

Council Meeting of
March 24, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance California

Members of the Council:

SUBJECT: Community Development – Order of the Court requiring the Council to reconsider a portion of the City Council’s decision approving a Precise Plan located at 602 Paseo de la Playa, regarding the impacts of air, light, and privacy, and if the Council upholds the appeal, issue a new decision by adopting a new resolution in which findings (c) and (d) of Resolution No. 2008-71 are set forth in a manner sufficient to bridge the analytical gap between the raw evidence and the ultimate decision.

PRE07-00030: James Meyer (Michael Guzman)- 602 Paseo de la Playa

Expenditure: None

RECOMMENDATION

Recommendation of the Community Development Director that the City Council reconsider the impacts of air, light, and privacy and adopt a new resolution in which findings (c) and (d) properly reflect the evidence contained in the Administrative Record.

BACKGROUND

On May 13, 2008, the City Council considered an appeal of the Planning Commission’s denial of a Precise Plan of Development to allow first and second story additions to an existing two-story single family residence. After a duly-noticed public hearing lasting approximately three hours, the City Council voted 6-1 to approve the proposed development.

The neighbors to north, Mr. and Mrs. Youngern, brought forth a writ of mandamus challenging the Council’s decision. At the hearing on February 13, 2009, Judge James C. Chalfant granted the writ in limited part. Judge Chalfant ruled that the hearing before the Council had been fair and that no new hearing is required (Judge’s Adopted Tentative Decision, p.6; Transcript, pp.8,18). In fact, at the hearing Judge Chalfant stated “there is no doubt in my mind that there was a fair hearing” (Transcript, pp.1-2). However, Judge Chalfant did direct the Council to reconsider its decision on the impacts of air, light and privacy.

If, based on the content of the Administrative Record (the “Record” or “AR”), the Council decides to uphold Guzman’s appeal, then the Council must adopt a new resolution in which two of its findings regarding the impacts of air, light, and privacy are restated to reflect the evidence contained in the Record.

The pertinent findings read as follows:

- “(c) The proposed development will not have an adverse impact upon the view, light, air and privacy of other properties in the vicinity;
- (d) The development has been located, planned and designed so as to cause the least intrusion on the views, light, air and privacy of other properties in the vicinity;”

The City Council must review the Record and conclude whether substantial evidence exists in the Administrative Record to support findings (c) and (d). With regard to finding (c), Judge Chalfant acknowledged the existence of “considerable evidence on this issue, including the project’s lower height, its silhouette, and the staff report,” which Judge Chalfant concluded “may well support a conclusion on air, light, and privacy...” He went on to explain that the flaw with finding (c) as contained in the original resolution of approval, is that finding (c) does not mention this evidence in order to substantiate the conclusion that the project will not have an adverse impact on light and air (Judge’s Adopted Tentative Decision, p.7). Therefore, the City must remedy this technical defect.

With respect to the view portion of finding (c), Judge Chalfant did conclude “there was substantial evidence to support a conclusion of no substantial impact on view,...” He emphasized that there was “abundant evidence that the project would not substantially impact any neighbor’s view” (Judge’s Adopted Tentative Decision, p.8).

As to the air and light portion of finding (c), as described in the Record, the project addressed concerns regarding impacts on the air and light of other properties in several ways. The project features a northern side yard setback 20 inches more than the existing residence, creating greater separation with the property to the north (AR 2:522, 4:1093). The greater distance between properties allows more light and air through, and reduces existing shadow effects. The northeast corner is set in 8 feet more than existing, eliminating an area of previous concern (AR 2:429, 2:438, 2:522, 3:870). Previous versions of the project had the northeast corner extending to the building line of the northern property, prompting major concern with light and privacy (AR 2:598, 3:770-771). With the elimination of this corner, and the proposed project being 8 feet less than existing, more light and air can pass through and will improve upon existing conditions in regards to light and air (AR 2:429). On the same note, the proposed highest ridge is slightly lower than existing and portions of the existing gabled roof will be eliminated (AR 2:522, 4:1093). Furthermore, the proposed design eliminates existing eave overhangs, allowing more light and air through the properties, ensuring at least—or even improving—existing conditions (AR 4:1093). Lastly, with the original version of the project, the applicants submitted a shadow study that showed how that version of the project minimally impacted the light of the neighbor to north (AR 2:593, 2:702-710). Since then, the project has been revised to the current version (which is set further in than the original proposal and the existing residence), further indicating the project will

not have an adverse impact upon the air and light of other properties in the vicinity (AR 2:593, 3:769-772).

With regard to the portion of finding (c) involving privacy, the Record shows any concerns regarding privacy have been addressed. As mentioned, the side yard setback to the north will be set in 20 inches further than the existing structure. The backyard (easterly) setback on the north side will be 8 feet further than the existing structure. Both of these modifications create greater separation between properties (AR 2:429, 2:522, 3:870). The greater distance limits the ability to peer into the adjacent property and impact privacy. In fact, the rear building line of the proposed structure will actually be located farther west than the rear building line of the neighbors to the north (AR 3:772). Because the proposed structure is set in more than the existing structure and the proposed second floor window layout on the north and northeast are similar to the existing window layout, the proposed project will not impact the neighbor to the north further than existing in terms of privacy, and should improve existing conditions (AR 3:761, 4:1093). Additionally, the northernmost second floor window on the east elevation is narrow and will feature obscured glass, specifically to mitigate privacy concerns (AR 4:1093). The proposed front facing balcony is oriented towards the street, away from the neighbor's rear yard (AR 2:522). Front yards are within the public realm and do not enjoy a reasonable expectation of privacy. Moreover, the northern neighbors' front yard is already visible from the existing driveway and second floor northwest windows of the subject property—not to mention the sidewalk and street (AR 3:763, 3:773).

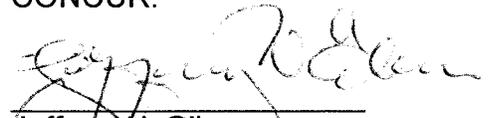
As to finding (d), Judge Chalfant concluded that if finding (c) is supported, meaning there is evidence to support a conclusion that there is no adverse impact on view, light, air and privacy, then there are no substantial impacts from the project and finding (d) would be supported as well because there would be nothing to reduce (Judge's Adopted Tentative Decision, p. 8).

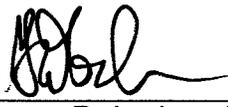
In order to comply with Judge Chalfant's order, the Council must review the Record and determine whether there is sufficient evidence in the Record to uphold the appeal and adopt the attached resolution. If the Council finds there is not sufficient evidence in the Record to uphold the appeal and adopt the attached resolution, then the Council may order a new hearing on the matter.

Respectfully submitted,

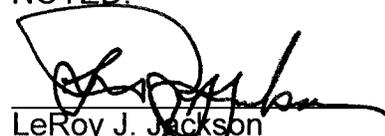
Jeffery W. Gibson
Community Development Director

CONCUR:


Jeffery W. Gibson
Community Development Director

By 
Gregg D. Lodan, AICP
Planning Manager

NOTED:


LeRoy J. Jackson
City Manager

Attachments:

- A. Proposed New Resolution
- B. Judge's Adopted Tentative Decision
- C. Minutes from 5/13/08 City Council Meeting
- D. Administrative Record (Copy available for review in the City Clerk's Office.)

