

**CITY OF MANHATTAN BEACH
PARKING AND PUBLIC IMPROVEMENTS COMMISSION
MINUTES OF REGULAR MEETING
December 1, 2011**

A. CALL TO ORDER

The regular meeting of the Parking and Public Improvements Commission of the City of Manhattan Beach, California, was held on the 1st day of December, 2011, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, 1400 Highland Avenue, in said City.

B. ROLL CALL

Present: Vigon, Fournier, Silverman, Adami and Chair Stabile.
Absent: None.
Staff Present: Thompson, Jester, and Ochoa.
Clerk: Schilling.

C. APPROVAL OF MINUTES

1. A motion was MADE and SECONDED (Fournier/Adami) to approve the Minutes of the October 27, 2011 regular meeting as written.

D. AUDIENCE PARTICIPATION

Frank Wattles, 7th Street – Inquired about the yucca tree item stating he did not see it on the agenda.

E. GENERAL BUSINESS

2. Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees over 42” in Height on the Public Walk Street to Remain – 228 7th Street

Director of Community Development Richard Thompson introduced Planning Manager Laurie Jester to present the staff report on this item.

Planning Manager Jester reported that each of the Commissioners should have received a copy of the staff report regarding Item #2 last week. This item involves the property located at 228 7th Street, a walk street in town and a group of Yuccas on public property at the front that exceed the height limit of 42 inches. The City received a complaint from the property owner at 300 7th Street who was objecting to the height of the Yuccas because they obstructed her view. The property located at 228 7th Street is located on a walk street and therefore

the Yuccas are on City property. This item has come before the commission tonight explained Planning Manager Jester for three reasons; there is no Encroachment Permit on file with the City, the Yuccas are more than 42 inches high, and there has been a complaint from a property owner across the street who claims they block the view from her property.

Planning Manager Jester noted that the City staff suggested that the parties discuss their differences in mediation (which is provided by the City at no cost to the participants) but that Mr. Wattles refused.

Planning Manager Jester wanted it known that this item had been scheduled to come before the PPIC Commission in September and again in October and each previous time the Appellant, Mr. Wattles asked for an extension. She also noted that Donna Howell, the property owner of 300 7th Street whose view is blocked was not able to attend the meeting tonight.

Moving forward in her presentation Planning Manager Jester cited that Mr. Wattles felt that his trees were “grandfathered in” because they were planted prior to the Ordinance on Encroachment Standards that became effective in 1972 with an amendment to that same ordinance in 2003.

Planning Manager Jester supported her presentation with a number of photos of the Yucca trees in question at 228 7th Street from a variety of perspectives including one taken from the property at 300 7th Street. At the present time the Yucca trees are between 12 and 15 feet high, well over the height limit of 42 inches declared in the Ordinance.

Planning Manager Jester mentioned that compliance of the Ordinance regarding Encroachment Standards is “complaint driven” meaning that the City takes action and follows the process outlined once they receive a complaint, in this case when Ms. Howell, filed a complaint.

Planning Manager Jester requested that the Commission deny the Encroachment Permit Appeal to Allow Existing Yucca Trees over 42” n height on the public walk street to remain at 228 7th Street based on the fact that the Yuccas are not in compliance with the City ordinance, there is no permit on file as well as no insurance, and they block views. Recommendations from the PPIC will then be presented to Council for a final decision.

Commissioner Vigon asked for clarification regarding the specifics of the ordinance approved in 1972 and the amendments added in 2003. In response Planning Manager Jester responded that the 2003 Amendments focused more on grading standards.

Commissioner Adami stated that this case is very similar to that of the Birkenfeld’s Eucalyptus tree next door. Council compromised with the

Birkenfeld's letting them keep the Eucalyptus three and pruning all other landscaping down to 42 inches. But in looking at the photos it could be determined that they are out of compliance with the terms Council established for them in reference to pruning their tree.

Commissioner Silverman asked why Donna Howell is complaining when she doesn't reside at the property located at 300 7th Street.

Planning Manager Jester repeated the fact that the Yuccas are not in compliance with City code and they block the view. She said that Donna Howell didn't complain about the Yuccas when she filed a complaint against the Birkenfelds Eucalyptus tree because she couldn't see them until the Eucalyptus tree and other landscaping was pruned.

