

March 28, 2014

To: The Board of Directors of the Palos Verdes Homes Association

From: John Harbison

**Subject: Clarification of the Legal Basis for the CEPC Lawsuit**

I am having a very hard time understanding why the PVHA entered into the transaction selling Via Panorama parkland to Robert Lugliani since it 1) seems so inconsistent with the Association's charter; 2) refutes PVHA's past commendable actions as steward in defending against the PVPUSD suit to sell lots C & D in Malaga Cove for residential development; and 3) refutes the basic legal constraints in the underlying deeds. As such, I feel compelled to summarize the facts known to me, since they must not have been clearly explained to you (or you would not have unanimously approved the transaction and further continue to waste resources and community goodwill by refusing to accept the inevitable by reversing the transaction).

The 1923 "Protective Restrictions" book states:

**"It will be the duty of this body to maintain the parks, street planting and other community affairs, and to perpetuate the restrictions."**

Yes, I understand that your lawyers have argued in our CEPC case that "shall" means "may" and the Protective Restrictions give PVHA some discretion in buying and selling property. However, when the PVHA transferred its parklands to the City of PVE in 1940, PVHA wrote additional land use restrictions into the deed that place some very specific and more onerous conditions that make it crystal clear that the property needs to remain "parkland forever" and **can never be sold to anyone for use other than for public use:**

**"That, except as hereinafter provided, said realty is to be used and administered forever for park and/or recreation purposes only ... for the benefit of the (1) residents and (2) non-resident property owners within the boundaries of the property heretofore commonly known as "Palos Verdes Estates" ... ¶ 3 (pp 6-7)**

**"That, except as provided in paragraph 3 hereof, said realty shall not be sold or conveyed, in whole or in part, by the Grantee herein except subject to the conditions, restrictions and reservations set forth and/or referred to herein and except to a body suitably constituted by law to take, hold, maintain and regulate public parks; provided, that portions of said realty may be dedicated to the public for parkway and/or street purposes. ¶ 3 (p 7)**

**"That, except as provided above, [exceptions are for utility easements] no buildings, structures or concessions shall be erected, maintained or permitted upon said realty, except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes." ¶4 (p 9)**

These restrictions were placed into the deed in 1940 by the PVHA and cannot be undone. These restrictions "run with the land" and direct any future owners, **including the PVHA** who subsequently acquired the property from the City of PVE under the 2012 MOU, to adhere to the restrictions:

**"PROVIDED, ALSO, that by the acceptance of this conveyance the Grantee agrees with the Grantor that the reservations, provisions, conditions, restrictions, liens, charges and covenants herein set forth or mentioned are a part of the general plan for the improvement and**

development of the property described and/or referred to in said Declarations of Restrictions, and are for the benefit of all of said property as described and/or **referred to and each owner of any land therein, and shall inure to and pass with said property and each and every parcel of land therein, and shall apply to and bind the respective successors in interest of the parties** hereto, and are, and each thereof is, imposed upon said realty as a servitude in favor of said property and each and every parcel of land therein as the dominant tenement or tenements."

Perhaps most disturbing, PVHA's lawyers failed to produce these critical deeds under the document requests made last year by CEPC's lawyer for all deeds pertaining to the Via Panorama property. It was only in March of 2014 when we specifically asked the City of PVE for the 1940 deeds involved in the transfer that were we given these most relevant and critical documents containing the language cited above. Withholding this information was a serious and disturbing breach of legal process. You should ask PVHA's lawyers why these deeds were not previously produced and demand an explanation for the omission.

Perhaps Judge O'Brien would have ruled differently in the writ mandamus on our third action if we had been able to clarify that the discretionary language in the 1923 Protective Restrictions **was overridden by the language written into the 1940 deeds by PVHA**. But likely or not, in the next phase of the trial we will certainly make that well known. And, as that information becomes available to the new Judge, the PVHA's likelihood of winning its case on the merits of its "discretionary " argument is low indeed.

Finally, I anticipate that you may be reluctant to accept reversion of this property out of concern that it could cause other aspects of the MOU to unravel. But I'd like to point out that the tax deductibility of Mr. Lugliani's gift was based on not tying that gift to his purchase of the Via Panorama property, and that this de-coupling was reinforced by Mr. Lugliani when he did not sign the MOU. There are other documents that specifically separate the donation to the PVPUSD and purchase of the Via Panorama parkland. In light of the documentation we have on hand, it would be hard for him to ask the PVPUSD to return his donation. Since those funds would remain under the control of the PVPUSD, it's not clear that any other aspect of the MOU would be jeopardized.

I've participated on many Boards of Directors, and I appreciate that the bad advice you may have been given puts you in a difficult position. Perhaps the enclosed deeds were not provided to you at the time you voted on the approval of the MOU. Perhaps their legal effect was not fully explained to you. It is not too late to do the right thing. The PVHA has the legal right as well as the legal and moral duty to trigger the reversionary interest in the Via Panorama Parkland, repay to Mr. Lugliani his \$500,000, and return this parkland to use by the public as parkland "forever" as it was intended. The homeowners that you represent would be greatly appreciative.

Most Sincerely,



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Attachments: Deeds conveying property from PVHA to PVE in 1940