City of Rolling Hills INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD
ROLLING HILLS, CA 90274
(310) 377-1521
FAX (310) 377-7288

PLANNING COMMISSION
PUBLIC FORUM ON VIEW PRESERVATION

STAFF REPORT ATTACHMENT

#3
CORRESPONDENCE

Subject: FW: Chapter 17.26 View Preservation

From: Heidi Luce <hluce@cityofrh.net>
To: Heidi Luce <hluce@cityofrh.net>

For the City Council and Planning Commission's information.

On 3/24/12 7:39 PM, "Lynn Gill" <lynn.gill@cox.net> wrote:

Dear Tony,

Thanks for the telephone call—it's good to talk with you, as always.

I was pleased to learn that the Planning Commission and City Council are considering commencing a process to review and possibly revise the view preservation ordinance, which was adopted in 1988. The City and residents now have nearly 25 years of experience with the ordinance, and now have the benefit of comparing the RH ordinance to those adopted by similar cities with rolling terrain, views, and many trees. I provided the Committee with comparisons of about ten city view ordinances that I prepared for RHCA when RHCA was drafting their view ordinance.

Some issues I have noted while reviewing the view preservation ordinance, and based on my analysis of about 50 city ordinances while helping with the RHCA ordinance:

1. **The City unnecessarily holds itself open to litigation.** Most cities act in an ombudsman role to try to resolve the conflict between the view seeker and the tree owner. If not successful in arriving at a solution with City ombudsman assistance, the parties then rely on the courts to resolve the matter. The City is out, not a party to the dispute. In the Rolling Hills ordinance, the City is a party to the dispute by actively enforcing the ordinance, and is subject to litigation.
2. **The date a view is established is ambiguous.** Because the date is ambiguous, it could be interpreted as the view a view seeker had when they purchased their property, or some other date. Current interpretation is that the view existed before the ordinance was written, before a view seeker purchased their property, and perhaps even before the City was chartered. Counsel I have consulted tell me that this is retroactive and may be an illegal taking under the 5th Amendment to the Constitution, as it takes property value from the tree owner and gives property value to the view seeker. On the other hand, no one I have talked with disagrees that a view seeker should be able to restore the view that they had when they purchased their property.
3. **Ambiguity.** Much of the language of the ordinance is ambiguous and conflicting. The result (counsel tell me) is that the parties are denied their due diligence rights guaranteed under the 5th Amendment to the Constitution.
4. **Definition of a view.** In some places view is singular, in others plural. The definition of view in Chapter 17.12 would appear to define view as singular, but there is disagreement about this issue. Other city ordinances have much better definition of "view," i.e., a view corridor. The RHCA ordinance also defines view in this way.
5. **Definition of a Viewing Point.** Other city ordinances are much more definitive about what is a view point. Some limit the view seeker to one viewing point.
6. **Limitation on the number of view abatement actions a view seeker can**

apply for. The RHCA ordinance and other city ordinances do not allow "serial view applications" by a view seeker. Multiple applications could be used by unscrupulous view seeker to pick off neighboring tree owners, one by one.

7. **Who pays?** The RHCA requires that the view seeker pay for all legal and other expenses related to the matter, for removal of vegetation, and for maintenance of the remediated vegetation.
8. **Mediation.** The legality of forcing the tree owner to enter into mediation is questionable. They are not a party to the application between view seeker and the City.

At any rate, I agree that it is time to re-evaluate the view preservation ordinance to make sure it can pass legal muster, and serves the will of the property owners in Rolling Hills. It sounds as though the wheels are already in motion, but if you need a formal request, please consider this letter such a request and communicate it to the Planning Commission and City Council.

Best regards,
Lynn

Subject: FW: VPO
Date: Wednesday, April 11, 2012 9:42 AM
From: Heidi Luce <hluce@cityofrh.net>
To: Heidi Luce <hluce@cityofrh.net>

For the City Council and the View Committee's information.

RECEIVED
APR 11 2012
City of Rolling Hills
By _____

------ Forwarded Message
From: Lynn Gill <lynn.gill@usc.edu>
Date: Wed, 11 Apr 2012 09:18:41 -0700
To: Anton Dahlerbruch <adahlerbruch@cityofrh.net>
Subject: Re: VPO

Please share this e-mail with the View Committee and City Council.

Regards,
Lynn

From: Lynn Gill <mailto:lynn.gill@usc.edu>
Sent: Monday, April 09, 2012 11:05 AM
To: Rolling Hills, City of, Anton Dahlerbruch <mailto:adahlerbruch@cityofrh.net>
Subject: VPO

Hello Tony,

Thanks for the heads up concerning your March 30 letter and the 11-page legal memorandum from Ass't City Attorney Elizabeth Calciano. I realize that your letter went out before we talked, but I did want to clarify a couple of points.

