

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DEPARTMENT 12	HON. BARBARA A. MEIERS, JUDGE	
CITIZENS FOR ENFORCEMENT OF PARKLAND)	
COVENANTS AND JOHN A. HARBISON,)	
)	
)	
)	
)	PLAINTIFFS,) NO. BS142768
)	
vs.)	
)	
CITY OF PALOS VERDES ESTATES, A)	
MUNICIPAL CORPORATION; PALOS VERDES)	
HOMES ASSOCIATION, A CALIFORNIA)	
CORPORATION; ROBERT LUGLIANI AND)	
DOLORES 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.)
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, MAY 29, 2015

APPEARANCES:
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FOR DEFENDANT CITY OF
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 BY: TARQUIN PREZIOSI, ESQ.
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TRISHA WIENER, CSR NO. 13576

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APPEARANCES (CONTINUED):

FOR DEFENDANT PALOS VERDES

HOMES ASSOCIATION: LEWIS BRISBOIS BISGAARD & SMITH
BY: BRANT H. DVEIRIN, ESQ.
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FOR DEFENDANTS ROBERT
AND DOLORES LUGLIANI,

THOMAS J. LIEB: ARMBRUSTER GOLDSMITH & DELVAC
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LOS ANGELES, CALIFORNIA 90049

1 CASE NUMBER: BS142768
2 CASE NAME: CITIZENS FOR ENFORCEMENT OF
3 PARKLAND COVENANTS, ET AL. vs.
4 CITY OF PALOS VERDES ESTATES, ET AL.
5 LOS ANGELES, CA FRIDAY, MAY 29, 2015
6 DEPARTMENT 12 HON. BARBARA A. MEIERS, JUDGE
7 REPORTER: TRISHA WIENER, CSR NO. 13576
8 TIME: A.M. SESSION
9
10 APPEARANCES: AS HERETOFORE NOTED.
11
12 THE COURT: OKAY.
13 MR. DVEIRIN: GOOD MORNING, YOUR HONOR.
14 THE COURT: IS IT?
15 MR. DVEIRIN: PARDON MY VOICE. I'M A LITTLE BIT
16 UNDER THE WEATHER. I DON'T KNOW IF MY OWN MOTHER WOULD
17 RECOGNIZE MY VOICE AT THIS POINT.
18 THE COURT: WOULD YOU ALL MAKE YOUR APPEARANCES,
19 PLEASE?
20 MR. DVEIRIN: YEAH.
21 LEWIS BRISBOIS BISGAARD & SMITH,
22 BRANT DVEIRIN, ON BEHALF OF DEFENDANT PALOS VERDES
23 HOMES ASSOCIATION.
24 MR. PREZIOSI: TARQUIN PREZIOSI, JENKINS & HOGIN,
25 YOUR HONOR, ON BEHALF OF THE CITY OF PALOS VERDES
26 ESTATES.
27 MR. MAMALAKIS: DAMON MAMALAKIS ON BEHALF OF THE
28 LUGLIANIS AND THE TRUSTEE TOM LIEB.

1 MR. LEWIS: GOOD MORNING, YOUR HONOR.

2 JEFFREY LEWIS FOR THE PLAINTIFFS.

3 THE COURT: YOU CAN BE SEATED.

4 MY TENTATIVE WAS TO GRANT THE PLAINTIFF'S
5 MOTION PROBABLY AS TO EVERYBODY, OTHER THAN THE CITY.
6 I'M NOT CERTAIN ABOUT THE CITY. THERE'S AN ISSUE THAT
7 NOBODY HAS ADDRESSED.

8 LET ME GO TO AN ASIDE BEFORE I TALK ABOUT
9 THAT. IS THERE SOME DISTINCTION BETWEEN "SCHOOL
10 DISTRICT" AND "THE CITY"? ISN'T THE SCHOOL DISTRICT A
11 PART OF THE CITY?

12 MR. LEWIS: THEY ARE SEPARATE ENTITIES, YOUR
13 HONOR.

14 THE COURT: TOTALLY SEPARATE?

15 MR. LEWIS: IT'S A SUBDIVISION OF THE STATE OF
16 CALIFORNIA. BOTH THE CITY AND THE SCHOOL DISTRICTS ARE
17 THE SAME IN THAT THEY ARE SUBDIVISIONS OF THE STATE OF
18 CALIFORNIA, BUT THEY ARE DISTINCT, SEPARATE POLITICAL
19 BODIES.

20 THE COURT: ALL RIGHT. HAVE A SEAT.

21 FIRST, THERE'S A LOT OF LOOSE LANGUAGE
22 ABOUT THE CITY'S INTEREST HAVING REVERTED BACK TO THE
23 HOMEOWNERS ASSOCIATION. IT DID NOT REVERT BACK. IT WAS
24 A TRANSFER. THE REVERSION BACK IS A UNILATERAL ACT, IN
25 MY VIEW. THAT'S WHERE THE HOMEOWNERS ASSOCIATION SAYS,
26 "WE'RE GIVING YOU NOTICE, HEADS UP, WE ARE RECLAIMING
27 THIS PROPERTY TO WHICH YOU HOLD TITLE BECAUSE YOU HAVE
28 VIOLATED THE RESTRICTIONS ON IT." AND THEIR ONLY RIGHT

1 AND POWER TO EXERCISE THAT REVERSIONARY INTEREST IS TO
2 CORRECT THAT VIOLATION OF RESTRICTIONS. THAT IS NOT
3 WHAT HAPPENED HERE AT ALL. THIS WAS A VOLUNTARY
4 TRANSFER AND ACCEPTANCE OF THIS PARCEL. SO ALL THIS
5 TALK ABOUT THERE HAVING BEEN A REVERSION, IN MY VIEW, IS
6 TOTALLY WRONG.

7 SO THEN WE HAVE TO LOOK AT WHAT HAPPENED IN
8 1940 WHEN THE HOMEOWNERS ASSOCIATION BASICALLY GOT OUT
9 OF THE BUSINESS OF MANAGING THESE PARKS AND EVERYTHING.
10 THERE HAD TO HAVE BEEN CITY ORDINANCES PASSED AT THAT
11 TIME AUTHORIZING THE CITY TO ACQUIRE THESE PARCELS.
12 THERE HAD TO BE SOME AGREEMENT ABOUT WHAT WAS TO BE
13 PAID. THERE HAD TO BE SOME AGREEMENT ABOUT UNDERTAKING
14 TO MANAGE AND CARE FOR THESE PARKS, PROBABLY IN
15 PERPETUITY. THERE PROBABLY WERE A WHOLE BUNCH OF OTHER
16 TERMS IN A VERY COMPLEX TRANSACTION AS TO HOW THIS WAS
17 GOING TO BE ACCOMPLISHED.

18 THE TRANSACTION ULTIMATELY WOULD HAVE BEEN,
19 I ANTICIPATE, AS A CONTRACT BETWEEN PALOS VERDES
20 ADMINISTRATION AND THE CITY OF PALOS VERDES.

21 THIS TAKES ME TO THE BODY OF LAW THAT YOU
22 HAVE NOT ADDRESSED. THERE'S A HUGE BODY OF VERY COMPLEX
23 CASE LAW ABOUT WHEN CITIES WEAR THEIR PRIVATE CITIZEN
24 HATS AND CONTRACTS THEY MAKE, BASICALLY STANDING IN THE
25 SAME SHOES OR POSTURE AS A PRIVATE CITIZEN, AND THEN
26 THERE'S A SECOND LAYER -- AND HOW THE COURT MAY GOVERN
27 THOSE CONTRACTS. CAN THE COURT ENJOIN A CITY FOR
28 BREACHING IT? CAN THE COURT TELL IT TO DO THIS OR TELL

1 IT TO DO THAT? OR IS THE CITY ONLY GOING TO BE ABLE TO
2 BE HELD LIABLE FOR DAMAGES FOR THE BREACH OF THAT
3 PRIVATE CONTRACT, IF YOU WILL?

4 AND LAYERED OVER THAT IS A WHOLE LINE OF
5 CASES ABOUT WHEN A GOVERNING BODY MAY BE LET OUT OF A
6 PRIVATE CONTRACT DUE TO EXIGENCIES THAT FORCE THE CITY
7 TO UTILIZE ITS POLICE POWER, OKAY, AND WHEN THEY CAN'T
8 UTILIZE THEIR POLICE POWER TO EITHER PREVENT THE
9 ENJOINING OF THE BREAKING OF A PRIVATE CONTRACT OR TO
10 OTHERWISE SET IT ASIDE. AND IF THEY DO USE THAT POLICE
11 POWER, THIS LEVEL THREE, THE COURTS MAY SAY, OKAY, WE
12 CAN'T STOP YOU FROM PASSING THIS MOST RECENT ORDINANCE
13 THAT INTERFERES WITH THAT CONTRACT, BUT THE OTHER PARTY
14 TO THAT CONTRACT IS GOING TO HAVE A RIGHT TO DAMAGES.
15 RIGHT? A VERY COMPLEX AREA AND DEVELOPING AREA.

16 SO TENTATIVELY, IN THIS COURT'S VIEW, THE
17 CITY WAS WEARING ITS PRIVATE CITIZEN HAT AND ENTERING
18 INTO WHATEVER CONTRACT IT HAD WITH PALOS VERDES, ALBEIT
19 APPROVED BY THE CITY TO ENTER INTO IT, TO UNDERTAKE THE
20 HANDLING AND MANAGING OF ALL THESE PARKS AND COLLECT
21 TAXES, I GUESS, WITH REGARD THERETO.

22 SO I'M NOT SURE THAT THE CITY IS, QUOTE,
23 "OUT OF IT" BECAUSE IT SIGNED THIS DEED SENDING THINGS
24 BACK. I'M NOT SURE IT COULD SEND THINGS BACK. I'M NOT
25 SURE IF THIS CONTRACT, WHATEVER IT WAS, HAS TO BE
26 ENFORCED WHERE THE CITY DEED OVER TO THE HOMEOWNERS
27 ASSOCIATION GETS VACATED AND SET ASIDE BECAUSE IT WAS
28 NOT A RECALL OR WHATEVER YOU WANT TO CALL IT AND THAT IT

1 MAY STILL END UP WHERE THE DEED IS STILL IN THE CITY,
2 THE CITY IS STILL ENCUMBERED.

3 YOU GUYS DIDN'T ADDRESS ALL THAT ON EITHER
4 SIDE. AND I'M PROBABLY GOING TO CALL FOR A SUBMISSION
5 OF FURTHER AUTHORITIES ON BOTH SIDES, BUT IT WOULD ALSO
6 BE A WHOLE NEW FACTUAL PRESENTATION. SO IT MIGHT BE
7 THAT I HAVE TO DENY THE SUMMARY JUDGMENT AS TO THE CITY
8 RIGHT NOW BUT WITHOUT PREJUDICE TO IT BEING REASSERTED,
9 POSSIBLY IN DIFFERENT AND I THINK MAYBE CORRECT TERMS,
10 BECAUSE NOBODY ADDRESSED IT. YOU DIDN'T GIVE ME THE
11 FACTS. I DON'T KNOW WHAT'S GOING ON WITH THAT.

