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CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS, an
unincorporated association and JOHN
HARBISON,

Plaintiffs and Petitioners,

vs.

CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
HOMES ASSOCIATION, a California
corporation; PALOS VERDES
PENINSULA UNIFIED SCHOOL
DISTRICT, a political subdivision of the
State of California,

Defendants and Respondents,

ROBERT LUGLIANI and DELORES A.
LUGLIANI, as co-trustees of THE
LUGLIANI TRUST; THOMAS J. LIEB,
TRUSTEE, THE VIA PANORAMA
TRUST U/DO MAY 2, 2012 and DOES 1
through 20,

Defendants and Real Parties in
Interest.

Case No.: BS142768

(Assigned for all purposes to
Hon. Joanne O'Donnell, Dept. 86)

**MEMORANDUM OF POINTS AND
AUTHORITIES BY CITIZENS FOR
ENFORCEMENT OF PARKLAND
COVENANTS IN OPPOSITION TO
DEMURRER BY ROBERT LUGLIANI,
DOLORES LUGLIANI AND THOMAS J.
LIEB TO FIRST AMENDED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT**

Hearing Date: January 3, 2014
Hearing Time: 1:30 p.m.
Department: 86

Action Filed: May 13, 2013
Trial Date: June 20, 2014

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

Robert Lugliani, Dolores Lugliani and Thomas Lieb (the “Luglianis”) donated \$1.5 million to the Palos Verdes Peninsula Unified School District and paid another \$400,000 to the Homes Association and \$100,000 to the City, with the expectation that public parkland would be conveyed to them for their private and exclusive use. (First Amended Petition, “FAP”, ¶ 22). Petitioners Citizens for Enforcement of Parkland Covenants (“CEPC”) and John Harbison (“Harbison”) filed this action to enforce the land use restrictions that prevent that parkland from being used for anything other than public parkland in perpetuity. The Luglianis previously demurred to the original petition herein. This Court has not previously ruled on the validity of any claims other than the petition for writ of mandate.

The FAP details specific facts and circumstances as to why the parkland covenants preclude the conveyance of public parkland to the Luglianis. In their demurrer to the FAP, the Luglianis argue that the declaratory relief action is duplicative, there is no actionable controversy and no claim for nuisance per se has been stated. The Court should reject these arguments for the reasons set forth below.

II. THE DEMURRER TO THE FIRST CAUSE OF ACTION SHOULD BE OVERRULED BECAUSE THE CLAIMS FOR DECLARATORY RELIEF AND WRIT OF MANDATE SEEK DIFFERENT RELIEF AGAINST DIFFERENT PARTIES

The Luglianis seek dismissal of the declaratory relief claim on the grounds that it is “identical” to the petition for writ of mandate claim. (Demurrer, p. 5, li. 24-28). CEPC respectfully disagrees. The declaratory relief is fairly broad in scope while the petition for writ of mandate is very narrow. Three key differences in the claims:

- The declaratory relief claim seeks relief against all of the parties to this action (the Association, the City and the Luglianis). (Complaint, p. 10, li. 6-7). The

1 mandate claim seeks only relief against two parties, the City and Association.
2 (Complaint, p. 13, li. 1-3).

- 3 • The declaratory relief claim seeks a judicial declaration that the portion of the
4 MOU that authorizes the conveyance of Area A is illegal. The declaratory relief
5 claim also asks the Court to declare that the two deeds for Area A violate land use
6 restrictions. No similar relief is sought in the petition for writ of mandate.
- 7 • While the declaratory relief action seeks to invalidate three *documents* (the MOU
8 and two deeds) the mandate action seeks to compel *action* above and beyond those
9 documents: to enforce land use restrictions.

10 Moreover, to the extent that the concurrently filed demurrers to the writ of mandate
11 are sustained, again, by this Court, there would be no duplication of claims and this argument
12 becomes moot.