1. Your letter and the memorandum seem to imply that I have allied myself with the Greenberg's in the Reis vs. Greenberg matter. That is not the case. I have stated several times that the Reis' have requested restoration of the view that they had 16 years ago when they purchased their property. That is a reasonable request. My concern is that the View Committee has not established, using best evidence and judgment, what that view was. They appear to have jumped to providing the Reis with a view they have not asked for.
2. I have studiously kept the Reis-Greenberg matter separate from the broader issue of the VPO itself. Your letter and the memorandum merge the two. Perhaps it is difficult to keep the two separate, but it would be good to do so. As we discussed, the View Committee is stuck with interpreting the current VPO. The broader issue is what kind of VPO do we the people want in the future? I don't have an answer for that, but I hope that the people be allowed to decide in open forum.
3. I have read the legal memorandum a couple of times, and still do not see a case cited in which the view-seeker did not have an established view that vegetation of the tree-owner encroached into. I couldn't see a case where the court allowed

property value to be taken from one owner and given to another to provide the view seeker with a view that they never had. In all cases, the opposite was true; the property value lost by the view-seeker due to vegetation that had grown up to obscure their established view was restored to view-seeker through mitigation. That is reasonable.

The legality of the current application of the VPO is less important than whether is is fair and reasonable. Because one has the power to do something does not imply that it fair and reasonable to do so.

A quote from Justice Samuel Alito in a recent case Sackett vs. EPA is informative, along with an example. The cited case does not deal with views, rather the improper use of the coercive police power of the EPA.

"If you related the facts of the case to an ordinary homeowner, don't you think most ordinary homeowners would say this kind of thing can't happen in the United States?"

The Example: Property Owner A purchases a property in Rolling Hills in 2002 for $3,000,000. At the time of purchase, the price was fairly bargained and included attractive landscaping which incorporated numerous trees.

In 2012, Property Owner B purchase an adjoining property for $2,700,000. They file a view encroachment action against Owner A and the View Committee required Owner A to cut 20 trees to give Owner B the requested view.

Property A's property value drops to $2,700,000 and property owner B's property with view increases to $3,000,000.

The people of Rolling Hills should be allowed to decide how to answer Justice Alito's question about the example situation which can happen in Rolling Hills under current interpretation of the VPO.

The appeal for Murrell vs. RHCA et. al established the value for a tree in Rolling Hills- $30,000 for two trees or $15,000 per tree. I used that value in my example above. Arborists typically place a higher value on certain specimen trees.

I plan to attend City Council this evening to request that the Council begin a process to review the current VPO. I have no intention of discussing the Reis vs. Greenberg matter.

Best regards,
Lynn
bcc. interested parties

------ End of Forwarded Message

Subject: Draft view ordinance revision
Date: Sunday, April 22, 2012 4:49 PM
From: Lynn Gill <lynn.gill@cox.net>
To: Anton Dahlerbruch adahlerbruch@cityofrh.net

Hello Tony,

Thanks for the telephone call. It's always nice to chat with you. I fully understand the timing necessity of getting current view committee matters completed before turning to possible revision of Chapter 17.26.

As I told you, I obtained a copy of the RHE trees and view ordinance. It is recent and well-lawyered. I took the liberty of melding the best parts of that ordinance along with the best parts of the RHCA view resolution into Chapter 17.26. I know from working on the RHCA view ordinance and the RHCA easement policy that drafting or revising an ordinance can appear to be a daunting task. Generally it's better to have a draft starting point, and I offer the attached in that spirit. I claim no pride of authorship, as I was simply melding a current well-written view ordinance into our RH ordinance, modifying it to fit our special RH circumstances and preferred ways of doing things. No doubt, the Committee and Council will go through many drafts, iterations and will obtain public input before arriving at an ordinance that is right for Rolling Hills.

Please share it with the City Council and Planning Commission. I provided both a PDf file and a non-protected Word file for use of Planning and the Council only.

Best regards,
Lynn

Chapter 17.12

The following replaces Section 17.12.220 in its entirety.

DEFINITIONS

17.12.220 Words, terms and phrases.

For the purpose of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

"Alter" means to take action that changes the tree or vegetation, including but not limited to, extensive pruning of the canopy area (topping), cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the feeder root zone of the tree or vegetation.

"Arbitration" means a voluntary legal procedure for settling disputes and leading to a final and binding determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted as set forth in California Code of Civil Procedure Section 1280 et seq.

"Arbitrator" means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes binding decisions for the disputing parties. The arbitrator of a view dispute shall be chosen from a list available from the city of qualified and professionally trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

"Arborist, certified" means a person who has passed a series of tests by the International Society of Arboriculture (ISA), is governed by ISA's professional code of ethics and possesses the technical competence through experience and related training to provide for or supervise the management of trees and other woody plants. The arborist utilized in mediation of a view dispute shall be certified by the city.

"Authorized agent" means a person, as defined herein, who has been designated and approved in writing by the property owner of record to act on his/her behalf in matters pertaining to the processing of a view claim as outlined in this chapter.

"Canopy" means the umbrella-like structure created by the over-head leaves and branches of a tree which create a sheltered area below.

"City" means the City of Rolling Hills.

