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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10

11 RESIDENTS FOR OPEN BOARD
ELECTIONS, et al.,

12 Petitioners,

13 v.

14 PALOS VERDES HOMES
15 ASSOCIATION,

16 Respondent.
17

Case No.: BS169638

PETITIONERS' REPLY BRIEF

(Assigned for all purposes to the
Hon. Ruth Ann Kwan, Dept. 72)

Date: October 10, 2017
Time: 9:00 a.m.
Department: 72

Filed: May 17, 2017
Trial: N/A

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Introduction**

3 The opposition brief by the Palos Verdes Homes Association (“Homes Association”)
4 contains many arguments and facts that confirm the need for this Court’s intervention to
5 restore democracy in the Homes Association’s elections:

- 6 ➤ “It is not the Association’s responsibility to establish a quorum for
7 Petitioner.” (Homes Association Brief, p. 15, li. 22).
- 8 ➤ “While the Association has committed to upholding the Bylaws and
9 election requirements, it is Petitioner’s burden to secure the votes of
10 interested members.” (Homes Association Brief, p. 16, li. 3-4).
- 11 ➤ The “Association’s members are comfortable with the steady
12 continuity of the status quo...” (Croft Decl., ¶ 54).
- 13 ➤ Sid Croft has been a member of the Palos Verdes Golf Club for 49
14 years. It his impression from multiple conversations during golf that
15 the majority of Association members are happy with the status quo.
16 (Croft. Decl., ¶ 57).

17 This complacent attitude is spearheaded by Attorney Sidney Croft who has been
18 entrenched as the sole legal advisor for the Homes Association Board since 1968 – when
19 Lyndon B. Johnson was still president. The Homes Association Board, advised by Croft, feels
20 no need to increase the number of mailings of ballots. Indeed, with Croft’s counsel, the
21 Homes Association has **decreased** ballot mailings and made it harder for any candidates to
22 appear on the ballot to challenge incumbents. For example, challenger candidates must secure
23 100 signatures on a notarized petition while incumbents automatically appear on the ballot.
24 The Homes Association sees no need to collect email addresses or use its website to promote
25 mailing. The Homes Association does not view it is its job to achieve a quorum. Ever since
26 1940, when all lots were sold by the developer, a quorum has only been reached in 26 of 77
27 years. (Harbison Decl., ¶ 9).

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1 The Homes Association sees each year's failed quorum as a referendum that the
2 thousands of members of the Homes Association are pleased with current leadership. It is
3 this attitude that has resulted in year after year of failed quorums. Contrary to Croft's
4 declaration, ROBE's complaint about the artificially high quorum is not new. It is a recurring
5 complaint that has been voiced repeatedly by Homes Association members over the decades.
6 Local papers have published complaints about the lack of the quorum in 1942, 1949, 1950,
7 1968, 1969, 1971, 1973 and 1976. (Harbison Decl., ¶ 12). In the 1950's, an editorial ran in the
8 local paper about the annual failure to reach a quorum:

9 The annual farce in the procedure to hold an annual meeting is just that – a
10 farce. The local resident property owners had no voice in electing the Board
11 of Directors of the Homes Association. The Board of Directors has become a
12 “perpetual” Board.... It is not a question of whether or not the members of
the Board of Directors are doing what is right...it is the principle in question
– a real American principle where the people govern themselves by FREE
election.

13 (Harbison Decl. 11, Ex. F).

14 Those words from the 1950's remain true today. The Court should invoke its powers
15 under Corporations Code section 7515 to enact changes in the quorum requirements to hold
16 a real meeting for January 2018. Moreover, the ballots cast in January 2017 should be opened,
17 counted and given effect.

19 **II. The Homes Association's Opposition is Replete with Factual Inaccuracies**

20 The Homes Association's opposition brief and declaration by Croft, attempt to
21 establish as fact eight myths that are outright wrong.

22 **A. The Myth that Lack of Quorum is Only a Recent Phenomenon**

23 The Homes Association argues that the failure to obtain a quorum is a recent
24 phenomenon. However, a review of voting data dating back to 1928 demonstrates that the
25 Homes Association annual meetings have been plagued with a lack of quorum. Although
26 quorums were regularly reached between 1928 and 1940 (when many lots were still unsold
27 and owned by the developer/bank), after 1940, quorums were infrequent. (Harbison Decl.,
28 ¶¶ 7-8, Exs. A-B).



