



# Staff Report

## City of Manhattan Beach

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

**THROUGH:** Richard Thompson, Interim City Manager

**FROM:** Laurie Jester, Acting Director of Community Development  
 Angelica Ochoa, Assistant Planner

**DATE:** November 16, 2010

**SUBJECT:** Consideration to Uphold the Parking and Public Improvements Commission (PPIC) Recommendation to Deny an Encroachment Permit for Landscaping on the Walkstreet at 619 Highland Avenue and to Approve an Encroachment Permit for Landscaping on the Walkstreet at 233 7<sup>th</sup> Street

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### RECOMMENDATION:

Staff recommends that the City Council consider the upholding of the Parking and Public Improvements Commission (PPIC) recommendation to deny an encroachment permit to allow existing landscaping over 42" in height on the walkstreet to remain at 619 Highland Avenue, and approve landscaping on the walkstreet over 42" in height at 233 7<sup>th</sup> Street and thereby uphold the Community Development Director's decision.

### FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

### BACKGROUND:

A complaint was received approximately in November 2009 by the neighbor at 300 7<sup>th</sup> Street and another complaint in December of 2009 by the property owner at 305 7<sup>th</sup> Street regarding over height trees and landscaping at 619 Highland Avenue and 233 7<sup>th</sup> Street located in the walkstreet. The main issues of concern from the neighbors were that the existing Eucalyptus tree and landscaping over the required 42" height limit at 619 Highland Avenue and the Palm tree at 233 7<sup>th</sup> Street directly impaired their views and vistas. The trees and landscaping exceed the required 42" height for landscaping in the walkstreet per Section 7.36.150 B.3 of the encroachment standards.

The property owners and neighbors attended mediation services but nothing was resolved. Staff also met with all parties and as a result of these meetings, the complaining parties agreed that the Eucalyptus tree at 619 Highland Avenue be removed because it directly impaired their views of the ocean and that the Palm tree at 233 7<sup>th</sup> Street be maintained and trimmed. Landscaping must be cut down to the required 42" height limit if a view is impaired, per Manhattan Beach Municipal Code (MBMC) Section 7.36.150 B.3. of the walkstreet standards.

The property owner at 619 Highland Avenue has an encroachment permit for pine trees and a low picket fence that was approved in 1979. The property owner at 233 7<sup>th</sup> Street has no encroachment permit that was finalized for any work in the walk street. The property owners at 619 Highland Avenue and 233 7<sup>th</sup> Street stated that the subject trees and landscaping were planted before the current regulations were in place and they should not be subject to these codes including obtaining an encroachment permit.

On June 9, 2010, staff received an appeal from the subject property owners to keep all existing landscaping over the required 42" in height on the walk street (7<sup>th</sup> Street) including the Eucalyptus and Palm trees. Per Manhattan Beach Municipal Code Section 7.36.030, the property owner may appeal the decision to the City Council with a recommendation from the Parking and Public Improvements Commission.

**DISCUSSION:**

The Parking and Public Improvements Commission (PPIC) heard testimony from the property owners, complaining parties and residents at its regular meeting of October 28, 2010 regarding the subject appeal. The main issues that were discussed were standards for landscaping in walkstreets, regulations for trees on private versus public property, non-conforming improvements per the encroachment standards, and encroachment standards being enforced on a complaint basis.

After receiving public testimony and discussion, the PPIC denied the subject appeal, 4-1. Staff stated that the existing landscaping at both subject properties did not have encroachment permits, did not comply with the required maximum 42" height limit for walkstreet standards and impaired the vistas of the neighbors to the east at 300 and 305 7<sup>th</sup> Street.

A number of residents and interested citizens spoke at the PPIC public hearing of October 28, 2010 regarding tree preservation, specifically of the Eucalyptus tree at 619 Highland Avenue. The public stated that the tree is a valuable asset to the community providing shade and greenery, has historical significance, was planted before the current requirements took effect, should be included as a "vista or view", as mentioned in the landscape standards and therefore should not be removed. Additionally, the residents stated that this tree should be protected and that the City's Tree Ordinance be revised to protect trees in walkstreets.

The PPIC discussed the standards for landscaping located in the walkstreets versus the regulations for City street trees. Staff clarified that the standards for landscaping in the walkstreets are regulated by Section 7.36.150 of the MBMC and that City street trees are regulated by Section 7.32 of the MBMC. One of the Commissioners discussed the unique situation of the Eucalyptus tree at 619 Highland Avenue in that it is the only tree of this size and no other tree impairs views on walkstreets west of Highland Avenue.

Also, the PPIC discussed the intent of the word "view" or "vista" as stated in Section 7.36.150 of the MBMC in that scenic vistas could be applied to trees. However, staff clarified that the intent of "view" as mentioned in the walkstreet standards has been interpreted to mean "view" of the ocean, skyline, waves, sand, but not trees on walkstreets. Another issue that was discussed was the City's policy on complaint-driven enforcement. The City has historically enforced encroachment, as well as Zoning code violations on a complaint basis only unless there are safety issues. However, some

of the PPIC felt that this was unfair. One of the Commissioners felt that this tree should be regulated and allowed to remain under the non-conforming section of the encroachment standards, MBMC Section 7.36.150 A.8. However, as stated in the non-conforming definition of Section 7.36., "Non-conforming" means a previously permitted and constructed improvement which is not consistent with the standards of this chapter". Therefore, since the subject property owners had no encroachment permits for the Eucalyptus tree, Palm tree and over-height landscaping, they are not legal non-conforming and this standard does not apply. Additionally, the walkstreet encroachment area is public property and the City may remove all private improvements at any time.

Overall, the PPIC (4-1 vote) agreed that the subject trees and landscaping located in the encroachment area are not subject to the non-conforming section and are regulated by the walkstreet standards. They agreed with staff's decision to deny the request to keep the Eucalyptus tree and all landscaping over the required 42" height limit at 619 Highland Avenue and that the Palm tree at 233 7<sup>th</sup> Street be maintained and trimmed. Both homeowners are required to obtain encroachment permits.

Attachments: A. Parking and Public Improvements minute excerpts (October 28, 2010)  
B. Staff report and attachments dated October 28, 2010, including all additional public comments received

cc: Sabine and Werner Birkenfeld, property owners of 619 Highland Avenue  
John Ziskin, property owner of 233 7<sup>th</sup> Street  
Donna Howell, property owner of 300 7<sup>th</sup> Street  
Scott and Susie Kim, property owners of 305 7<sup>th</sup> Street

**DRAFT EXCERPT**  
**PARKING AND PUBLIC IMPROVEMENTS COMMISSION MEETING**  
**OCTOBER 28, 2010**

**E. GENERAL BUSINESS**

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

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

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

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

Assistant Planner Ochoa summarized the staff report. She explained that the encroachment appeal application was filed by the property owners at 619 Highland Avenue and 233 7<sup>th</sup> Street and that this matter arose when the neighbors at 300 and 305 7<sup>th</sup> Street filed a complaint that existing trees and landscaping at the two locations impair their vistas and views. Ms. Ochoa shared information on the encroachment permit

Parking and Public Improvements Commission  
October 28, 2010



previously issued for pine trees and a low-picket fence at 619 Highland Avenue in 1979, but not the eucalyptus tree or landscaping over 42 inches high in the walkstreet; for low landscaping walls and other improvements at 233 7<sup>th</sup> Street; and on the unsuccessful mediation in which the appellants and the complainants participated. She presented photographs depicting the situation, noting that the eucalyptus tree at 619 Highland was trimmed recently, and reviewed the City's encroachment standards. Assistant Planner Ochoa related the staff recommendations to deny the request for 619 Highland Avenue in that neighbors' vistas are impaired and the landscaping does not comply with current walk street standards and is substantially overgrown and exceeds 42 inches in height; and approve all improvements and landscaping in the public right-of-way at 233 7<sup>th</sup> Street, with a stipulation that the palm trees shall be maintained and an encroachment permit shall be obtained.

In response to inquiries from the Commission, Assistant Planner Ochoa affirmed that the palm trees at 233 7<sup>th</sup> Street are encroaching into the public right-of-way (walkstreet); that trees on the sidewalk in front of 305 7<sup>th</sup> Street (as shown in the presentation) are City trees which, according to Code Section 7.32, must be maintained by property owners; and that the property owners did discuss with the neighbors whether trimming the eucalyptus tree would suffice. She explained the complaint-driven enforcement process.

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

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

### **Audience Participation**

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

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

**On behalf of the appellant, Frank Wattles** gave an overview of information he provided the Commission, and he asked the Commissioners to read it as well.

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

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

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

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

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

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

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

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

**Marti Padilla, 610 Highland Avenue,** commented on her enjoyment of ocean vistas on wall streets. She pondered who makes up the "public;" asked the Commission

to remember that members of the public other than those owning property on walk streets are also interested in this issue; and stressed the importance of consistency in enforcement.

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

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

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

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

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

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

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

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

**John Nelson** related his understanding that, according to City records, the eucalyptus tree at 619 Highland Avenue was not there in 1979. He explained that the attorney present at mediation dominated the discussion; that Ms. Howell resides in

Manhattan Beach; and has owned the property at 300 7<sup>th</sup> Street for approximately eight years.

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

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

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

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

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

#### **RECESS AND RECONVENE**

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

#### **Commission Discussion**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acting Community Development Director Jester advised that, since the ordinance was adopted in 2003, the Council has considered a number of appeals and their

interpretation of view has been ocean, waves, skyline, Malibu, Palos Verdes, Catalina, and sand, but not trees.

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

Prior to roll call vote, Commissioner Vigon stipulated that he seconded the motion on the basis of staff's determination that the eucalyptus tree at 619 Highland Avenue, like any other structure, was not permitted and, therefore, the protections for grandfathering as interpreted by Commissioner Stabile do not apply. The motion was eventually defeated by a 3-2 roll call vote.

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

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

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

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

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

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

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

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

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

Commissioner Vigon pointed out the probability that, between now and the City Council meeting during which the Commission's recommendation will be considered, the specifics of the ordinance will be further discussed by the appellant's lawyer and the City Attorney.

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

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

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

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


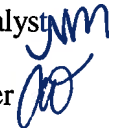
Commissioner Gross thanked speakers for their testimony.


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

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

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

**TO:** Parking and Public Improvements Commission

**FROM:** Laurie B. Jester, Acting Director of Community Development   
Nhung Madrid, Management Analyst 

**BY:** Angelica Ochoa, Assistant Planner 

**DATE:** October 28, 2010

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street

**RECOMMENDATION:**

Staff recommends that the Commission:

- A) **DENY** the request at 619 Highland Avenue to maintain and keep all landscaping in the public right of way, on 7<sup>th</sup> Street (walkstreet), over the required maximum 42 inches height limit, and,
- B) **APPROVE** all improvements and landscaping in the public right of way at 233 7<sup>th</sup> Street.

**BACKGROUND:**

A complaint about the trees and tall landscaping was received in November and December of 2009 by the property owners across Highland Avenue, to the east, at 300 and 305 7<sup>th</sup> Street. Specifically, the complaint focused on the existing landscaping being over the maximum height limit of 42" in the walkstreet at 619 Highland Avenue and 233 7<sup>th</sup> Street and the impact on ocean and scenic views (Exhibit A). The property at 619 Highland Avenue has an existing Eucalyptus tree and overheight landscaping in the walkstreet that exceeds the 42" maximum height limit. The property at 233 7<sup>th</sup> Street has existing Palm trees and overheight landscaping in the walkstreet that exceeds the 42" maximum height limit as well. The complaining parties stated that the landscaping directly impacts 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".

The property owner at 619 Highland Avenue has an encroachment permit from May 1979 for Pine trees and a low picket fence only (Exhibit B). There is no encroachment permit for the Eucalyptus tree and over 42" high landscaping in the walkstreet. The property owner at 233 7<sup>th</sup> Street has no encroachment permit for the Palm trees, over 42" high landscaping, walls or any

improvements in the walkstreet, although, the prior owner had applied for encroachment permits for low landscaping walls and other improvements. Per Section 7.36.030 of the Manhattan Beach Municipal Code, an encroachment permit is required for improvements in the public right of way. However, both property owners felt that the existing landscaping was planted before the current regulations were in place and that they should not be subject to these regulations.

Thus, the property owners, Sabine and Werner Birkenfeld, at 619 Highland Avenue and property owner, John Ziskin at 233 7<sup>th</sup> Street filed an encroachment appeal (Exhibit C) on June 9, 2010 requesting to keep all landscaping on the walkstreet (7<sup>th</sup> Street) over the required maximum 42" height limit. Per Code Section 7.36.080, the property owner may appeal the decision to the City Council with a recommendation from the Parking and Public Improvements Commission.

### **DISCUSSION:**

Staff met with the subject property owners at 619 Highland Avenue and 233 7<sup>th</sup> Street and explained the concerns from the complaining parties at 300 and 305 7<sup>th</sup> Street. The property owners stated that the existing landscaping was planted before the 42" height limit was enforced for walkstreets and felt they should be allowed to keep it. Additionally, staff met with the complaining parties of 300 and 305 7<sup>th</sup> Street to try and resolve the concerned issues. The complaining parties agreed that if the property owner at 619 Highland Avenue cut down all landscaping to the required 42" height limit and that the property owner at 233 7<sup>th</sup> Street trimmed and maintained the Palm trees, their views would no longer be affected.

However, the subject property owners felt they should not be subject to the walkstreet regulations since the trees and landscaping were planted before these current (2003) regulations were in place and for this reason, an appeal was filed. Since the property owner at 619 Highland Avenue had an encroachment permit from 1979 for the Pine trees and low picket fence, staff felt that these improvements could remain, however, all other landscaping must comply with the current encroachment standards.

The property at 233 7<sup>th</sup> Street has an encroachment permit that was approved in 1989 for the previous owner for a patio, sidewalk, steps, 32" high planter wall, and landscaping not to exceed 42" high, but the permit was never finalized. A revised encroachment permit was applied for in 2000 for landscaping, planter walls, paved patio and planters, but it was never approved. Since the current improvements at 233 7<sup>th</sup> Street do not impact any views and the complaining parties requested that the current owner only maintain the Palm trees, staff feels that all improvements may remain. Staff is requiring that the current owner at 233 7<sup>th</sup> Street obtain an encroachment permit in accordance with the requirements of Section 7.36.030.

### **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 Eucalyptus tree at 619 Highland Avenue and over height Palm tree at 233 7<sup>th</sup> Street directly impact the views of the property owners to the east (across Highland Avenue) at 300 and

305 7<sup>th</sup> Street. According to the complaining parties, if the property owner at 233 7<sup>th</sup> Street kept his Palm tree trimmed and maintained, the issue would be resolved. However, the Eucalyptus tree would require removal in order to achieve an open view.

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 D), "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 D), the Director of Community Development shall direct the owner to cut the landscaping in the encroachment area to a maximum of 42" high. In regards to the property at 619 Highland, staff feels that the existing Eucalyptus tree and other landscaping, not currently permitted, is directly impairing the resident views from the complaining parties. Staff does not feel that the Palm trees at 233 7<sup>th</sup> Street are a substantial impairment of view but the property owner is required to obtain an encroachment permit and the Palm trees be kept trimmed and maintained. Also, depending on the outcome of this issue, other properties along 7<sup>th</sup> Street with walkstreet landscaping over the allowed maximum height of 42" may require compliance and code enforcement action.

Therefore, the property owner at 619 Highland Avenue must remove the Eucalyptus tree and bring all landscaping into conformance at a maximum 42" high. The property owner at 233 7<sup>th</sup> Street shall obtain an encroachment permit and may maintain the Palm trees in the walkstreet, if they are kept trimmed.

### **Public Input**

A notice of the Parking and Public Improvement Commission meeting was mailed to all owners of record within a 300 foot radius from the subject encroachment property (Attachment E), in accordance with Section 7.36.080 of the MBMC. Staff received three (3) e-mail comments, two opposing the over height trees and landscaping and one in favor (Attachment F).

### **CONCLUSION:**

The walkstreet standards allow only landscaping limited to a maximum height of 42 inches. The subject properties (619 Highland Avenue and 233 7<sup>th</sup> Street) landscaping is not consistent with the walkstreet standards and a complaint was filed. Since the landscaping of the subject properties 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 619 Highland Avenue must comply with the walkstreet regulations. Since the current improvements at 233 7<sup>th</sup> Street do not impair any views, staff is requiring that the current owner obtain an encroachment permit.

Attachments:

- A. Complaint Letter and Photos from Property Owner at 300 7<sup>th</sup> Street dated October 18, 2010
- B. Public Works Commission staff report – Encroachment Permit appeal May 25, 1979 - 619 Highland Avenue
- C. Encroachment Appeal dated June 9, 2010 - 619 Highland Avenue and 233 7<sup>th</sup> Street
- D. Chapter 7.36 MBMC-excerpts (walkstreet standards 7.36.150 B.3, 7.36.150 A6, 7.36.030)
- E. Public Notice dated October 1, 2010
- F. E-mail Comments dated October 13, 2010 and October 18, 2010
- G. Vicinity Map

cc: Sabine and Werner Birkenfeld, property owners of 619 Highland Avenue  
John Ziskin, property owner of 233 7<sup>th</sup> Street  
Donna Howell, property owner of 300 7<sup>th</sup> Street  
Scott and Susie Kim, property owners of 305 7<sup>th</sup> Street



October 18, 2010

City Council Members  
Manhattan Beach

**RE: Violation of Manhattan Beach Municipal Code Section 7.36.150**

Dear City Council Members:

I am the owner of the property located at 300 7<sup>th</sup> Street. I have been a resident of Manhattan Beach for over 40 years and was hoping to someday build a retirement home with an ocean view for myself and my family, so I bought the property located at the corner of 7<sup>th</sup> and Highland.

Unfortunately, our ocean view has been entirely blocked by a tree located at 619 Highland. The tree is in the neighbor's front yard area and is presently over 40 feet tall but continuing to grow (please see the enclosed photos). The tree violates Manhattan Beach Municipal Code Section 7.36.150 ("City Code") as its height far exceeds the mandated 42-inch limitation. Our neighbor has indicated that she is unwilling to prune the tree to conform to the City Code nor to a height that would allow us to enjoy our ocean view.

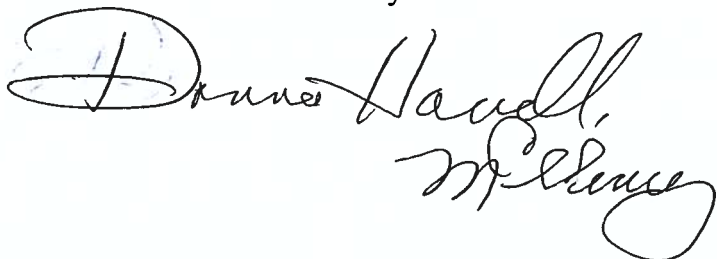
The City Code recognizes that ocean views are special and should be preserved by requiring that "obstructions to a neighboring resident's scenic views shall be avoided." As a realtor for over 33 years in Manhattan Beach, I have relayed the City Code to numerous clients concerned about whether their ocean views could be blocked by a tree or other obstruction. Many people have relied on the Code and trusted that it applies to equally to everyone. They have demonstrated their reliance by be willing to pay more for ocean views. I conservatively estimate that the ocean view contributes at least \$500,000 in value to my property. If the Council were to find that the City Code should be enforced on a selective basis and not to my neighbor's property, I would no longer be comfortable telling my clients that their views cannot be blocked by a tree that violates City Code.

While in most cases I believe trees add to a community as well as contribute to the environment. However, the tree at issue is a eucalyptus species, which is actually an invasive species in California that displaces native vegetation, in addition to emitting biogenic emissions. As a result, I do not believe the tree is beneficial to our environmental and will have an arborist testify to that fact if necessary.

In 2009, the City Council recognized the importance of protecting trees by enacting a new tree ordinance. However, the Council also recognized the importance of preserving ocean views and determined that the tree ordinance would not apply to Area 3, where our property is located. We sincerely hope the City Council continues to balance the interests of our community and administer the Municipal Code in a fair manner.

Sincerely,

Donna Howell McWhinney



**EXHIBIT**  
A

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donnasells@hotmail....

**Inbox (9)**

Junk

Drafts

Sent

**Deleted (276)**

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Contact list

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New | Delete Junk | Mark as ▾ Move to ▾ |

Reply Reply all Forward |

*Thoo*

Messenger ▾ | Op

## Encroachment violation

From: **Jacqueline Harris** (jharris@citymb.info)

Sent: Fri 1/22/10 11:34 AM

To: donnasells@hotmail.com

### 7.36.150 Encroachment standards.

#### A. General Standards:

6. Obstructions to neighboring resident's scenic views shall be avoided.

#### B. Walk Street Standards:

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.

**Jacqueline Harris**  
Code Enforcement Officer  
City of Manhattan Beach  
310-802-5538

Reply Reply all Forward | Delete |

**BEST GUARANTEE FOR 2**

FIO

FIOS IN

PH



**\$480 SAV**

**\$8**

PLUS TA: TWO-YR

Get

Accour

10-17-2010



2010 10 17



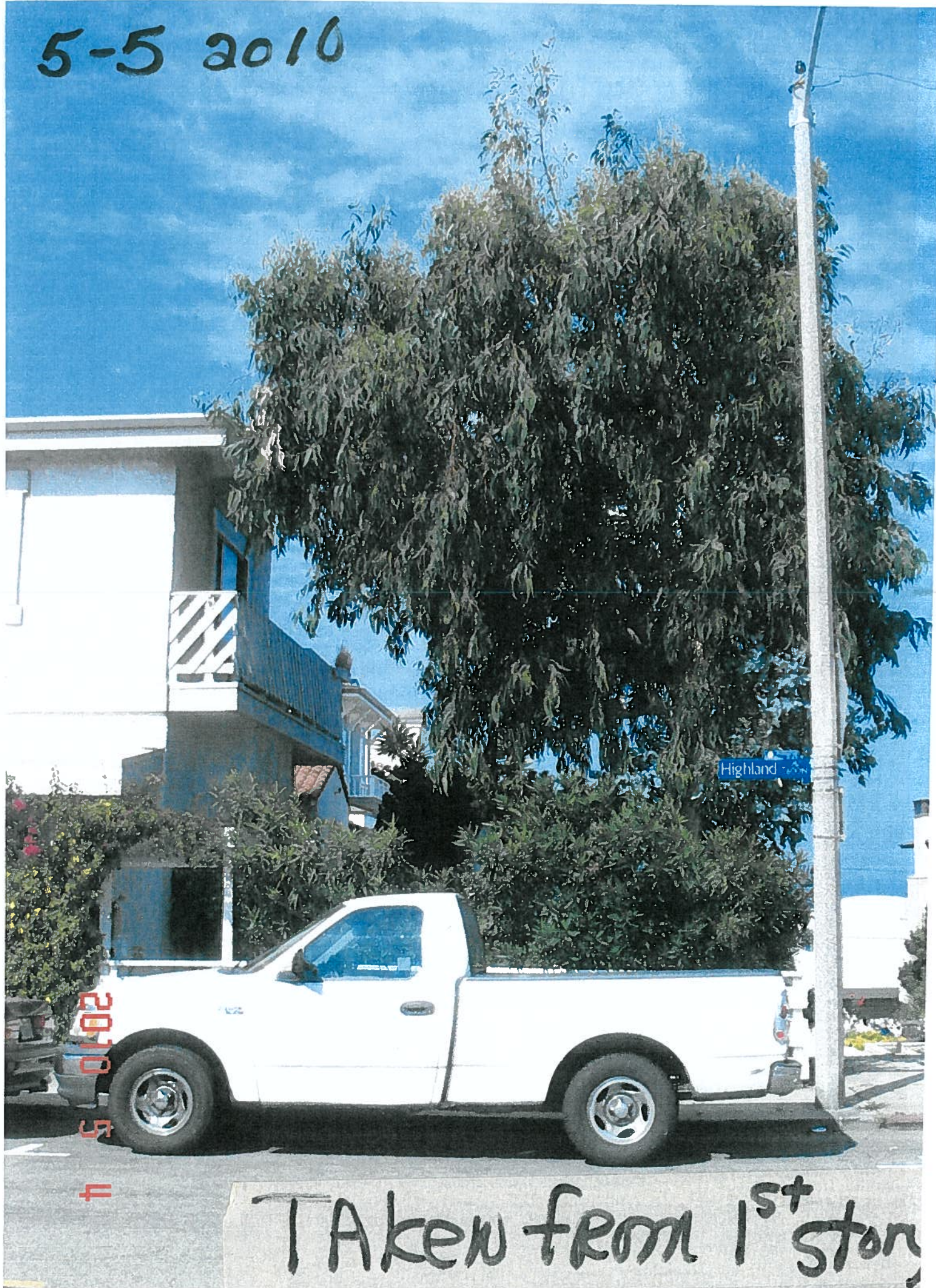
Growing on wall street

5-5 2010

Highland

2010  
5  
4

TAKEN FROM 1<sup>ST</sup> STORY





2010 10 17

10-17-2010  
Taken from  
street. Tree  
has grown  
since last picture



front yard-

2010 3 2

2010 10 17

10/17/10  

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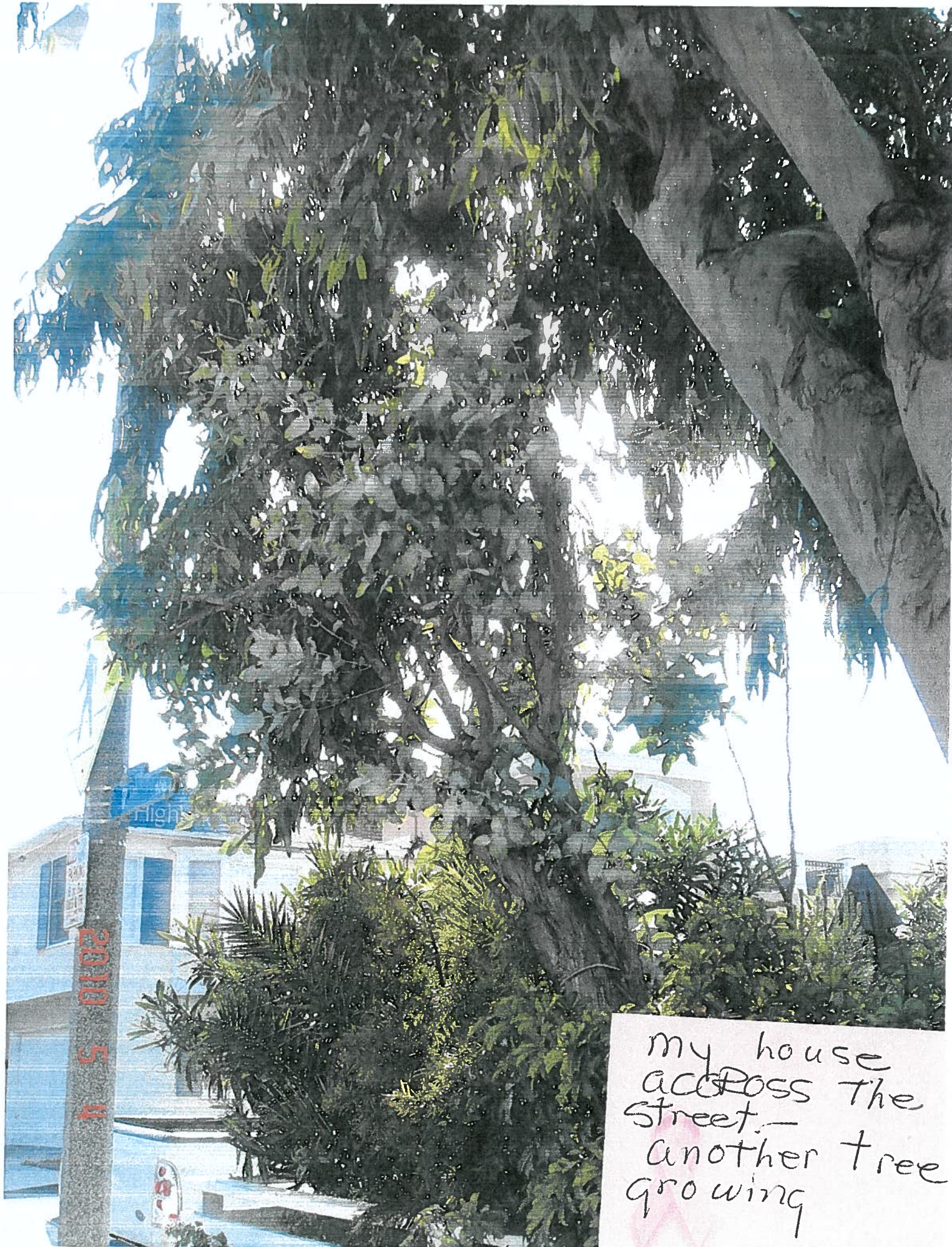
Other trees  
growing  
over 42"



