

Agenda Item #: 2
Meeting Date: May 22, 2012

**DRAFT MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF
PALOS VERDES ESTATES, CALIFORNIA**

May 8, 2012

A regular meeting of the City Council of the City of Palos Verdes Estates was called to order this day at 7:30 PM in the Council Chambers of City Hall by Mayor Bird. He announced that MPT Goodhart, pursuant to Government Code Section 54953(b), is attending the meeting via teleconference from the Fairfield Inn & Suites in Somerset, New Jersey.

PLEDGE OF ALLEGIANCE

ROLL CALL (7:30 PM)

PRESENT: Mayor Bird, Mayor Pro Tem Goodhart (via teleconference; left at 9:20pm), Councilmember Humphrey, Councilmember Perkins, Councilmember Rea

ABSENT: None

ALSO PRESENT: City Manager Smith, Police Chief Dreiling, Public Works Director Rigg, City Treasurer Sherwood, City Attorney Hogin, Asst. to City Manager Davis, Asst./Deputy City Clerk Kroneberger, Assistant City Attorney Agrusa, Office Specialist Castillo

MAYOR'S REPORT - MATTERS OF COMMUNITY INTEREST – None.

CONSENT AGENDA (ITEMS 1 - 4)

On motion of Councilmember Humphrey, seconded by Councilmember Perkins, Council approved CONSENT AGENDA (Items 1 – 4) by the following oral roll call vote:

AYES: Bird, Goodhart (remote), Humphrey, Perkins, Rea

NOES: None

ABSENT: None

1. WAIVE FURTHER READING
2. CITY COUNCIL MINUTES OF APRIL 24, 2012
3. CITY TREASURER'S REPORT - APRIL 2012

CITY COUNCIL
May 8, 2012

4. TREASURER'S QUARTERLY INTEREST REPORT - JANUARY-MARCH 2012

COMMUNICATIONS FROM THE PUBLIC – No one came forward to speak.

NEW BUSINESS

5. RESOLUTION R12-11; CONSIDERATION OF MEMORANDUM OF UNDERSTANDING AMONG THE CITY OF PALOS VERDES ESTATES, THE PALOS VERDES HOMES ASSOCIATION, THE PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, AND THE PROPERTY OWNERS OF 900 VIA PANORAMA (THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012, TOGETHER WITH TRUSTS FOR THE BENEFIT OF RELATED PARTIES) REGARDING RESOLUTION OF ENFORCEABILITY OF DEED RESTRICTIONS ON PROPERTY OWNED BY PVPUSD AND OF ENCROACHMENT IN CITY PARKLAND NEAR 900 VIA PANORAMA AND DISPOSITION OF CERTAIN OPEN SPACE PROPERTIES (LOTS C & D)

Councilmember Humphrey recused herself from consideration of this item, citing conflict of interest, and left the Chamber.

City Attorney Hogin reported, as a planned community, consideration of views and open space was part of the General Plan; every property is subject to deed restrictions, which protect those ideals. Before the City was incorporated, she said the State threatened to foreclose and the Homes Association would have lost control of the property. To preserve the founders' vision, 7 properties (13 lots) were conveyed for use as open space and school use. More parkland was conveyed, upon incorporation, to the City by the Homes Association to preserve the community. In the last ten years, she said the City embarked on a plan to make sure there were no private encroachments into the public parkland to preserve open space, which included property at the end of the cul de sac near 900 Via Panorama, where some retaining walls remain. Facing some financial challenges, she said the PVPUSD Board proposed selling 2 lots (known as Lots C&D), which were subject to deed restrictions. The Board determined there was no school use and wished to sell the lots for use as single family homes. The Homes Association disputed this, citing the deed restrictions; zoning issues were also disputed. PVPUSD filed a lawsuit and sought declaratory relief. The City was subsequently dismissed from the suit, but the school district and PV Homes Association went to trial. She said it was found that the deed restrictions were enforceable for Lots C&D, but the PVPUSD appealed the decision. The Homes Association sought to recover fees, which was denied, which is also on appeal.

City Attorney Hogin said PVE residents voiced their concerns regarding the use of the land as open space or for schools. She said the Lugliani's have an interest in having both open space and successful well-funded public schools, and also expressed interest in donating \$1.5 million, which the District sought if they were able to sell the property, which immensely changed the dynamic.