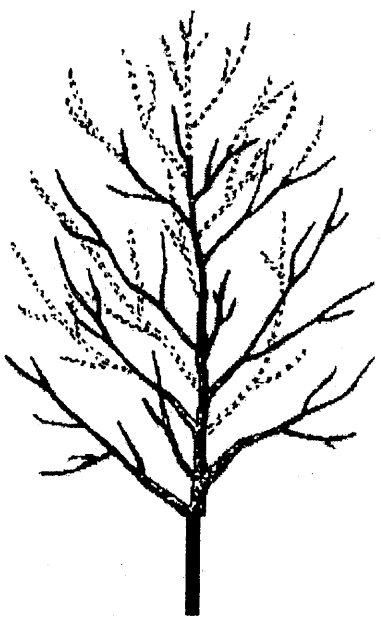
"City maintained trees" means trees which are specifically designated for maintenance by the city council, typically on city property.

"City property" means any real property of which the city is the fee simple owner of record.

"Claim, view " means documentation that outlines the basis of view impairment and the specific preservation/restoration action that is being sought.

"Crown" means the rounded top of the tree.

"Crown reduction/shaping" means a method of pruning that reduces a tree's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal. The diagram that follows is illustrative of "crown reduction/shaping" within the meaning of this chapter.

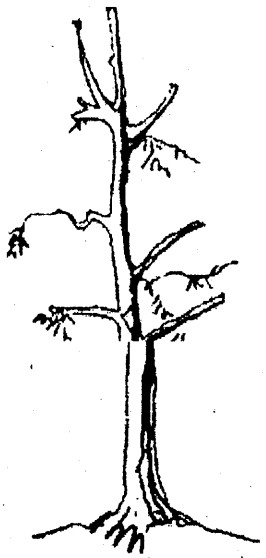


"Destroy" means to kill or take action that endangers the health or vigor of a tree or vegetation, including, but not limited to, cutting, girdling, topping, interfering with the water supply, applying chemicals or re-grading around the base of the trunk.

"Established view" means a view that was in existence on the date the view-seeker purchased their real property, or the date the tree/vegetation owner purchased their property, whichever date is more recent.

"Established View and tree/vegetation equity" means achievement of a fair, reasonable, and balanced accommodation of an established view and competing impairments (such as structures, trees and/or vegetation), considering privacy and the use and enjoyment of property.

"Heading back" means the overall reduction of the mass of a tree by modification to major limbs. The diagram that follows is illustrative of "heading back" within the meaning of this chapter. "Heading back" as defined herein is considered to be severe pruning.



"Impairment" means the blocking or diminishment of a view attributable to growth, improper maintenance or location of trees and/or vegetation.

"Lacing" means a method of pruning that selectively removes excess (primarily interior) foliage to improve the structure of the tree and to provide a view through the tree. It is a method of pruning to achieve "Vista pruning." The diagram for "crown reduction" herein is indicative also of lacing (without necessarily reducing height of the tree.

"Maintenance" means pruning with the primary objective of maintaining or improving tree health and structure; includes "crown reduction/shaping" or "lacing," but not ordinarily "heading back."

"Mediator" means a neutral, objective third party professional negotiator/facilitator to help disputing parties reach a mutually satisfactory solution regarding a view claim. The mediator shall be chosen from a list available from the city of qualified and professiona11y trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

"Person" means any individual, individuals, corporation, partnership, firm or other legal entities

"Preservation/restoration action" means any specific steps taken affecting trees or vegetation that would result in the preservation or restoration of an established view across property lines.

"Pruning" means the removal of plant material from a tree/vegetation.

"Real property" means rights or interests of ownership of land and all appurtenances to the land including buildings, fixtures, vegetation and improvements erected upon, planted or affixed to the land.

"Severe pruning" means the cutting of branches and/or trunk of a tree in a manner which substantially reduces the overall size of the tree and/or destroys the symmetrical appearance or natural shape of the tree and which results in the removal of main lateral branches leaving the trunk and branches of the tree in a stubby appearance. "Heading back" and "topping" as defined herein are considered to be severe pruning.

"Stand thinning" means the selective removal of selected trees from a grove of trees.

"Topping" is the removal of the entire canopy of a tree by cutting back large-diameter branches to stubs or truncating the main stem/trunk. Topping damages and weakens trees, often results in explosive new growth, and topped trees appear disfigured or mutilated. Topping shall be prohibited.

"Tree" means any woody perennial vegetation that generally has a single trunk and reaches a height of at least eight feet at maturity.

"Tree/vegetation owner" means any person who owns real property in the city on which tree(s) and/or vegetation is located.

" Vegetation" means all types of plants, bushes, hedges and shrubs, including trees.

"View" means a single vision of a scene or vista from a viewing point in a principal residence, or any immediately adjoining patio or deck area at the same elevation as the residence , which consists of a visually impressive scene or vista not located in the immediate vicinity of the residence, such as a scene of the Pacific Ocean, off-shore islands, lights of the Los Angeles basin, the Palos Verdes hills or Los Angeles Harbor. The term "view" does not mean an unobstructed panorama of these features. "View", "the view" and "views" are synonymous and singular.

"View corridor" is a narrow visual pathway through trees or vegetation from a single viewing point to a single scene or vista.

"View impairment" means a significant interference with an established view by landscaping, trees or any other vegetation. (Ord. 239 §11(part), 1993).

"View Seeker" means any real property owner in the city or authorized agent of such property owner who alleges that tree(s)/vegetation located within the immediate vicinity of the property are causing unreasonable impairment of an established view benefiting such real property.