10-17-2010

Walkstreet  
growth

2010 10 17



my house  
across the  
street -  
another tree  
growing



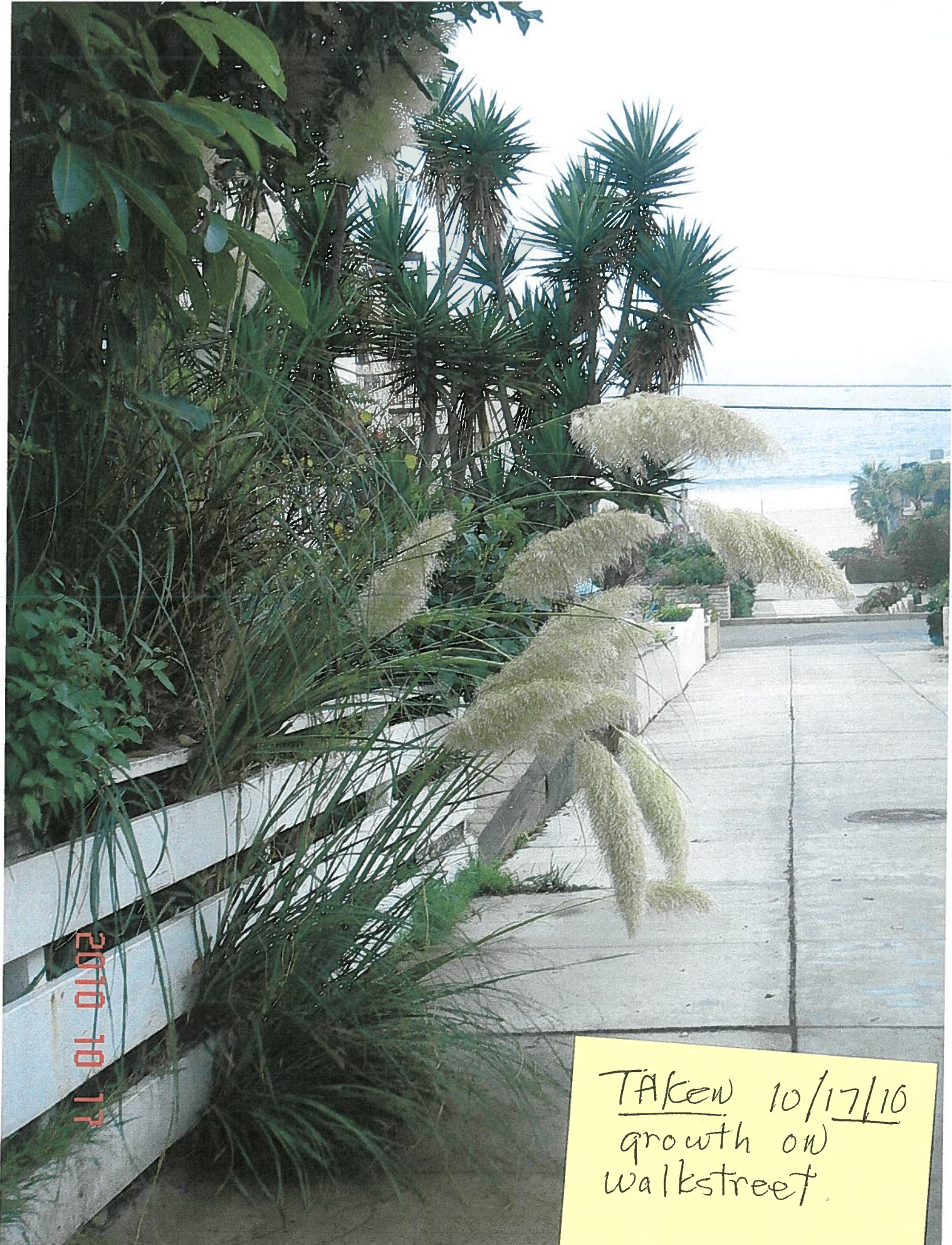
2010 3 2

New tree

2-20-2010



2<sup>nd</sup> Story View



2010 10 17

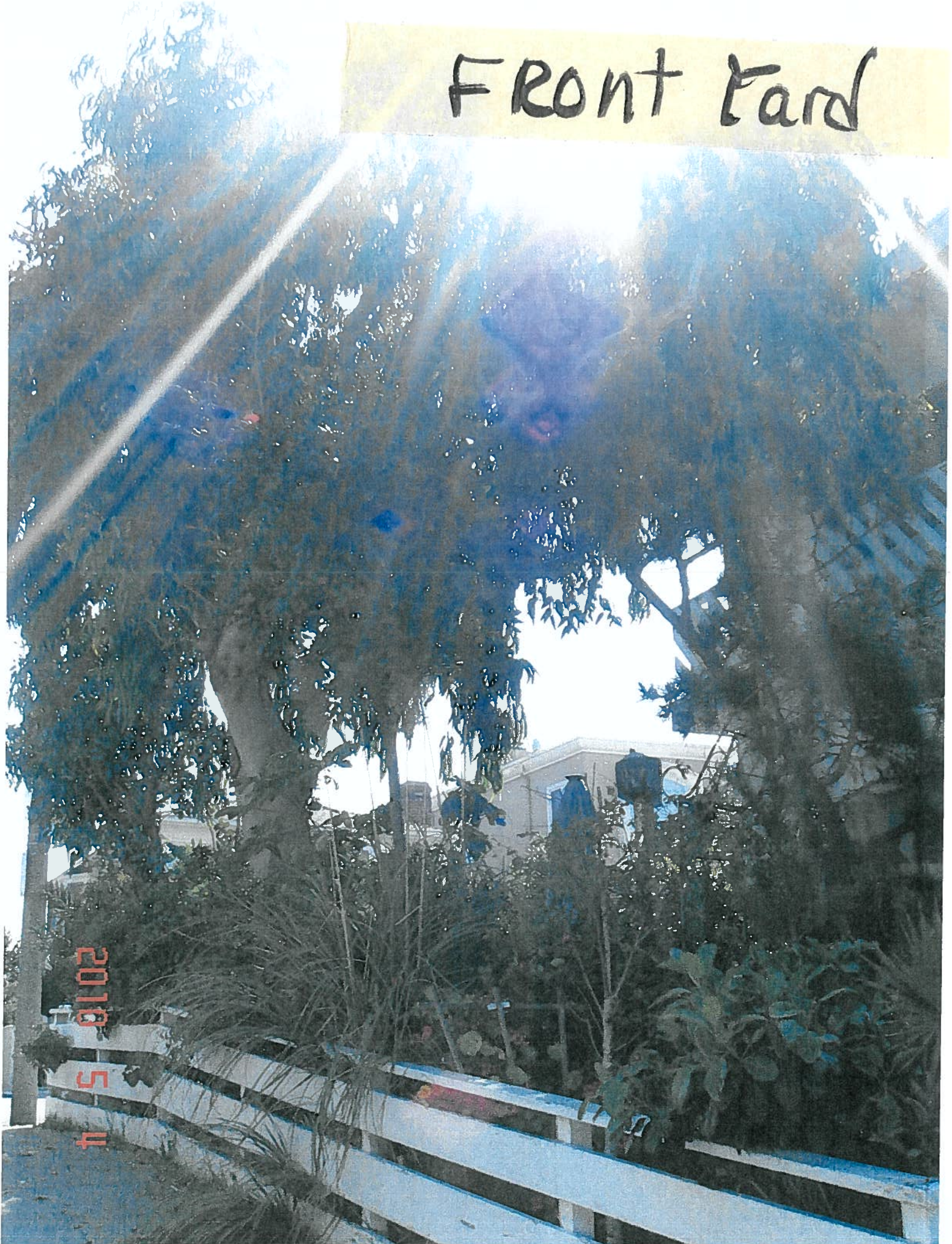
TAKEN 10/17/10  
growth on  
walkstreet.

2-20-2010



Taken from 2<sup>nd</sup> Story

# FRONT Yard



2010 5 4



INVASIVE SPECIES → 70 FT - 90 FT TALL



4  
5  
2010

of encroachment Area

3-2-10



More trees -



2010  
3  
2

2-10-15

More trees grow



taken from  
walk street  
on west side  
of property.  
Several trees have  
been planted.

-Facing walk street  
landscaped growing  
into street.

2-10-2010



MY VIEW



2010 5 4

5-5-2010  
New Growth



Other growth  
invading  
Side walk on  
Highland. -

2010 10 17

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LEFT

INTENTIONALLY

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25 May 1979

To: Public Works Commission

From: Thomas M. Martinsen, Jr., Director of Public Works

By: Michael Lowry, Engineer Intern *meel*

Subject: Encroachment Permit Appeal - 619 Highland Avenue

BACKGROUND

Werner and Sabine Birkenfeld, owners of the residence at 619 Highland Avenue, have requested Public Works Commission review of a design for proposed improvements to be constructed on the Seventh Street right-of-way adjacent to their property. This area is presently landscaped with a number of pine trees and a low picket fence which meets the criteria for walk street encroachments.

DISCUSSION

The proposed design would establish a strictly private usage of a portion of the right-of-way by the installation of a five-foot high fence, wooden deck, and hot tub, none of which are permitted by the encroachment guidelines. The Birkenfelds have been advised by the Public Works Department staff that approval of this design would be an unprecedented departure from the encroachment regulations adopted by the City Council and that the staff feels there are no special circumstances, as required by Section 7-9.02 of the Municipal Code, which would warrant favorable consideration of this proposal. The Birkenfelds have appealed the staff evaluation.

ALTERNATIVES

The Public Works Commission may:

- (1) Recommend that the encroachment permit appeal be denied.
- (2) Recommend that the design or elements of it be approved, subject to standard procedural requirements, even though they are not in conformance with the adopted guidelines.

RECOMMENDATION

It is recommended that the encroachment permit appeal be denied and that the applicants be permitted to resubmit a revised design, without prejudice, in conformance with the guidelines.

bam



Aug 26<sup>th</sup>



# PARKING AND PUBLIC IMPROVEMENTS APPEAL APPLICATION

PAID  
E/001-01265323  
06-09-2010

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5000 FAX (310) 802-5501 TDD (310) 546-3501

## ENTIRE "BLOCKED" AREA MUST BE FILLED OUT

John T. Ziskin for Agent for Daniel E. Ziskin

Resident/Applicant: SABINE + WERNER BIRKENFELD Date: 6-9-2010

MAILING Address: 619 HIGHLAND AVE. 233<sup>7th</sup> Street Phone No. 310 376-6892  
(310) 374-7215

City: MANHATTAN BEACH State: CA. ZIP Code: 90266

Appeal Request:  ~~SB~~ Red Curb  Parking  Traffic Signs/Marks  Right of Way

Other: SEE ATTACHED LETTER

Address/Intersection: 619 HIGHLAND AVE 233 7<sup>th</sup> St M.B. 90266

Description: SEE ATTACHED LETTER

Petition: SEE ATTACHED LETTER

Signature: Sabine Birkenfeld  
John T. Ziskin Agent for Daniel E. Ziskin

Cashier	\$ _____	Date	_____	Initials	_____
TRAN Code	#4502	Amount Rec'd.	_____	Receipt #	_____
Fee Schedule	Permit Appeal	\$465.00			

Legal Description \_\_\_\_\_

Map Book \_\_\_\_\_ Page \_\_\_\_\_ APN \_\_\_\_\_

Comments/Notes \_\_\_\_\_

**EXHIBIT**  
C

Approved/Denied \_\_\_\_\_ Date \_\_\_\_\_

Community Development Department

Werner & Sabine Birkenfeld  
619 Highland Avenue  
Manhattan Beach, CA 90266

Daniel Ziskin  
233 7<sup>th</sup> Street  
Manhattan Beach, CA 90266

June 9, 2010

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

Re: Your Letters, dated May 14, 2010

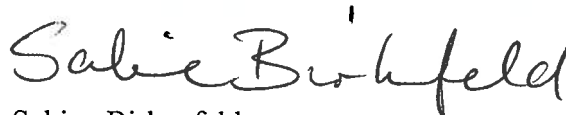
To: Department Director:

This letter responds to the referenced letters by Jacqueline Harris respectively addressed to the two property owners identified above. The referenced letters reported that after meetings, the Department determined that each of the responding property owners was required to remove or reduce the height of vegetation and a tree in the respective encroachment area of the owned properties. Additionally, the owners are required to sign an encroachment agreement.

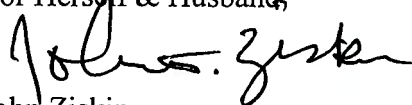
As a part of the discussions, Ms. Harris stated that the two owners can join in an appeal to the City Council of the decision and requirements of the Department and by doing so split the cost of the fee. We each contend that there is no merit to the decision and requirements, and for that reason we appeal.

We will deliver this letter to the Department on its date and pay the \$465 appeal fee. We understand this appeal timely responds to the referenced letters, 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.

Respectfully submitted,

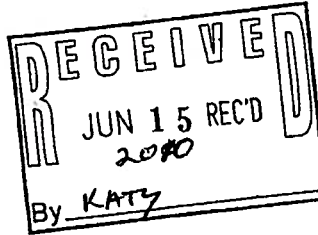


Sabine Birkenfeld  
For Herself & Husband,



John Ziskin,  
Agent for Daniel Ziskin

Werner & Sabine Birkenfeld  
619 Highland Avenue  
Manhattan Beach, CA 90266



Daniel Ziskin  
233 7<sup>th</sup> Street  
Manhattan Beach, CA 90266

June 14, 2010

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

Re: Our Appeal Filed on June 9, 2010

To: Department Director:

Last week, we paid a appeal fee to have our dispute heard by the City Council. The total paid was \$465. As in our letter seeking appeal dated June 9, 2010, we stated that there was no merit to your determination stated in letters dated May 14, 2010. Your letters reported your decision that we were required to remove or reduce the height of vegetation and a tree in the respective encroachment area of our properties and we are required to sign a encroachment agreement. We responded to your decision by stating that it had no merit, nor did your requirement to apply for a encroachment permit. We asked for an appeal to the City Council.

Please clarify a concern that has arisen. We note in an excerpt from the 2008 Resolution of Fees found at <http://www.citymb.info/Index.aspx?page=1550> that the fee for an appeal to the City Council of a Planning Commission decision or an administrative decision is \$465, the same fee we paid to you. There also listed is a encroachment permit appeal to the PPIC with a fee of \$465. We also note that according to Section 7.36.080 of the Manhattan Beach Code:

“Applications which are inconsistent with the ‘Encroachment Standards’ set forth in Section 7.36.150, including right of way frontage improvements required as a condition of approval by the Director of Public Works, must be appealed to and approved by the City Council with a recommendation from the Parking and Public Improvements Commission.” Further, a notice shall be sent to neighboring property owners whose lots’ front property lines are within three hundred feet (300’) of the subject encroachment area site at least ten (10) calendar days prior to each body’s consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such an appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

This appeal to the PPIC seems to be what you set for hearing on August 26.

The appeal to the PPIC appears to conflict with our request to you. As we understand, the appeal to the PPIC, we are requesting an exception to the Encroachment Standards be granted in accordance with our encroachment proposal. That is not our appeal position.

We want to appeal your decision requiring that the respective trees be cut down to a

height of 42 inches and that we are required to file an application for encroachment permit.

For example, the City Council of Manhattan Beach shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 9.78. See 9.78.050 D. In the same manner, we respectfully allege there is an error in your requirement, decision, or determination in the enforcement or administration of Chapter 7.36. It appears that were we to appeal to the PPI as stated, then we would be surrendering our defense against your errors. Instead, we want to appeal your decision as an administration or enforcement decision for which a fee of \$465 has been set as stated. In addition to that appeal, and in the alternative, we have no problem with appealing to the City Council and asking for it to make an exception to its code regarding our trees and/or vegetation in excess of 42 inches.

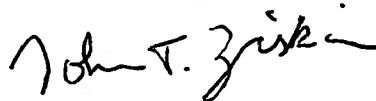
Finally, you have stated that Daniel Ziskin is not required to reduce the tree or vegetation in question on his property to 42 inches, notwithstanding your letter to him of May 14, 2010, if he will trim the frons of the tree; however, he must apply for a encroachment permit. To be clear, he is willing to trim the frons to resolve the matter, but not willing to apply for a permit. Your decision allowing mere trimming of the frons, but requiring a encroachment permit left him no option but to make the requested appeal. Further, the fee for such a permit is too much and abusively excessive.

We would appreciate it if you would respond to the concerns of this letter to insure that the procedure of our appeal properly follows our appeal request.

Respectfully submitted,



Sabine Birkenfeld  
For Herself & Husband



John Ziskin,  
Agent for Daniel Ziskin

"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

October 1, 2010

### PUBLIC MEETING NOTICE

Encroachment Permit Appeal- 619 Highland and 233 7<sup>th</sup> Street

Dear Resident/Property Owner:

The Department of Community Development has received an application for an Encroachment Appeal submitted by property owners, Werner and Sabine Birkenfeld at 619 Highland Avenue and Daniel Ziskin, property owner at 233 7<sup>th</sup> Street. Mr. and Mrs. Birkenfeld are requesting to keep their Eucalyptus tree and all landscaping in the public right of way (walkstreet) on 7<sup>th</sup> Street over the required maximum 42" height limit. Mr. Ziskin is requesting to keep his Palm tree and all landscaping in the public right of way (walkstreet) on 7<sup>th</sup> Street over the required maximum 42" height limit.

The request has been administratively denied because the existing trees and landscaping exceed the 42" maximum height limit for landscaping in the public right way per Manhattan Beach Municipal Code 7.36.150. Additionally, both property owners have no current encroachment permits. An encroachment permit is required per Manhattan Beach Municipal Code Section 7.36.030 for private improvements in the public right of way. Both homeowners have 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, October 28, 2010

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](mailto: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,

Laurie B. Jester  
Acting Director of Community Development



**Angelica Ochoa**

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**From:** Ray Joseph [rayj310@gmail.com]  
**Sent:** Wednesday, October 13, 2010 4:07 PM  
**To:** Angelica Ochoa  
**Subject:** Encroachment hearing

Hi Angelica,

I live on 6th ST and think they should cut the tree down at 233 7th ST and 619 Highland Ave. It is inappropriate for the sand section to have such a large trees. I think the city made the right decision requiring the trees to be cut down.

Thanks,

Ray Joseph  
228 6th St  
Manhattan Beach CA

**EXHIBIT**  
F

**Angelica Ochoa**

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**From:** Bill Citta [bpcitta@verizon.net]  
**Sent:** Monday, October 18, 2010 8:49 AM  
**To:** Angelica Ochoa  
**Cc:** Mitch Ward (External); griffin3@roadrunner.com  
**Subject:** ENCROACHMENT @ HIGHLAND & 7TH ST.

HONORABLE PPIC MEMBERS,

I must submit a negative to the request for an ENCROACHMENT PERMIT at 619 Highland & 233-7th Street to leave trees exceeding the 42" height limit.

Upon a personal 'check' of the situation, it definitely appears these over-height trees are blocking ocean views of other residents beside the fact they were planted without prior City approval.

Although I am generally against removing any trees, there are situations that require such action, and this is such one of them. I see no reason these trees cannot be replaced with dwarf-growing ones that will 'fit' the existing landscape.

Respectfully submitted,

William G. Citta  
229 - 8th Street  
M.B.  
310.379.4018

**Angelica Ochoa**

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**From:** mary boyd [mbmitzi@gmail.com]  
**Sent:** Monday, October 18, 2010 5:34 PM  
**To:** Angelica Ochoa  
**Cc:** Sabine@dslextreme.com; grandart@verizon.net  
**Subject:** Encroachment Permit Appeal - 619 Highland and 233 7th Street

This is in response to the letter I received from the City of Manhattan Beach dated October 1, 2010, same subject:

**PLEASE DO NOT CUT THE EUCALYPTUS TREE IN THE BIRKENFELD'S GARDEN  
NOR THE PALM TREES ACROSS THE STREET.**

I have been in my home for nearly 50 years. My lovely neighbors, Mr. and Mrs. Birkenfeld were either here, or came shortly after I did. Their beautiful Eucalyptus Tree has been in their garden for nearly the same amount of time (50 years). I don't know when the palms at 233 7th were planted. I don't pay much attention to Palm Trees but I love their Eucalyptus Tree. Seventh Street is full of trees. In fact a new neighbor moved here on this street "because of the greenery."

This is what I know: The only time there has been a complaint against the Birkenfeld's tree is from the Realtor who owns the property directly across from the Birkenfeld's. A couple years ago (perhaps longer) she lodged a complaint because the place was up for rent. As soon as the place was rented she dropped the complaint. Once again, the place came up for rent and once again she complained about the Birkenfeld's tree. Obviously she spoke to the neighbor across the way who is the one complaining about the silly palm trees.

The realtor is a fairly new owner of the house and the guy complaining about the palm trees is a new neighbor. Many of us have lived here for years. Personally, I have trees, and most of my neighbors have trees in the encroachment area.

If the City thinks this is just a problem with these two properties they are **WRONG!** Most of us on 7th Street **HAVE BIG TREES.** There is a realtor on my block who is going around telling people their trees will be cut down to 42 inches. We are angry!!! We planted trees when this place was barren and now that they are grown **NEWCOMERS** think they have the right to tell us what to do. Well, they don't.

To the best of my knowledge the ordinance first came into existence in the 70's and then again in 2003? We have been here much longer than the ordinances.

For heavens sake, **LISTEN TO US!!! WE LOVE NATURE AND WE LOVE TREES.**

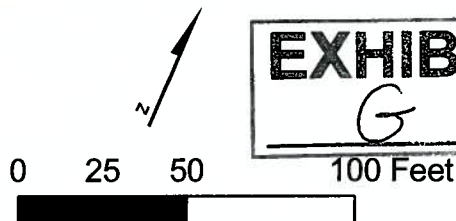
Sincerely, Mary Boyd (320 7th st.) Manhattan Beach

10/19/2010



# Vicinity Map

233-7th Street and  
619 Hihland Avenue



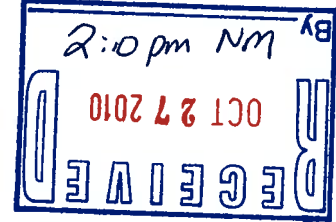
**EXHIBIT**  
G



City of Manhattan Beach  
Community Development

Additional Comments rec'd Oct. 22<sup>nd</sup> - 28<sup>th</sup> 5pm

Joseph Lordeon 612 Highland Ave. Manhattan Beach, Ca. 90266



Parking and Public Improvements Commission

City of Manhattan Beach

Subject 619 Highland 50 year old tree killing proposal

I bought my house in 1982 and have enjoyed the shade as I marched up the walk street on many of our sunny days. The delightful tree is 80 feet from my balcony and I have enjoyed beauty. The complainer knew the tree was there when they bought the property. The walk streets have turned to concrete jungles with too much patio furniture. It is refreshing to see a mature tree on the walk street that is over 50 years old.

