed for this meeting (Exhibit B). Attached is the staff report and attachments from September 22, 2011 as Exhibit A. Staff also received email comments (Exhibit D).

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

TO: Parking and Public Improvements Commission

FROM: Richard Thompson, Director of Community Development
Clay Curtin, Management Analyst 

BY: Angelica Ochoa, Assistant Planner 

DATE: September 22, 2011

SUBJECT: Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees Over 42" in Height on the Public Walkstreet to Remain- 228 7th Street

RECOMMENDATION:

Staff recommends that the Commission **DENY** the request at 228 7th Street to maintain and keep Yucca trees in the public right of way, on 7th Street (walkstreet), over the 42 inch maximum allowed height limit.

BACKGROUND:

A complaint about over height Yucca trees was received on February 18, 2011 by the property owner, Donna Howell across Highland Avenue, to the east, at 300 7th Street. Specifically, the complaint focused on the existing Yucca trees being over the maximum height limit of 42" in the walkstreet at 228 7th Street and the impact on ocean and scenic views (Exhibit A). The complaining party stated that the Yucca trees directly impact their views. Per Section 7.36.150 B.3 of the encroachment standards, if a resident view is impaired, the property owner shall be directed to trim down their landscaping to the required maximum height of 42". Mr. Frank Wattles, property owner of 228 7th Street has no encroachment permit for the Yucca trees, or any improvements in the walkstreet as required by Section 7.36.030 of the Manhattan Beach Municipal Code.

A letter was sent to Mr. Wattles on April 5, 2011 (Attachment F) by the code enforcement officer regarding the complaint and he was directed to contact mediation services by May 20, 2011 to address the neighbor's concerns. Mr. Wattles did not contact mediation services by the deadline. On March 30, 2011, Mr. Wattles filed a lawsuit against the City to keep his Yucca trees and on July 25, 2011 the court ruled in favor of the City. On August 8, 2011 (Exhibit B), Mr. Wattles submitted an appeal to the City of Manhattan Beach to keep his Yucca trees in the encroachment area on 7th Street.

Section 7.36.030 of the Manhattan Beach Municipal Code requires that encroachment permit appeals be heard by the Parking and Public Works Commission (PPIC) with a recommendation to the City Council.

DISCUSSION:

Staff originally met with the subject property owner of 228 7th Street when an encroachment appeal was filed in June 2010, by the property owners to the east at 619 Highland Avenue (Birkenfeld) and to the north at 233 7th Street (Ziskin) to keep their existing landscaping over the maximum height limit of 42". Mr. Frank Wattles was the property owners' representative for 619 Highland Avenue and 233 7th Street.

Staff explained to Mr. Wattles at that time that his Yucca trees may become a problem since they were over the required maximum height of 42", but that a determination would not be made until after resolution of his neighbor's appeals. The PPIC heard the appeal and made a recommendation (October 28, 2010) to City Council (November 16, 2010) to uphold the denial to request to keep the landscaping over the maximum height of 42" at the properties at 619 Highland Avenue and 233 7th Street. The City Council then took final action on the appeal. The property at 233 7th Street was allowed to keep the existing landscaping over 42" high since it did not impair any scenic or ocean views. The property owners at 619 Highland Avenue were allowed to keep the Eucalyptus tree as long as it was trimmed and the openness was maintained, and cut down their over height landscaping to 42". The property owners did not comply with the City Council's decision, and the City cut down the landscaping to conform to the maximum height of 42".

The code enforcement officer then received a complaint on February 18, 2011 from the property owners across Highland Avenue (Howell), to the east at 300 7th Street. The code enforcement officer spoke to Mr. Wattles and recommended he meet with the complaining party and attend mediation services to try and resolve the concerned issues. Mr. Wattles did not pursue mediation services and filed a lawsuit against the City on March 30, 2011. The subject property owner felt they he should not be subject to the walkstreet regulations since the Yuccas were planted before the current (2003) regulations were in place and he had a acquired a vested right in the encroachment area where the Yucca trees were located. The judge stated Mr. Wattles had no such right, at the hearing on July 25, 2011, and confirmed that the regulatory jurisdiction was the City of Manhattan Beach as the Yuccas are on public property, owned by the City. Also, the judge stated that the governing ordinance for walkstreets is Section 7.36 of the Municipal Code, which is regulated by the City of Manhattan Beach.

Encroachment Regulations

Encroachment standards have historically been enforced largely on a complaint basis. In this case, a complaint was filed due to obstruction of views. Specifically, the over grown and over height Yucca trees at 228 7th Street directly impact the ocean, and beach views of the property owner to the east (across Highland Avenue) at 300 7th Street.

Encroachment Permit regulations are contained in Chapter 7.36 of the Manhattan Beach Municipal Code. Specifically, walkstreet standards, as stated in MBMC Section 7.36.150 B.3 (Exhibit C), "Landscaping is permitted subject to approval of a landscape plan submitted with an encroachment permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and

conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42”) as measured from the adjacent walkway”.

The encroachment code states that if a view is impaired (Section 7.36.150 A6 and 7.36.030, Exhibit C), the Director of Community Development shall direct the owner to cut the landscaping in the encroachment area to a maximum of 42” high. The existing Yucca trees, which are about 6 to 12 feet tall, are not currently permitted, and are directly impairing the resident views of the ocean, waves, and beach from the complaining parties.

Therefore, the property owner at 228 7th Street Highland Avenue must cut or remove the Yucca trees to be in conformance of the encroachment standards for landscaping of maximum 42” high.

Public Input

A notice of the Parking and Public Improvement Commission meeting was mailed to all owners of record within a 300 feet radius from the subject encroachment property (Attachment D), in accordance with Section 7.36.080 of the MBMC. Staff received one email comment in support of keeping the Yucca trees (Attachment E).

CONCLUSION:

The walkstreet standards allow only landscaping limited to a maximum height of 42 inches. The landscaping is not consistent with the walkstreet standards and a complaint was filed due to view blockage. There is no approved encroachment permit for the improvements. Since the landscaping of the subject property impairs neighbors’ views and the intent of the 42” high landscaping in the encroachment area is to keep a low and open view, the landscaping at 228 7th Street must be cut down to 42” to comply with the public walkstreet regulations.

Attachments:

- A. Photos from Property Owner at 300 7th Street dated August 29, 2011
- B. Encroachment Appeal dated July 27, 2011 – 228 7th Street
- C. Chapter 7.36 MBMC-excerpts (walkstreet standards 7.36.150 B.3, 7.36.150 A6, 7.36.030)
- D. Public Notice dated September 7, 2011
- E. Email comment dated September 8, 2011
- F. Code Enforcement letter sent to Mr. Wattles dated April 4, 2011
- G. Vicinity Map and Photos from Walkstreet of Subject Property

cc: Frank Wattles, property owner of 233 7th Street
Donna Howell, property owner of 300 7th Street

Angelica Ochoa

Subject: FW: pictures 300 7th sy vs 619 Highland
Attachments: DSC_0701.JPG; DSC_0702.JPG

From: Jacqueline Harris
Sent: Monday, August 29, 2011 10:38 AM
To: Angelica Ochoa
Cc: Laurie B. Jester
Subject: FW: pictures 300 7th sy vs 619 Highland

See attached pictures from Donna Howell.

Thanks
Jackie

Jacqueline Harris
Code Enforcement Officer

P: (310) 802-5538
E: jharris@citymb.info

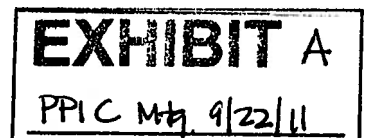
• Reply
• Forward
• Print

Date: Mon, 29 Aug 2011 12:15:34 -0500
From: katcrawford@verizon.net
To: donnasells@hotmail.com
Subject: pictures

Hi Donna-

Attached are the pictures you requested. One is from the very north edge of the north window on the second floor. The other is from the driveway on the street level. Hopefully this is what is needed.