RESOLUTION NO. 2009-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, APPROVING A PRECISE PLAN OF DEVELOPMENT AS PROVIDED FOR IN DIVISION 9, CHAPTER 1, ARTICLE 41 OF THE TORRANCE MUNICIPAL CODE TO ALLOW FIRST AND SECOND STORY ADDITIONS TO AN EXISTING TWO-STORY SINGLE FAMILY RESIDENCE ON PROPERTY LOCATED IN THE HILLSIDE OVERLAY DISTRICT IN THE R-1 ZONE AT 602 PASEO DE LA PLAYA.

PRE07-00030: JAMES MEYER (MICHAEL GUZMAN)

WHEREAS, on January 16, 2008, the Planning Commission of the City of Torrance conducted a public hearing and denied an application for a Precise Plan of Development to allow first and second story additions to an existing two-story single family residence on property located within the Hillside Overlay District in the R-1 Zone at 602 Paseo de la Playa; and

WHEREAS, On January 29, 2008, Michael Guzman filed an appeal for consideration of the Planning Commission's denial of the request to allow first and second story additions to an existing two-story single family residence on property located within the Hillside Overlay District at 602 Paseo de la Playa; and

WHEREAS, On May 13, 2008, the City Council conducted a public hearing of an appeal of the Planning Commission's denial of a Precise Plan of Development to allow first and second story additions to an existing two-story single family residence on property located within the Hillside Overlay District at 602 Paseo de la Playa; and

WHEREAS, on June 10, 2008, the City Council adopted Resolution No. 2008-71 approving the Precise Plan of development (PRE07-00030); and

WHEREAS, thereafter Tim and Cory Youngern, the neighbors to the north of the property, brought a writ of mandamus challenging the City Council's decision; and

WHEREAS, on February 13, 2009, Judge James C. Chalfant granted the writ in limited part. Judge Chalfant ordered the City Council to reconsider the portion of the City Council's decision approving the Precise Plan regarding the impacts of air, light, and privacy, and if the City Council upholds the appeal, issue a new decision by adopting a new resolution in which findings (c) and (d) of Resolution No. 2008-71 are set forth in a manner sufficient to bridge the analytical gap between the raw evidence and the ultimate decision; and

WHEREAS, this resolution contains revised findings. In particular, findings (c)

and (d) have been re-written to reference the substantial evidence contained in the Administrative Record which supports the Council's conclusions; and

WHEREAS, after reviewing the Administrative Record ("AR"), the Council now wishes to uphold the appeal and adopt this new resolution of approval; and

WHEREAS, additions to single family residential properties are Categorically Exempted by the Guidelines for Implementation of the California Environmental Quality Act; Article 19, Section 15301 (e); and

WHEREAS, due and legal publication of notice was given to owners of property in the vicinity thereof for all of the required public hearings, all in accordance with the provisions of Division 9, Chapter 6, Article 2 of the Torrance Municipal Code; and

WHEREAS, the City Council of the City of Torrance does hereby find and determine as follows:

- a) That the property is located at 602 Paseo de la Playa;
- b) That the property is described Lot 133 of Tract 18379 as per map recorded in the Office of the Los Angeles County Recorder, State of California;
- c) That the proposed residence, as conditioned, will not have an adverse impact upon the view, light, air and privacy of other properties in the vicinity; the height of the proposed structure is lower than the existing structure and the location of the proposed two-story structure, as demonstrated by the silhouette, does not adversely impair views of those surrounding properties within the Hillside Overlay District; and that the project will not adversely impact the air, light, and privacy of the neighbors to the north because: the proposed building is set in 20 inches further from the north and 8 feet further from the northeast compared to the existing structure, creating greater separation between properties thereby allowing more light and air through and limiting the ability to impact privacy (AR 2:429, 2:522, 3:870, 4:1093); the rear building line of the proposed structure will actually be located farther west than the rear building line of the neighbors to the north (AR 3:772); because the proposed height provides a slightly lower profile and the proposed design eliminates existing eave overhangs which also allows more air and light through (AR 2:522, 4:1093); because the applicants have submitted shadow studies demonstrating how a larger project would only minimally impact light, therefore the reduced proposal will have no impact (AR 2:593, 2:702-710, 3:769-772); because with the proposed second floor window layout on the north and northeast being similar to existing along with the proposed structure being set further in than existing, the project will not impact privacy any further and should even improve existing conditions (AR 3:761, 4:1093); because the northernmost second floor window on the east elevation is narrow and will feature obscured glass to mitigate privacy concerns (AR 4:1093); and because the front facing balcony is oriented towards the street within the public realm (AR 2:522, 3:763, 3:773);
- d) That the proposed residence, as conditioned, has been located, planned and designed so as to cause the least intrusion on the views, light, air, and privacy of

other properties in the vicinity because: the proposed residence complies with the development standards of the R-1 Zone; because the proposed structure provides a slightly lower profile, eliminates portions of the existing gabled roof which reduces bulk and massing, opens up view corridors, and also allows air and light through (AR 2:522, 4:1093); because the proposed structure will be set back further from the north (20 inches more than existing) and northeast (8 feet more than existing), thus creating greater separation between properties reducing the potential for further impacts to air, light, and privacy, by allowing more air and light to pass through and by limiting the ability to peer into the adjacent property and impact privacy (AR 2:429, 2:522, 3:870, 4:1093); because the proposed second floor window layout on the north and northeast are similar to existing, ensuring no additional privacy impacts (AR 3:761, 4:1093); because the northernmost second floor window on the east elevation is narrow and features obscured glass to mitigate privacy concerns (AR 4:1093); and because the project features a front facing balcony towards the street, away from the neighbor's rear yard (AR 2:522, 3:763, 3:773);

- e) That the design provides an orderly and attractive development in harmony with other properties in the vicinity because the proposed exterior design elements are in keeping with the architecture and finishes of other recently developed properties and will incorporate high-quality finishes equal to those of surrounding residences; the staff report and numerous photographs in the Administrative Record of other properties in the neighborhood demonstrate that the design is in harmony with other properties in the vicinity;
- f) That the design will not have a harmful impact upon the land values and investment of other properties in the vicinity because renovating and upgrading the existing residence which has been described as "old", an "eyesore," and "in disrepair" (AR 3:904) will not only raise the property value of the subject property, but the surrounding neighborhood as well, as the potential for impacts to view, air, light, and privacy have been reduced by the proposed residence through increased setbacks and a lower overall height in several areas as compared to the existing residence;
- g) That granting such application would not be materially detrimental to the public welfare and to other properties in the vicinity because a single-family residence is an appropriate use for this property and is in compliance with the R-1 Zone and the Hillside Overlay District;
- h) That the proposed additions would not cause or result in an adverse cumulative impact on other properties in the vicinity because the proposed additions will incorporate high quality building materials and concepts, have a lower height and roof profile, and eliminates portions of the existing gabled roof;
- i) That it is not feasible to increase the size of or rearrange the space within the existing building or structure for the purposes intended except by increasing the height in order to preserve the rear yard outdoor recreation space;
- j) That denial of this request to increase the height would constitute an unreasonable hardship because the proposed residence, as conditioned, does not have an adverse impact on view, light, air and privacy of the surrounding properties and the existing residence is already two stories; and

- k) That granting this application will not be materially detrimental to the public welfare and to other properties in the vicinity because the project, as conditioned, complies with the development standards for the R-1 Zone.