13
14 **III. THE DEMURRER TO THE FIRST CAUSE OF ACTION SHOULD BE**
15 **OVERRULED BECAUSE CEPC HAS ALLEGED AND THE**
16 **LUGLIANIS HAVE CONFIRMED THE EXISTENCE OF A**
17 **CONTROVERSY**

18
19 **A. CEPC alleged a controversy over the validity of the September 2012**
20 **Deeds**

21 A demurrer is not an appropriate response to a declaratory relief action. (*Qualified*
22 *Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 756). Even if the Court
23 concludes at this early juncture that the Luglianis will prevail on the declaratory relief claim,
24 CEPC is still entitled to proceed to trial and obtain a resolution of the declaratory relief claim:

25
26 Strictly speaking, a general demurrer is not an appropriate means
27 of testing the merits of the controversy in a declaratory relief
28 action because plaintiff is entitled to a declaration of his rights
even if it be adverse.

Taxpayers for Improving Public Safety v. Schwarzenegger (2009) 172 Cal.App.4th 749, 769

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[D]emurrer is not the proper context to reach and resolve the merits of plaintiffs' claim for declaratory judgment. "When," as here, "the complaint sets forth facts showing the existence of an actual controversy between the parties relating to their respective legal rights and duties and requests that these rights and duties be adjudged, the plaintiff has stated a legally sufficient complaint for declaratory relief. It is an abuse of discretion for a judge to sustain a demurrer to such a complaint and to dismiss the action, even if the judge concludes that the plaintiff is not entitled to a favorable declaration."

Qualified Patients Ass'n v. City of Anaheim, supra, 187 Cal.App.4th at p. 756)

The arguments set forth in the demurrer confirm the existence of an actual controversy: the Luglianis contend that the former parkland is now the Luglianis' private property. (Demurrer, p. 1, li. 13-16). CEPC contends that the September 2012 conveyances were void and of no legal effect. (FAP, ¶¶ 44(c), 52, 62). The validity of the September 2012 conveyance is an actual controversy that CEPC is entitled to have resolved.

For the foregoing reasons, the demurrer should be overruled.

B. A controversy exists between CEPC and the Luglianis as the beneficiary of the sale of public parkland

The Luglianis bemoan CEPC's interference with their "private use" of public parkland that the Luglianis now claim to own. (Demurrer, p. 1, li. 13-16). The Luglianis admittedly have applied for zoning changes for this parkland. (Demurrer, p. 4, li. 17-18). The hearings on that zoning change have been suspended pending the outcome of this case. The demurrer admits that if declaratory relief is granted, that would "affect Lugliani." (Demurrer, p. 9). Indeed it would. The Luglianis' \$2 million combined donation to the Palos Verdes Peninsula Unified School District and payment to the Homes Association and the City to purchase public parkland would be for nothing. (FAP, ¶ 22). It is in this context that the Luglianis claim no controversy exists between CEPC and the Luglianis. To the contrary, the Luglianis, as the purported beneficial owners of public parkland and the party who made a \$2 million donation to effect the parkland land grab has the most at stake of any party in this case.

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C. CEPC and Harbison each has standing to protect parkland covenants

The Luglianis complain that CEPC has no standing to challenge the Luglianis’ illegal land grab. CEPC adequately pled its standing at paragraph eight of the FAP:

CEPC has standing to assert the below pled claims for the following three reasons: First, by virtue of John Harbison’s payment of taxes within the past year, CEPC may assert on his behalf, a taxpayer’s action pursuant to Code of Civil Procedure section 526a. Second, under the “Citizen Suit” doctrine, CEPC has standing to enforce a public duty (the property restrictions alleged below) and raising questions of public rights (the rights of CITY residents to enforcement of protective covenants, to preserve open space and to prevent unlawful conveyances of parklands to private parties). Third, by virtue of Mr. Harbison’s ownership of real property within the CITY, he is a beneficiary of the restrictions and CEPC may assert those restrictions on Mr. Harbison’s behalf.

