RESOLUTION NO. 182

RESOLUTION OF THE BOARD OF DIRECTORS OF
THE PALOS VERDES HOMES ASSOCIATION
ADOPTING GUIDELINES AND ESTABLISHING PROCEDURES
FOR IMPLEMENTING THE ASSOCIATION’S
AUTHORITY TO MAINTAIN VIEWS, AND A POLICY THAT ENFORCEMENT OF THE
ASSOCIATIONS AUTHORITY SHALL BE DONE BY INDIVIDUAL MEMBERS NOT PVHA

WHEREAS, ARTICLE V, SECTION 7 OF THE DECLARATION OF ESTABLISHMENT OF BASIC
PROTECTIVE Restrictions, Conditions, Covenants, Reservations, Liens and Charges and Certain Local Restrictions
(hereinafter referred to as “Restrictions”) of Palos Verdes Estates and portions of Miraleste provided in part:

“Representatives of the Homes Association... shall have the right at any time to enter on or upon
any property for the purpose of cutting back trees or other plantings which may grow up to a greater
height than in the opinion of the Homes Association is warranted to maintain the view and protect
adjoining property.”

WHEREAS, The Board of Directors (the “Board”) of the Palos Verdes Homes Association (the
“Association” or “PVHA”) adopted Resolution No. 146 in November 2000, Resolution 150 in November 2002,
Resolution 156 in May 2005, Resolution 159 in July 2006 Resolution 165 in March 2010, Resolution 169 in March
2013 and Resolution 172 to establish procedures for its members to utilize the authority of the Association to correct
view impairments created by trees or other plantings;

WHEREAS, the Association has had experience with Resolution No. 146, No. 150, No. 156, No. 159, No.
165, No.169 and No. 172;

WHEREAS, it is the Association’s policy to encourage resolution of view impairment issues between
parties who are directly involved, whenever possible;

WHEREAS, in the course of resolution the parties frequently agree to the removal of trees or other
plantings; removal requires the agreement of parties. The Association does not compel removal of trees or plantings
without such agreement;

WHEREAS, the Association wishes to adopt written procedures regarding its view impairment authority so
that members may better understand the procedures and remedies available pursuant to Article V, Section 7; and
with the hope that this understanding will further promote settlement by the parties;

WHEREAS, the Association has held public meetings, circulated drafts and received written and oral
communications from its members;

WHEREAS, the Association wishes to adopt both guidelines and establish procedures for its members to
utilize the authority of the Association to establish an opinion that trees and other plantings have grown to a greater
height than in the opinion of the PVHA is warranted to maintain the view, which cannot be resolved between the
parties;

WHEREAS, Article VI Section 11, the Deed Restrictions give the Association “...the authority to interpret
the Restrictions.”

WHEREAS, The California Supreme Court has established a principle that judicial deference will be given
to Association decisions that are made in good faith, within the scope of its authority and in accordance with
reasonable covenants;

Nahrstedt v. Lakeside Village Condominium Ass’n (1994) 8 C4th 361, 33, CR2d 63. The California
Supreme Court gave a comprehensive history and overview of common interest developments. The opinion sets out
certain basic principles including:
“An equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the land against which the CC&R’s are recorded; or it otherwise imposes burdens on the affected land that are so disproportionate to the restrictions beneficial effects that the restriction should not be enforced.”

The court instructed that “...generally courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common development, are consistent with the development’s governing documents and comply with public policy.”

In 1999, in the case of Lamden v. La Jolla Shores (1999) 21 Cal 4th 294, the California Supreme Court established the principal that as a matter of law California Courts must defer to a community association’s board decisions. The court held that where a duly constituted community association board upon reasonable investigation in good faith exercises discretion within the scope of its authority under its restrictions, courts should defer to the Board’s authority and presumed expertise. The court states “thus we adopt today for California Courts a rule of judicial deference to community association Board decision making.”

California law recognizes the right to obtain a mandatory injunction to trim trees that obstruct views in violation of deed restrictions. Ezer v. Fuchloch (1979) 99 CA3d 849, 160 CR 486.

WHEREAS, California Civil Code section 5975. Entitled Covenants and Restrictions in Declaration-Enforcement states at Section (a) “The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.”

WHEREAS, Enforcement of Article V, Section 7 generally benefits only one property owner, rather than the entire Association;

WHEREAS, nothing in these guidelines or procedures is intended to limit the authority of the Association;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following guidelines for the processing of all view impairment applications submitted to the Association and restating the policy that enforcement of Article V, Section 7, opinions established by PVHA shall be done by individual members.

The following words, phrases and terms shall have the following meaning ascribed to them.

The date when a view was obstructed is not mentioned in Declaration No. 1 and is not material.