As a long time resident of this area, I strongly support NOT killing the tree, to comply with an city ordinance penned long after it was flourishing.

Thank you for your consideration

Joseph Lordeon

Cc Sabine and Werner Birkenfeld

**From:** STEVEN GLASS [mailto:stevieofmb@msn.com]  
**Sent:** Thursday, October 28, 2010 9:34 AM  
**To:** Angelica Ochoa  
**Subject:** Encroachment Appeal - 619 Highland

Ms. Ochoa

My name is Steven Glass and I reside at 324 7th Street Manhattan Beach.

The subject matter Eucalyptus tree blocks approximately 1/2 of my ocean view from my bay window, which is the only window in my house that has a true ocean view. I never knew that the tree encroached a public right-of-way.

If the branch and leaf portion of the tree were reduced/cut back in height by about 2/3, it wouldn't block my view and I wouldn't have any further objection to the tree exceeding the 42" height limitation.

Please advise if you require my appearance at this evening's meeting.

Steven Glass  
310-374-1072

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



**TO:** Parking and Public Improvements Commission

**FROM:** 1. Werner and Sabine Birkenfeld and  
2. John Ziskin for Daniel Ziskin, deceased

**BY:** Frank Wattles, attorney

**DATE:** October 28, 2010

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street

**REQUESTED ACTION**

Property Owners Birkenfelds of the property at 619 Highland Avenue ("Owners Birkenfeld") and Property Owner Ziskin of the property at 233 Seventh Street ("Owner Ziskin") are appealing:

1. the decision of the Department of Community Development ("CDD"). requiring removal of vegetation in the respective encroachment areas, and
  2. the requirement of CDD that Owners apply for an encroachment permit for all improvements in the respective encroachment areas,
- on the grounds that the requirements are in error legally and factually.

Owners request that this Commission recommend to the City Council that both legally and factually Owners are not required to comply with the stated directives of CDD.

Note: Owners are not requesting this Commission APPROVE improvements and landscaping in the Birkenfeld front yard.

Note: Based upon the recommendations set out by CDD to APPROVE all the improvements and landscaping of Ziskin, said Owner joins in the recommendation so long as there is no requirement to file an application for encroachment permit.

**STATEMENT OF FACTS AND LAW**

CDD by its letters dated May 14, 2010 ordered that both property owners cut down trees and shrubs in excess of 42 inches height growing in their respective front yards bordering Seventh Street. The owners were ordered further to obtain an encroachment permit for "private



improvements” located in the public right of way (“R-O-W”) forming their respective front yards.

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.

The paper supporting the CDD recommendations fails to attach a copy of said letters, and for that reason, the May 14 letter to the Birkenfelds is annexed and marked Exhibit 1.

Both owners join in this appeal on the ground that there is no merit in law or in fact to the orders of the CDD. There is no authority for the orders. The specific contentions are set forth hereinbelow.

The property at 619 Highland Avenue was developed in 1949 by building two dwelling units on the 30' by 90' lot. Later the lot was split into two 45' lots, each with a dwelling unit.

Werner Birkenfeld moved into the property in 1966 with his wife Sabine joining him shortly thereafter. They purchased the property and began developing their treasured nature preserve on their “front yard” made up almost entirely of the area of right of way (“R-O-W”) between their northern property line and the southern curb line of the walk street. They planted the existing eucalyptus tree and pine trees and an assortment of shrubs before 1970. The creation has been maintained continuously since its inception and has been a vital sanctuary, not only to the Birkenfeld family but also to a wide array of birds and small wild animals and the neighborhood.

The preserve/sanctuary may have served as a model for the enactment of MBMC 7.32.010 (Tree, Shrub and Plant Regulations) enacted in 1971. The Chapter’s stated purpose is to serve the public health, safety and general welfare by improving general aesthetic values, reducing traffic noise, deflect glare and heat, lower wind velocity, purify air, increase property values, and provide cooling shade and beauty.

At the time of the creation of the preserve/sanctuary, the City encouraged such plantings and use of its R-O-W and did not require a permit for such activity. The ordinance history of plantings, regulations and private use of the public right of way is discussed in greater detail in this paper.

In 1974, the one-story dwelling unit on the property was expanded by adding on an additional floor, a second story. A dormer and large plate glass observation station was added to the first floor which overlooked the preserve and a deck was added on the second floor also overlooking the preserve. All required permits were received from the City. The preserve was observed by many inspectors and considered by the City in issuance of the permits. Again, in 1979 an application was made for encroachment permit. The supporting plan illustrated the encroachment area with existing picket fence and trees causing a City staff member to state in his letter dated May 25, 1979, that “This area is presently landscaped with a number of pine trees ...”. Exhibit B of CDD current paper. The illustration did show the tree and shrub design in the area, but the City letter incorrectly states that all the trees are pines. In fact, one of the illustrated trees was the existing eucalyptus and that tree continues to exist.

Greg J. Monfette, an arborist of substantial repute who is well-known to this City, recently visited the preserve and prepared a report which is attached to this paper, incorporated herein and marked Exhibit 2. Attached to his report is a resume demonstrating his qualifications

as an expert in the field. Based upon his expertise, he estimated the age of the tree as about 50 years with a planting in the 1960's. This estimate is correct with the tree planted in the late 1960s and actual age nearer to 45 years.

The report estimates the market value of the tree at \$26,500, but also observes the immense psychological purpose served by the tree and the preserve which if removed would leave human scars and a deficit to the community.

As observed in the report, the tree is regularly trimmed (each six months) and is in good health. It may be fair to say that the tree is a member of the family. According to its regular semi-annual schedule, the tree was trimmed a few days ago.

The City through a staff member frequently visits and observes the preserve and through the years has tacitly approved the vegetation at the site. Certainly it may be true as set forth in the CDD paper that the City formally approved vegetation at the site in 1979 ("The property owner at 619 Highland Avenue has an encroachment permit from May 1979 for pine trees and a low picket fence only . . ."), but even if the formal approval was not received to include the eucalyptus, the City has tacitly approved its existence over the nearly 45 years of its presence. For example, see Exhibit 3, page 1, 5<sup>th</sup> paragraph, referring to occasions when the City requested tree trimming of the eucalyptus and a supporting trimming invoice to evidence completion of the job.

The same neighbor who complained on this occasion (see Exhibit A of the CDD paper), complained in 2006 asking that the tree be removed. The City initiated proceedings to remove the tree at that time and during the extended process sent a letter dated August 28, 2006. None of this is reported by CDD in its current paper. Mrs. Birkenfeld wrote a letter in response and attached a petition signed by many persons in the neighborhood. A file copy of the letter is annexed hereto and marked "Exhibit 3". This letter and petition was filed with CDD. Request is made that CDD produce the letter and petition containing nearly 150 signatures supporting the Birkenfelds' preserve and sanctuary. It is here noted that the letter sets forth many of the facts here stated including the age of the tree and its trimming schedule. A copy of the petition signatures is available for viewing at the hearing.

The record will reflect that some time in 2007, the neighbor dropped the complaint; however, apparently only to renew it in 2009. The record will also reflect that through these years of proceedings concerning the tree, there have been unsuccessful attempts at mediation wherein the complainant will not accept trimming of the tree, and will only accept removal. Hopefully this process will establish the vested rights of the Birkenfelds in the retention of the tree and clarify the ordinance so that each time the economy changes, the complainant does not reappear.

### **Historical Laws, Vesting and Development of the Area.**

The State provides in the Coastal Act, *inter alia*: "No person who has obtained a vested right in a development prior to the effective date of (the Coastal Act) . . . shall be required to secure approval for the development . . .". Public Resources Code Section 30608 (hereinafter "PRC")

While the trees and shrubs installed by Owners do not fall within the definition of "development" (30106), Owners certainly have a "vested" right therein and are entitled to the

right afforded in 30608 of the Coastal Act and other state and federal constitutional rights in the protection of property.

The CDD by its decision herein recommending removal of certain trees and shrubs as unpermitted encroachments in the R-O-W are tacitly requiring removal of a "development". The recommendation is contrary to 30608.

Owners at 619 Highland Avenue contend the subject tree and shrubs were planted prior to 1970. The plantings were legal at the time, are grandfathered by MBMC 7.32.090, and as such Owner has a vested right therein. By law (30608, etc.), City shall not require removal of the tree and shrubs in the absence of an encroachment permit. CDD has not shown cause for removal of the subject vegetation.

The order of CDD "to remove or reduce the vegetation and the tree in the encroachment area" is a study in confusion. As stated, CDD acknowledges that the pine trees have an encroachment permit from May 1979. "Background", 1<sup>st</sup> parag. In fact, there are two pine trees of approximately 15 feet. Notwithstanding, CDD ordered removal or reduction of "the vegetation and the tree". Exhibit 1. The pine trees are "vegetation". Does CDD contend the pine trees must go even if they received an encroachment permit? Is CDD going to make a series of orders until it is satisfied with the "view"? All of this without particularizing the scope of the view to be obtained. Owner contends that this process is illegal and intolerable.

The City enacted Ordinance 82 in 1914 prohibiting planting of trees or shrubs "along any public street, or other public place in said city unless planted between the property line and the curb line . . .". Ord 82, section 2. The curb lines of Seventh Street in the subject area were established in 1914. Ordinances 92, 116 and 132. The Street adjacent to Owner's front yard/encroachment area was designated a walkstreet closed to vehicle traffic in 1962. Ordinance 916. By the ordinance, the City stated, *inter alia*: "WHEREAS the private property along such streets and portions thereof has been developed in a manner not commensurate with the use of such streets for motor vehicle travel . . .".

In the 1960's, the properties on Seventh Street in the block of Owner's property regularly used the front yard areas for private purposes and planted trees and shrubs therein with the City's blessings.

Not until 1972 with enactment of MBMC 7.32 did the City require a permit to plant trees and shrubs in a public place along streets between the property line and the curb line. The purpose was to acknowledge the huge public benefit of such vegetation and to seek to regulate listed activities. While certain regulations were initiated, the ordinance allowed that street trees then existing could remain to old age. MBMC 7.32.090.

Staff members of CDD have stated that 7.32.090 does not apply. The Chapter and Section does apply.

Section 7.32.090 provides:

**"Those street trees now existing may remain** until by old age or other reasons they are removed. When any new street tree is planted it shall conform to the street tree planting guide referred to in subdivision (A)(1) of Section 7.32.080." Emphasis added  
"Street trees shall mean trees or shrubs in public places along City streets, roads, boulevards and alleys." 7.32.020.D. "Trees and shrubs' shall include all woody vegetation now or hereafter growing, planted or to be planted on any public place or area." 7.32.020.E. "Public place or

area' shall include all those streets and highways within the City and all other properties owned by the City of Manhattan Beach." 7.32.020.G.

There is no question that the City claims ownership of the R-O-W constituting the front yard of the Birkenfeld's property, i.e.: "the preserve/sanctuary" and that the City allowed private use of the front yard before the enactment of 7.32 in 1972 or 7.36 in 2003.

Furthermore, even if the case is made that there was some approval required to plant a tree in the R-O-W in the 1960's, the scope of the "grandfather" of 7.32.090 applies to "trees now existing" and is not limited to approved trees or shrubs. Again, the City has expressly permitted through the "grandfather" the trees and shrubs in the Birkenfelds' front yard. The rights are vested in the Birkenfelds and the enactment of 7.36 in 2003 cannot remove the Birkenfelds' right. The Coastal Act as cited above bars the City and the CDD from requiring approval of the trees or shrubs through an encroachment permit or otherwise. The City has no authority to contradict the dictates of the Coastal Act because the State has preempted the field.

There should be no question — the Birkenfeld's trees and shrubs were planted in their front yard, along the walkstreet with the permission of the City, and use continued thereafter with the express approval of the City. The trees and shrubs cannot be removed based upon the allegation of a neighbor that they exceed 42 inches in height and impair her "view".

### **Scope and Application of Chapter 7.36.**

CDD alleges correctly that there is vegetation in the front yards which exceeds 42 inches in height; however, it incorrectly alleges that Manhattan Beach Municipal Code ("MBMC") prohibits such vegetation. Specifically, CDD contends that MBMC 7.36.150 requires removal of vegetation including trees over the height. The contention is wrong.

The trees and shrubs subject of the order of CDD are mature, existing and contribute to the scenic beauty of the area. This vegetation long pre-existed the ordinance cited by CDD. As such, the vegetation is not subject to the ordinance for the reasons herein.

Chapter 7.36 governs use of the public right of way by private parties. It establishes standards to allow private use and development of the public right of way with certain improvements that are compatible with surrounding developments. 7.36.010. Failure to comply with the standards is a violation. Specifically, "violation" is defined in one sentence, as follows:

*"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."* 7.36.030

An "encroachment" is defined as follows:

*"Encroachment' means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property."* 7.36.030

In this provision "encroachment" is defined by examples within a class of "structures" or "objects", which examples include paving, fence, stand, building, entry monument. Each of the examples are structures.

This kind of definition is covered in the California Civil Code and is an example of the legal maxim *ejusdem generis*. "Particular expressions qualify those which are general." (Civ.

Code, §§ 3534 (enacted 1872).) The legal maxim contained in Civil Code section 3534 is a statutory expression of the rule of construction: **ejusdem generis** -- of the same kind, class or nature. (In re Marquez (1935) 3 Cal.2d 625, 629 [45 P.2d 342].) "... where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The particular words are presumed to describe certain species, and the general words to be used for the purpose of including other species of the same genus. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes. The words "other" or "any other," following an enumeration of particular classes, are therefore to be read as "other such like," and to include only others of like kind or character." (People v. McKean (1925) 76 Cal.App. 114, 119 [243 P. 898].)

Consequently, "encroachment" does not include trees, shrubs or other like living things. The class of structures or objects listed does not include living things. For this reason, Owners herein cannot be in violation of the Chapter cited because after enactment of the Chapter neither Owner constructed, created, occupied or used an encroachment in the public right of way by having trees or shrubs of any height in their front yards, i.e.: the public R-O-W.

Further, the word "placed" is more descriptive of a structure being located on an area than of a tree or shrub growing.

In addition, a following sentence of Section 7.36.030 includes definition by example, once again requiring construction by the maxim *ejustem generis*. The provision is stated as follows:

"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 broad statement of activity is "all other intrusions into the public right of way". Specific examples of the intruding class are three, one of which is "private improvements". The Chapter does not define "improvements"; however, any meaning attributed must be consistent with the "violation" provision discussed herein, i.e.: landscaping or living things located upon an encroachment area without an encroachment permit do not violate the provisions of Chapter 7.36.

For the reasons stated, an encroachment permit is required where construction or placement of a structure in the encroachment area is involved. In conjunction with such work, landscaping may be added to the encroachment area. Such improvements on a walkstreet involve the standards set forth in 7.36.150-B-3. This is the section recited by CDD in its letter of May 14. Exhibit A.

Section 7.36.150 is titled "Encroachment Standards". The subject of the height of trees or shrubs is not involved where these living things are not "encroachments". However, where there is encroachment work to be performed, the landscaping relating to the encroachment work may be included as described in 7.36.150. In such case, the landscaping provisions apply, but not otherwise.

The current application of the provisions of Chapter 7.36 and its requirement for an

encroachment permit is evidenced by this City's 9/2009 revision of the Encroachment Permit Application, a copy being annexed hereto and marked "Exhibit 4". The Form requires identification of the encroachment (including Landscaping). Additionally, the applicant is required to certify in relevant part, as follows:

"Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. . ."

The certification requires understanding and compliance with Section 7.36.150 of the ordinance, or a facsimile thereof. The Section is titled "Encroachment Standards" and Subpart A is titled "General Standards". The certification is dependent in part upon the meaning of "private improvements".

Section 7.36.150-A-8 provides in relevant part: "Existing improvements which do not conform to current standards must be removed or brought into conformance . . . if any new significant construction is proposed in the public right of way." In this case, the construction in the R-O-W is the encroachment proposed and the "improvement" must then be brought into conformance.

The general standard is consistent with the particular provision applied to Walkstreets at Subpart B-3, which provides, *inter alia*: "Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit." This statement does not identify "landscaping" to be an encroachment. Like Subpart A-8, the improvement is made subject of the Permit *if* there is other encroachment work requiring a Permit. In Subpart B-3, the "landscaping" accompanies other encroachment work requiring a Permit. The reference to a "landscape plan" incorporates Chapter 7.32 and its plant regulations.

In the absence of encroachment work requiring a permit, Sub-part B-3 does not require that landscaping alone requires a Permit. In this case, the general standard applies and landscaping expressly does NOT require a Permit and is subject to a landscape plan in accordance with 7.32 and Subpart A-2.

In brief summary, landscaping on the R-O-W of the walkstreet does not require a Permit and through the general standard does require adherence to the provisions of 7.32. Additionally, improvements existing at the time of adoption of 7.36 do not require a Permit. The mere fact that an object is located now in the R-O-W is not cause for a claim of "violation" and order to obtain a Permit.

### **Chapter 7.36 Applied to "Views"**

CDD's paper in support of its recommendation to the Commission attributes to 7.36.150.B.3 a standard widely variant from the standard there provided. This mistake is basic to protection of view, particularly given the directives of the Coastal Act. To highlight the difference the statement of CDD and ordinance provision are blocked out, as follows:

CDD Statement	Ordinance Provision
if a view is impaired (Section 7.36.150 A6 and 7.36.030, Exhibit D), the Director of Community Development shall direct the owner to cut the landscaping in the encroachment area to a maximum of 42" high.	If it is determined that a resident view is impaired, the Director of CD shall direct the owner of the property adjacent to the <b>encroachment landscaping</b> to trim the over-height landscaping to forty-two inches (42") maximum
landscaping in the encroachment area	<b>encroachment landscaping</b>
"Encroachment area" means the section of public right of way located between the property line and the edge of the walkway or roadway.	"Encroachment" means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, <b>right of way</b> , sidewalk or street by or for the use of the adjoining property.

By its statement, CDD changes "encroachment landscaping" of the ordinance to "landscaping in the encroachment area". The result is a significant distortion of the ordinance.

An "encroachment" is not the same as "encroachment area". As described herein, an encroachment does not include trees and shrubs, but certainly an encroachment area may include trees and shrubs. These terms are defined in the ordinance. If the Council intended its statement to include "encroachment area landscaping", it would have so provided.

By the ordinance, because "encroachment" modifies "landscaping", the statement means "landscaping" around or in the presence of a qualified encroachment. These terms address a standard to be applied in the processing of an encroachment permit, or in a determination of violation to obtain such a permit.

According to the standard of Subsection B.3, the adjacent property owner must fail to trim "encroachment landscaping" in excess of 42 inches where a "resident view" is "impaired" and CDD so determines. There are several elements to the requirement, but at the least, there must be shown to exist "encroachment landscaping", not just landscaping in excess of 42 inches.

Further, the "resident view" must be in conformance with the preempting Coastal Act. "View" is dependent from the "resident's scenic view" of 7.36.150.A.6. The purpose of the protection is stated in B.3 "To promote visual openness and conserve scenic vistas . . ." and that view of the scenic vista must be impaired. Of course, "scenic vistas" can be any view (the eye of the beholder) and the provision would be impermissibly broad without definition.

Arguably, scenic vistas means those views protected by the Coastal Act. Section 30251 of the Act provides, *inter alia*:

"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to

and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.”

This provision protects scenic and visual qualities of coastal areas. “Permitted development” is designed to protect views “to and along the ocean and scenic coastal areas”. In 2005, the Coastal Commission found that the Coastal Act does not protect views from private residences. Case W8b, Appeal Number: A-5-RDB-04-261, p. 14 of 18

In a depublished opinion, the California Appellate Court discussed Case W8b and protection of views pursuant to the Coastal Act. *Farr v. California Coastal Commission (Doyle)* (2009) 173 Cal.App.4th 1474. The Court stated at page 1479: “After independent review . . . , we cannot find that the Commission added words to section 30251, or that the Legislature intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views.” The Court affirmed the judgment of the Coastal Commission.

In the subject case, CDD recommends that the Birkenfeld tree be removed because it impairs the view of the resident complainant even though a tree immediately across the walkstreet is determined not to impair such views. Owners requested of CDD the complaint upon which the decision and recommendation were based. CDD required that a “Request for Public Record” be filed, but that the request will be denied because the document is confidential and “under investigation”. The Request was filed weeks ago but there has been no reply. The complaints appear necessary to preparation for this hearing, and based thereon, Owners object to this proceeding.

Attached to the CDD paper is Exhibit A, a letter dated October 18, 2010, to which are attached 25 photographs. This is not the complaint. For the record, this woman filed the same complaint in 2006. That complaint was prosecuted for an extended period of time until it was dismissed. Thereafter, in 2009, the complaint was refiled. CDD fails to report this relevant fact. See Exhibit 3, herein, and the available petition signatures provided by Owner Birkenfelds in 2006.

Concerning the 25 photographs, there are some labeled as “taken from 1<sup>st</sup> story”, the street, the second story, the street and the walkstreet. The vantage point of the pictures is uncertain. The view to be protected is uncertain. However, the complainant appears to contend that she is entitled to a view of the ocean from her residence, be it first story or second. This interpretation of 7.36 is buoyed by the fact that she includes no pictures through the view corridor including the palm tree located across the walkstreet. To the extent she requires a view from her building, she is not so entitled.

From the top of the hill of Seventh Street, there is a minimal view of the sand of the beach at the bottom of the hill more than 600 feet away and through the view corridor. The horizontal breath of the view is limited by perspective, i.e.: narrowing railroad tracks the further the view. Likewise, this view through the corridor to the water is minimal. For a larger breath of view, the view is over rooftops, a relatively unprotected view. For a view over the hill on



Seventh Street and just East of Highland, the view is blocked by large carrotwood trees located along Seventh Street, a vehicular street.

The carrotwood trees off Highland were planted by the City and are related to a view complaint heard on January 25, 2007, before this Commission. The ruling was to deny a view complaint appeal to remove the trees at the intersection of Eighth Street and Manhattan Avenue. Reasons given for the ruling were that the trees were 20 years old, not a nuisance according to 7.32.070, they provide a great view for Eighth Street residents, and the City Council retained the trees on multiple appeals in the past.

Related thereto, the Birkenfelds contend that their nature preserve including the eucalyptus tree provides a great view for residents and members of the public in general. The preserve and tree enhance the neighborhood while allowing a substantial view along the view corridor to the beach without interfering with access along the walkstreet to the beach. In fact, often visitors to the beach stop to view and photograph the preserve.

MBMC 7.36.150 protects "resident's views" while clearly PRC 30251 addresses views by the public. This paper has no problem with implementation of protection of residents as members of the public; however, there is a problem where protection of views is extended to residents in their homes. That protection is in conflict with State law and herein objected to on that basis.

Finally, the City has stated that because the encroachment area belongs to the City, laws regulating the area are enacted and enforced retroactively, i.e.: there is no grandfather. Owners dispute that unwritten contention as totally unsupported in this matter and categorically incorrect.

## CONCLUSION

In brief summary, the trees and shrubs subject of this hearing are property of the respective Owners in which they have vested interests protected under Federal and State Constitutions, State statutes including the Coastal Act and importantly, the law of this City. Further, the provisions upon which CDD relies in support of its recommendation to this Commission is riddled with error and without authority of the MBMC. The alleged view to be protected and upon which CDD relies to support its order to remove the valuable preserve and sanctuary is uncertain at least. Finally, CDD continues to deny Owners discovery of the particulars of the complaint that drives this case, and in so refusing deprives Owners of a fair hearing and further, fails to reveal to this Commission the earlier complaints by this same complainant and the outcry through a petition in support of the Birkenfelds.

There follows a summary of relevant historical events:

- 1914 Ord 82 Prohibited planting trees or shrubs in a public place unless planted in the area which is now defined as the encroachment area.
- 1949 House built on property now owned by Birkenfeld. Front yard was the area now identified as encroachment area.
- 1962 Seventh Street adjacent to Birkenfeld closed to vehicular traffic by Ord 962 because of the development of the front yards along the street - private use
- 1967-68 Birkenfelds purchased the subject property and started planting trees and shrubs in

its front yard, including 2 pine trees and a eucalyptus tree.. At all times thereafter the City knew of the plantings/trees and did not object.

1972 MBMC 17.32 was enacted requiring a permit for trees or shrubs planted in public places, and grandfathering existing trees. This was express authority for the vegetation (trees, etc.) in the Birkenfeld's front yard (now encroachment area).

1972 The Conservancy Act

1974 Birkenfelds added a story to their house and in so doing memorialized the front yard preserve. All permits were granted approving same.

1976 The Coastal Act

1979 CDD acknowledges permit for pine trees in Birkenfeld front yard.

2003 MBMC 17.36 enacted, but it did not require permit for trees or shrubs in encroachment area or other pre-existing improvements as CDD contends.

2006 Present complainant complained that Birkenfeld's eucalyptus tree impaired her view and CDD ordered removal

2007 Complaint is withdrawn after much time and expense.

2009 Complainant makes same complaint which is subject of this hearing

2010 Owners request a copy of complaint filed to discover alleged view to be protected but are denied by CDD. Owners object on grounds the rejection deprives them of a fair hearing and opportunity to prepare therefore.

For all of the reasons herein stated, Owners request that this Commission direct CDD to abate and withdraw its order, or in the alternative recommend to the City Council that Owners are not required to comply with the stated directives of CDD.



