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9 Attorney for Plaintiffs
10 CITIZENS FOR ENFORCEMENT OF
11 PARKLAND COVENANTS and JOHN
12 HARBISON

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

15 CITIZENS FOR ENFORCEMENT OF
16 PARKLAND COVENANTS, an
17 unincorporated association,

18 Plaintiff and Petitioner,

19 vs.

20 CITY OF PALOS VERDES ESTATES, a
21 municipal corporation; PALOS VERDES
22 HOMES ASSOCIATION, a California
23 corporation; PALOS VERDES
24 PENINSULA UNIFIED SCHOOL
25 DISTRICT, a political subdivision of the
26 State of California,

27 Defendants and Respondents,

28 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. Barbara A. Meiers, Dept. 12)

**PLAINTIFFS' OPPOSITION TO EX
PARTE APPLICATION; DECLARATION
OF JEFFREY LEWIS IN SUPPORT
THEREOF**

Hearing Date: March 3, 2015
Hearing Time: 8:30 a.m.
Department: 12

Action Filed: May 13, 2013
Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Citizens for Enforcement of Parkland Covenants (“CEPC”) and John Harbison filed this action to enforce real estate restrictions that require that certain parkland located within the City of Palos Verdes Estates remain parkland forever. This action challenges the legality of certain deeds whereby Defendant City of Palos Verdes Estates (“City”) and Palos Verdes Homes Association (“Association”) illegally conveyed parkland to a private party, defendant Thomas Lieb for the benefit of Dr. Robert and Delores Lugliani (collectively, the “Luglianis”). Plaintiffs filed a summary judgment motion (“MSJ”) on December 5, 2014 because there are no factual issues in dispute in this case. The Court merely has to interpret whether a deed that states a park should be parkland “forever” is enforceable. Plaintiffs respectfully oppose defendants’ ex parte application to change the date of the pending motion for summary judgment on the following grounds:

1. The Court denied a substantially identical ex parte application by defendants on February 27, 2015. No new facts or circumstances warrant reconsideration of the Court’s February 27, 2015 denial of the ex parte. (Code Civ. Proc., § 1008).¹ The Court found on February 27, 2015 that there was no judicial economy to be served by hearing multiple motions for summary judgment at the same time. The Court also raised questions about the diligence of the defendants for failing to conduct discovery in 2013 or 2014. Nothing has changed since February 27, 2015 to warrant granting the application.

2. Good cause does not exist to move the hearing date a second time. Plaintiffs’ MSJ was originally scheduled to be heard on February 25, 2015. In light of the holidays, and in response to defendants’ request for additional time to conduct discovery, plaintiffs voluntarily continued the hearing date to March 25, 2015. There is no reason to continue the hearing date further.

3. Defendants have not been diligent about discovery. This case has been pending since **May 2013**. As to the Association and the Luglianis, the case has been at issue

¹ The Court may impose sanctions on a party that files a motion for reconsideration not based on new facts or circumstances. (Code Civ. Proc., § 1008, subd. (d).)

1 since **July 21, 2014**, when defendants filed their answers. Yet the City has served no
2 discovery. None. The Luglianis have served no discovery. None. The Association, only in
3 January 2015, first served one set of special interrogatories and plaintiffs have responded. To
4 the extent that defendants contend that they need discovery to oppose the summary
5 judgment motion, the MSJ statute has a procedure for opposing a summary judgment on this
6 ground. (437c, subd. (h).) Defendants should avail themselves of that procedure and in
7 opposing the MSJ articulate just what defendants' discovery might unearth that is relevant to
8 the MSJ rather than burdening the court with an unnecessary ex parte application.

9 **4. No factual discovery is needed.** The MSJ rests on application of law to
10 undisputed facts. For example, the deeds dating back to the 1940's state that the parkland at
11 issue in this case was to remain parkland forever. The MSJ seeks a legal interpretation that
12 those deeds mean what they say. No discovery is needed on this pure legal question. Yet
13 defendants have inexplicably based their request for a continuance on a need to conduct
14 factual discovery.

15 **5. No expert discovery is needed.** The question presented in the MSJ is the
16 enforceability of the deeds from the 1940's. Defendants have suggested they want to hire a
17 high priced legal scholar to opine on the enforceability of so-called "ancient deeds" especially
18 in light of California's Marketable Title Act. Plaintiffs contend that the Court does not need
19 a legal expert to tell the Court what the law is. Moreover, there is still ample time for
20 defendants to retain such an expert in advance of the March 11 deadline to oppose the
21 MSJ. Defendants have had since May 2013 to retain an expert witness.