NOW, THEREFORE, BE IT RESOLVED that PRE07-00030, filed by James Meyer (Michael Guzman) to allow first and second story additions to an existing two story single family residence on property located within the Hillside Overlay District in the R-1 Zone at 602 Paseo de la Playa, on file in the Community Development Department of the City of Torrance, is hereby APPROVED subject to the following conditions:

1. That the use of the subject property for a single-family residence shall be subject to all conditions imposed in Precise Plan of Development 07-00030 and any amendments thereto or modifications thereof as may be approved from time to time pursuant to Section 92.28.1 et seq. of the Torrance Municipal Code on file in the office of the Community Development Director of the City of Torrance; and further, that the said use shall be established or constructed and shall be maintained in conformance with such maps, plans, specifications, drawings, applications or other documents presented by the applicant to the Community Development Department and upon which the Planning Commission relied in granting approval;
2. That if this Precise Plan of Development 07-00030 is not used within one year after granting of the permit, it shall expire and become null and void unless extended by the Community Development Director for an additional period as provided for in Section 92.27.1;
3. That the maximum height of the residence at the highest point of the roof shall not exceed 23.36 feet as represented by the survey elevation of 133.88, based on a bench mark elevation of 109.64 located at L&T RCE 30826 off the northwesterly property corner on Paseo de la Playa and the lowest adjacent corner (110.64) as shown on the official survey map on file in the Community Development Department; (Development Review)
4. That the height of the structure shall be certified by a licensed surveyor/engineer prior to requesting a framing or roof-sheathing inspection and shall not exceed 23.36 feet based on a bench mark elevation of 110.64 located at L&T RCE 30826 off the northwesterly property corner on Paseo de la Playa as shown on the survey map on file in the Community Development Department; (Development Review)
5. That the silhouette shall remain in place for no more than 45 days after the final public hearing to the satisfaction of the Community Development Director; (Development Review)
6. That within 30 days of the final public hearing, the applicant shall remove the City's "Public Notice" sign to the satisfaction of the Community Development Director; (Development Review)
7. That color and material samples of the proposed home be submitted for review to the Community Development Department; (Development Review)

8. That the rooftop solar panels be flat mounted as shown on the plans, and not angled or raised; (Development Review)
9. That automatic electric roll-up garage doors shall be installed; (Development Review)
10. That the applicant shall provide four inch minimum contrasting address numerals for residential, condo, etc. uses; and (Environmental)
11. That the applicant shall delete portion of proposed CMU wall in public parkway or obtain an encroachment permit for any proposed structures/walls in the public right of way prior to issuance of Grading Permit; (Permits and Mapping)

Introduced, approved and adopted this 24th day of March 2009.

Frank Scotto,
Mayor of the City of Torrance

ATTEST:

Sue Herbers,
City Clerk of the City of Torrance

APPROVED AS TO FORM:

JOHN L. FELLOWS III, City Attorney

By _____

Youngern v. City of Torrance
BS 116080

Tentative decision on petition for writ of
mandate: granted only in part

Petitioners Tim and Cory Youngern (“Youngern”) seek a writ of administrative mandamus to overturn a decision by Respondent City of Torrance (“Torrance” or “City”) issuing Resolution No. 2008-71, which granted a development permit to Real Party-in-Interest Michael Guzman (“Guzman”). The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioners Youngern commenced this proceeding on July 25, 2008, seeking to overturn a decision by Respondent Torrance to approve a precise plan of development to allow first and second storey additions to an existing two-storey single family residence on property located in the City’s Hillside Overlay District. The Youngerns contend that the approval is not in compliance with the City’s Hillside Ordinance.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass’n for a Scenic Community v. County of Los Angeles, (“Topanga”) (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceed without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

Section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). Land use decisions do not typically involve vested rights requiring independent review. *See* PMI Mortgage Insurance Co. v. City of Pacific Grove, (1981) 128 Cal.App.3d 724, 729. The granting of a permit or variance does not infringe on the fundamental vested rights of adjoining property owners. Bakman v. Dept. of Transportation, (1979) 99 Cal.App.3d 665, 689-90. A landowner does not have either an easement for air and light in the absence of an express covenant (Katcher v. Home Savings & Loan Assn, (1966) 245 Cal.App.2d 425, 429), and there is no vested right in the enforcement of a zoning ordinance. Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, (2001) 86 Cal.App.4th 534, 552.¹ “Substantial evidence” is relevant evidence that a

¹Although Petitioners argue that this action is governed by the independent judgment test, it does not involve their fundamental vested rights. They do not have a vested right to any particular view, light, air or privacy. Instead, the Hillside Ordinance merely prohibits Guzman from developing his property under certain circumstances affecting those issues. That is not a vested right. *See* Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, *supra*, 86 Cal.App.4th at 552. Even if Guzman were challenging the denial of a development permit for his

reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 (“[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

The agency's decision at the hearing must be based on the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.*

C. Statement of Facts

1. The Initial Application

This action involves the remodel of an existing two-story single family home on Guzman's property located at 602 Paseo de la Playa (the “property”). The home currently has 2,697 sq. ft. of living area on a 7,380 square foot lot. AR 99, 429. The existing home, constructed in 1955, is in a state of disrepair. AR 904. There homes in the neighborhood are a mixture of one and two-story homes. AR 428. On Paseo de la Playa, every home in near proximity to the property is two-story. AR 839.

The City's General Plan states as a policy of promoting new residential development which is aesthetically pleasing and compatible with the character and scale of existing neighborhoods. AR 993. The property is located in the City's Hillside Overlay District where residential development is subject to special review criteria based on view, light, air and privacy concerns. AR 1016. For his project, Guzman was required to submit a “Precise Plan. Torrance Municipal Code (“TMC”) §91.41.5. AR 1060. A Precise Plan must comply with the City's “Hillside Ordinance,” which contains strict development requirements as follows: “No construction and no remodeling or enlargement of a building or structure shall be permitted unless the Planning Commission (or the City Council on appeal) shall find that the location and size of the building or structure, or the location and size of the remodeled or enlarged portions of the building or structure, have been planned and designed in such a manner as to comply with the following provisions: a) The proposed development will not have an adverse impact upon the view, light, air and privacy of other properties in the vicinity; b) The development has been located, planned and designed so as to cause the least intrusion on the views, light, air and

property, the substantial evidence test would apply. *See id.*

privacy of other properties in the vicinity; c) The design provides an orderly and attractive development in harmony with other properties in the vicinity; d) The design will not have a harmful impact upon the land values and investment of other properties in the vicinity; e) Granting such application would not be materially detrimental to the public welfare and to other properties in the vicinity; f) The proposed development will not cause or result in an adverse cumulative impact on other properties in the vicinity.” TMC §91.41.6; AR 1061.