City Hall                      1400 Highland Avenue                      Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5500                      FAX (310) 802-5501                      TDD (310) 546-3501

May 14, 2010

Werner & Sabine Birkenfeld  
619 Highland Ave.  
Manhattan Beach, CA 90266

RE: over height tree and vegetation at 619 Highland Ave., Manhattan Beach

Dear Mr. & Mrs. Birkenfeld:

As a result of the meeting you had recently with our department a determination has been made that you will need to remove or reduce the vegetation and the tree in the encroachment area that is above the 42" requirement. In researching the complaint it has come to the attention that you do not have a current encroachment permit agreement with the city. You are also required to get an agreement.

The Manhattan Beach Municipal Code Section 7.36.150 Encroachment standards.

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.

**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)*

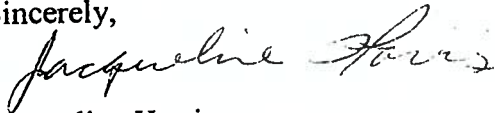
**EXHIBIT /**

Please reduce the vegetation and tree in the front yard (encroachment area) to 42 inches. **A re-inspection for compliance will be done on June 10, 2010 for the removal of the vegetation and tree or as discussed you may appeal the decision. You will also need to obtain the encroachment permit no later than June 10, 2010.**

The City of Manhattan Beach is desirous of obtaining voluntary compliance. If you have any questions, please contact me at (310) 802-5538.

Thank you for your cooperation.

Sincerely,



Jacqueline Harris  
Code Enforcement Officer  
Community Development Department

Registered Consulting Arborist #481  
Certified Arborist #729  
Certified Tree Worker #1138

Pest Control Advisor Li. #74824  
Qualified Applicator Li. #97557  
Certified Utility Arborist #729U

Neighborhood Consulting Arborist  
Greg J. Monfette  
4617 Purdue Avenue, Culver City, CA 90230  
Telephone/Facsimile: (310) 902-6581  
Email: [arboristgm@ca.rr.com](mailto:arboristgm@ca.rr.com)

Date: October 18, 2010

To: Frank Wattles

Loc: 619 Highland Avenue  
Manhattan Beach, CA 90266

**Re: Review of Mature Eucalyptus Tree**

Neighborhood Consulting Arborist (NCA) visited the site on October 13, 2010, to review the subject Eucalyptus tree growing in the front yard at 619 Highland Ave. The tree is 23" diameter by 30-35' tall in trimmed condition and maintained on a regular basis. NCA estimates this tree to be approximately 50 years old (planted in the 60's) and one of the more mature trees in the neighborhood.

NCA was contacted because a complaint has been made regarding this tree and its potential to block a view. NCA reviewed the Manhattan Beach Code of Ordinances, Title 7, Public Works, Chapter 7.32 (Trees, Shrub and plant Regulations) and Chapter 7.36 (Private use of Public Right of Way) and found that this tree is "grandfathered" in and therefore the tree shall remain.

Furthermore, the resident at 619 Highland Ave. is willing to maintain the tree once every six months, which is more than appropriate, so the size, shape and health of the tree can continue to provide the benefits to the community that it currently does. The owner of the tree has enjoyed the various benefits, as well as the privacy, for many years as he has built a bay-window and upper deck to further enjoy the benefits this tree provides. If this tree is to be removed it will be a huge impact to the tree owner from an emotional and physical state, which would have to be argued by council. NCA appraised the value of the tree in accordance with current arboriculture standards (Trunk Formula Method) as described below.

**Trunk Formula Method**

The Trunk Formula Method of Landscape Appraisal ("Guide for Plant Appraisal 9th Edition," Council of Tree & Landscape Appraisers, 2000) has been applied to help establish a baseline capital asset value represented by the Eucalyptus tree.

**EXHIBIT 2**

This process considers the species, size, condition, and location (site, placement, and contribution) of the subject trees and, using a standard industry process that has been evolving for over 100 years, arrives at a 'cost approach' to landscape value.

The capital asset value expressed by the Eucalyptus tree using the Trunk Formula Method as established by the Council of Tree & Landscape Appraisers in the 9th Edition of the Guide for Plant Appraisal is \$26,500.

The pruning of the tree twice a year is a reasonable solution/requirement to resolve this situation and preserve one of the mature trees in the neighborhood.

If you have any questions at anytime please contact me directly at 310-902-6581.

Thank you,

Greg J. Monfette  
Neighborhood Consulting Arborist  
[www.ncatree.com](http://www.ncatree.com)

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## NEIGHBORHOOD CONSULTING ARBORIST

Neighborhood Consulting Arborists (NCA) is dedicated to the enhancement of your community and the protection of the environment as the preeminent authority on matters related to tree and plant health—ensuring through our expertise and objectivity the safety, preservation, functionality and beauty of your natural surroundings.

Trees in our developed environment present a challenge, requiring careful planning and vigilant maintenance. The shared public trust of governments, businesses and homeowners is to ensure that tree plantings grow, thrive and remain safe. When a problem occurs—if a tree causes damage or becomes a public safety hazard—a source for advice and mediation is often needed. This is the role of NCA to bring a comprehensive, objective viewpoint to the diagnosis, appraisal and evaluation of arboricultural issues.



As Consulting Arborists we are called upon to advise in the most challenging situations that necessitate experience in the science and practice of arboriculture, as well as specific expertise in the practical, ethical and objective role of the consultant.

We strive to be the arboricultural experts of choice to assist law firms, insurance companies, utilities, and developers, municipalities, landscape planners and architects, homeowners, individuals and organizations coping with disaster mitigation, and others requiring authoritative knowledge and perspective on trees and plant life.

In addition to court case work, we specialize in root analysis, structural stability and the overall evaluation of the root collar area in determining various needs, or addressing various concerns. We perform our

excavation with the use of an Air-Spade which uses a patented supersonic nozzle that focuses the air "like a laser beam" to break up the soil. The soil can then be easily removed from the excavation site without damaging the roots. Air exiting the nozzle is at twice the speed of sound (approximately 1300 mph) which allows for best digging conditions with the effort of tree preservation in mind, even in the hardest soils. And the best of all is that it is not harmful to the roots or the adjacent infrastructure.

The Air-Spade can be used for just about any application that requires digging around sensitive roots or objects. We use the Air-Spade for the following applications:

- Root collar excavations
- Soil compaction relief
- Diagnosis work
- Treatment of diseases
- Trenching for underground utilities
- Root pruning
- Root structure analysis
- Transplanting of trees
- Educational work on roots and plants
- Construction of sidewalks
- Construction of house foundations


As you can see the Air-Spade is an outstanding tool if your ultimate goal is tree preservation, or if you need to identify the 'actual' cause an alleged dangerous condition caused by a tree root. For more information on the Air-Spade applications and benefits see the Air-Spade link.



Businesses, government agencies, organizations and individuals engaging us as their Consulting Arborist have the confidence that we adhere to the highest standards of professional practice. At NCA we have the unique and unparalleled ability to...

- Provide expert witness testimony in cases involving damage or injury related to trees
- Conduct appraisals of tree value for property insurance claims
- Evaluate the environmental impact of land development
- Guide the long-term planning for placement and maintenance of trees
- Offer valuable information about the preservation of existing trees
- Inspect plant material to determine health and safety
- Educate the public, and public officials, about the preservation of existing trees
- Counsel homeowners on the evaluation, planning and preservation of trees
- Conduct root-crown-evaluations to identify underground conditions





At NCA we strive hard to serve our customers. In doing this we've established a policy to respond back to all request, inquiries, contact, emails and phone calls within four working hours.

We know your time is important and we wish to honor that while your spending this time with Neighborhood Consulting Arborist.

Thank You,

Greg J. Monfette, Owner

(310) 902-6581

Contact NCA Today at (310) 902-6581  
[ncatree@ca.rr.com](mailto:ncatree@ca.rr.com)

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"My daughter and I in Founders Grove" (1990) on the base of what was the tallest [Redwood] tree in the world, now it is the longest."

Greg and Jamie

**MISSION STATEMENT**

To provide our clients with the most current research-backed information regarding tree issues, root crown disorders, tree root and infrastructure damage assessments, and expert witness testimony while continuing to offer the finest representation in dispute resolution.

**THE CONSULTANT OF CHOICE**

I have been a Certified Arborist since 1991 and actively involved with the Tree Care Industry for over 27 years. I've been involved with the Western Chapter International Society of Arboriculture in the following areas: Judging and assisting with the Certified Tree Worker/arborist exams; Proctoring for the Certification process; The Regional Conference Chair for the entire Western Chapter; Champion of an initiative of the chapters strategic plan; Coordinated the Western Chapters first Workday event; as well as various other committees throughout my tenure. Currently, I am the Vice President on the Board for the Western chapter International Society of Arboriculture,

**KEEP READING**

At the present time I am a Superintendent in the Urban Forestry Division for the City of Los Angeles which manages one of the largest street tree populations in the nation. Prior to coming to the City of Los Angeles I was the owner/operator of Neighborhood Tree Service and shortly thereafter I started consulting on a part time basis. In 1999 I started consulting on a regular basis and that's when we changed our name to

Neighborhood Consulting Arborist. I am currently a Past President of the Street Tree Seminar in Southern California, on the board of directors for the Western Chapter International Society of Arboriculture, an American Society of Consulting Arborist academy graduate, a Certified Arborist/Certified Tree Worker/Utility Specialist with the WCISA, a licensed Pest Control Advisor and Operator with the State of California and have been involved with the tree care industry for more than 25 years.

My career goals are the following: to continue to provide relevant education and training, promoting outreach and involvement to youth, multilingual and diverse groups, resulting in professional growth and development within our industry; work to express the importance of volunteers within our industry and the benefits to our membership as well as our constituents; work on a study, with other arborist, to develop industry standards relating to sidewalk repair, alternative options, tree preservation, tree retention, and root pruning standards; outreach to more homeowners and/or business owners through field level training and on-hands demonstration; and work with other arborist to continue to improve our industry and ensure that our constituents receive the benefits they deserve.

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Werner & Sabine Birkenfeld  
619 Highland Avenue  
Manhattan Beach, CA 90266

September 25, 2006

Parking & Public Improvements Commission  
City of Manhattan Beach Community Development  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: Encroaching Landscaping – 619 Highland Ave Manhattan Beach, CA 90266

To Whom It May Concern:

This is in response to your letter dated August 28, 2006 and my subsequent telephone conversations with Jacqueline Harris and Rob Osborne.

My husband, myself and pretty much our whole neighborhood, feels the need to seek relief from your request to kill and remove our 40 year old Eucalyptus Tree due to a complaint about the tree blocking some ocean view and exceeding the allowable height limit of 42 inches.

When I called to find out about the protection of all old and mature trees in Manhattan Beach, I was told the city had a very strong tree protection ordinance and policy throughout all areas of Manhattan Beach except for the Sand Section. We find this very disturbing and discriminatory.

We have lived here since the sixties and enjoyed our garden and our beautiful tree throughout all these years. It is a healthy tree, a haven for many wild creatures, where we have been privileged to watch a multitude of different bird species nest, feed and rest, including Humming Birds, Blue Jays, Finches, Mocking Birds, Doves, Parrots and even an occasional Hawk, just to name a few. At one time, we even had a squirrel build an elaborate nest, which we know is a rare sight in the Sand Section. We think of our yard as a small nature preserve, something extremely important to our environment.

On a couple of occasions, throughout all the years that we have lived here, we have had a request from the city to trim our tree because it was growing too close to the power lines. Never was there a request to remove it or to cut it down to 42 inches. We of course complied with the request and all we had to do was take a copy of the "paid bill for the job completed" to city hall.

We take care of our tree. It gets trimmed twice a year, once in spring and once in fall.

Who ever complained about our tree blocking their view, bought their property east of us just a few years ago, knowing this tree was there before they decided to make this purchase. It always has been there. They looked at it then, just as they are looking at it today. We resent the fact, that a person could conceivably move into a neighborhood and demand that we kill our tree and dictate a different lifestyle to us, our family and our friends by depriving us of our enjoyment of nature with our tree in our yard.

**EXHIBIT 3**

Manhattan Beach is not a city with protected views as for example Hollywood Riviera is. When the smaller, older properties get torn down here, the lots are built out to the maximum and ocean views are lost all the time. One of the only places where views are guaranteed here is on The Strand. That is a known fact.

Our tree has been in existence way before the city passed the ordinance with the 42 inch height limit for the Walk Streets. It may be non-conforming to current regulations, but we believe it should be protected and grandfathered in because it is and always has been a pre-existing condition.

We find it interesting to see just how many properties on the Walk Streets have beautiful mature trees and shrubs. It would be an absolute shame if the City of Manhattan Beach would allow all this nature to be destroyed by enforcing such a discriminatory ordinance. Living in this high density area with so little space, please try to imagine looking up and down our streets without mature tall greenery. In the El Porto area, on the North end of Highland Ave. there are mostly massive concrete buildings in dire need of trees.

The information we received from Rob Osborne and Jackie Harris, was that the City of Manhattan Beach does not enforce or act upon the "42 Inch Ordinance" in the Sand Section unless there is a complaint. How can any of this be fair? That alone should be a signal, that maybe it is time to protect mature trees and plants equally throughout the city.

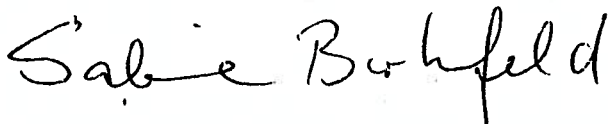
Enclosed you will find signatures from neighbors and residents and friends who want to see our Eucalyptus Tree thrive and grow for many years to come. These same people also want to see equally protective rights for all trees throughout Manhattan Beach, including our Sand Section. If you require more signatures – we can get them. People are aware of how important trees are for our environment, our air, our own survival, this planet.

Our gardener was scheduled to trim our tree last Friday. We went ahead and had the tree trimmed and thinned out.

We hope you will give the Sand Section Trees the same protection you offer to all the other Manhattan Beach Trees and that you realize how important it is to let our tree live.

Please feel free to contact me with any questions or concerns. You can best reach me at 310 374-7215

Sincerely,

A handwritten signature in cursive script that reads "Sabine Birkenfeld". The signature is written in dark ink on a white background.

Sabine Birkenfeld

CC: Mitch Ward, Nick Tell, Jim Aldinger, Richard Montgomery, Joyce Fahey, Tim Lilligren, Rob Osborn, Jacqueline Harris.



# ENCROACHMENT PERMIT APPLICATION

Chapter 7.36 MBMC

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5500 FAX (310) 802-5501 TDD (310) 546-3501

Applicant/Agent-Name/number \_\_\_\_\_ Date \_\_\_\_\_

Owners **MAILING** Address \_\_\_\_\_ Phone # (\_\_\_\_) \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ E-mail \_\_\_\_\_

**PROJECT** Address \_\_\_\_\_

Encroachment Located on \_\_\_\_\_ Street, Avenue, etc. (If on more than one street, note both)

Name(s) of **LEGAL OWNER(s)** (**AS SHOWN ON TITLE**) \_\_\_\_\_

Proposed Encroachment (Check all that apply and describe)  Deck/Patio  Fence/Wall  
 Walkway/landings  Steps  Landscaping  
 Irrigation (Plumbing permit required)  Lighting/Electrical (Electrical Permit Required)  Other (Describe) \_\_\_\_\_

Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. This Encroachment Permit shall be valid for six (6) months after issuance. Additionally, a right-of-way permit shall be required for all work in the public right-of-way.

Signature (s) \_\_\_\_\_

Cashier	\$ _____	_____	Date _____	Initials _____
	Amount Rec'd.	Receipt #		
Fee Schedule	Permit Application	\$1410.00	Permit Fee (4502)	_____
	Permit Transfer or Minor Revision	\$ 370.00	Imaging Fee (4017)	_____
	Permit Appeal	\$ 465.00	Total	_____

Legal Description \_\_\_\_\_  
Map Book \_\_\_\_\_ Page (s) \_\_\_\_\_ APN \_\_\_\_\_  
Bldg Permit # \_\_\_\_\_ (if applicable) New House: Yes \_\_\_ No \_\_\_

Comments/Notes: Water Main location: \_\_\_\_\_  
Sewer Main location: \_\_\_\_\_  
Public Works OK: Yes \_\_\_ No \_\_\_  
Agreement Submitted: Yes \_\_\_ No \_\_\_ Insurance Submitted: Yes \_\_\_ No \_\_\_  
Other: \_\_\_\_\_

Approved / Denied \_\_\_\_\_ Date \_\_\_\_\_  
Community Development Department

**Chapter 7.32**  
**TREE, SHRUB AND PLANT REGULATIONS**

7.32.010 - Purpose.

Official tree, shrub and plant regulations for the City are hereby adopted and established to serve the public health, safety and general welfare. To that end the purposes of this chapter are specifically declared to be as follows:

- A. Improve general aesthetic values;
- B. Reduce traffic noise;
- C. Deflect glare and heat;
- D. Lower wind velocity;
- E. Purify air;
- F. Increase property values;
- G. Provide cooling shade and beauty;
- H. Provide for the proper selection of trees to minimize trouble in sewer and water mains, broken sidewalks, storm drains, etc.;
- I. Minimize interference with street and traffic lighting;
- J. Minimize the spread of disease to healthy trees;
- K. Minimize danger of falling trees and limbs onto streets, sidewalks and private property;
- L. Minimize accumulation of leaves and debris which cause unnecessary labor in cleaning the sidewalks, streets and storm drains; and
- M. Select trees of longevity and suitable to the environment.

( §§ 3, Ord. 1202, eff. February 19, 1970 )

**7.32.090 - Street tree planting guide.**

**Those street trees now existing may remain until by old age or other reasons they are removed.**

**When any new street tree is planted it shall conform to the street tree planting guide referred to in subdivision (A)(1) of Section 7.32.080.**

(§§ 3, Ord. 1202, eff. February 19, 1970)



**"Encroachment" means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property.**

**7.36.020**

# PETITION TO SAVE THE TREES LOCATED AT:

619 Highland Ave. Manhattan Beach  
 Owner: Werner & Sabine Birkenfeld  
 Phone: 310 374-7215

&

233 7<sup>th</sup> Street Manhattan Beach  
 Owner: Daniel E. Ziskin  
 Phone: 310 994-6644

Ms. 10/28/10  
 RECEIVED  
 OCT 28 2010  
 BY 10/28/10

By signing below you are stating that you are in favor of protecting and saving a beautiful, more than 40 year old Eucalyptus Tree at 619 Highland Ave and the wonderful Palm Trees at 233 7th Street. The Birkenfeld and Ziskin families feel it is unfair and discriminatory to be forced to remove these neighborhood enhancing trees or to have to reduce them to 42 inch stumps. Trees are protected everywhere in the city, except for the "Sand Section". Your support is greatly appreciated and will be of tremendous help for our TREE ENCROACHMENT APPEAL with the city, to hopefully not only save our trees, but to also preserve all the wonderful greenery on our Walk Streets throughout the whole Sand Section.

Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. Mary A. Boyd Mary A. Boyd 320 7<sup>th</sup> MB mbmitzi@verizon.net 2/7/10
2. Marilyn Rubin Marilyn Rubin 316 7<sup>th</sup> St MB - - 2/7/10
3. Denise Evans Denise EVANS 325 7<sup>th</sup> St. MB. devans53@verizon.net 2/7/10
4. Deborah Ventura Deborah Ventura 341 7<sup>th</sup> St 2/7/10
5. LISA MARSHALL LISA MARSHALL 337 7<sup>th</sup> St MB. 2/7/10
6. David Dixwiddie David Dixwiddie 337 7<sup>th</sup> St MB 2/7/10
7. Michelle Williams Michelle Williams 413 7<sup>th</sup> St MB. 2/7/10
8. Adele Thurnher Adele Thurnher 429 7<sup>th</sup> St. M.B. 2/7/10
9. Anthony Wall ANTHONY WALL 433 7<sup>th</sup> St. MB 2/7/10
10. Todd Coordt Todd Coordt 437 7<sup>th</sup> MB 2/7/10
11. Michelle Woodward Michelle Woodward 441 7<sup>th</sup> m.B. 2/7/10
12. Raymond H. Buscher Raymond H Buscher 405 6<sup>th</sup> St MB 2/7/10
13. FRANK HILLERBRAND FRANK HILLERBRAND 516 7<sup>th</sup> St MB 2/7/10
14. Brad David Brad David 500 7<sup>th</sup> MB 2/7/10
15. Kathleen Klumman Kathleen Klumman 412 7<sup>th</sup> St MB 2/7/10
16. Michelle Michelle 329 St St. 2/7/10
17. CHUCK KLOEG CHUCK KLOEG 325 5<sup>th</sup> ST 2/7/10
18. TAMMARA JACKSON TAMMARA JACKSON 333 5<sup>th</sup> St. MB 2/7/10
19. KEE KEE KEE KEE 413 5<sup>th</sup> Street MB 2/7/10
20. Mark Fossman Mark Fossman 428 7<sup>th</sup> St 2/7/10

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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. Sabine Birkenfeld SABINE BIRKENFELD 619 HIGHLAND M.B. SABINE@DSL.ETREME 310 374-7215 1-26-10
2. Werner Birkenfeld WERNER BIRKENFELD 619 Highland Ave MB 310-374-7215 1-26-10
3. Britta Birkenfeld BRITTA BIRKENFELD 619 Highland Ave. MB britta.yungbluth@yahoo.com 310-374-7215 1-26-10
4. Daniel E. Ziskin DANIEL ZISKIN 233 7<sup>th</sup> ST MB 2-3-10
5. John Ziskin JOHN ZISKIN 233 7<sup>th</sup> ST M.B. 90261 Zinvestment@aol.com 310 376-6892 2/5/10
6. Veronique Acres VERONIQUE ACRES 233 6<sup>th</sup> Street MB VACRESY@aol.com 310 318 3186 10/25/10
7. Mark Acres MARK ACRES 233 6<sup>th</sup> ST. MB seakings@aol.com (310) 310-3186 2-02-10
8. Pauline Acres PAULINE ACRES 233 6<sup>th</sup> ST. MB spottedmissy@aol.com (310) 740 7898 2-02-10
9. Michael Ruiz MICHAEL RUIZ 228 7<sup>th</sup> ST MB MICHAEL@NTPOSTSTUDIO.COM 469-8563 2-2-10
10. Shirley Oberhaus SHIRLEY OBERHAUS 229 7<sup>th</sup> ST M.B. 310-392-6396 2/2/10
11. Kirsten F. Kirsten Figue 228 7<sup>th</sup> ST MB Kirstenfigue@mac.com 3-21-10
12. Kwada Clam Kwada Clam 704 Highland MB ammadachen@yahoo.com 10-27-10
13. Ashley Craig Ashley CRAIG 225 7<sup>th</sup> Street 10.27.2010
14. Charles Dwen CHARLES DWEN 1000 the strand 7/27-10
15. \_\_\_\_\_
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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. *Karen Frischi* 920 JOHN ST 310 379-0868 1/27/10
2. *[Signature]* 1210 KATS ST. MD 310-292 9937
3. *[Signature]* Susan Paccini 4 Anabodo Ct MB 310-315-0044 1/27/10
4. *[Signature]* Patricia Haight 729 26<sup>th</sup> Street 310-989-1177 28 January, 2010
5. *[Signature]* Keith Kugley 120 4TH ST 365-661-4554 1/27/10
6. *[Signature]* STACEY JERMWI 1560-2nd St 310 798 9891 1.28.10
7. *[Signature]* LUCI WEAVER 1451 Manhattan Beach Blvd 310-545-5603 1-28-10
8. *[Signature]* CHARLES WEAVER 1451 M.B. Blvd 310-545-5603 1-28-10
9. *[Signature]* 601 Highland Ave 323-896-7801 1-29-10
10. *[Signature]* ROBERT REYES 905 Manhattan Beach Blvd 310 546 3441 1-31-10
11. *[Signature]* Jason Cole 217 8th Place MB CA 90266 310-200-6434 2/2/10
12. *[Signature]* Sue Navarro 1642 11<sup>th</sup> Street MB, CA 90266 (310) 399-3855 2/08/10
13. *[Signature]* RUDY NAVARRO 1642 11<sup>th</sup> ST. M.B. CA. 90266 310-379-3855 2-8-10
14. \_\_\_\_\_
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# PETITION TO SAVE THE TREES LOCATED AT:










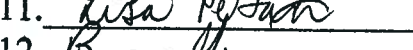


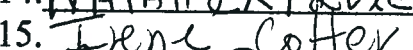



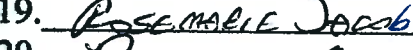



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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

