

ROCKEY & WAHL LLP
A LIMITED LIABILITY PARTNERSHIP

LAWYERS FOR BUSINESS
AND REAL ESTATE

5743 CORSA AVENUE, SUITE 116
WESTLAKE VILLAGE, CALIFORNIA
91362

TELEPHONE 818 865-2200
FACSIMILE 818 879-9400

WRITER'S E-MAIL ADDRESS
Jay@RockeyWahl.com

March 7, 2013

Mayor George F. Bird, Jr. and the
Palos Verdes Estates City Council
340 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

**Re: Rezoning of Area "A"/ 900 Via Panorama Drive
PVE City Council Hearing: March 12, 2013 7:30 PM.**

Dear Mayor Bird and Council Members:

We represent the Via Panorama Trust, the owner of Area A, which is located near 900 Via Panorama. We request that your Council approve our application for a Rezoning of Area A which will allow the permitting of certain improvements, which pre-date my client's ownership.

Area A was recently deeded to my client pursuant to the terms of a Memorandum of Understanding (MOU) which settled a number of critical issues and costly litigation between the PVP School District, the Homes Association and the City of Palos Verdes Estates. The MOU conferred unprecedented benefits on this community by preserving open space on Lots C and D, removing doubt about the enforceability of the Homes Association deed restrictions and to discouraging the PVP School District from installing lights on its athletic fields. The MOU contemplated my client seeking permits from the City to allow the existing improvements to remain on Area A. However, the permits could not be issued as Area A is presently zoned Open Space which zoning does not allow some improvements which presently exist on the property. The parties to the MOU including the City and my client subsequently determined that the proper way to obtain those permits was to modify the zoning on the parcel to an R-1 zone which would allow such permits to issue, subject to other normal conditions.

This matter was brought before your City Planning Commission on February 19 along with a permit request to keep an existing retaining wall. The Planning Commission approved the

March 7, 2013

Page 2

permit for the wall subject to approval of the zone change. The Planning Commission then recommended denial of the rezoning based solely on the Commissioners having little or no information on the intent of your Council in approving the MOU and contemplating the use of a zone change as the process to appropriately obtain the permits. If the Commissioners had information on your Council's intent about the correct process to follow, presumably they would have recommended approval of the application.

The evidence of your Council's intent to allow rezoning does exist. However, it was not readily apparent or brought to the attention of the Planning Commission at that hearing. The parties to the MOU wanted to provide a path for my client to pursue permits for the improvements. Hence, the MOU specifically requires that my client "shall apply for planning approvals and city permits to allow them to maintain" the improvements. (See, MOU, Art. V, subsection A). Retaining walls were not permitted in Open Space zone, so something else had to change for my client to be able to pursue the permits and that "something else" became the rezoning of Area A to an R-1 zone which would allow the proposed uses. While the discussion about the alternative processes for permitting the requested uses continued during and after the MOU was executed, rezoning remained an alternative for the City and the property owners. Furthermore, the deeds that transferred the property from the City specifically referenced the need for my client to "seek a zone change to permit the accessory uses." (See, Deed from the City dated August 8, 2012, section 5). The deed from the Homes Association also specifically references that "Grantee shall apply for approval of any such permitted structures by Grantor and the City in accordance with standard procedure and in conformance with applicable covenants, ordinances and codes." (See Deed from the Homes Association, Section 2, dated August 14, 2012.) The parties to the MOU, including the City and my client, envisioned allowing my client to seek permits for the improvements and that rezoning was likely to occur in that process.

Following the Planning Commission hearing, we have considered the numerous public statements offered at the hearing, in the press and elsewhere regarding this matter. We found that there was some amount of confusion and a lack of understanding on the part of some opponents to our application. In that regard, we have prepared the following points of information to set the record straight:

1. **THE REZONING OF THE LAND IS FULLY JUSTIFIED.** The rezoning is justified, as it will allow limited uses on private land consistent with private ownership and good stewardship of the land. The existing Open Space zone is inconsistent with private ownership, as only public parcels are zoned open space. The MOU provided for the applicant to retain certain existing improvements and make limited new improvements, which are minor in impact on the property. The most logical way for such improvements to remain is for a change in the zoning to a new designation that allows such limited improvements. The City agreed to allow such limited improvements and that consequently calls for a rezone. The deeds from the grantors specifically refer to a rezoning of the property as the appropriate method to follow.
2. **ZONE CHANGE TO R-1 WOULD NOT ALLOW ANOTHER HOUSE TO BE BUILT ON AREA "A".** The deed restrictions affecting the property transferred ("Area A")

March 7, 2013

Page 3

specifically limit the types of improvements which are allowed and do not allow a residential structure. The deed restrictions also expressly prohibit any merger with adjoining lands. This rezoning will not equate with a merger of the parcels. The owners have no intention of building any habitable structure on this newly acquired property. The property is subject to an open space easement in favor of the City, which would prevent a house or other structures inconsistent with that easement.