Chair Stabile noted that had Ms. Howell not complained about the Birkenfeld's tree staff wouldn't have acted on the violation of the ordinance, and staff confirmed that was correct.

Commissioner Silverman asked about the definition of "grandfathering".

Community Development Director Thompson explained that the term refers to pre-existing structures on private property; this is public property.

Commissioner Adami commented that he has observed a number of trees/shrubs throughout the City, especially in the Sand and Tree sections, that are not in compliance with the City ordinance but yet the City allows it.

Chair Stabile asked Mr. Wattles, owner of the property/Yucca trees at 228 7th Street to come up and speak.

Mr. Wattles approached the podium and shared his feelings about the Yucca trees that he planted at his home at 228 7th Street in 1968. He loves the trees and finds them beautiful, very scenic and a joy to have in his yard. He also mentioned the wildlife that the trees attract. Mr. Wattles explained that the Yucca tree is a very slow growing tree with individual fronds and that the tree is very open, not at all dense. From his perspective the only view that can be seen from the property located at 300 7th Street is the alignment of the structures along 7th Street. He stated that when he received the complaint last February that his Yucca trees were out of compliance and obstructing the view at 300 7th Street he went to that property to observe the view. Though there was only a very meniscal view from the corner of one bedroom window at the 300 7th Street property he did the "neighborly" thing. He had the Yucca trees pruned substantially even removing whole trunks. In Mr. Wattles observation there is no view obstructed just a bit of the horizon to be seen.

Mr. Wattles went on to say that when they planted the trees in 1968 they went to the City and asked about planting the drought tolerant plants. In 1972 when the City adopted the Encroachment Standards Ordinance it did not include landscaping. Mr. Wattles cited parts of several City codes; 7.32.100 – Existing trees in right of way are to be protected, 7.32.090 – Keep trees until old age and 7.36 – provides for grandfathering.

Mr. Wattles passionately described his Yucca trees as being part of the neighborhood, kids play under them, birds live in them, and there is sufficient support to keep them from the neighbors.

Chair Stabile asked Mr. Wattles theoretically if the City were to grant his appeal would he continue to prune his trees and keep them trimmed.

Mr. Wattles said he would be happy to comply.

Chair Stabile commented that it appeared the Birkenfelds were not able to keep the agreement they made with City Council.

Commissioner Adami questioned the petition that Mr. Wattles had given them copies of when he came up to the podium, stating that of the seven signatures on the petition none of the signers lived on the north side of 7th Street.

Mr. Wattles announced that there were more signatures, additional pages of the petition that would be provided shortly.

Commissioner Vigon asked if Mr. Wattles would indemnify the City for any damages his trees may cause to property/persons.

Mr. Wattles said he would defer to his attorney.

Commissioner Vigon noted that no one whose view was obstructed by his trees had signed the petition.

Mr. Wattles maintained that his Yucca trees did not obstruct anyone's scenic vista.

Commissioner Silverman asked why Mr. Wattles didn't contact the mediator once he received the letter from the City's code enforcement officer regarding the service provided at no charge to him by the City.

Mr. Wattles explained that he did not contact the mediator because Donna Howell was not interested in mediation; she wanted the Yucca trees cut to 42 inches.

Commissioner Silverman asked Mr. Wattles why he filed a lawsuit before pursuing the avenues offered to him by the City such as coming before the PPIC.

Mr. Wattles stated that his attorney could answer that question later.

Commissioner Adami suggested that residents try to work together before filing a lawsuit, that staff is very responsive and knowledgeable. He was bothered that Mr. Wattles decided to file a lawsuit.

Mr. Wattles suggested that if he were allowed to keep his Yucca trees he would most likely drop the law suit.

Commissioner Silverman questioned the ability to guarantee that Mr. Wattles would comply with any conditions made by the City concerning his Yucca trees as apparently the Birkenfelds were not able to do so. Commissioner Silverman would ultimately like to see the Wattles keep their trees and the Howells keep their view.

Commissioner Vigon asked Mr. Wattles how often he pruned his Yucca trees. Mr. Wattles responded that the Yucca trees grow differently with large trunks and fronds and that pruning was determined on an as need basis, sometimes they are almost self-pruning as the trunks will break if they become too heavy. They are pruned infrequently.