- |  |                    |                             |                             |                |          |
|--|--------------------|-----------------------------|-----------------------------|----------------|----------|
| 1.     | Wendy Messner      | 608 Highland Ave            | wmessner@platinumequity.com | 917-375-1165   | 2/2/10   |
| 2.     | Sherri Sussman     | 317 6 <sup>th</sup> St MB   | sherrisus@gmail.com         | 310-435-3910   | 2/6/10   |
| 3.     | Craig Sussman      | 317 6 <sup>th</sup> St MB   | craig.evo@cent.com          | 310 372 5454   | 2/6/10   |
| 4.     | Cheryl ESSING      | 1466 19 <sup>th</sup> ST MB | CME33@VERIZON.NET           | 310-546-4855   | 2/9/10   |
| 5.     | MELITA B. RIDDLE   | 725 MANHATTAN BEACH BLVD MB | melitariddle@earthlink.net  | (310) 796-1177 | 2/9/10   |
| 6.     | LYNNE Cochran      | 1300 Parkview Ave. #205 MB  |                             | 310545-8363    | 2/9/2010 |
| 7.     | Jerrilyn Schneider | 3528 Laurel Ave MB          |                             | 310-545-5446   | 2/9/10   |
| 8.     | Aileen Martin      | 329 31 <sup>st</sup> St HB  |                             | 310 376-1033   | 2.9.10   |
| 9.    | Martha Andreani    | 117-10 <sup>th</sup> St MB  |                             | (310) 372-9061 | 2/9/10   |
| 10.  | Evelyn Frey        | 228-3 <sup>rd</sup> St MB   |                             | (310) 374-0937 |          |
| 11.  | Lisa Pelgand       | 506 23rd St MB              | lisa@verizon.net            | 205-561-218    | 2-9-10   |
| 12.  | Bea Gordon         | 2115 Perry Ave RB           |                             | 310-545-4140   | 2/9/10   |
| 13.  | Kay Skinner        | 19 Laguna Ct MB             | KSKINNER@VERIZON.NET        |                | 2/9/10   |
| 14.  | NATALI Kravic      | 1508 Elm Ave MB             |                             |                | 2/9/10   |
| 15.  | Fern Cotter        | 1200 Keats St               |                             |                | 2/9/10   |
| 16.  | Joyce HARN         | 2107 Ernest Ave RB          |                             |                | 2/9/10   |
| 17.  | Gretel Fournell    | 594 27 <sup>th</sup> St. MB |                             |                | 2/9/10   |
| 18.  | Elaine O'Rourke    | 11 Emerald Lane MB          |                             |                | 2/9/10   |
| 19.  | ROSEMARIE JACOBSON | 109-33rd St MB              |                             | 310-5969061    | 2/9/10   |
| 20.  | ROSEMARY GRAY      | 564 29 <sup>th</sup> St MB  |                             |                | 2/9/10   |

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Signature	Print Name	Street Address	Email	Phone#	Date
<i>Joseph Jordan</i>	Joseph Jordan	612 Highland	jlordean@kordewan.com	340 977 8916	1/27/10
<del><i>[Signature]</i></del>	<del>Jim O'Rourke</del>	<del>604 Highland</del>	<del>JimO'Rourke@gmail.com</del>	<del>310-1580</del>	<del>1/26/10</del>
<i>[Signature]</i>	Sara Chojnacki	601 Highland	schojnacki@yahoo.com	310-422-8875	1/29/10
<i>Sabrina Marchetti</i>	Sabrina Marchetti	416 Highland	marchetti1@roadrunner.com	310 937-2861	1/31/10
<i>[Signature]</i>	Michael Marchetti	416 Highland	"	"	1/31/10
<i>[Signature]</i>	MARTI PADILLA	610 Highland Ave.	W.Hickman@AOL.com	346-5465	2/1/10
<i>Nancy Hickman</i>	NANCY HICKMAN	610 HIGHLAND AVE	"	"	2/1/10
<i>[Signature]</i>	Niki Connor	6016 Highland Ave	NikiHumphrey@gmail.com		2/2/10
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**Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-**

1.  SHEILA ENNIS 213 N. DIANTHUS, MB SHEILAEENIS@YAHOO.COM (310) 376-6917 2/4/10

2.  MICKY ROUBHEN 333 18<sup>th</sup> ST, MB MROUBHEN@AOL.COM 310 308-7652 2/4/10

3.  BEVERLY BANDINI RICCI 321 3rd ST MB 2/5/10

- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_
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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. Corki Rochlitz CORKI ROCHLITZ PO Box 3411 Torrance CA (310) 517-0084 2-9-10
2. Barbara Marge BARBARA MARGE 2808 LAUREL AVE M.B. (310) 546-2730 2-9-10
3. Marianne Jacobs 2301 Palm Ave M.B. (310) 545-9455
4. Janet Dennis JANET DENNIS 901 Highland Ave M.B. (310) 322-8520 2-9-10
5. Joan Maturko Joan Maturko 652 27th St MB 310 545-7389 2/9/10
6. Robin Kirk Robin Kirk 2115 Repley 310-379-2609
7. Dona McCormick Dona McCormick 1733 Oak Ave 310-545-3128 2/9/10
8. Carol Shaffer CAROL SHAFFER 1712 Pacific Ave 310-545-4958 2-9-10
9. Judith Haueter Judith Haueter 769 31st ST MB. 310-545-7950 2-9-10
10. Sharon May SHARON MAY 816 Dunbar Pl. M.B. 310-372-5578 2-9-10
11. Mary Essman Mary Essman 1221 2nd St. MB 310-374-9713 2-9-10
12. Cetha Ericson Cetha Ericson 246 Silverstrand t/B (310) 324-3878 2-9-10
13. Louise A Boll Louise A Boll 1126 2ND ST M.B. 310-372-0161 2-9-10
14. Grace McMahon GRACE McMATHON 1336 2ND ST M.B. (310) 374-5968 2-9-10
15. Mollie Mulcrone MOLLIE MULCRONE 648 27th ST MB (310) 517-5030 2-9-10
16. Sandy Warner Sandy Warner 621 Porter Lane MB 310 379-2796 2-9-10
17. Mary K. Golob Mary K. Golob 3312 Pine Ave. M.B. 2-9-10
18. Mary Ralls MARY RALLS 1200 No Poinsettia MB 2-9-10
19. Barbara Graham Barbara Graham 228 23rd St. MB 310 545-4526 2-9-10
20. Nancy Taugner NANCY TAUGNER 431 SECOND ST. MB 310 374 7205 2-9-10



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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. J. Tatan JASON TATAN 905 MANHATTAN BEACH BLVD 310-703-2930 2-01-10
2. Jackie White Jackie White 609 13<sup>th</sup> St 310 546 1968 2/25/10
3. \_\_\_\_\_
4. \_\_\_\_\_
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**Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----**

1. *[Signature]* Steven Neil 1541-19<sup>th</sup> St LMB. 310-~~316-1758~~ 717  
2. *[Signature]* Adam Winfrey 645 25<sup>th</sup> St 2739  
3. \_\_\_\_\_  
4. \_\_\_\_\_  
5. \_\_\_\_\_  
6. \_\_\_\_\_  
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2/3/12

**PETITION TO SAVE THE TREES LOCATED AT:**

619 Highland Ave. Manhattan Beach  
Owner: Werner & Sabine Birkenfeld  
Phone: 310 374-7215

&

233 7<sup>th</sup> Street Manhattan Beach  
Owner: Daniel E. Ziskin  
Phone: 310 994-6644

By signing below you are stating that you are in favor of protecting and saving a beautiful, more than 40 year old Eucalyptus Tree at 619 Highland Ave and the wonderful Palm Trees at 233 7th Street. The Birkenfeld and Ziskin families feel it is unfair and discriminatory to be forced to remove these neighborhood enhancing trees or to have to reduce them to 42 inch stumps. Trees are protected everywhere in the city, except for the "Sand Section". Your support is greatly appreciated and will be of tremendous help for our TREE ENCROACHMENT APPEAL with the city, to hopefully not only save our trees, but to also preserve all the wonderful greenery on our Walk Streets throughout the whole Sand Section.

**Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-**

1. *Richard Gunning* Richard Gunning 617 Manhattan Ave, MB 90266 310 374 1362 2/6/10
2. *Lisa Jak Gunning* Lisa Jak Gunning " " " " " "
3. *Jacqueline A Flaherty* Jacqueline A Flaherty 2009 Magnolia Ave MB 90266 310 379 4085 2/6/10
4. *John Russo* JOHN RUSSO 421 Manhattan Beach, CA 90266 JRRUSSO@AOL.COM 310-252-
5. *John Russo* JOHN RUSSO 421 Manhattan Beach, CA 90266 310-374-2522
- 6.
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JA

# PETITION TO SAVE THE TREES LOCATED AT:

619 Highland Ave. Manhattan Beach  
Owner: Werner & Sabine Birkenfeld  
Phone: 310 374-7215

&

233 7<sup>th</sup> Street Manhattan Beach  
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Signature-----Print Name-----Street Address-----Email-----Phone#-----Date-----

1. *[Signature]* Debbie Hoppes 2256 Santa Fe, Torr debbhopp@aol.com 310 3766917 2/4/10
2. *[Signature]* TRACI HOROWITZ 501 HERON DR ST. #39 HB 90254 tracihorowitz@yahoo.com 310 958766 2/4/10
3. *[Signature]* Niki Thomas 23230 Doris Way Torr 90505 niki.thomas.73@yahoo.com 310-766-9077 2/4/10
4. *[Signature]* Cindy Oles 1909 Ernest Street Redondo Beach 90278 310 376-6917 2/4/10
5. *[Signature]* Manuel Duenas 555 Pier Ave Hermosa Beach 90254 310-200-7382 2/4/10
6. *[Signature]* Gary Lane 800 S. Juanita Ave PBCA 90254 310-980-1931 2/4/10
7. *[Signature]* Cindy Ausland 4644 Darien Street Torr. 90503 310-214-0550 2-5-10
8. *[Signature]* Lemmie Acove POB 712 Hermosa Bch 90254 310 3766917 2/5/10
9. \_\_\_\_\_
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**FRANK WATTLES**  
ATTORNEY AT LAW  
P. O. Box 3514  
MANHATTAN BEACH, CALIFORNIA 90266  
TELEPHONE (310) 372-0454

**TO:** Parking and Public Improvements Commission

**FROM:** 1. Werner and Sabine Birkenfeld and  
2. John Ziskin for Daniel Ziskin, deceased

**BY:** Frank Wattles, attorney

**DATE:** October 28, 2010

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street  
Agenda Item 10/28/10-2

**OBJECTION TO HEARING**

Werner and Sabine Birkenfeld join with John Ziskin for Daniel Ziskin, deceased ("Owners") and file formal objection to the conduct of the Subject hearing.

This objection is made on the grounds that Community Development ("CDD") and the City of Manhattan Beach ("City") have refused to reveal the complaint made by the complainant Donna Howell or any other unidentified complainant. As stated in the papers filed in response to the CDD Report filed in this matter, the absence of any identification of a "view" to be protected and the vantage point of any photograph has disabled Owners from adequately preparing for this hearing.

Further, this action of enforcement is said to be "complaint-driven", i.e.: no enforcement is undertaken until there is a complaint. Where this type of enforcement is involved, there needs to be transparency to insure the absence of collusion between the city and complainants, or other extraneous purposes of the City. At present, there is no transparency. In effect, the wizard is behind the curtain running a show that is not what it appears. Owners would like full disclosure of the facts so that Owners can defend.

Further, there is information that suggests that some or all Commissioners are not impartial and should recuse themselves. Indeed, the law presented in Owners paper filed herein is drastically at variance with the law as applied by this Commission for many years. The "inertia" of the past makes fair review impossible without fair disclosure.

Distributed at  
PPIC meeting  
10/28/10

To start with, this complaint-driven case is based upon the initial complaint which has been withheld and is directed at the impairment of some “view” which is not identified. There are many photographs, but no adequate identification of the view to be protected. The Owners are threatened with a loss of a lifetime of their home and “preserve”.

Due Process requires a fair hearing. On both federal and state constitutions, this objection is made.

Further, information indicates that notice of this hearing was not sent to all residents within the distance required. In fact, no notice was received at the address in the lot next to 619 Highland. CDD might need to insure the adequacy of their noticing.

### **RECOMMENDATION**

Owners request that the hearing be suspended for a sufficient time (1) to afford a study by the City and this Commission of the points raised by Owners in their brief and (2) to deliver the complaint filed to Owners together with any other information which will identify the view to be protected. and (3) to notice the hearing according to law.

Shirley Oberhaus

Oct. 26, 2010

229 7<sup>th</sup> Street

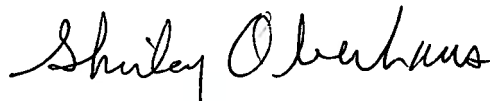
Manhattan Beach, CA 90266

To whom it may concern,

I am writing this letter to help save my neighbors' Eucalyptus tree at 619 Highland Avenue. My family and I have enjoyed this beautiful tree since we moved to Manhattan Beach in 1969. Living across the walk street from the Birkenfelds, we have enjoyed watching birds in it as well as smelling the fragrance it gives off. It also acts as a nice buffer from the street noise. The Birkenfelds have always taken good care of the tree and have it trimmed twice a year. I cannot imagine how anyone could want to destroy such a healthy and beautiful tree. Trees enhance our neighborhood and should be protected everywhere in Manhattan Beach. The city should be preserving nature, not destroying it.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Shirley Oberhaus". The signature is written in black ink and is positioned above the printed name.

Shirley Oberhaus

October 27, 2010

To whom it may concern,

I am writing this letter out of desperation and as a plea to help save a life. It's incomprehensible to me that I am even forced to do so as I don't see how this could even be a debatable or questionable issue. The issue is this: the 50+ year old Eucalyptus tree that stands in our garden at 619 Highland Avenue, Manhattan Beach is threatened to be removed. I grew up in the aforementioned property and have loved and admired our tree and was taught to respect nature. I love all the greenery in front of our house as well as all the other plants and trees in our neighborhood and throughout the city. I have also loved living at the beach and feel privileged to have grown up here. Unfortunately it has become a pattern over more recent years that the homes in the sand section of Manhattan Beach have become increasingly large and the gardens smaller with less and less trees and greenery. I am aware of the city's code about a 42 inch height limit on landscaping in the sand section. I, as well as a **huge majority** of our neighbors in the sand section, feel that this is wrong. **We want to see more trees and plants and would rather have our views enhanced by greenery than have our views blocked by the enormous homes that have been built.**

As you can see from the other letters being submitted as well as the multitude of signatures we have obtained over the years, there is a huge number of people in support of not only our tree but also trees in the sand section and an appeal to reverse the city's code which we feel is **discriminatory** and **unconstitutional**. **We hope that this will open the city council members' eyes to see that it is time to throw out the 42 inch limit!** After all, we are living in the United States of America which is a democracy are we not? It is unfathomable that we are faced with this threat of our tree being removed by the request of one or two neighbors who buy a property in our neighborhood some 30 years later. How did the City Council come up with this ridiculous code that enables people to act as dictators and take away our rights?! They have the right to purchase a property of their choice – if they are so concerned with having ocean view, they should have chosen a location more suitable to their needs.

I was thrilled when I heard of the city's proposal that the Palm trees located at our neighbors' property at 233 7<sup>th</sup> Street should be allowed to remain. However, this is discriminatory to say that one property gets to keep their trees but the property adjacent to it does not?!?!?! So the code applies to some residents in the sand section but not all?! How does a decision like this get made?! This is completely unconstitutional and unfair and another example of dictatorial actions by our local government!

Furthermore, it is an injustice that just a couple blocks behind us the same *rules* do not apply, but rather the opposite!?! How can the city justify that trees are **protected**

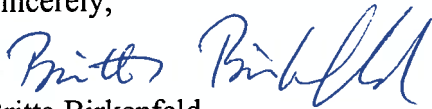


and homeowners are even *penalized* if they remove a tree in the hill and tree sections of Manhattan Beach?!?! Who could believe that Manhattan Beach even has a tree section – a whole area within the city that is dedicated to protecting trees and named such because of the plethora of trees it has. How could such a huge discrepancy and utter contradiction even come into effect within our city!? Since the life of our beautiful and healthy Eucalyptus tree has been threatened, my family and I have been talking to our neighbors and other Manhattan Beach residents and are very happy to discover that the majority feels the way we do about trees. **Several of our newer neighbors have even moved to our street because of the trees!** The greenery and trees drew them to our neighborhood rather than other streets in the sand section where they are scarce.

My parents planted a Eucalyptus tree in the late 1960's, over 40 years ago, to enhance our garden and views. Now someone is coming along and saying they don't like it and we should get rid of it?! This is a grave travesty to us and our neighbors who have enjoyed and admired our tree over the 40+ years. In this day and age when people are becoming more and more green and environmentally aware, this is a big step backward. Please help us save our tree and all the other trees in the sand section as well! It will be good for society as a whole and the natural environment instead of benefiting only a small percentage of people who have no respect for nature or their neighbors.

I appreciate anyone who takes the time to read my thoughts on this matter that I feel so strongly about. We feel like our tree is part of our family and it has been a pillar of strength over the years. Removing it would be like losing a limb to us. Again, thank you for your time and consideration.

Sincerely,



Britta Birkenfeld  
619 Highland Avenue  
Manhattan Beach, CA 90266

## Sabine Birkenfeld

---

**From:** Ashley Craig [ashleycraig913@gmail.com]  
**Sent:** Monday, October 18, 2010 9:31 AM  
**To:** aochoa@citymb.com  
**Cc:** sabine@dslextreme.com; Robert Craig  
**Subject:** 7th Street Trees

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Green Category

Dear Ms. Ochoa,

I am writing in reference to the encroachment appeal filed by the Birkenfelds and Ziskins.

My husband, Rob, and I own a home at 225 7th street in Manhattan Beach. We purchased the home 5 years ago and one of the things that drew us to the street was the lovely plantings, particularly thr beautiful trees on the properties at the corner of Highland and 7th, specifically at 619 Highland and 233 7th Street.

We appreciate that code requirements need to be enforced to keep trees safely trimmed to prevent damage during storms and power interruptions. However, the 42" maximum height limit seems unreasonable and contradictory to the greater good that trees provide. Trees cleanse the air and reduce storm water run off, two vital roles given the high traffic on Highland and the fact that groundwater will run directly into the Pacific if not adequately contained.

I feel the complaint issued against these trees has no merit. The city must consider the great value of trees to our community and the fact that we have too few of them - not too many. I hope the City Council will favorably reconsider the request for repeal and find a way to reach a reasonable compromise that recognizes the importance of these beautiful trees to our neighborhood.

Thank you for considering our request.

Ashley and Rob Craig  
225 7th Street  
Manhattan Beach, CA 90266

Mark and Veronique Acres  
233 6<sup>th</sup> street  
Manhattan Beach, CA 90266

October 24<sup>th</sup>, 2010

Encroaching Landscaping – 619 Highland Ave Manhattan Beach, CA 90266

To Whom It May Concern:

Our neighbors, Werner and Sabine Birkenfeld, need to keep their tree, it is a beautiful fifty year old eucalyptus that provides shade and privacy to their patio. It is also a refuge for the local birds that we love to hear chirping.

They take great care of their tree and keep it trimmed.



It is unfair that the trees are protected everywhere else in Manhattan Beach but not in the Sand Section. We need more trees not less. The houses are getting bigger and the gardens smaller.

It is a crime to remove a tree that has been there since fifty years and is part of the Birkenfelds' home.

Mature trees give character to our streets and embellish the neighborhood.

Nature needs to be preserved and not destroyed.

Sincerely,

Marti Padilla  
Nancy Hickman  
610 Highland Ave.  
Manhattan Beach, CA.

Parking and Public Improvements Commission  
City of Manhattan Beach Community Development  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: Encroaching Landscaping - 619 Highland Ave. Manhattan Beach, CA 90266

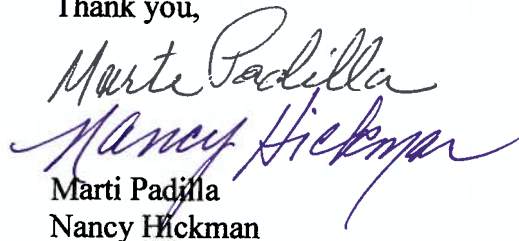
To Whom It May Concern:

As you can see by our address we live on Highland Ave. I look up and down the street and see many trees over 42" high. Is this the beginning of the end for any green in this concrete world?

It is my understanding that the tree in question was here long before the 42" ordinance was adopted. It should be "legal – non conforming" and left alone.

I would hope that the persons making the decision regarding this tree will be fair and understanding that we need more "green" in our lives and in the Manhattan Beach sand section

Thank you,

  
Marti Padilla  
Nancy Hickman

Joseph Lordeon 612 Highland Ave. Manhattan Beach, Ca. 90266

Parking and Public Improvements Commission

10/27/10

City of Manhattan Beach

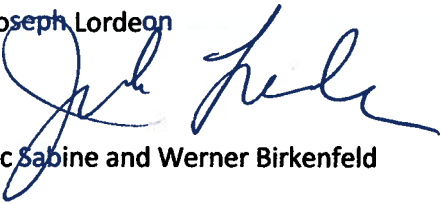
Subject 619 Highland 50 year old tree killing proposal

I bought my house in 1982 and have enjoyed the shade as I marched up the walk street on many of our sunny days. The delightful tree is 80 feet from my balcony and I have enjoyed beauty. The complainer knew the tree was there when they bought the property. The walk streets have turned to concrete jungles with too much patio furniture. It is refreshing to see a mature tree on the walk street that is over 50 years old.

As a long time resident of this area, I strongly support NOT killing the tree, to comply with an city ordinance penned long after it was flourishing.

Thank you for your consideration

Joseph Lordeon

A handwritten signature in blue ink, appearing to read 'Joseph Lordeon', written over the printed name.

Cc Sabine and Werner Birkenfeld

Sabrina & Michael Marchetti  
416 Highland Ave.  
Manhattan Beach, CA 90266

October 26, 2010

To Whom it May Concern,

We are eleven year residents of Manhattan Beach and live in the sand section. While we truly enjoy the beauty of our ocean view, we feel there is one thing missing from the beautiful landscape of Manhattan Beach, the greenery of more trees.

We are writing in support of Sabine Birkenfeld and the lovely Eucalyptus tree that sits in front of her walkstreet home. It has come to our attention that it has been threatened because it blocks someone's ocean view. Sabine and her husband groom & maintain the tree on a regular basis, it is not overgrown or unruly. Also, the complaintant bought the home knowing that a large tree partially obstructed the property's ocean view, it was not planted after the purchase. If that tree is removed it sets a sad precedent for the sand section and its' residents.

Trees are a sign of a healthy community. I hope you will let this one continue to grow.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Sabrina Marchetti". The signature is written in dark ink and is positioned above the printed name.

Sabrina Marchetti

## Sabine Birkenfeld

---

**From:** mary boyd [mbmitzi@gmail.com]  
**Sent:** Monday, October 18, 2010 5:34 PM  
**To:** aochoa@citymb.info  
**Cc:** Sabine@dslextreme.com; grandart@verizon.net  
**Subject:** Encroachment Permit Appeal - 619 Highland and 233 7th Street

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Green Category

This is in response to the letter I received from the City of Manhattan Beach dated October 1, 2010, same subject:

**PLEASE DO NOT CUT THE EUCALYPTUS TREE IN THE BIRKENFELD'S GARDEN NOR THE PALM TREES ACROSS THE STREET.**

I have been in my home for nearly 50 years. My lovely neighbors, Mr. and Mrs. Birkenfeld were either here, or came shortly after I did. Their beautiful Eucalyptus Tree has been in their garden for nearly the same amount of time (50 years). I don't know when the palms at 233 7th were planted. I don't pay much attention to Palm Trees but I love their Eucalyptus Tree. Seventh Street is full of trees. In fact a new neighbor moved here on this street "because of the greenery."

This is what I know: The only time there has been a complaint against the Birkenfeld's tree is from the Realtor who owns the property directly across from the Birkenfeld's. A couple years ago (perhaps longer) she lodged a complaint because the place was up for rent. As soon as the place was rented she dropped the complaint. Once again, the place came up for rent and once again she complained about the Birkenfeld's tree. Obviously she spoke to the neighbor across the way who is the one complaining about the silly palm trees.

The realtor is a fairly new owner of the house and the guy complaining about the palm trees is a new neighbor. Many of us have lived here for years. Personally, I have trees, and most of my neighbors have trees in the encroachment area.

If the City thinks this is just a problem with these two properties they are WRONG! Most of us on 7th Street HAVE BIG TREES. There is a realtor on my block who is going around telling people their trees will be cut down to 42 inches. We are angry!!! We planted trees when this place was barren and now that they are grown NEWCOMERS think they have the right to tell us what to do. Well, they don't.

To the best of my knowledge the ordinance first came into existence in the 70's and then again in 2003? We have been here much longer than the ordinances.

For heavens sake, LISTEN TO US!!! WE LOVE NATURE AND WE LOVE TREES.

Sincerely, Mary Boyd (320 7th st.) Manhattan Beach

10/28/10

City Council of Manhattan Beach

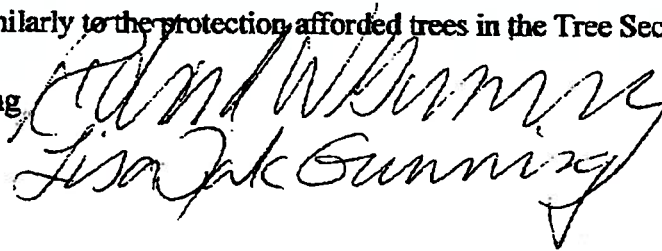
RE: Tree on Birkenfeld Property at 7<sup>th</sup> and Highland

To Whom it May Concern:

We reside at and own the property at 617 Manhattan Avenue in Manhattan Beach and are familiar with the Birkenfeld's beautiful 50 year old tree on their property. We have no objection to the tree remaining and would hope that the City Council will, in its wisdom, allow the tree to continue to stand. We believe that mature trees in the Sand Section should be protected similarly to the protection afforded trees in the Tree Section.

Richard Gunning

Lisa Gunning

Handwritten signatures of Richard Gunning and Lisa Gunning. The signature for Richard Gunning is written over the printed name 'Richard Gunning' and the signature for Lisa Gunning is written over the printed name 'Lisa Gunning'.



## Sabine Birkenfeld

---

**From:** Seavue617@aol.com  
**Sent:** Thursday, October 21, 2010 6:55 PM  
**To:** sabine@dslextreme.com  
**Subject:** (no subject)  
**Attachments:** tree.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Green Category

Here you go.

