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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 THE CITY OF PALOS VERDES ESTATES' DEMURRER 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

The first amended petition ("FAP") by Citizens for Enforcement of Parkland Covenants ("CEPC") alleges three separate and independent legal theories to invalidate the purported conveyance in September 2012 of publicly owned parkland to private owners for private use. The City of Palos Verdes Estates ("City") asserts three fallacious arguments in support of its demurrer. Each must be rejected.

First, the City argues that because it does not presently own the land, it cannot be compelled to take any action concerning the land. (Demurrer, p. 5, li. 23). This argument ignores CEPC's allegations that the September 2012 deeds are void and illegal. (First Amended Petition ("FAP,") ¶¶ 44(c), 52, 62). The City owned the parkland before entering into the illegal settlement and deeds that are the subject of this lawsuit. The City's misconduct at that time that it owned the parkland that also forms the basis of the FAP. The City cannot avoid declaratory relief and the action for waste of public funds by claiming that the parkland has already been (illegally) conveyed. This Court has the power to conclude that the deeds were invalid and the City still owns the parkland.

Second, the City argues that it has the unfettered power to buy and sell public parkland at whim. (Demurrer, p. 10, p. 8-9). This argument is contrary to well settled law. Although a municipality such as the City generally has the power to buy and sell, that power is limited where it receives property via deed containing use restrictions. "[L]and which has been dedicated as a public park must be used in conformity with the terms of the dedication, and it is without the power of a municipality to divert or withdraw the land from use for park purposes." (*City of Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295, 300). A city that attempts to use a property in violation of the deed restrictions "would be an ultra vires act." (*Ibid.;* see also *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 104). "It is well settled that where a grant deed is for a specified, limited and definite purpose, the subject of the grant cannot be used for another and different purpose." (*Roberts v. City of Palos Verdes Estates* (1949) 93 Cal.App.2d 545, 547).

Third, the City argues that because many of CEPC's newer allegations in the FAP are mere conclusions of law that this Court may ignore them. (Demurrer, p. 6, citing *Aubry v. Tri-City Healthcare Distr.* (1992) 2 Cal.4th 962, 967). With all due respect, the new allegations at paragraphs 17 – 42 are neither conclusory nor legal in nature. CEPC detailed numerous specific factual circumstances under which the City made statements and acted as though the same land use restrictions at issue in this case were binding on the City. For example, CEPC alleges that the same deed restrictions that the City now claims are optional, the City in 2003 stated were legally binding on the City. (FAP, ¶ 18(g).) As another example, the City has argued in this case that in 1940 the City was without power to accept any limiting deed restrictions when it accepted the parkland properties. In 2005, the City, through staff, stated that the City "wholeheartedly accepted" the condition that the parkland must be perpetually maintained for the public to enjoy." (FAP, ¶ 18 (h).) Likewise, the FAP describes a 2005 resolution passed by the City describing "deed-restricted" parkland and making enforcement of illegal encroachment mandatory. (FAP, ¶ 18 (i).) These factual allegations and the remainder of the FAP are not remotely close to the type of "legal conclusion" that courts can and should disregard in the context of a demurrer. Rather, the purposes of these paragraphs is to plead the existence of estoppel. (See Part V below).

For these reasons, the demurrer must be overruled.

II. THE DEMURRER TO THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF SHOULD BE OVERRULED BECAUSE CEPC HAS ALLEGED THE EXISTENCE OF AN ACTUAL CONTROVERSY REGARDING THE SEPTEMBER 2012 DEEDS AND RELATED TRANSACTIONS

The City has joined in the other parties' demurrer to the first cause of action for declaratory relief. (Demurrer, p. 7, li. 19-23). A demurrer is not an appropriate response to a declaratory relief action. (*Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 756). Even if the Court concludes at this early juncture that the City will prevail on the

declaratory relief claim, CEPC is still entitled to proceed to trial and obtain a resolution of the declaratory relief claim:

> Strictly speaking, a general demurrer is not an appropriate means of testing the merits of the controversy in a declaratory relief 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

> [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)

For the foregoing reasons, the demurrer should be overruled.