22 **6. The Court does not need more motions.** Defendants contend that one reason
23 they need a continuance is so that they can file their own motions for summary judgment to
24 be heard concurrently with Plaintiffs' MSJ. Respectfully, plaintiffs disagree. Every issue that
25 defendants want to raise they can raise in opposition to Plaintiffs' MSJ. There is nothing
26 stopping defendants from filing their own motions for summary judgment. If the Court
27 grants Plaintiffs' MSJ on March 25, the defendants' later filed motions will be
28 moot. Plaintiffs also note that defendants have had ample time to file their own MSJ but

1 have not done so.

2 For the foregoing reasons, plaintiffs respectfully request that the Court deny the ex
3 parte application and allow the MSJ to remain on calendar for March 25, 2015.

4 DATED: March 2, 2015

BROEDLOW LEWIS LLP

6
7 By: _____
Jeffrey Lewis

8 Attorneys for Plaintiff and Petitioner
9 CITIZENS FOR ENFORCEMENT OF
10 PARKLAND COVENANTS

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www.BroedlowLewis.com

DECLARATION OF JEFFREY LEWIS

I, Jeffrey Lewis, declare as follows:

1. I am a partner of BROEDLOW LEWIS LLP counsel for plaintiffs Citizens for Enforcement of Parkland Covenants (“CEPC”) and John Harbison (“Harbison”) in this matter.

2. I have personal knowledge of the truth and accuracy of the facts set forth herein, and if called upon as a witness, I could competently testify thereto. I do not intend to waive the attorney-client privilege or work product doctrine by making any statement herein.

3. On December 10, 2014, I had a productive telephone call with Brant Dveirin, counsel for defendant Palos Verdes Homes Association (the “Association”). Following that call, I emailed Mr. Dveirin about our conversation. Attached hereto as Exhibit “1” is a true and correct copy of my December 10, 2014 email to Mr. Dveirin.

4. On Monday, January 19, 2015, I received written discovery and depositions notices directed to my clients from Mr. Dveirin. I was surprised by the deposition notices because the notices specified dates for my clients to be deposed when they would be out of the country. I previously informed Mr. Dveirin of that out of country trip. On January 19, 2015, I wrote a letter to Mr. Dveirin about the scheduling issues. In my letter I offered multiple depositions dates for my clients to appear for deposition in January, February and March. Attached hereto as Exhibit “2” is a true and correct copy of a letter dated January 19, 2015 to Mr. Dveirin.

5. In January 2015, I had proposed six additional dates for my clients to appear for deposition in January, February or March (in addition to the three deposition dates that I had previously offered for my clients). Mr. Dveirin wrote me an email on January 20, 2015 accepted the latest of the deposition dates I offered. Attached hereto as Exhibit “3” is a true and correct copy of Mr. Dveirin’s email dated January 20, 2015.

6. On February 6, 2015, I sent a letter to Mr. Dveirin on the subject of moving the summary judgment hearing. Attached hereto as Exhibit “4” is a true and correct copy of my letter dated February 6, 2015.

1 I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct.

3 Executed this 2nd day of March 2015, at Rolling Hills Estates, California
4

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6 Jeffrey Lewis
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EXHIBIT 1



Jeffrey Lewis <jeff@broedlowlewis.com>

CEPC v. Lugliani - today's call

Jeffrey Lewis <jeff@broedlowlewis.com>

Wed, Dec 10, 2014 at 2:00 PM

To: "Dveirin, Brant (Brant.Dveirin@lewisbrisbois.com)" <Brant.Dveirin@lewisbrisbois.com>

Thanks for initiating the call today. As I said, I have no problem with a short continuance of the MSJ hearing to accommodate any scheduling conflicts you may have with the present hearing date. If the defendants want to file cross-motions for summary judgment that are not duplicative of the issues I raised in my motion, I could be open to having those heard simultaneously with my motion. Please confer with the other defense counsel and let me know what your thoughts are regarding what discovery might be needed and how much time you might need to get an MSJ on file. With respect to your proposed discovery on the topics of standing and administrative exhaustion, it is quite possible we can reach a stipulation of fact in lieu of discovery on those topics. For example, I think everyone understands and agrees that CEPC members did not attend and/or protest the May 2012 city council meeting. Let me know if you want to go that route.

