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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.)

19 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
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1 **I. INTRODUCTION**

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

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

14 **II. STATEMENT OF FACTS**

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

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

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

25 BE IT RESOLVED, by the Council of the City of San Diego, that the City
26 Manager is authorized and empowered to enter into exclusive negotiations with
27 Hillel of San Diego, for the ground lease of Site 653 at La Jolla Scenic Drive
28 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 9th 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. 4th 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") § 22.0902¹ establishes mandatory

28 ¹All 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

1 Permit for both Phases of Hillel's Project. (1 AR: Ex.3 at 16.) Issuance of the SDP/PDP required a
2 finding that: "[t]he proposed *development* will comply with the applicable regulations of the Land
3 Development Code." (SDMC §126.0504(a)(3); SDMC § 126.0604(a)(3).)

4 The City ostensibly made these findings in its Permit Resolution. As discussed below, however,
5 the findings are deficient and the City, in approving Hillel's SDP/PDP, prejudicially abused its
6 discretion.

7 **1. The City Abused Its Discretion in Finding that Phase I Complies with the Land**
8 **Development Code's Zoning Requirements.**

9 Hillel's Project is located in the SF (single family) zone of the La Jolla Shores Planned District.²
10 In addition to "one-family dwellings," the SF Zone allows "[c]hurches, temples or buildings of a
11 permanent nature, used primarily for religious purposes." (SDMC § 103.0304.1.) These religious uses
12 are differentiated in the Land Development Code from uses not permitted under the SF Zone, including:
13 "Business and professional offices." (SDMC § 103.0304.4(c)(1).)

14 Here, Phase I is described alternately as the "operation of administrative offices" and the "use of
15 a single-family residence ... as religious offices." (2 AR: Ex.10 at 610 and 1 AR Ex.3 at 16.)
16 Regardless of Phase I's description, however, it is not a "one-family dwelling," a "building ... used
17 primarily for religious purposes," or any other use permitted by the SF Zone. Rather, Phase I is Hillel's
18 use of the Cliffridge Residence as "business and professional offices" -- a use permitted under the
19 Commercial Center Zone but not the SF Zone. (SDMC §§ 103.0304.4(c)(1) and 103.0304.1.)

20 The City and Hillel in fact admit Phase I is a "business and professional offices" use.

21 The Land Development Code establishes parking requirements according to categories of use.
22 Parking requirements are calculated differently for "Churches and places of religious assembly" than for
23 the use identified in the Code as "Offices: Business & professional/Government/Regional & corporate
24 headquarters." (SDMC § 142.0530, table 142-05F.) Hillel and the City, recognizing Phase I for what it
25 is, calculated parking requirements according to the use designation that includes "business &
26
27

28 ²The SF Zone is established by the La Jolla Shores Planned District Ordinance. The Planned District Ordinance is incorporated in the Land Development Code. (SDMC §111.0101.) Issuance of the PDP/SDP therefore required a finding that the Project complies with the SF Zone.

1 professional” offices but not “churches and places of religious assembly.”³

2 However, in a disingenuous effort to approve the PDP/SDP, the City found that, for zoning
3 purposes, Phase I is not a business and professional office, but is rather a church, temple or permanent
4 building used primarily for religious purposes. (1 AR: Ex.3 at 20.) This finding directly contradicts the
5 City and Hillel’s admission that, for parking purposes, Phase I is a business and professional office. The
6 City’s finding that Phase I complies with the SF Zone therefore is not supported by the evidence and
7 establishes a prejudicial abuse of the City’s discretion. The City’s decision to grant the SDP/PDP for
8 Phase I should be vacated.

