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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 TAXPAYERS FOR RESPONSIBLE LAND )  
14 USE, et al., )

15 Plaintiffs and Petitioners, )

16 v. )

17 CITY OF SAN DIEGO, et al., )

18 Defendants and Respondents. )

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HILLEL OF SAN DIEGO, et al., )

20 Real Parties-in-Interest. )

Case No. GIC867378

**POINTS AND AUTHORITIES IN SUPPORT  
OF PETITION FOR WRITS OF MANDATE  
(CCP §§ 1094.5 & 1085)**

ASSIGNED FOR ALL PURPOSES TO:  
*Hon. Linda B. Quinn*

Date: March 1, 2007

Time: 1:30 PM

Dept: 74

Action filed: June 12, 2006

TABLE OF CONTENTS

1

2 I. INTRODUCTION ..... 1

3 II. STATEMENT OF FACTS ..... 1

4 III. THE CITY'S SALE OF SITE 653 VIOLATED MANDATORY

5 PROCEDURES AND SHOULD BE DECLARED VOID ..... 3

6 A. The City Violated the San Diego Municipal Code ..... 3

7 B. The Council Violated Its Mandatory Policies ..... 5

8 III. THE PROJECT APPROVALS SHOULD BE VACATED UNDER CCP § 1094.5 ..... 6

9 A. Standard of Review under CCP § 1094.5 ..... 6

10 B. The City Prejudicially Abused Its Discretion by

11 Vacating the Public Right-of-Way ..... 8

12 1. The City's findings are inadequate under the *Topanga* case. .... 8

13 2. The City's findings are not supported by substantial evidence. .... 9

14 a. *The City's finding that the right-of-way vacation*

15 *will not adversely affect a land use plan is not*

16 *supported by substantial evidence.* ..... 9

17 b. *The City's finding that there is no present or prospective*

18 *use for the vacated right-of-way is not*

19 *supported by substantial evidence.* ..... 10

20 c. *The City's finding that the vacation will not detrimentally*

21 *affect the public facility for which the right-of-way was*

22 *acquired is not supported by substantial evidence.* ..... 10

23 3. The Council Failed to Make a Required Finding. .... 11

24 C. The City Prejudicially Abused Its Discretion by

25 Granting Hillel's Development Permits ..... 11

26 1. The City Abused Its Discretion in Finding that

27 Phase I Complied with the Land Development Code's

28 Zoning Requirements. .... 12

2. The City Abused Its Discretion in Finding that Phase I

Complied with the Land Development Code's Parking

Requirements. .... 13

3. The City Abused Its Discretion in Finding that Phase

II Complies with the Land Development Code. .... 13

V. CONCLUSION ..... 14

**TABLE OF AUTHORITIES**

**CASES**

*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320 ..... 7

*Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96 ..... 3

*Stationary Engineers Local 39 v. County of Sacramento* (1997) 59 Cal.App.4th 1177 ..... 3

*Topanga Association. for a Scenic Community v. County of L.A.* (1974) 11 Cal.3d 506 ..... 7, 8, 9

**STATUTES AND REGULATIONS**

Code of Civil Procedure

Section 1085 ..... 1, 3,

Section 1094.5 ..... 1, 6, 7

San Diego Municipal Code

Section 22.0101.5 ..... 6

Section 22.0902 ..... 4, 5

Section 103.0304 ..... 12

Section 113.0103 ..... 11

Section 113.0104 ..... 12

Section 125.0941 ..... 8-11

Section 126.0504 ..... 12

Section 126.0604 ..... 12

Section 142.0530 ..... 12

Section 142.0545 ..... 14

1  
2  
3  
4  
5  
6  
7  
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## I. INTRODUCTION

On May 9, 2006, the Council ("Council") for the City of San Diego ("City") adopted a resolution authorizing the Mayor to execute a contract for the previously negotiated sale of City-owned property ("Site 653") to Hillel of San Diego ("Hillel"). Pursuant to Code of Civil Procedure ("CCP") § 1085, Taxpayers for Responsible Land Use and the La Jolla Shores Association ("Petitioners") seek a writ of mandamus vacating that resolution and all other acts by which the Council and/or City sold or may sell Site 653 to Hillel. The writ should issue because, in negotiating and authorizing the sale of Site 653, the City and Council violated procedures enjoined upon them by law.