1. “Cutting back trees or other plantings” means trimming of the necessary portions of a tree or planting to restore a view.

2. “Maintain and improve the view of” means one or more areas of view; and does not mean an unobstructed view.

3. “View” means primary view from a principal residence and any immediately adjoining patio or deck area at the same elevation as the residence which consists of a visually impressive scene or vista such as a scene of the Pacific Ocean, off-shore islands, city lights of Los Angeles basin, or the mountains.

4. “View Impairment” means a significant interference with and obstruction of a view by landscaping, trees or any other vegetation.

5. “Adjoining Property” means close, next to or in contact with one another. [Welch v. Kai (1970) 4 CA3d 374, 84 CR2d 619.] PVHA interprets Article V, Section 7 to apply to properties that adjoin the applicants property; or directly across a street.

WHEREAS, the Association wishes to establish procedures for its members to utilize the authority of the Association to correct view impairments, which cannot be resolved between the parties;

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WHEREAS, the Association has retained the services of a professional mediator;

WHEREAS, enforcement of a PVHA decision to remove a view obstruction of PVHA generally benefits only one member; not the entire Association;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following procedure for the processing of all view impairment applications submitted to the Association, and a policy that enforcement of view restoration decisions of PVHA shall be done by individual members not PVHA.

The following are general policies of the Association:

1. The applicant shall submit information on an application form provided by the Association.

2. The applicant shall be required to document efforts to resolve the obstruction issue with his neighbor including copies of all correspondence between the parties.

3. The applicant shall pay an administrative application fee to the Association at the time an application is submitted. PVHA shall set the fee from time to time to reflect the expense to PVHA associated with said applications.

4. The applicant shall execute a financial responsibility agreement with the Association at the time an application is submitted.

   A. The applicant must agree to pay the entire cost of the initial trimming or removal of trees or shrubs.

   B. The applicant must agree to reimburse the Association for its fees and expenses related to the application particularly if PVHA is named as a defendant in a lawsuit.

5. If the owner appeals, as a condition of the appeal:

   A. The owner must pay an administrative appeal fee to the Association, at the time the appeal is filed. PVHA will set the fee from time to time to reflect the expense to PVHA associated with the appeal.

   B. The owner must execute a financial responsibility agreement and the owner must agree that if after a hearing and decision by the Board of Directors, if PVHA is named in litigation related to the Board decision the Owner will pay PVHA expenses and fees.

6. The Association will send a Notice to the owner of the property where the vegetation is located, ("affected property").

7. The Notice will inform the owner of the affected property of the action requested in the application; and that a mediator will be appointed.

8. The mediator and the parties may make reasonable efforts to mediate and reach an agreement between the applicant and the owner of the affected property; however, if the parties cannot agree, the mediator will prepare a written advisory opinion.

9. A copy of the advisory opinion shall be mailed to the applicant and owner of the affected property along with a notice that the opinion will become the opinion of PVHA unless the applicant or the owner appeal to the Board.

10. The Board shall review the advisory opinion to assure that it is not arbitrary or unreasonable. The advisory opinion shall constitute the opinion of the PVHA unless either party appeals the decision to the Board and pays the appeal fee within thirty (30) calendar days of the mailing of the decision. The appeal fee will be set from time to time to reflect the expenses related to the appeal.

11. If the advisory opinion is appealed; The Board will hold a de novo hearing; the Board will hear the
evidence and arguments of the parties and make an independent decision based on the presentations of the applicant and affected party.

12. It is the policy of PVHA to implement decisions without undue delay. If a decision is appealed to the Board, PVHA will put the appeal on a Board agenda, and both parties will be notified of the date of the Board hearing of the appeal. The appealing party must appear or give PVHA 10 days notice of a request that the appeal be continued until the subsequent Board meeting.

13. No more than one continuance will be granted. If the appealing member fails to appear at the continued hearing, the appeal will be denied.

14. It has been the experience of PVHA, that trimming requires the cooperation of the owner or a court order. The applicant and the owner of the affected property shall have the right and responsibility to schedule the trimming. The final act in the process for PVHA is to establish an opinion that the applicant may seek to enforce. PVHA will not be involved in scheduling trimming on behalf of the applicant; or any effort to enforce the provisions of Article V Section 7.

15. If any further action up to and including filing a lawsuit, is necessary to schedule the trim or to otherwise enforce the PVHA opinion, the applicant or the owner shall have the exclusive right and responsibility to pursue whatever means they deem appropriate and legal.

PASSED, APPROVED AND ADOPTED this 24th day of July 2018.

[Signature]
President
Palos Verdes Homes Association

Attest:
[Signature]
Executive Secretary
Palos Verdes Homes Association