November 23, 2016

This letter below (the black text) was written by Phil Frengs, PVHA President and posted by him on NextDoor on November 22, 2017. Once again, there are many incorrect statements. Below I have inserted my comments in red to answer Mr. Frengs' statements in **bold black**. Further, in the spirit of full transparency (as we have done all along), both Mr. Frengs' letter and my corresponding comments are now posted on both www.PVEopenspace.com and www.PVEgoodgov.org.

John Harbison

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Please don't be deceived by Harrison's misinformation and untruths. He will say anything to short stop the legal process. His lawsuit against the PVE, PVHA and the Lugliani's, decided by Judge Meiers' in summary judgment is being appealed. The California Court of Appeals will hear it later in 2017. Judge Meiers flawed decision will likely be overturned and there will also likely be a new trial. He assertion that a win at the appellate level will set a legal precedent that will make restrictions no longer applicable and that 800 acres will be sold for development is ABSOLUTELY false. This kind of rhetoric, which has been the norm by Harrison is not true and is designed to inflame our citizens.

I'm not a lawyer, but if the PVHA and the other defendants appeal is successful, then there certainly will be a legal precedent that the deed restrictions against the sale of public parkland in PVE to non-public entities can be ignored. The City of PVE, the PVPUSD and/or the PVHA could cite that court decision as justification to permit them to sell any of the other approximately 800 acres of open space/parkland presently owned by the City of PVE or the PVPUSD. To say otherwise is absurd. The following is from the conclusion of the PVHA's appellate brief at page 130: "the original declaration giving the Palos Verdes Homes Association the right and power to sell parkland has never been amended or modified in accordance with Article VI. As a result, it had the right to sell area a to the Luglianis." This sounds to me like the PVHA is fighting for the right to sell parkland.

Check out Judge Meiers' record: http://www.therobingroom.com/california/...

Judge Meiers wrote a thorough ruling in June 2015 with 30 pages of justification for her conclusions. See https://static1.squarespace.com/static/54c2de5ae4b08b9c092866bb/t/55945ed4e4b0fc1e2ed6a8e7/1435786964550/Ruling.pdf . In that ruling, Judge Meier cited (and included verbatim) the 2011 Ruling by another Superior Court Judge on the validity of the same restrictions in the case filed by the PVPUSD against the PVHA; the Judge in the PVPUSD vs PVHA suit ruled in favor of PVHA who maintained that PVPUSD could not sell Parcels C and D in Lunada Bay. So **two Judges have basically come to the same conclusion**; the language used in deeds covering the 800 acres of open space/parkland and school property in PVE stipulates the **land cannot be sold to private owners**. The final judgment by Judge Meiers can be found at https://static1.squarespace.com/static/54c2de5ae4b08b9c092866bb/t/560c9a8ee4b00a54037cba98/1443666574092/20150921+-+Final+Judgment-compressed.pdf

Please read the following before you vote, and vote for steady leadership by returning the incumbent directors:

What's the real story behind the "Save PV Parkland" PVHA Board battle?

Dear PVHA Members,

We are about to hold the 2017 election for Directors of PVHA. I am writing this letter on my own and funding this communication personally since, as a community benefit corporation, the Palos Verdes Homes Association is governed by the Corporations' Code of the State of California and is not permitted to engage in campaigning on behalf of its directors for the upcoming elections.

For more than three years PVHA has been under attack by one of its members, John Harbison. Mr. Harbison has formed two committees: Citizens for Enforcement of Parkland Covenants, (CEPC) and Residents for Open Board Elections, (ROBE). CEPC filed suit against the City of Palos Verdes Estates, the Palos Verdes Unified School District, the Lugliani family and PVHA to reverse the transaction that was detailed in a Memorandum of Understanding (MOU) among the defendants. An explanation of the MOU and relevant documents is available at http://www.PVEstates.org/ government/legal-matters on the City's website.