---

City Council of Manhattan Beach

RE: Tree on Birkenfeld Property at 7<sup>th</sup> and Highland

To Whom it May Concern:

We reside at and own the property at 617 Manhattan Avenue in Manhattan Beach and are familiar with the Birkenfeld's beautiful 50 year old tree on their property. We have no objection to the tree remaining and would hope that the City Council will, in its wisdom, allow the tree to continue to stand. We believe that mature trees in the Sand Section should be protected similarly to the protection afforded trees in the Tree Section.

Richard Gunning  
Lisa Gunning

October 28, 10  
Dearest Sabine,

Good luck this evening  
with your project save the trees.  
I so am in support of saving  
every tree in Manhattan Beach.  
Each and every tree. I feel  
it's alive and deserves to be  
treated as such. It's the  
giving and giving of life. We give  
to them and they give to us.

I was recently in South  
Africa on a nursing expedition.  
The lot across from me had  
sodol and I had a huge budge  
that must have been 100 yrs. old.  
I worked with a builder to try

to save it. The builder agreed.  
The day I left for South Africa  
the bridge was destroyed. I  
can't explain how devastated  
I was to return and have it  
destroyed. The next morning I  
awoke to a huge catapillar in  
my living room with a man  
staring at me.

The destruction of Manhattan  
Beach has to stop. I am  
only renting here and would be  
so upset if I owned this home.  
I am seriously considering leaving  
Manhattan Beach.

The quality of life has been  
destroyed. We are replacing a  
serene life with noise pollution.

2105 4th Street Coody Luck  
Jacque Anderson

TO: City of Manhattan Beach

It is reported that you are trying to cut down that beautiful eucalyptus tree at 619 Highland Avenue and the Palm tree across the accessway from it. For years, I have enjoyed the drive along Highland just to go slow and look down at the beach view from a distance. Sometimes I park at the curb opening there and just enjoy. There should be something illegal in what you are doing. I hope that you change your purpose. Save that tree.

*Dr. Peter Shefman*

Peter Shefman  
3233 The Strand  
Hermosa Beach

## Nhung Madrid

---

**From:** Angelica Ochoa  
**Sent:** Friday, October 29, 2010 9:52 AM  
**To:** Laurie B. Jester; Nhung Madrid  
**Subject:** FW: Encroachment Permit Appeal

**Angelica Ochoa**  
**Assistant Planner**

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



Please consider the environment before printing this email.

---

**From:** Scott Kim [mailto:scottykim@yahoo.com]  
**Sent:** Thursday, October 28, 2010 5:50 PM  
**To:** Angelica Ochoa  
**Subject:** Encroachment Permit Appeal

Dear Angelica Ochoa, Assistant Planner  
Community Development Department

The residents of 305 7th Street, Scott and Susie Kim are in favor of enforcing Manhattan Beach Municipal Code 7.36.150.

We believe the City Council would be wise to enforce current codes and to make sure property owners have current encroachment permits.

The residents of Manhattan Beach should follow the rule of law and the City Council should make sure it's enforced.

I can't to imagine a city where each homeowner decides what codes to follow.

I believe if all the residents were in agreement, which is not the case in this Appeal, maybe the city can consider a review.

But clearly you have residents that are against this Encroachment, the City Council should enforce MBMC 7.36.150.

I trust you will make a wise decision.

Respectfully Submitted,  
Scott and Susie Kim

RECEIVED  
CITY CLERK'S OFFICE

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

2010 NOV 10 PM 4:43

November 10, 2010

**TO:** Department of Community Development

**SUBJECT:** Appeal of the Property Owners at 619 Highland Avenue and  
233 Seventh Street

In accordance with your instructions, please find enclosed the following listed documents to be distributed to each Council Person and the City Attorney. These documents are part of the record in these administrative proceedings and are necessary to the appeal of the subject Owners.

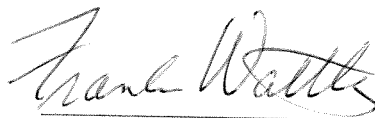
The documents are in support of a motion for dismissal to be made and presented by Owners at the Hearing on November 16.

#### DOCUMENTS

- 1 General Demurrer - Failure of Community Development to Allege an Actionable Cause; Objection to Further Proceedings (4 pgs + 2 Exhibits);
- 2 Owners Response Papers to PPIC dated October 28 (11 pgs + 4 Exhibits);
- 3 Objection to Hearing distributed to Commission at PPIC Hearing on October 28 (2 Pgs);
- 4 Enlarged displays of Codes distributed to Commission at PPIC Hearing on October 28 (7 Pgs) including 7.32.090; 7.36.020 definition of Encroachment; 7.32.010; Quote from the Farr Case regarding a view over the Doyle's roof; PRC 30001, 30001.1, 30106;
- 5 Partial transcription of a recording taken at the PPIC Hearing on October 28 (5 pgs).

Please be advised that Owners intend to file further documents where appropriate.

Yours truly,



Frank Wattles  
Attorney for Owners



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

**TO:** City Council and City Attorney

**FROM:** 1. Werner and Sabine Birkenfeld and  
2. John Ziskin for Daniel Ziskin, deceased

**BY:** Frank Wattles, attorney

**DATE:** November 10, 2010

**SUBJECT:** Encroachment Permit Appeal - 619 Highland Avenue & 233 7<sup>th</sup> Street  
**General Demurrer - Failure of Community Development to Allege an Actionable Cause**  
**Objection to Further Proceedings**

**REQUESTED ACTION**

Property Owners Birkenfelds of the property at 619 Highland Avenue (“Owners Birkenfeld”) and Property Owner Ziskin of the property at 233 Seventh Street (“Owner Ziskin”) are appealing:

- 1 the decision of the Department of Community Development (“CDD”), requiring removal of vegetation in the respective encroachment areas, and
  - 2 the requirement of CDD that Owners apply for an encroachment permit for all improvements in the respective encroachment areas,
- on the grounds that the requirements are in error legally and factually.

**REQUEST**

This Request is based upon the absence of any authority for CDD to make its decisions relating to the subject properties. In such absence of any authority, Owners request that the City Council with concurrence of the City Attorney order vacation of the orders of CDD before proceeding to hearing on the merits. In the alternative, Owners Request that the matter be postponed and scheduled for a later date so that study of the points made by Owners can be explored.

**OWNERS SUMMARY CONTENTIONS**

- 1 **Landscaping, By Itself, Cannot Be An Encroachment.**  
**CDD Has No Authority For Its Order.**
- 2 **CDD Has No Authority To Enforce A Resident View From A Private Residence**

3       **Complainant McWhinney Has No Standing to Complain**  
4       **Complainant Is Not A Resident At 300 Seventh Street**  
5       **CDD Denies a Fair Hearing By Refusing to Reveal The Complaint**  
6       **There Is No Evidence Of A Complainant At 305 Seventh Street**  
7       **Owners Are Denied Any Reasonable Opportunity To Present Their Case**

Owners respectfully submit for consideration the points and authorities hereinafter set forth in support of this Motion/Request.

## **POINTS AND AUTHORITIES**

### **Order of CDD**

This matter was initiated by the letters of CDD to, respectively, Owners Birkenfeld and Owner Ziskin dated May 14, 2010. A copy of the letter to Owners Birkenfeld is annexed hereto and marked Exhibit 1. The letter requires removal of “the tree” and reduction of vegetation to 42 inches in height existing in the encroachment area adjacent to the adjoining property and further requires an encroachment permit with an encroachment agreement.

The “Order” of the letter appears subject to modification because the CDD Report to the PPIC at page 2 states “. . . staff felt that these improvements (pine trees and low picket fence at 619 Highland) could remain . . .”. The Recommendation of CDD and the PPIC regarding 619 Highland is at best – uncertain.

### **CDD Cited Authority for the Order**

The requirement above-stated is based upon Manhattan Beach Municipal Code (MBMC) Chapter 7.36, Sections .030 and .150.B.3 as recited in the letter, Exhibit 1. Chapter 7.36 (Ordinance 2039) was enacted and effective on February 18, 2003.

### **Landscaping, By Itself, Cannot Be An Encroachment CDD Has No Authority For Its Order**

First, landscaping cannot be an “encroachment” within an encroachment area. This is so because an encroachment is defined to mean or include inanimate objects which clearly excludes living things, like plants. 7.36.020. (Apparently the Acting Director thought so little of the definition of “encroachment” that the definition was omitted from the codes included in Exhibit D of her Recommendation Paper to the PPIC in this matter.) See discussion at Scope and Application of Chapter 7.36 on pages 5-7 of Owners Response Paper to the PPIC. In fact, the Acting Director expands her authority by deleting the word as it modifies “landscaping”. As graphically described at pages 7-8 of Owners’ Paper, Acting Director accepts authority to cut landscaping in the encroachment area, whereas such authority is limited to “encroachment landscaping”.

One might ask: if landscaping cannot be an encroachment, how can there be encroachment landscaping? The answer is found in the first sentence of the shared Section 7.36.150.B.3, i.e.: “Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit.” This sentence is followed by three contrasting sentences providing the landscaping “shall” or “shall not” . . . The first sentence is permissive, i.e.:



landscaping may, but is not required to, be submitted with an encroachment permit. For example, where an encroaching entry monument in the area is surrounded with landscaping, then although landscaping itself is not an encroachment, the landscaping can be coupled with an encroachment to form encroachment landscaping.

The other option for landscaping is found in the General Standard at Section 7.36.A.2, which provides: “Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code.” This sentence also is permissive.

The code is clear – landscaping is not an encroachment and landscaping existing in 2003 at the inception of Chapter 7.36 is not subject to the standards applied in processing an encroachment permit. In fact, new landscaping by itself or coupled with an encroachment does not require an encroachment permit for the landscaping. The Acting Director has no authority to order Owners to remove landscaping or to obtain an encroachment permit.

### **CDD Has No Authority To Enforce A Resident View From A Private Residence**

The “resident view” of the code, as applied, violates this City’s Local Coastal Program (LCP) and its general purpose as stated in Chapter A.96.010 to implement the Coastal Act of 1976 (Division 20 of the Public Resources Code).

First, this City has no view ordinance any where in the City, including the Coastal Zone. The view provisions of Chapter 7.36 implement the Coastal Act. The Coastal Commission interpreted PRC Section 30251 in a similar situation in Redondo Beach and found that “4. No provision of the certified LCP or the Coastal Act protects views from private residences.” Case W8b, Appeal Number: A-5-RDB-04-261, p. 14 of 18. Also see pages 8-10 of Owners Response Paper to the PPIC. The important result is that the Coastal Act protects certain views of the *public* to and along the ocean.

The Acting Director exceeds the authority of this City, by seeking to enforce views from the residence of 300 Seventh Street. These views are not public and are not protected by law.

### **Complainant McWhinney Has No Standing to Complain Complainant Is Not A Resident At 300 Seventh Street**

Furthermore, the Acting Director’s orders protect this “resident view” notwithstanding that the complainant is not a resident of the property. Donna Howell McWhinney owns and rents the property to tenants who do not complain about the view. The complainant who owns and invests in multiple properties in the area and who has lived elsewhere for many years, is using this complaint-driven ordinance to enhance the perceived value of her investment. The Acting Director is aiding this purpose and in doing so, not only exceeds her authority, but abuses what authority she does possess. This City cannot give effect to these abusive tactics. The extra-jurisdictional order must be vacated.

### **CDD Denies a Fair Hearing By Refusing to Reveal The Complaint**

Further, the Acting Director hides the true nature of this “complaint-driven” investigation by refusing to reveal the complaints made. At the Acting Director’s requirement, Owners made multiple Requests for Public Records in order to prepare for this case and to discover the nature

of the complaints. A copy of each Request and its denial response is annexed hereto and marked "Exhibit 2". The Request for the complaints was denied on the ground that such writings are "Confidential Code Enforcement Information". Given that the complaint forms the basis of this entire case, then denial of the Request gives the appearance of collusion between the complainant and the City. Based thereon, Owners demand that the case be dismissed, or in the alternate, that the requested documents be produced and an extension of time be granted to Owners so that they can evaluate the documents. In the absence of either option, Owners object to these proceedings on the ground that Owners, and each of them, are denied a fair hearing.

**There Is No Evidence Of A Complainant At 305 Seventh Street**

Further, the Staff Report identifies that there is a complainant residing at 305 Seventh Street and that person's view is impaired, yet there is no complainant identified and no statement made. Apparently, the Acting Director has stepped into the shoes of that complainant and represents that person while withholding the complaint. Owners object to this phantom complaint and based thereon demand dismissal of that complaint, or in the alternate, production of the complaint with extension of time to evaluate and investigate it before a hearing.

**Owners Are Denied Any Reasonable Opportunity To Present Their Case**

Further, Owners object to the procedure before the PPIC and to any like procedure which may occur before the City Council. The hearing afforded Owners approximately four minutes to present their case, whereas the Staff Report consumed more than 25 minutes. Each member of the public at the hearing was afforded three minutes to speak. This procedure denies Owners a fair opportunity to present their case, and based thereon Owners object and require a reasonable opportunity to be heard, not just be relegated to stand as a member of the public.

**CONCLUSION.**

For the reasons set forth, Owners request and demand that:  
City vacate the orders of CDD before proceeding to hearing on the merits, or  
alternatively, that the matter be postponed and scheduled for a later date so that study of  
the points made by Owners can be explored.;

Respectfully Submitted,



Frank Wattles  
Attorney for Owners



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5500 FAX (310) 802-5501 TDD (310) 546-3501

May 14, 2010

Werner & Sabine Birkenfeld  
619 Highland Ave.  
Manhattan Beach, CA 90266

RE: over height tree and vegetation at 619 Highland Ave., Manhattan Beach

Dear Mr. & Mrs. Birkenfeld:

As a result of the meeting you had recently with our department a determination has been made that you will need to remove or reduce the vegetation and the tree in the encroachment area that is above the 42" requirement. In researching the complaint it has come to the attention that you do not have a current encroachment permit agreement with the city. You are also required to get an agreement.

The Manhattan Beach Municipal Code Section 7.36.150 Encroachment standards.

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.

**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)

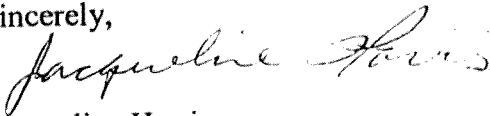
**EXHIBIT /**

Please reduce the vegetation and tree in the front yard (encroachment area) to 42 inches. **A re-inspection for compliance will be done on June 10, 2010 for the removal of the vegetation and tree or as discussed you may appeal the decision. You will also need to obtain the encroachment permit no later than June 10, 2010.**

The City of Manhattan Beach is desirous of obtaining voluntary compliance. If you have any questions, please contact me at (310) 802-5538.

Thank you for your cooperation.

Sincerely,



Jacqueline Harris  
Code Enforcement Officer  
Community Development Department

# City of Manhattan Beach REQUEST FOR PUBLIC RECORDS

The City of Manhattan Beach encourages public participation in the governing process and provides reasonable accessibility to all public records except those documents which are exempt from disclosure by express provisions of law or considered confidential or privileged under the law. The City, in accordance with Government Code Section 6253(b), has ten (10) days to respond to any request for public documents by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. To assist us in providing a timely response to your request, please fill out the form below and indicate the specific record/document you wish to review.

Name FRANK WATTLES Phone 310-372-0454  
Address PO Box 3514 Fax \_\_\_\_\_  
MB CA 90266

**Record or Document Requested:**

To assist the City with your request, please identify each requested record/document separately. Please be as specific as possible. Non specific inquiries may cause response to be delayed or may prove to be burdensome and therefore the City may not be able to respond.

First Tree planting Permit to plant tree in walk-street  
right-of-way encroachment area - See 7.36 of MBMC  
Want to view application form of earliest version.

**Applicable Charges:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Amount Due \_\_\_\_\_

I agree to pay all applicable fees and charges per the City Council Resolution of Fees for any copies I request of the above mentioned documents.

Frank Wattles

Signature

10-12-10

Date

**For Official Use Only - After completion of request, please forward copy to the City Clerk's Office**

Action Requested: \_\_\_\_\_ Action Taken: \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Review Only  Document Reviewed  Non-Existent Document  
 Copies Requested  Copies Provided  Other (Please Explain)  
 Refusal/Reason \_\_\_\_\_

forwarded to Com Dev 10/12/10

# City of Manhattan Beach REQUEST FOR PUBLIC RECORDS

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Amount Due \_\_\_\_\_

I agree to pay all applicable fees and charges per the City Council Resolution of Fees for any copies I request of the above mentioned documents.

Frank Wattles

Signature

10-12-10

Date

<b>For Official Use Only</b> - After completion of request, please forward copy to the City Clerk's Office		
Action Requested:	Action Taken:	By: <u>Angelica Ochoa</u> Date: <u>10/28/2010</u>
<input type="checkbox"/> Review Only	<input type="checkbox"/> Document Reviewed	<input checked="" type="checkbox"/> Non-Existent Document
<input type="checkbox"/> Copies Requested	<input type="checkbox"/> Copies Provided	<input type="checkbox"/> Other (Please Explain)
	<input type="checkbox"/> Refusal/Reason	<u>Per the Department of Public</u>

works no permit was issued for planting trees in the walkstreet encroachment areas.

White Copy - City Clerk's Office  
Yellow Copy - Departmental Record

→ called on 11/2/10

# City of Manhattan Beach REQUEST FOR PUBLIC RECORDS

The City of Manhattan Beach encourages public participation in the governing process and provides reasonable accessibility to all public records except those documents which are exempt from disclosure by express provisions of law or considered confidential or privileged under the law. The City, in accordance with Government Code Section 6253(b), has ten (10) days to respond to any request for public documents by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. To assist us in providing a timely response to your request, please fill out the form below and indicate the specific record/document you wish to review.

Name FRANK WATTLE Phone 310-372-0454  
Address PO Box 3514 Fax \_\_\_\_\_  
Manhattan Beach 90266

**Record or Document Requested:**

To assist the City with your request, please identify each requested record/document separately. Please be as specific as possible. Non specific inquiries may cause response to be delayed or may prove to be burdensome and therefore the City may not be able to respond.

With respect to the complaints made of the height of vegetation, including trees, against the Seventh Street front yards of 619 Highland and 233 Seventh St, all complaints in 2006 and as amended in 2010, which complaints form the basis of the respective decisions of CPD now pending hearing.

Applicable Charges: The documents should include photographs, if any. Please route through Jacqueline if possible.

Total Amount Due \_\_\_\_\_

I agree to pay all applicable fees and charges per the City Council Resolution of Fees for any copies I request of the above mentioned documents. If there are charges - advise in advance.

Frank Wattle  
Signature

10-14-10  
Date

<b>For Official Use Only - After completion of request, please forward copy to the City Clerk's Office</b>		
Action Requested:	Action Taken:	By: <u>JACKIE HARRIS</u> Date: <u>10-15-10</u>
<input type="checkbox"/> Review Only	<input type="checkbox"/> Document Reviewed	<input type="checkbox"/> Non-Existent Document
<input type="checkbox"/> Copies Requested	<input type="checkbox"/> Copies Provided	<input type="checkbox"/> Other (Please Explain)
<input checked="" type="checkbox"/> Refusal/Reason	<u>CONFIDENTIAL CODE ENFORCEMENT INFORMATION</u>	

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

**TO:** Parking and Public Improvements Commission

**FROM:** 1. Werner and Sabine Birkenfeld and  
2. John Ziskin for Daniel Ziskin, deceased

**BY:** Frank Wattles, attorney

**DATE:** October 28, 2010

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street

**REQUESTED ACTION**

Property Owners Birkenfelds of the property at 619 Highland Avenue ("Owners Birkenfeld") and Property Owner Ziskin of the property at 233 Seventh Street ("Owner Ziskin") are appealing:

1. the decision of the Department of Community Development ("CDD"). requiring removal of vegetation in the respective encroachment areas, and
2. the requirement of CDD that Owners apply for an encroachment permit for all improvements in the respective encroachment areas,

on the grounds that the requirements are in error legally and factually.

Owners request that this Commission recommend to the City Council that both legally and factually Owners are not required to comply with the stated directives of CDD.

Note: Owners are not requesting this Commission APPROVE improvements and landscaping in the Birkenfeld front yard.

Note: Based upon the recommendations set out by CDD to APPROVE all the improvements and landscaping of Ziskin, said Owner joins in the recommendation so long as there is no requirement to file an application for encroachment permit.

**STATEMENT OF FACTS AND LAW**

CDD by its letters dated May 14, 2010 ordered that both property owners cut down trees and shrubs in excess of 42 inches height growing in their respective front yards bordering Seventh Street. The owners were ordered further to obtain an encroachment permit for "private



improvements” located in the public right of way (“R-O-W”) forming their respective front yards.

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.

The paper supporting the CDD recommendations fails to attach a copy of said letters, and for that reason, the May 14 letter to the Birkenfelds is annexed and marked Exhibit 1.

Both owners join in this appeal on the ground that there is no merit in law or in fact to the orders of the CDD. There is no authority for the orders. The specific contentions are set forth hereinbelow.

The property at 619 Highland Avenue was developed in 1949 by building two dwelling units on the 30' by 90' lot. Later the lot was split into two 45' lots, each with a dwelling unit.

Werner Birkenfeld moved into the property in 1966 with his wife Sabine joining him shortly thereafter. They purchased the property and began developing their treasured nature preserve on their “front yard” made up almost entirely of the area of right of way (“R-O-W”) between their northern property line and the southern curb line of the walk street. They planted the existing eucalyptus tree and pine trees and an assortment of shrubs before 1970. The creation has been maintained continuously since its inception and has been a vital sanctuary, not only to the Birkenfeld family but also to a wide array of birds and small wild animals and the neighborhood.

The preserve/sanctuary may have served as a model for the enactment of MBMC 7.32.010 (Tree, Shrub and Plant Regulations) enacted in 1971. The Chapter’s stated purpose is to serve the public health, safety and general welfare by improving general aesthetic values, reducing traffic noise, deflect glare and heat, lower wind velocity, purify air, increase property values, and provide cooling shade and beauty.

At the time of the creation of the preserve/sanctuary, the City encouraged such plantings and use of its R-O-W and did not require a permit for such activity. The ordinance history of plantings, regulations and private use of the public right of way is discussed in greater detail in this paper.

In 1974, the one-story dwelling unit on the property was expanded by adding on an additional floor, a second story. A dormer and large plate glass observation station was added to the first floor which overlooked the preserve and a deck was added on the second floor also overlooking the preserve. All required permits were received from the City. The preserve was observed by many inspectors and considered by the City in issuance of the permits. Again, in 1979 an application was made for encroachment permit. The supporting plan illustrated the encroachment area with existing picket fence and trees causing a City staff member to state in his letter dated May 25, 1979, that “This area is presently landscaped with a number of pine trees ...”. Exhibit B of CDD current paper. The illustration did show the tree and shrub design in the area, but the City letter incorrectly states that all the trees are pines. In fact, one of the illustrated trees was the existing eucalyptus and that tree continues to exist.

Greg J. Monfette, an arborist of substantial repute who is well-known to this City, recently visited the preserve and prepared a report which is attached to this paper, incorporated herein and marked Exhibit 2. Attached to his report is a resume demonstrating his qualifications

as an expert in the field. Based upon his expertise, he estimated the age of the tree as about 50 years with a planting in the 1960's. This estimate is correct with the tree planted in the late 1960s and actual age nearer to 45 years.

The report estimates the market value of the tree at \$26,500, but also observes the immense psychological purpose served by the tree and the preserve which if removed would leave human scars and a deficit to the community.

As observed in the report, the tree is regularly trimmed (each six months) and is in good health. It may be fair to say that the tree is a member of the family. According to its regular semi-annual schedule, the tree was trimmed a few days ago.

The City through a staff member frequently visits and observes the preserve and through the years has tacitly approved the vegetation at the site. Certainly it may be true as set forth in the CDD paper that the City formally approved vegetation at the site in 1979 ("The property owner at 619 Highland Avenue has an encroachment permit from May 1979 for pine trees and a low picket fence only . . ."), but even if the formal approval was not received to include the eucalyptus, the City has tacitly approved its existence over the nearly 45 years of its presence. For example, see Exhibit 3, page 1, 5<sup>th</sup> paragraph, referring to occasions when the City requested tree trimming of the eucalyptus and a supporting trimming invoice to evidence completion of the job.

The same neighbor who complained on this occasion (see Exhibit A of the CDD paper), complained in 2006 asking that the tree be removed. The City initiated proceedings to remove the tree at that time and during the extended process sent a letter dated August 28, 2006. None of this is reported by CDD in its current paper. Mrs. Birkenfeld wrote a letter in response and attached a petition signed by many persons in the neighborhood. A file copy of the letter is annexed hereto and marked "Exhibit 3". This letter and petition was filed with CDD. Request is made that CDD produce the letter and petition containing nearly 150 signatures supporting the Birkenfelds' preserve and sanctuary. It is here noted that the letter sets forth many of the facts here stated including the age of the tree and its trimming schedule. A copy of the petition signatures is available for viewing at the hearing.

The record will reflect that some time in 2007, the neighbor dropped the complaint; however, apparently only to renew it in 2009. The record will also reflect that through these years of proceedings concerning the tree, there have been unsuccessful attempts at mediation wherein the complainant will not accept trimming of the tree, and will only accept removal. Hopefully this process will establish the vested rights of the Birkenfelds in the retention of the tree and clarify the ordinance so that each time the economy changes, the complainant does not reappear.

### **Historical Laws, Vesting and Development of the Area.**

The State provides in the Coastal Act, *inter alia*: "No person who has obtained a vested right in a development prior to the effective date of (the Coastal Act) . . . shall be required to secure approval for the development . . .". Public Resources Code Section 30608 (hereinafter "PRC")

While the trees and shrubs installed by Owners do not fall within the definition of "development" (30106), Owners certainly have a "vested" right therein and are entitled to the

right afforded in 30608 of the Coastal Act and other state and federal constitutional rights in the protection of property.

