

From: John Harbison
Subject: Fact-Checking Your Assertions Last Night about ROBE Misleading the Public
Date: November 11, 2016 at 9:54:10 AM PST
To: Philip Frengs

Phil,

Thanks to you and Carolbeth for participating in the Meet the Candidates Night last night.

I remain concerned that you continue to make disparaging remarks about ROBE (and me) in public settings such as last night's Candidate Forum and in recent PVHA Directors meetings; these remarks are neither accurate nor appropriate. I recognize that you and I are never going to agree on the basic conclusion of whether the actions taken by the PVHA and the City of PVE in selling parkland were legal or not, and as you said, we will have to leave that up to the courts to decide. However, I take great issue when you make statements that are disparaging and not fact-based, and in so doing, impugn my integrity and the integrity of many other concerned citizens in our community. I feel an obligation to respond in writing to some of the inaccuracies you stated last night. As I mentioned last night, at ROBE and CEPC we have been very careful to be accurate and transparent in what we say on our respective websites -- if there is something written that is not accurate, then I'd like to know the specifics so corrections can be made. As part of embracing transparency, we have posted both sides points of view in our documents portion of our website in order to encourage residents to become fully informed and to reach their own conclusions. I trust you agree with that approach and hope you will cease saying things that are inaccurate, once we point them out.

This email will cover several topics that you brought up last night:

1. On whether the PVHA supported the partial of the closure of Paseo del Sol in 2015
2. On whether ROBE's statement that result of PVHA winning the appeal will be to allow future sales of parkland
3. On whether the ROBE concern about poor stewardship is founded
4. On the PVHA policy of re-appointing its Board in the absence of a quorum
5. On statements ROBE has made about the outcome of last year's election

ON WHETHER THE PVHA SUPPORTED THE PARTIAL OF THE CLOSURE OF PASEO DEL SOL IN 2015

You stated that ROBE has misrepresented that the PVHA Board supported the proposal to re-route a portion of the Paseo Del Sol Fire Road trail and build a 300-foot long 7-foot high fence to deny public access to part of the current trail. You said that I was misrepresenting what was said in the letter by Mark Paullin.

Attached is the subject PVHA letter, which was included in the application by Jim D'Angelo in the documentation for the Parklands Committee meeting on September 10, 2015. The letter is on PVHA stationery and signed by Mark Paullin as President of the PVHA. The letter states:

- **"The Board of Directors supports the concept of the project..."** and
- **"A proposal outlining a project to relocate public activity at the rear has been brought before the Board which outlined their solutions to improve the impact on the residents in this area."** and
- **"The Board's funding will follow a presentation of the satisfactory final concept that will be supported and approved by the City of Palos Verdes Estates."**

The application itself contains a description of the proposed project including:

"The fence bid includes 300' lineal feet of 7' high chain link fence to demise off the 2 entrances and guide the traffic approximately 100' into the new path and 1 - 10' wide gate for governmental and utility companies access to continue on the fire road. There is also a need for proper no trespassing signage on the fences or posted at the two entrances to notify the users to stay on the path, not enter the road and fines will be strictly enforced, we suggest a minimum \$500 fine."

In light of these written statements, I don't see how you can claim that I am misrepresenting the PVHA position. If your

point is that the PVHA Board was not aware of the proposal's specifics at the time of Mark's letter, then it was irresponsible for PVHA to submit a letter indicating support without reading the proposal first.

Further, it is clear that building a 300-foot fence that is 7 feet high and marked by "no trespassing" signs and a monetary fine is a violation of the underlying deed restrictions which require that *"said realty is to be used and administered forever for park and/or recreation purposes only."* Re-routing a trail that is heavily used by the public and blocking off a substantial segment with a fence and "no trespassing" signs is certainly not maintaining the area for public recreational use. As stewards of our CC&Rs, you should know that – especially since the trail closure is on the same parcel of land that a Judge had just concluded was conveyed "ultra vires" by the PVHA in violation of these deed restrictions. As good stewards, you should be telling the City of PVE that such an action would be a violation of the deed restrictions rather than saying essentially you would defer to their conclusion on the merits of the proposal.