Petitioners also seek writs of mandate under CCP § 1094.5 vacating the Council's adjudicative decisions to (i) vacate a portion of a public right-of-way adjacent to Site 653, and (ii) grant a Site Development Permit/Planned Development Permit authorizing Hillel to construct and operate a student center on Site 653 and to continue using a residence as administrative offices. The writs should issue because the challenged actions were adopted through prejudicial abuses of the City's discretion.

## II. STATEMENT OF FACTS

Site 653 is City-owned land located in a residential neighborhood of La Jolla, California. (1 AR: Ex.5 at 48.) The Site is bounded on the north by La Jolla Village Drive, on the east by La Jolla Scenic Way, and on the south by La Jolla Scenic Drive North. (*Id.*) La Jolla Scenic Drive North runs northwest from La Jolla Scenic Way toward its terminus at a cul-de-sac that allows pedestrian traffic, but not vehicular traffic, to access La Jolla Village Drive. (6 AR: Ex.59 at 2258 and 2299.)

On April 12, 2000, the City authorized the issuance of a request for proposal for the potential sale or lease of Site 653. (1 AR: Ex.5 at 48). Two proposals were submitted, including Hillel's proposal to construct and operate a Jewish student center on the Site. (*Id.*)

On November 20, 2000, the City Council adopted a resolution ("2000 Resolution") authorizing exclusive negotiations with Hillel for the *lease* of Site 653. The 2000 Resolution, in its entirety, states:

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized and empowered to enter into exclusive negotiations with Hillel of San Diego, for the ground lease of Site 653 at La Jolla Scenic Drive North. (19 AR: Ex.1032 at 7929.)

Though the 2000 Resolution authorized lease negotiations, the City and Hillel commenced

1 negotiations for the potential lease *or sale* of Site 653. (19 AR: Ex.1024 at 7891.) By April 18, 2006,  
2 the City and Hillel had negotiated final terms for the Site's sale. (10 AR: Ex.246 at 4033.) A Real Estate  
3 Purchase and Sales Agreement ("Agreement") was prepared, and the Council was requested to adopt a  
4 resolution authorizing the Mayor to execute the Agreement. (4 AR: Ex.39 at 1335.) The Council  
5 adopted the resolution ("Sale Resolution") at its May 9, 2006 hearing. (1 AR: Ex.5 at 49.)

6 While negotiating its acquisition of Site 653, Hillel simultaneously pursued the land use  
7 approvals necessary for a two-phased project ("Project").

8 The first phase ("Phase I") is Hillel's continued office use of the residence ("Residence") at 8976  
9 Cliffridge Avenue. (1 AR: Ex.3 at 15.) The Residence is located across the La Jolla Scenic Dr. North  
10 cul-de-sac from Site 653. (4 AR: Ex.41 at 1405.) Prior to June 16, 2003, Hillel had leased and illegally  
11 converted the Residence for use as an office. (18 AR: Ex.965 at 7733.) The City ordered Hillel to either  
12 obtain a permit for the office use or restore the property as a residence. (*Id.*) Hillel, consequently,  
13 sought a Site Development Permit allowing its continued office use. (1 AR: Ex.3 at 15.)

14 Phase II of the Project is the construction and operation of a 12,000 square-foot student center  
15 above a 17,000 square foot parking facility. (1 AR: Ex.3 at 16.)

16 To accommodate the student center's size, Hillel sought vacation of portions of a public street  
17 and right-of-way adjacent to Site 653. The vacation area encompasses portions of La Jolla Scenic Drive  
18 North - including the entire cul-de-sac between Site 653 and the Cliffridge Residence (4 AR: Ex.42 at  
19 1453.) The vacation area covers approximately 18,000 square feet and, when coupled with Site 653,  
20 increases the property to be acquired for Phase II to 33,518 square feet. (1 AR: Ex.3 at 20.)

21 Hillel further sought a Planned Development Permit ("PDP")/Site Development Permit ("SDP")  
22 for the construction and operation of its planned student center. (1 AR: Ex.3 at 15.)

23 Hillel's project, prior to Council review, was considered by multiple planning boards. They all  
24 recommended denial. (4 AR: Ex.42 at 1430-1431.) The La Jolla Shores Planned District Advisory  
25 Board recommended denial on January 18, 2005. (*Id.*) The La Jolla Community Planning Group  
26 recommended denial on February 3, 2005. (*Id.* at 1431.) And the City Planning Commission  
27 unanimously recommended denial. (4 AR: Ex.42 at 1430.)