Guzman submitted the first proposal in early 2007 for a Precise Plan (“PRE07- 00013”) and a Waiver (“WAV07-00010”) to maintain the existing northern side yard setback, which was less than required by code. Guzman sought to add first and second story additions to the existing residence, resulting in a 4,314 square foot home with lot coverage of 37.2%. AR 99, AR 429.

When their neighbors had concerns about the project, Guzman met with them for the purpose of resolving them. AR 13-19, 258-64. Guzman also attempted to meet with the Youngherns, but their lawyer told him not to contact them directly. AR 265. City staff conducted an extensive analysis of the project, which included field inspections of the Guzman’s home and surrounding properties. AR 200. Staff required Guzman to present a Silhouette Certification signed by a registered professional engineer verifying that the silhouette accurately represented the project’s size and shape. AR 114. To address neighbors’s privacy concerns, staff required that the stairwell window be made of translucent glass and that the east facing study window be replaced with a transom window with a sill height of six feet. AR 200. Staff determined that the project would not cause any adverse or significant intrusion on the view, air, or light of adjacent properties. AR 200. After imposing the privacy conditions, staff recommended approval of PRE07-00013 and denial of WAV07-00010. AR 201.

2. The Planning Commission Decision

The first public hearings for the project was set for August 15, 2007 before the City’s Planning Commission. By letter dated August 7, 2007, the Youngherns objected to the project. AR 261. Upon hearing the concerns of his neighbors, Guzman stated that a continuance was a good idea so that he could redesign his project to see how the elimination of a waiver would affect the project. AR 197. The continued hearing was held on September 5, 2007. Guzman announced that he had met with the Youngherns to address their concerns. He had agreed to delete 407 sq. ft. of the project, 75% of which was removed to address those concerns. AR 166. The Commission denied the application without prejudice. AR 97.

In December 2007, Guzman made a new application, PRE07-00030, intended to mitigate neighbor concerns. It rearranged the first floor plan to eliminate privacy concerns, and the second floor space was reduced by 234 square feet. The number and square footage of balcony space was reduced, facing the street and not the neighbor’s yard. AR 98. The maximum building height is 23.36 feet, below both the homes existing height and the 27-foot maximum prescribed by the TMC. AR 98, 429. The floor area ratio is .50, which is well below the .60 maximum. AR 98, 1068. The application met all setback requirements, eliminating the need for a waiver. AR 98.

The Planning Manager of the Community Development Department recommended that the Planning Commission approve the project. AR 100-01. Several neighbors opposed based primarily on impact on their ocean view. AR 26-29, 30-31, 40. The Youngherns also opposed based on the impact on their privacy, views and light from the 228 square foot balcony, as well

as lack of harmony with other properties. AR 32. They also submitted a petition from 40 residents that they were unhappy with the proposed project. AR 65-70. Commission members stated concerns about view impact, privacy impact, and the balcony's size and impact. AR 410. The Planning Commission denied the application without prejudice, with one commissioner dissenting. AR 418-19.

3. The City Council Appeal

Guzman appealed to the City Council. The Community Development Department recommended approval of the appeal. AR 428-30. In its Report, the Community Development Department determined: "[b]ased on the silhouette, the proposal does not pose significant impacts. The revisions to the project have been made to mitigate the most impacted neighbors. Previous concerns with light and privacy have been addressed with the reduction of building area at the northeast corner. Previous concerns with bulk and size have also been addressed, making the project more pedestrian-scaled and less imposing by reducing square footage and FAR." While the project may impact some view, the impacts are not adverse or significant, noting that the view corridors from the southeast towards the building's silhouette are already obscured by landscaping and other structures. AR 429-30.

At the May 13, 2008 hearing, the Community Development Department also presented a PowerPoint presentation. AR 748-66. The presentation contained photographs of the existing residence with the silhouette showing the proposed addition, elevation drawings, and photographs of neighboring properties. Guzman also presented a PowerPoint presentation complete with architectural renderings and photographs. AR 767-784.

The City Council also heard testimony from members of the public. Several neighbors submitted photographs and letters regarding light and privacy impacts. AR 746-47, 789, 803-07. One of the Youngherns addressed the City Council, contending that the project dwarfs his home and is visually imposing, interferes with his privacy, is not in harmony with the surrounding homes in style, and would constitute a noise intrusion. He specifically argued that the balcony - - located off the front of the Guzman's' home adjacent to the Youngherns's garage and driveway (AR 51) -- would be visually imposing because it could be seen from his front yard and patio and would create a "noise intrusion." AR 869. He did concede that Guzman "has reduced the size of this house considerably and I appreciate that; especially in the back." AR 870.

Several other neighbors spoke about the project. Daniel Meyer voiced his support of the project, stating that Guzman had made every concession to appease those opposed. AR 868. Another neighbor, Chuck Valentine, expressed his support for the project. AR 885-87. He believed that some of those in opposition had an unrealistic expectation of privacy in a densely populated neighborhood. AR 886. Jim Dulerggio praised the project, stating it was replacing an eyesore. AR 904. He further stated that Guzman "made every effort to appease any valid concerns of the neighbors" and that this was a case where the neighbors had conspired to "reduce the development and the rights of property owners." AR 905.

An issue was raised at the hearing that some of the opposing neighbors had caused trees which may have been in Guzman's yard and may have been in the neighbors's yard (AR 790-95, 836-37, 844-46, 858), to be trimmed. AR 852, 850. The neighbors had not wanted these trees trimmed in September, and the trimming apparently happened sometime around the beginning of April 2008. AR 854. The City Council was concerned that the neighbors' concern about view

was artificial in that the view had not existed before the trees were trimmed. AR 827, 840-41. They also expressed concern about the bad faith of the neighbors. *See* AR 924-28.

Four council members indicated they had visited the site. AR 922, 924, 927-28, 930. During her visit, Councilwoman Witkowsky noted that she “was really impressed” that “actually the footprint of the house really doesn’t change very much.” AR 922. The City Council voted six to one to approve the appeal and hence Guzman’s application. AR 934.