3. THE ZONE CHANGE IS ENTIRELY CONSISTENT WITH THE INTENDED USE OF OPEN SPACE. This private property is not consistent with the City's General Plan for Open Space zones. The Municipal Code provides that Open Space zones are for public lands, not private lands. Section 18.16.010 of the PVE Municipal Code provides: **"The purpose of the open space (OS) zone is to preserve, promote and enhance valuable natural and open space resources in the city. The open space zone land consists of all publicly owned land including all city-owned land . . ."** The Open Space zone is a burden that should only be borne by the community at large. As this land is private, it is inconsistent to have these owners carry that burden. Nonetheless, the uses on the property are restricted by deed restrictions and a restrictive open space easement such that, except for the minor improvements allowed under the deed restrictions, it would be the functional equivalent of Open Space zoning and the Owner agrees with those deed limitations.

4. THIS ZONE CHANGE WILL NOT CAUSE A NET LOSS OF OPEN SPACE. The MOU resulted in more land protected as Open Space than was the case prior to the sale of Area A. Not only were Lots C and D preserved as Open Space and Area A made subject to an Open Space easement, but the school district affirmed that all of its properties were subject to the protective covenants enforced by the Homes Association, which will limit further development in the City, and accepted restrictions on lights at the high school athletic field, which will enhance dark skies in the community. Additionally, the transaction also provided the City with a fire road / emergency access easement encircling the entire Area A to better access the other City property in the immediate area in the event of a fire / emergency.

5. THE REZONING WILL PROHIBIT PUBLIC ACCESS TO THE LAND. There was never any express authorization by the City allowing public access to Parcel A when it was owned by the City. An Open Space zoning designation does not necessarily mean such land is open for public access. The parties to the MOU specifically agreed that there would be no public access to Area A and that resulted in a corresponding deed provision to make that clear.

6. THE SALE WAS NOT A "SWEETHEART" DEAL. The Owner paid \$500,000 for Area A. The appraisal for Area A was equivalent in value to the appraisal for Parcels C and D. A well-known, local certified appraiser appraised the land based on all of the factors affecting the property, including the restrictive open space easement. The purchase price exceeded the appraised value. As a part of the transaction, the Owner must also rebuild the City storm drain and has granted the city an easement relating to the storm drain all to the benefit of the City. Predecessors of the Owner constructed most of the improvements on Area A.

March 7, 2013

Page 4

7. THIS WAS NOT A “BACK-ROOM” DEAL. The PVE City Council approved the MOU in a noticed public meeting on May 8, 2012. In that meeting the Council approved the MOU, which detailed the entire transaction. The City Council meeting and the decision to approve the MOU was the subject of a Daily Breeze article, which included graphics detailing the results of the agreement. The School District and the Homes Association in noticed meetings of those bodies also unanimously approved the agreement. The City further approved a resolution dated July 24 to which was attached a form of deed with reference to the zone change. The City, HOA and the School District each have the legal authority to enter into such agreements. The immediate neighbors of 900 Via Panorama fail to understand the larger, positive impact that this agreement provided for the City, the PVP School District and the Homes Association.

8. FIRE DEPARTMENT APPROVAL / FIRE ACCESS. The fire department has reviewed the proposal and signed off, approving the transaction. This transaction creates a new fire / emergency access easement described above which provides a considerable and direct benefit to all neighbors on Via Panorama as well as the community at large.

9. THE SALE OF OPEN SPACE LAND IS NOT UNPRECEDENTED. There are other instances of PVE city land zoned Open Space, which have been transferred to private parties. We have identified at least four parcels of Open Space city land that were transferred to private owners.

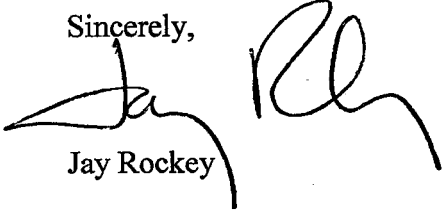
10. THE CITY HAS NOT SOLD A PUBLIC PARK TO A PRIVATE PARTY. Area A was never a public park. Area A was never open for public access. Area A was public land, but not designated or improved for the public to access it. Simply because a parcel is owned by the City does not allow random public access to that parcel. There are no trails which evidence that the public ever used the steep parcel and certainly not on a regular basis. The MOU and the deed restrictions recites that Area A is not readily accessible to the public. The deed provides that, “This Open Space Easement does not include a right of public access.”

11. THIS TRANSACTION WOULD NOT SET A PRECEDENT FOR FUTURE SALES OF OPEN SPACE. This transaction was a complex and unique transaction that required the delicate balancing of many public interests within a framework of litigation between numerous public agencies. The transaction also included the generous actions of a local family willing to bring peace between the public agencies and resolve a very problematic situation for which no other solution existed. The likelihood that those elements could come together again is doubtful, at best. This is not a precedent that will occur again in our lifetimes and it is certainly not a precedent for any cash-strapped city to simply sell a parcel of OS zoned land to raise cash.

March 7, 2013
Page 5

Again we request that you approve the application to change the zoning on Area A from Open Space to R-1. Thank you for your consideration of this matter. We stand ready to provide you with any further information that you may require.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Rockey', is written over the printed name. The signature is fluid and cursive, with a large 'R' and 'e'.

Jay Rockey

CC: Via Panorama Trust