"Viewing point" is a location within a principal residence designed to take advantage of an established view, such as the living, family, and dining rooms, rooms that have features such as picture windows, sliding glass doors, or French doors; and common exterior areas such as patios, balconies, decks, pool areas, and gazebos.

"Vista pruning" means the selective thinning of framework limbs or specific areas of the crown of a tree to allow an established view through the tree from a specific viewing point.

The following replaces Chapter 17.26 in its entirety.

Section Chapter 17.26

TREES AND VIEW PRESERVATION

Sections:

17.26.010	Intent and purpose.
17.26.020	Criteria for determining unreasonable impairment.
17.26.030	Criteria for determining appropriate preservation/restoration action.
17.26.040	Hierarchy of view preservation/restoration actions.
17.26.050	Committee on Trees and Views.
17.26.060	Desirable and undesirable trees.
17.26.070	View and tree/vegetation equity process
17.26.080	Initial discussion.
17.26.090	View claim procedure.
17.26.100	Mediation.
17.26.110	Assistance of Committee on Trees and Views.
17.26.120	Arbitration.
17.26.130	Litigation.
17.26.140	Preservation/restoration action limitations.
17.26.150	Implementation of restorative action.
17.26.160	Enforcement
17.26.170	Responsibility for view preservation/restoration action and subsequent maintenance.
17.26.180	Liability.
17.26.190	Severability.
17.26.200	Notification of subsequent owners.

SEC. 17.26.010 Intent and purpose.

The City of Rolling Hills enjoys both beautiful views and an abundance of mature trees and other vegetation, and values both as contributing to the unique character of the city and enhancing the quality of life. Views of the Pacific Ocean, Catalina Island, city lights and Los Angeles Harbor are a special quality of property ownership for many residential lots in the city. Views contribute to property values. These views have the potential to be diminished or eliminated by maturing landscaping located on private property.

Trees and vegetation produce significant psychological and tangible benefits for both residents and the broader community. Trees and vegetation provide privacy, modify temperatures, screen winds, replenish oxygen to the atmosphere, remove pollutants from the air, maintain soil moisture, mitigate soil erosion and provide wildlife habitat. Trees and vegetation also create shade which reduces energy costs from air conditioning.

Trees and vegetation contribute to the visual aesthetics by providing visual screens and buffers between different properties or land uses. Trees and vegetation in landscaping buffer the scale and mass of architecture and provide an attractive environment. Trees and vegetation within the city provide botanical variety and a sense of history. Trees and vegetation contribute to property values. Absent an unreasonable impairment of the established view of a

neighboring property, the city encourages and supports the growth and maintenance of trees and vegetation.

The benefits derived from an established view and trees/vegetation may come into conflict. The planting or natural germination of trees and other vegetation and their subsequent growth, particularly when such trees are not properly maintained, can produce intended or unintended harmful effects both on the property on which they are planted and/or on neighboring properties. No person shall plant, maintain, or permit to grow any trees or vegetation which unreasonably obstructs an established view from a neighboring property or properties.

The purpose of this chapter is to:

a. Mitigate the inherent conflict between an established view and trees/vegetation by establishing procedures for the protection of an established view and abatement of view impairments created by trees and vegetation, while at the same time protecting trees and vegetation from indiscriminate removal,
b. Establish a right of real property owners in the city to preserve and or/restore an established view that existed on the date that the property was purchased by the view-seeker, or on the date that tree/vegetation owner's property was purchased, whichever is more recent,
c. Establish a right of tree/vegetation owners to preserve and protect trees and vegetation that existed on the date that the property was purchased by the tree/vegetation owner.

It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter. The goal is to provide established view and tree/vegetation equity.

SEC. 17.26.020 Criteria for determining unreasonable impairment.

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable impairment of an established view has occurred:

(1) The viewing point from which the established view is observed;

(2) The extent of the established view impairment, both currently and at tree/vegetation maturity;

(3) The quality of the established view, including the existence of landmarks, vistas, or other unique features of the established view;

(4) The extent to which the tree(s) and/or vegetation have grown to obscure the enjoyment of the established view from the primary view seeker's property since the view seeker's acquisition of his or her property or from the date the tree/vegetation owner purchased his or her property, whichever is more recent;

(5) The extent to which the established view has been or is diminished by factors other than tree(s) and/or vegetation.

(6) Legal building structures consistent with city regulations, and vegetation within the silhouette of such structures are not within the definition of view impairment. Vegetation may grow up to roof height for a privacy shield and/or to shield the view into a pool and certain defined private areas within a property. An established view to be preserved or restored is generally of a distant vista above or around the structure silhouette.

SEC. 17.26.030 Criteria for determining appropriate preservation/restoration action.