Chair Stabile questioned staff about a non-residents ability to complain about a view being obstructed when she didn't reside at the property and asked if the renters had approached the City about the obstruction of their view by the Wattles Yucca trees.

Staff was unaware of any complaints other than Ms. Howell.

Chair Stabile opened the floor to public comment.

Michael Ruiz, 228 7th Street He and his family have been tenants of Mr. Wattles living in the front unit at 228 7th Street for 2 ½ years. No one has ever complained to him about the Yucca trees or their view being obstructed. He took the photos that Mr. Wattles had included in his packet to the Commissioners tonight, again reiterating that there is just a piece of the horizon that can be seen from a corner of the bedroom window at 300 7th Street. Mr. Ruiz also noted that he has pruned the trees for Mr. Wattles. He and his family value the Yucca trees.

A discussion ensued among Commissioners Silverman, Vigon, Fournier, and Mr. Ruiz inquiring about the view from his front yard, the cost of pruning the Yucca trees, the hearing that took place with Ms. Howell and the Birkenfelds regarding the Eucalyptus tree and so forth. Mr. Ruiz said there is no view from his yard of the ocean unless you go to the very edge, the cost of pruning the

trees was \$300 and he was present at the hearing regarding the Birkenfelds Eucalyptus tree.

Wayne Hunkins, Beverly Hills, CA Self-proclaimed tree lover and attorney for Mr. Wattles, wanted to clarify that the photos that Mr. Ruiz took of the trees and views are more accurate than those provided by the City. He felt that the 2 inch “view” of the horizon didn’t warrant cutting down trees that had grown there for almost 50 years.

Mr. Hunkins disagreed with staff regarding the “grandfathering” of trees and his hope in pursuing the lawsuit was for the courts to determine that the trees are protected. He also found that the definition of street trees and other trees was not well defined. Mr. Wattles did plant the trees but they were planted on City property so they should be protected according to the Ordinance.

Chair Stabile asked about the status of the lawsuit.

Mr. Hunkins stated that it would be tried on motion after the first of the year.

Commissioner Fournier asked what Mr. Hunkins wanted the appellate court to do. Mr. Hunkins responded that he would like a ruling made on appeal to state that the trees are street trees and are therefore protected and the Yucca trees were permitted to remain, legal to be there.

Chair Stabile asked staff if there was a permit for the trees on file.

Community Development Director Thompson stated there is no permit on file.

Commissioner Vigon asked if City Council were to allow Mr. Wattles to keep the Yucca trees at their current height would he pursue the lawsuit.

Mr. Hunkins stated that it would be Mr. Wattle’s decision. However Mr. Hunkins did want to address the issue regarding indemnification and said that is usually covered through an insurance policy that the homeowner would provide.

Mary Boyd, 320 7th Street Long time Manhattan Beach resident, loves the Yucca trees located at 228 7th Street and feels like they have been there forever, you can see right through them, there is no view obstruction and they provide shade. She feels the City may have a problem with trees and mentioned the cutting of the trees at Mira Costa High School that is in the works.

Chair Stabile asked if she wanted the trees to stay and Ms. Boyd responded absolutely.

Sabine Birkenfeld, 7th Street Wanted to clarify that the Eucalyptus tree that had been mentioned several times this evening had been trimmed in April and was scheduled to be trimmed again December 9, 2011. She would like it to be clear that they have complied with the conditions Council set forth last year in reference to their Eucalyptus tree. Mrs. Birkenfeld further commented that the entire "tree" issue has been very difficult, causing dissention among the neighbors and she doesn't understand how one person could cause so much misery for so many. She feels extremely scrutinized by the City now. The Yuccas block her view and she is okay with that.

Commissioner Silverman reiterated the fact that the tree needs to be routinely trimmed.

Mary Boyd, 320 7th Street explained that the Yucca trees are much smaller than the Eucalyptus tree and the picture doesn't present an accurate proportion. She shared that the tree issue has impacted the entire block.

Chair Stabile closed Public Comments at 7:51 p.m.

Planning Manager Jester interjected that the Birkenfelds had not complied with the pruning of the Eucalyptus tree to the extent that Council imposed, and the other landscaping has not been kept to 42 inches.

Chair Stabile suggested that staff document the status of the tree after the December 9, 2011 pruning.