28 The Project was then docketed for the Council's May 9, 2006 hearing. (4 AR: Ex.46 at 1649.)

1 Prior to the hearing, hundreds of community members expressed their opposition to the Project.  
2 The community's primary concerns were the Project's tremendous size and its consequent traffic,  
3 parking and safety impacts on the surrounding residential neighborhood. (6 AR: Ex.59 at 2253.)

4 The community further argued the Council could not lawfully approve the Project. The  
5 community specifically warned that the negotiated sale of Site 653 had never been authorized (9 AR:  
6 Ex.140 at 3679.); that under Council Policy 700-10 the Council could not approve the sale (6 AR: Ex.59  
7 at 2293); that none of the findings required for the proposed right-of-way vacation could be made (*Id.* at  
8 2376-2377); that the findings for the right-of-way vacation proposed by staff were inadequate (*Id.* at  
9 2392); that the findings required for the development permits could not be made (*Id.* at 2303) ; that the  
10 Project does not meet the Municipal Code's parking requirements (*Id.* at 2402); and that the Project is  
11 not a permitted use within the applicable zone (*Id.* at 2401).

12 Despite the community's overwhelming opposition, and in disregard of the Planning Groups'  
13 recommendations, the Council approved Hillel's Project at its May 9<sup>th</sup> hearing. (1 AR: Ex.1- Ex.4.)

14 **III. THE CITY'S SALE OF SITE 653 VIOLATED MANDATORY**  
15 **PROCEDURES AND SHOULD BE DECLARED VOID**

16 "It is settled principle that administrative agencies have only such powers as have been conferred  
17 on them, expressly or by implication, by constitution or statute." (*Ferdig v. State Personnel Board*  
18 (1969) 71 Cal.2d 96, 103 ("*Ferdig*").) Accordingly, "when an administrative agency acts in excess of, or  
19 in violation, of the powers conferred upon it, its action thus taken is void." (*Id.* at 104.)

20 Such acts are subject to review, and may be declared void, under CCP § 1085. (*Id.*; *See also*  
21 *Stationary Engineers Local 39 v. County of Sacramento* (1997) 59 Cal. App. 4<sup>th</sup> 1177, 1182.)

22 Here, as discussed below, the City's negotiated sale of Site 653 violated mandatory procedures  
23 prescribed by the Municipal Code and City Council Policies. The Court should accordingly order that,  
24 until the City and its Council comply with the procedures enjoined upon them, all acts by which the City  
25 has sold or may sell Site 653 are void.

26 **A. The City Violated the San Diego Municipal Code**

27 San Diego Municipal Code ("SDMC" or "Municipal Code") § 22.0902<sup>1</sup> establishes mandatory

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<sup>1</sup>All referenced municipal code sections and Council policies are lodged herewith.

1 procedures for the sale of City property. It states:

2 Except as otherwise provided in the City Charter, the Council shall sell the real  
3 property of the City in compliance with the requirements herein established. No  
4 real property belonging to the City shall be sold except in pursuance of a  
5 resolution passed by an affirmative vote of five members of the Council, which  
6 shall contain the following:

- 7 (a) The reason for selling such real property;  
8 ...  
9 (e) A statement that the property will be sold by negotiations or by public  
10 auction, or by sealed bids, providing, however, that in the event that such  
11 property is to be sold by negotiation, the reasons therefore shall be  
12 included in the resolution.

13 This section requires the Council to sell City property "in pursuance of" a resolution that, among  
14 other things, states the reason for the sale and identifies the process by which the property "will be sold."

15 For example, a sale of City property by public auction must be "in pursuance of" a prior  
16 resolution stating that the property "will be sold" by auction. Similarly, a sale by sealed bids must  
17 be "in pursuance of" a prior resolution stating that the property "will be sold" by sealed bids. The  
18 resolution, consequently, must precede the sale process.

19 It follows, logically and from the provision's plain meaning, that a sale by negotiation must be  
20 "in pursuance of" a resolution stating the property will be sold by negotiation, and that, as with sales by  
21 auction or sealed bids, the resolution must precede the sale process. This conclusion is supported by the  
22 additional provision, applicable solely to negotiated sales, that the required resolution must state the  
23 reasons the property is "to be sold by negotiation." Again, the required resolution must precede the  
24 identified process.