So is ROBE misrepresenting this episode? I think not. Here is what we say in our current flyer:

"Incumbent PVHA Directors supported blocking access to a portion of the popular Paseo Del Sol Fire Road Trail through Parklands with a fence -- contrary to deed restrictions. Offered funding conditional on City approval. Proposal failed due to strong community objections"

And on our website at pvegoodgov.org, here is the entry:

9/10/15 Parklands Committee considers re-routing a portion of the Paseo Del Sol Fire Road closure/re-routing, and the application includes a letter from PVHA President Mark Paullin stating that "The Board of Directors supports the concept of the project". The application clearly is intended to deny public access to the area, and is in conflict with the underlying deed restrictions that say *"said realty is to be used and administered forever for park and/or recreation purposes only."* For the PVHA support letter, [click here](#). For the complete application to which the letter was attached, [click here](#). For letter containing John and Renata Harbison's comments on the proposal, [click here](#).

ON WHETHER ROBE'S STATEMENT THAT RESULT OF PVHA WINNING THE APPEAL WILL BE TO ALLOW FUTURE SALES OF PARKLAND

You stated that PVHA's actions relating to the Panorama Parkland sale and appeal were to protect the portion of the parkland owned by the PVPUSD from being sold and developed. I fully understand that was the stated reason PVHA chose to enter into the MOU in the first place. But if PVHA chose to accept Judge Meiers' ruling, you would have achieved a stronger version of that same objective because the ruling establishes clarification by the Court that the deed restrictions are enforceable and prevents the sale of any of the 800 acres of parkland that are currently owned by the City of PVE or the PVPUSD to any party that is not *"a body suitably constituted by law to take, hold, maintain and regulate public parks; provided, that portions of said realty may be dedicated to the public for parkway and/or street purposes."*

The flipside is also true. If PVHA prevails and wins the appeal, as well as a subsequent court case (since only the Motion for Summary Judgment is under appeal), then the courts would be establishing that there are no teeth in the restrictions and that the subject parkland and school properties can indeed be sold to private entities for development. You mentioned that PVHA was appealing because you have the right to appeal under the court system. PVHA certainly has that right. But what we don't understand is why are you seeking that outcome, which would allow not only the sale of the Panorama Parkland but all parkland due to the precedent set.

In my Nextdoor post yesterday I wrote:

"If the PVHA wins the appeal, then they will have established a legal precedent that deed restrictions no longer apply in PVE, and that all of the 800 acres of open space can be sold for development. Open Space has been an essential aspect of PVE since the founding of our community in 1924, and it contributes immensely to our quality of life and our property values."

I said “can be sold” not “will be sold.” I stand by that statement. Regardless of the intentions of the current Board, winning the appeal would grant to the City of PVE, the PVPUSD, PVHA or any other future owner the right to sell to private parties. PVHA should want to avoid that outcome.

You commented last night that PVHA cannot sell parkland because it does not own parkland. But that did not stop PVHA from being the party to sell parkland to Lugliani as the result of the MOU into which the PVHA entered. And it certainly doesn't stop PVHA from accepting additional parkland from the City or the PVPUSD under the reversionary interest clause and then selling that. I understand that you've stated that the Panorama Parkland sale was a “limited transaction” and that it is not your intention to sell other parcels. Nevertheless, by seeking to win the appeal you are seeking to have the right to sell.

We are not saying that PVHA or the City have the current intent to sell additional parkland. What we are saying is that neither the City of PVE nor the PVHA should have the right to sell parkland covered by the deed restrictions which prohibits the sale of parkland to non-public entities, and that any subsequent owner is also bound by those restrictions.

ON WHETHER THE ROBE STATEMENTS ABOUT POOR STEWARDSHIP IS FOUNDED

The mission of PVHA is meticulously laid out in the 1923 Protective Restrictions and By-Laws. Stewardship is measured on how PVHA stays true to those responsibilities, takes proactive steps to defend those Protective Restrictions and acts responsibly to protect the assets to which it is entrusted.

When the PVPUSD sued PVHA and the City of PVE to be able to sell Lots C & D, PVHA demonstrated excellent stewardship by defending those restrictions in court and winning. We have said this repeatedly. It is regrettable that the cost of that defense was over \$400,000 (as you mentioned last night), but for that we blame the PVPUSD not the PVHA. You did exactly what your mission demanded that you do. Former PVHA President Lin Melton said at the 2014 Annual meeting that the \$1 million reserve that the PVHA has historically held was necessary for just such a contingency – recognizing the likelihood that either the PVPUSD or the City (or any subsequent public entity that owned the land) might someday try to sell the land to a private entity.