Jeffrey Lewis

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January 19, 2015

VIA E-MAIL (Brant.Dveirin@LewisBrisbois.com) AND CONFIRMED VIA U.S. MAIL

Brant Dveirin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012

RE: *Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates*
Los Angeles County Superior Court Case No. BS142768

Dear Brant,

I am in receipt of your deposition notices and interrogatories. As you know, following our productive phone call on December 19, I sent an email that same day to all defense counsel offering to make John Harbison available for deposition on January 12, 16, 19 or 20. No one accepted that offer. On December 30, 2014, you responded to my December 19, 2014 email by asking me for my availability after the week of January 5, 2014 for a conference call with defense counsel to discuss discovery and cross-motions for summary judgment. On January 6, I offered to participate in a discovery conference call requested by you on January 12, 14, 15 or 16. I also referenced my earlier email of December 19 and asked defense counsel to “let me know if any of those dates would work” for plaintiffs’ deposition. I also informed you that John Harbison would be “out of the country and unavailable for deposition between February 3 and 23.” Nobody responded to my January 6 email. No one accepted my offer to produce Mr. Harbison for deposition on January 12, 14, 15 or 16. No one accepted my offer to have a discovery conference call on January 12, 14, 15 or 16.

It was in this context, that I was quite shocked to receive deposition notices for depositions to be held on Saturday February 7, 2015 and Tuesday, February 17, 2015. Both of those dates fall within the range of dates that I informed you that Mr. Harbison will be out of the country. I would like to think that this was the result of miscommunication and not a deliberate attempt to harass and burden Mr. Harbison. Enclosed please find objections to the deposition notices. Mr. Harbison will not be appearing on February 7 or 17 as he will be out of the country. He could be available to attend deposition on the following dates: January 22, 23 and 27, February 2 or



March 12 and 13. Please be advised that Mr. Harbison will be the “PMK” designated to testify as to the subjects identified in your deposition notice and we would request that you conduct the depositions in his individual and representative capacity concurrently. If you wish to select any of those dates, please let me know this week as my calendar is filling up rapidly. Also, please advise of your willingness to conduct the deposition in the South Bay, perhaps at Ms. Hogin’s office? I believe that is more central to the witnesses and attorneys than your downtown office.

As a reminder, I remain willing to enter a factual stipulation that may obviate the need for a deposition or certainly shorten it. For example, in the past we have offered to stipulate regarding the participation (or lack thereof) by Harbison and CEPC at the MOU meetings of the City and Association. Let me know if you want to proceed with this route.

Finally, the Association has served interrogatories asking that the plaintiffs confirm which members are members of the Association. Would you be so kind as to informally produce the Association’s current membership list to assist our efforts in responding to the Association’s discovery? Please advise.

Thank you,

Jeffrey Lewis

Encls. (2)

cc: *VIA EMAIL ONLY*

Christi Hogin, Esq. (CHogin@LocalGovLaw.com)

R.J. Comer, Esq. (RJ@AGD-LandUse.com)

Sidney F. Croft, Esq. (SFCroftLaw@AOL.com)



Jeffrey Lewis <jeff@broedlowlewis.com>

Jeff, we had our conference call...

Dveirin, Brant <Brant.Dveirin@lewisbrisbois.com>

Tue, Jan 20, 2015 at 3:24 PM

To: "Jeff@BroedlowLewis.com" <Jeff@broedlowlewis.com>

Cc: "Hyde, Daniel" <Daniel.Hyde@lewisbrisbois.com>, "SFCroftlaw@aol.com" <SFCroftlaw@aol.com>, "R.J. Comer (rj@agd-landuse.com)" <rj@agd-landuse.com>, "damon@agd-landuse.com" <damon@agd-landuse.com>, "CHogin@LocalGovLaw.com" <CHogin@localgovlaw.com>, Tarquin Preziosi <tpreziosi@localgovlaw.com>

We all agreed to the deposition dates of March 12 and 13 in your letter, which I will confirm in amended deposition notices. We understand that you will be producing Mr. Harbison as both the individual and as representative of the Association. The 7 hour limit does not pertain to PMK depositions only to individual depositions. Mr. Harbison will be deposed at the same time in both capacities, and it could take longer than one day, although we don't anticipate that at least not initially. Tarquin agreed we can use his office for the depositions. I will send out amended notices for both depositions beginning on March 12 and March 13 with the understanding that you will be producing just Mr. Harbison for both deposition which can go longer than one day. Let me know if this is fine with you.

We still need time to complete the depositions, and also other discovery and expert discovery and the depositions prior to hearing on your msj, and we need to set a schedule that allows for our cross motion for summary judgment.