25 The City implicitly confirmed this requirement. In support of the May 9, 2006 resolution  
26 authorizing the Mayor to consummate the previously negotiated sale of Site 653, the City repeatedly  
27 argued that the 2000 Resolution authorized the negotiation process. (4 AR: Ex.39 at 1336.) Indeed, the  
28 2006 Sale Resolution itself asserts "...on November 20, 2000, the City Council authorized READ staff  
to enter into exclusive negotiations with Hillel of San Diego." (1 AR: Ex.5 at 48.) The City's reliance  
on the 2000 Resolution makes sense only in context of the interpretation, argued above, that the Council  
was required to have previously identified the negotiation process.

SDMC § 22.0902 therefore requires that, prior to the City negotiating a sale of its property, the

1 Council must adopt a resolution that identifies the negotiation process, states the reasons the property is  
2 to be sold by negotiation, and states the reasons for the sale.

3 In violation of the Code's plain meaning, however, the process by which the City sold Site 653  
4 was not preceded by the required resolution. Indeed, the only resolution that even addresses a negotiated  
5 sale was the 2006 Sale Resolution. That resolution, however, was adopted years after the City began  
6 negotiating with Hillel (19 AR: Ex.1024 at 7891), approximately one month after negotiations were  
7 complete (10 AR: Ex.246 at 4033), and at least six days after the Real Estate Purchase and Sales  
8 Agreement was drafted. (4 AR: Ex.39 at 1335.) The 2006 Sale Resolution was therefore adopted after  
9 the negotiated sale process was complete, and does not comply with SDMC § 22.0902.

10 The City has consequently argued the *2000 Resolution* authorized the negotiation process. (See 1  
11 AR 5 at 48). That resolution, however, speaks only to a negotiated *lease* of Site 653. (19 AR: Ex.1032  
12 at 7929.)

13 Thus, neither the 2000 Resolution nor the 2006 Sale Resolution satisfies the requirement that,  
14 prior to the City negotiating the sale of its property, the Council must adopt a resolution identifying the  
15 negotiation process.

16 Further, even assuming the 2000 Resolution or the 2006 Sale Resolution adequately identified  
17 the sale process, the resolutions would nevertheless be deficient because they omit statements, required  
18 under SDMC § 22.0902, concerning the reasons for the sale and the negotiation process. (19 AR:  
19 Ex.1032; 1 AR: Ex.5 )

20 The negotiated sale of Site 653 was therefore carried out in violation of the Municipal Code and  
21 in excess of the City's jurisdiction. The Court should declare that, until the City and Council comply  
22 with the procedures enjoined upon them by law, all acts by which the City has sold or may sell Site 653  
23 are void.

24 **B. The Council Violated Its Mandatory Policies**

25 The Council's authority to sell City real property is further limited by the procedures enacted in  
26 the Council Policy Manual.

27 "Regulatory policies established by the City Council usually are adopted by ordinance and  
28 included in the Municipal Code. However, other policies also are established which by their nature do

1 not require adoption by ordinance.” (Council Policy 000-01.) These other regulatory policies generally  
2 concern “only such municipal matters for which the responsibility of decision is placed in the City  
3 Council ....” (*Id.*) They are enacted by Council resolution, must be reviewed by the City Attorney and  
4 are compiled in a Council Policy Manual. (*Id.*) Further, pursuant to Municipal Code § 22.0101.5, the  
5 procedures enacted in the Council Policy Manual “shall be continued in full force and effect.” (SDMC §  
6 22.0101.5, Rule 10.)

7 The Council Policies establish mandatory procedures. Relevant here, Policy 700-10 governs the  
8 disposition of City-owned real property and provides that “negotiated transactions” may be approved  
9 only under prescribed circumstances. (Council Policy 700-10, p.4.)