12 MR. LEWIS: YOUR HONOR, IF I COULD BE HEARD AGAIN
13 FOR THE PLAINTIFFS.

14 WOULD THE COURT'S THINKING BE CHANGED AT
15 ALL IF IT WERE INFORMED THAT THE ONLY DOCUMENT THAT
16 I'M AWARE OF BETWEEN THE CITY AND THE ASSOCIATION ON THE
17 ISSUE OF TAKING THESE PARKS AND MAINTAINING THESE PARKS
18 IS A RESOLUTION 12, IT WAS EXHIBIT 8 IN OUR PAPERS, THAT
19 SAID, "WE, THE CITY, AGREE TO TAKE THIS PROPERTY UNDER
20 ALL THESE CONDITIONS"? AND THAT'S IT, AS FAR AS I KNOW.
21 THE CITY ATTORNEY IS HERE. HE CAN EXPLAIN FURTHER. AS
22 FAR AS I KNOW, AFTER THAT 1940 RESOLUTION BY THE CITY
23 ACCEPTING THE PROPERTY, THERE WAS NO CONTRACT. THERE
24 WERE NO SUBSEQUENT AGREEMENTS.

25 THE COURT: I MUST HAVE MISSED THIS EXHIBIT 8.

26 MR. LEWIS: YOUR HONOR, IT'S THE HARDEST-TO-READ
27 EXHIBIT. IT'S IN REVERSE PRINT, BLACK AND WHITE, AND
28 IT'S PLAINTIFF'S EXHIBIT 8.

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THE COURT: PLAINTIFF'S A?

MR. DVEIRIN: 8.

MR. LEWIS: 8, YOUR HONOR.

THE COURT: WELL, I DON'T HAVE THE RIGHT ONE.

MR. LEWIS: YOUR HONOR, IT MAY BE UNDER TAB 10 IN OUR NOTEBOOK.

THE COURT: IT SAYS "EVIDENCE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT." 10 IS BLACK WITH WHITE.

MR. LEWIS: THAT IS THE DOCUMENT I WAS REFERRING TO, AND SPECIFICALLY AT PAGE --

THE COURT: HOLD ON.

WOULD YOU HOLD OFF THE TINKY-TINK FOR A MINUTE THERE?

OKAY. IT DOES HAVE A PROVISION THAT THE GRANT, LIKE THE ORIGINAL TRUST, IS TO BE FOREVER.

ALSO, THERE'S AN ODD PROVISION THAT ALL LAND -- "AND TEND TO THE PARTIES THAT TITLE TO ALL LAND UNDER, WITHIN ALL STREETS, ALLEYS, WALKS, ROADS, AND HIGHWAYS IS RESERVED." OKAY. THAT'S NOT THE PARKLAND.

WHERE WAS THAT LINE THAT SAID IT WAS GRANTED FOREVER? ARE YOU AWARE OF WHERE THAT IS?

MR. LEWIS: YOUR HONOR, I BELIEVE IT'S ON PAGE 22 OF 25 AND PAGE 23 OF 25 WHERE --

THE COURT: IT'S EARLIER THAN THAT. I HADN'T EVEN READ THAT FAR.

BUT ON 22? WHERE?

MR. LEWIS: TOWARDS THE BOTTOM OF THE PAGE ON THE

1 SIDE, THERE'S A PARAGRAPH MARKER 388. AND I CIRCLED IT
2 WITH A BOX.

3 THE COURT: NO. THERE'S A 57 AND 68, A 78 OR 18.

4 MR. LEWIS: YOUR HONOR, IF IT SAYS PAGE 22 OF 25
5 AT THE BOTTOM --

6 THE COURT: I SEE IT HERE.

7 NO, THAT'S SEPARATE. THERE'S SIMPLY A LINE
8 THAT SAYS THAT THE GRANT IS IN PERPETUITY.

9 AT ANY RATE, I'D HAVE TO GO THROUGH THIS
10 WITH MORE CARE, BUT I THINK THERE WAS CLEARLY NO
11 EXERCISE OF ANY REVERSIONARY RIGHT HERE. SO I DON'T
12 KNOW WHERE THAT'S GOING TO LEAVE US.

13 LET ME HEAR FROM THE PROPONENT OF THIS
14 MOTION FIRST.

15 MR. LEWIS: YOUR HONOR, DO I UNDERSTAND THE
16 TENTATIVE WAS TO GRANT MY MOTION AS TO EVERYBODY EXCEPT
17 THE CITY?

18 THE COURT: YES, BASICALLY.

19 MR. LEWIS: LET ME SPEAK ON THE ISSUE OF THE CITY.
20 I BELIEVE THIS CASE STANDS ON ALL FOUR SQUARES --

21 THE COURT: ALTHOUGH I'M NOT SURE OF THE LANGUAGE
22 THAT I WOULD UTILIZE IN THE DECLARATORY RELIEF ACTION OR
23 WHO I'M GOING TO REQUIRE TO PAY FOR WHAT. THERE ARE INS
24 AND OUTS THERE.

25 I WOULD SUGGEST TO YOU THAT THERE IS ONE
26 WAY OF SETTLING THIS MATTER THAT YOU MAYBE HAVE NOT
27 THOUGHT ABOUT, AND THAT IS BY MEANS OF DEDICATION. IF
28 THE LOT WERE TO REMAIN HELD BY THE PRIVATE OWNERS BUT

1 THE GATES WERE TO ALL BE TAKEN DOWN AND REMOVED, THEN
2 ANYTHING THAT THEY HAVE PUT ON THE PROPERTY WOULD ALSO
3 BE DEDICATED TO PUBLIC USE.

4 IN SHORT, IT WOULD NO LONGER BE THEIR
5 PRIVATE BACKYARD, BUT THEY WOULD HAVE THE ABILITY TO USE
6 THE GAZEBO OR THE FIREPIT OR WHATEVER, JUST LIKE ANY
7 OTHER MEMBER OF THE PUBLIC COULD. IT WOULD NOT MEAN
8 TEARING DOWN SUPPORT WALLS AND THINGS OF THAT NATURE.

9 AND IF THE OWNERS --

10 IF I'M CORRECT IN MY ASSESSMENT, PROBABLY
11 THERE WOULDN'T BE MUCH PUBLIC USE OF THIS PARTICULAR
12 STRETCH. SO YOU COULD PRESERVE ALL THE PARKWAY --

13 MR. LEWIS: YOUR HONOR, THAT'S AN INTRIGUING IDEA.

14 THE COURT: -- ACCESS AND EVERYTHING ELSE AND JUST
15 HAVE IT DEDICATED. AND ONCE IT'S DEDICATED, THAT'S A
16 PERMANENT SOLUTION AS WELL.

17 MR. LEWIS: YOUR HONOR, THAT'S AN INTRIGUING IDEA,
18 AND I WILL PURSUE THAT WITH COUNSEL IN THE HALLWAY AFTER
19 THIS HEARING.

20 ON THE ISSUE OF WHAT WOULD THE JUDGMENT
21 LOOK LIKE IF THE MOTION WERE GRANTED, WHAT I ENVISIONED
22 WAS SUBMITTING A JUDGMENT GRANTING DECLARATORY RELIEF
23 THAT THE TWO SEPTEMBER 2012 DEEDS ARE HEREBY VOID AND
24 HAVE NO FORCE AND EFFECT. THAT IS THE JUDGMENT THAT WE
25 WANT.

26 THE COURT: MEANING TITLE WOULD BE LEFT WHERE?

27 MR. LEWIS: WITH THE CITY. AND IF THE CITY AT
28 THAT POINT WANTED TO TRY AGAIN AND SEND IT TO THE

1 PALOS VERDES LAND CONSERVANCY OR SEND IT TO THE
2 LUGLIANIS WITH THE IDEA OF A PUBLIC DEDICATION, THEN WE
3 MIGHT BE IN A DIFFERENT POSTURE, BUT TITLE WOULD BE LEFT
4 WITH THE CITY AS IT WAS BEFORE THIS TRANSACTION WAS
5 ENTERED INTO.

6 THE COURT: WELL, THERE WAS NO QUESTION, UNLESS
7 THERE WAS SOME EFFORT TO ELIMINATE IT IN THE DEED WE
8 JUST REFERRED TO, THAT ANY PRIVATE HOMEOWNER IN THE
9 TRACT HAS THE ABSOLUTE RIGHT INDIVIDUALLY TO ENFORCE
10 THESE RESTRICTIONS.

11 ADDITIONALLY, SOMETIMES IN THE DOCUMENTS IT
12 REFERS TO RESIDENTS ALSO HAVING SUCH A RIGHT. YOU COULD
13 HAVE A TENANT SOMEWHERE WHO'S A RESIDENT, NOT A
14 HOMEOWNER. THEY MIXED THEM UP, BOTH IN SOME AREAS, ONE
15 IN ANOTHER.

16 CERTAINLY OUR PLAINTIFF IS HOME FREE IN
17 TERMS OF BEING ABLE TO ACT AS WELL. AND SINCE HE CAN
18 ACT, THE QUESTION IS WHETHER HE COULD COMMIT WHAT WOULD
19 NOT BE A TRESPASS IF DONE BY THE HOMEOWNERS ASSOCIATION,
20 BUT MIGHT BE A TRESPASS IF DONE BY HIM, TO GO IN AND
21 REMOVE ALL OF THE STRUCTURES.

22 AND YOU STILL NEED TO GET TITLE MOVED BACK
23 FROM THE PRIVATE PARTIES INTO THE PUBLIC ARENA. BUT
24 WHOEVER IS THE PUBLIC ARENA, THEY ARE GOING TO GET STUCK
25 WITH REMOVING EVERYTHING AND PAYING FOR IT.