City Attorney Hogin explained that each party has something to offer and something to gain within this MOU, but there are no bilateral exchanges. The Homes Association has come forward with a series of creative conveyances to achieve the retention of open space. She said in the MOU,

CITY COUNCIL
May 8, 2012

PVPUSD reaffirms the deed restrictions on all properties owned by the District, although the suits were about Lots C&D. The City will be called upon to preserve the open space of Lots C&D by accepting ownership. The Homes Association has asked the City to maintain ownership to be maintained as parkland, including dark skies, which relates to the issue of lights on the playing fields of the high school. There was willingness by the school district to work with the City. They do not want to prevent, but to control, future lighting which is consistent with the General Plan, which favors dark skies. The District said they would not invoke their right, and in exchange they are given incentives - a truncated review by the Art Jury who has full power to enforce their rights, as long as they don't exempt themselves from zoning requirements. The agreement provides for reimbursement of attorneys fees.

Attorney Hogin said the Lugliani property sits at end of a cul de sac; the parklands around it is steep and has retaining walls installed on city parkland; one of the few remaining encroachments that remain because they stabilize a hill. The Lugliani's were seeking an encroachment permit but the City would have to maintain the walls; their removal would destabilize the hill. It is not accessible parkland, but provides a sense of open feeling with ocean views. Attorney Hogin said the MOU imposes additional restrictions on the parkland, but also creates some advantages. The City would allow accessory structures, such as the gazebo, to be returned. The City would retain emergency access; the property would be Quit Claim (reverted) back to the Homes Association; they will sell that property to the Lugliani's, providing \$400,000 to pay for litigation costs; \$100,000 would be unrestricted funds paid to the City, and would retain benefit of open space. Once PVPUSD resolves the litigation, including relief of obligation of Lots C&D, \$1.5 million would be donated by the Lugliani's to the District. She said the agreement is complicated, but it has benefits that could not be won in court. From the City's point of view, the Homes Association has asked the City to participate. The deal is structured so the City accepts Lots C&D, and conveys the area around the Lugliani's property. The agreement has been approved by the Lugliani's, the Homes Association has accepted; the PVPUSD has also approved it this evening at their School Board Meeting.

MPT Goodhart asked how long it would take to finalize the MOU process. Attorney Hogin said it would be finalized tonight if the MOU is approved by Council, but it would take a few months for the additional legal documents and exchanges to be completed. MPT Goodhart asked which agency would lead this effort. Ms. Hogin said the Homes Association is the lead organization, but the school district is motivated to complete the process.

Walker Williams, PVPUSD Superintendent, said the Board voted 5-0 to pass the MOU, and that they convey thanks for all the parties coming together. He said this is a win-win agreement.

Dale Hoffman, President of Palos Verdes Homes Association, thanked the City Attorney for facilitating the process, PVPUSD for their cooperation, and property owners and members of the Homes Association. He said the Board of the Palos Verdes Homes Association voted unanimously to approve the MOU. A press release conveying their full support went out on May 7th; and concluded that we're all winners.

Joseph Barnett congratulated Council for accomplishing the objective of maintaining the deed restrictions; however, he had reservations regarding the sale of parklands property to Via Panorama

CITY COUNCIL
May 8, 2012

property owners.

Len Lyberger, resident, said he hopes \$1.5 million in funds will go to schools, classrooms, and children and hoped that was the intent for those funds.

Councilmember Rea asked about the \$1.5 million funds and the timing for payment. Attorney Hogin said the funds donated to the school district are unrestricted in their use.

Councilmember Perkins said the gift is a side agreement; it is not part of the MOU. Attorney Hogin responded that the donation agreement will not be effective until the lawsuit is dismissed.

MPT Goodhart said this is a terrific opportunity to settle this long lingering issue. He thanked the City Attorney and all involved. He said he appreciated Mr. Barnett's concern, but some compromise is needed, and he favored approval.

Councilmember Perkins said our City is a "Jewel by the Sea" - two reasons to live here is the ambience, as defined by open space, and the excellence of our public schools. The litigation was disconcerting, but now this agreement is a creative elegant solution. It protects open space, the City, reaffirms deed restrictions, and insures lighting at PV High would only occur with the consent of Homes Association and the City, while PVPUSD realizes their financial goal. She said this is a remarkable accomplishment and appreciated all those involved; she favored approval of adopting the MOU.