On June 10, 2008, the City Council Adopted a Resolution of Approval Reflecting the Action of the City Council. AR 966-69. The Resolution includes the following findings: (1) that “the proposed residence, as conditioned, will not have an adverse impact upon the view, light, air and privacy of other properties in the vicinity because the location of the proposed two-story structure does not adversely impair views of those surrounding properties within the Hillside Overlay District;” (2) that “the proposed residence, as conditioned, has been located, planned and designed so as to cause the least intrusion on the views, light, air, and privacy of other properties in the vicinity because the proposed residence complies with the development standards of the R-1 zone, provides a slightly lower profile, and eliminates portions of the existing gabled roof which reduces bulk and massing and opens up view corridors;” (3) that “the design provides an orderly and attractive development in harmony with other properties in the vicinity because the proposed exterior design elements are in keeping with the architecture and finishes of other recently developed properties;” (4) that “the design will not have a harmful impact upon the land values and investment of other properties in the vicinity because the exterior will be treated with high-quality finishes equal to those of surrounding residences;” (5) that “granting such application would not be materially detrimental to the public welfare and to other properties in the vicinity because a single-family residence is an appropriate use for this property and is in compliance with the R-1 Zone and the Hillside Overlay District;” (6) that “the proposed additions would not cause or result in an adverse cumulative impact on other properties in the vicinity because the proposed additions will incorporate high quality building materials and concepts, have a lower height and roof profile, and eliminates portions of the existing gabled roof;” (7) that “it is not feasible to increase the size of or rearrange the space within the existing building or structure for the purposes intended except by increasing the height in order to preserve the rear yard outdoor recreation space;” (8) that “denial of this request to increase the height would constitute an unreasonable hardship because the proposed residence, as conditioned, does not appear to have an adverse impact on view, light, air and privacy of the surrounding properties and the existing residence is already two stories;” and (9) that “granting this application will not be materially detrimental to the public welfare and to other properties in the vicinity because the project, as conditioned, complies with the development standards for the R-1 Zone.” *Ibid.*

D. Analysis

1. Fairness of Hearing

The Youngherns contend that they did not receive a fair hearing from the City Council. They argue that the City Council was obligated to address the Planning Commission’s findings on a point-by-point basis, and failed to do so in any meaningful fashion. Instead, the City Council wrongly focused on the neighbors’ “hatchet job” in cutting down the trees that impeded their own view, which could not be relevant because it occurred after the Planning Commission

decision. The City Council also “may have” relied on evidence outside the record because the members went to the homes and looked at the views.

This claim is spurious. The City Council clearly conducted a full hearing, which lasted several hours. The Youngherns were not denied any opportunity to present evidence and argue their position. There is no evidence indicating that the City Council made its decision based upon evidence outside the record. A number of council members visited the site. This was perfectly permissible and those council members stated their impressions of what they saw just like any of the other witnesses who appeared. The City’s Mayor also stated that he would like to have taken pictures, but knew that they would have to be submitted as evidence. AR 930. This, too, was perfectly appropriate.

The Youngherns contention that the City Council was obligated to evaluate the findings of the Planning Commission on a point-by-point basis is completely wrong. Pursuant to the City Council Rule of Order 7.7 (AR 1092), appeals from decisions by the Planning Commission are heard *de novo*. This means that the Planning Commission’s recommendation is technically irrelevant. The City Council is free to address it or not as it chooses. The only thing that matters is the City Council’s final decision and whether that decision (and no other) is supported by substantial evidence.

Nor was the hearing “tainted” by the neighbors’ tree trimming. There is no question but that effort falls into the category of “dirty tricks.” As such, it was relevant to the appeal for two reasons. First, it relates to the credibility of the neighbors (whether or not including the Youngherns) who complained that their views were impeded. The action was an effort to manufacture a view issue that previously did not exist. This fact was expressly noted by one council member as well as the mayor. AR 926, 930. Second, it impacts the evidentiary value of any photographs reflecting view that were taken after the tree trimming. Again, this fact was noted by a council member. Petitioners have not shown that the City Council’s consideration of this relevant evidence in any way affected its impartial decision-making.

The appeal hearing was fair.

2. City Council’s Findings

Petitioners contend that the City abused its discretion in approving the development in that the decision is not supported by findings (c), (d), (e), and (j),² and there is no substantial evidence for those findings

The pertinent findings are as follows: (c) that the proposed residence, as conditioned, will not have an adverse impact upon the view, light, air and privacy of other properties in the vicinity because the location of the proposed two-story structure does not adversely impair views of those surrounding properties within the Hillside Overlay District;” (d) “that the proposed residence, as conditioned, has been located, planned and designed so as to cause the least intrusion on the views, light, air, and privacy of other properties in the vicinity because the proposed residence complies with the development standards of the R-1 Zone, provides a

²In reply, Petitioners claim that they are challenging other findings in the Resolution. Their opening brief did not address findings (a), (b), (f), (g), (h), (i), (j) or (k), and any argument concerning them has been waived.

slightly lower profile, and eliminates portions of the existing gabled roof which reduces bulk and massing and opens up corridors;" (e): "that the design provides an orderly and attractive development in harmony with other properties in the vicinity because the proposed exterior design elements are in keeping with the architecture and finishes of other recently developed properties;" and (j) "that denial of this request to increase the height would constitute an unreasonable hardship because the proposed residence, as conditioned, does not appear to have an adverse impact on view, light, air and privacy of the surrounding properties and the existing residence is already two stories."

An agency's quasi-judicial land use decision is subject to the Topanga rule. See City of Rancho Palos Verdes v. City Council, (1976) 59 Cal.App.3d 869, 885. The City Council's Resolution must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, 11 Cal.3d at 15. Less formality is required for the findings in land use cases, which are sufficient if they inform the parties and the court whether the decision is based on lawful principles. Id. at 514-16. A transcript of taped oral remarks by the decision-maker at a public hearing when rendering a decision can be considered. City of Carmel-by-the-Sea, *supra*, 71 Cal.App.3d at 92. Moreover, a city council need not make express findings of its own in reach a decision, and may incorporate by reference a staff report as its implied findings on the matter. McMillan v. American General Financial Corp., (1976) 60 Cal.App.3d 175, 183-85. Also, the adoption of a subordinate entity's findings may obviate the need for separate findings from the reviewing agency. Carmel Valley View, Ltd. v. Board of Supervisors, (1976) 58 Cal.App.3d 817, 823. However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. Glendale Memorial Hospital & Health Center v. State Dept of Mental health, (2001) 91 Cal.App.4th 129; City of Carmel-by-the-Sea v. Board of Supervisors, (1977) 71 Cal.App.3d 84, 91.

In making their argument, Petitioners mistakenly claim that the Hillside Ordinance precludes development if the project will have any affect on the view, light, air and privacy of neighboring properties. In fact, the Ordinance precludes development only if it will have an "adverse impact" on these rights. What constitutes an adverse impact is a matter of interpretation, and the City Council is in the best position to interpret its own Ordinance. In seems plain that the City Council is interpreting "adverse impact" to mean a "substantial impact." This is the only reasonable interpretation; Petitioners' interpretation would effectively prohibit all development. Every development has some impact on the view, light, air and privacy of the properties around it.

Applying this "substantial impact" test, the Youngherns first argue that finding (c) – that the project does not substantially impact neighbors' views because its location does not adversely impair views – is ambiguous.

They are correct. More accurately, the finding is a *non sequitur*. It does not necessarily follow from the fact that the project will not substantially impact views that it will not also substantially impact light, air and privacy. While the City points to considerable evidence on this issue, including the project's lower height, its silhouette, and the staff report, and this evidence may well support a conclusion on air, light, and privacy, it is not in the City Council's findings. The court cannot speculate why the City Council believes that air, light, and privacy are not substantially impacted; it must fill this analytical gap. This issue is particularly important

because privacy was the Youngherns principal reason for opposing the project.