III. THE DEMURRER TO THE SECOND CAUSE OF ACTION FOR PUBLIC WASTE SHOULD BE OVERRULED BECAUSE THE CONVEYANCE OF PUBLIC PARKLANDS TO A PRIVATE PARTY FOR PRIVATE USE IS PER SE ULTRA VIRES

The second cause of action alleges that the September 2012 deeds conveying public parklands to private parties for private use constituted an ultra vires act. (FAP, ¶¶ 51-52). The contemplated spot zoning or other legislative solutions to permit private, exlcusive use of the parkland is also alleged to be an ultra vires act. (FAP, ¶ 51). There is ample precedent for CEPC's allegations. *City of Hermosa Beach v. Superior Court*, *supra*, 231 Cal.App.2d at p. 296 is instructive. In that case, in 1907, the city was deeded beach property for recreational purposes and prohibiting traffic. Fifty years later, when the city erected a fence and constructed a road on the deeded property, a city resident sued the city to enforce the 1907 deed restriction. The city demurred on the ground that only the attorney general could

enforce the land restrictions. The demurrer was overruled and the city sought writ relief. In denying writ relief, the court of appeal confirmed that when a municipality is deeded land for public purposes:

> the municipality owes the public a duty to employ the property in a certain way and that the members of the public can proceed in equity to compel the municipality to live up to this part of its governmental obligations.

(City of Hermosa Beach v. Superior Court, *supra*, 231 Cal.App.2d at pp. 298-99)

The court went on to hold that once a city accepts a deed with restricted public purposes, the city must continue to use that land for public purposes. (*Id.* at 300). The city, in such a circumstance 'is without the power of a municipality to divert or withdraw the land from use for park purposes." (*Ibid.*) A city that attempts to use a property in violation of the deed restrictions "would be an ultra vires act." (*Ibid.;* see also *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 104). Notably, the *City of Hermosa Beach* case specifically approved the procedure of asserting a claim asserting ultra vires acts under Code of Civil Procedure, section 526a to protect parkland. (*(City of Hermosa Beach v. Superior Court*, *supra*, 231 Cal.App.2d, at p. 300).

The *City of Hermosa Beach* case is not an aberration:

> California courts have been loathe to cast aside use restrictions on property contained in deeds: " 'It is well settled that where a grant deed is for a specified, limited and definite purpose, the subject of the grant cannot be used for another and different purpose. (*Roberts v. City of Palos Verdes Estates* [(1949)] 93 Cal.App.2d 545, 547 [209 P.2d 7]; *Griffith v. Department of Public Works* [(1956)] 141 Cal.App.2d 376, 380 [296 P.2d 838].)' " (*Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 103, 132 Cal.Rptr. 835 [*Big Sur Properties*]; see also *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1012, 263 Cal.Rptr. 896 [Welwood Murray].)
>
> Likewise, California courts have often held that " '[w]here a tract of land is donated to a city with a restriction upon its use—as, for instance, when it is donated or dedicated solely for a park—the city cannot legally divert the use of such property to purposes inconsistent with the terms of the grant.' (Citations.) Further, where, as here, property is acquired by a public entity through private dedication, the deed is strictly construed. (Citations.) As several California courts have observed: "Courts have guarded zealously the restrictive covenants in donations of property for public use...." (Citations.) In fact, where property has been donated for public use, some courts have concluded such property "is held upon what is loosely referred to as a 'public

> trust,' and any attempt to divert the use of the property from its dedicated purposes or uses incidental thereto is an ultra vires act. (Citations.)

(*County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 575-76).

In sum, *City of Hermosa Beach v. Superior Court*, *supra*, 231 Cal.App.2d at pp. 298-99 and *County of Solano v. Handlery*, *supra*, 155 Cal.App.4th at pp. 575-76 confirm that a city that accepts deeds with land use restrictions remains bound by those land restrictions. The City's present legal posture: that the land use restrictions have no force and effect confirm the existence of the very controversy alleged in the pleadings: the $2.0 million payoff[1] by the Luglianis in exchange for parkland property presents a very real and actionable justicable dispute.