Councilmember Rea agreed and said we owe a debt of gratitude to City Attorney Hogin for putting this agreement together. It contains something good for everybody; none of the parties will be unhappy. 28% of City is open space and it is important to preserve it. The General Plan has an open space element, which is measured down to 1/10th of acre; it is carefully tracked. He said it was disconcerting for the PVPUSD to attempt sell off part of that space, even though it was owned by them. What is most important is the reaffirmation of the deed restrictions on the part of the school district. Preserving dark skies around the high school is also quite important, which incentivizes PVPUSD from lighting the fields, but only with an agreement with the City and PVHA. He said he understood the concerns regarding the Lugliani property; but there is legal exposure to the city, so it is a unique situation. The City is paying nothing to achieve these things, and getting back \$100,000 to help expenses and to preserve Lots C&D. He stated that he wholeheartedly supported approval of the MOU.

Mayor Bird said he was disappointed that the school district sued, when we have continued to support the schools. He spoke of the recent consideration of an EIR and development, where residents went through a long process without suing, which speaks to the ethics of working together to resolve differences. He said this is a win-win-win, and credit goes to City Attorney, and that the public must know she spearheaded this agreement by bringing the parties together. Everyone is the better because of the coming together of these entities to resolve this issue. He said selling parklands does not set a good precedent, but he favored the MOU because of the liability issues we would have due to the uniqueness and inaccessibility of that parkland; we will all get the benefit of looking at that open space. He concurred with Councilmembers Perkins and Rea and supported the

CITY COUNCIL
May 8, 2012

MOU.

City Attorney Hogin explained that there is a small non-substantive change in the language proposed regarding the quit claim deed, which provides a more complete description of the emergency access easement.

On motion of Councilmember Rea, seconded by Councilmember Perkins, Council approved Resolution R12-11; Consideration of Memorandum of Understanding Among the City of Palos Verdes Estates, the Palos Verdes Homes Association, the Palos Verdes Peninsula Unified School District, and the Property Owners of 900 Via Panorama (Thomas J. Lieb, Trustee, The Via Panorama Trust U/DO May 2, 2012, Together with Trusts for the Benefit of Related Parties) Regarding Resolution of Enforceability of Deed Restrictions on Property Owned by PVPUSD and of Encroachment in City Parkland Near 900 Via Panorama and Disposition of Certain Open Space Properties (Lots C & D) by the following oral roll call vote:

AYES: Bird, Goodhart, Perkins, Rea
 NOES: (None)
 RECUSED: Humphrey
 ABSENT: (None)

Councilmember Humphrey returned to Chambers.

PUBLIC HEARINGS - 7:30 PM

6. APPEAL OF PLANNING COMMISSION DENIAL OF CDP-88/WT-118-10;
 COASTAL DEVELOPMENT PERMIT AND WIRELESS TELECOMMUNICATION
 APPLICATIONS FOR STRUCTURES PROPOSED WITHIN THE CITY RIGHT-OF-
 WAY ADJACENT TO THE SINGLE FAMILY RESIDENCE LOCATED AT 1105
 PALOS VERDES DRIVE WEST. LOT 7, BLOCK 1450, TRACT 7536
 APPELLANT/APPLICANT: ROB SEARCY
 CABLE ENGINEERING SERVICES/
 PRESCOTT COMMUNICATIONS, INC.
 10640 SEPULVEDA BLVD., #1
 MISSION HILLS, CA 91345

Mayor Bird announced Item 6 would be continued to the Council Meeting of May 22nd at the request of the applicant, with Council's concurrence.

OLD BUSINESS

7. PC-339-12: APPLICATION TO REMOVE 1 SILVER DOLLAR EUCALYPTUS TREE
 LOCATED IN THE CITY PATHWAY BETWEEN 1824 AND 1900 VIA ESTUDILLO
 (PARKLANDS COMMITTEE MEETING ITEM OF FEBRUARY 13, 2012)
 APPLICANT: CHRISTINE MCNAMARA
 1228 VIA CORONEL
 PALOS VERDES ESTATES, CA 90274

CITY COUNCIL
 May 8, 2012

PARKLANDS COMMITTEE RECOMMENDED ACTION: DENY. (3-1, PETERSON RECUSED, SHAFFER DISSENTING)

Planning Director Rigg reported that the Parklands Committee reviewed and recommended denial of the application for removal of one silver dollar eucalyptus tree at their meeting in February. At the February 28th Council meeting, the item was removed from consent at the request of the applicant. Council then reviewed the application at their meeting of March 13th and overturned the Parklands Committee recommendation by a vote of 4-1, Perkins dissenting. After the Council meeting, residents who were unaware this action had taken place voiced their concerns, and it was determined the application would be re-heard this evening.