26 THERE WAS A QUESTION ABOUT WHETHER THE CITY
27 COULD, BY SOME ATTEMPT AT ZONING, CHANGE THE ZONES FOR
28 THESE AREAS. MY TENTATIVE ANSWER TO THAT IS NO. AND,

1 AGAIN, IF YOU GO INTO THAT LINE OF CASE LAW THAT
2 I TALKED TO YOU ABOUT WITH PRIVATE -- THE CITY ACTING
3 LIKE A PRIVATE CONTRACTOR IN A CONTRACT --

4 ONE EXAMPLE MIGHT BE WHERE THE CITY GIVES
5 CERTAIN OIL RIGHTS AND ABILITY TO DEVELOP OIL. AS IT
6 TURNS OUT, THESE EXERCISES OF THE OIL RIGHTS ARE
7 CREATING MASSIVE SEEPAGE OF THIS, THAT, AND THE OTHER,
8 AND IT'S BECOME A REAL PUBLIC HEALTH HAZARD. WOULD A
9 COURT BE PERMITTED TO ENJOIN AN EXERCISE OF THE POLICE
10 POWER THAT SAYS THERE'S A NEW ORDINANCE, YOU CANNOT HAVE
11 OIL WELLS IN THIS AREA?

12 IT BREACHES THEIR CONTRACT, IT DEFEATS
13 THEIR CONTRACT. BUT THE COURTS WOULD GENERALLY ANSWER,
14 YES, THERE'S AN OVERRIDING HEALTH AND PUBLIC ISSUE THAT
15 THIS ZONING IS NOT GOING TO BE ENJOINED, THIS
16 TERMINATION OF USE CANNOT BE ENJOINED BECAUSE OF THE
17 OVERWHELMING PUBLIC NEED.

18 THEY MIGHT IN THOSE CASES ALSO SAY THERE
19 WILL BE NO RIGHT OF RECOVERY OF DAMAGES BECAUSE ALL
20 PARTIES KNEW OR SHOULD HAVE KNOWN WHEN THEY ENTERED INTO
21 THIS PRIVATE CONTRACT THAT OIL SPILLAGE COULD BECOME
22 POTENTIALLY A FUTURE PROBLEM THAT WOULD REQUIRE A
23 SHUTDOWN. RIGHT?

24 BUT IN SCENARIOS WHERE THE PRIVATE PARTIES
25 WOULD HAVE NO REASON TO CONTEMPLATE, THAT THE CITY
26 DECIDED TO RE-ZONE SOMETHING BECAUSE THE MAYOR WANTED TO
27 PUT HIS HOUSE THERE, YOU WOULD DEFINITELY END UP WITH
28 DAMAGES AND YOU WOULD PROBABLY END UP WITH AN INJUNCTION

1 BECAUSE THERE WOULD BE NO SUPPORTABLE USE OF THE POLICE
2 POWER FOR THAT PURPOSE.

3 SO MY FEELING AT THIS MOMENT, I HATE TO
4 TALK ABOUT FEELINGS IN MAKING RULINGS, BUT MY FEELING AT
5 THIS MOMENT IS PROBABLY THE CITY WOULD GET ESTOPPED BY
6 THIS COURT THROUGH AN INJUNCTIVE ORDER FOR TRYING TO
7 RE-ZONE THIS OR DO ANYTHING ELSE THAT WOULD INTERFERE
8 WITH THESE RESTRICTIONS ON THE PROPERTY OR THE
9 ENFORCEABILITY THEREOF.

10 I'M SORRY. I INTERRUPTED YOU, BUT YOU
11 NEEDED TO KNOW THE REST OF IT.

12 MR. LEWIS: YOUR HONOR, MY FINAL THOUGHT ON THIS
13 SUBJECT GIVEN THE TENTATIVE IS I WANTED TO EMPHASIZE WE
14 ARE NOT SEEKING DAMAGES AGAINST THE CITY OR THE
15 ASSOCIATION.

16 THE COURT: I KNOW THAT.

17 MR. LEWIS: AND I WILL SAY --

18 THE COURT: BUT YOU ARE. YOU'RE SEEKING AN ORDER
19 THAT THEY PAY FOR IT. YOUR CLIENT DOESN'T WANT TO PAY
20 TO REMOVE ALL THIS STUFF.

21 MR. LEWIS: VERY GOOD, YOUR HONOR. I SEE THAT
22 POINT. I RECOGNIZE THAT.

23 I JUST WANTED TO SAY THAT THE JUDGMENT THAT
24 I SUBMIT, SHOULD WE PREVAIL, WOULD NOT INCLUDE A PRAYER
25 FOR DAMAGES.

26 THE COURT: RIGHT.

27 MR. LEWIS: THE FINAL POINT I'LL SAY IS ON THIS
28 ISSUE OF SETTLEMENT. I'LL LET YOU KNOW IN OUR CITY OR

1 ON THE PENINSULA, THERE WAS AN ISSUE WITH DONALD TRUMP
2 ERECTING A GIANT, HUGE FLAGPOLE ON PRIVATE PROPERTY.
3 AND THE CITY WANTED TO REGULATE THAT. IT WAS GOING TO
4 BE A BIG CONSTITUTIONAL LAWSUIT. THE PARTIES SETTLED
5 IT, AND THE WAY THEY SETTLED IT IS IT WAS DEDICATED AS A
6 PUBLIC PARK. DONALD TRUMP STILL OWNS THAT FLAGPOLE, BUT
7 THE PUBLIC IS ABLE TO COME INTO THE PARK AT ALL TIMES.
8 THEY SETTLED THAT CASE AND AVOIDED LITIGATION.

9 I WAS REMINDED OF THAT SETTLEMENT WHEN YOU
10 WERE JUST SPEAKING, AND I'LL HAVE A SINCERE CONVERSATION
11 WITH COUNSEL IN THE HALLWAY ABOUT THAT.

12 THE COURT: WELL, I'VE BEEN AROUND FOR A LOT OF
13 YEARS, SO ALL THESE ARCHAIC CONCEPTS GET STUCK IN THE
14 BACK OF MY MIND, LIKE DEDICATION.

15 EASEMENTS HAVE NOTHING TO DO WITH ANYTHING,
16 BY THE WAY. YOU GUYS TALKED ABOUT SERVITUDES AND
17 EASEMENTS. THIS IS NOT AN EASEMENT CASE. THESE
18 RESTRICTIONS ARE NOT EASEMENTS.

19 OKAY. SO I'LL HEAR FROM YOU.

20 MR. PREZIOSI: THANK YOU, YOUR HONOR.

21 THE COURT: AND THERE'S THE CROSS-MOTION, SO
22 YOU'RE ADVANCING YOUR ARGUMENTS ON THE CROSS-MOTION AND
23 YOUR DEFENSIVE ARGUMENTS TO HIS MOTION AT THE SAME TIME,
24 IF YOU WOULD.

25 THEN I'LL GIVE HIM THE LAST WORD.

26 MR. PREZIOSI: YOUR HONOR, I'LL RESPOND
27 SPECIFICALLY RIGHT NOW TO THE ARGUMENTS THAT COUNSEL
28 RAISED AND THE QUESTIONS THAT THE COURT RAISED.

1 AS TO THE RESOLUTION THAT'S EXHIBIT
2 NUMBER 8 THAT WE'VE BEEN TALKING ABOUT, ALL THAT IS IS A
3 RESOLUTION -- IT'S A DECLARATION BY THE CITY TO ACCEPT
4 THE LOTS AT ISSUE HERE. THE CITY JUST ACCEPTS THE LOTS.
5 IT'S A RESOLUTION, NOT A LAW. THE CITY ACCEPTS THE
6 LOTS. THE CITY AGREES THAT THE DEED RESTRICTIONS ARE
7 CONTROLLING. IT ACCEPTS THE LOTS WITH THE DEED
8 RESTRICTIONS.

9 INSTRUCTIVE ON THIS ISSUE IS THE WELWOOD
10 CASE BECAUSE WHAT THE CITY DID IN 2012, IT QUITCLAIMED
11 THE PROPERTY BACK TO THE ASSOCIATION, ORIGINAL GRANTOR
12 OF THE ASSOCIATION. AND UNDER WELWOOD, AND I QUOTE, IT
13 SAYS, "LEGISLATIVE ACTION MAY NOT BE ENJOINED BUT THAT
14 BREACH OF A TRUST MAY BE ENJOINED, WHEN READ TOGETHER,
15 COMPEL THE FOLLOWING CONCLUSION. AN INJUNCTION WILL NOT
16 LIE TO PREVENT THE CITY FROM MAKING EXPRESS LEGISLATIVE
17 DETERMINATION THAT IT WOULD BE IN THE BEST INTEREST OF
18 THE CITY AND ITS CITIZENS TO CEASE USING THE PROPERTY,"
19 FOR LIBRARY PURPOSES IN THAT CASE, "AND ALLOW THE
20 PROPERTY TO VIRTUALLY REVERT TO THE GRANTOR'S HEIRS."

21 THAT IS IN ESSENCE WHAT THE CITY DID. THE
22 CITY QUITCLAIMED PROPERTY BACK TO THE ASSOCIATION. THIS
23 WAS DULY NOTICED AT A PUBLIC HEARING. THIS WAS VOTED ON
24 BY THE CITY COUNCIL. THERE IS NO EVIDENCE IN THE RECORD
25 THERE WAS ANYTHING BUT. PLAINTIFF HAS NOT PUT FORTH ANY
26 ARGUMENT OR EVIDENCE THAT THIS WAS NOT A PROPER MEETING,
27 THAT THIS WAS NOT PROPERLY DONE. THE CITY DELIBERATED
28 UPON IT. THE CITY FINALLY CAME TO THE CONCLUSION THAT

1 IT WANTED THE PROPERTY TO REVERT BACK -- NOT TO REVERT,
2 TO QUITCLAIM THE PROPERTY BACK TO THE ASSOCIATION.

3 SO WHETHER IT REVERTS BACK TO THE
4 ASSOCIATION, WHICH IS THE PRIMARY REMEDY UNDER THE DEED,
5 OR THE CITY GIVING IT BACK TO THE ASSOCIATION, IT
6 DOESN'T MAKE A DIFFERENCE BECAUSE UNDER WELWOOD, IT WAS
7 GIVEN BACK TO THE GRANTOR. SO THE RESOLUTION RETENTION
8 FROM 1940, EXHIBIT 8, DOES NOT BIND THE CITY TO HOLD
9 THIS LAND FOREVER IN PERPETUITY.