Similarly, Harbison separately alleged his own standing. (FAP, ¶ 63). California courts routinely recognize the standing of citizens to challenge a municipality’s attempt to violate land use restrictions for parks. (*City of Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295, 300 [recognizing resident’s standing as taxpayer under Code of Civil Procedure, § 526a and in instances alleging ultra vires acts by the government].) The standing argument should be rejected.

IV. THE COURT SHOULD DENY THE LUGLIANIS’ JOINDER IN THE DEMURRER TO THE SECOND AND THIRD CAUSES OF ACTION BECAUSE CEPC AND HARBISON MAKE NO CLAIM AGAINST THE LUGLIANIS ON THE SECOND AND THIRD CAUSES OF ACTION

The second and third causes of action seek relief against the City and Association. (FAP, p. 21). No relief is sought in those claims against the Luglianis. (*Ibid.*). The Luglianis have inexplicably joined in the demurrers by the City and Association to those claims. (Demurrer, p. 12, li 7-11). That joinder should be denied insofar as no relief is sought against the Luglianis.

1 **V. THE DEMURRER TO THE FOURTH CAUSE OF ACTION FOR**
2 **NUISANCE PER SE SHOULD BE OVERRULED BECAUSE**
3 **HARBISON HAS ALLEGED THAT THE PARKLAND IS ZONED**
4 **OPEN SPACE AND THAT THE LUGLIANIS' PRIVATE USE**
5 **VIOLATES SECTION 18.16.020 OF THE MUNICIPAL CODE**

6 The Luglianis have correctly stated the law of nuisance per se but have misapplied it
7 here. Title 18 of Palos Verdes Estates's Municipal Code (hereinafter, "Municipal Code")
8 governs zoning. Within Title 18, Chapter 18.16¹ governs the use of open space (OS) zoned
9 property. Section 18.16.020 defines several permitted uses in the OS zone, including:
10 "Undeveloped natural open space available for visual and physical enjoyment of the public."
11 Nowhere in Section 18.16.020 is there a provision for a private party's personal, exclusive use
12 of open space. For example, Section 18.16.020 does not authorize the installation of a
13 barbecue, gazebo, sports court or retaining walls for the private exclusive use of abutting
14 neighbors. Municipal Code section 17.32.050 states that "any use of property, contrary to the
15 provisions of this title and PVEMC Title 18 shall be unlawful and a public nuisance..."
16 Reading sections 17.32.050 and 18.16.020 together, the City of Palos Verdes Estates has
17 declared that any uses of open space beyond those enumerated in Section 18.16.020 are "...
18 unlawful and a public nuisance..."

19 It is in this context that Harbison has alleged that the Luglianis' obnoxious erection
20 and maintance of landscaping, a baroque wrought-iron gate with stone pillars and lion
21 statues, a winding stone driveway, dozens of trees (some as high as 50 feet), a gazebo, an
22 overgrown atheltic field, a 21-foot high retaining wall and other retaining walls is a public
23 nuisance and nuisance per se.

24 The Luglianis' arguments concerning who owns the parkland is not relevant to the
25 disposition to this particular cause of action. The Luglianis concede, as they must, that the
26 parkland is presently zoned open space (OS). (Demurrer, p. 4, li. 17-18). Regardless of who

27 _____
28 ¹ For the Court's convenience, a copy of the relevant provisions of Chapter 18.16 of the
Municipal Code are attached as Exhibit "A" to the Request for Judicial Notice.

owns the property, as OS property, the Luglianis' private use of this property is presently a nuisance per se under City law.

VI. CONCLUSION

For the foregoing reasons, CEPC and Harbison respectfully request that the Court overrule the demurrer in its entirety. Alternatively, CEPC and Harbison request leave to amend.

DATED: December 19, 2013

BROEDLOW LEWIS LLP

By: _____



Attorneys for Plaintiffs and Petitioners
CITIZENS FOR ENFORCEMENT OF
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