Councilmember Rea commented that the application had been continued to their March meeting to allow for the preparation of minutes of the Parklands Committee. Director Rigg concurred, and he confirmed there had been no additional public notification at that time.

City Manager Smith said the hearing was reposted and neighbors were notified upon the determination of a re-hearing.

Mayor Bird confirmed with staff that currently re-posting is not conducted for appeals of committee decisions. Director Rigg said they will see if there is a better process.

Councilmember Humphrey clarified that this pertains to City committees only, because they service in an advisory capacity; the City Council takes the [formal] action based on their recommendations. This does not apply to the Planning Commission process.

The following Via Estudillo residents spoke in support of retaining the tree:

Sherri Tossell said there are 14 silver dollar eucalyptus trees that provide shade and views. It is a beautiful entry to Margate School and provides a distinct character.

Gary Tossell said this area is a jewel and trees are very important, and he supported lacing/trimming.

Mark Krietzman showed photographs on PowerPoint of eucalyptus trees that he said define the character of the community, providing ambience, watershed, and shade. He said the McNamara property is below grade and a green tree line would still remain if the tree is allowed to be removed.

Dwight Abbott said eucalyptus trees still characterize this neighborhood; the coppertone loquat is not accepted by residents, which would block others views and is not good for property values.

Ted Leung said the tree enhances the aesthetic value of neighborhood and helps maintain property values; it is majestic and healthy, and he supported lacing.

CITY COUNCIL
May 8, 2012

Clyde Stuhlmacher supported lacing.

Yu-Hsin Chen submitted a petition in opposing removal and said it would provide limited view to the applicant, which is 18 ft. below the street on Via Coronel.

Paul McNamara, applicant, asked for removal of the tree to restore view. He said growth of the tree has come at the expense of their view. He said the petition does not mention the tree management policy, which supports removal of view encroaching vegetation. He said ocean views are important and views trump trees. He said street trees are selected so they do not rise above the height of roofs and that the policy states view can't be obstructed. He said no tree was supported, in lieu of planting another tree in its place, by the Parklands Committee.

Christine McNamara, applicant, said the photographs shown this evening are not current or accurate; trees have been removed or laced since they were taken. She said they are only asking for one tree to be removed; one of fourteen strikes a balance and she felt that the tree management policy should govern their decision. She said Via Coronel is in same neighborhood as Via Estudillo, and that neighbors are trying to enhance their property value at their expense. She said trees are not mentioned in real estate listings on Via Estudillo, but ocean views are listed. She said no new issues were brought forth this evening and asked City Council to affirm their decision.

Mayor Bird asked about the PowerPoint presentation provided by Mr. Krietzman. City Attorney Hogin said the depiction was described accurately, but Council could afford the applicant the opportunity to see it.

Councilmember Humphrey confirmed with staff that the coppertone loquat is the street tree designated for Via Estudillo. Director Rigg said there is a process to change the designated street tree or a donation to the tree bank would be appropriate.

Mayor Bird called a brief recess at 8:58 p.m. to allow Mr. and Mrs. McNamara the opportunity to view Mr. Krietzman's PowerPoint presentation.

Mayor Bird reconvened the meeting at 9:05 p.m.

Ms. McNamara said most of pictures in Mr. Krietzman's PowerPoint were irrelevant; there is only one tree that is in question, and she couldn't verify assumptions.

MPT Goodhart asked staff if the street tree policy assertions were accurate. Director Rigg summarized the policy for Parklands review and said findings are identical to neighborhood compatibility. He said assertions were made that views trump trees; but it is a balancing act.

MPT Goodhart said although he didn't like the notion of removing the tree, he wished to find balance, and this tree blocks a good portion of the view. He said he visited the McNamara's property last weekend to view the impacts, and was surprised to find that the tree provided greater view blockage than he had previously seen. He said he supported affirming their decision to allow for the removal of the tree, and that it would not be productive to require that the tree be replaced.

CITY COUNCIL
May 8, 2012

Councilmember Humphrey concurred with MPT Goodhart. She visited the property when they last heard this application and concurred that it is a balancing act, and they would like to see views framed by trees, and lacing does not have long lasting effects. She said the adjacent Via Estudillo neighbors don't support the coppertone loquat because it would block their own views. She supported affirming their decision and looking at a better replacement tree.

