



# MEMORANDUM

Agenda Item #: 7  
 Meeting Date: 3/12/13

**TO:** HONORABLE MAYOR BIRD AND CITY COUNCILMEMBERS

**FROM:** CHRISTI HOGIN, CITY ATTORNEY *Christi Hogin*

**SUBJECT:** ZC-2; ZONE CHANGE FOR THE PROPERTY LOCATED  
 ADJACENT TO 900 VIA PANORAMA (LOT A) TRACT 7540.

**APPLICANT:** BOLTON ENGINEERING  
 25834 NARBONNE AVENUE, #210  
 LOMITA, CA 90717

**OWNER:** LUGLIANI TRUST  
 900 VIA PANORAMA  
 PALOS VERDES ESTATES, CA 90274

**DATE:** MARCH 12, 2013

### The Issue

This application arises from an unusual context. The application is a small part of the agreement among the Homes Association, Palos Verdes Peninsula Unified School District, the City, and the owner of the subject property to remove legal doubt over the enforceability of the Homes Association’s deed restrictions on property owned by the School District citywide, to preserve from development two open space parcels known as Lots C and D, to resolve certain encroachments on public open space property, and to discourage the School District from ever installing lights on the athletic field at PV High School. The specific question before the City Council tonight is this: should the City Council rezone all or a portion of the deed-restricted Area A adjacent to 900 Via Panorama from Open Space (OS) to Residential (R-1) in order to accommodate limited accessory uses (sport court and gazebo) and retain existing unpermitted retaining walls?

### Background and Analysis

At its regular public meeting of May 8, 2012, the City Council discussed and heard public comment relating to the proposed agreement among the City, the Palos Verdes Peninsula Unified School District, the Palos Verdes Homes Association, and the property owners of

900 Via Panorama. The four parties had come together over a number of discrete problems that found resolution through mutual cooperation among the parties.

The City wanted to resolve the encroachment of the retaining walls installed by the Lugliani's predecessors-in-interest on the slopes of the public open space parcel adjacent to 900 Via Panorama. This is a thorny issue because, while installed without permits, they are holding unstable slopes and removal may have created liability for the city (as then property owner).

The City wanted to advance its general plan goals of protecting open space and preserving dark skies by supporting the Homes Association's position in the lawsuit challenging the enforceability of the deed restrictions (once the City secured a dismissal from the lawsuit) and by securing the School District's commitment not to install lights on the PV High athletic field.

The School District wanted to address its urgent need for additional operating funds and, toward that end, had set its sights on selling Lots C and D for residential development, which plan was the subject of the lawsuit originally filed by the School District against the City and the Homes Association.

The Homes Association wanted to preserve Lots C and D as open space but was also enormously concerned about defending the integrity of the deed restrictions citywide, which restrictions form the core protection of the character of PVE. It also was concerned with the significant attorneys fees that it had incurred in the lawsuit.

The Luglianis wanted to keep the retaining walls that had been in place before they purchased the adjacent property and wanted to restore accessory uses to a small, flat portion of the adjacent open space parcel, which they had installed without permits and removed at the direction of the City's code enforcement officer.

At its public meeting, the City Council adopted Resolution No. R12-11, approving a Memorandum of Understanding ("MOU") among the four parties. Generally, the MOU reaffirmed the enforceability of the deed restrictions on all property in the City owned by School District; set up the process that resulted in the application before the City Council tonight to resolve the dispute regarding certain existing encroachments (the retaining walls and the columns) and proposed accessory uses (in Area 3) adjacent to 900 Via Panorama; provided for the preservation of certain open space properties subject to litigation (Lots C and D); and generally prohibited the installation of nighttime lighting of the athletic field at Palos Verdes High School. The Staff Report for the public hearing on the matter, which includes a detailed history and explanation of the reasons for the MOU, is attached hereto as Attachment A.

### *History*

The encroachments constructed on the open space parcel (Area A) violated both the Municipal Code because they were unpermitted and also the Homes Association's CC&Rs to

which the property was subject. As part of the MOU, the City agreed to allow Area A to revert back to ownership by the Homes Association by operation of the CC&Rs and to receive ownership of Lots C and D (which under the MOU reverted back to the Homes Association ownership from the School District). In this way, the City could protect Lots C & D as open space/parkland in perpetuity.

The City first and then the Homes Association imposed a number of deed restrictions on Area A that specified that the property would be restricted as open space, other than one portion of the property identified as “Area 3,” where the owners would be permitted to seek approval of certain uninhabitable accessory structures, including a gazebo, sports court, and other accessory structures permitted by Palos Verdes Estates Municipal Code Section 18.32.010.D. Specifically, the deed restrictions impose an Open Space easement prohibiting development over the vast majority of Parcel A (deed paragraph 1), a sewer and a storm drain utility easements (deed paragraphs 2 and 3), an emergency access road easement (deed paragraph 4), permit retaining walls and a lot line adjustment to accommodate existing walls (deed paragraph 5), permit limited uninhabitable accessory structures only in Area 3 and only with city and Homes Association approval, require weed abatement by property owner at its sole expense (deed condition 7), and otherwise binds the property to conditions. Both the City deed and the Homes Association deeds are attached as Attachment B.