As for whether there was substantial evidence to support a conclusion of no substantial impact on view, air, light, and privacy, there is abundant evidence that the project would not substantially impact any neighbor's view. Its height is lower than the existing structure and its silhouette is low. The Council members who visited the site all believed that there was no substantial impact on view, and the staff and Guzman powerpoints showed the same. Whether the project also would not substantially impact their air, light, and privacy is for the City Council to decide in the first instance. There is a clear relationship between view and air and light which suggests that they, too, will not be substantially impacted, but privacy is a separate issue not fully encompassed in issues concerning view. ✓

The Youngherns argue that finding (j) – that denial of a request to increase height would constitute an unreasonable hardship because the proposed residence does not appear to have an adverse impact on view, light, air and privacy and the existing structure is two stories – is impermissibly uncertain in using the language “it does not appear.”

While finding (j) does not use the best language, when the Resolution is evaluated as a whole the finding is supported by the more definite language in other findings concerning the same impacts. For example, finding (c) states unequivocally that view, light, air and privacy will not be adversely impacted by the project. Given this definite language, nothing in finding (j)'s uncertain language, by itself, would require remand.³

The Youngherns contend that finding (d) – that the project has been designed to cause the least intrusion on the views, light, air and privacy – is not supported. because nothing in the record supports a conclusion that these impacts could not be further reduced.

The short answer to this argument is that if the impacts on view, light, air and privacy are not substantial, then there is nothing to reduce. The Ordinance cannot be interpreted to require reduction of impacts below the substantial or minimal level. The Resolution cites to the project's silhouette, the elimination of portions of the existing gabled roof, and compliance with the development standards of the R-1 zone. By itself, this may not be enough to support the finding. However, if finding (c) is supported, then there are no substantial impacts from the project and this finding would be supported as well.

Finally, the Youngherns contend that finding (e) – that the design provides a development in harmony with other properties in the area because of the architecture and finishes of other recently developed property – is not supported because there is no evidence of the design of other properties.⁴

As the City points out, the proposed design is articulated in the record. AR 1, 822. The staff report and photographs in the record of other properties in the neighborhood provide substantial evidence that the Guzman design is in harmony with those other properties. argue that there may or may not be substantial evidence in the record to support the City's

³Since the matter must be remanded for the City Council to reconsider finding (c), it may wish to clean up the language in finding (j).

⁴The Youngherns also complain that the appeal hearing was not held on a timely basis, but failed to raise that issue at the hearing and it has been waived.

findings in this case.

The Petition for writ of mandate is granted in limited part. A writ will issue directing the City Council to reconsider its decision on the impacts of air, light, and privacy and, if it upholds Guzman's appeal, issue a new decision in which findings (c) and (d) are set forth in a manner sufficient to bridge the analytical gap between the raw evidence and the ultimate decision.

The City's counsel is ordered to prepare a proposed judgment and writ, serve them on all other counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for March 3, 2009.

May 13, 2008

**MINUTES OF AN ADJOURNED REGULAR
MEETING OF THE TORRANCE CITY COUNCIL**

1. CALL TO ORDER

The Torrance City Council convened in an adjourned regular session at 5:01 p.m. on Tuesday, May 13, 2008 in the City Council Chambers at Torrance City Hall.

ROLL CALL

Present: Councilmembers Barnett, Brewer, Drevno, Nowatka, Sutherland, Witkowsky, and Mayor Scotto.

Absent: None.

Also Present: City Manager Jackson, City Attorney Fellows, City Clerk Herbers, and other staff representatives.

Agenda Item 15A was considered out of order at this time.

15A. RESUMPTION OF HEARING ON STATUS OF PETITIONER'S REVIVED INTEREST IN EMPLOYMENT

Recommendation

Recommendation of the **City Manager** that City Council resume its hearing held on September 27, 2007 in order to comply with the writ of mandate issued by the Los Angeles Superior Court ordering the City to hold a hearing regarding the extent to which Petitioner, a former Torrance police officer, has a revived interest in employment. Specifically, the City Manager recommends:

- 1) That the City Council conduct a hearing to consider the findings of fact and conclusions as contained in the Police Department's background report;
- 2) That the Petitioner and the Department have the opportunity to argue their respective positions regarding the findings of fact and conclusions of the Police Department's background investigation to determine if the report represents legal cause to deny the Petitioner's reinstatement; and
- 3) That after considering the findings of fact and conclusions and arguments by both parties, the City Council makes a determination of the Petitioner's revived interest in employment, or to continue the matter for further consideration of additional evidence.

At 5:02 p.m., the City Council recessed to closed session to conduct the hearing.

At 6:08 p.m., the City Council returned to the Chambers where Mr. Wohlenberg, Counsel for the City announced that after consideration of the evidence, the arguments of the parties, and the briefs submitted, the City Council exercised Option number 1 as given in the staff report; has adopted the findings and recommendations contained in the Police Department's report and found that the City does, in fact, have legal cause for not reinstating the petitioner to employment and that the vote was unanimous.

City Council
May 13, 2008

RESOLUTION NO. 2008-64

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE ADOPTING REVISIONS TO THE SECOND YEAR OF THE TWO-YEAR OPERATING BUDGET PLAN; AND ESTABLISHING THE ANNUAL APPROPRIATION FOR THE 2008-09 FISCAL YEAR

MOTION: Councilmember Brewer moved for the adoption of Resolution No. 2008-64. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

RESOLUTION NO. 2008-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE ESTABLISHING THE ANNUAL APPROPRIATION FOR THE THIRD YEAR (2008-09) OF THE CITY'S 2006-11 CAPITAL BUDGET

MOTION: Councilmember Brewer moved for the adoption of Resolution No. 2008-65. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

13B. ORDINANCE AMENDING SPEED LIMITS**Recommendation**

Recommendation of the **Community Development Director** and the **Police Chief** that City Council adopt an Ordinance amending Article 10 (Speed Limits) of the Torrance Municipal Code (TMC) Sections 61.10.1, 61.10.2, 61.10.3, 61.10.4, and 61.10.5 modifying speed limits on certain streets in the City of Torrance. (*Supplemental material*)

The public hearing was opened and continued to May 20, 2008.

13C. PRE07-00030: 602 PASEO DE LA PLAYA – MICHAEL GUZMAN**Recommendation**

Recommendation of the **Planning Commission** that City Council deny the appeal and adopt a Resolution denying a Precise Plan of Development to allow first and second story additions to an existing two-story single family residence on property located within the Hillside Overlay District, in the R-1 Zone at 602 Paseo de la Playa.

Recommendation of the **Community Development Director** that City Council uphold the appeal and adopt a Resolution approving a Precise Plan of Development to allow first and second story additions to an existing two-story single family residence on property located within the Hillside Overlay District, in the R-1 Zone at 602 Paseo de la Playa.

PRE07-00030: JAMES MEYER (MICHAEL GUZMAN)

Mayor Scotto announced that this was the time and place for a public hearing on this matter. City Clerk Herbers confirmed that the hearing was properly advertised.

With the aid of slides, Planning Manager Lodan briefly described the proposed project, noting that it incorporates recycled and energy efficient materials, as well as environmentally friendly building concepts, including solar panels and a green roof. He shared photographs taken from various vantage points in the neighborhood and reported that the Planning Commission denied the project by a vote of 6-1.