Director of Community Development Thompson said he would direct staff to do so.

Planning Manager Jester emphasized that the Birkenfelds could keep the Eucalyptus tree if they continued to prune it regularly.

Commissioner Vigon asked for clarification of the Ordinance in reference to the construction of a new home on the property located at 300 7th Street which could result in substantial obstruction of the view.

Director of Community Development Thompson explained that there is value placed on ocean/sand views.

Commissioner Vigon asked staff if they thought the view was obstructed by the Yucca trees at 228 7th Street. Director of Community Development Thompson replied yes.

Commissioner Silverman remarked that he was under the impression that there wasn't actually a view obstruction.

Commissioner Adami relayed his thanks to all the tree lovers that were in attendance at the meeting. He too is passionate about the trees and has compassion for the neighbors but is bothered that a lawsuit has been brought against the City. He would like to see the item resolved. Code section 7.36 states that trees should be preserved where possible. Commissioner Adami was at the site over the weekend and had photos of the tree that he had taken. He doesn't understand why the one tree would be picked out of so many trees throughout the neighborhood. Commissioner Adami would like to see the same consideration given to the Wattles as the Birkenfelds received from Council.

Commissioner Stabile stressed that perhaps there should be some type of penalty in place if the residence were non-compliant and suggested a \$5,000 fine.

Chair Stabile added that if a resident doesn't maintain compliance then the City would come in and prune or cut them.

Director of Community Development Thompson informed the Commissioners that if the resident doesn't comply and follow the process established by the City then the City will come in and do the pruning and in turn bill the resident for the service.

Commissioner Adami wished to mention two things;

1. Safety – there are no safety concerns regarding the Yucca trees
2. Why this tree – there are many trees in the area and why is this one singled out?

Commissioners Vigon and Silverman engaged in a brief discussion regarding the City's ability to enforce the conditions placed on a resident such as the Birkenfeld's Eucalyptus tree. They felt that you would need an expert's opinion, to determine the frequency of pruning for each specific type of tree.

Director of Community Development Thompson asked the Commission for some direction in what they would like for staff to do in reference to the Yuccas. He said the key issue to start with is does the Commission feel the Yuccas significantly block a view.

Commissioner Adami suggested that they look at the "big picture"; he wants the City to look nice and therefore supports leaving the Yucca trees.

Commissioner Vigon expressed having a difficult time and questioned why the ordinance came about. If it's about the obstruction of the view then the trees are in violation of the ordinance – he feels conflicted, but there are ordinances and reasons for their existence that must be respected.

Commissioner Fournier acknowledged that the tree issue has been followed for almost a year and a lot of work and thought have gone into this item. He continued with some concerns about the ordinance and whether or not Council needs to revisit the specifics of it. Commissioner Fournier supports staff's recommendation. He doesn't feel the PPIC should take on these items as they are not the tree committee. If Director Thompson could design some kind of compromise he may support it.

Commissioner Silverman said it was difficult to see the Yuccas through the dense Eucalyptus. He expressed his concerns that the Yuccas are not the problem but would like to see the Eucalyptus tree thinned out more.

Chair Stabile remarked that they went through a similar process last year with the Birkenfeld's Eucalyptus tree. In his estimation this is not about the views but rather the attempt of an investor to use the City ordinance to enhance her property value. Chair Stabile referred to Ordinance 7.36.150 A6 - residents scenic view is obstructed, which brings him back to his initial question, does an owner who doesn't reside at the property have the ability to complain about the view.

Chair Stabile would like to recommend to Council that they amend the Ordinance to avoid having this same issue reoccur.

Chair Stabile went on to say that he doesn't support the "complaint driven" process, feels it's unfair and difficult to enforce. He would like staff to convey his concerns to Council. He cited three incidents in the last four years that have come before Council and each time the tree or trellis was allowed to remain under certain specified conditions.

Chair Stabile concluded that it boils down to Statutory Interpretation and there is no clear meaning in the ordinance. He also quoted former Councilmember Aldinger in 2006 regarding a similar tree related issue. The trees existed before the Ordinance was put into effect in 1972 and therefore he believes the trees should stay under the following conditions;

1. Trees remain provided they are trimmed in a manner acceptable to the City to optimize scenic views
2. Recommends that the Ordinance be amended to define whether or not it is retroactive
3. Who has the ability to make complaint, the owner or only resident/tenant

Commissioner Vigon would like to add that the "complaint driven" portion of the Ordinance be omitted as well, as it is difficult to enforce.