It goes without saying, that Mr. Harbison has the right to file suit against the defendants. He has, however, bitterly attacked PVHA's Board of Directors for its decision to exercise its right to appeal a flawed decision of the Superior Court. With that as background, I am writing to debunk the myths that populate Mr. Harbison's websites, his statements to the press and his postings on social media. Harbison says that his handpicked candidates need to be elected to "Save PV Parkland". There is no basis for his assertion. PVHA is not selling Parkland. Parkland is owned by the City of PVE not PVHA. Harbison says PVHA is jeopardizing property value in PVE. In fact, PVHA has done more than anyone else to insure and promote high property values in PVE and Miraleste.

It is irrefutable that PVHA sold 1.7 acres of parkland in 2012 to Lugliani. There is a recorded deed for that transaction. It was part of a larger MOU, but the sale was by the PVHA to Lugliani. To say otherwise is absurd. All of the source documents are on www.PVEopenspace.com, so if you'd like to read the deed itself, here is the link: https://static1.squarespace.com/static/54c2de5ae4b08b9c092866bb/t/54c3de22e4b0dec48bc355c9/1422122530942/Recorded_Deed_-_PVHA_to_Via_Panorama_Trust.pdf.

Mr. Frengs is correct in saying that parkland is owned by the City of PVE not PVHA. But that did not stop the PVHA from accepting the 1.7 acres of parkland back from the City so the PVHA could sell it to Lugliani. If CEPC's legal challenge fails, then there is no reason they could not repeat that transaction another time and sell any of the other acres of parkland currently owned by the City of PVE. Finally, if more parkland is lost to development, it would most certainly depress PVE property value. To be clear, we have never said that PVHA **will** sell other parkland – we have just said that **if they prevail in the court case then they will have earned the right to sell**, and given their demonstrated willingness to do that in 2012 it is certainly conceivable that they may try to do it again.

Finally, the statement that I (Harbison) handpicked the ROBE candidates is false. All three decided to apply for the director role in October 2015, which was before ROBE was even formed in November of 2015. However, all three candidates have pledged to never sell parkland and the five incumbents to date have not made a similar pledge (to my knowledge); three of the incumbents (Frengs, Fountain and Hoffman) did vote to sell parkland in 2012.

Harbison says that photos on his websites and in the local press represent the proper es. The

misleading photographs are, in fact, parkland adjacent to the to the Lugliani's family's home, but ARE NOT the subject property which severely slopes at 30% and more away from the property.

This is an old argument that the City has made on its website, and Mr. Frengs is repeating. I wrote a response to that earlier allegation in 2013, and asked the City to correct its misstatement on their website. They have not done so. Here is the link with maps clarifying the situation: https://static1.squarespace.com/static/54c2de5ae4b08b9c092866bb/t/54c3d79fe4b0b232095ca11c/1422120863524/To_PVE_City_Council_members_7-17-13.pdf

Harbison says that CEPC has 130 members. But court documents prove that CEPC has only Mr. Harbison and 10 other members who are PVE resident property-owners. Others are not resident property owners in PVE. Why the outsiders in this group? Bob Patton, an RPV resident, is soliciting PVE residents to fund the ROBE campaign. RPV Attorney Jeff Lewis represents Harbison in his litigation and has threatened to sue PVHA. Lewis, if the appeal is not overturned, is scheduled to earn $235,000 for his self described "pro bono" representation of Harbison's litigation, giving PVE residents the unusual opportunity to use their City's treasury to fund both sides of this disagreement.

Harbison claims "over 150 signed letters of support" but does not specify whether these are from some of the 120 plus who are not property owners, therefore not PVHA members.

Our challenge to this illegal act has been going on since January 2013. There are many documents on www.PVEopenspace.com and the statements on our website refer to different measures of support. In the initial stages, there were 152 letters or petitions signed, and of these, 137 were residents of PVE. In the court proceedings, about 80 of these PVE residents agreed to the disclosure of their names in court documents, and the PVHA was given that list with names and addresses. However, rather than compare that with their records, PVHA's lawyers asked for proof that they were owners rather than renters. Between the 2015 and 2016 election, there have been **335 residents that have signed nominations of ROBE candidates** and the PVHA has all that information; **all 335 live in PVE**, and the PVHA has accepted those petitions as valid. If PVHA rejected some of those petitioners, they haven't shared that information with ROBE.