If it has been determined that unreasonable impairment of an established view has occurred, then the following un-weighted factors shall be considered in determining appropriate preservation action:

(1) The number of existing trees or amount of vegetation in the area and the current effects of the tree(s) and their removal on the neighboring vegetation;

(2) The extent to which the tree(s) and/or vegetation provide:

(a) Screening or privacy,

(b) Energy conservation and/or climate control,

(c) Soil stability, as measured by soil composition, degree of slope and extent of the tree's root system when a tree is proposed to be removed,

(d) Aesthetics,

(e) Community/neighborhood quality, value or significance,

(f) Shade,

(g) Historical context due to the age of the tree/vegetation,

(h) Rare and interesting botanical species,

(i) Habitat value for wildlife,

(J) Blending, buffering or reduction in the scale and mass of architecture and buffering between properties provided by trees/vegetation

(3) Any hazards posed by the tree(s) or vegetation including, but not limited to, fire danger or the danger of falling limbs or trees;

(4) The species, age, projected rate of growth, and maintenance requirements of the tree(s) or vegetation;

(5) The date the view seeker purchased their property; and

(6) The date the tree/vegetation owner purchased their property.

(7) "Established view" is the view that existed on the date the view-seeker purchased their real property, or the date the tree/vegetation owner purchased their property, whichever date is more recent.

SEC. 17.26.040 Hierarchy of view preservation/restoration actions.

View claim actions must be consistent with all other provisions of this Title. Severe pruning should be avoided due to the damage such practice causes to the tree's form and health. Preservation actions may include, but are not limited to the following, in order of preference, assuming no countervailing health or safety interest(s)exist:

(1) Lacing. Lacing is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree. View corridors are provided through laced trees.

(2) Vista Pruning. Vista pruning of branches may be utilized where possible, if it does not in the opinion of a certified arborist adversely affect the tree's growth pattern or health.

(3) Crown Reduction. Crown reduction is preferable to tree removal, if it is determined by a certified arborist that the impact of crown reduction would not destroy the visual proportions of the tree, adversely affect the tree's growth pattern or health, or otherwise constitute a detriment to the tree(s) in question.

(4) Stand Thinning. The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.

(5) Heading Back. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if restoration actions (1) through (4) of this section will not accomplish the determined preservation action and in the opinion of a certified arborist the subsequent growth characteristics will not create a future impairment.

(6) Severe pruning. Severe pruning such as heading back and topping shall not be permitted, except as stated in (5) above.

(7) Tree/Vegetation Removal. Tree and/or vegetation removal, which may be considered when the above-mentioned preservation actions are judged to be ineffective and may be accompanied by required replacement plantings of appropriate vegetation to mitigate the level of benefits lost due to tree removal. View seeker shall bear the cost of replacement planting.

17.26.050 Committee on Trees and Views.

A Committee on Trees and Views ("Committee")is established for the purpose of administering the provisions of this chapter. The Committee shall be composed of no less than three members, selected from among property owners in the city. One member may be a professional member, such as a certified arborist or landscape architect/designer. The Committee shall be appointed by the Commission annually at the same time as the Commission selects its officers, or whenever a vacancy occurs. Committee meetings shall be scheduled as adjourned or special meetings of the Commission.

The Committee is authorized to consult with city officials and with specialists such as landscape architects and certified arborists as required, but shall not incur any expense on behalf of the city. (Ord. 292 §4, 2003: Ord. 239 §11(part),1993). All such costs related to established a view claim (view and tree/vegetation equity) will be borne by the view seeker, unless otherwise agreed between the view seeker and the tree vegetation owner or as specified herein.

17.26.060 Desirable and undesirable trees.

The Committee is authorized and directed to prepare a list of desirable and undesirable trees for planting within the city. The list shall be based upon ability of the tree to flourish in Rolling Hills, tree size and shape, rate of growth, depth of roots, fire resistance/hazard, fall rate of leaves or bark or fruit or branches, and other factors related to safety, maintenance and appearance. The purpose of this provision is to make information available to property owners which may serve to avoid future view claims, and other proceedings authorized by this chapter. (Ord. 239 §11(part), 1993).

SEC. 17.26.070 View and tree/vegetation equity process.

The view seeker shall follow the process established by this chapter in seeking preservation or restoration of an established view:

First, the view seeker must complete the "initial discussion" process described in Section 17.26.080.

Second, if that process does not yield a result mutually satisfactory to the view seeker and the tree/vegetation owner, then the view seeker may file a view claim with the

city and request mediation, as described in Sections 17.26.090 and 17.26.100.

Third, if the tree/vegetation owner does not participate in mediation or if mediation is unsuccessful in resolving the claim, the view seeker may next pursue resolution by requesting assistance from the Committee on Trees and Views as described in Section 17.26.110

Fourth, if the recommendation of the Committee on Trees and Views is not accepted by the view seeker and the tree/vegetation owner, the view-seeker may next pursue resolution by arbitration, as set forth in Section 17.26.120.

Fifth, if arbitration is not accepted by the tree/vegetation owner, the view seeker may then initiate litigation as described in Section 17.26.130.

SEC. 17.26.080 Initial discussion.

A view seeker, who believes that one or more trees or vegetation on another person's property in the city has caused unreasonable impairment of an established view from the view seeker's property, shall first notify the tree/vegetation owner of such concerns. The notification shall request personal discussions to enable the view seeker and tree/vegetation owner to attempt to reach a mutually agreeable solution, and shall be followed-up in writing. The notification shall include a copy of the view preservation ordinance (chapter 17.26 of this code), available from the city.