Kathy







Michael Ruiz
228 Seventh Street
Manhattan Beach, CA 90266

July 27, 2011

Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Your Letter regarding trees in my front yard

To: Department Director:

This letter responds to the referenced letter whereby you order the trees cut down in the property beside the public walkstreet and next to my property. I am a long term resident at the letterhead address and enjoy the trees which have been there for many years. Your Department determined that the trees must be cut down. You cite an ordinance that requires the cutting, but based upon what happened to a neighbor, I want to appeal as they did. I disagree that the ordinance and its standards apply to this tree and I understand that the City Council can make a decision saving the trees.

~~\$465~~ \$500.00

I will deliver this letter to the Department on its date and pay the ~~\$465~~ appeal fee which the neighbors paid for their appeal. I understand this appeal timely responds to the referenced letter, and consequently the action by the Department to cut down the respective trees will be abated during the appeal. Please confirm that direct action to cut down or remove the trees will be deferred during the appeal.

Yours truly,



Michael Ruiz



F. WATTLES

FRANK

Prop. Owner

8-8-2011

OK

"Engineer" means the Manhattan Beach City Engineer or his or her designee.

"Excavation" means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

"Landscaping" means an area devoted to or developed and maintained with lawn, gardens, trees, shrubs and other plant materials and excluding decorative outdoor landscape elements such as water features, paved surfaces, potted plants and sculptural elements.

"Natural grade" means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

"Nonconforming" means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.

"Occupy" means owning or operating any facilities that are located in rights of way.

"Open design fence" means a fence where the primary fence material is transparent and colorless, or the open spaces between the solid segments are equal to or exceed the size of the solid segments.

"Overhead structures" means any improvement extending over a public place, right of way or street.

"Person" means any living individual, any corporation, joint venture, partnership, or other business entity.

"Public walkway" means the portion of the public right of way improved and designated by the City for pedestrian travel.

"Right of way" means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

"Usable surface" means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding forty-four inches (44") in width that provides access from the public walkway to private property.

"Walk street" means a dedicated public street improved with a public walkway that is closed to vehicular traffic.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.030 - Permit required.

It shall be a violation of this chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this chapter shall include, but not be limited to, private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. The City Council may, from time to time, by resolution set fees for issuance of encroachment permits authorized by this chapter.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.040 - Initiation.

The Director of Community Development shall have the authority to issue an encroachment permit consistent with the standard set forth in this chapter provided that where fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, or street alterations are to be performed, detailed plans for any such work shall be submitted to the Director of Public Works whose approval shall be required.

Applications shall be submitted to the Community Development Department with the required forms, fees, plans, and related material. Applications shall be reviewed for compliance with the requirements of this chapter, and the public's priority for use of City right of way as determined to be appropriate by the Director of Public Works.



7.36.105 - Restoration of public right of way.

Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the Director of Public Works. Where excavation occurs within areas already paved, the Director of Public Works may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the Director of Public Works may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee's adjacent real property.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.110 - Revocation.

The Director of Community Development or the City Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment, including but not limited to provision of liability insurance coverage to the City or if it is determined that such permit is not in the public interest. A written notice shall be mailed to the permittee of such revocation. Within ten (10) working days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be made to the Parking and Public Improvements Commission whose recommendation will be reviewed by the City Council and the Council's determination of the matter shall be final.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.120 - Enforcement.

Violation of this chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation; inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; and attorney fees.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.140 - Other permits.

Nothing in this chapter shall preclude a requirement for a Coastal Development Permit, Business License, Conditional Use Permit, or other City, State or County permit if otherwise required for the encroaching activity. See Chapter A.96 of the Manhattan Beach Local Coastal Program Implementation Program for applicable Coastal Development Permit requirements.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.150 - Encroachment standards.

A. General Standards:

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.

3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of thirty inches (30") of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an Encroachment Permit.
5. All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.
6. Obstructions to neighboring resident's scenic views shall be avoided.
7. Steps and Stairs, other than risers between four and seven inches (4" to 7") in height and spaced a minimum of three feet (3') apart, are not permitted in the public right of way.
Exception. One set of steps comprised of three (3) consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.
8. 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.
9. Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.

B. Walk Street Standards:

1. Fences and railings, including required safety handrails and guardrails, are permitted provided an open design is utilized. The maximum allowable height is forty-two inches (42") above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a thirty-six inch (36") maximum height (measured from adjacent curb level) is required within a distance of five feet (5') from the street corner.
2. Retaining walls (not including walkway risers), free-standing walls and closed design fences are permitted provided the maximum allowable height is thirty-two inches (32") above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (1) above shall not be permitted.
Exception. Retaining walls and related required safety railing that exceed the thirty-two inch (32") limit may be constructed at the side boundaries of an encroachment area if necessary to retain a neighbor's existing grade, provided all other encroachment improvements comply with applicable encroachment standards. If subsequently such over-height walls and/or safety rails are no longer necessary due to modification of the adjoining encroachment area, the property owner shall lower the over-height wall/safety rail to conform with applicable standards. This requirement shall be included as a permit condition in the Encroachment Permit Agreement.
3. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42") as measured from the adjacent public walkway. Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to forty-two inches (42") maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.
4. Usable surfaces (as defined herein). The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway. Usable surfaces are permitted as follows:
 - a. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of twelve inches (12") as measured above or below the adjacent public walkway.
 - b. Within the rear half of the encroachment area (adjacent to private property), limited to a maximum height of either: thirty-six inches (36") as measured above or below the adjacent public walkway, or twelve inches (12") as measured above or below the natural grade, as defined herein.
5. The total combined height of fences, railings, retaining walls (including walkway risers) shall not exceed a height of forty-two inches (42") as measured from lowest adjacent finished grade.
6. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards except as permitted by the Director of Public Works.



City of Manhattan Beach

Community Development

Phone: (310) 802-5500

FAX: (310) 802-5501

TDD: (310) 546-3501

September 7, 2011

PUBLIC MEETING NOTICE

Encroachment Permit Appeal- 228 7th Street

Dear Resident/Property Owner:

The Department of Community Development has received an application for an Encroachment Appeal submitted by property owner, Frank Wattles at 228 7th Street. Mr. Wattles is requesting to keep his Yucca trees in the public right of way (walkstreet) on 7th Street over the required maximum 42" height limit.

The request has been administratively denied because the existing Yucca trees exceed the 42" maximum height limit for landscaping in the public right way per Manhattan Beach Municipal Code 7.36.150, and a residential view is impaired by the over height yuccas. Additionally, the property owner has no current encroachment permit. An encroachment permit is required per Manhattan Beach Municipal Code Section 7.36.030 for private improvements in the public right of way. Mr. Wattles appealed this decision and therefore this matter has been referred to the PPIC (Parking and Public Improvement Commission) for review and a recommendation for action by the City Council. Your comments and input are invited. The review will be held on:

Thursday, September 22, 2011

6:30 pm

City Council Chambers

1400 Highland Avenue

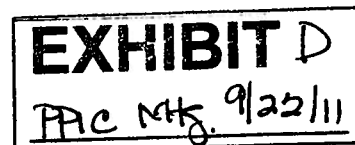
Input regarding the subject Encroachment Permit Appeal may be submitted in advance through the Community Development Department or at the Hearing. Comments made in advance should be mailed or emailed to:

Angelica Ochoa, Assistant Planner
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266 email: aochoa@citymb.info

If you have any questions or would like additional information, please contact Angelica Ochoa at (310) 802-5517 or email at the email noted above.

Sincerely,


Richard Thompson
FOIR
Director of Community Development



Angelica Ochoa

From: mbmitzi@verizon.net
Sent: Thursday, September 08, 2011 6:35 PM
To: Angelica Ochoa
Subject: Over 50 year old Yucca Trees

Here we go again!! Don't you understand that people who have lived here longer than the encroachment rules were established have older growth? What are you trying to do? My God, are there not other matters far more important for you and Laurie to work on?

You bet I'll be there just like I was for the Eucalyptus tree. The realtor/owner across the street was stopped once by we the people and I guarantee you it will happen again. She just won't stop. I see she has not submitted her plans to build yet. What a neighbor!!

Have you seen the mess around her property? She needs to clean up her own yards before attacking her neighbors.

Mary Boyd, see you there.