10 THE COURT: I'M NOT SURE OF THAT. THE LANGUAGE
11 SAYS THAT IT'S GOING TO BE IN PERPETUITY.

12 MR. PREZIOSI: THAT IS A RESOLUTION OF THE
13 CITY COUNCIL. THAT IS NOT A LAW. THE CITY COUNCIL
14 PASSED --

15 THE COURT: WHAT IS A RESOLUTION? THIS IS JUST
16 PERMISSION TO THE CITY TO BUY IT; IS THAT IT?

17 MR. PREZIOSI: THE CITY DIDN'T BUY IT.

18 THE COURT: IT'S NOT A LAW?

19 MR. PREZIOSI: IT'S NOT A LAW.

20 THE COURT: THEY GAVE THEM \$10 FOR IT. COME ON.

21 MR. PREZIOSI: THEY DIDN'T GIVE THEM \$10 FOR IT.

22 THE COURT: IT RECITES THEY DID, AND RECITALS ARE
23 BINDING.

24 MR. PREZIOSI: IT WAS SOLD TO THE CITY FOR \$10.
25 THE CITY ACCEPTED IT. ALL THE RESOLUTION DOES IS
26 ACCEPTS THE DEED RESTRICTIONS THAT WERE ON THE PROPERTY,
27 BUT THAT DOESN'T COMPEL THE CITY TO OWN IT FOREVER. THE
28 CITY HAS --

1 THE COURT: IT DOES SAY THE GRANT IS FOREVER.

2 MR. PREZIOSI: WELL, IT MAY HAVE --

3 WELL, WE MAY HAVE THE RESOLUTION --

4 THE COURT: AND THERE ARE ONLY CERTAIN
5 CIRCUMSTANCES IN WHICH SOMETHING CAN GO BACK TO THE
6 GRANTOR. ONE IS THAT THE CITY DISAPPEARS. ANOTHER IS
7 IF THE GRANTOR WANTS IT BACK BECAUSE YOU'VE BEEN
8 VIOLATING TERMS, BUT THERE'S NOTHING THAT PROVIDES FOR A
9 GRANT-BACK.

10 MR. PREZIOSI: I DISAGREE, YOUR HONOR.

11 THE CITY HAS THE POWER UNDER LAW TO ACCEPT
12 AND DISPOSE OF REAL PROPERTY UNDER THE GOVERNMENT CODE,
13 AND THAT IS WHAT IT DID HERE. IT GAVE IT BACK TO THE
14 GRANTOR.

15 JUST BECAUSE THE CITY COUNCIL IN 1940
16 PASSES A RESOLUTION THAT SAYS, "WE WANT TO HOLD THIS
17 FOREVER," THAT CANNOT ESTOP, THAT CANNOT BIND THE HANDS,
18 CANNOT TIE THE HANDS OF FUTURE COUNCIL TO SAY, "WE NO
19 LONGER WISH TO OWN THIS PROPERTY," WHICH IS WHAT THE
20 CITY COUNCIL IN 2012 DID. IN ESSENCE, IT SAID, "WE NO
21 LONGER WISH TO OWN THIS PROPERTY, WE ARE GIVING IT BACK
22 TO THE GRANTOR WHO HELD THE REVERSIONARY INTEREST."

23 SO IN THEORY, IF THE CITY HAD CEASED TO USE
24 IT FOR PARK PURPOSES, THE GRANTOR UNDER BOTH THE 1940
25 DEEDS AS WELL AS THE RESOLUTION WOULD HAVE HAD THE RIGHT
26 TO COME IN AND SAY, "NO, WE WANT IT BACK." THAT, OF
27 COURSE, WAS NOT NECESSARY BECAUSE THE CITY GAVE IT BACK
28 AND THE HOMEOWNERS ASSOCIATION WANTED IT BACK. SO THAT

1 IS, IN ESSENCE, WHAT THE MOU DID AND WHAT THE 2012 GRANT
2 DEED, GAVE IT BACK TO THE GRANTOR.

3 CAN I --

4 WOULD YOU LIKE MORE ON THAT ISSUE, OR WOULD
5 YOU LIKE ME TO MOVE ON TO THE CITY'S CROSS-MOTION?

6 THE COURT: IS THERE ONE PERSON ARGUING?

7 YOU'RE REPRESENTING?

8 MR. DVEIRIN: I REPRESENT THE HOMEOWNERS
9 ASSOCIATION. I'M ONLY IN OPPOSITION --

10 THE COURT: OKAY. SO LET HIM FINISH.

11 MR. PREZIOSI: YOUR HONOR, WOULD YOU LIKE ME TO
12 ADDRESS THE CITY'S CROSS-MOTION FOR SUMMARY JUDGMENT AT
13 THIS TIME?

14 THE COURT: YES, IF YOU WISH.

15 BY THE WAY, THERE WAS SUPPOSEDLY A BUNCH OF
16 EXHIBITS TO THE DECLARATION OF HANSEN. THERE ARE NONE.

17 MR. PREZIOSI: ARE YOU REFERRING TO HARBISON,
18 YOUR HONOR?

19 THE COURT: YEAH, I GUESS.

20 MR. DVEIRIN: THE ORIGINAL DECLARATION --

21 ALL EXHIBITS THAT PLAINTIFF'S COUNSEL IS
22 REFERRING TO ARE ATTACHED TO THE HARBISON DECLARATION
23 WITH EXHIBIT 8, 9, 10, ALL THOSE.

24 THE COURT: YEAH, THEY'RE NOT --

25 MR. LEWIS: THE ONE WE WERE JUST LOOKING AT,
26 YOUR HONOR. THE BLACK-AND-WHITE, TERRIBLE, HARD-TO-READ
27 DOCUMENT.

28 THE COURT: THAT'S IT?

1 MR. DVEIRIN: WELL, THERE'S A BUNCH OF THEM.

2 MR. LEWIS: THAT WAS 8 OF 20-SEVERAL.

3 THE COURT: I DON'T KNOW. I READ A DECLARATION
4 THAT SAID THIS IS ATTACHED AS EXHIBIT THIS, THIS IS
5 ATTACHED AS EXHIBIT THAT. I THOUGHT IT WAS HANSEN. AND
6 THERE WAS NOTHING ATTACHED. SO --

7 MR. PREZIOSI: YOUR HONOR, AS TO THE CITY'S MOTION
8 FOR SUMMARY JUDGMENT, THE CROSS-MOTION, I AM PREPARED TO
9 SUBMIT ON THE CITY'S PAPERWORK. I WILL RESPOND TO ANY
10 QUESTIONS THE COURT HAS. OR AT THE COURT'S PLEASURE,
11 I CAN BRIEFLY STATE THE MOTION.

12 THE COURT: BOTH PARTIES REPEATEDLY CITED TO THEIR
13 SEPARATE STATEMENTS OF UNDISPUTED FACTS. YOU'RE BETWEEN
14 A ROCK AND A HARD SPOT BECAUSE EVERY COURT DOES
15 EVERYTHING DIFFERENTLY, BUT I RECOMMEND YOU NOT DO THAT
16 EVER AGAIN IN ANY COURT.

17 WHAT MAKES YOU THINK THE JUDGE WANTS TO BE
18 READING THROUGH AND SEE SOME IMPORTANT POINT, "IN JUNE,
19 DA, DA, DA HAPPENED," AND INSTEAD OF GIVING ME EXHIBIT A
20 TO THE UMPTEENTH DECLARATION, YOU SAY, "GO TO OUR
21 SEPARATE STATEMENT, UNDISPUTED FACT THING"? SO I'VE GOT
22 TO GO OVER THERE. THEN I HAVE TO LOOK IT UP OVER THERE.
23 THEN I HAVE TO FIND WHAT DOCUMENT THAT SUPPOSEDLY TELLS
24 ME NOW TO GO TO.

25 WHY WOULD I WANT TO DO THAT WHEN I HAVE
26 A STACK OF PAPERS TWO FEET HIGH?

27 MR. LEWIS: UNDERSTOOD, YOUR HONOR.

28 THE COURT: YOU WERE SUPPOSED TO CITE TO FACTS IN

1 YOUR PAPERWORK, NOT TO SOME OTHER SOURCE THAT WILL TAKE
2 YOU TO ANOTHER FACT. DON'T DO THAT. DON'T DO IT.
3 I DON'T CARE IF OTHER JUDGES LET YOU DO IT. I CANNOT
4 IMAGINE THAT ANY OF THEM ARE GOING TO BE HAPPY WITH IT
5 BECAUSE IT IMPOSES ON US THIS DOUBLE EFFORT. AND WE'RE
6 NOT TALKING ABOUT LITTLE PIECES OF PAPER LIKE THIS.
7 WE'RE TALKING ABOUT POUNDS OF DOCUMENTS. PLEASE DON'T
8 DO THAT.

9 NOW, YOU SAY, "FOR DECADES PRIOR THE
10 CURRENT OR PAST OWNERS HAD THESE PERMISSIBLE
11 STRUCTURES."

12 HOW FAR BACK DOES THIS GO?

13 MR. PREZIOSI: ARE YOU REFERRING TO --

14 THE COURT: THAT WAS IN YOUR PAPERS, THAT
15 STATEMENT, "FOR DECADES PRIOR."

16 HOW FAR BACK HAVE THEY HAD ALL THIS STUFF
17 ON THERE?

18 MR. PREZIOSI: MY UNDERSTANDING, YOUR HONOR, IS
19 THERE HAVE BEEN STRUCTURES ON THE PROPERTY --

20 THE COURT: EXCUSE ME.

21 TELL OUR JURORS TO COME BACK AT 1:30,
22 PLEASE, WITH SINCERE APOLOGIES. MAKE IT 1 O'CLOCK.
23 I'LL WORK THROUGH LUNCH WITH COUNSEL, IF NEED BE.

24 MR. PREZIOSI: YOU'RE TALKING ABOUT THE ILLEGAL
25 STRUCTURES OR THE UNPERMITTED STRUCTURES. THE REVERTED
26 STRUCTURES HAVE BEEN ACTION PLANNED BY THE CITY CODE
27 ENFORCEMENT OFFICERS TO REMOVE CERTAIN STRUCTURES OVER
28 THE COURSE OF YEARS GOING BACK SEVERAL DECADES,

1 I BELIEVE. THE MOST RECENT RECORDS WE HAVE ARE FROM THE
2 '90S AND THE 2000S WHEN CERTAIN ACTION WAS TAKEN TO
3 COMPEL THE REMOVAL OF SOME OF THESE STRUCTURES.