- 1 ➤ Between 1941 and 1969, a quorum was never reached.
- 2 ➤ In 1970, a quorum was reached with three ballot mailings.
- 3 ➤ Between 1971 and 1973, no quorum was reached.
- 4 ➤ Between 1974 and 2001, a quorum was reached in 22 of the 28 years.
- 5 ➤ Between 2002 and 2006, there was no quorum.
- 6 ➤ Between 2007 and 2009: Quorums were reached because Board members took
- 7 an active role in the election and ensured there were three mailings and
- 8 telephone calls.
- 9 ➤ Between 2010 and 2017: There were 8 years without a quorum.

10 (Harbison Decl., ¶ 8, Ex. B).

11 In the years since 1940 when the votes were in the hands of owners rather than the
12 developer, a quorum was achieved in only 26 of 77 years. (Harbison Decl., ¶ 9). Furthermore,
13 in the years in which a quorum was achieved, the Board seems to have taken a more active
14 role in terms of sending multiple ballots and making phone calls by individual Board
15 Directors to get out the vote. In contrast, the current Board is at best passive, and arguably
16 has placed many obstacles to make it harder to achieve a quorum.

17 **B. The Myth that Proxies are not Allowed, Have Never Been Used and**
18 **That is How Members Like It**

19 The Homes Association argues that proxies are not allowed and “Members have been
20 satisfied with the status quo regarding proxy voting since the Bylaws were adopted.” (Homes
21 Association Brief, p. 14-15). However, proxies were accepted throughout the first eight
22 decades of the Homes Association. (Harbison Decl., ¶ 10). It is only recently that the Board,
23 advised by Croft, has declared that proxies will not be allowed.

24 **C. The Myth that This is the First Challenge to Election Procedures in 100**
25 **Years of Governance**

26 The Homes Association argues that this is the first time in 100 years that a group of
27 members have challenged election procedures and the integrity of the election process. (Croft
28 Decl., ¶ 56; Homes Association Brief, p. 14). This assertion is demonstrably false. A challenge

1 was mounted in 1954 and the Homes Association itself expressed support for lowering the
2 quorum in the past. (Harbison Decl., ¶ 11, Exs. C – H).

3 **D. The Myth that There Has Never Been any Frustration Expressed over a**
4 **Lack of Quorum**

5 The Homes Association argues that there has never been any frustration expressed by
6 Homes Association members over a lack of quorum. This is untrue. For 29 years from 1941-
7 1969 there was annual frustration expressed at most Homes Association Annual Meetings, as
8 reported by the Palos Verdes News. (Harbison Decl., ¶ 12, Ex. I – K). In 1942, the Palos
9 Verdes News included an editorial:

10 As it is now, many people believe that the present board will be self-
11 perpetuating and board personnel will change only when directors resign and
12 their places are filled with appointments.”

12 (Harbison Decl., ¶ 12, Ex. I).

13 **E. The Myth that The Homes Association Has Never Adjourned day-to-**
14 **day until a Quorum is Reached**

15 One remedy sought by Petitioners is that for years where the quorum is not reached,
16 hold the election open and allow more votes to be cast. The Homes Association argues that
17 has never been done. But the By-Laws provide for this. And in years past rather than simply
18 declaring incumbents to be Board members for a full year, the Board held the election open
19 for additional time to allow additional votes to be cast until a quorum is reached. (Harbison
20 Decl., ¶ 13). This occurred in 1929, 1930, 1931, 1941, 1942, 1969 and 1971. (Harbison Decl.,
21 ¶ 13).

22 **F. The Myth that the Number of Ballot Mailings is not Relevant to**
23 **Establishing a Quorum**

24 The 1970 election was the first election in 30 years that got a quorum, with 3,027
25 voting (up from 771 in 1969). One person found this so surprising that he asked for
26 verification of the count. As such, in the January 13, 1970 Homes Association minutes was a
27 full accounting which revealed that multiple ballots do impact the number of votes cast.
28 (Harbison Decl., ¶ 14).