The view seeker shall invite the tree/vegetation owner to examine the alleged view impairment from the viewing point on the view seeker's property. Criteria to be considered are contained in Section 17.27.020. The view seeker shall provide proof of the alleged established view and a description of the nature and extent of the alleged impairment, including pertinent and corroborating evidence. Evidence may include, but is not limited to, documented and dated photographic prints, negatives, or slides; and written testimony from residents living in the area. Such evidence must show the extent to which the established view has been diminished by trees and/or vegetation.

The tree/vegetation owner is urged to invite the view seeker to examine the situation from his/her property. Criteria to be considered are contained in Section 17.26.030.Heirartcy of view preservation/restoration actions are contained in Section 17.26.040.

Failure of the tree/vegetation owner to respond to the written request for initial discussion within forty-five days from the date of delivery shall be deemed formal refusal by the tree/vegetation owner to participate in the initial discussion.

If the initial discussion is refused, or if the parties do not agree as to the existence and nature of the view seeker's view impairment and the appropriate view preservation/resolution actions, the view seeker may proceed with the subsequent claim procedure outlined in Section 17.26.090.

SEC. 17.26.090 View claim procedure.

If the initial discussion outlined in Section 17.26.080 does not result in an agreement between the tree/vegetation owner and the view seeker, the view seeker may file a written view claim with the city requesting mediation. Any person in the city who owns or has lawful possession of a residence from which a view is allegedly impaired by vegetation growing on property other than their own may seek abatement of the view impairment under the following procedure.

A. Application Required. The view seeker shall submit a complete application for abatement of impairment of an established view (view claim) on a form provided by the city. The application shall be accompanied by a fee as provided for in Section 17.30.030 of this title.

B. Financial Responsibility and Indemnification Agreement. The applicant shall execute a financial responsibility and indemnification agreement with the city and post a payment bond at the time a view claim is submitted. The applicant must agree to pay the entire cost of the view claim process and view preservation/remediation, except as otherwise may be agreed between view seeker and the tree/vegetation owner or as specified herein. View seeker shall agree to indemnify city of any liability (Section 17.26.180).

A view claim to preserve or restore view shall consist of all of the following:

(1) A description of the nature and extent of the alleged impairment of an established view, including pertinent and corroborating evidence. Evidence may include, but is not limited to, documented and dated photographic prints, negatives, or slides; or written testimony from residents living in the area. Such evidence must show the extent to which the alleged established view has been diminished by trees and/or vegetation;

(2) The location of all trees and/or vegetation alleged to cause the view impairment, the address of the property upon which the trees and/or vegetation are located, and the present tree/vegetation owner's name and address;

(3) Specific actions to preserve/restore the alleged established view proposed by the view seeker to resolve the allegedly unreasonable impairment;

(4) Evidence that initial discussion as described in Section 17.26.080 has been made and has failed. A view claim shall not be accepted for filing unless the view seeker can demonstrate that the owner of the view-impairing vegetation(tree/vegetation owner) has been given notice of the impairment and a reasonable opportunity to abate it, but has refused to do so. Evidence may include, but is not limited to, copies of receipts for certified or registered mail correspondence;

(5) Evidence confirming the ownership and the date of acquisition of the view seeker's property.

(6) Evidence confirming the ownership and the date of acquisition of the tree/vegetation owner's property.

(7) "Established view" is the view that was in existence on the date the view-seeker purchased their real property, or the date the tree/vegetation owner purchased their property, whichever date is more recent.

SEC. 17.26.100 Mediation.

Upon receiving the written view claim, financial responsibility and indemnification agreement, payment bond, and processing fee in the amount established by resolution of the city council, city staff shall prepare and send by certified mail to the tree/vegetation owner, a copy of the written view claim and a notice requesting that the tree/vegetation owner agree to participate in a mediation process to attempt to resolve the view claim.

The notice of the view claim and request for mediation provided by the city in accordance with Section 17.26.090 shall inform the tree/vegetation owner of the provision in Section 17.26.130 that a tree/vegetation owner who prevails in litigation shall not be entitled to recover attorneys' fees and costs if the tree/vegetation owner has declined to participate in the view and tree/vegetation equity processes set forth in Sections 17.26.080, 17.26.090, 17.26.100,17.26.110, or 17.26.120.

In addition, city staff shall notify all property owners within 500 feet of the tree/vegetation owner's property of the pending view claim, their right to file a view claim on their own behalves within 45 days of city staffs mailing of notice of the original view claim, and the fact that their view claim will be subject to a two-year time limit if it is not filed within 45 days of staffs' mailing of notice of the original claim. Any view claim(s) submitted by surrounding property owners after being advised by staff of the pending view claim shall, to the extent possible, be combined with the view claim for purposes of mediation and arbitration.

The tree/vegetation owner shall have 45 days from delivery of the request for mediation to either accept or decline mediation. The notice sent to the tree/vegetation owner shall inform the tree/vegetation owner that a failure to respond to the request for mediation within forty-five days from the date of delivery of the notice shall be deemed formal refusal of the mediation process by the tree/vegetation owner.