10 Of those circumstances, only one could justify Site 653's negotiated sale to Hillel. (*Id.*) It allows  
11 negotiated sales to qualified nonprofit institutional organizations, but only if “... there is 1) a  
12 development commitment, and 2) a right to repurchase or a reversion upon a condition subsequent.”  
13 (*Id.*) Further, for negotiated sales to nonprofit institutional organizations such as churches, the purchaser  
14 must “develop under the City conditional use permit procedure.” (*Id.*)

15 Here, contrary to Council Policy 700-10, the Council adopted the Sale Resolution without  
16 requiring that Hillel “develop under the City conditional use permit procedure.” Further, the Council  
17 failed to require “a right to repurchase or a reversion upon a condition subsequent.” (1 AR: Ex.5.)

18 The Council therefore exceeded its jurisdiction not only because it failed to comply with the  
19 Municipal Code, but also because it violated mandatory procedures enacted in Council Policy 700-10.

### 20 **III. THE PROJECT APPROVALS SHOULD BE** 21 **VACATED UNDER CCP § 1094.5**

22 The City should be ordered, through writs of administrative mandate, to rescind the adjudicative  
23 decisions by which it vacated portions of the public right-of-way adjacent to Site 653, granted Hillel's  
24 development permits, and approved Hillel's requested lot-line adjustment. As explained below, the City  
25 prejudicially abused its discretion in adopting each of these actions.

#### 26 **A. Standard of Review under CCP §1094.5**

27 CCP § 1094.5 “structures the procedure for judicial review of adjudicatory decisions rendered by  
28 administrative agencies.” (*Topanga Association for a Scenic Community v. County of Los Angeles*  
(1974) 11 Cal.3d 506, 514 (“*Topanga*”).) Such review extends “to the questions whether the respondent

1 has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was  
2 any prejudicial abuse of discretion.” (CCP § 1094.5(b).)

3 Abuse of discretion “is established if the respondent has not proceeded in the manner required by  
4 law, the order or decision is not supported by the findings, or the findings are not supported by the  
5 evidence.” (CCP § 1094.5(c).)

6 Implicit in these provisions “is a requirement that the agency which renders the challenged  
7 decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate  
8 decision or order.” (*Topanga, supra*, 11 Cal. 3d 507, 515.) This requirement “serves to conduce the  
9 administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the  
10 intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly  
11 leap from evidence to conclusions.” (*Id.* at 516.) Absent such findings, “if the court elects not to  
12 remand, its clumsy alternative is to read the record, speculate upon the portions which probably were  
13 believed by the board, guess at the conclusions drawn from the credited portions, construct a basis for  
14 decision, and try to determine whether a decision thus arrived at should be sustained.” (*Id.* at n.15).  
15 Findings, accordingly, may not merely recite “the language of the applicable legislation.” (*Id.* at note  
16 16.) Rather, they “must be sufficient both to enable the parties to determine whether and on what basis  
17 they should seek review and, in the event of review, to apprise a reviewing court of the basis of the  
18 board’s action.” (*Id.* at 514.)

19 If the findings are sufficiently detailed to satisfy *Topanga*, courts then determine whether they  
20 “are supported by the evidence.” (CCP § 1094.5; *see Dore v. County of Venture* (1994) 23 Cal.App.4th  
21 320, 327-330 (“*Dore*”).) Except in particular cases where courts independently review the evidence,  
22 findings need only be supported by “substantial evidence in light of the whole record.” (CCP §  
23 1094.5(c).) “Substantial evidence” means “enough relevant information and reasonable inferences from  
24 this information that a fair argument can be made to support a conclusion, even though other conclusions  
25 might also be reached.” (*Dore, supra*, 23 Cal.App.4th at 330).

26 In determining whether findings support the agency’s decision or are supported by substantial  
27 evidence, “the reviewing court must resolve reasonable doubts in favor of the administrative findings  
28 and decision.” (*Topanga, supra*, 11 Cal. 3d 506, 514).

1 **B. The City Prejudicially Abused Its Discretion by Vacating the Public Right-of-Way**

2 The Council abused its discretion in approving Hillel's requested street and right-of-way vacation  
3 because: (1) its findings are inadequate under *Topanga*, (2) its findings are not supported by the  
4 evidence; and (3) it failed to make a required finding.