Michael Guzman, 602 Paseo de la Playa, applicant, stated that he grew up in the Riviera area and would like to raise his family there and specifically purchased this property because the large lot and existing second story make it possible to expand without impacting neighbors. With the aid of slides, he detailed revisions made to the project to address concerns about view and privacy impact since the initial Planning Commission hearing in August 2007.

Referring to photographs to illustrate, Mr. Guzman reported that his neighbor at 606 Paseo de la Playa, with whom he is involved in a property line dispute, cut down trees on his property without his permission on April 8 opening up a view corridor that never existed since the inception of this project.

Mr. Guzman explained that the "green roof" is simply an environmentally friendly roofing system and contrary to neighbors' claims, it cannot be converted into a deck, garden or putting green without City approval. He disputed claims that the project was out of character with the neighborhood, noting that there are a variety of architectural styles in this area and a house with a similar contemporary design is currently under construction at 504 Paseo de la Playa. With regard to concerns about "mansionsization," he pointed out that the Hillside Ordinance restricts the floor area ratio (FAR) to address this issue and the proposed project complies with this limit.

Councilmember Witkowsky asked about staff's position on the trimming of the trees and whether the view corridor that it opened up is an "acquired view."

Community Development Director Gibson advised that the Hillside Ordinance does not address the impact of trees or the issue of acquired view and it is up to the Council to weigh all the evidence and determine whether or not a project complies with the ordinance.

In response to Councilmember Brewer's inquiry, Mr. Guzman confirmed that he made an effort to discuss the project with neighbors at the beginning to the process.

In response to Mayor Scotto's inquiry, Mr. Guzman reported that no one has ever asked him to trim the trees on his property since he purchased it in January 2007 and neighbors to the rear actually asked that the lush growth be maintained to preserve their privacy.

Diane Miltimore, 621 Camino de Encanto, submitted photographs taken from inside her residence showing the restoration of view since the trimming of the trees. She urged denial of the project, citing the Planning Commission's 6-1 vote for denial; the applicant's failure to discuss the project with neighbors before the design process; and the cumulative effect on views.

Roberta Blowers, 621 Camino de Encanto, contended that the trees that were trimmed are on Mr. Kadlick's property (606 Paseo de la Playa), submitting photographs

showing a survey mark to illustrate and a copy of a receipt for the work. She explained that the trimming was paid for by a group of neighbors; that the work was done by Mr. Guzman's longtime gardener; and that the trimming restored the view she had when she purchased the property in 2002. She stated that there is widespread opposition to the project, as evidenced by the petition submitted, which is indicative of the impact it would have. She reported that her ocean view would be impacted from the living room, dining room and master bedroom, therefore, the project should be denied because this is a violation of the Hillside Ordinance.

Councilmember Brewer stated that he visited Mr. Guzman's property and clearly saw a tree on his side of the fence that had been topped, not trimmed.

Mayor Scotto related his understanding that the survey mark shown in the photograph represents Mr. Guzman's rear property line, not the side property line.

Councilmember Sutherland pointed out a discrepancy in the copy of the receipt concerning the date when the work was done. Dr. Blower explained that the gardener, who is also her gardener, wrote out the receipt yesterday and put down the wrong date.

Daniel Meyer, 132 Via la Circula, urged approval of the project, stating that Mr. Guzman has made every effort to reach out to his neighbors and has made numerous concessions to try to address their concerns.

Tim Youngern, 536 Paseo de la Playa, voiced objections to the project. He contended that second floor windows and the oversized deck would intrude on his privacy; that noise from the deck would seep through skylights and echo throughout his home; and that the deck would set a precedent and encourage the building of other large rooftop decks. He maintained that the proposed project was out of character with the neighborhood in both size and its boxy modern design; expressed disappointment that staff recommended approval of the project rather than supporting the Planning Commission's decision; and called for the strict enforcement of the Hillside Ordinance.

Nancy Valentine, 638 Paseo de la Playa, related her experience that the Guzmans are a wonderful family and considerate neighbors and stated that she has been saddened by the hostility shown to them and the lynch-mob mentality. She urged the Council to approve the project.

Athena Concialdi, 606 Paseo de la Playa, reported that Mr. Kadlick trimmed the trees because they were interfering with his telephone service and he needs access to 911 because of a medical condition. She voiced objections to the project, citing the impact on privacy and the loss of natural light, submitting photographs to illustrate. She expressed concerns that the project would cause a drastic reduction in the value of Mr. Kadlick's property.

In response to Councilmember Brewer's inquiry, Ms. Concialdi clarified that the tree trimming she was referring to, which was necessary to restore telephone service, took place several months ago and not the more recent trimming.

The Council recessed from 10:26 p.m. to 10:39 p.m.

Chuck Valentine, 638 Paseo de la Playa, expressed concerns about the toll this process has taken on a neighborhood that was known for its friendliness. He suggested that it was unrealistic to expect complete privacy in this urban setting and related his belief that the project would be a welcome addition to this neighborhood which has a diversity of architectural styles.

Martin Burke, 533 Paseo de la Playa, contended that the project was not designed to cause the least intrusion, as required by the Hillside Ordinance, because the extra space Mr. Guzman desires could be added on to the first level. Urging denial, he stated that it was obvious that the project would have an adverse impact on neighbors' views and that this view loss would cause a substantial reduction in their property values.

Sam Sandt, 614 Palos Verdes Boulevard, noted that the proposed project is located within the State designated Local Coastal Zone and expressed concerns that Torrance does not have an approved Local Coastal Zone Plan. He also expressed concerns about the ongoing problem of the blockage of views by trees and noted that tree-shaded homes require more energy to heat them.

Marjorie Hill, 539 Camino de Encanto, contended that the proposed two-story home violates the Hillside Ordinance and should be denied.

Robert Hill, 539 Camino de Encanto, noted that large multi-story residences across the street that Mr. Guzman has used to justify his project are on lots that are zoned R-3. He reported that Mr. Guzman failed to share his plans with him and other adjacent neighbors and suggested that some of the animosity could have been avoided if he had done so. He related his belief that Mr. Guzman had not exhausted all other options and had simply pared down the original proposal to comply with FAR limitations.

Vahik Gregorian, 625 Camino de Encanto, reported that Mr. Guzman did discuss plans to expand with him early in the process. He voiced objections to the project, stating that it would obstruct 30% of his white water view and decrease the value of his property. He explained that he plans to add a window in his kitchen to take advantage of the view, which would also be impacted by the project.

Referring to a photograph in staff's slide presentation taken from Mr. Gregorian's backyard, Mayor Scotto pointed out that he had no white water view until the trees were trimmed and suggested that any view gained from the new kitchen window would be an acquired view and therefore not entitled to the same degree of protection.

Armando Montoya, 526 Palos Verdes Boulevard, stated that he was opposed to any project that would lessen the value of anyone's property.

Molly Gregorian, 625 Camino de Encanto, voiced her opinion that the project was not in harmony with the neighborhood and would decrease the value of her property, which was purchased two years ago specifically for the view. She reported that there was a white water view at that time because the trees were smaller.