If the tree/vegetation owner agrees to participate in a mediation process, the view seeker shall then pay the fee established by resolution of the city council for the mediation process, including review by the city's certified arborist. The mediator shall be chosen by the parties from the list of professional mediators maintained by the city. In the event the parties are unable to choose a mediator from the approved list, city staff shall randomly select a mediator from the list. City staff, in consultation with the mediator, shall establish a date for mediation, and a written notice of the mediation hearing date shall be sent to each party by certified mail.

The mediator shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 17.26.020 and 17.26.030, and the hierarchy of preservation actions set forth in Section 17.26.040, respectively, in attempting to resolve the view claim. The mediator shall also solicit recommendations of a certified arborist regarding landscape techniques and/or maintenance procedures.

The role of the mediator shall be advisory in nature and shall not be binding in establishing the preservation or restoration of view. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing and signed by the mediator and all of the parties, and two copies shall be submitted to the city clerk. The cost of mediation, including review by a certified arborist, shall be paid initially by the view seeker, provided, however, that the ultimate responsibility for such cost may subsequently be modified by mutual agreen1ent of the parties. The mediator is encouraged

to suggest a just and reasonable allocation of responsibility for the cost of mediation as part of the mediation process.

If agreement is reached through mediation, it shall be implemented in accordance with Section 17.26.150.

SEC. 17.26.110 Assistance of Committee on Trees and Views.

If the initial discussion outlined in Section 17.26.080 or mediation outlined in Sections 17.26.090 and 17.26.100 does not result in an agreement between the tree/vegetation owner and the view seeker, the view seeker may request assistance from the Committee on Trees and Views. The Committee serves only in an advisory capacity.

A. **Public Hearing.** The matter shall be returned to the City Manager, who shall schedule the matter for a public hearing before the Committee on Trees and Views. (Ord. 292 §5, 2003; Ord. 239 §11(part), 1993. Public notice of the hearing shall be given a minimum of fifteen days prior to the hearing. The hearing shall not proceed unless proof is shown that the owner of the tree or other obstructing vegetation received notice of the hearing as provided herein:

1. Notice shall be given by certified mail, return receipt requested, to the owner of the tree or other obstructing vegetation and to the complainant;
2. Notice shall be given by first class mail to all property owners within one thousand feet of the exterior boundary of the property on which the tree or other obstructing vegetation are located and to other persons who, in the Committee's judgment, might be affected.

B. **Content of Notice**. The notice shall state the name of the complaining party (view seeker), the name of the property owner against whom the complaint is filed (tree/vegetation owner), the location of the tree or other vegetation, and the time and place of hearing. The notice shall invite written comments to be submitted prior to or at the hearing.

Where there is more than one property with trees/vegetation that impair a view of view seeker, the Committee will deal with all of those properties in a consolidated manner to arrive at a comprehensive recommendation.

C. **Conduct of Hearing.** The Committee shall adopt rules for the conduct of required hearings. At the hearing, the Committee shall consider all written and oral testimony and evidence presented in connection with the application. In the event the Committee requires expert advice in consideration of the matter, the cost of obtaining such evidence shall be borne by the complainant, pursuant to written agreement with the city.

The Committee shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 17.26.020 and 17.26.030, and the hierarchy of preservation actions set forth in Section 17.26.040, respectively, in attempting to resolve the view claim.

D. **Findings.** Based on the evidence received and considered, the Committee may find any of the following:

1. That there is no established view within the meaning of this chapter;
2. That there is an established view within the meaning of this chapter, but that the established view is not significantly impaired; or
3. That there is an established view within the meaning of this chapter and that the established view is significantly impaired.
4. The Committee will not create an unobstructed view for applicants. The

objective is to restore an established view by creating a view corridor in order to provide a view through trees/vegetation.

5. In order to minimize the number of trees/vegetation recommended to be trimmed or removed, the Committee may recommend abatement of view impairments in increments.

The Committee shall make specific written findings in support of the foregoing determinations.

E. **Action.** If the Committee makes finding subsection (D)(3) of this section, it shall provide recommendations as is necessary to abate the view impairment and to restore the complainant's established view, including, but not limited to, lacing, vista pruning, crown reduction, stand thinning, heading back, removal or similar alteration of the vegetation. The Committee may impose conditions as are necessary to prevent future view impairments. In no event shall restorative action be required if such action would adversely affect the environment or would unreasonably detract from the privacy or enjoyment of the property on which the objectionable vegetation is located.

F. **Finality of Decision.** In the event that the recommendation of the Committee is accepted by the tree/vegetation owner and the view seeker, the Committee's decision shall be final twenty days after adoption of its written findings, unless it is appealed to the City Council pursuant to the provisions of Chapter 17.54. (Ord. 295 §7 (Ex. B (part)), 2004; Ord. 239 §11(part), 1993)

G. If agreement between the view seeker and the tree/vegetation owner is reached through acceptance of the recommendations of the Committee, it shall be implemented in accordance with Section 17.26.150.

H. It is the intention of this section that the advisory opinion of the Committee be admissible as evidence in any civil action brought pursuant to Section 17.26.130 of this chapter.

SEC. 17.26.120 Arbitration.

If the initial discussions under Sections 17.26.080, 17.26.90, 17.26.100, and 17.26.110 fail to achieve agreement between the tree/vegetation owner and the view seeker, the view seeker may send to the tree/vegetation owner a request to participate in a binding arbitration process.