The restrictions were recorded against the property when the property was transferred from the Homes Association to the current property owners. They are in full force and effect and govern the restricted use of the property.

The Homes Association agreed to sell Area A (subject to the deed restrictions) to the owners of 900 Via Panorama. This transfer of ownership relieved the City of any liability or responsibilities relating to the retaining walls, the hillside or weed abatement, while retaining for the City and its residents the open space benefits on undisturbed portions of Area A and reserving several utility-related easements on Area A in favor of the City. In other words, with the exception of the accessory uses proposed in Area 3, the City was able to retain the practical benefits of the open space parcel (its contribution to the ratio of undeveloped and developed land in the City providing the City’s open, park-like character) while relieving itself of the burdens of the property. More importantly, the scale of the transaction is much broader than this one application because the property owner’s participation in the four-party MOU was essential. The School District’s sole objective was to raise additional operating funds to meet an immediate shortfall. Without the property owner’s \$1.5 million contribution to the School District that was concurrent with the MOU and conditioned on it, the School District and the Homes Association would still be litigating the enforceability of the deed restrictions, an expensive and perilous lawsuit. Moreover, the City would not have any authority to prevent lighting at PV High.

This application is consistent with the expectations of the MOU. It seeks a zone change for Area A from Open Space to R-1; however, this zone change would not impact or otherwise change the underlying deed restrictions on the property that would restrict Area A as open space in all areas other than “Area 3.”

### *Applicable regulation and policies*

The OS zone is defined in the Zoning Ordinance as follows: “The open space zone land consists of all publicly owned land including all city-owned land, including parklands and street rights-of-way, except any land within the coastal zone as defined by the California Coastal Commission, all school sites utilized or owned by the Palos Verdes Peninsula Unified School District, all sites utilized or owned by the Palos Verdes Peninsula Library District, and all land owned or which could be owned by the Palos Verdes Homes Association as a result of the exercise of any reversionary rights.” PVEMC §18.16.010 (emphasis added). Generally, this definition suggests that OS zoned property is publicly owned land, not private property. Area A is privately owned property. However, OS zoned property may simply be property that *could* be owned by the Homes Association by virtue of a right of reversion. Area A is also subject to such right of reversion.

In Palos Verdes Estates, all property is subject to certain conditions, restrictions and reservations in favor of the Homes Association as stated in the *Palos Verdes Homes Association's Protective Restrictions of Palos Verdes Estates*. As part thereof, open space property is subject to a reversionary right in favor of the Homes Association that is triggered in the event of a breach of the protective restrictions.

The property located at 900 Via Panorama is subject to the Local Protective Restrictions, Conditions, Covenants, Reservations, Liens, and Charges Affecting Real Property Known as Tract No. 8652 (Montemalaga) and the Homes Association right of reversion set forth at Article VI, section 6 of the *Palos Verdes Estates Protective Restrictions*. The deed conveying ownership of the parcel from the Homes Association to the property owners provides that the property remains subject to all of the Homes Association conditions, restrictions and reservations, thus preserving the right of reversion as set forth in the *Palos Verdes Homes Association's Protective Restrictions of Palos Verdes Estates* as the Homes Association's remedy in the event of a breach. Should the property owner install structures on Area A other than those permitted in the Grant Deed, PVHA could require their immediate removal and/or seek reversion of the property.

The R-1 zone generally permits single-family dwellings and accessory buildings and uses, limited to private recreational facilities; private bath house, greenhouse, or gardens; and/or private shed or workshop. PVEMC § 18.04.010.

The project site was conveyed from the PVHA to the current property owners subject to several deed restrictions. The deed provides that:

“Unless expressly provided for herein, [the property owner] shall not construct any structure on the Property and the Property shall be restricted to open space. It is the intent of the parties, subject to compliance with the requirements for such development of accessory structures of the City and [PVHA], that [the property owner] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ as defined by . . . PVEMC Section 18.32.010.D within the area . . . shown as Area 3 . . . [the property owner]

shall apply for approval of any such permitted structures by [PVHA] and the City in accordance with the standard procedure and in conformance with applicable covenants, ordinances, and codes. Any such structure shall comply with any and all requirements of City, [PVHA], and the Art Jury including but not limited to height, size, orientation, design, and setback.”