However, PVHA did not exercise good stewardship when:

1. PVHA entered into the MOU and did exactly what PVHA opposed when the PVPUSD attempted to sell parkland – selling deed restricted property to a private entity
2. PVHA decided to appeal the CEPC case when winning on appeal would be doing irreparable harm to the Protective Restrictions that articulated their mission and the Deed Restrictions that PVHA authored when the properties were transferred to the City of PVE and the PVPUSD in 1939
3. PVHA issued a letter that supported the closure of a section of a popular hiking trail which would have denied public access to public parkland that contains the existing trail with a fence, “no trespass” signs and a monetary fine for trespassers. You should not have deferred to the City, but rather should have been proactive in informing the City that such an action would be a violation of the CC&Rs and Deed restrictions
4. PVHA declined to give input last month to the City of PVE when asked by the City about the legality of building a turnaround on parkland near the end of Paseo del Sol
5. PVHA has ignored for many decades its responsibility to pressure the City of PVE to enforce encroachments on parkland. While the City is to blame for not enforcing their own municipal code, PVHA does have an obligation to exert its reversionary interest if the City of PVE (owners of the deed restricted property) allows encroachments to be tolerated
6. PVHA has shown signs of wasteful spending. For instance, in 2015 we were told that PVHA would be willing send a second ballot out on behalf of ROBE at ROBE's expense at the same price of \$12,000 that PVHA had paid for its mailing. ROBE got the mailing done for less than \$4000. In another instance, PVHA refused to accept volunteers to work under PVHA's supervision to count ballots in the upcoming election in the event that a quorum is not reached. Residents deserve to know the outcome of the ballots submitted. But perhaps the most egregious waste was walking away from PVHA's investment of over \$400,000 which achieved the win in the School Board case. The PVHA's actions in the MOU to sell parkland, followed by its vigorous defense of its right to do so, has severely undermined and wasted the considerable expenditure that led to its hard fought victory defending the deed restrictions.

ON THE PVHA POLICY OF RE-APPOINTING ITS BOARD IN THE ABSENCE OF A QUORUM

You stated that PVHA was following its By-Laws when it appoints its own directors in the absence of a quorum. But that is not what PVHA's By-Laws state in Article V on page 51:

*"At such annual meeting of the members, Directors for the ensuing year shall be elected by secret ballot, to serve as herein provided and until their successors are elected. If, however, for want of a quorum or other cause, a member's meeting shall not be held on the day above named, or should the members fail to complete their elections, or such other business as may be presented for their consideration, **those present may adjourn from day to day until the same shall be accomplished.**"*

So your By-Laws state you should extend the election long enough to establish a quorum. Clearly that has not been the policy of the PVHA, at least in recent years. So why are you not following your By-Laws?

And why did you make the statement that you were just doing what your By-Laws require you to do, when that statement is false?

ON STATEMENTS ROBE HAS MADE ABOUT THE OUTCOME OF LAST YEAR'S ELECTION

Last night and in recent PHVA Directors meetings you've asserted that I've made misleading statements about the outcome of last year's election and contradicted the report issued by Judge Latin.

That is not accurate. Here is what is posted on our website:

2/11/16 John Harbison Comments on the PVHA Election Report: If the last ballot submitted by PVHA voters were counted (instead of the first ballot as PHVA did), all four ROBE candidates would have been in the top five vote getters. This is disappointing because PVHA Attorney Sid Croft stated on 12/26/15 in the Daily Breeze that **"If (residents) want to revoke their ballots, they can come to the homes association and mark whoever they want."** For Harbison's comments, [click here](#).

I stand by that statement. The linked file gives a longer explanation supporting the statement. My statement was not misrepresenting the Judge's report, but only pointing out that the methodology used was not the one that was promised by PVHA's attorney as quoted in the Daily Breeze, and if the originally announced methodology were followed, the outcome in terms of relative vote counts would have been different. Again, I stand by that statement.

In closing, I'd be happy to meet with you one-on-one and discuss any of the above. I'd also like to reiterate my statement that if indeed ROBE is saying anything that is factually inaccurate, I'd like know the specifics so we can correct what we've posted.

Best regards,
John

cc: PVHA Directors
Kim Robinson
ROBE Steering Committee