Harbison claims that PVHA chose to appeal the judgment ignoring "overwhelming community opposi on". The opposition consisted of the 12 PVHA members, including both Mr. and Mrs. Harbison who spoke at a PVHA public meeting held prior to the Board deciding to appeal.
In Harbison's "ambush" election of Directors last year, some 140 members signed petitions for ROBE's candidates to unseat incumbents, and in the upcoming 2017 election Harbison reports 212 petitions for ROBE candidates.

PVHA is made of 5,420 members. Whether the number is 212, 140, 12 or "over 150" this represents less than 4% of PVHA's membership. The PVHA Board represents all of its members, including the other 96%.

Yes, there were 12 PVHA members who came to PVHA's directors meeting to advocate **not** appealing. Yes, that is a very small percentage of the 5,420 members. But it should be noted that no members (other than the directors themselves) spoke advocating appeal; I would be interested in knowing how many members spoke at PVHA directors meetings in all of 2015 on any subject. I guess we will see in the current election how many of that 96% silent majority support the current directors and believe they are making good decisions. As for the accusation of "ambush", the effort to add alternatives to the ballot

last year did not start until the PVHA decided in mid-November to appeal. It was that decision by PVHA that compelled a group of concerned citizens to form Residents for Open Board Elections (ROBE) and gather signatures to challenge the incumbents and bring back responsible leadership.

Harbison says that PVHA sold 1.7 acres of Parkland. The facts are that PVHA participated in the MOU, where the City chose to sell parkland to settle an encroachment dispute. PVHA settled litigation with the School District, affirming that all school sites were restricted from future real estate development. PVE accepted from PVPUSD open space land that was the subject of the litigation between PVHA and PVPUSD. PVHA has not owned parkland since 1940 when it deeded all parkland to the City and to the Miraleste Parks and Recreation District. To say the PVHA is selling or will sell Parkland is simply false.

The description in the preceding paragraph on the MOU is accurate. However, **the last sentence saying that PVHA did not sell parkland is patently false**. See the link above to the deed where PVHA sold parkland to a private individual in 2012. Further, we have never said that PVHA will sell parkland again; we have **only said that if they win the appeal, and the court case that would likely follow, they would have a court precedent establishing their ability to sell parkland in the future**. That is what we are fighting for – to protect the parkland forever for public recreational use as was originally intended.

Harbison says that PVHA supported the blockage of a trail in parkland. PVHA was approached by residents on Via Elevado to relocate the trail uphill to help with privacy issues on their properties. PVHA, as it has done many times in the past, offered, that if the citizen group could (1) gain City approval and funding, and (2) provide local citizen support and funding, that PVHA would consider modest funding for this community project. PVHA never promoted the trail relocation, nor spoke at the Parklands Committee in support, where this project died.

It is true that the PVHA "never spoke at the parklands committee in support", but the PVHA **did** write a **letter in support of the project** which was included in the application by Jim D'Angelo in the documentation for the parklands committee meeting on September 10, 2015. The subject PVHA letter is on PVHA stationery and signed by Mark Paullin as president of the PVHA. Here is the link: https://static1.squarespace.com/static/56566f16e4b0f0c1a00c62a5/t/58256ee720099e33a00cece5/1478848231782/PVHA+letter+supporting+the+Paseo+Del+Sol+Fireroad+re-routing.pdf. 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."*

For the application itself (see: https://static1.squarespace.com/static/56566f16e4b0f0c1a00c62a5/t/58256f1cb3db2be01c6aa8b6/1478848285185/via+elevado+application+%281%29-email.pdf) which includes the PVHA letter of support and 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."*

Finally, the PVHA should not be deferring to the City of PVE to determine if projects on parkland are consistent with the deed restrictions and the 1924 protective restrictions. The 1924 restrictions make it clear that it is the PVHA's responsibility to defend those restrictions, and whenever the owner (whether the City of PVE, the PVPUSD or any resident) violates those restrictions, the PVHA has the right to apply its reversionary interest clause and take back the property. Clearly the current leadership of the PVHA has acted consistently to neglect that responsibility time and time again -- deferring to the City on such matters instead.

Harbison accuses the PVHA of being poor "stewards" of the Parkland, ignoring the fact that the Parkland is owned and managed by PVE. PVHA no longer (since 1940) has oversite on Parkland use.