The CDD by its decision herein recommending removal of certain trees and shrubs as unpermitted encroachments in the R-O-W are tacitly requiring removal of a “development”. The recommendation is contrary to 30608.

Owners at 619 Highland Avenue contend the subject tree and shrubs were planted prior to 1970. The plantings were legal at the time, are grandfathered by MBMC 7.32.090, and as such Owner has a vested right therein. By law (30608, etc.), City shall not require removal of the tree and shrubs in the absence of an encroachment permit. CDD has not shown cause for removal of the subject vegetation.

The order of CDD “to remove or reduce the vegetation and the tree in the encroachment area” is a study in confusion. As stated, CDD acknowledges that the pine trees have an encroachment permit from May 1979. “Background”, 1<sup>st</sup> parag. In fact, there are two pine trees of approximately 15 feet. Notwithstanding, CDD ordered removal or reduction of “the vegetation and the tree”. Exhibit 1. The pine trees are “vegetation”. Does CDD contend the pine trees must go even if they received an encroachment permit? Is CDD going to make a series of orders until it is satisfied with the “view”? All of this without particularizing the scope of the view to be obtained. Owner contends that this process is illegal and intolerable.

The City enacted Ordinance 82 in 1914 prohibiting planting of trees or shrubs “along any public street, or other public place in said city unless planted between the property line and the curb line . . .”. Ord 82, section 2. The curb lines of Seventh Street in the subject area were established in 1914. Ordinances 92, 116 and 132. The Street adjacent to Owner’s front yard/encroachment area was designated a walkstreet closed to vehicle traffic in 1962. Ordinance 916. By the ordinance, the City stated, *inter alia*: “WHEREAS the private property along such streets and portions thereof has been developed in a manner not commensurate with the use of such streets for motor vehicle travel . . .”.

In the 1960's, the properties on Seventh Street in the block of Owner’s property regularly used the front yard areas for private purposes and planted trees and shrubs therein with the City’s blessings.

Not until 1972 with enactment of MBMC 7.32 did the City require a permit to plant trees and shrubs in a public place along streets between the property line and the curb line. The purpose was to acknowledge the huge public benefit of such vegetation and to seek to regulate listed activities. While certain regulations were initiated, the ordinance allowed that street trees then existing could remain to old age. MBMC 7.32.090.

Staff members of CDD have stated that 7.32.090 does not apply. The Chapter and Section does apply.

Section 7.32.090 provides:

“**Those street trees now existing may remain** until by old age or other reasons they are removed. When any new street tree is planted it shall conform to the street tree planting guide referred to in subdivision (A)(1) of Section 7.32.080.” Emphasis added  
“Street trees shall mean trees or shrubs in public places along City streets, roads, boulevards and alleys. ” 7.32.020.D. “Trees and shrubs’ shall include all woody vegetation now or hereafter growing, planted or to be planted on any public place or area. ” 7.32.020.E. “Public place or

area' shall include all those streets and highways within the City and all other properties owned by the City of Manhattan Beach." 7.32.020.G.

There is no question that the City claims ownership of the R-O-W constituting the front yard of the Birkenfeld's property, i.e.: "the preserve/sanctuary" and that the City allowed private use of the front yard before the enactment of 7.32 in 1972 or 7.36 in 2003.

Furthermore, even if the case is made that there was some approval required to plant a tree in the R-O-W in the 1960's, the scope of the "grandfather" of 7.32.090 applies to "trees now existing" and is not limited to approved trees or shrubs. Again, the City has expressly permitted through the "grandfather" the trees and shrubs in the Birkenfelds' front yard. The rights are vested in the Birkenfelds and the enactment of 7.36 in 2003 cannot remove the Birkenfelds' right. The Coastal Act as cited above bars the City and the CDD from requiring approval of the trees or shrubs through an encroachment permit or otherwise. The City has no authority to contradict the dictates of the Coastal Act because the State has preempted the field.

There should be no question — the Birkenfeld's trees and shrubs were planted in their front yard, along the walkstreet with the permission of the City, and use continued thereafter with the express approval of the City. The trees and shrubs cannot be removed based upon the allegation of a neighbor that they exceed 42 inches in height and impair her "view".

### **Scope and Application of Chapter 7.36.**

CDD alleges correctly that there is vegetation in the front yards which exceeds 42 inches in height; however, it incorrectly alleges that Manhattan Beach Municipal Code ("MBMC") prohibits such vegetation. Specifically, CDD contends that MBMC 7.36.150 requires removal of vegetation including trees over the height. The contention is wrong.

The trees and shrubs subject of the order of CDD are mature, existing and contribute to the scenic beauty of the area. This vegetation long pre-existed the ordinance cited by CDD. As such, the vegetation is not subject to the ordinance for the reasons herein.

Chapter 7.36 governs use of the public right of way by private parties. It establishes standards to allow private use and development of the public right of way with certain improvements that are compatible with surrounding developments. 7.36.010. Failure to comply with the standards is a violation. Specifically, "violation" is defined in one sentence, as follows:

*"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."* 7.36.030

An "encroachment" is defined as follows:

*"Encroachment" means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property.* " 7.36.030

In this provision "encroachment" is defined by examples within a class of "structures" or "objects", which examples include paving, fence, stand, building, entry monument. Each of the examples are structures.

This kind of definition is covered in the California Civil Code and is an example of the legal maxim *ejusdem generis*. "Particular expressions qualify those which are general." (Civ.

Code, §§ 3534 (enacted 1872).) The legal maxim contained in Civil Code section 3534 is a statutory expression of the rule of construction: **ejusdem generis** -- of the same kind, class or nature. (In re Marquez (1935) 3 Cal.2d 625, 629 [45 P.2d 342].) "... where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The particular words are presumed to describe certain species, and the general words to be used for the purpose of including other species of the same genus. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes. The words "other" or "any other," following an enumeration of particular classes, are therefore to be read as "other such like," and to include only others of like kind or character." (People v. McKean (1925) 76 Cal.App. 114, 119 [243 P. 898].)

Consequently, "encroachment" does not include trees, shrubs or other like living things. The class of structures or objects listed does not include living things. For this reason, Owners herein cannot be in violation of the Chapter cited because after enactment of the Chapter neither Owner constructed, created, occupied or used an encroachment in the public right of way by having trees or shrubs of any height in their front yards, i.e.: the public R-O-W.

Further, the word "placed" is more descriptive of a structure being located on an area than of a tree or shrub growing.

In addition, a following sentence of Section 7.36.030 includes definition by example, once again requiring construction by the maxim *ejusdem generis*. The provision is stated as follows:

"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 broad statement of activity is "all other intrusions into the public right of way". Specific examples of the intruding class are three, one of which is "private improvements". The Chapter does not define "improvements"; however, any meaning attributed must be consistent with the "violation" provision discussed herein, i.e.: landscaping or living things located upon an encroachment area without an encroachment permit do not violate the provisions of Chapter 7.36.

For the reasons stated, an encroachment permit is required where construction or placement of a structure in the encroachment area is involved. In conjunction with such work, landscaping may be added to the encroachment area. Such improvements on a walkstreet involve the standards set forth in 7.36.150-B-3. This is the section recited by CDD in its letter of May 14. Exhibit A.

Section 7.36.150 is titled "Encroachment Standards". The subject of the height of trees or shrubs is not involved where these living things are not "encroachments". However, where there is encroachment work to be performed, the landscaping relating to the encroachment work may be included as described in 7.36.150. In such case, the landscaping provisions apply, but not otherwise.

The current application of the provisions of Chapter 7.36 and its requirement for an

encroachment permit is evidenced by this City's 9/2009 revision of the Encroachment Permit Application, a copy being annexed hereto and marked "Exhibit 4". The Form requires identification of the encroachment (including Landscaping). Additionally, the applicant is required to certify in relevant part, as follows:

"Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. . ."

The certification requires understanding and compliance with Section 7.36.150 of the ordinance, or a facsimile thereof. The Section is titled "Encroachment Standards" and Subpart A is titled "General Standards". The certification is dependent in part upon the meaning of "private improvements".

Section 7.36.150-A-8 provides in relevant part: "Existing improvements which do not conform to current standards must be removed or brought into conformance . . . if any new significant construction is proposed in the public right of way." In this case, the construction in the R-O-W is the encroachment proposed and the "improvement" must then be brought into conformance.

The general standard is consistent with the particular provision applied to Walkstreets at Subpart B-3, which provides, *inter alia*: "Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit." This statement does not identify "landscaping" to be an encroachment. Like Subpart A-8, the improvement is made subject of the Permit *if* there is other encroachment work requiring a Permit. In Subpart B-3, the "landscaping" accompanies other encroachment work requiring a Permit. The reference to a "landscape plan" incorporates Chapter 7.32 and its plant regulations.

In the absence of encroachment work requiring a permit, Sub-part B-3 does not require that landscaping alone requires a Permit. In this case, the general standard applies and landscaping expressly does NOT require a Permit and is subject to a landscape plan in accordance with 7.32 and Subpart A-2.

In brief summary, landscaping on the R-O-W of the walkstreet does not require a Permit and through the general standard does require adherence to the provisions of 7.32. Additionally, improvements existing at the time of adoption of 7.36 do not require a Permit. The mere fact that an object is located now in the R-O-W is not cause for a claim of "violation" and order to obtain a Permit.

### **Chapter 7.36 Applied to "Views"**

CDD's paper in support of its recommendation to the Commission attributes to 7.36.150.B.3 a standard widely variant from the standard there provided. This mistake is basic to protection of view, particularly given the directives of the Coastal Act. To highlight the difference the statement of CDD and ordinance provision are blocked out, as follows:

CDD Statement	Ordinance Provision
if a view is impaired (Section 7.36.150 A6 and 7.36.030, Exhibit D), the Director of Community Development shall direct the owner to cut the landscaping in the encroachment area to a maximum of 42" high.	If it is determined that a resident view is impaired, the Director of CD shall direct the owner of the property adjacent to the <b>encroachment landscaping</b> to trim the over-height landscaping to forty-two inches (42") maximum
landscaping in the encroachment area	<b>encroachment landscaping</b>
"Encroachment area" means the section of public right of way located between the property line and the edge of the walkway or roadway.	"Encroachment" means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, <b>right of way</b> , sidewalk or street by or for the use of the adjoining property.

By its statement, CDD changes “encroachment landscaping” of the ordinance to “landscaping in the encroachment area”. The result is a significant distortion of the ordinance.

An “encroachment” is not the same as “encroachment area”. As described herein, an encroachment does not include trees and shrubs, but certainly an encroachment area may include trees and shrubs. These terms are defined in the ordinance. If the Council intended its statement to include “encroachment area landscaping”, it would have so provided.

By the ordinance, because “encroachment” modifies “landscaping”, the statement means “landscaping” around or in the presence of a qualified encroachment. These terms address a standard to be applied in the processing of an encroachment permit, or in a determination of violation to obtain such a permit.

According to the standard of Subsection B.3, the adjacent property owner must fail to trim “encroachment landscaping” in excess of 42 inches where a “resident view” is “impaired” and CDD so determines. There are several elements to the requirement, but at the least, there must be shown to exist “encroachment landscaping”, not just landscaping in excess of 42 inches.

Further, the “resident view” must be in conformance with the preempting Coastal Act. “View” is dependent from the “resident’s scenic view” of 7.36.150.A.6. The purpose of the protection is stated in B.3 “To promote visual openness and conserve scenic vistas . . .” and that view of the scenic vista must be impaired. Of course, “scenic vistas” can be any view (the eye of the beholder) and the provision would be impermissibly broad without definition.

Arguably, scenic vistas means those views protected by the Coastal Act. Section 30251 of the Act provides, *inter alia*:

“The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to

and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.”

This provision protects scenic and visual qualities of coastal areas. “Permitted development” is designed to protect views “to and along the ocean and scenic coastal areas”. In 2005, the Coastal Commission found that the Coastal Act does not protect views from private residences. Case W8b, Appeal Number: A-5-RDB-04-261, p. 14 of 18

In a depublished opinion, the California Appellate Court discussed Case W8b and protection of views pursuant to the Coastal Act. *Farr v. California Coastal Commission (Doyle)* (2009) 173 Cal.App.4th 1474. The Court stated at page 1479: “After independent review . . . , we cannot find that the Commission added words to section 30251, or that the Legislature intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views.” The Court affirmed the judgment of the Coastal Commission.

In the subject case, CDD recommends that the Birkenfeld tree be removed because it impairs the view of the resident complainant even though a tree immediately across the walkstreet is determined not to impair such views. Owners requested of CDD the complaint upon which the decision and recommendation were based. CDD required that a “Request for Public Record” be filed, but that the request will be denied because the document is confidential and “under investigation”. The Request was filed weeks ago but there has been no reply. The complaints appear necessary to preparation for this hearing, and based thereon, Owners object to this proceeding.

Attached to the CDD paper is Exhibit A, a letter dated October 18, 2010, to which are attached 25 photographs. This is not the complaint. For the record, this woman filed the same complaint in 2006. That complaint was prosecuted for an extended period of time until it was dismissed. Thereafter, in 2009, the complaint was refiled. CDD fails to report this relevant fact. See Exhibit 3, herein, and the available petition signatures provided by Owner Birkenfelds in 2006.

Concerning the 25 photographs, there are some labeled as “taken from 1<sup>st</sup> story”, the street, the second story, the street and the walkstreet. The vantage point of the pictures is uncertain. The view to be protected is uncertain. However, the complainant appears to contend that she is entitled to a view of the ocean from her residence, be it first story or second. This interpretation of 7.36 is buoyed by the fact that she includes no pictures through the view corridor including the palm tree located across the walkstreet. To the extent she requires a view from her building, she is not so entitled.

From the top of the hill of Seventh Street, there is a minimal view of the sand of the beach at the bottom of the hill more than 600 feet away and through the view corridor. The horizontal breath of the view is limited by perspective, i.e.: narrowing railroad tracks the further the view. Likewise, this view through the corridor to the water is minimal. For a larger breath of view, the view is over rooftops, a relatively unprotected view. For a view over the hill on



Seventh Street and just East of Highland, the view is blocked by large carrotwood trees located along Seventh Street, a vehicular street.

The carrotwood trees off Highland were planted by the City and are related to a view complaint heard on January 25, 2007, before this Commission. The ruling was to deny a view complaint appeal to remove the trees at the intersection of Eighth Street and Manhattan Avenue. Reasons given for the ruling were that the trees were 20 years old, not a nuisance according to 7.32.070, they provide a great view for Eighth Street residents, and the City Council retained the trees on multiple appeals in the past.

Related thereto, the Birkenfelds contend that their nature preserve including the eucalyptus tree provides a great view for residents and members of the public in general. The preserve and tree enhance the neighborhood while allowing a substantial view along the view corridor to the beach without interfering with access along the walkstreet to the beach. In fact, often visitors to the beach stop to view and photograph the preserve.

MBMC 7.36.150 protects "resident's views" while clearly PRC 30251 addresses views by the public. This paper has no problem with implementation of protection of residents as members of the public; however, there is a problem where protection of views is extended to residents in their homes. That protection is in conflict with State law and herein objected to on that basis.

Finally, the City has stated that because the encroachment area belongs to the City, laws regulating the area are enacted and enforced retroactively, i.e.: there is no grandfather. Owners dispute that unwritten contention as totally unsupported in this matter and categorically incorrect.

## CONCLUSION

In brief summary, the trees and shrubs subject of this hearing are property of the respective Owners in which they have vested interests protected under Federal and State Constitutions, State statutes including the Coastal Act and importantly, the law of this City. Further, the provisions upon which CDD relies in support of its recommendation to this Commission is riddled with error and without authority of the MBMC. The alleged view to be protected and upon which CDD relies to support its order to remove the valuable preserve and sanctuary is uncertain at least. Finally, CDD continues to deny Owners discovery of the particulars of the complaint that drives this case, and in so refusing deprives Owners of a fair hearing and further, fails to reveal to this Commission the earlier complaints by this same complainant and the outcry through a petition in support of the Birkenfelds.

There follows a summary of relevant historical events:

- 1914 Ord 82 Prohibited planting trees or shrubs in a public place unless planted in the area which is now defined as the encroachment area.
- 1949 House built on property now owned by Birkenfeld. Front yard was the area now identified as encroachment area.
- 1962 Seventh Street adjacent to Birkenfeld closed to vehicular traffic by Ord 962 because of the development of the front yards along the street - private use
- 1967-68 Birkenfelds purchased the subject property and started planting trees and shrubs in

its front yard, including 2 pine trees and a eucalyptus tree.. At all times thereafter the City knew of the plantings/trees and did not object.

1972 MBMC 17.32 was enacted requiring a permit for trees or shrubs planted in public places, and grandfathering existing trees. This was express authority for the vegetation (trees, etc.) in the Birkenfeld's front yard (now encroachment area).

1972 The Conservancy Act

1974 Birkenfelds added a story to their house and in so doing memorialized the front yard preserve. All permits were granted approving same.

1976 The Coastal Act

1979 CDD acknowledges permit for pine trees in Birkenfeld front yard.

2003 MBMC 17.36 enacted, but it did not require permit for trees or shrubs in encroachment area or other pre-existing improvements as CDD contends.

2006 Present complainant complained that Birkenfeld's eucalyptus tree impaired her view and CDD ordered removal

2007 Complaint is withdrawn after much time and expense.

2009 Complainant makes same complaint which is subject of this hearing

2010 Owners request a copy of complaint filed to discover alleged view to be protected but are denied by CDD. Owners object on grounds the rejection deprives them of a fair hearing and opportunity to prepare therefore.

For all of the reasons herein stated, Owners request that this Commission direct CDD to abate and withdraw its order, or in the alternative recommend to the City Council that Owners are not required to comply with the stated directives of CDD.



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795  
Telephone (310) 802-5500 FAX (310) 802-5501 TDD (310) 546-3501

May 14, 2010

Werner & Sabine Birkenfeld  
619 Highland Ave.  
Manhattan Beach, CA 90266

RE: over height tree and vegetation at 619 Highland Ave., Manhattan Beach

Dear Mr. & Mrs. Birkenfeld:

As a result of the meeting you had recently with our department a determination has been made that you will need to remove or reduce the vegetation and the tree in the encroachment area that is above the 42" requirement. In researching the complaint it has come to the attention that you do not have a current encroachment permit agreement with the city. You are also required to get an agreement.

The Manhattan Beach Municipal Code Section 7.36.150 Encroachment standards.

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.

**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)

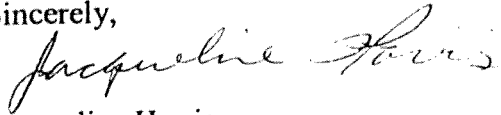
**EXHIBIT /**

Please reduce the vegetation and tree in the front yard (encroachment area) to 42 inches. **A re-inspection for compliance will be done on June 10, 2010 for the removal of the vegetation and tree or as discussed you may appeal the decision. You will also need to obtain the encroachment permit no later that June 10, 2010.**

The City of Manhattan Beach is desirous of obtaining voluntary compliance. If you have any questions, please contact me at (310) 802-5538.

Thank you for your cooperation.

Sincerely,



Jacqueline Harris  
Code Enforcement Officer  
Community Development Department

Registered Consulting Arborist #481  
Certified Arborist #729  
Certified Tree Worker #1138

Pest Control Advisor Li. #74824  
Qualified Applicator Li. #97557  
Certified Utility Arborist #729U

Neighborhood Consulting Arborist  
Greg J. Monfette  
4617 Purdue Avenue, Culver City, CA 90230  
Telephone/Facsimile: (310) 902-6581  
Email: [arboristgm@ca.rr.com](mailto:arboristgm@ca.rr.com)

Date: October 18, 2010

To: Frank Wattles

Loc: 619 Highland Avenue  
Manhattan Beach, CA 90266

**Re: Review of Mature Eucalyptus Tree**

Neighborhood Consulting Arborist (NCA) visited the site on October 13, 2010, to review the subject Eucalyptus tree growing in the front yard at 619 Highland Ave. The tree is 23" diameter by 30-35' tall in trimmed condition and maintained on a regular basis. NCA estimates this tree to be approximately 50 years old (planted in the 60's) and one of the more mature trees in the neighborhood.

NCA was contacted because a complaint has been made regarding this tree and its potential to block a view. NCA reviewed the Manhattan Beach Code of Ordinances, Title 7, Public Works, Chapter 7.32 (Trees, Shrub and plant Regulations) and Chapter 7.36 (Private use of Public Right of Way) and found that this tree is "grandfathered" in and therefore the tree shall remain.

Furthermore, the resident at 619 Highland Ave. is willing to maintain the tree once every six months, which is more than appropriate, so the size, shape and health of the tree can continue to provide the benefits to the community that it currently does. The owner of the tree has enjoyed the various benefits, as well as the privacy, for many years as he has built a bay-window and upper deck to further enjoy the benefits this tree provides. If this tree is to be removed it will be a huge impact to the tree owner from an emotional and physical state, which would have to be argued by council. NCA appraised the value of the tree in accordance with current arboriculture standards (Trunk Formula Method) as described below.

**Trunk Formula Method**

The Trunk Formula Method of Landscape Appraisal ("Guide for Plant Appraisal 9th Edition," Council of Tree & Landscape Appraisers, 2000) has been applied to help establish a baseline capital asset value represented by the Eucalyptus tree.

**EXHIBIT 2**

This process considers the species, size, condition, and location (site, placement, and contribution) of the subject trees and, using a standard industry process that has been evolving for over 100 years, arrives at a 'cost approach' to landscape value.

The capital asset value expressed by the Eucalyptus tree using the Trunk Formula Method as established by the Council of Tree & Landscape Appraisers in the 9th Edition of the Guide for Plant Appraisal is \$26,500.

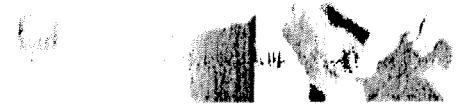
The pruning of the tree twice a year is a reasonable solution/requirement to resolve this situation and preserve one of the mature trees in the neighborhood.

If you have any questions at anytime please contact me directly at 310-902-6581.

Thank you,

Greg J. Monfette  
Neighborhood Consulting Arborist  
[www.ncatree.com](http://www.ncatree.com)


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 **NEIGHBORHOOD CONSULTING ARBORIST**

Maple Leaf Neighborhood Consulting Arborists (NCA) is dedicated to the enhancement of your community and the protection of the environment as the preeminent authority on matters related to tree and plant health—ensuring through our expertise and objectivity the safety, preservation, functionality and beauty of your natural surroundings.

Trees in our developed environment present a challenge, requiring careful planning and vigilant maintenance. The shared public trust of governments, businesses and homeowners is to ensure that tree plantings grow, thrive and remain safe. When a problem occurs—if a tree causes damage or becomes a public safety hazard—a source for advice and mediation is often needed. This is the role of NCA to bring a comprehensive, objective viewpoint to the diagnosis, appraisal and evaluation of arboricultural issues.

 As Consulting Arborists we are called upon to advise in the most challenging situations that necessitate experience in the science and practice of arboriculture, as well as specific expertise in the practical, ethical and objective role of the consultant.

We strive to be the arboricultural experts of choice to assist law firms, insurance companies, utilities, and developers, municipalities, landscape planners and architects, homeowners, individuals and organizations coping with disaster mitigation, and others requiring authoritative knowledge and perspective on trees and plant life.

In addition to court case work, we specialize in root analysis, structural stability and the overall evaluation of the root collar area in determining various needs, or addressing various concerns. We perform our

excavation with the use of an Air-Spade which uses a patented supersonic nozzle that focuses the air "like a laser beam" to break up the soil. The soil can then be easily removed from the excavation site without damaging the roots. Air exiting the nozzle is at twice the speed of sound (approximately 1300 mph) which allows for best digging conditions with the effort of tree preservation in mind, even in the hardest soils. And the best of all is that it is not harmful to the roots or the adjacent infrastructure.

The Air-Spade can be used for just about any application that requires digging around sensitive roots or objects. We use the Air-Spade for the following applications:

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- Diagnosis work
- Treatment of diseases
- Trenching for underground utilities
- Root pruning
- Root structure analysis
- Transplanting of trees
- Educational work on roots and plants
- Construction of sidewalks
- Construction of house foundations

As you can see the Air-Spade is an outstanding tool if your ultimate goal is tree preservation, or if you need to identify the 'actual' cause an alleged dangerous condition caused by a tree root. For more information on the Air-Spade applications and benefits see the Air-Spade link.



Businesses, government agencies, organizations and individuals engaging us as their Consulting Arborist have the confidence that we adhere to the highest standards of professional practice. At NCA we have the unique and unparalleled ability to...

- Provide expert witness testimony in cases involving damage or injury related to trees
- Conduct appraisals of tree value for property insurance claims
- Evaluate the environmental impact of land development
- Guide the long-term planning for placement and maintenance of trees
- Offer valuable information about the preservation of existing trees
- Inspect plant material to determine health and safety
- Educate the public, and public officials, about the preservation of existing trees
- Counsel homeowners on the evaluation, planning and preservation of trees
- Conduct root-crown-evaluations to identify underground conditions





At NCA we strive hard to serve our customers. In doing this we've established a policy to respond back to all request, inquiries, contact, emails and phone calls within four working hours.

We know your time is important and we wish to honor that while your spending this time with Neighborhood Consulting Arborist.