EXHIBIT E
PPIC MH. 9/22/11



City of Manhattan Beach

Community Development

Phone: (310) 802-5500
FAX: (310) 802-5501
TDD: (310) 546-3501

April 4, 2011

Frank Wattles
228 7th St.
Manhattan Beach, CA 90266

RE: Over height vegetation in the encroachment area at 228 7th St., Manhattan Beach, CA 90266

Dear Mr. Wattles:

Recently, the City of Manhattan Beach received a complaint notifying us that your property has over height Yucca trees in violation of the Manhattan Beach Municipal Code.

7.36.150 Encroachment standards B (3) Walk street standards, states in part:

“To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42”) as measured from the adjacent public walkway.”

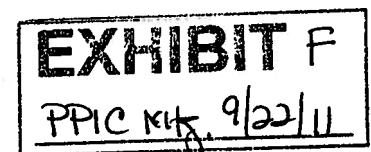
Please reduce the Yucca trees in the encroachment area to 42” no later than May 20, 2011. Should you wish to mediate this please contact Lance Widman of South Bay Dispute Resolution at (310) 376-7007.

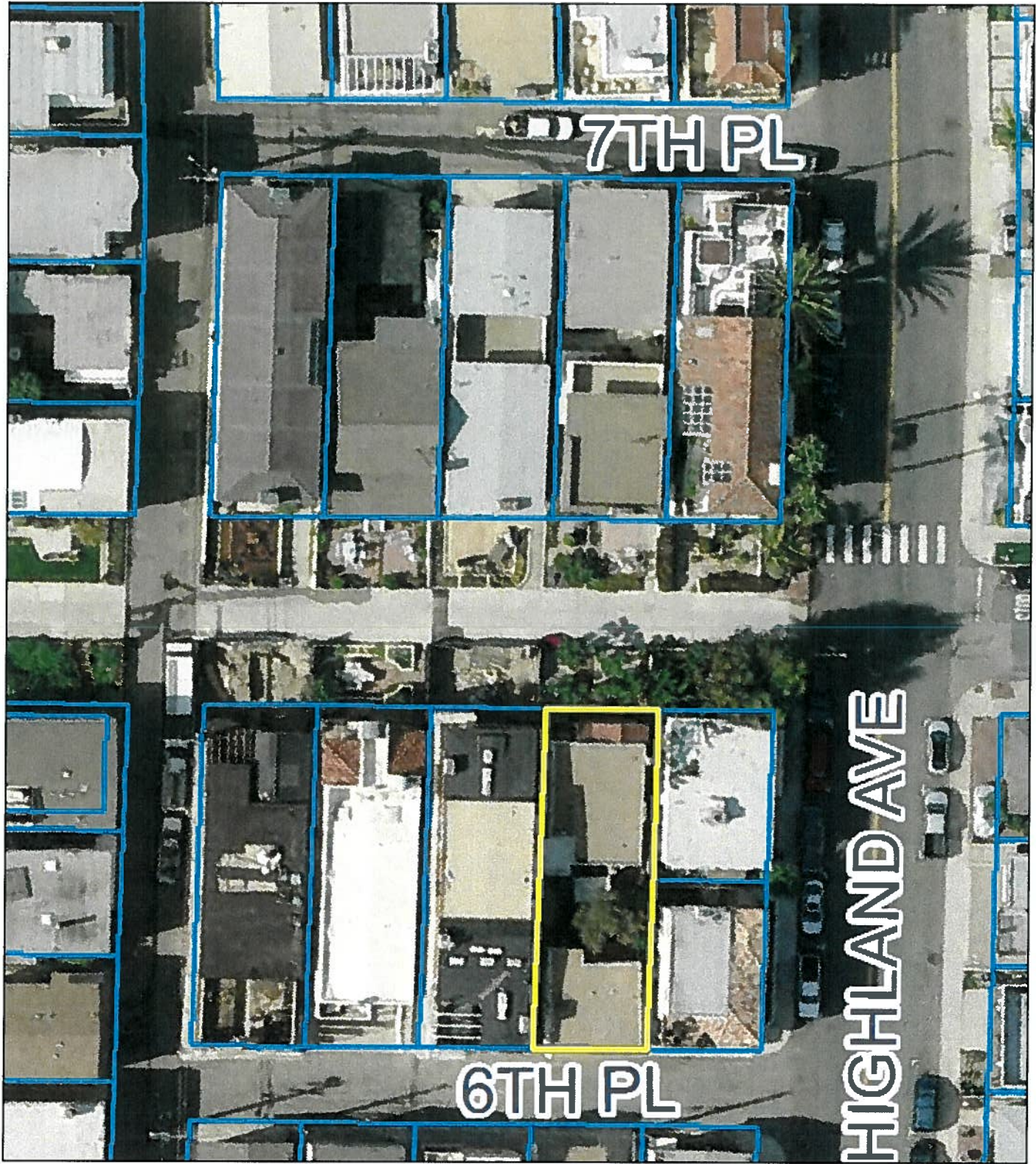
If you have any questions please contact me at (310) 802-5538.

Sincerely,

Jacqueline Harris
Code Enforcement Officer
City of Manhattan Beach

Cc Lance Widman, South Bay Dispute Resolution





Vicinity Map

228-7th Street



0 15 30 60 Feet



EXHIBIT 6
PPIC MKG. 9/22/11



City of Manhattan Beach
Community Development







City of Manhattan Beach

Community Development

Phone: (310) 802-5500

FAX: (310) 802-5501

TDD: (310) 546-3501

October 12, 2011

**SECOND NOTICE OF CONTINUED MEETING
PUBLIC MEETING NOTICE
Encroachment Permit Appeal- 228 7th Street**

Dear Resident:

The Department of Community Development has received an application for an Encroachment Appeal submitted by property owner, Frank Wattles at 228 7th Street. Mr. Wattles is requesting to keep his Yucca trees in the public right of way (walkstreet) on 7th Street over the required maximum 42" height limit. The meeting was continued from September 22, 2011 at the request of the property owner.

The request has been administratively denied because the existing Yucca trees exceed the 42" maximum height limit for landscaping in the public right of way per Manhattan Beach Municipal Code 7.36.150, and a residential view is impaired by the over height yuccas. Additionally, the property owner has no current encroachment permit. An encroachment permit is required per Manhattan Beach Municipal Code Section 7.36.030 for private improvements in the public right of way. Mr. Wattles appealed this decision and therefore this matter has been referred to the PPIC (Parking and Public Improvement Commission) for review and a recommendation for action by the City Council. Your comments and input are invited. The review will be held on:

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Angelica Ochoa, Assistant Planner
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266 email: aochoa@citymb.info

If you have any questions or would like additional information, please contact Angelica Ochoa at (310) 802-5517 or email at the email noted above.

Sincerely,

Richard Thompson
Director of Community Development

FRANK WATTLES
P. O. Box 3514
MANHATTAN BEACH, CALIFORNIA 90266
TELEPHONE (310) 372-0454

PAID
E/001-01291634
09-22-2011

September 22, 2011

Laurie B. Jester, Planning Manager
City of Manhattan Beach
Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266
HAND DELIVERED

Re: Appeal of Owner of 228 Seventh Street
Request for Continuance

Dear Ms. Jester:

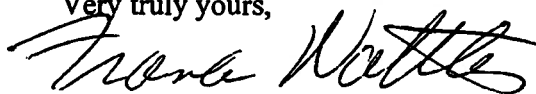
This letter is in further reply to your e-mail earlier today. I had requested a continuance based upon certain points raised in my letter to Mr. Curtin delivered yesterday. You clarified in requiring a payment of \$380 for a continuance fee. You stated that as an appellant I was entitled to notice of the date of the hearing only, and that I was not entitled to the Staff Report. That Report you said was given only as a courtesy. For this reason, I am enclosing the fee, because the appeal cannot possibly be presented this evening as scheduled.

You stated that there is nothing new in this case and that there is nothing new in the Staff Report. Your inference seems to be that I cannot be prejudiced by inadequate time to respond to the Report. I respectfully disagree.