1 **III. Any Member has Standing to Bring a Petition to Lower the Quorum**

2 The Homes Association argues that the Homes Association – and only the Homes
3 Association – may petition the Court to lower the quorum. The Homes Association is wrong.
4 The text of Corporations Code, section 7515 contemplates that any Homes Association
5 director, officer, delegate or **member** may file a petition:

6 If for any reason it is impractical or unduly difficult for any corporation to call
7 or conduct a meeting of its members, delegates or directors, or otherwise
8 obtain their consent, in the manner prescribed by its articles or bylaws, or this
9 part, then the superior court of the proper county, **upon petition of a**
10 **director, officer, delegate or member**, may order that such a meeting be
11 called or that a written ballot or other form of obtaining the vote of members,
12 delegates or directors be authorized, in such a manner as the court finds fair
13 and equitable under the circumstances.

14 (Corp. Code, § 7515, subd. (a), emphasis added).

15 It would have been easy enough for the Legislature to restrict Section 7515 to
16 petitions brought by Directors. Section 7515’s inclusion of “members” confirms that the
17 Legislature intended to allow a petition to be brought without the consent – and over the
18 objection of – the Board. Why else would a member ever have to bring such a petition if not
19 over the Board’s objection?

20 **IV. The Davis-Stirling Act is Irrelevant**

21 The Homes Association invokes the Davis Stirling Act (Civ. Code, § 4000 et seq.) but
22 admits that the Davis Stirling Act does not apply. (Homes Association Brief, p. 13). This is an
23 important concession because the Davis Stirling Act contains very strict procedures for
24 conducting Board elections. Those restrictions do not apply to California law governing
25 corporations generally. For example, California corporations generally have the right to
26 cumulative voting by shareholders. (*Wilson v. Louisiana-Pacific Resources, Inc.* (1982) 138
27 Cal.App.3d 216, 223). Likewise, while proxies may not be available under Davis Stirling, they
28 are presumptively valid for non-Davis Stirling corporations. (Corp. Code, § 705, subd.(a)).
Petitioners readily admit that much of the relief it seeks in the petition would not be available



1 under Davis Stirling. But because Davis Stirling does not apply, the limitations that the
2 Homes Association attempts to invoke here is not relevant to this proceeding.

3
4 **V. The Requested Changed to Election Procedures are Not Costly, Impractical or**
5 **Illegal**

6 The Homes Association argues that the changes requested by petitioners are costly,
7 impractical or illegal. Respectfully, the Homes Association is wrong.

8 **Lowering the Quorum is not Costly, Impractical or Illegal.** Lowering the quorum
9 from fifty percent to twenty-five percent is not costly. It would not increase the cost of
10 conducting an election. It is not impractical. If this Court issues an order, the next election
11 could easily be conducted with a twenty-five percent quorum without one nickel in increased
12 cost. Nor is it illegal. Corporations Code, section 7515 authorizes an order lowering the
13 quorum.

14 The Homes Association argues that lowering the quorum will allow “agitators” to take
15 control of the Board. However, lowering the quorum will merely allow votes to be counted.
16 Per the declaration of attorney Croft, he believes the minority view of ROBE candidates are
17 unpopular and that most members of the Homes Association are “happy with the status
18 quo.” (Croft Decl., ¶ 57). If attorney Croft is correct, then counting ballots will confirm
19 Croft’s belief, the incumbents will be voted in and ROBE candidates will be handily rebuked.
20 Moreover, there are five board positions. Last year ROBE ran three candidates. If those
21 candidates were each able to secure more votes than the incumbents – an unlikely result per
22 Croft – there would still be two incumbents serving on the Board.

23 **Allowing Proxies.** The Homes Association argues that allowing votes by proxy
24 violates the law. However, California law provides that – outside Davis Stirling associations –
25 proxies are presumptively valid. (Corp. Code, § 705, subd.(a)).