Thank You,

Greg J. Monfette, Owner

(310) 902-6581

Contact NCA Today at (310) 902-6581  
[ncatree@ca.ar.com](mailto:ncatree@ca.ar.com)

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Grove and Jamie

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#### THE CONSULTANT OF CHOICE

I have been a Certified Arborist since 1991 and actively involved with the Tree Care Industry for over 27 years. I've been involved with the Western Chapter International Society of Arboriculture in the following areas: Judging and assisting with the Certified Tree Worker/arborist exams; Proctoring for the Certification process; The Regional Conference Chair for the entire Western Chapter; Champion of an initiative of the chapters strategic plan; Coordinated the Western Chapters first Workday event; as well as various other committees throughout my tenure. Currently, I am the Vice President on the Board for the Western chapter International Society of Arboriculture,

#### KEEP READING

At the present time I am a Superintendent in the Urban Forestry Division for the City of Los Angeles which manages one of the largest street tree populations in the nation. Prior to coming to the City of Los Angeles I was the owner/operator of Neighborhood Tree Service and shortly thereafter I started consulting on a part time basis. In 1999 I started consulting on a regular basis and that's when we changed our name to

Neighborhood Consulting Arborist. I am currently a Past President of the Street Tree Seminar in Southern California, on the board of directors for the Western Chapter International Society of Arboriculture, an American Society of Consulting Arborist academy graduate, a Certified Arborist/Certified Tree Worker/Utility Specialist with the WCISA, a licensed Pest Control Advisor and Operator with the State of California and have been involved with the tree care industry for more than 25 years.

My career goals are the following: to continue to provide relevant education and training, promoting outreach and involvement to youth, multilingual and diverse groups, resulting in professional growth and development within our industry; work to express the importance of volunteers within our industry and the benefits to our membership as well as our constituents; work on a study, with other arborist, to develop industry standards relating to sidewalk repair, alternative options, tree preservation, tree retention, and root pruning standards; outreach to more homeowners and/or business owners through field level training and on-hands demonstration; and work with other arborist to continue to improve our industry and ensure that our constituents receive the benefits they deserve.

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Werner & Sabine Birkenfeld  
619 Highland Avenue  
Manhattan Beach, CA 90266

September 25, 2006

Parking & Public Improvements Commission  
City of Manhattan Beach Community Development  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: Encroaching Landscaping – 619 Highland Ave Manhattan Beach, CA 90266

To Whom It May Concern:

This is in response to your letter dated August 28, 2006 and my subsequent telephone conversations with Jacqueline Harris and Rob Osborne.

My husband, myself and pretty much our whole neighborhood, feels the need to seek relief from your request to kill and remove our 40 year old Eucalyptus Tree due to a complaint about the tree blocking some ocean view and exceeding the allowable height limit of 42 inches.

When I called to find out about the protection of all old and mature trees in Manhattan Beach, I was told the city had a very strong tree protection ordinance and policy throughout all areas of Manhattan Beach except for the Sand Section. We find this very disturbing and discriminatory.

We have lived here since the sixties and enjoyed our garden and our beautiful tree throughout all these years. It is a healthy tree, a haven for many wild creatures, where we have been privileged to watch a multitude of different bird species nest, feed and rest, including Humming Birds, Blue Jays, Finches, Mocking Birds, Doves, Parrots and even an occasional Hawk, just to name a few. At one time, we even had a squirrel build an elaborate nest, which we know is a rare sight in the Sand Section. We think of our yard as a small nature preserve, something extremely important to our environment.

On a couple of occasions, throughout all the years that we have lived here, we have had a request from the city to trim our tree because it was growing too close to the power lines. Never was there a request to remove it or to cut it down to 42 inches. We of course complied with the request and all we had to do was take a copy of the "paid bill for the job completed" to city hall.

We take care of our tree. It gets trimmed twice a year, once in spring and once in fall.

Who ever complained about our tree blocking their view, bought their property east of us just a few years ago, knowing this tree was there before they decided to make this purchase. It always has been there. They looked at it then, just as they are looking at it today. We resent the fact, that a person could conceivably move into a neighborhood and demand that we kill our tree and dictate a different lifestyle to us, our family and our friends by depriving us of our enjoyment of nature with our tree in our yard.

EXHIBIT 3

Manhattan Beach is not a city with protected views as for example Hollywood Riviera is. When the smaller, older properties get torn down here, the lots are built out to the maximum and ocean views are lost all the time. One of the only places where views are guaranteed here is on The Strand. That is a known fact.

Our tree has been in existence way before the city passed the ordinance with the 42 inch height limit for the Walk Streets. It may be non-conforming to current regulations, but we believe it should be protected and grandfathered in because it is and always has been a pre-existing condition.

We find it interesting to see just how many properties on the Walk Streets have beautiful mature trees and shrubs. It would be an absolute shame if the City of Manhattan Beach would allow all this nature to be destroyed by enforcing such a discriminatory ordinance. Living in this high density area with so little space, please try to imagine looking up and down our streets without mature tall greenery. In the El Porto area, on the North end of Highland Ave. there are mostly massive concrete buildings in dire need of trees.

The information we received from Rob Osborne and Jackie Harris, was that the City of Manhattan Beach does not enforce or act upon the "42 Inch Ordinance" in the Sand Section unless there is a complaint. How can any of this be fair? That alone should be a signal, that maybe it is time to protect mature trees and plants equally throughout the city.

Enclosed you will find signatures from neighbors and residents and friends who want to see our Eucalyptus Tree thrive and grow for many years to come. These same people also want to see equally protective rights for all trees throughout Manhattan Beach, including our Sand Section. If you require more signatures – we can get them. People are aware of how important trees are for our environment, our air, our own survival, this planet.

Our gardener was scheduled to trim our tree last Friday. We went ahead and had the tree trimmed and thinned out.

We hope you will give the Sand Section Trees the same protection you offer to all the other Manhattan Beach Trees and that you realize how important it is to let our tree live.

Please feel free to contact me with any questions or concerns. You can best reach me at 310 374-7215

Sincerely,

A handwritten signature in cursive script that reads "Sabine Birkenfeld". The signature is written in black ink on a white background.

Sabine Birkenfeld

CC: Mitch Ward, Nick Tell, Jim Aldinger, Richard Montgomery, Joyce Fahey, Tim Lilligren, Rob Osborn, Jacqueline Harris.



# ENCROACHMENT PERMIT APPLICATION

Chapter 7.36 MBMC

City Hall

1400 Highland Avenue

Manhattan Beach, CA 90266-4795

Telephone (310) 802-5500

FAX (310) 802-5501

TDD (310) 546-3501

Applicant/Agent-Name/number \_\_\_\_\_ Date \_\_\_\_\_

Owners **MAILING** Address \_\_\_\_\_ Phone # (\_\_\_\_) \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ E-mail \_\_\_\_\_

**PROJECT** Address \_\_\_\_\_

Encroachment Located on \_\_\_\_\_ Street, Avenue, etc. (If on more than one street, note **both**)

Name(s) of **LEGAL OWNER(S)** (**AS SHOWN ON TITLE**) \_\_\_\_\_

Proposed Encroachment (Check all that apply and **describe**)  Deck/Patio \_\_\_\_\_  Fence/Wall \_\_\_\_\_

Walkway/landings \_\_\_\_\_  Steps \_\_\_\_\_  Landscaping \_\_\_\_\_

Irrigation (Plumbing permit required)  Lighting/Electrical (Electrical Permit Required)  Other (Describe) \_\_\_\_\_

Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. This Encroachment Permit shall be valid for six (6) months after issuance. Additionally, a right-of-way permit shall be required for all work in the public right-of-way.

Signature (s) \_\_\_\_\_

Cashier \$ \_\_\_\_\_ Date \_\_\_\_\_ Initials \_\_\_\_\_  
Amount Rec'd. Receipt #

Fee Schedule	Permit Application	\$1410.00	Permit Fee (4502)	_____
	Permit Transfer or Minor Revision	\$ 370.00	Imaging Fee (4017)	_____
	Permit Appeal	\$ 465.00	Total	_____

Legal Description \_\_\_\_\_

Map Book \_\_\_\_\_ Page (s) \_\_\_\_\_ APN \_\_\_\_\_

Bldg Permit # \_\_\_\_\_ (if applicable) New House: Yes \_\_\_ No \_\_\_

**Comments/Notes:** Water Main location: \_\_\_\_\_

Sewer Main location: \_\_\_\_\_

**Public Works OK:** Yes \_\_\_ No \_\_\_

**Agreement Submitted:** Yes \_\_\_ No \_\_\_ **Insurance Submitted:** Yes \_\_\_ No \_\_\_

Other: \_\_\_\_\_

Approved / Denied \_\_\_\_\_ Date \_\_\_\_\_

Community Development Department

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

**TO:** Parking and Public Improvements Commission

**FROM:** 1. Werner and Sabine Birkenfeld and  
2. John Ziskin for Daniel Ziskin, deceased

**BY:** Frank Wattles, attorney

**DATE:** October 28, 2010

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street  
Agenda Item 10/28/10-2

**OBJECTION TO HEARING**

Werner and Sabine Birkenfeld join with John Ziskin for Daniel Ziskin, deceased ("Owners") and file formal objection to the conduct of the Subject hearing.

This objection is made on the grounds that Community Development ("CDD") and the City of Manhattan Beach ("City") have refused to reveal the complaint made by the complainant Donna Howell or any other unidentified complainant. As stated in the papers filed in response to the CDD Report filed in this matter, the absence of any identification of a "view" to be protected and the vantage point of any photograph has disabled Owners from adequately preparing for this hearing.

Further, this action of enforcement is said to be "complaint-driven", i.e.: no enforcement is undertaken until there is a complaint. Where this type of enforcement is involved, there needs to be transparency to insure the absence of collusion between the city and complainants, or other extraneous purposes of the City. At present, there is no transparency. In effect, the wizard is behind the curtain running a show that is not what it appears. Owners would like full disclosure of the facts so that Owners can defend.

Further, there is information that suggests that some or all Commissioners are not impartial and should recuse themselves. Indeed, the law presented in Owners paper filed herein is drastically at variance with the law as applied by this Commission for many years. The "inertia" of the past makes fair review impossible without fair disclosure.

Distributed at  
PPIC meeting  
10/28/10

To start with, this complaint-driven case is based upon the initial complaint which has been withheld and is directed at the impairment of some "view" which is not identified. There are many photographs, but no adequate identification of the view to be protected. The Owners are threatened with a loss of a lifetime of their home and "preserve".

Due Process requires a fair hearing. On both federal and state constitutions, this objection is made.

Further, information indicates that notice of this hearing was not sent to all residents within the distance required. In fact, no notice was received at the address in the lot next to 619 Highland. CDD might need to insure the adequacy of their noticing.

### **RECOMMENDATION**

Owners request that the hearing be suspended for a sufficient time (1) to afford a study by the City and this Commission of the points raised by Owners in their brief and (2) to deliver the complaint filed to Owners together with any other information which will identify the view to be protected. and (3) to notice the hearing according to law.



**7.32.090 - Street tree planting guide.**

**Those street trees now existing may remain until by old age or other reasons they are removed.**

**When any new street tree is planted it shall conform to the street tree planting guide referred to in subdivision (A)(1) of Section 7.32.080.**

**"Encroachment" means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property.**

**7.36.020**

## Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

### 7.32.010 - Purpose.

Official tree, shrub and plant regulations for the City are hereby adopted and established to serve the public health, safety and general welfare. To that end the purposes of this chapter are specifically declared to be as follows:

- A. Improve general aesthetic values;
  - B. Reduce traffic noise;
  - C. Deflect glare and heat;
  - D. Lower wind velocity;
  - E. Purify air;
  - F. Increase property values;
  - G. Provide cooling shade and beauty;
  - H. Provide for the proper selection of trees to minimize trouble in sewer and water mains, broken sidewalks, storm drains, etc.;
  - I. Minimize interference with street and traffic lighting;
  - J. Minimize the spread of disease to healthy trees;
  - K. Minimize danger of falling trees and limbs onto streets, sidewalks and private property;
  - L. Minimize accumulation of leaves and debris which cause unnecessary labor in cleaning the sidewalks, streets and storm drains; and
  - M. Select trees of longevity and suitable to the environment.
- ( §§ 3, Ord. 1202, eff. February 19, 1970 )

**Citing the Commission's finding that the view over the Dolyes' roof was not a significant public view which must be protected, . . .**

**[3] After independent review . . ., we cannot find that the Commission added words to section 30251, or that the Legislature intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views. Instead, the Legislature intended balance, having declared that the "basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment . . . (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the state." (§§ 30001.5.)**

**30001. The Legislature hereby finds and declares:**

**(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.**

**(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.**

**(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.**

**(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.**

**30001.5. The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:**

**(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.**

**(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.**

30106. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Transcription of Recording taken at the PPIC Hearing on October 28

Silverman We're on to general business - OK - the only item on the agenda this evening -- Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7<sup>th</sup> Street  
Before I ask you to introduce the item - I guess Laurie is going to introduce the item

LJ I'm just going to be making some brief comments and then Angelica Ochoa will be making the staff report and power point presentation

Commissioner Silverman:, OK, before you do that let me say we received a tremendous amount of paper work in just the last few minutes, let alone to date. We are going to reserve the right to break at anytime during this discussion even during testimony so that we can look at this information during the break and go from there.

FW: Excuse me. Would it be out of order to interrupt . . .

LJ: Yes, it would be!

Commr: Yes, it would.

LJ: We will have ... I'll make some brief comments as I mentioned - we'll have a presentation by Angelica Ochoa who is the project manager who has been working on this. After that presentation, we will have questions from the commission directed to staff. Then it would be appropriate at that time to open it for public comment. Generally, the way we run our planning commission, is the same way - you have testimony from the appellant, then from the property owners and then from other members of the public after that.

Chairman: That is exactly what we do here as well.

LJ: Good.

Chairman: Even though this gentleman wants to say something right now, it is not because we don't want to hear from him, we have our procedures, and he is welcome to fit right in there.

LJ: I'd also like to suggest , since you have a large number of people here tonight, we do have the public testimony, you may want to remind the audience to not repeat what other people have said, that if you agree with the person who spoke before, try to keep your comments brief. You may want to put a time limit on the speakers so that we can keep things moving along in an expeditious manner.

Chairman: You want to introduce yourself.

LJ: Yes. My name is Laurie Jester and I'm the Acting Director of Community Development.



I've been with the Department for almost 10 years. It is rare to come before the PPIC but when we have these issues of tree appeals – They come up very rarely. That's why I'm rarely here. We actually had two of them this year, and prior to that maybe 5 or 6 years since we've had one.

So, it's the subject that the PPIC is not as familiar with as the traffic issues that you deal with on a day by day basis. And so, I just wanted to give an introduction and overview to sort of frame the discussion – so that we all have the same information before us. I'd also like to – would be beneficial to the audience also.

What I really want to emphasize is that we are here before the PPIC because this is public property. This is not private property. This is not a street tree that we are talking about. We are talking about a walk street which has an encroachment area, and has a certain section of the code – its Chapter 7.36 that allows the private use of public property with an encroachment on it. That encroachment permit has very specific standards detailed in that Chapter 7.36 and all the improvements need to conform to those standards. An encroachment permit agreement is required to report on the property that has very specific details. It says that come in and remove that encroachment at any time. The property remains public property. It never transfers on the property owner. They are required to have liability insurance. So it's a very specific requirement. So one of these very specific requirements is that an encroachment can be only 42 inches in height. And the reason for that as you can see in the Chapter 7.36 is to preserve scenic vistas and views for residents. You will see that very specific criteria.

Now, you have probably heard that there are trees in the walk street all over the city and that is absolutely correct. And just like on private property, on public property, we enforce on a complaint basis. We are not a pro-active code enforcement, we are reactive. So, if there are trash cans out, if there are signs — illegal trees that are over the height limit, we as staff, do not go out and seek out those violations and try to abate them. We react on a complaint basis. So, that is why it is before you.

We received a complaint from a couple of neighbors that there were trees that were impacting their view. 803 and so we followed up on that. Angelica will tell you the whole process we have been through to try to work with the neighbors to try to resolve the issue – and unfortunately we were not able to as staff– and so that is why we are here tonight. Um – a number of people have mentioned a different code section – 7.32. That is not the code section that is applicable in this situation.

That is for city street trees. You may hear some people discuss private property protection – that is covered by Title 10 – the zoning ordinance, where we do protect private trees on private property in the front yards. That is not what we are talking about here. So we are specifically talking about walk street standards which allow the landscaping to 42 inches in height and we enforce that on a 857 complaint basis. There is no grandfathering. You may hear people - grandfathering or non-conforming - these particular situations, these people do not have encroachment permits. There is no right to any of the landscaping they are supporting tonight. So that is a very broad overview. Angelica will make a few notations and more details –

Q Stabile ----

A and if you have a question

- Q You said there is no grandfathering --
- A Yes.
- Q What is the basis for that statement?
- A. The basis for that statement is that this is public property
- Q And the argument being that since this is public property, that the city can do whatever it wants with that property at any time.
- A That is true. There also actually is a definition in 7.36 as non-conforming and it refers to --um -- structures and other improvements that have been legally permitted and placed in the encroachment area and they do not fall under those standards.
- Q And another question -- Are there any prior instances of on large landscaping that existed before the enactment of Chapter 7.36 being removed on a complaint basis?
- A Yes, there has been.
- Q Um --I think this is maybe the last one --Is landscaping --um -- an improvement within the meaning of the word improvement as its used in Chapter 7.36?
- A Landscaping is regulated by Chapter 7.36. They have specific standards.
- Q -- (inaudible)
- A I would have to ask you to actually look up the definition and -- (unintelligible)  
Yes, there is a definition of "Landscaping". There is no definition of "improvement" but there is a definition of landscaping in the area devoted to (unintelligible) structural elements.
- Q Can landscaping be an encroachment within the meaning of Chapter 7.36?
- A Yes, absolutely.
- Q Thank you.
- A You're welcome

Yes, good evening. My name is Angelica Ochoa. I have been the project planner on this project working together with the property owners as well as the complaining parties.

I'm just going to summarize the staff report now.

This is an encroachment appeal application. It is a private use of public property and there are standards that must be followed for the public property with a permit and there are encroachment standards as well that must be followed.

Again, an encroachment appeal application was filed by the owners at 619 Highland Avenue and they are appealing staff's denial to keep all existing landscaping over 42 inches high. The property owner at 233 7<sup>th</sup> Street is appealing obtaining an encroachment permit and staff is recommending approval of all improvements and landscaping with an encroachment permit. In approximately November 2009 a complaint was received by the city, um sorry, from the neighbors at 300 and 305 7<sup>th</sup> Street. Their concerns were that these trees and landscaping at 619 Highland and 233 7<sup>th</sup> Street were impairing their vistas and their views.

Again this landscaping is not per the current encroachment standards and that is why we are here.

And this is just a vicinity map and aerial to familiarize yourself with the subject property. This yellow line here is the property line and that is the walkstreet encroachment area and the subject

property at 609 Highland. Everything outside this line is also the encroachment area. And the subject trees and landscaping are within that area. The complaining parties are to the east of Highland. This is one of the complaining parties at 305 7<sup>th</sup> Street and the other complaining party lived here at 300 7<sup>th</sup> Street and as you can see here this is their view directly 1507 west with the trees as well as the trees and landscaping here. Again, these encroachment areas can be developed but there are standards that they must follow. They can be developed with patios, landscaping while all with a permit. And just to give you some background on these properties the 619 Highland Ave. has an encroachment permit from 1979 for pine trees and a fence which is attached to the staff report. There is no permit for the eucalyptus tree and for the landscaping that is over 42 inches high. The property 1607 at 233 7<sup>th</sup> St had a encroachment permit in 1989 but was not final and a revised encroachment permit was applied for in 2000, but it was not approved. So again, there is no existing permit for the palm trees and landscaping over 42 inches high in the walkstreet. And just specifically, on the encroachment appeals, the property owner at 619 Highland is requesting to keep the eucalyptus tree and all existing landscaping. The property owners feel that these were planted prior to the current encroachment standard and they should be allowed to keep their trees and all existing landscaping. The property owner at 233 7<sup>th</sup> St. is also requesting to keep all existing improvements and landscaping with no permit, however, he is subject to a permit that is per the current encroachment standards, but he feels he is not subject to those standards and does not feel that to obtain a permit ---he should do that. The property owners and neighbors did attend mediation services. They did meet with the mediator, but there was no outcome from that, and we did meet with them — we met with the property owners as well as the neighbors, but there was no outcome that came out of those meetings. The neighbors are requesting that the trees at 619 Highland be removed and all landscaping cut down to 42 inches high. And that the palm trees at 233 7<sup>th</sup> St. as long as they are trimmed and maintained - that will agree with them. This is taken from the third floor balcony of one of the complaining parties at 305 7<sup>th</sup> St. — and you can see the tree here — the eucalyptus tree and this picture here is also taken from the third story balcony at 305 7<sup>th</sup> St. and here's the subject tree here. And this is 300 7<sup>th</sup> St., the other complaining party. This is another photograph here that is also taken from the third floor balcony at 305 7<sup>th</sup> St. — this shows a better picture here — and this is the ocean here. You can see that. So this is what they are looking at from their third floor balcony. And this was actually taken by the complaining parties in October. And this picture was taken just a couple of days ago. And this is at the Highland street level. So you can see that the tree has been thinned out here. The picture here is taken at the street level from the complaining party at 300 7<sup>th</sup> St. And this picture is just the same — a different angle. This picture — these are the palm trees from 233 7<sup>th</sup> St. And this is a picture from the second story of one of the complaining parties at 300 7<sup>th</sup> St.

This is their view from the second floor. And this photograph is taken from one of the neighbors that we received — a letter of opposition for the trees. And this is from his view from his second floor residence. And this is from the palm trees at 233 7<sup>th</sup> St. And you can see — one of the complaining parties 300 7<sup>th</sup> St. And these are some street trees. But this is his view — what he's looking at here even though its been pruned.

And just to go over the encroachment standards, the original encroachment ordinance was

adopted in 1972 with a revision in 2003 – an encroachment permit is required. Landscaping and walls are required to be 42 inches high maximum and that is to provide an open and scenic vista. Again, the standards are enforced only on a complaint basis, and this has been the city's practice. And again, if a complaint arises the landscaping could be required to be cut down to the required 42 inches high or it could also be cut down if it's a safety issue.

Staff is recommending the denial of the request at 619 Highland Ave. due to the height impairs the neighbor's vista. From the pictures you could see that. It does not comply with the current walkstreet standards. And the landscaping is substantially overgrown and does exceed the 42 inches high. The 1979 permit allowed the pine trees and fence and we are also asking that the owner obtain an encroachment permit. The staff is recommending approval of all landscaping and improvements at 233 7<sup>th</sup> St. It does not impair the neighbor's vista from the picture you can see that. We are asking that the palm tree be trimmed and maintained per the neighbor's request and that he obtain an encroachment permit.

In conclusion, we're asking that the PPIC to uphold Staff's recommendation to deny the request at 619 Highland Ave. to keep all landscaping over 42 inches high in the walkstreet and approve all improvements and landscaping at 233 7<sup>th</sup> St. END  
I'll be happy to answer any questions you may have.

Questions which followed are here omitted

**Angelica Ochoa**

---

**From:** Steve Goldberg [steve@askgoldberg.com]  
**Sent:** Tuesday, November 09, 2010 11:34 PM  
**To:** Angelica Ochoa; Richard P. Montgomery  
**Cc:** Steve Goldberg  
**Subject:** Calendar for 11/16 Session...

**Importance:** High

Dear Angela and Richard: This mail is regarding a calendar item for the November 16th Council meeting. The item is a review of the Encroachment Permit Appeal on 619 Highland Avenue and 233 7th Street.

I am wondering if there is any way that this matter can be moved to a later session of the Council?

The reason I am making this request is because -- while not formally part of the process (I do not own the properties in question nor did I bring/participate in the original complaint) -- in fact only my property/view is directly impacted by the landscaping in question. So It would be of great importance to me -- and I believe of great value to the Council -- for my commentary to be part of the scheduled discussion.

Unfortunately, I am scheduled to be out of the country, on the 16th. I know I can make a written declaration for the meeting but would greatly prefer to attend and comment in person (especially since the parties involved are my neighbors.)

Since the landscaping in question has been in place for decades I'm hopeful that another few weeks can go by without this matter being finalized.

Please let me know your thoughts.

Thank you...

Steve Goldberg

11/10/2010

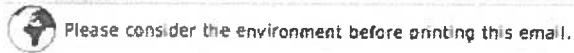
**Angelica Ochoa**

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**From:** Laurie B. Jester  
**Sent:** Monday, November 08, 2010 4:02 PM  
**To:** Angelica Ochoa  
**Cc:** Nhung Madrid  
**Subject:** FW: regarding encroachment permit appeal-619 highland and 233 7th street  
For Council

**Laurie B. Jester**  
**Community Development Acting Director**

P: (310) 802-5510  
E: ljester@citymb.info



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**From:** Body In Balance Day Spa [mailto:life@bodyinbalancedayspa.com]  
**Sent:** Monday, November 08, 2010 3:45 PM  
**To:** List - Planning Commission  
**Subject:** regarding encroachment permit appeal-619 highland and 233 7th street

To whom it may concern,

we recently recieved a letter from Laurie B. Jester in regards to the encroachment permit appeal-619 highland and 233 7th street. I, Nazila Mahgerefteh, am a business owner on 808 Manhattan ave. in MB and i am very much in favor of keeping the city green and keeping as many trees as possible and also planting more trees. as i travel to other cities such as Encino, Tarzana and San Fernando Valley, i realize how little trees we have in the South Bay and how much we "Trim" the trees (almost bald). it would be a disappointment to find out if any tree is being cut down.

Thank you for your attention,

Nazila  
Body in Balance Health Center & Spa  
808 Manhattan Ave  
Manhattan Beach CA 90266  
310.406.1910

11/10/2010