This appeal claims that there is no merit to any of the claims made by your department in requiring an encroachment permit. That requirement is disputed and is a subject of this appeal. As a property owner who planted the Yuccas long before your ordinance which you allege orders you to destroy those trees, I have an entitlement to the limited but continued presence of the trees. The steps in the right-of way forming the front yard were permitted by the City as were all of the items serving my adjoining property. The trees were permitted by MBMC 7.32.090 and additionally to the extent that the trees are an encroachment (with which I disagree) are grandfathered by Subpart 150.A.8 of Chapter 7.36. For these entitlements/rights the action you are recommending is illegal. Your claims are in excess of jurisdiction, and for that reason it is important that you state the reasons and give me an opportunity to respond. By late delivery of the Staff Report, including its recommendation and reasons, I am disabled from meaningful response and appeal.

I contend that by your procedure, I have been forced to ask for this continuance and should not have to pay an added fee. Notwithstanding this objection and subject thereto, the fee is enclosed.

Very truly yours,



Frank Wattles

cc: Wayne Hunkins, Esq.

FRANK WATTLES
P. O. Box 3514
MANHATTAN BEACH, CALIFORNIA 90266
TELEPHONE (310) 372-0454

September 21, 2011

Mr. Clay Curtin, Management Analyst
City of Manhattan Beach
Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266
HAND DELIVERED

Re: Appeal of Owner of 228 Seventh Street
Request for Continuance of the Hearing

Dear Mr. Clay:

I am the owner and one of the appellants in the Encroachment Appeal regarding the referenced property. It is necessary to request a continuance of the hearing scheduled for tomorrow for reasons stated below. I have been informed that you are the person to whom I should make this request.

The information concerning the hearing and the Staff Report setting forth the position of the City and the Complainant have come to me late with no adequate time to prepare. I am represented by an attorney in legal matters concerning the property and he will not be able to prepare for the hearing. His contact information is:

Wayne Hunkins Esq.
Matison, Margolese & Korn, ALC
714 W. Olympic Blvd. Suite 450
Los Angeles, California 90015
Phone: (213)765-0632

The Public Notice dated September 7, 2011, was not sent to me. Eventually, by rumor I learned of the Notice. The Staff Report which is undated was received early this morning. The document sets forth the

Mr. Clay Curtin
City of Manhattan Beach

2

September 21, 2011

recommendation of Community Development Department ("CDD") for the hearing and the reasons therefor. The document is necessary to respond in a writing in advance of the hearing. The document was sent to me on Monday in the late afternoon by e-mail; however, I did not receive it until very early this morning. The reason for late delivery is that there was a electronic problem with the delivery system which prevented my learning of the mail until this morning.

The Report notes that a carbon copy was sent to me and the complainant; however, I never received that copy.

Immediately, I forwarded the e-mailed document to my attorney. He is not able to respond in time for the hearing, nor am I.

General plans were made for the hearing which were hurried; however, with the very late delivery of the Staff Report, no response can be made timely. Even if a response could be made, there would be much detail contained therein. Past experience has taught that the Commissioners are ill-prepared to address a late-received document.

I submit to you that the only fair procedure is to continue the hearing to a following date which will afford an opportunity for the appellants to respond. This letter makes that request.

Please advise.

Very truly yours,



Frank Wattles

cc: Wayne Hunkins, Esq.

Angelica Ochoa

From: Ray Joseph <rayj310@gmail.com>
Sent: Thursday, September 15, 2011 5:13 PM
To: Angelica Ochoa
Subject: 7th st YES CUT DOWN Plants

I strongly support the 42" height restriction for walkstreets. People buy walkstreets for the views and social aspects. The city should enforce the 42" requirement when neighbors complain.

--

Thanks,

Ray Joseph
Shorewood Realtors
3300 Highland Ave
Manhattan Beach CA 90266
310-545-RayJ (7295)
Fax 310-376-1031
RayJ310@gmail.com
Search live MLS listing at www.RayJoseph.com

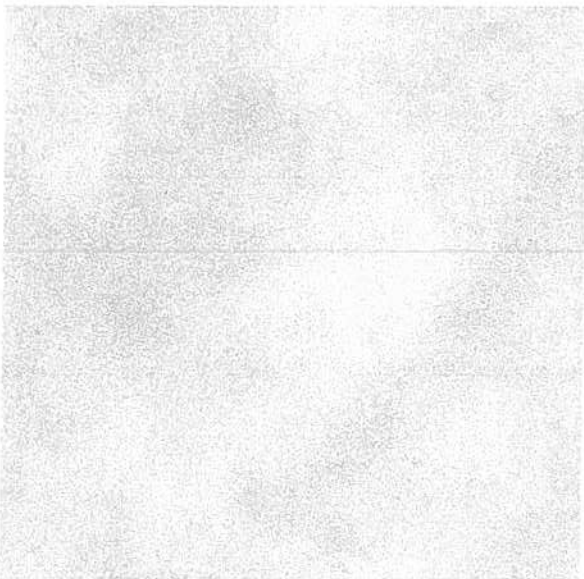
The highest compliment my clients can give me is a referral of their friends, family and business associates.

Angelica Ochoa

From: Donna Howell <donnasells@hotmail.com>
Sent: Tuesday, September 20, 2011 9:05 AM
To: Angelica Ochoa
Subject: RE: Staff Report for 228 7th Street Appeal to PPIC

I will be on a cruise at the time of the meeting. I know that they have already sent out flyers to try to get people to e-mail and show up at the meeting. Most of the people that attended the city council meeting and sent e-mails weren't from Manhattan Beach. I would love to attend but know they can't postpone it for me. I get back 9/28. I really don't understand ..she got to keep her tree. It looks like she has planted several more since January. Please tell the planning commission that 99% of those e-mails aren't from MB. residents.

Subject: Staff Report for 228 7th Street Appeal to PPIC
Date: Mon, 19 Sep 2011 14:20:04 -0700
From: aocchoa@citymb.info
To: donnasells@hotmail.com



Hi Donna,
Here is the staff report for the appeal at 228 7th Street that will be going forward to the PPIC this Thursday, Sept. 22, 2011 at 6:30pm.
Let me know if you have any questions.
Angelica

Angelica Ochoa
Assistant Planner

P: (310) 802-5517
E: aocchoa@citymb.info



Angelica Ochoa

From: Marjorie Bowen <marjorie.bowen@verizon.net>
Sent: Friday, September 23, 2011 12:42 PM
To: Angelica Ochoa
Subject: Comments regarding 228 7th Street

Dear Ms. Ochoa -

Though I missed the meeting last night during which the encroachment for the above property was reviewed, I would like to know if a decision was made. If a decision wasn't made I'd like to add to the comments that perhaps you have received.

My comment is very simple: if you are a resident anywhere in the city, you live within an area that has zoning restrictions and you must be willing to live within those restrictions if your property is not within code and a neighbor complains. Selective enforcement and selective waivers are not effective tools for government which must fairly and consistently uphold our rules of zoning as well as other rules. I am a neighbor in the 200 block of 6th Street, and the code has caused me to cut down trees, and I've asked my neighbors to do the same. We all must accept and abide by the same set of rules. It is frustrating that the city doesn't uniformly enforce the code, and that "squeaky wheels get the grease." Again, no encroachments are appropriate, we all must live within a set of rules that are enforced fairly and consistently, and I hope that if a conclusion was reached it is within this spirit of government.

Please advise as to the status of the request.

Thank you,

Marjorie Bowen
225 6th Street

Angelica Ochoa

From: mary boyd <mbmitzi@gmail.com>
Sent: Monday, October 17, 2011 3:27 PM
To: Angelica Ochoa
Subject: Beautiful Yucca Trees

Hello Ms. Ochoa: Once again this woman is after a neighbor's Yucca Trees. She was not satisfied with losing the battle to remove the Eucalyptus Tree so she is after the next door neighbor's Yucca Trees. This is a scorned person reverting to revenge. What a terrible neighbor she will be.

I have lived here for going on 51 years and as far back as I remember the Yucca trees have been here also. They are beautiful and they are spaced far enough apart that the neighbor, mentioned above, could still see the ocean; but for the Eucalyptus tree. What a loser loser.

I do not want these beautiful Yccas cut. Period. See you at the Council meeting. Thank you Mis Ochoa, you seem like a nice person. What a job you've got.