4 THE COURT: ALL RIGHT. AND FINALLY, I THOUGHT IT
5 WAS A LITTLE DISINGENUOUS IN THE CROSS-COMPLAINT
6 DESCRIPTION OF THE TRANSACTION TO SAY THAT THIS DEED WAS
7 GIVEN TO SO-AND-SO AND THIS DEED WENT TO SO-AND-SO AND
8 THIS DEED WENT TO SO-AND-SO, OMITTING THEREFROM THE FACT
9 THAT THOUSANDS AND THOUSANDS AND THOUSANDS OF DOLLARS
10 PASSED HANDS IN THIS TRANSACTION. THIS WAS NOT SOME,
11 "OH, LET'S DO IT FOR THE PUBLIC GOOD, THIS LOT IS BETTER
12 USED FOR SO-AND-SO." A LOT OF MONEY, A LOT OF MONEY
13 PASSED HANDS.

14 AND CERTAINLY THE VIEW COULD BE TAKEN THAT
15 THE PUBLIC INTEREST WAS BEING SOLD OUT HERE FOR DOLLARS.
16 I DON'T KNOW THAT TO BE THE CASE. I AM NOT MAKING THAT
17 FINDING. BUT WHEN YOU DISCUSS THE DEAL, I EXPECT YOU TO
18 TELL ME THE DEAL. AND IT INVOLVED LOTS OF MONEY FROM
19 THESE PRIVATE HOMEOWNERS WHO ENDED UP WITH THIS PARKLAND
20 AND WITH IGNORING NOTICES TO REMOVE THINGS, YOU NOW TELL
21 ME, GOING BACK 10 OR 20 YEARS WITH IMPUNITY.

22 MR. PREZIOSI: YOUR HONOR, JUST TO CLARIFY, THERE
23 WERE CODE ENFORCEMENT ACTIONS THAT WERE TAKEN UNDER THE
24 CITY'S POLICE POWER. CERTAIN OBJECTS WERE REMOVED.
25 THIS HAS NOT BEEN A COMPLETELY STATIC THING. ITEMS THAT
26 HAVE BEEN PUT ON THE "AREA A" AT ISSUE HAVE NOT ALWAYS
27 EXISTED THERE IN PERPETUITY. THE ISSUE UNDER THE CITY'S
28 CODE ENFORCEMENT, THEY HAD TAKEN ACTION UNDER THE CITY'S

1 POLICE POWER BECAUSE IT WAS A VIOLATION OF ZONING
2 ORDINANCES TO REMOVE CERTAIN ITEMS. THERE ARE SOME
3 ITEMS THAT NOW EXIST --

4 THE COURT: NEVER REMOVED THE BIG GATE BLOCKING
5 ACCESS TO THAT PARKLAND PROPERTY, DID THEY?

6 MR. PREZIOSI: NOT THAT I'M AWARE OF, YOUR HONOR.

7 THE COURT: NO.

8 MR. MAMALAKIS: THE GATE, YOUR HONOR, ONLY WENT TO
9 THE ACCESS ROAD. THE GATE DID NOT SURROUND THE AREA IN
10 QUESTION WHATSOEVER.

11 THE COURT: JUST THE ROAD?

12 MR. MAMALAKIS: JUST THE FIRE ACCESS ROAD TO WHICH
13 THE CITY HAS AN EASEMENT FOR AND FOR WHICH THEY HAVE A
14 KEY TO THE GATE.

15 THE COURT: I SEE.

16 HOW ABOUT THE PUBLIC? HOW DID THEY GET IN?

17 MR. MAMALAKIS: JUST WALK RIGHT AROUND. THERE'S A
18 GATE, AND THEN IT'S COMPLETELY OPEN.

19 THE COURT: I SEE. MY MISTAKE.

20 ALL RIGHT. FINISH YOUR ARGUMENTS,
21 PLEASE --

22 MR. PREZIOSI: THANK YOU, YOUR HONOR.

23 THE COURT: -- ON YOUR CROSS-MOTION.

24 MR. PREZIOSI: I'LL GO TO THE CROSS-MOTION NOW.

25 THE COURT: THEN THE HOMEOWNERS CAN ADVANCE THEIR
26 ARGUMENTS AND I'LL HEAR FROM PLAINTIFF. AND THEN WE
27 HAVE TO WIND THIS UP.

28 MR. PREZIOSI: THANK YOU, YOUR HONOR.

1 THE COURT: AGAIN, I DO VIEW THESE ACTS AS
2 ULTRA VIRES. NOTHING HAS CHANGED MY MIND ON THAT.

3 MR. PREZIOSI: THANK YOU, YOUR HONOR.

4 AS TO THE CITY'S CROSS-MOTION AND TO THE
5 FIRST CAUSE OF ACTION WHICH ARE, ONE, THE REVERSION --
6 THE CITY IS NOT USING THE PROPERTY. ALL THAT THE DEED
7 RESTRICTIONS GO TO ARE CERTAIN USES OF THE PROPERTY AND
8 OWNERSHIP. THE CITY IS NOT USING THE PROPERTY IN
9 CONTRAVENTION OF THE DEEDS. THE CITY IS NOT USING THE
10 PROPERTY AT ALL.

11 THE COURT: PLAINTIFF ARGUES THAT YOU TRANSFERRED
12 IT TO AN ENTITY THAT DOES NOT HAVE THE ABILITY TO RUN
13 PARKS OR ANYTHING LIKE THAT ANY LONGER AND THAT IT IS
14 ACTUALLY NOW JUST A PRIVATE ASSOCIATION.

15 MR. PREZIOSI: MAY I BE HEARD ON THAT, YOUR HONOR?
16 WHAT THE DEEDS ACTUALLY STATE IS THAT THE PROPERTY SHALL
17 NOT BE TRANSFERRED EXCEPT TO A BODY DULY CONSTITUTED BY
18 LAW TO HOLD PARKLAND. THERE IS NO REQUIREMENT IN THE
19 DEED LANGUAGE THAT THE HOMEOWNERS ASSOCIATION CURRENTLY
20 HOLD PARKLAND.

21 IN FACT, PLAINTIFF HIMSELF -- ONE OF THE
22 PLAINTIFFS HIMSELF, MR. HARBISON, ACTUALLY STATED UNDER
23 OATH, YOU SAW IT IN OUR PAPERS, THAT THE ASSOCIATION
24 COULD HOLD PARKLANDS.

25 THE COURT: REALLY?

26 MR. PREZIOSI: AND AS A MATTER OF FACT --

27 THE COURT: DIDN'T IT GIVE UP ALL ITS RIGHT AND
28 ABILITY TO HOLD PARKLAND AND THEN TRANSFERRED IT ALL TO

1 THE CITY?

2 MR. PREZIOSI: YOUR HONOR, AS PLED IN THE SECOND
3 AMENDED COMPLAINT AND AS SET FORTH IN THE DEEDS THAT
4 HAVE BEEN CITED REPEATEDLY, THE ASSOCIATION, ONE OF ITS
5 COVENANTS AND RESTRICTIONS, ONE OF ITS BINDING ARTICLES
6 OF INCORPORATION ALLOWS IT TO HOLD AND MAINTAIN PARKS.
7 JUST BECAUSE IT DEEDED ITS PARKS TO THE CITY TO AVOID
8 THE TAX LIABILITIES DOESN'T MEAN THAT IT CAN NO LONGER
9 HOLD PARKS. AND THE FACT BEING, BECAUSE YOU HAVE A
10 REVERSIONARY CLAUSE IN THE VERY DEEDS THE PLAINTIFF
11 SEEKS TO ENFORCE, THERE WAS CLEARLY A CONTEMPLATION THAT
12 THE ASSOCIATION COULD ONCE AGAIN HOLD PARKLANDS.

13 THE COURT: OKAY.

14 MR. PREZIOSI: I MEAN, THAT'S IN THE DEEDS
15 THEMSELVES.

16 THE COURT: BYLAWS IS A GOOD RESPONSE.

17 MR. PREZIOSI: THERE'S NO DUTY --

18 THE CITY HAS NO DUTY TO ENFORCE PRIVATE
19 COVENANTS, CONDITIONS, AND RESTRICTIONS. THE CITY'S
20 ONLY DUTIES ARE SET FORTH IN THE LAW OF THE STATE OF
21 CALIFORNIA AND ITS MUNICIPAL CODES.

22 THE COURT: IT ABSOLUTELY HAS THE OBLIGATION IF IT
23 HOLDS LAND SUBJECT TO RESTRICTIONS IF IT IS WEARING ITS
24 PRIVATE HAT. AND IT'S BOUND JUST LIKE ANY OTHER PRIVATE
25 CITIZEN ON ITS CONTRACT.

26 MR. PREZIOSI: YOUR HONOR, I AGREE IT WOULD BE
27 BOUND TO THE USE. FOR EXAMPLE, IF THE CITY OWNED A
28 PIECE OF PROPERTY THAT THE COVENANTS, CONDITIONS, AND

1 RESTRICTIONS SAID IT CAN BE USED ONLY FOR PARKLAND, FOR
2 PARK PURPOSES, AND THE CITY DECIDED, WELL, IT WANTED TO
3 PUT CITY HALL ON THAT PRIVATE PROPERTY -- OR ON THE
4 PROPERTY, EVEN IF IT WAS ZONED TO ALLOW THE CITY TO PUT
5 THE CITY HALL, THE CITY WOULD BE ESTOPPED FROM DOING
6 THAT, FROM USING THE PARKLAND BY THE CC&RS OF THE
7 PARKLAND.

8 BUT THAT'S NOT THE CASE HERE. THE CITY IS
9 NOT USING "AREA A" AT ALL. THE CITY IS SIMPLY NOT
10 OWNING IT. THE CITY CAN'T BE COMPELLED TO OWN IT
11 FOREVER BECAUSE THERE'S A REVERSIONARY INTEREST AND IT
12 GAVE IT BACK TO THE GRANTOR. BUT I'VE SPOKEN ENOUGH
13 ABOUT THAT.