So R-1 zoning together with the deed restrictions would allow these limited accessory uses on the portion of Area A designated as Area 3. Whether the remainder of the parcel is rezoned is legally unimportant and either way the deed restrictions govern. The alternative method of achieving this end is to change the zoning ordinance to allow such accessory uses in privately owned open space; however, that seemed to create the possibility of too broad an application. Nevertheless, it is an alternative to rezoning and either mechanism reaches the same basic end.

### ***Planning Commission Recommendation***

The Planning Commission considered the application at its public meeting on February 19, 2013. The Planning Commission staff report is included as Attachment C. After considering the staff report and hearing public comment on the matter, the Planning Commission recommended that the zone change request be denied. The Planning Commission determined that, despite the public benefits gained through the MOU, given the City’s policy of preserving open space, it did not believe that rezoning of the entire Area A from Open Space to R-1 was the proper mechanism to permit the accessory structures contemplated in the MOU. Further, given that the MOU did not specify the mechanism for approval of the accessory structures contemplated in the grant deed, the Commission did not believe that it had clear direction from City Council that the zone change was the appropriate mechanism; therefore, it chose to defer to City Council’s legislative determination of the issue. Draft Minutes of the Planning Commission meeting are attached as Attachment D. The Planning Commission resolution recommending denial of the zone change application is attached as Attachment F.

The Planning Commission approved miscellaneous application M-902-13 for an after-the-fact permit for retaining walls installed without a permit in Area A. The Planning Commission determined that the retaining walls were necessary to stabilize the property and that their removal could result in geologic instability. Its approval was conditioned upon the property being rezoned from Open Space to R-1. The Commission’s approval of the miscellaneous application was a final determination and requires no further action by Council. The resolution approving the miscellaneous application is attached as Attachment E.

### **Findings Required to Approve**

The Municipal Code does not contain specific findings regarding approval of a zone change. In order to approve the requested zone change, the City Council must adopt the negative declaration and find that the proposed zone change is consistent with the general plan and any applicable specific plan.

The project is consistent with the General Plan. The application is part of a larger multi-party agreement which results in the preservation of vital open space on Lots C and D in the

City. Further, while the project would result in the construction of small accessory structures on a portion of the property, the structures would be installed on property previously disturbed by prior development, and the majority of the property would be restricted to remain open space in perpetuity. The minimal development contemplated as part of the MOU reflects this Council's legislative choice to allow a minor deviation from the City's open space restrictions in return for certainty that other School District parcels would remain subject to PVHA deed restrictions, in addition to other public benefits obtained for City residents pursuant to the MOU. There are no applicable specific plans.

### **Miscellaneous responses**

During the public hearing and in subsequent correspondence, a few issues have been raised that warrant response to avoid confusion:

1. No additional house. The zone change to R1 – whether that is the whole Area A or just Areas 1 and 3 – will not permit another house or other habitable structure on Area A. The deed restrictions preclude construction of any habitable structure.

2. No fence. The application does not include a fence of the property.

3. Overall benefit to open space. There is no question that a small portion of Area A (that is Area 3, which is approximately .2 of the 1.8 acre parcel) that was previously developed illegally will be allowed to be redeveloped with a sport court and a gazebo under this application and the MOU. However, in exchange for that relatively small incursion, the City and the Homes Association have rescued the deed restrictions and the Association's reversionary interests in all open space and school district property citywide, secured Lots C & D as open space/parkland instead of *either* residential development or development for school uses (the latter of which was clearly permitted), and retained the lion's share of the open space benefits through deed restrictions, while unburdening the City of any liability or weed abatement responsibilities.

4. Fire and emergency access. The City has expressly reserved emergency access, fire road and utility easements over the property.

5. No precedent. Concern has been expressed that this action would set a precedent for the privatization, sale or rezoning of parkland. However, as detailed in the MOU itself, this complex transaction, of which the rezone application is a small part, is unique. These conditions are not likely to ever repeat and the City is under no obligation to consider rezoning of any other parcel. Further, rezoning is a legislative action, which may be motivated by advancing the public interests described in this report.

### **Recommendation**

Staff recommends that the City Council open the public hearing, receive public input, close the public hearing, and approve the application if it determines in light of the whole record that it can make the findings required for approval. If the City Council wishes to approve the

zone change, it must first introduce the associated ordinance and then vote to approve the ordinance at a subsequent City Council meeting.

- Attachments:
- A - City Council Staff report re Memorandum of Understanding
  - B - City and PVHA deeds re Area A
  - C - Planning Commission Staff Report of February 19, 2013
  - D - Draft Minutes of PC Meeting of February 19, 2013 re: 900 Via Panorama
  - E - Planning Commission Resolution No. PCR-2013-0656
  - F - Planning Commission Resolution No. PCR-2013-0656-2
  - G - Additional Correspondence Received
  - H - Draft Ordinance