Mary Boyd, 320 7th st. MB

Angelica Ochoa

From: Donna Howell <donnasells@hotmail.com>
Sent: Wednesday, October 19, 2011 5:24 PM
To: Angelica Ochoa
Subject: RE: Encroachment Appeal Notice of 228 7th Street

planning commission

I am sorry to miss tonite's meeting. I am attending a ROTC reunion in Kansas that was planned a a year ago. I am the only property that is affected by Mr. Waddle's yucca trees. You have in your possession photos showing my view blocked by Mr Waddle's Yucca trees. The people that have been attending the past meeting concerning the tree next door to Mr Waddle's house and are probably the same ones at tonite's meeting are not MB residents. They are from Hollywood, Lomita, Redondo Beach, etc...One man who spoke at two of these meetings and was even quoted in the newspaper stated he lived at 266 7th street. There is no such address as the street stops at 233 and then skips to 300. This can be verify in the videos taken.The e-mails that are being sent to you to protect Mr. Waddle's trees are also a joke and are not from residents of MB. If you decide to waive and not enforce the ordinance that you created to protect the sand section ocean views then you should get rid of the ordinance all together. Recently I removed a 30 year old Cypress tree from a property when a neighbor complained of her view being blocked. I built an enclosure for trash cans that had sat in the same spot for 40 years because a neighbor complained. I follow the rules MB have. Rules and ordinances are not to be governed by a popularity contest. Everyone deserves to be treated equally. Thank you, Donna Howell

You can write a letter and I can include it in my staff report. The staff report goes out this Friday, October 21. I will need the letter at the latest by tomorrow, Wednesday, October 19, 2011. You can still submit your letter after this date and it will be handed out to the PPIC commissioners at the meeting on October 27, 2011.

Angelica

Angelica Ochoa
Assistant Planner
P: (310) 802-5517
E: aocchoa@citymb.info



From: Donna Howell [<mailto:donnasells@hotmail.com>]
Sent: Tuesday, October 18, 2011 10:51 AM
To: Angelica Ochoa
Subject: RE: Encroachment Appeal Notice of 228 7th Street

We are going to be at a ROTC reunion in Kansas that has been planned for over a year. I have discovered that 99% of the people that show up and send e-mails do not live in Manhattan Beach. Should I write a letter and can someone read it to the planning commission? I am really the only one that is effected by his trees. I tore out a 30 yr old cypress this year because it blocked somone's view. If the commossion and city council make their decision on how many people show up instead of their own rules then their should be no ordinance. Please let me know the best course of action. Thank you, Donna Howell

Subject: Encroachment Appeal Notice of 228 7th Street
Date: Thu, 13 Oct 2011 16:00:49 -0700
From: aocchoa@citymb.info
To: donnasells@hotmail.com

Donna,

Angelica Ochoa

From: Marjorie Bowen <marjorie.bowen@verizon.net>
Sent: Friday, October 21, 2011 9:39 PM
To: Angelica Ochoa
Subject: Re: Comments regarding 228 7th Street

Hello Angelica -

I wanted to remind you of my comments (below) in advance of the Public Meeting on October 27th regarding 228 7th Street. Frankly I don't have much sympathy for a neighbor that wants to breach a zoning code for their benefit at the expense of another neighbor.

"Grandfathering" of residential structures is entirely reasonable, but non-residential structures (such as patios and decks) and foliage should all be subject to existing codes so that each property is as in compliance as possible at a reasonable cost. No exceptions, no waivers when neighbors are negatively impacted. If you want more trees, move to an area that doesn't have such restrictive zoning regarding the height of vegetation.

Thank you for your consideration.

Marjorie Bowen
225 6th Street

On Sep 23, 2011, at 2:53 PM, Marjorie Bowen wrote:

Thanks for the information. I appreciate it.

Regards,
Marjorie

On Sep 23, 2011, at 2:12 PM, Angelica Ochoa wrote:

Ms. Brown,

The item for 228 7th Street was not heard last night at the Parking and Public Works Commission (PPIC) meeting. The item was continued until October 27, 2011 at the request of the applicant. I will provide copies of your comments to the commissioners.

Thank you.

Angelica

Angelica Ochoa
Assistant Planner
P: (310) 802-5517
E: aochoa@citymb.info
City of Manhattan Beach, CA

-----Original Message-----

From: Marjorie Bowen [<mailto:marjorie.bowen@verizon.net>]
Sent: Friday, September 23, 2011 12:42 PM
To: Angelica Ochoa
Subject: Comments regarding 228 7th Street

Dear Ms. Ochoa -

Though I missed the meeting last night during which the encroachment for the above property was reviewed, I would like to know if a decision was made. If a decision wasn't made I'd like to add to the comments that perhaps you have received.

My comment is very simple: if you are a resident anywhere in the city, you live within an area that has zoning restrictions and you must be willing to live within those restrictions if your property is not within code and a neighbor complains. Selective enforcement and selective waivers are not effective tools for government which must fairly and consistently uphold our rules of zoning as well as other rules. I am a neighbor in the 200 block of 6th Street, and the code has caused me to cut down trees, and I've asked my neighbors to do the same. We all must accept and abide by the same set of rules. It is frustrating that the city doesn't uniformly enforce the code, and that "squeaky wheels get the grease." Again, no encroachments are appropriate, we all must live within a set of rules that are enforced fairly and consistently, and I hope that if a conclusion was reached it is within this spirit of government.

Please advise as to the status of the request.

Thank you,

Marjorie Bowen

225 6th Street

EXHIBIT C
PPIC Meeting 12/1/11

FRANK WATTLES
P. O. Box 3514
MANHATTAN BEACH, CALIFORNIA 90266
TELEPHONE (310) 372-0454

Michael and Kirsten Ruiz (and Jackson)
228 Seventh Street
Manhattan Beach, California 90266
Telephone (310) 802-0704

RECEIVED
NOV 18 2011
By *UBJ*

TO: Parking and Public Improvements Commission

FROM: 1. Frank Wattles, property owner, and
2. Michael and Kirsten Ruiz (and Jackson), tenants

DATE: December 1, 2011

SUBJECT: Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees Over 42" in Height on the Public Walkstreet to Remain- 228 7th Street

ISSUE ON APPEAL

Property Owner Frank Wattles of the property at 228 Seventh Street ("Owner") and Tenants – The Ruiz Family – of the property are appealing the decision of the Department of Community Development ("CDD"). requiring reduction of the subject Yucca trees to a height of 42 inches ("removal").¹

GROUND FOR APPEAL

The grounds for the appeal are:

- 1 CDD has no authority to require removal of the trees;
- 2 Even if, arguendo, CDD has authority, the trees are grandfathered by the provisions of the Municipal Code of Manhattan Beach ("MBMC"), Sections 7.32.090, 9.72.015.B.5, and 7.36.150.A.8;
- 3 The terms of MBMC 7.36 of "neighboring resident's scenic views" and "resident view" are so lacking in definition as to be unenforceable;
- 4 The terms "obstruction" and "impaired" as used in MBMC 7.36 must be governed by "reasonableness" in any interpretation, and the City fails to apply that standard;
- 5 The City adopted a "policy" prohibiting the removal of street trees in the street right of way ("ROW") for view enhancement, and in this case refuses to adhere to that policy.

¹ Reduction to 42" will kill the tree and, thus, removal is a descriptive term.

6 The application of a 42 inch height standard to specific street trees that do not obstruct any "view" is unreasonable and unenforceable.

REQUESTED ACTION

Owner and Tenants request that the Commission ("PPIC") 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 action by CDD should have occurred.

In the event the recommendation or ruling in this administrative appeal is to sustain any part of the decision of CDD or order the reduction or removal of any subject Yucca tree, Appellants request that the City Council stay action cutting the tree(s) until the related action pending in Superior Court be finally determined. The related action states a cause for declaratory relief wherein the interpretation and enforceability of the City's ordinance is to be determined.

STATEMENT OF FACTS AND LAW

Owner filed a "Complaint Seeking Declaratory Relief With Temporary and Permanent Injunctive Relief" in Los Angeles Superior Court on March 30, 2011. The action requested that the court determine the rights, duties and obligations of each of the parties vis-a-vis the City's codes and ordinances and that a temporary restraining order and/or preliminary injunction issue protecting the status quo until the court could render its judgment..