IV. THE DEMURRER TO THE THIRD CAUSE OF ACTION FOR WRIT OF MANDATE SHOULD BE OVERRULED BECAUSE CEPC HAS ALLEGED A CLEAR, MINISTERIAL DUTY

The City argues that the petition for mandate claims fail because the City does not own the parkland anymore (Demurrer, pp. 11-12). This argument assumes that the Court will find that the September 2012 deeds were valid. That argument is premature. The Court has yet to rule on the validity of the deeds. For purposes of the demurrer, the Court must assume as true CEPC's allegations that the deeds are illegal and void. (*Flores v. Arroyo* (1961) 56 Cal.2d 492, 497). Under that assumption, the City does currently own the parkland. Moreover, in the event that the Court grants CEPC's requested declaratory relief that the September 2012 deeds are void CEPC is also entitled to relief under the mandate claim that the City will enforce the deed restrictions.

The City also argues that there is no ministerial duty here. (Demurrer, p. 11). CEPC disagrees. The land use restrictions compelling that the parkland be used perpetually for

[1] More specifically, the Luglianis donated $1.5 million to the Palos Verdes Peninsula Unified School District, paid $400,000 to the Palos Verdes Homes Association and $100,000 to the City.

public purposes is akin to a condition of approval imposed by a planning commission for a development project. Although the decision to reject or approve a development project is a discretionary one not subject to judicial inteference, once a project is approved and conditions of approval are made, enforcement of those conditions is a ministerial duty. (*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 186 Cal.App.3d 814, 834 [holding that Zoning Administrator had clear, ministerial duty to enforce plannning commission condition of approval requiring construction of pedestrianway].) Here, once the City made the discretionary decision in 1940 to accept the deed restricitons, the enforcement of those restrictions by city officials became a clear, minsterial duty.

The case of *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003 (hereinafter, "*Welwood* is instructive. In *Welwood*, the City of Palm Springs owned real property where the city's library was situated. The library property had been acuired by private deed restricting the use of the property to library uses. Forty years later, the City entered into an agreement with a developer. The agreement contemplated moving a popular restaurant to the library property. An unincoproated association formed for the purpose of blocking the project filed a petition for writ of mandate in the Superior Court to prevent the city from conveying the library to the developer. After the lawsuit was filed, the city and developer entered into an amended agreement calling for a partial razing of the library building in lieu of a conveyance to the developer to accompodate the dining area. The trial court was poised to grant the writ and block the city's actions when the city and developer began negotations for a third agreement to allow for an easement for dining uses on library party. The trial court granted the writ of mandate and an injunction precluding the city from granting an easement or razing the library. The city appealed.

The Court of Appeal confirmed that the deed restrictions controlled the use of the property and dining uses would not directly contribute to a library use of the property. (*Welwood*, at 1012):

> The use proposed by City in no way directly contributes to these purposes, and, actually, in at least one way, is antithetical to such purposes, for the

> proposed use would destroy parts of the building where books are stored and used.

(*Welwood*, at 1015).

The *Welwood* court found that the city's successive developer agreements would violate the deed restrictions requiring the city to "forever maintain" the library. (*Ibid.*) On appeal, the city argued that the writ impermissibly invaded the City's discretion. The *Welwood* court disagreed:

> The language of the writ does not prevent City from removing sections of the library, from conveying easements or other legal rights over the Library Property or from otherwise undertaking any acts *necessary for library purposes*. It merely commands City not to undertake any such actions if they are done primarily for a nonlibrary purpose or if they interfere with library use.

(*Welwood*, at 1016, emphasis in original).