Councilmember Perkins said she was the dissenting vote in March, and after hearing testimony tonight, her position remains. She said views are valued in the City; petitions are everyone's right, but we do not have a view protection ordinance. She said there are four factors to consider: one is views and neighborhood character is another. She said they take into account how trees affect ambience of neighbors on other streets, and when objected to, a higher threshold is considered. She is aware that the tree impacted some of the view, but also that it was a strip of ocean view; and queried if they should look at it little differently if it is not a primary view. She said she still believed that removing the tree is drastic; those that are there do add to the character of the street.

Councilmember Rea said he viewed this tree from various streets and from the McNamara home. He said it is a beautiful tree, but unfortunately it is in the middle of their primary ocean view. Balancing the process dictates that the tree should come out; going forward the City will not approve eucalyptus, canary pines or other tall trees, which is why they adopted street trees that would not grow to block ocean views. He understood the opposition to the loquat, thus favoring a donation to the tree bank in lieu of planting a replacement tree. He said he affirmed his decision.

Mayor Bird said he did not previously have the benefit of Via Estudillo neighborhood sentiment, and considered how they must balance their consideration. He considered lacing, but determined trimming would not have a long term effect. This tree [if presented today] would not be approved and the primary ocean view is affected by that tree. He supported overturning the Parklands Committee, granting the appeal, and supported a contribution to the tree bank.

On motion of Councilmember Rea, seconded by Councilmember Humphrey, Council approved PC-339-12: Application to Remove 1 Silver Dollar Eucalyptus Tree Located in the City Pathway Between 1824 and 1900 Via Estudillo, and a \$500 contribution to the Tree Bank, by the following oral roll call vote:

AYES: Bird, Goodhart, Humphrey, Rea

NOES: Perkins

RECUSED: None

ABSENT: None

STAFF REPORTS

8. CITY MANAGER'S REPORT – None.

MPT Goodhart excused himself from the meeting from the remote location in New Jersey at 9:20 p.m. PDT.

CITY COUNCIL
May 8, 2012

DEMANDS**9. DEMANDS OF MAY 8, 2012**

On motion of Councilmember Rea, seconded by Councilmember Humphrey, Council approved payment of Motion #1 – Payroll Warrant of April 27, 2012, totaling \$211,389.76, and Motion #2 – Warrant Register of May 8, 2012, totaling \$181,983.89 by unanimous oral vote; Goodhart absent.

MAYOR& CITY COUNCILMEMBERS' REPORTS

Mayor Bird reported that he spoke at the Malaga Cove Homeowners Association Annual Meeting of April 25th and he congratulated out-going President Margaret McCarthy for her service. On April 26th, he attended the Freedom 4U fundraiser at Trump Country Club, and congratulated Dr. Greg Allen for the success of this fundraiser which benefits Peninsula youth. The Mayor reported on his presentation of a Proclamation recognizing the Peninsula Girl Scouts Centennial on Sunday, May 6th.

Mayor Bird reported that the first “Saturdays with the Mayor” was conducted on Saturday, May 5th on the parking deck of City Hall. On Mother’s Day, Sunday, May 13th, the PV Symphonic Band Mother's Day concert will be at the Botanical Gardens.

Mayor Bird announced that PVE CERT classes will be held on Saturday, May 12th, 19th and 26th.

Councilmember Rea said this month he will judge the Lunada Bay Elementary Spelling Bee finals, and will attend the Friendship Circle Club honors ceremony recognizing a PV teen. He also reported on his attendance at the Executive Committee Joint Power Insurance Authority workshop; a discussion of the possibility of modifications for coverage on land movement will bear watching.

Councilmember Humphrey acknowledged the completion of the Paseo La Cresta pathway, and the Montemalaga residents are very happy. She also thanked staff for assistance with the successful Rancho Del Mar High School/ASB recycling event.

Councilmember Perkins reported that South Bay COG Executive Director Jacki Bacharach presented the work plan for the coming year at their Board Meeting of April 26th; focus will be placed on environmental programs and economic issues.

Mayor Bird complimented City Manager Smith on her leadership in reiterating City staff’s commitment to customer service by providing a new survey at City Hall encouraging customers to “Tell us how we're doing”.

Mayor Bird recognized City staff for replacing the 9-11 U.S. flags at the City’s entrance.

ADJOURNMENT

Mayor Bird adjourned the meeting at 9:35 p.m. to May 22, 2012.

CITY COUNCIL
May 8, 2012

RESPECTFULLY SUBMITTED,

**VICKIE KRONEBERGER,
EXECUTIVE ASSISTANT/DEPUTY CITY CLERK**

APPROVED BY:

GEORGE F. BIRD, JR., MAYOR

DRAFT

CITY COUNCIL
May 8, 2012