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1 **VI. The Fact that the Homes Association was Found by the LA Superior Court to**
2 **have Illegally Sold Parkland is Irrelevant to this Case**

3 The Homes Association devotes considerable time and pages to discussion of another
4 case: involving the Homes Association's 2010 illegal sale of parkland. It is true that the
5 Homes Association sold a public park in violation of deed restrictions. (Harbison Decl., ¶
6 17). It is true that a lawsuit was filed to challenge that sale.¹ (Harbison Decl., ¶ 17). However,
7 that parkland case is almost over. Judgment was entered against the Homes Association in
8 2015 declaring that the Homes Association violated deed restrictions. (Harbison Decl., ¶ 17).
9 Although an appeal is pending, briefing is complete and an appellate opinion will likely issue
10 in early 2018. It is doubtful that the results of a Board election can impact that appeal. Even
11 if the Homes Association, under new Board leadership, wanted to abandon the appeal, there
12 are two other parties to the appeal who would likely proceed even without the Homes
13 Association. Thus, the Homes Association's argument that this action to lower the quorum is
14 related to the nearly completed appeal by the Homes Association is not logical. Moreover, if
15 the Homes Association truly believed that this case was related to the parkland case, the
16 Homes Association was required to file a notice of related case in this case. (Cal. Rules of
17 Court, Rule 3.300 subd.(b) [stating requirement that party learning of related case "must serve
18 and file a Notice of Related Case."]). The Homes Association failure to file a notice of related
19 case in this action is telling.

20
21 **VII. Retroactive Relief Requested**

22 The Court has broad discretion to fashion relief calculated to lead to an actual
23 election. As for the 1,589 ballots for the January 2017 election, the Court should order them
24 opened and counted and the top five winners from those ballots should be given a three-year
25 term each. The opposition brief cites no law, fact or argument why those 1,589 ballots should
26 not be counted.

27 _____
28 ¹ *Citizens for Enforcement of Parkland Covenants v. Palos Verdes Estates*, LASC Case No. BS142768.



1 **VIII. Candidate Nomination Procedure Relief Requested**

2 The Board has passed resolutions requiring challengers to obtain over a hundred
3 signatures of property owners on a notarized petition before challengers appear on the ballot.
4 The incumbents are not subject to that same requirement. The Homes Association's brief
5 does not defend this undemocratic rule. The Court should order that any requirements for
6 challengers to appear on the ballot should apply with equal force to incumbents.

7
8 **IX. Prospective Relief Requested**

9 As for the upcoming election in January 2018, the following options have been
10 suggested by petitioners:

- 11 1) Lower the quorum for annual meetings and elections of board of directors from
12 fifty percent (50%) to twenty-five percent (25%);
- 13 2) Direct the Homes Association to conduct at least 3 mailings of ballots each year in
14 the 4-month period before the January election (unless a quorum is achieved after
15 1 or 2 mailings);
- 16 3) Allow for cumulative voting;
- 17 4) Allow for voting by written proxies;
- 18 5) Allow for votes by members appearing in person at the January annual meeting;
- 19 6) Allow for voting by members dropping ballots off in a lock-box at the Homes
20 Association office; and
- 21 7) Allow for By-Law amendments to be approved by Homes Association members if
22 there is a vote by forty percent (40%) of all members.

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X. Conclusion

Based on the foregoing, petitioners respectfully request that the petition be granted and the Court grant such other and different relief as the Court deems just and proper.

DATED: October 2, 2017

Respectfully submitted,

By: 
Jeffrey Lewis

Attorneys for Petitioners
RESIDENTS FOR OPEN BOARD
ELECTIONS and L. RIED SCHOTT

PROOF OF SERVICE

Residents for Open Board Elections, et al. v. Palos Verdes Homes Association
Los Angeles Superior Court Case No.: BS169638

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 734 Silver Spur Road, Suite 300, Rolling Hills Estates, CA 90274.

On **October 2, 2017**, I served the foregoing: **PETITIONERS' REPLY BRIEF** on the interested parties in this action by placing the original a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

Brant H. Dveirin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071

Attorneys for Respondent

- BY GOLDEN STATE OVERNIGHT. The within correspondence will be deposited with Golden State Overnight delivery service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Rolling Hills Estates, California, following ordinary business practices.
- COURTESY COPY** BY ELECTRONIC SERVICE. I served the foregoing document(s) on interested parties via email to each of the parties listed in the service caption above. A true and correct copy of the transmittal will be produced if requested by any party or the Court.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 2, 2017**, in Rolling Hills Estates, California.


Jason R. Ebbens