5 **1. The City's findings are inadequate under the *Topanga* case.**

6 SDMC § 125.0941 establishes findings the City must make to vacate public rights-of-way. It  
7 states:

8 *A public right-of-way may be vacated only if the decision maker makes the*  
9 *following findings:*

- 10 (a) There is no present or prospective public use for the *public right-of-way*,  
11 either for the facility for which it was originally acquired or for any other  
12 public use of a like nature that can be anticipated;
- 13 (b) The public will benefit from the action through improved use of the land  
14 made available by the vacation;
- 15 (c) The vacation does not adversely affect any applicable *land use plan*; and
- 16 (d) The public facility for which the public right-of-way was originally  
17 acquired will not be detrimentally affected by the vacation. (SDMC §  
18 125.0941 ).

19 The City's resolution essentially recites these findings. It states:

20 WHEREAS, the City Council finds that:

- 21 (a) there is no present or prospective use for the public street system for which  
22 the right-of-way was originally acquired, or for any other public use of a  
23 like nature that can be anticipated in that the right-of-way is not needed for  
24 public street, bikeway, or open-space purposes; and
- 25 (b) the public will benefit from the vacation through improved utilization of  
26 land; and
- 27 (c) the vacation is consistent with the General Plan or an approved  
28 Community Plan; and
- (d) the public street system for which the right-of-way was originally acquired  
will not be detrimentally affected by this vacation; (1 AR 40-41).

These "findings" violate each of the requirements, and their purposes, articulated by the Supreme  
Court in *Topanga*. They do not apprise the court and the parties of the basis of the Council's action, but  
merely recite applicable language of the Municipal Code. (See *Topanga, supra*, 11 Cal. 3d at 514 and  
n.16.) They do not "facilitate orderly analysis" of the City's decision, but instead suggest the City

1 “randomly ... [leapt] from evidence to conclusions.” (*Id.* at 516). They do not “bridge the analytic gap”  
2 between evidence and the City’s ultimate conclusion. (*Id.* at 515.)

3 As a result, judicial review of the City’s decision would require the Court to read the record,  
4 speculate upon the portions which probably were believed by the Council, guess at the conclusions  
5 drawn from the credited portions, construct a basis for decision, and try to determine whether a decision  
6 thus arrived at should be sustained. (*Id.* at n.15).

7 *Topanga*, however, recognizes that the Court need not engage this “clumsy” process. It holds  
8 findings like those offered by the City are inadequate as a matter of law.

9 The City’s decision therefore is not supported by the findings and constitutes a prejudicial abuse  
10 of discretion. The Court should grant the Petition and order the City to rescind its resolution.

11 **2. The City’s findings are not supported by substantial evidence.**

12 If the Court pursues the “clumsy” avenue of review left open to it by the City, the writ should  
13 nevertheless issue because, as discussed below, the City’s findings are not supported by substantial  
14 evidence.

15 *a. The City’s finding that the right-of-way vacation will not adversely affect a land*  
16 *use plan is not supported by substantial evidence.*

17 SDMC § 125.0941(c) precludes the City from vacating a public right-of-way unless it finds the  
18 vacation “does not adversely affect any applicable land use plan.”

19 At least one commentator recognized this finding could not be made. She noted the vacation  
20 would eliminate a Class II Bike Lane required by the applicable land use plan. (8 AR: Ex.63 at 2977;  
21 *See also, Id.* at 2984.) Accordingly, in recommending denial of the Project, the La Shores Advisory  
22 Board expressed concern about the bike lane’s loss and determined the findings for the street vacation  
23 could not be made. (4 AR: Ex.42 at 1431.)

24 The City’s response to this concern admits that “Page 77 of the Community Plan identifies La  
25 Jolla Scenic Drive North between La Jolla Scenic Way and Cliffridge Avenue for a future Class II bike  
26 lane.” (4 AR: Ex.43 at 1511).

27 The City nevertheless ignored the vacation’s impact on the Class II Bike Lane and the  
28 Community Plan. It did so, remarkably, by arguing: “It seems showing this segment with a future Class  
II bike lane may be an error in the Community Plan ....” (*Id.*) Thus, instead of analyzing the vacation’s

1 undisputed impact on the legislatively enacted Community Plan, the City summarily dismissed the  
2 impact by concluding there “may be an error in the Community Plan.” On this unfounded and legally  
3 untenable argument, the Council determined: “the vacation is consistent with the General Plan or an  
4 approved Community Plan.” (1 AR: Ex.4 at 40.)

5 The Council’s finding, however, is not supported by substantial evidence. To the contrary, it  
6 directly contradicts evidence that the vacation is inconsistent with the Community Plan. The decision to  
7 vacate portions of the public street and right-of-way was therefore adopted through a prejudicial abuse of  
8 the City’s discretion.