Shortly after the civil case was filed, and in apparent response to the Complaint, CDD by its letter dated April 4, 2011 ordered that Owner cut down Yucca trees in excess of 42 inches height growing in his front yard bordering Seventh Street. Exhibit F of Staff Report dated September 22, 2011.

The CDD order set out in the letter was couched in terms of a request for voluntary compliance with the standards of the ordinance, but clearly evident in the letter is that failure to comply is a violation of the ordinance, and the violation is subject to order. Mediation was offered should Owner "wish".

The identified complainant in previous mediation covering a span of years had refused anything short of the immediate neighbors, the Birkenfelds, cutting down all their trees to 42 inches. This recent experience and knowledge made talking at mediation an unlikely settlement technique. After extensive analysis of the facts, it was determined to eschew "talking" at mediation and follow the old adage: "let your actions do the talking". At no time has complainant talked to Owner or Tenants on any subject.

The action was to trim the trees, particularly where they were visible from the complainant's property. Many branches/trunks were cut off and frons (groupings of spiked leaves) removed on April 21, 2011 by a professional tree trimmer, Jose Bocanegra. The cuttings were numerous and filled the worker's truck. The "action" cost \$300 and was designed to achieve expedited resolution in lieu of mediation. The effort and expense failed and there is no indication that the complainant even saw the change.

Later in regular maintenance, Owner hired a trimmer to remove dead frons from the Yuccas, mostly from near the tops of the trees.

The Lawsuit.

The Staff Report liberally tells the reader what “the judge” said by paraphrasing and infers that the litigation is completed and Owner has lost his case. That is not true. The judge to which the Report refers was not the trial judge, but conducted a hearing on July 25, 2011, with respect to Owner’s request for a temporary restraining order or preliminary injunction. That judge excluded much of the evidence presented because a brief was filed late by Owner’s lawyer. However, the trial is scheduled for May 9, 2012 in Department 48 before the trial judge – a different judge. At trial the matter will be supported by all the evidence. In support of this statement of status, there is attached a partial Case Summary provided by the Superior Court and available online. Exhibit 1.

The case was filed so that the Court could declare the law with respect to the validity and enforcement of the ordinances at issue in this case. That purpose has not changed.

Given the pending lawsuit, the purpose of this appeal through the PPIC to the City Council is to submit for consideration the factual matters which largely fall within the discretion of the City Council. Thus, the legal issues are deleted from this brief to the extent reasonably possible. This means that this brief in support of the appeal will focus on the “view” which is sought to be created or enhanced or protected. This appeal, depending upon result, may obviate the need for further litigation.

Origin of the Yuccas.

In late 1967, Owner purchased the property at 228 Seventh Street in Manhattan Beach from Mr. and Mrs. Woods, and caused the deed to be recorded in January, 1968.

The property is 30 feet wide and 90 feet deep extending between Seventh Street on the north to Sixth place on the south with two separate residential buildings. The northern building was built in 1929/1930 within approximately one foot of the property line adjacent to the ROW of Seventh Street.

The property is located within less than three blocks east of the beach. Seventh Street was part of a large subdivision dedicated by a developer in 1901. The dedicated Street is 50 feet wide extending westward to the beach down a substantial slope.

All of the buildings on both sides of Seventh Street are built within approximately one to two feet of the respective property line, thus forming a corridor between the eastern end of Seventh Street to the beach.

A pedestrian walkway 15 feet wide is centered on the Street. The area between the curblines located at the edge of the walkway and the adjacent property line is 17.5 feet deep and extends the width of each property or lot. This area is part of the City’s ROW and has been developed historically to be used privately as the “functional front yard” of each adjacent property.

In or about the end of 1967, the City was contacted for the purpose to receive a permit to replace a water heater on the property. At about the time of that visit, Owner asked a City official if trees could be planted in the above-stated area, much as then existed in the property immediately east of the subject property. The City had no objection and recommended a drought

tolerant tree. No permit was required.

During 1968, Owner caused the Yucca trees to be planted in the functional front yard of the subject property and has maintained them in place since that time.

The City has conducted inspections on the subject property or the properties next door on multiple occasions spanning the years since 1968 and at no time has complained of the trees planted until recently.

Value of the Yuccas

During the years since 1968, the Yuccas have been maintained and nurtured. They have grown on not only the property, but have attached to the hearts of those who have lived there. Tenants spoke passionately before the City Council of the Yuccas. They are proudly unique and constantly exude benefits to the entire neighborhood. They are like a member of the family and priceless in that respect.

In dollar value, the Yuccas are irreplaceable. Any dollar figure of their value would be large.

Owner and Tenants contend that any "reasonable" comparison of the continued existence of the Yuccas to the right of the complainant to a further enhanced view from her peekhole port is hugely in favor of the Yuccas.

The "View".

Appellants contend that even if the Yuccas were cut down, there would be little or no enhancement of view of the beach and ocean which complainant contends is being impaired. The viewing location in complainant's second story window is a mere peekhole as will be shown below. Appellants have voluntarily trimmed a huge amount of the Yuccas, particularly along the sliver of view of some ocean along a line of sight hugging the southern boundary of the ROW adjacent to the adjacent properties.

There are two photographs representing the view which is subject of the complaint. Attachment A of the Staff Report. According to the e-mail from Kathy to Donna sent about two hours after the City received it and forwarded it to Ms. Ochoa, the first photo is taken from the driveway on the street level. Because this is a view not taken from the residence at 300 Seventh Street, it is not a resident view. Instead, it is a public view from the ROW. This view is not a subject of Chapter 7.36 and should be disregarded.

The second photograph is stated to be "from the very north edge of the north window on the second floor." The building including this window is photographed in an attachment, Exhibit 2. According to the description, the camera was positioned at the northwest corner of the building adjacent to the window. An "X" has been placed on the photo, Exhibit 2, to locate the camera. Further, it appears that the camera was positioned outside the window. The window is not capable of being opened as it appears sealed shut. The blinds of the window are always closed.

Clearly, the City considers this window to be a viewing port for the resident view of the ocean and beach. It is this view and view port that is the subject of this hearing and the

complaint to which it responds.

Mr. Michael Ruiz, Tenant, is a local, professional photographer. He initially filed this appeal with the City on July 27, 2011. He took the photos that are attached as exhibits to help understand the views involved in this case.

The photo of the complainant's window was taken on October 11. Exhibit 2 -6367. He placed a camera in approximately the same location as the complainant's view was photographed and he placed the focus without zoom in the same direction. The result is the photo attached as Exhibit 3 -07a. Complainant's camera was placed adjacent to the lower edge of the window. The reference in both pictures is the two lines across the pictures. The lines are the telephone or electric lines on poles along Bayview.

Another Ruiz photo is attached as Exhibit 4 -6371. This photo shows the landscape along Seventh Street looking westwardly from beside the south extreme line of sight. There are shown some trees in the ROW which block views. Importantly, the buildings on the north side of Seventh Street form a sloping wall intersecting the line of sight. There is no protected view or right over buildings. West of the Yuccas along the line of sight are the buildings.

After the trimming of the Yuccas, the amount of ocean that can be seen from the edge of complainant's building is a very small percentage of the picture – a keyhole peek. This small view disappears as you move the camera to the middle of the window and certainly to the center window. The reason for this condition is found on the City's satellite view of this 200 Block. Staff Report, Vicinity Map at Attachment G. The map shows that the development by the City of the Block is that the property lines on both sides of the street are virtually the north or south facing building walls. There is no usable front yard for any of the properties. This condition is unique. Each of the nearby walkstreets finds some amount of space to the property line, which space can accommodate a tree or other large plants.

City Policy Prohibiting Removal of Street Trees for View Enhancement.

The City has adopted a policy prohibiting removal of street trees for view enhancement. This policy was stated in 2007 after a number of residents in the 200 Block of 8th Street asked the City to remove trees in the ROW at the intersection with Manhattan Avenue. The City Council approved the recommendation of staff to deny the request. Those complainants wanted the trees removed or smaller trees planted, and the City announced its policy. A copy of the Staff Report and minutes of that case is attached as Exhibit 5.

