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File No. 65276.00401

April 24, 2018

SETTLEMENT COMMUNICATION
Evidence Code §1152

VIA EMAIL

John Harbison
harbisonjohn@gmail.com

Jeffrey Lewis
jeff@jefflewislaw.com

Re: *CEPC/Harbison v. City of Palos Verdes Estates, et al.*
LACSC Case No. BS142768

Dear Messrs. Harbison and Lewis:

I write on behalf of the City of Palos Verdes Estates and in response to Mr. Harbison's settlement offer dated April 9, 2018, and amended April 16, 2018. We welcome the discussion.

Your proposal is the result of private negotiations John and Renata Harbison initiated with Robert and David Lugliani. You have represented that, in addition to yourselves, Citizens for Enforcement of Parkland Covenants and the Luglianis have agreed to the proposed terms of settlement. The City was not part of those private negotiations.

What the proposal asks of the City

As we understand it, you propose to resolve the above-referenced litigation as follows.

Under the MOU challenged in the lawsuit, the City accepted Lots C & D in order to keep them from sale and development by the School District. Because that was an unanticipated added expense to the City, the Homes Association gave the City \$100,000 to offset the ongoing expense of maintaining Lots C & D as parkland. Also in connection with the MOU, the City created an open space easement and utility/fire access easements over the Panorama property and transferred the burdened Panorama property to the Homes Association. The Homes Association then sold that encumbered property to the Luglianis for \$500,000.

Your settlement proposal involves a multi-step real estate transaction which starts with "voiding" both the PVHA's sale of the 1.7 acre Panorama property to the Luglianis and the



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City's transfer of the property to the Homes Association. The Homes Association would give the Luglianis \$400,000 and the City would give them \$100,000. After that, your proposal requires that the City sell the Luglianis for \$500,000 an acre of residentially zoned property the City owns, which is commonly known as Bluff Cove property. The City would be required to give the Homes Association \$400,000 from the proceeds of the sale.

Next, you propose that the City and the Luglianis swap an acre of Panorama Parkland for the acre of residentially zoned Bluff Cove property that the City was required to sell to the Luglianis. The exact acre of Panorama Parkland to be transferred to the Luglianis will be subject to your approval, CEPC's approval, and the Luglianis' approval, after having been surveyed and staked.

The Luglianis would have to maintain the property in accordance with "agreed upon restriction to restore and then preserve views" and be subject to city utility easements. The proposal provides that the acre "shall be converted to R1 for private exclusive use by the Luglianis" and, subject to approval by the Planning Commission, a 4-foot property fence could be installed.

The remaining .7 acre of the Panorama Property will be held by the City as parkland.

The City would be required to zone the Bluff Cove properties as Open Space and the Homes Association is "to impose use restrictions on that property to be used for parks forever using language as 1940's deeds."

You have also proposed that the City and the Homes Association pay \$406,000 in legal fees and costs, if the Homes Association's insurance company does not cover that amount.

Finally, on execution of this agreement, the PVHA Board would effect the appointment of four ROBE candidates that ran in the last PVHA election, presumably settling unrelated litigation between you and the PVHA.

While the City welcomes the opportunity to resolve the litigation and would like to play a constructive role, much of what is proposed cannot be done legally as proposed and some of the proposed objectives may be accomplished in an easier manner than proposed.

What the City can do

The City stands ready to accept and protect as much parkland as is made available to the City from any source, be it the Homes Association, the Luglianis, the School District or any other source. Maintaining parkland is a core mission of the City.



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With respect to the Bluff Cove property, as you are likely aware, that property came into the City's ownership in the settlement of inverse condemnation lawsuits. It is zoned R-1 but its location in an historic slide area limits its potential use. The City has terminated the residential use and cleared the property, having already determined that it is no longer suitable for such use. Instead, the City counts the property among its inventory of open space/park property. The City's process to date in managing the conversion that property from residential use has been open and public. Many residents have taken an interest in the City's handling of the property. It appears that your proposal is consistent with the City's actions and intent to date.