9 ***b. The City’s finding that there is no present or prospective use for the vacated  
10 right-of-way is not supported by substantial evidence.***

11 SDMC § 125.0941(a) precludes the City from vacating a public right-of-way unless it finds:  
12 “There is no present or prospective public use for the *public right-of-way*, either for the facility for which  
13 it was originally acquired or for any other public use of a like nature that can be anticipated.”

14 Comments to the City recognized this finding cannot be made. (8 AR: Ex.63 at 2976-2977). The  
15 comments note that the vacated portions of the right-of-way were designated for use as a Class II Bike  
16 Lane. (*Id.*) This prospective use of the right-of-way was admitted by the City, and its existence is not  
17 contradicted by substantial evidence. (4 AR: Ex.43 at 1511.)

18 Additionally, vacated portions of the right-of-way are presently used for, among other things,  
19 public, on-street parking and public access to the corner of Torrey Pines Road and La Jolla Village  
20 Drive. (7 AR:Ex.60 at 2423). Indeed, in furtherance of the right-of-way’s present uses, the City recently  
21 completed extensive plans to upgrade a pedestrian sidewalk in the right-of-way to bring it into  
22 compliance with the Americans with Disabilities Act. (12 AR: Ex.540 at 5079). No evidence on the  
23 record, substantial or otherwise, contradicts the present use of the right-of-way for pedestrian traffic and  
24 parking. The City’s finding that “there is no present or prospective public use for the public right-of-  
25 way” is therefore not supported by the evidence.

26 ***c. The City’s finding that the vacation will not detrimentally affect the public  
27 facility for which the right-of-way was acquired is not supported by substantial  
28 evidence.***

SDMC § 125.0941(d) prohibits the City from vacating a public right-of-way unless it finds “[t]he  
public facility for which the *public right-of-way* was originally acquired will not be detrimentally

1 affected by the vacation.”

2 This finding cannot be made. According to Hillel, the public right-of-way was originally  
3 acquired to connect La Jolla Scenic Drive to La Jolla Village Drive. (14 AR: Ex.653 at 5825.) This  
4 potential public facility would be eliminated if, as proposed, the cul-de-sac at the terminus of La Jolla  
5 Scenic Drive North were vacated and used for Hillel’s project. Further, while Hillel argues the original  
6 purpose for the right-of-way has been abandoned, neither the findings nor evidence in the record support  
7 that conclusion. The City’s finding is therefore not supported by the evidence. Its decision to vacate the  
8 right-of-way should be rescinded as a prejudicial abuse of discretion.

9 **3. The Council Failed To Make a Required Finding.**

10 SDMC § 125.0941(c) precludes the City from vacating a public right-of-way unless it finds the  
11 vacation “does not adversely affect any applicable *land use plan*.” As defined by the Municipal Code,  
12 “*Land use plan*” means: “the Progress Guide and General Plan and adopted community plans, specific  
13 plans, precise plans, and subarea plans.” (SDMC § 113.0103.) The Code, accordingly, requires a  
14 finding that a right-of-way vacation does not adversely affect the General Plan *and* the applicable  
15 community plan.

16 Here, however, the City could not make this finding. It instead found: “the vacation is  
17 consistent with the General Plan or an approved Community Plan.” (Emphasis added.) (1 AR: Ex.4 at  
18 40-41.) Thus, through its use of the disjunctive “or,” the City chose not to find that the vacation is  
19 consistent with both the General Plan *and* the Community Plan. This choice rendered the finding  
20 inconsistent with the unambiguous requirements of the Municipal Code.

21 Further, because the finding is completely devoid of detail and supportive reasoning, the Council  
22 provides no basis other than the literal meaning of its words to ascertain its intent. Petitioners and the  
23 Court, consequently, can look only to the finding as it was actually and literally written. That finding, on  
24 its face, does not satisfy the requirements of the Municipal Code.

25 The City’s decision to vacate portions of the public right-of-way is therefore not supported by the  
26 findings. It should be rescinded as a prejudicial abuse of discretion.

27 **C. The City Prejudicially Abused Its Discretion by Granting Hillel’s Development Permits**

28 Council Resolution R-301433 approved the Site Development Permit/Planned Development