Finally, the *Welwood* court concluded that the trial court's issuance of an injunction to block the City's plans was proper:

> A public trust is created when property is held by a public entity for the benefit of the general public. (Citations.) Here, title to the library property is held by City to be used by City for the benefit of the general public as a public library. Any attempt to divert the use of the property from its dedicated purposes or uses incidental thereto would constitute an ultra vires act. (Citations.) Thus, it would be proper not only to issue an injunction to enforce the obligation arising from the existence of the public trust, i.e., to enforce City's obligation to use the property as a public library, but also to prevent an ultra vires, and hence nonlegislative, act.

(*Welwood*, at 1017).

The holding of *Welwood* is applicable here. The City of Palm Spring's attempt to first convey and then raze the library is analagous to the City's conveyance of public parkland to the Luglianis. The issuance of a writ was upheld in *Welwood* because the proposed dining use for library property was a blatant violation of the deed restrictions. The facts of *Welwood* are not distinguishable.

Finally, the City also argues that the Court cannot compel the City to adopt any specific measures to enforce the restrictions. CEPC agrees. However, that does not preclude the Court from ordering the City to actually enforce the restrictions. For example, the Court could order the City to use reasonable measures to remove illegal encroachments on public

parkland within the next five years. Such an order would not invade the admittedly broad discretion that the City enjoys in the exercise of its police powers. The fact that the City has a choice among various enforcement mechanisms does not grant the City authority to simply not enforce the deed restrictions.

V. THE COURT SHOULD FIND THE CITY IS ESTOPPED BY ITS OWN DEEDS AND WORDS FROM DENYING THE ENFORCEABILITY OF THE DEED RESTRICTIONS

For decades, the City has acted and stated that the deed restrictions on public parkland are legally binding and require the City to keep parklands free of illegal structures and private usage. (FAP, ¶ 18(a), (c), (d), (e), (g).) The City has previously taken the position that the City "wholeheartedly accepted" and was legally bound by the restrictions contained in the deeds conveying the parkland to the City. (FAP, ¶ 18 (h).). The City, having accepted the deed restrictions in 1940 and public pronouncd that they were legally binding as support for City-wide parkland enforcement efforts, is now estopped from denying the binding nature of those deed restrictions. (*Chapman v. Gillett* (1932) 120 Cal.App. 122, 126-27 [holding that plaintiff took deed of conveyance reciting existence of prior deed of trust is estopped from denying validity of prior deed of trust].) Estoppel principles apply to claims against the government, "particularly where the application of the doctrine would further public policies and prevent injustice." (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 131).

The City also suggests that the Court should disregard CEPC's estoppel arguments because the Court previously considered and rejected them in the prior demurrer. (Demurrer, p. 5). In fact, the City previously urged this Court to ignore the estoppel arguments because they were not pled in the original pleading. (Reply to Demurrer to Petition, p. 7). CEPC, having now accepted the City's invitation to plead the estoppel argument, the argument should now be considered for the first time on the merits.

VI. THE COURT SHOULD FIND THE CITY IS COLLATERALLY ESTOPPED BY THE LITIGATION IN *ROBERTS V. CITY OF PALOS VERDES ESTATES*

In the 1940's, the City attempted to use parkland for non-parkland purposes. *Roberts v. City of Palos Verdes Estates* (1949) 93 Cal.App.2d. 545. The Court of Appeal ruled that the deed restrictions trumped the City's desires to use the land for another purpose. Having fully litigated that issue previously in 1949, the City may not re-litigate the same issue here. The Court of Appeal has already conclusively established that the City's desires for better uses for parkland are immaterial. "What a city council or board of trustees would like to do under whatever guise it may be proposed is not the test as to the validity of the proposal. The terms of the deed alone are controlling." (*Roberts v. City of Palos Verdes Estates*, supra, 93 Cal.App.2d at p. 548). The issue may not be re-litigated here. (*Proctor v. Vishay Intertechology, Inc.* (2013) 213 Cal.App.4th 1258, 1274 [holding that doctrine of collateral estoppel may be asserted to prevent party from relitigating issue previously decided after a full and fair hearing on the merits].)

VII. CONCLUSION

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

DATED: December 19, 2013

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