14 SO IN ESSENCE, PLAINTIFF IS NOT ENTITLED TO
15 A DECLARATION THAT THE CITY --

16 THE COURT: YOU'RE ARGUING YOUR CROSS-COMPLAINT
17 NOW.

18 MR. PREZIOSI: CORRECT, MY CROSS-MOTION.

19 THE COURT: SO NOW YOU'RE SLIDING BACK AGAIN INTO
20 ANSWERING HIS, AND I'M NOT GOING TO GIVE YOU A LOT MORE
21 TIME. SO I THINK YOU SHOULD ADVANCE YOUR ARGUMENTS ON
22 YOUR MOTION.

23 MR. PREZIOSI: THE OTHER ISSUE ON THE FIRST CAUSE
24 OF ACTION IS THE CITY CANNOT BE COMPELLED TO EXERCISE
25 ITS POLICE POWER AS IS PLED IN THE SECOND AMENDED
26 COMPLAINT. NO ONE CAN COMPEL THE CITY TO EXERCISE ITS
27 DISCRETION TO ENFORCE THE LAWS OF THE PALOS VERDES
28 ESTATES OR THE STATE OF CALIFORNIA IN A MATTER TO BE

1 FIT. IT SIMPLY DOES NOT EXIST. I'LL SUBMIT ON MY
2 PAPERWORK ON THAT.

3 AS TO THE SECOND CAUSE OF ACTION, WHICH IS
4 A WASTE OF PUBLIC FUNDS --

5 THE COURT: WELL, THEY CAN FORCE THE CITY IF IT IS
6 HOLDING THE PROPERTY WITH ALL THAT STUFF ON IT. THE
7 PRIVATE ACTOR CAN REMOVE THAT STUFF AT THE CITY'S
8 EXPENSE.

9 MR. PREZIOSI: HERE'S THE DISTINCTION, YOUR HONOR.
10 THERE'S THE LAW AND THEN PRIVATE COVENANTS, CONDITIONS,
11 AND RESTRICTIONS. THE CITY ONLY HAS THE POWER TO
12 ENFORCE THE LAW, WHETHER IT'S LAW OF THE PENAL CODE --

13 THE COURT: YOU'RE NOT HEARING ME. IF YOU OWN THE
14 PROPERTY, YOU'RE BOUND BY THE RESTRICTIONS AND IT'S YOUR
15 JOB TO REMOVE THEM BY VIRTUE OF THE OWNERSHIP OF
16 RESTRICTED PROPERTY. WE'RE NOT TALKING ABOUT GOVERNMENT
17 IN THE ABSTRACT. WE'RE TALKING ABOUT IN ITS PRIVATE
18 CAPACITY. AND IF IT DOESN'T, SOME OTHER HOMEOWNER IN
19 THAT TRACT CAN TURN AROUND, COME IN. AND MY ONLY
20 QUESTION IS HOW MUCH THEY COULD USE A BULLDOZER AND
21 KNOCK DOWN THESE THINGS AND CAUSE YOU TO PAY FOR IT.

22 MR. PREZIOSI: YOUR HONOR, MY --

23 THE COURT: I'M A LITTLE CONCERNED ABOUT THAT
24 PHYSICAL ASPECT. NOBODY BRIEFED THAT FOR ME EITHER.

25 MR. PREZIOSI: MY REPLY TO THAT IS IF THE CITY IS
26 ACTUALLY USING IT, WHICH IT IS NOT, IN CONTRAVENTION TO
27 THE DEEDS, THEN THE ASSOCIATION WOULD HAVE THE POWER TO
28 EXERCISE THE RIGHT OF REVERSION WHICH IS SET FORTH IN

1 THE SECOND AMENDED COMPLAINT. PLAINTIFF PLEADS THAT THE
2 CITY AND ACTUALLY ASKS FOR THE CITY -- OR THE
3 ASSOCIATION TO EXERCISE ITS RIGHT OF REVERSION TO PUT
4 THE DEEDS, PUT THE PROPERTY BACK IN THE ASSOCIATION.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MR. PREZIOSI: THAT'S PLED.

7 FINALLY --

8 THE COURT: ANYTHING ELSE?

9 MR. PREZIOSI: YES.

10 AS TO THE SECOND CAUSE OF ACTION, AS TO THE
11 WASTE OF PUBLIC FUNDS, THE ULTRA VIRES ACTIVITY, I'VE
12 TALKED ABOUT -- I'VE DISCUSSED WELWOOD; SO I'LL MOVE ON
13 FROM THAT.

14 AND THEN THE SECOND ISSUE AS TO THE SECOND
15 CAUSE OF ACTION, PLAINTIFF IS BRINGING AN ACTION TO
16 ENJOIN A FUTURE LEGISLATIVE ACT WHICH IS THIS SO-CALLED
17 THREATENED SPOT ZONING, WHICH THERE REALLY WAS NO ACTION
18 THAT WAS EVER TAKEN ON THAT. CITY COUNCIL DISCUSSED
19 THAT, GAVE DIRECTION TO CITY STAFF TO INVESTIGATE IT --

20 THE COURT: THAT GOES TO THE AREA I TOLD YOU THAT
21 YOU HAVEN'T BRIEFED. REMEMBER, I TALKED ABOUT USING
22 POLICE POWER TO INTERFERE WITH THE CITY'S OWN CONTRACTS.
23 SOMETIMES THEY CAN, SOMETIMES THEY CAN'T. THERE'S BEEN
24 NO OVERRIDING JUSTIFICATION FOR ANY EXERCISE OF POLICE
25 POWER TO TRY AND INTERFERE WITH THESE PRIVATE RIGHTS
26 THAT I'VE SEEN SO FAR.

27 MR. PREZIOSI: WELL, YOUR HONOR, THERE HASN'T
28 BEEN --

1 THE COURT: YOU HAVEN'T BRIEFED IT.

2 ANYTHING FROM THE HOMEOWNERS ASSOCIATION?

3 MR. DVEIRIN: GOOD MORNING, YOUR HONOR. I GUESS
4 ALMOST GOOD AFTERNOON. LEWIS BRISBOIS BISGAARD & SMITH,
5 BRANT DVEIRIN.

6 THE ONLY THING I CAN GATHER FROM WHAT
7 YOU'VE SAID IS YOU BELIEVE THESE ARE ULTRA VIRES ACTS,
8 AND THAT'S WHY YOUR TENTATIVE IS THAT WAY. I'LL SUBMIT
9 THAT I THINK THAT'S A MISTAKE.

10 THIS CASE IS DEAD ON ARRIVAL.

11 THE COURT: AS TO YOUR PEOPLE, THEY DON'T HAVE ANY
12 RIGHT TO INTERPRET ANYTHING HERE. I DON'T CARE WHAT THE
13 PROVISIONS SAY ABOUT IT BECAUSE THERE'S NO UNCERTAINTY.
14 IT SAYS THEY CAN INTERPRET ONLY WHERE THERE'S
15 UNCERTAINTY. THERE'S NO UNCERTAINTY HERE. IT'S BLACK
16 AND WHITE.

17 MR. DVEIRIN: ALL RIGHT. SO THAT --

18 AND I UNDERSTAND THAT'S WHAT YOU'RE SAYING,
19 BUT UNDER THE RULES OF THE DUFFY CASE AND STANDING UNDER
20 THE DAVIS-STIRLING ACT, PLAINTIFFS' CASE IS DEAD ON
21 ARRIVAL. THERE WAS A PREVIOUS CASE, THE SCHOOL DISTRICT
22 LITIGATION, THAT WAS LITIGATED TO JUDGMENT TWO YEARS AGO
23 AND THEN THE MOU WHICH YOU TALKED ABOUT, THE EXCHANGE OF
24 ALL THAT MONEY, AND I'M GOING TO GET TO THAT, WAS A
25 SETTLEMENT OF THAT CASE.

26 UNDER THE DAVIS-STIRLING ACT AND UNDER
27 CORPORATE LAW PRINCIPLES, WHEN THE HOMEOWNERS
28 ASSOCIATION LITIGATES A CASE AND WHEN IT SETTLES A CASE,

1 IT BINDS NOT ONLY MR. HARBISON, WHO'S IN THE COURTROOM
2 TODAY, BUT ALL THE OTHER HOMEOWNERS AS A MATTER OF LAW.

3 HERE'S THE PROBLEM THAT WE'RE GOING TO RUN
4 INTO. IF YOU'RE NOT BOUND TO WHAT THE SCHOOL
5 DISTRICT -- TO WHAT THE ASSOCIATION --

6 THE COURT: NO, IT CAN'T. WHEN YOU LOOK IN THESE
7 DOCUMENTS, IT SAYS THAT IF THE HOMEOWNERS ASSOCIATION
8 WANTS TO ELIMINATE A RESTRICTION, THERE HAS TO BE A
9 MEETING BY THE HOMEOWNERS ASSOCIATION AND X NUMBER OF
10 OWNERS OF THE PROPERTY. AND AT ONE TIME IT EVEN
11 INVOLVED THE BANK OF AMERICA AS THE GRANTOR OF THE WHOLE
12 PROJECT. THEY HAVE TO ALL SIT DOWN, MAKE AN AGREEMENT,
13 ELIMINATE A RESTRICTION ON A PARTICULAR PROPERTY. THAT
14 WAS NOT DONE.

15 THAT, TOO, WOULD BE ULTRA VIRES, OUTSIDE
16 THEIR POWER TO DO, AND CERTAINLY NOT WITHIN ANY POWER TO
17 BIND EVERY OTHER HOMEOWNER IN THAT TRACT, EACH OF WHOM
18 HAVE AN INDEPENDENT RIGHT OF ACTION.

19 MR. DVEIRIN: I WOULD SUBMIT THAT COURTS WILL --
20 THE COURT: I HOPE YOU CAN TELL I'VE READ YOUR
21 PAPERS.

22 MR. DVEIRIN: COURTS CAN DISAGREE ON WHAT'S ULTRA
23 VIRES. I GET THAT. BUT THE PROBLEM HERE IS WE HAVE A
24 COURT THAT DECIDED A CASE, THAT ENTERED JUDGMENT, AND
25 THE PARTIES SETTLED THE CASE. THE HOMEOWNERS ARE BOUND
26 TO THAT SETTLEMENT, THAT MOU AS WELL AS --

27 THE COURT: IT'S NOTHING BUT A PRIVATE AGREEMENT.

28 MR. DVEIRIN: NO, BUT THE POINT IS THAT IF YOU

1 READ THE DUFFY CASE WHICH IS CITED, I THINK, ON PAGE 3
2 OF OUR OPPOSITION PAPERS TO WHICH THERE WAS NO REPLY TO
3 THE DUFFY CASE AND NO REPLY TO THE STANDARD ARGUMENTS,
4 ALL HOMEOWNERS ARE BOUND TO THAT PRIOR LITIGATION AND
5 THE MOU UNDER 5980 OF THE DAVIS-STIRLING ACT.