What the City cannot do and what it will not do

The City is unwilling to participate in a transaction that requires the City to sell parkland to private parties. Your proposal conflicts with this principle. With respect to the Panorama Property, you propose that it be returned to the City's ownership and that the City swap an acre of the property with the Luglianis, in exchange for Bluff Cove property that the City already currently owns.

The City is in a different legal position than the Homes Association. As the City consistently has maintained in the lawsuit (and the Court of Appeal affirmed), the applicable deed restrictions allow the City to transfer the Panorama Property to Homes Association. That is what the City did. The City cannot do what you have proposed, which is to transfer parkland to the Luglianis. The Homes Association's governing documents may offer a mechanism to accomplish your proposed objective, but the City cannot play the role you propose.

On the flip side, you propose that the Homes Association impose use restrictions on the Bluff Cove property [settlement proposal para. 4], but that property is owned by the City. The Homes Association has no legal authority to impose restrictions on property it does not own.

The law places very specific restrictions on the sale of City property and your proposal may be untenable. Surplus property must be offered to affordable housing developers and in some cases the school district and non-deed restricted park likewise must be made first available for purchase by park providers. So the transaction is not simple. With respect to the Bluff Cove property, you propose a transaction involving sale of an acre for \$500,000. The City cannot sell a property for less than fair market value. An appraisal would be required to determine whether your price is realistic and, honestly, given the geologic history of the property, I could not guess value of the property.

More problematic, however, is the proposal that the City give the Homes Association \$400,000 from the proceeds of that sale. Standing on its own, that would be an unconstitutional



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gift of public funds. It is hard to imagine how the value of the settlement to the taxpayers would support such an expensive purchase of restrictions on property that the City currently owns.

It seems that the proposal is unnecessarily complicated by the artifice of the swap of residential property for parkland and especially the awkward exchange of cash. The City was given \$100,000 to lessen the financial burden of Lots C & D. Given that you support the City's efforts in that regard, it does not seem fruitful to disturb that aspect of the MOU. The Homes Association or the Luglianis can convey the .7 acre of Panorama property to the City without the need for the complicated and in part unlawful transactions you propose.

The City cannot commit to rezone property in a settlement agreement. Rezoning is a legislative action that requires a noticed public hearing prior to action. At most, the City can agree to undergo consideration of a proposed rezoning, with no guarantee of outcome.

Finally, the City currently has no liability for attorneys' fees. The City understands that a portion of the case has been remanded, creating a potential for attorneys fee liability, but the City does not agree with your characterization of the issues left to be litigated or likely outcome on remand.

What the City proposes

In exchange for dismissal of the City with prejudice, the City will accept any portion of the Panorama property that the Association or the Luglianis convey to the City and the City will maintain it as parkland. The City is also open, in accordance with applicable law, to considering rezoning proposals, which may facilitate resolution of the litigation among the other parties. The City will take no position on whatever arrangement satisfies the Harbisons, CEPC, the Homes Association, and the Luglianis with respect to view easements, property ownership, and related issues, to the extent that they are consistent with the Municipal Code.

Having given the matter careful consideration and detailed attention, the City is prepared to take the actions appropriate to its role as custodian of parkland and as the local government, and, in that way, assist in the resolution of this litigation.

One last thing. Your email imposed an April 26th deadline on the City, which you justified as coinciding with the tenth day since Mr. Lewis filed a proposed judgment with the trial court. As Mr. Lewis and I have agreed, his draft inappropriately included provisions that would have affected the City. I trust that will be addressed. But, more immediately, as you point out, the judgment was filed in an attempt to show an aggressive posture toward moving the



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litigation along. It was filed inappropriately because the remittitur has not yet been received by the trial court and the matter not yet assigned to a courtroom. Such posturing tends to inflate legal costs unnecessarily. It is my hope that the parties can have a meaningful and orderly discussion to explore settlement based, in part, on some of the concepts you have identified as common ground.

As you can see from the discussion above, settling with a public agency requires attention to a number of particular laws. As proposed, the City is unable to accept the take-it-or-leave-it proposal. It is my hope that this explanation convinces you to engage in a discussion that includes all parties and to reach a resolution that accounts for the obligations, interests, and limitations of each party.

I look forward to hearing from you.

Very truly yours,

Christi Hogin
City Attorney
City of Palos Verdes Estates

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