Jim Delurgio, 209 Via El Toro, expressed support for the project, noting that it complies with all requirements of the Hillside Ordinance and Mr. Guzman has made every effort to address the valid concerns of neighbors. He explained that he was

initially put off by the project's contemporary design but subsequently noticed that there are similar homes in the neighborhood. He reported that the president of Riviera Homeowners Association has written a newsletter grossly misstating the requirements of the Hillside Ordinance and maintained that the vague ordinance and conduct surrounding hearings was destroying the neighborhood. He voiced his opinion that the illegal trimming of tress on the applicant's property to enhance opponents' position should not be tolerated.

Ruth Vogel, 114 Via la Soledad, stated that she is not directly impacted by the project but was present to support the Hillside Ordinance, noting that the ordinance does not address the issue of acquired views. She related her understanding that the trees that were trimmed are on Mr. Kadlick's property and reported that there is growing support for a tree ordinance. She indicated that her primary objection to the proposed project was the expansion of the existing second story, which was built prior to the enactment of the Hillside Ordinance and would not be approved today, and the precedent this would set.

Richard Maddox, 627 Camino de Encanto, urged the Council to uphold the Planning Commission's denial of the project, stressing the need for strict adherence to the Hillside Ordinance to preserve the unique character of the Riviera area.

Pamela Maran, 5501 Via del Valle, contended that original views should be protected whether or not trees have grown to block them. She maintained that the Planning Commission's denial of the project should stand, because Mr. Guzman had offered no evidence to rebut the commission's finding that it did not comply with the Hillside Ordinance. She voiced her opinion that the project's modern design was not compatible with the neighborhood.

Bob Hoffman, 109 Via Sevilla, expressed concerns that the Hillside Ordinance was being abused by a group of activists and voiced his opinion that homeowners associations should not take positions on individual projects. He related his experience that the approval process can cause great rifts among neighbors and stressed the need to find a way to promote better communication in the early stages to avoid confrontational hearings. With regard to the issue of harmony, he noted that the original tract homes in this neighborhood have evolved into a variety of architectural styles, which he believes is part of the beauty of the area.

Returning to the podium, Mr. Guzman wanted to clarify that he did make an effort to discuss the project with adjacent neighbors. He explained that Mr. Kadlick was in favor of the project until the property line dispute arose and his attempts to discuss the project with the Youngerns ended when he received a letter from their attorney directing him not to approach them about the project. He further explained that he did not contact the two neighbors directly behind him on Camino de Encanto because they are not impacted by the project. He voiced objections to the trimming of trees by neighbors who did not have the legal authority to do so.

Asked about the sequence of events, Mr. Guzman reported that he delivered a set of plans to the Youngerns in May 2007; that attempts to meet with them were rebuffed and he subsequently received the letter from their attorney; and that he first learned of their concerns in a hostile letter sent to the Community Development Department shortly before the original hearing in August 2007. He reported that he also

wrote letters to everyone who spoke at the hearing, inviting them to discuss their concerns, and no one responded except for Ruth Vogel, who was unable to meet with him.

MOTION: Councilmember Witkowsky moved to close the public hearing. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

Councilmember Witkowsky voiced support for the project, stating that she did not observe a significant impact on neighbors and thought the applicant had done a good job of redesigning it. She noted that there is only a slight change to the footprint of the existing home and that there is a dense hedge along the back of the property that makes it impossible to see the homes to the rear on Camino de Encanto, which are at a higher elevation.

Councilmember Barnett expressed concerns about the trimming of the trees, which clearly were blocking views as evidenced by the staff photograph, and about the animosity this project has created among neighbors.

Councilmember Sutherland stated that he was inclined to deny the project because even though he was disappointed by the actions of neighbors, now that the view is there he felt it must be protected. He pointed out that Mr. Guzman, as a longtime resident, should be well aware of the Hillside Ordinance and the challenges involved in remodeling a residence.

Councilmember Brewer noted that that this project has gone through three iterations with almost no input from neighbors despite Mr. Guzman's offers to meet with them, as evidenced by letters in the record, and related his belief that it could have been a much different project if neighbors had been more receptive to his efforts.

Councilmember Drevno reported that she observed a whitewater view that she initially thought should be protected, however she was disturbed that a group of neighbors conspired to hire Mr. Guzman's gardener to chop off the trees.

Mayor Scotto commented on his experience in judging view impact, noting that he lives in the Hillside Overlay area and has participated in numerous hearings during his years on the Council. He explained that it was impossible to eliminate the subjectivity in the Hillside Ordinance because the importance of a particular view and the degree to which it is impacted is open to debate. He expressed disappointment about the rift this project has caused in the neighborhood. He suggested that if trees on someone else's property were obstructing his view, he would offer to pay to have them trimmed, therefore, he questioned how important the white water view really is when neighbors never did anything to reclaim it until after Mr. Guzman proposed this project. He related his experience that the Hillside Ordinance has worked very well over the years and is the best ordinance of its kind.

Councilmember Brewer voiced support for the project, relating his belief that Mr. Guzman had acted in good faith to address the concerns of neighbors. With regard to concerns about mansionization, he noted that the project complies with FAR restrictions and setback requirements put in place to address this issue.

MOTION: Councilmember Witkowsky moved to approve the appeal and approve the project. The motion was seconded by Councilmember Brewer and passed by a 6-1 roll call vote, with Councilmember Sutherland dissenting.

Resolution of approval to be adopted at a later date.

15. **OTHER**

15A. **RESUMPTION OF HEARING ON STATUS OF PETITIONER'S REVIVED INTEREST IN EMPLOYMENT**

Considered earlier in the meeting, see page 1.

The City Council reconvened as the Redevelopment Agency from 11:56 p.m. to 11:57 p.m.

17. **ORAL COMMUNICATIONS #2**

17A. Councilmember Witkowsky announced Annie Banani's balloon reading adventures at the Civic Center Library on Friday, May 30, at 4:00 p.m.

17B. Councilmember Drevno announced a reading assistance program for children ages 6-11 at the Katy Geissert Civic Center Library on Friday, May 22, from 4:00 – 6:00 p.m.

17C. Mayor Scotto announced City of Torrance "Dodger Day" on June 29 and asked that staff look into the possibility of providing bus transportation for a nominal fee.

18. **EXECUTIVE SESSION**

At 11:59 p.m., the City Council recessed to closed session to confer with the City Manager and the City Attorney on agenda matters listed under 18A) Real Property – Conference with Real Property Negotiator, pursuant to California Government Code §54956.8.

The Council reconvened in open session at 12:21 a.m. No formal action was taken on any matter considered in closed session.

19. **ADJOURNMENT**

At 12:21 a.m., the meeting was adjourned to Tuesday, May 20, 2008 at 5:30 p.m. for an executive session, with the regular meeting commencing at 7:00 p.m. in the Council Chambers.

Attest: /s/ Frank Scotto
Mayor of the City of Torrance

/s/ Sue Herbers
Sue Herbers,
City Clerk of the City of Torrance

Approved on August 5, 2008

Sue Sweet
Recording Secretary

City Council
May 13, 2008