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, but for that we blame the PVPUSD not the PVHA. You did exactly what your mission demanded 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 public entity that subsequently 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. PVHA 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 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.

Harbison says that the current Board reappointed themselves when 2016 proxies were less than a quorum, implying some sort of self-serving motive. He ignores the fact that PVHA Board members, as the Association's bylaws dictate, were appointed to serve until the next annual meeting.

Mr. Frengs' repeated statements on this point have demonstrated that he is not aware of what is actually in the by-laws, or even if he is aware, then he is not following the by-laws. I stated this in writing to him in February 2016 (see https://static1.squarespace.com/static/56566f16e4b0f0c1a00c62a5/t/56bd1c20e32140f858495090/1455234080718/john+harbison+comments+on+PVHA+election+result+release.pdf) and again in my November 11, 2016 letter (see https://static1.squarespace.com/static/56566f16e4b0f0c1a00c62a5/t/5835b1ea579fb34d13e854e8/1479913962515/email+to+frengs+2016-11-11+final.pdf), yet he is still stating PVHA's obligations under the PVHA by-laws incorrectly. 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****."*

"Day to day" does not mean "until a year from now". The language means PVHA should extend the election long enough to establish a quorum. We certainly hope the PVHA will follow their own by-laws if this election does not achieve a quorum by the 2017 Annual Meeting and extend the election until enough ballots are returned.

Harbison says that our Board led a recent opening using a "non-public closed" process. PVHA published an opening on the Board in late 2015 soliciting interested members. Multiple candidates submitted their qualifications and were interviewed. Carol Swet was selected in 2015. At the end of 2015, facing another opening, PVHA reviewed the earlier submissions, met with several candidates and selected Carolbeth Cozen in mid-2016 to fill the open seat. I believe that in both selections, the PVHA Board selected the candidate with the best qualifications.

Mark Paullin resigned his director position on the PVHA board in December 2015, yet PVHA did not move to select a replacement until July 2016. Why the delay if it had the applications from October 2015 to draw upon? Further, at the Candidates Forum in December 2015, PVHA director Dale Hoffman said that there would be an open solicitation of candidates before that position would be filled. Obviously, that did not happen. In the end, i think they picked a well-qualified candidate in Carolbeth Cozen; my comments have been directed at the process – both the lack of transparency and the lack of following the process that has been articulated.

Harbison says the PVHA has not aligned its view and tree policy with the City. As a Director, I would be delighted to turn over view/tree disputes to the City. So far there has been no interest on the City's part. PVHA's policy is to provide mediation/arbitration to its members, after encouraging them to work it out with their neighbors first. Most of these disputes are, in fact, handled this way. If the dispute persists, PVHA will mediate. Since 2002, nearly 100 applications have been filed by members. The lion's share is settled through mediation. Of those that have been arbitrated, a still smaller subset of disputes have been appealed to the PVHA board. Criticizing PVHA on the view/ tree policy is another example of taking a swipe at us with bad information, no facts and for no other purpose than to tar the incumbent directors.

Many residents have expressed frustration with the current process and have pointed out inconsistencies in how the PVHA and the City of PVE articulate their guidelines. This includes the City's definition of neighborhood compatibility which does not align with the PVHA, and the PVHA's stated preference for views over trees that is different than the more balanced and nuanced approach the City tries to follow. Just in the past month, a court case has covered testimony that PVHA counsel has argued that views should be returned to views in 1924, when there were almost no trees in Palos Verdes. Failing to acknowledge a problem in these inconsistencies is another example of the current PVHA board not taking its responsibilities seriously.

Harbison's formation of ROBE to attempt to unseat the incumbents, in my opinion, has been completely retaliatory with two missions – to punish the incumbent directors for not caving in to his public relations campaign at the time of the appeal, and to hijack the PVHA board in an attempt to withdraw from the upcoming appeal. Harbison seems very insecure about his prospects on appeal, as indeed he should be. Judge Meiers' judgment is flawed. The judgment bizarrely would have had the Panorama property immediately deeded to PVHA instead of PVE and make PVHA responsible to return the hillside to its natural state, removing the many old retaining walls, trees and other vegetation at PVHA's expense — all to be done within 90 days by court order. PVHA has not owned the property since 1940, nor does it have the resources for hillside remediation, nor the available funds to finance this endeavor. It would frankly require PVHA to assess its members for the first time since 1939. For that reason and many others, in my opinion, this onerous judgment will be overturned at the Court of Appeals.