6 AS THAT CASE POINTS OUT --
7 PLEASE LET ME FINISH.

8 AS THAT CASE POINTS OUT, IF THEY ARE NOT
9 BOUND, THEN CODE OF CIVIL PROCEDURE 374, NOW CIVIL CODE
10 SECTION 5980, IS MEANINGLESS. IT SAYS THAT RIGHT IN THE
11 DUFFY CASE.

12 THE PRACTICAL PROBLEM THAT THIS COURT HAS,
13 AND IT'S A VERY REAL PROBLEM, IS THAT WHEN THIS CASE IS
14 DECIDED AND IF MR. HARBISON WINS THIS CASE, THEN THE
15 HOMEOWNER TO THE RIGHT OF THE LUGLIANIS WHO'S NOT HERE
16 CAN COME INTO THIS COURTROOM AND SAY THAT THE DECISION
17 OF THIS COURT IS NOT BINDING ON HIM BECAUSE HE WASN'T
18 PRESENT IN THIS CASE, AND THEN THE NEXT HOMEOWNER AND
19 THEN THE NEXT HOMEOWNER.

20 THE COURT: WHAT ARE YOU DREAMING OF?

21 MR. DVEIRIN: BECAUSE WE HAD A CASE AND WE HAD A
22 SETTLEMENT OF THAT CASE.

23 THE COURT: THE SETTLEMENT IS NOT A JUDGMENT IN A
24 CASE. IF I ACT HERE, I'M GOING TO RENDER A JUDGMENT IN
25 THE CASE.

26 MR. DVEIRIN: BUT IF YOU LOOK AT 5980, IT
27 SPECIFICALLY SAYS -- 5980 INCLUDES SETTLEMENT OF CASES.
28 IT SPECIFICALLY SAYS THAT IN THERE. AND WHY DOES IT SAY

1 THAT? BECAUSE THE HOMEOWNERS ASSOCIATION HAS TO HAVE
2 THE ABILITY TO ACT ON BEHALF OF THE HOMEOWNERS.

3 I THINK --

4 THE COURT: IT CAN ACT ONLY IN KEEPING WITH THE
5 RESTRICTIONS THAT ARE IMPOSED ON THEM BY THE HOMEOWNER
6 ASSOCIATION AND DEEDS INVOLVED.

7 MR. DVEIRIN: NO. IF THE HOMEOWNERS --

8 THE COURT: AND THEY DIDN'T.

9 MR. DVEIRIN: THERE'S NOTHING IN THE STATUTE THAT
10 SAYS THAT THAT RES JUDICATA EFFECT OF THE HOMEOWNERS
11 LITIGATING AND SETTLING A CASE IS BASED ON SOME SORT OF
12 FINDING OF A NEXT COURT ON ULTRA VIRES. THAT'S NOT IN
13 THERE.

14 AND I WOULD SUBMIT TO YOU THAT MR. HARBISON
15 IS NOT A MAN WITHOUT A REMEDY. HE HAS THE ABILITY, AND
16 WE POINTED THAT OUT IN OUR PAPERS, TO SEEK A RECALL
17 PETITION AGAINST BOARD MEMBERS OF THE HOMEOWNERS
18 ASSOCIATION. HE HIMSELF CAN TRY TO GET ON THE BOARD.

19 BUT THE ONE THING HE ABSOLUTELY CANNOT DO
20 IS TO DO WHAT HE'S DOING IN THIS CASE WHICH IS TO COME
21 INTO THIS COURTROOM AND ASK YOU TO GO BEHIND INTO
22 ANOTHER CASE AND A SETTLEMENT IN THAT CASE AND SAY THAT
23 HE'S NOT BOUND. NOT ONLY IS HE BOUND, ALL THE OTHER
24 HOMEOWNERS ARE BOUND. AND I SUBMIT TO YOU IF HE'S NOT
25 BOUND, THEN GET READY, BECAUSE THE OTHER HOMEOWNER THAT
26 COMES NEXT IS GOING TO ARGUE THAT THE RULING IN THIS
27 CASE DOESN'T BIND THE OTHER PERSON AND THEN THE NEXT
28 PERSON AND WE'LL NEVER HAVE FINALITY.

1 AS THE COURT IN DUFFY SAID, THAT'S WHY --
2 THE COURT: I CHALLENGE YOU TO FIND ANY HOMEOWNER
3 WHO WOULD DISAGREE WITH A DECISION BY THIS COURT SAYING
4 THAT THEY CANNOT SELL OFF PARKLAND TO ALLOW PEOPLE TO
5 USE IT FOR THEIR PRIVATE PROPERTY. I DON'T THINK YOU'RE
6 GOING TO FIND TOO MANY HOMEOWNERS IN THE TRACT WHO ARE
7 OF THAT VIEW, BUT THAT'S NO NEVERMIND.

8 MR. DVEIRIN: THEORETICALLY, YOU MAY BE CORRECT.
9 THE COURT: I HEARD YOUR POINT.

10 IS THERE ANYTHING ELSE?

11 MR. DVEIRIN: YES.

12 SO IF YOU LOOK AT THE STANDING ARGUMENT,
13 WHICH WE BELIEVE WAS VERY STRONG, IT'S IN THE FIRST PART
14 OF OUR PAPERS, IT WASN'T RESPONDED TO, THAT'S ENOUGH TO
15 DENY THE SUMMARY JUDGMENT ON ITS OWN.

16 THERE'S TEN PEOPLE IN THE PLAINTIFF'S CEPC
17 GROUP WHO ARE NOT HOMEOWNERS. AND AS WE POINTED OUT IN
18 OUR PAPERS, THOSE TEN PEOPLE WHICH WAS THE DISCOVERY
19 THAT WE TOOK WHEN YOU GAVE US THE CONTINUANCE, THOSE TEN
20 PEOPLE AS A MATTER OF LAW DON'T HAVE STANDING TO
21 CHALLENGE THE ASSOCIATION. ONLY HOMEOWNERS CAN
22 CHALLENGE THE ASSOCIATION.

23 THE COURT: AND RESIDENTS.

24 MR. DVEIRIN: NO, NOT RESIDENTS.

25 THE COURT: I DON'T KNOW IF THESE PEOPLE ARE
26 RESIDENTS ARE NOT. I DON'T THINK IT WAS LAID OUT.

27 GO BACK AND READ ALL THESE PAPERS. I WENT
28 BACK TO 1923. SOMETIMES IT SAYS "RESIDENTS AND OWNERS."

1 SOMETIMES IT SAYS JUST "OWNERS." ALWAYS IT INCLUDES THE
2 ORIGINAL GRANTOR BANK OF AMERICA, LATER THE HOMEOWNERS
3 ASSOCIATION IN ITS SHOES.

4 MR. DVEIRIN: AND WE CITED CASES IN OUR BRIEF.
5 AS A MATTER OF LAW, ONLY OWNERS HAVE THE RIGHT TO
6 CHALLENGE --

7 THE COURT: YOU ONLY NEED ONE, AND YOU'VE GOT
8 MR. HARBISON.

9 MR. DVEIRIN: BUT MR. HARBISON IS BOUND TO THE
10 SCHOOL DISTRICT LITIGATION JUDGMENT AND THE SETTLEMENT
11 AGREEMENT.

12 THE COURT: NOW YOU'RE GOING AROUND IN A CIRCLE.
13 THERE WAS NO JUDGMENT IN THE HOMEOWNERS ASSOCIATION
14 THING, OTHER THAN THAT THE RESTRICTIONS WERE ALIVE AND
15 WELL.

16 ALL RIGHT. LET'S HEAR FROM PLAINTIFF.

17 MR. DVEIRIN: I'M NOT --

18 I HAVE A COUPLE OF OTHER POINTS I WANT TO
19 MAKE.

20 THE COURT: THAT ARE NOT IN YOUR PAPERS?

21 MR. DVEIRIN: THAT ARE JUST A COUPLE HIGHLIGHTS
22 FROM THE PAPERS.

23 THE COURT: I'LL GIVE YOU THREE MINUTES.

24 MR. DVEIRIN: THE SECOND ONE IS THAT IN ADDITION
25 TO STANDING, YOU TALKED ABOUT THE MONEY THAT WAS
26 TRANSFERRED, THAT THIS WASN'T JUST A DEED, THERE WAS
27 SIGNIFICANT MONEY THAT WAS TRANSFERRED. WE AGREE WITH
28 THAT. THAT IS WHY YOU DON'T HAVE ALL THE PARTIES IN

1 THIS CASE BEFORE YOU.

2 A SCHOOL DISTRICT -- THE SCHOOL DISTRICT
3 WHICH RECEIVED 1.5 MILLION IN DONATION AND RESTRICTED 11
4 OF ITS PROPERTIES AND AGREED NOT TO HAVE LIGHTS ON A
5 FOOTBALL FIELD ARE ALL PART OF THE SETTLEMENT OF THAT
6 CASE.

7 THE COURT: DON'T CARE.

8 MR. DVEIRIN: IF YOU'RE GOING TO TAKE APART PART
9 OF A CONTRACT WHICH IS TWO DEEDS UNDER THE CASES THAT
10 WE'VE CITED, YOU HAVE TO HAVE ALL THE PARTIES BEFORE
11 YOU.

12 THE COURT: NO. I'M NOT TAKING APART THE
13 CONTRACT. I'M SAYING IT WAS ULTRA VIRES, YOU HAD NO
14 POWER TO DO IT, AND FIGHT IT OUT NOW AMONGST YOURSELVES.
15 IF YOU PROMISED TO ACCEPT MONEY FROM SOMEBODY IN RETURN
16 FOR SOMETHING YOU HAD NO RIGHT, ABILITY, OR POWER TO
17 CONVEY, I IMAGINE THEY'LL COME ON YOUR DOORSTEP AND ASK
18 YOU FOR THE MONEY BACK. THAT'S GOING TO BE BETWEEN
19 EVERYONE WHO SIGNED THAT AGREEMENT AND PASSED THAT MONEY
20 AROUND. IT HAS NOTHING TO DO WITH THIS.

