

Highlights of the May 29th Court Hearing on our Motion for Summary Judgment

Here are excerpts of the May 29th Court Hearing on our Motion for Summary Judgment:

- Judge says: “My tentative was to grant the Plaintiff’s Motion probably as to everybody, other than the City.” (Page 4, lines 4-5)
- Judge says: “My feeling at this moment is probably the city would get estopped by this court through an injunctive order for trying to re-zone this or do anything else that would interfere with these restrictions on the property or the enforceability thereof.” (Page 13, lines 4-9)
- PVE City attorney says: “So the Resolution Retention from 1949, Exhibit 8, does not bind the City to hold this land forever in perpetuity.” To which the Judge replied, “I’m not sure of that. The language says it’s going to be in perpetuity.” (Page 16, lines 7-11)
- Judge says: “It does say the grant is forever...and there are only certain circumstances in which something can go back to the grantor. One is that the city disappears. Another is if the grantor wants it back because you've been violating terms, but there's nothing that provides for a grant-back.” (Page 17, line 1)
- Judge says: “And finally, I thought it was a little disingenuous in the cross-complaint description of the transaction to say that this deed was given to so-and-so and this deed went to so-and-so and this deed went to so-and-so, omitting therefrom the fact that thousands and thousands and thousands of dollars passed hands in this transaction. This was not some, "oh, let's do it for the public good, this lot is better used for so-and-so." A lot of money, a lot of money passed hands. And certainly the view could be taken that the public interest was being sold out here for dollars. I don't know that to be the case. I am not making that finding. But when you discuss the deal, I expect you to tell me the deal. And it involved lots of money from these private homeowners who ended up with this parkland and with ignoring notices to remove things, you now tell me, going back 10 or 20 years with impunity.” (Page 21, lines 4-21)
- Judge says: “Again, I do view these acts as ultra vires. Nothing has changed my mind on that.” (Page 23, lines 1-2)
- PVE City Attorney says: “There's no duty -- the City has no duty to enforce private covenants, conditions, and restrictions. The City's only duties are set forth in the law of the state of California and its municipal codes. The Judge responded: “It absolutely has the obligation if it holds land subject to restrictions if it is wearing its private hat. And it's bound just like any other private citizen on its contract.” (Page 24, lines 17-25)
- Judge says: “You're not hearing me. If you own the property, you're bound by the restrictions and it's your job to remove them by virtue of the ownership of restricted property. We're not talking about government in the abstract. We're talking about in its private capacity.” (Page 26, lines 13-18)

- Judge says to PVHA attorney: “As to your people, they don't have any right to interpret anything here. I don't care what the provisions say about it because there's no uncertainty. It says they can interpret only where there's uncertainty. There's no uncertainty here. It's black and white.” (Page 28, lines 11-16)
- Judge says: “When you look in these documents, it says that if the Homeowners Association wants to eliminate a restriction, there has to be a meeting by the Homeowners Association and x number of owners of the property. And at one time it even involved the Bank of America as the grantor of the whole project. They have to all sit down, make an agreement, eliminate a restriction on a particular property. That was not done. That, too, would be ultra vires, outside their power to do, and certainly not within any power to bind every other homeowner in that tract, each of whom have an independent right of action.” (Page 29, lines 6-18)
- Judge says: “I challenge you to find any homeowner who would disagree with a decision by this court saying that they cannot sell off parkland to allow people to use it for their private property. I don't think you're going to find too many homeowners in the tract who are of that view, but that's no nevermind.” (Page 32, lines 2-7)
- Judge says: “I'm not taking apart the contract. I'm saying it was ultra vires, you had no power to do it, and fight it out now amongst yourselves. If you promised to accept money from somebody in return for something you had no right, ability, or power to convey, I imagine they'll come on your doorstep and ask you for the money back. That's going to be between everyone who signed that agreement and passed that money around. It has nothing to do with this.” (Page 34, lines 12-20)
- Judge says: “These restrictions, the terms of the grant, everything that is involved in how this property was obtained to be parkland for this area, that's what controls.” (Page 35, lines 22-24)
- Judge says: “I don't care what your experts tell me. it's my job to apply the law to the case and the correct law, and we don't take declarations from attorneys telling us what the law is.” (Page 37, lines 3-6)