We are very confident that CEPC will prevail in the current court case. The reason we have advocated that the PVHA not appeal is that appeal is not in the best interests of PVHA or the community. The **judgment as written prevents any of the approximately 800 acres of parkland from ever being sold to a private owner for private use, and that is exactly the objective the PVHA stated as the reason to enter into the MOU in the first place**. It is a **stronger barrier** to land sales than relying on the promise of the school board in the MOU. Therefore, assuming (as I do) that the PVHA was sincere in that original statement, appealing serves no purpose other than to assert PVHA's right to sell other parcels in the future (which is what the PVHA is arguing in their appellate brief). Mr. Frengs is also misrepresenting the judgment in several aspects (for the final judgment see https://static1.squarespace.com/static/54c2de5ae4b08b9c092866bb/t/560c9a8ee4b00a54037cba98/1443666574092/20150921+-+final+judgment-compressed.pdf:

- The ruling does invalidate the deed between the PVHA and the Luglianis, and rules that the PVHA's actions were "ultra vires" (illegal). It does not invalidate the deed between the PVHA and the City because the court concluded that earlier transfer was legal because PVHA is a

public entity able to accept and maintain parkland for public recreational use as the deed states. But the ruling certainly does not forbid the PVHA from transferring the parkland back to the City, as it did in 1940. PVHA can also transfer it to the Palos Verdes Land Conservancy or any other such non-private entity that can maintain parkland.

- The **ruling does not ask the PVHA to pay for the remediation** – that is the responsibility of the Luglianis. So there is no need for a special assessment because of that.
- However, there is a **significant risk that the PVHA and its members will be responsible for the continued court costs incurred pursuing this case**. Mr. Frengs has said that the appeal is not costing the PVHA anything because insurance is covering the cost. He has not specified whether the insurance is title insurance or D&O insurance. But I have been told by someone who has expertise in insurance that there is often a clause that would void D&O coverage for **illegal acts**, and a clause that would void title insurance if the insured was **aware of the defect** in title at the time the insurance policy was written. The fact that **three title insurance companies** turned PVHA down on the land sale suggests **PVHA was aware of the potential defect**, and the fact that the current ruling declares PVHA's actions in the case **"ultra vires"** indicates that there may be exposure voiding D&O insurance. So again, PVHA's board appears to be taking actions and making decisions (such as the appeal) on the possibly **incorrect premise that the appeal is "not costing anything"** as they have said several times in public forums. This is indicative of **poor stewardship**.

Please don't be deceived by John Harbison's self-serving rhetoric. Don't let Harbison's campaign of mistruths, mischaracterizations and attacks on my integrity and that of my fellow incumbent directors sway you when voting in the upcoming PVHA Board of Directors election.

Please vote for:
Carol Beth Cozen
Phil Frengs
Carol Swets
Ed Fountain
Dale Hoffman

My actions are hardly "self-serving." I have **no direct financial benefit from this case**. In contrast, I have given selflessly of my time and energy to right this wrong, and there is no financial reward to me. My views are not impacted by Lugliani's encroachments (my house looks out over the portion of parkland that was **not** sold). I am fighting to protect views on **all** parkland not yet sold, which include about 800 acres across our City. Doing so protects property values for **all** of us. I am also fighting for responsible government. It pains me to see our Government act illegally and then hear our institutions make arguments such as:

1. "shall" means "may" and may means optional, so that the **PVHA has a right but not a duty** to follow its protective restrictions
2. The City of PVE has **"municipal police powers"** that allow it to **selectively enforce its municipal code** and these powers mean they are **not obligated by contracts (such as deeds) into which they have entered**

As a citizen of PVE, I find these assertions by our government terrifying.

I am happy to discuss this with you personally. Harbison has advanced one untruth after another in

support of his litigation and his efforts to gain control of the PVHA Board of Directors. Please call or text me at 310-709-8578 with questions or comments. I will return your call or text as soon as I am able.

Very truly yours,

Phil Frengs