Commissioner Fournier said that he watched the City Council meeting regarding the Birkenfelds tree and noted that there doesn't appear to be a lot of complaint driven items such as this.

Director Thompson said that one or two come before the Commission each year.

Commissioner Adami reiterated the ordinance that says that existing trees should be preserved in the street where possible. He believes that preserving old trees is very important to the City, State, County, and Country.

Action

A motion was MADE and SECONDED (Stabile/Adami) to approve the Encroachment Appeal to allow the existing Yucca trees over 42 inches in height on the public walk street to remain at 228 7th Street under the following conditions;

1. Recommend that the Yucca trees remain provided they are kept trimmed to present form.
2. Amend Section 7.36. to expressly state if the provisions are to have retroactive affect or not, and clarify who has standing to complain about view obstruction, resident or non-resident owner.
3. Concerns with complaint driven enforcement.

Commissioners Silverman, Adami, Stabile and Vigon engaged in a discussion about the definition of view, scenic view, ocean, sand, etc.

Commissioner Fournier didn't feel that this definition should be so complex as to request that Council make a policy change.

Director Thompson implied that the Yuccas don't pose a significant impact to the commission but would appreciate having a better defined direction such as 50% reduction.

Commissioner Silverman commented that the three items could be linked together and that Council could determine action.

AYES: Vigon, Silverman, Adami and Chair Stabile.

NOES: Fournier.

ABSENT: None.

ABSTAIN: None.

Director Thompson stated that staff will present the recommendations of the Commission under Consent at the December 20, 2011 Council Meeting.

Audience Participation

None.

F. COMMISSION ITEMS

1. Chair Stabile inquired about the status of the Commission's request at the October 27, 2011 meeting to include wording on the appeal guidelines to include getting information to the Commission prior to the meeting.

Planning Manager Jester assured Chair Stabile that the language had been incorporated into the appeal guidelines and that she could send a copy of the change on the application and notice.

2. Commissioner Adami asked for confirmation that a Commissioner could visit a site in question prior to a meeting.

Director Thompson said that Commissioners should visit the sites in question but would caution the Commissioners about engaging in conversation about the item with the appellant.

Chair Stabile stated that Mr. Wattles had called him prior to the meeting but that he declined to engage in a discussion regarding the item.

Director Thompson also suggested that if a Commissioner does engage in conversation with the appellant before a meeting that he mentions the conversation at the beginning of the meeting.

3. Commissioner Vigon asked if the Chair can censor another Commissioner and then direct an audience participant not to answer a question.

Chair Stabile replied that he did have the authority to do so based on Rosenberg's Rules of Order that were given to Commissioners and staff at the Brown Act Training.

Director Thompson recommends against the Chair limiting other Commissioners questions.

4. Commissioner Silverman said he was confused about the Birkenfeld case and would like further clarification regarding their tree.
5. Commissioner Fournier witnessed an accident on the corner of 12th and Highland where a pedestrian was hit. He expressed his concerns about how dark the street is there and suggested that staff look into installing blinking lights to alert drivers of the crossing there.

6. Commissioner Adami described the beautiful bike stands that he saw in Hermosa Beach and would like to see something similar at the Manhattan Beach pier.

G. Staff Items

Director Thompson presented the following items:

1. Monthly Revenue and Expenditure Report for September 2011: Receive and file.
2. The December 22, 2011 meeting will be cancelled due to the holidays.
3. City Council approved the Encroachment Appeal at 301 28th Street.
4. The item regarding the Parking Meters on Parkview will be agendaized for the Council meeting on February 21, 2012.
5. A special PPIC meeting is scheduled to take place on February 16, 2012 to discuss the CIP. This will replace the February 23, 2012 meeting.
6. Nhung Madrid is back from maternity leave.

H. ADJOURNMENT

The Meeting was adjourned at 8:52 p.m. to the Regular PPIC Meeting on Thursday, January 26, 2012 at 6:30 p.m. in the City Council Chambers of City Hall, 1400 Highland Avenue, in said City.