It is reported by Staff in the Birkenfeld hearing in 2010 that there have been three cases before the City Council since 2003 relating to enforcement/enhancement of views along walkstreets.

Both 7th Street and 8th Street are walkstreets developed in the same fashion. Trees in the ROW along the walkstreet are defined as "street trees". MBMC 7.32.020. Trees in any public place or area owned by the City are public trees subject to the regulations of Chapter 7.32. The case on 8th Street in 2007 refers to "Streetscape trees", but no definition is provided distinguishing "street trees" from "streetscape trees". Using the common usage of "streetscape", the meaning would refer to trees which landscape streets.

The 2007 case limited removal of the trees to those provided in 7.32.070 Public Nuisance

and found that the trees located in the ROW were not a nuisance because they obstructed views of the ocean and beach. At the time of the case, Chapter 7.36 was in force, and notwithstanding the policy was enforced.

At this point in the context of the 2007 case, the MBMC provides many protections for all trees in the ROW, such as where the Yuccas are located. Section 7.32.090 provides: "Those street trees now existing may remain until by old age or other reasons they are removed." Yes, the trees can be removed, but clearly only if the tree is a nuisance in accord with 7.32.070. This provision is specific to the Yuccas and like trees, even to the extent of enforcement of views.

When Chapter 7.36 was enacted, there was provided: "Existing trees located in the street right of way will be preserved where possible." MBMC Section 9.72.015.B.5 (Ord. 2042). This provision is specific to trees such as the Yuccas and addresses Chapter 7.36 in the same manner as Section 7.32.090 addresses Chapter 7.32. The City Policy is clear – the Yuccas may not be removed to enhance the instant complaint.

CONCLUSION.

For the reasons set forth, the alleged impairment of view to complainant's peekhole is so minimal and the Yucca trees so unique that there is no cause to approve the recommendation of CDD. Further, City Policy requires that no action be taken against the trees.

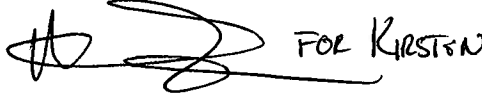
Appellants request that if any action is to be taken or recommended against the trees, that action be deferred or stayed until after the pending civil action is made final.

Dated: November 18, 2011

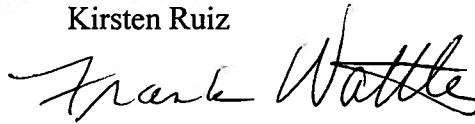
Respectfully submitted,



Michael Ruiz



Kirsten Ruiz



Frank Wattles

Exhibit

- 1 Los Angeles Superior Court, Case Summary, Case No. BC458481
- 2 Photo of western side of 300 7th Street
- 3 Photo - Complainant's peekhole view without zoom
- 4 Photo - View westwardly along complainant's line of sight from south edge of Yuccas
- 5 > Staff Report, City Council Agenda Item #: 07/0206.16 on Feb. 6, 2007; page 1
 - ▶ Minutes of related PPIC hearing, 2 pages
 - ▶ City Council Minutes of Feb. 6, 2007, 3 pages

Case Summary

Case Number: BC458481
FRANK WATTLES VS CITY OF MANHATTAN BEACH ET AL

Filing Date: 03/30/2011
Case Type: Declaratory Relief Only (General Jurisdiction)
Status: Pending

Future Hearings

05/04/2012 at 08:31 am in department 48 at 111 North Hill Street, Los Angeles, CA 90012
Final Status Conference ((CT 5/9/12))

05/09/2012 at 09:30 am in department 48 at 111 North Hill Street, Los Angeles, CA 90012
Court Trial - Short Cause (2-DAY ESTIMATE)

Documents Filed | Proceeding Information

Parties

DOES 1 THROUGH 10 - Defendant/Respondent
HUNKINS WAYNE ESQ. - Attorney for Plaintiff/Petitioner
MANHATTAN BEACH CITY OF - Defendant/Respondent
MCCUNE DANA JOHN ESQ - Attorney for Defendant/Respondent
MCWHINNEY DONNA HOWELL - Defendant/Respondent
WATTLES FRANK - Plaintiff/Petitioner

Documents Filed (Filing dates listed in descending order)

09/08/2011 Order-Case Management
Filed by Court

08/26/2011 Statement-Case Management
Filed by Attorney for Deft/Respnt

08/25/2011 Notice (OF PLAINITFF'S MOTION FOR PRELIMINARY INJUNCTION OFF CALENDAR)

Filed by Attorney for Pltf/Petr

08/23/2011 Statement-Case Management

Filed by Attorney for Pltf/Petr

08/12/2011 Request and Entry of Dismissal (**COMPLAINT AGAINST DONNA HOWELL McWHINNEY ONLY W/O PREJUDICE**)

Filed by Attorney for Pltf/Petr

07/25/2011 Order (TENTATIVE DECISION ADOPTED AS FINAL RULING OF COURT)

Filed by Court









Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: Geoff Dolan, City Manager *GD*

FROM: Neil Miller, Director of Public Works *nm*
Juan Price, Maintenance Superintendent

DATE: February 6, 2007

SUBJECT: Ratification of Parking and Public Improvement Commission Decision to Uphold Existing Policy Prohibiting Removal of Streetscape Trees for View Enhancement

RECOMMENDATION:

Staff recommends that the City Council pass a motion to uphold the Parking and Public Improvement Commission's decision to uphold existing City policy prohibiting removal of Streetscape trees for view enhancement.

FISCAL IMPLICATION:

No fiscal impact for recommended action.

BACKGROUND:

On January 25, 2007 the Parking and Public Improvement Commission heard an appeal of existing City policy to not allow removal of Streetscape trees for view enhancement. Several residents from 8th Street above Manhattan Avenue had requested that Streetscape trees located at the intersection of 8th Street and Manhattan Avenue be removed for view enhancement. This request was denied by staff stating that there was an existing City policy prohibiting the removal of Streetscape trees for view enhancement. The 8th Street residents then requested the policy be appealed.

DISCUSSION:

After receiving public testimony and input from staff, the Parking and Public Improvements Commission (PPIC) voted to uphold the existing City policy. Staff's recommendation to deny the appeal is based on the fact that this issue has been before the City Council before (August, 2000) at which time a decision was made not to remove the trees.

During public testimony, two 8th Street residents requested that the trees in question be replaced with smaller trees. In response, staff informed the Commission that a project to replace all of the Streetscape landscaping is on a current list of unfunded Capital Improvement Program projects competing with other unfunded projects.

G. GENERAL

1. Appeal of Existing Policy Prohibiting Removal of Streetscape Trees for View Enhancement – 8th Street and Manhattan Avenue

Public Works Director Neil Miller presented staff's report and recommendation to deny the appeal and uphold staff's decision to maintain the carrotwood trees from the intersection of 8th Street and Manhattan Avenue.

Audience Participation

Chris Griffin, 200 Block of 8th Street, spoke on behalf of the residents of the 200 Block of 8th Street who have petitioned the City to remove the trees, installed during the Downtown beautification project, and replace them with shorter trees that more closely comply with City Code. Utilizing a Power Point presentation, he reviewed how the current trees are affecting views and are not in line with typical landscaping in the area. He reviewed alternate trees that can be planted, noting that the Downtown Business Owner's Association has no objection to the replacement of the trees.

Richard Buckley, 200 Block of 8th Street, stated that these trees were planted over 20 years ago and their growth and canopy size have gotten worse and worse. The residents are not against trees – they are just asking that the trees be in proper balance to the area. He asked that the Commission consider this petition a reasonable request and act accordingly, adding that he would be willing to contribute to the costs if necessary.

In response to a number of questions from the Commission, Public Works Maintenance Supervisor Juan Price explained that any tree can be relocated, but is a costly expense and the success rate of the replanted tree varies, with about half surviving. The City heavily trims these trees and are actually over-pruning them to maintain their size.

Public Works Director Miller shared that the PPIC and City Council have been asked in the past to remove a Streetscape tree for the purpose of enhancing view and the request was denied by both. The circumstances whereby trees can be removed are described in Section 7.32.070 Public Nuisance. It describes many situations which constitute a nuisance; however view obstruction is not one of those.