9 **2. The City Abused Its Discretion in Finding that Phase I Complies with the**
10 **Land Development Code’s Parking Requirements**

11 Comments to the City establish that Phase I requires 26 parking spaces. (6 AR: Ex.59 at 2404.)

12 As discussed above, however, the City determined the 6 spaces provided by Hillel satisfy the
13 Land Development Code’s requirements. This finding rests on the City’s application of the parking ratio
14 for the “Business & professional/Government/Regional & corporate headquarters” subcategory of the
15 “Offices” use. But the application of that ratio directly contradicts the City’s finding that, for zoning
16 purposes, Phase I is not a business and professional office, but is instead a church, temple or building
17 used primarily for a religious purpose. (1 AR: Ex.3 at 20.) Consequently, if the City’s zoning
18 determination is correct, the City prejudicially abused its discretion by failing to apply the proper parking
19 ratio. The PDP/SDP should be rescinded.

20 **3. The City Abused Its Discretion in Finding that Phase II Complies with the Land**
21 **Development Code.**

22 Phase II requires at least 135 on-site spaces.⁴ (1 AR: Ex.3 at 20.) It provides for only 68. (*Id.*)

23 ³Hillel’s final development plans calculate 6 required parking spaces for Phase I. (12 AR: Ex.50
24 at 5171.) Its calculation is based on the Cliffridge Residence’s square footage and a parking ratio of 3.3
25 spaces for every 1,000 square feet of floor area. The ratio used in Hillel’s plans is the ratio required
26 under the development code for business and professional offices. (SDMC § 142.0530, table 142-05F.)
In approving the PDP/SDP, the City expressly found that 6 spaces complies with the requirements for
Phase I under the Land Development Code.

27 ⁴This requirement is based on the parking ratio for “Churches and places of religious assembly,”
28 which requires 30 spaces for every 1,000 square feet assembly area. (SDMC § 124.0350, Table 1442-
05F.) Hillel and the City calculate the Project’s assembly area to be 3,566 square feet. (1 AR Ex.3 at
20.) This calculation improperly excludes a 2,239 square foot “lounge.” (*See* 12 AR Ex.550 at 5186.)
Parking required for Phase II should therefore be at least 174 instead of 135 spaces.

1 The City nevertheless found that Phase II complied with the Land Development Code. (*Id.* at 18.) It did
2 so by conditioning the SDP/PDP on Hillel's acquisition of "shared parking" (*Id.* at 30.)

3 However, while shared parking may be used under certain circumstances to meet the Code's
4 parking requirements, they may not be used in "single unit residential zones."⁵ (SDMC § 142.0545.)
5 The Project site is located in the Single Family residential zone. Hillel therefore cannot use shared
6 parking to meet its requirements under the Land Development Code.

7 Additionally, the Code establishes specific rules governing the use of shared parking. (SDMC §
8 142.0545.) There is no evidence on the record, however, that the shared parking required of Hillel will
9 satisfy those rules.

10 For example, the Code establishes a "shared parking formula" that determines the minimum
11 number of off-street parking spaces for a proposed development. (SDMC § 142.0545.) The PDP/SDP,
12 however, prescribes the minimum numbers of off-street spaces for the Hillel Project in a manner that has
13 nothing to do with the required shared parking formula. (1 AR: Ex.3 at 19-20.)


14 Shared parking therefore cannot be used to meet Phase II's parking requirements under the Land
15 Development Code. The City's reliance on shared parking is improper, and the its finding that Phase II
16 satisfies the LDC is not supported by the evidence.

17 V. CONCLUSION

18 For the foregoing reasons, Petitioners respectfully request that the Court issue a writ of
19 mandamus vacating the Sale Resolution and all other acts by which the Council and/or City sold or may
20 sell Site 653 to Hillel. Petitioners further request that the Court issue writs of mandate ordering that the
21 Council rescind each of its adjudicative approvals of Hillel's Project.

22 Date: January 8, 2007

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28 ⁵SDMC § 142.0545 provides: "(a) Approval Criteria. In all zones except single unit residential zones, shared parking may be approved through a Building Permit subject to the following requirements." (Emphasis added.)