We propose we enter into a stipulation setting the various dates for discovery cut off and expert discovery cut off, and date for hearing on cross motions for summary judgment and submitting it to the court to be entered as an order, or alternatively to invite the court to order a TSC/CMC. Let me know if you are agreeable to the stipulation and order. We will draft the stipulation. If we cannot agree, we will request the court *ex parte* to set the dates, but we hope that will not be necessary.

We look forward to hearing from you. Regards, Brant Dveirin.



LewisBrisbois.com

Brant H. Dveirin

Partner

Brant.Dveirin@lewisbrisbois.com

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Los Angeles, CA 90071

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February 6, 2015

VIA E-MAIL (Brant.Dveirin@LewisBrisbois.com) AND CONFIRMED VIA U.S. MAIL

Brant Dveirin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012

RE: *Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates*
Los Angeles County Superior Court Case No. BS142768

Dear Brant,

I was able to touch base with John and Renata Harbison before they left the country. I'm sorry, but we are not in agreement to further postpone the MSJ hearing. We think the issues in our motion are dispositive of the case and will moot the issues you have described for your cross-MSJ. We also believe that every issue that you want to raise in your cross-MSJ could be sufficiently raised in opposition to our MSJ. Perhaps we should request that the court set a case management conference to address these issues.

On an unrelated note, you have served me with discovery which require a response on February 20. I was unable to obtain signed verifications before the Harbisons left the country. Therefore, I would like an extension until February 30 to obtain the verifications and finalize the discovery responses.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeffrey Lewis', with a stylized flourish at the end.

Jeffrey Lewis

cc: *VIA EMAIL ONLY*

Christi Hogin, Esq. (CHogin@LocalGovLaw.com)
R.J. Comer, Esq. (RJ@AGD-LandUse.com)
Sidney F. Croft, Esq. (SFCroftLaw@AOL.com)

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PROOF OF SERVICE

Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.
Los Angeles Superior Court Case No. BS142768

I, Jeffrey Lewis, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 734 Silver Spur Road, Suite 300, Rolling Hills Estates, CA 90274.

On March 3, 2015, I served the foregoing: **PLAINTIFFS' OPPOSITION TO EX PARTE APPLICATION TO CONTINUE SUMMARY JUDGMENT MOTION; DECLARATION OF JEFFREY LEWIS IN SUPPORT THEREOF** on the interested parties in this action by placing the original a true copy thereof as follows:

** See Attached Service List **

- BY HAND DELIVERY. I caused said document to be hand delivered to parties referenced below at the Los Angeles Superior Court on the date reference above.
- BY OVERNITE EXPRESS/FEDERAL EXPRESS. The within correspondence will be deposited with Overnight Express on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Palos Verdes, California, following ordinary business practices.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 2015, in Los Angeles County, California.

Jeffrey Lewis

SERVICE LIST

(Page 1 of 1)

Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.
Los Angeles Superior Court Case No. BS142768

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<p>LAW OFFICE OF SIDNEY CROFT 314 Tejon Place Palos Verdes Estates, CA 90274</p> <p>Sidney F. Croft, Esq. SFCroftLaw@AOL.com Tel: (310) 849-1002</p> <p>LEWIS BRISBOIS BISGAARD & SMITH LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071</p> <p>Daniel V. Hyde, Esq. Daniel.Hyde@LewisBrisbois.com Tel: (213) 680-5103 Fax: (213) 250-7900</p> <p>Brant H. Dveirin, Esq. Brant.Dveirin@LewisBrisbois.com Tel: (213) 580-6317 Fax: (310) 250-7900</p>	<p><i>Attorneys for Defendant and Respondent:</i></p> <p>Palos Verdes Homes Association</p>
<p>ARMBRUSTER GOLDSMITH & DELVAC LLP 11611 San Vicente Blvd., Suite 900 Los Angeles, CA 90049</p> <p>Damon P. Mamalakis, Esq. Damon@AGD-LandUse.com Tel: (310) 254-9026 Fax: (310) 254-9046</p> <p>R.J. Comer, Esq. RJ@AGD-LandUse.com Tel: (310) 254-9056 Fax: (310) 254-9046</p>	<p><i>Attorneys for Defendants and Real Parties in Interest:</i></p> <p>Robert Lugliani and Delores A. Lugliani as co-trustees of The Lugliani Trust</p> <p>Thomas J. Lieb, Trustee, The Via Panorama Trust U/Do May 2, 2012</p>