21 MR. DVEIRIN: THE THIRD POINT IS THAT -- AND I
22 THINK IT'S ALSO ONE OF OUR ARGUMENTS IN OUR BRIEF THAT
23 GETS TO THIS ISSUE OF ULTRA VIRES, THE ASSOCIATION BOARD
24 HAS THE ABILITY AND RIGHT UNDER CORPORATE LAW AND UNDER
25 THE DAVIS-STIRLING ACT AND STATUTORY LAW TO EXERCISE ITS
26 BUSINESS JUDGMENT. THAT BUSINESS JUDGMENT CANNOT BE
27 INTERFERED WITH BY THE COURT.

28 THE COURT: NO. THERE WERE --

1 DO YOU REMEMBER -- RECALL WHAT'S GOING ON
2 UP AT THE VA HOSPITAL RIGHT NOW? THE VA HOSPITAL IN
3 WESTWOOD WAS GIVEN AS DEDICATED LAND TO BE HELD IN TRUST
4 AND TO BE UTILIZED FOR THE BENEFIT OF THE VETERANS.

5 MR. DVEIRIN: THE BASEBALL STADIUM ISSUE.

6 THE COURT: AND INSTEAD, THEY HAVE RENTED OUT --

7 MR. DVEIRIN: THAT'S RIGHT.

8 THE COURT: -- PORTIONS TO PRIVATE SCHOOLS FOR
9 BASEBALL STADIUMS, FOR A GOLF COURSE, FOR WHATEVER. THE
10 ONE THING WE DON'T HAVE ARE ANY DECENT LOOKING BUILDINGS
11 FOR THE VETERANS. THE CHURCH IS FALLING APART. IT'S
12 NOT BEING PROPERLY MAINTAINED. BUT ALL THESE PRIVATE
13 INTERESTS HAVE BEEN GIVEN ACCESS.

14 NOW, I BELIEVE THAT THAT HAS ROLLED INTO
15 FEDERAL COURT. I BELIEVE THE INITIAL RULING WAS IN
16 FAVOR OF THE FAMILY OF THE TRUSTOR WHO HAD GRANTED ALL
17 THIS LAND. AND HIS DESCENDENTS NOW SAY TOO BAD. THEY
18 VITIATED THEIR OBLIGATIONS. THEY VITIATED THE TERMS OF
19 THE TRUST AND IT ALL REVERTS.

20 THAT'S WHAT GOVERNS THIS, NOT YOUR
21 SPIRLING ACT [SIC] OR WHATEVER YOU'RE TALKING ABOUT.
22 THESE RESTRICTIONS, THE TERMS OF THE GRANT, EVERYTHING
23 THAT IS INVOLVED IN HOW THIS PROPERTY WAS OBTAINED TO BE
24 PARKLAND FOR THIS AREA, THAT'S WHAT CONTROLS.

25 MR. DVEIRIN: SO IN WRAPPING UP, FOR THE REASON OF
26 STANDING, INDISPENSABLE PARTY, AND EXERCISING BUSINESS
27 JUDGMENT, WE HAVE VERY DETAILED PAPERS ON ALL THREE OF
28 THESE ARGUMENTS. WE'RE JUST ASKING THAT YOU TAKE THIS

1 UNDER SUBMISSION AND THAT YOU CONSIDER THOSE ARGUMENTS
2 THOROUGHLY AND THAT YOU NOT RULE UNTIL YOU DO THAT AND
3 THAT -- AND THAT IF YOU HAVE FURTHER QUESTIONS, YOU HAVE
4 US BACK FOR MORE ARGUMENT BECAUSE I BELIEVE THAT THESE
5 LEGAL ARGUMENTS ARE VERY STRONG, DESERVE YOUR FULL
6 ATTENTION. AND WE'RE NOT TELLING YOU HOW TO RULE, BUT
7 WE'RE JUST ASKING YOU TO CONSIDER THEM.

8 THE COURT: COUNSEL, YOU'RE SORT OF EDGING TOWARD
9 TELLING ME I HAVEN'T GIVEN THEM MY FULL ATTENTION.

10 MR. DVEIRIN: NO, I'M JUST --

11 THE COURT: SO PLEASE JUST SIT DOWN AT THIS TIME.
12 IT'S A GOOD IDEA.

13 MR. DVEIRIN: THANK YOU, YOUR HONOR.

14 THE COURT: I APPRECIATE ALL THE PAPERS THAT
15 YOU'VE ALL DONE. YOU'VE DONE A GOOD JOB ON THIS.
16 THERE'RE SOME COMPLICATED ISSUES HERE.

17 MR. LEWIS: MAY I HAVE 30 SECONDS WITH SOME
18 WRAP-UP POINTS, 30 SECONDS?

19 THE COURT: YOU HAVE TO BE ALLOWED TO RESPOND
20 OBVIOUSLY.

21 MR. LEWIS: THE COURT ASKED HOW LONG HAS THIS BEEN
22 GOING ON IN TERMS OF THE PHYSICAL PROBLEMS AND THE
23 ENCROACHMENT. WE SUBMITTED AS EXHIBIT 16 A 1972 LETTER
24 BY THE ASSOCIATION SAYING, "TEAR THIS STUFF DOWN." SO
25 IT'S SINCE THE '70S.

26 THE SECOND POINT IS MAY I PLEASE HAVE A
27 RULING ON MY EVIDENTIARY OBJECTIONS THAT THE EXPERT
28 DECLARATIONS OF ATTORNEY SID CROFT AND ATTORNEY LORE

1 HILBURG ARE INADMISSIBLE?

2 THE COURT: TENTATIVELY, THEY ARE.

3 I DON'T CARE WHAT YOUR EXPERTS TELL ME.
4 IT'S MY JOB TO APPLY THE LAW TO THE CASE AND THE CORRECT
5 LAW, AND WE DON'T TAKE DECLARATIONS FROM ATTORNEYS
6 TELLING US WHAT THE LAW IS.

7 MR. LEWIS: AND THEN MY FINAL POINT, YOUR HONOR,
8 I'LL KEEP IT BRIEF, THERE WAS A SUGGESTION THAT BECAUSE
9 THE GATE WAS ONLY FOR THE FIRE ROAD, WELL, THE PUBLIC
10 HAS ACCESS TO THIS PARKLAND. AND I'M HERE TO TELL YOU
11 THERE IS LANDSCAPING AND TREES ON THE PROPERTY TO
12 PREVENT THE PUBLIC FROM FULLY ACCESSING THE PARKLAND.
13 SO THE GATE ISSUE DOES NOT --

14 THE COURT: IT'S NOT THE BE-ALL AND END-ALL,
15 I UNDERSTAND. BUT CERTAINLY IT WAS MY IMPRESSION THERE
16 WAS NOT ONLY A GATE, BUT ALSO SIDES GOING ALONG. BUT A
17 GATE IS STILL A DETERRENT EVEN IF IT IS OPEN ON THE
18 SIDES.

19 MR. LEWIS: IT GIVES THE APPEARANCE OF PRIVATE
20 PROPERTY.

21 THE COURT: YES.

22 MR. LEWIS: YOUR HONOR, MY FINAL POINT WOULD BE
23 IF YOU ARE GOING TO TAKE IT UNDER SUBMISSION, MIGHT
24 I SUGGEST YOU NOT ACCEPT ANY FURTHER BRIEFING UNLESS
25 IT'S INVITED BY THE COURT.

26 THE COURT: THE ONLY THING I MIGHT WANT FROM YOU
27 IS ON THAT POINT WITH WHICH I OPENED THE DISCUSSION, A
28 CITY AS A PRIVATE CONTRACTING PARTY AND THE DIFFERENCES

1 THAT DEVELOP FROM THAT AND WHAT THE CITY QUA CITY
2 INSTEAD OF CITY QUA PRIVATE CITIZEN CAN OR CANNOT DO
3 THAT WOULD DISRUPT OR INTERFERE WITH THE PROPER CONDUCT
4 OF THE CONTRACT. ALL RIGHT?

5 AND WHAT COURT REMEDIES CAN BE EMPLOYED.
6 I SAY RARELY ARE DAMAGES THE ANSWER, BUT COURTS DO IN
7 THAT CONTEXT FIND SOMETIMES THAT IT'S AN IMPROPER USE OF
8 THE POLICE POWER TO TRY AND INTERFERE WITH THEIR OWN
9 CONTRACT AND THEY'RE NOT GOING TO LET THE CITY DO IT.

10 THANK YOU VERY MUCH FOR ALL THE WORK YOU'VE
11 PUT IN. AND I WILL GO OVER IT AGAIN, AS I PROMISED.

12 MR. DVEIRIN: THAT'S ALL WE CAN ASK, YOUR HONOR.
13 THANK YOU, YOUR HONOR.

14 MR. PREZIOSI: THANK YOU, YOUR HONOR.

15 MR. MAMALAKIS: YOUR HONOR, YOU ALSO CALLED THIS
16 MATTER FOR A CMC.

17 THE COURT: A CMC TODAY? NO, WE'RE NOT READY FOR
18 THAT.

19 MR. MAMALAKIS: UNDERSTOOD. YOU JUST HAD CALLED
20 THAT.

21 THE COURT: I'LL INDICATE THAT THE CMC WENT OFF
22 CALENDAR. THANK YOU.

23 MR. MAMALAKIS: THANK YOU, YOUR HONOR.

24 (PROCEEDINGS ENDED AT 11:56 A.M.)

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DEPARTMENT 12 HON. BARBARA A. MEIERS, JUDGE

CITIZENS FOR ENFORCEMENT OF)
PARKLAND COVENANTS AND JOHN A.)
HARBISON,)
)

PLAINTIFFS,) NO. BS142768

VS.)
)

CITY OF PALOS VERDES ESTATES, A) REPORTER'S
MUNICIPAL CORPORATION; PALOS VERDES) CERTIFICATE
HOMES ASSOCIATION, A CALIFORNIA)
CORPORATION; ROBERT LUGLIANI AND)
DOLORES 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.)
_____)

I, TRISHA WIENER, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID
CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND
THAT THE FOREGOING PAGES 1 THROUGH **, INCLUSIVE,
COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE
ABOVE-ENTITLED CAUSE ON FRIDAY, MAY 29, 2015.

DATED THIS 10TH DAY OF JUNE, 2015.

TRISHA WIENER, CSR NO. 13576

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