Public Works Director Miller further explained that the Downtown Streetscape is 20 years old and that a project to redo the area, which includes replacement of these carrot wood trees, is currently on the City's unfunded project list. Staff is not opposed to the replacement of these trees but questions a piecemeal approach, and that funding is also an issue.

Public Works Maintenance Supervisor Price stated that there are a total of 75 carrot wood trees and that even with the severe pruning taking place; these trees will double in size over the next ten years.

Discussion

Commissioner Seville-Jones stated that although she is sympathetic to the residents concerns, she has to question how the City can deal with these four trees and not the rest. She stated that she is leaning toward the short term measure of pruning the trees as much as possible in hopes that the City Council will address the long term solution of replacing the trees.

Commissioner Osterhout agreed, commenting that he does not find reason to overturn staff's recommendation, noting the past decision of the City Council to retain the trees.

Commissioner Donahue pointed out that the trees have been cut back since the pictures were taken for the Power Point, and that he believes the 8th Street residents have a great view. Commissioner Donahue stated that it is best to address the situation of the trees together, versus a piecemeal approach, and that he will support staff's recommendation.

Commissioner Paralusz noted her agreement with Commissioner Seville-Jones, stating that she too is sympathetic to the residents' concerns, however will support staff's recommendation as removal of the trees is not justified under the City's Code.

Chairperson Lang voiced his support of pruning the trees as an interim measure until the City is able to address the long term solution. He also questioned why a Downtown beautification plan includes the planting of trees which can block the very ocean that makes the area so beautiful to begin with.

Action

A motion was MADE and SECONDED (Seville-Jones/Paralusz) to deny the appeal of existing policy prohibiting removal of streetscape trees for view enhancement - 8th Street and Manhattan Avenue; instruct staff to prune the trees more often; and request that the City Council address the trees in Downtown Streetscape in light of the future damage they can cause.

AYES: Donahue, Osterhout, Paralusz, Chairperson Seville-Jones and
Chairperson Lang
NOES: None
ABSENT: None
ABSTAIN: None

2. Appeal of Existing Policy Prohibiting Plantings or Structures in Excess of 42 Inches – 3404 The Strand

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
REGULAR MEETING OF
FEBRUARY 6, 2007**

The Regular Meeting of the City Council of the City of Manhattan Beach, California, was held on the 6th day of February, 2007, at the hour of 6:32 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

PLEDGE TO FLAG

Public Works Director Neil Miller led the pledge of allegiance.

ROLL CALL

Present: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Absent: None.
Clerk: Tamura.

CEREMONIAL CALENDAR

07/0206.1 Presentation of "There's No Place Like Manhattan Beach" Commendation to Boy Scout Troop 849 in Recognition for their Extraordinary Contribution to the Community

The Council presented Boy Scout Troop 849 with the "There's No Place Like Manhattan Beach" commendation in recognition of their extraordinary contributions to the community.

07/0206.2 Introduction of Los Angeles County Community Library Manager Don Gould

The Council and City Manager Geoff Dolan introduced Don Gould, Los Angeles County Community Library Manager welcoming him to the City and presenting him with a City pin.

07/0206.3 Presentation of Proclamation to the American Heart Association Declaring February 2, 2007 as "Wear Red For Women" Day

The Council presented a proclamation to Hillel Cohn of the American Heart Association declaring February 2, 2007 as "Wear Red for Women" Day.

07/0206.4 Introduction of New Employees and Presentation of Service Awards

The Council introduced new City employees and presented employee service awards.

CONSENT CALENDAR

The Consent Calendar (Item Nos. 5 through 18), consisting of items under *General Consent* and *Boards and Commissions*, was approved by motion of Councilmember Ward, seconded by Councilmember Montgomery and passed by unanimous roll call vote with the exception of Item Nos. 5, 9 and 16 which were considered later in the meeting under "Items Removed from the Consent Calendar."

Ayes: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Noes: None.
Absent: None.
Abstain: None.

informative nature of the majority of the joint meetings between the Council and City commissions; and the idea of continuing the subject minutes to add some narrative about the discussion during the meeting.

City Manager Dolan confirmed that the subject minutes could be continued to add some narrative with regard to the discussion at the meeting and that staff will ensure that actions at the joint meetings between the Council and City Commissions are documented.

MOTION: Councilmember Montgomery moved to continue the minutes of the Joint City Council/Parks and Recreation Commission meeting of January 9, 2007 to the City Council meeting of February 20, 2007. The motion was seconded by Mayor Pro Tem Aldinger and passed by the following unanimous roll call vote:

Ayes: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Noes: None.
Abstain: None.
Absent: None.

07/0206.9 Consideration of Financial Reports:
a) Ratification of Demands: January 25, 2007
b) Investment Portfolio for the Month Ending December 31, 2006

A member of the audience pulled this item from the Consent Calendar for Council discussion.

The following individual spoke on this item:

- **Viet Ngo, No Address Provided**

City Manager Dolan advised that the funds referred to by **Mr. Ngo** pertain to all City employees, not solely the City Manager.

MOTION: Councilmember Fahey moved to approve with no exception Warrant Register No. 16B in the amount of \$2,862,568.66 in payment of ratification of demands and claims as prepared by the Director of Finance, together with the original demands and claims as prepared by said Warrant Register and receive and file the Investment Portfolio for the Month Ending December 31, 2006. The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote:

Ayes: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Noes: None.
Abstain: None.
Absent: None.

07/0206.16 Ratification of Parking & Public Improvement Commission Decision to Uphold Existing Policy Prohibiting Removal of Streetscape Trees for View Enhancement

Chris Griffin, 200 Block of 8th Street, distributed written material illustrating why he is requesting the removal of a Carrotwood Tree that blocks views of the ocean in his neighborhood.

City Manager Dolan noted the difficulty of dealing with public trees. He advised that the Manhattan Beach City Council has consistently denied resident requests to remove public trees. Due to the late hour, he encouraged the Council to consider this matter at a future meeting and he cautioned against piecemeal approvals to remove trees for purposes of view enhancement.

The Council discussed the maintenance of the tree to which **Mr. Griffin** referred; the idea of narrowing the tree removal for view enhancement discussion down to the walk streets; and the Code requirements for removing trees in the public right-of-way.

City Manager Dolan indicated that staff could support future discussion of a new landscaping plan in the Downtown area. However, he noted that this would be very expensive.

Council held discussions with Public Works Director Neil Miller and Maintenance Superintendent Juan Price who provided information about the maintenance schedule of the trees to which **Mr. Griffin** referred. Noting that the City has an unfunded project to redo the streetscape, Public Works Director Miller encouraged the Council not to address this issue on a piecemeal basis.

The Council agreed to address the topic of tree removals for purposes of view enhancement during Work Plan discussions.

MOTION: Councilmember Ward moved to approve ratifying the Parking & Public Improvement Commission's decision to uphold the existing policy prohibiting the removal of streetscape trees for view enhancements. The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote:

Ayes: Montgomery, Fahey, Ward, Aldinger and Mayor Tell.
Noes: None.
Abstain: None.
Absent: None.

AUDIENCE PARTICIPATION

07/0206.39 Esther Besbris Re Resident Satisfaction Survey

Referring to the Resident Satisfaction Survey discussed during the Council meeting of January 16, 2007, **Esther Besbris, No Address Provided**, related her concern over the inaccuracy of the information obtained through the Survey, particularly regarding utility undergrounding.

07/0206.40 Robert Homan Re Verizon

Robert Homan, 500 Block of 17th Street, elaborated on the negative impacts of Verizon's fiber optics on his internet services.

The Council related concerns over Verizon's apparent misrepresentation of the services they are offering, and that other residents, especially Senior Citizens, might be having problems with Verizon similar to those experienced by **Mr. Homan**. The Council discussed that a Verizon representative could be invited to a Council meeting to address this issue and that residents should be notified of such a meeting date via the *Beach Reporter* and the City's website.

City Attorney Robert Wadden advised that cable franchise laws have nothing that deal with marketing; that the Police Department could deal with fraud/misrepresentation issues; that, where there are repeated violations, processes in the franchise agreement require Verizon to deal with State Fraud Law, but State Law gives them the opportunity to provide a service anyway.