The tree/vegetation owner shall have forty-five days from delivery of the request for arbitration to either accept or decline arbitration. Failure to respond within forty-five days shall be deemed formal refusal of arbitration.

If arbitration is accepted, the parties shall agree in writing to the selection of an arbitrator, who shall be chosen from a list of professional arbitrators available from the city within thirty days of such acceptance. If the parties are unable to agree on a specific arbitrator within thirty days, they may jointly request that city staff randomly select an arbitrator from the list maintained by the city. In addition,

either party may petition a court of competent jurisdiction to appoint an arbitrator.

The arbitrator shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 17.26.020 and 17.26.030, and the hierarchy of preservation/restoration actions set forth in Section 17.26.040, respectively, in attempting to resolve the view claim, and shall submit a complete written decision to the view seeker and the tree/vegetation owner. Any decision of the arbitrator shall be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq., and two copies of the decision shall be submitted to the city clerk.

The costs of arbitration shall be paid initially by the view seeker, provided, however, that the ultimate responsibility for such costs may subsequently be modified either by mutual agreement of the parties or by a determination of the arbitrator as to a just and reasonable allocation of responsibility. The decision of the arbitrator shall be implemented in accordance with Section 17.26.150.

SEC. 17.26.130 Litigation.

If a view seeker has attempted to obtain but has been unsuccessful in attaining agreement or resolution under Sections 17.26.080, 17.26.90, 17.26.100, 17.26.110,and 17.26.120 of this chapter, the view seeker may initiate civil action in a court of competent jurisdiction for resolution of his/her view claim under the provisions of this chapter. It is the intent of this chapter that the evaluation criteria set forth herein be utilized in adjudicating view claims in civil litigation. In the event of civil litigation, the view seeker shall provide two copies of the filed complaint to the city clerk.

The prevailing party in any civil action brought pursuant to this chapter shall be entitled to recover its reasonable costs and attorneys' fees incurred in the litigation, subject to the following exception: a tree/vegetation owner who prevails in litigation shall not be entitled to recover attorneys' fees and costs if the tree/vegetation owner has declined to participate view and tree/vegetation equity processes set forth in Sections 17.26.080, 17.26.090, 17.26.100,17.26.110, and 17.26.120. The notice of the view claim and request for mediation provided by the city in accordance with Section 17.26.090 shall inform the tree/vegetation owner of this provision and the consequences of non-participation in the initial discussion, mediation, assistance from the Committee on Trees and Views, and/or arbitration process.

The decision established by litigation shall be implemented in accordance with Section 17.26.150.

SEC. 17.26.140 Preservation/restoration action limitations.

Except as otherwise authorized by law, no tree and/or vegetation on real property owned or controlled by another person may be removed, destroyed or altered unless the view seeker either enters into a written agreement with the tree/vegetation owner or obtains an arbitration award or judicial decision specifying, in detail, the nature and timing of the preservation action and the parties responsible for performing such action.

SEC. 17.26.150 Implementation of restorative action.

Restorative action may be determined by agreement among the view seeker and the tree/vegetation owner, through mediation, by agreement to accept recommendations of the Committee on Trees and Views, through arbitration, or through litigation.

A. Within thirty days of a final decision ordering restorative action, the view seeker shall obtain and present to the owner of the obstructing vegetation three bids from licensed and qualified contractors for performance of the work, as well as a cash deposit in the amount of the lowest bid. In order to qualify, the contractors must provide insurance which protects and indemnifies the city and the view seeker from damages attributable to negligent or wrongful performance of the work. Any such insurance shall be subject to the approval of the city.

B. The owner of the obstructing vegetation may select any licensed and qualified contractor to perform the restorative action (as long as the insurance requirements of subsection A of this section are satisfied), but shall be responsible for any cost above the amount of the cash deposit. The work shall be completed no more than thirty days from receipt of the cash deposit.

C. Subsequent maintenance of the vegetation in question shall be performed as prescribed by deciding bodies' final decision at the cost and expense of the owner of the property on which the vegetation is growing. The vegetation shall be maintained in accordance with the final decision so as not to allow for future view impairments.

D. The implementation method provided for in this section may be modified by the parties or in any final decision if grounds exist to justify such a modification. In particular, the deciding body may allocate the cost of restorative action as follows:

1. If the deciding body finds that the tree or other vegetation constitutes a safety hazard to the view seeker or his property, and is being maintained by the owner in disregard of the safety of others, the owner may be required to pay one hundred percent of the cost of correction; or

2. If the tree/vegetation owner is maintaining a hedge fifteen feet or more in height, the deciding body may allocate the cost of remediation of the hedge to the tree/vegetation owner. The tree/vegetation owner shall be required to maintain at his/her expense the hedge at the height determined by the deciding body. If the tree/vegetation owner agrees to remove the hedge, the view seeker shall pay for replacement plantings. (Ord. 239 §11(part), 1993).

SEC. 17.26.160 Enforcement.

A. Failure or refusal of any person to comply with a final decision under this chapter or to comply with any provision of this chapter shall constitute a misdemeanor and shall be punishable by a fine of one thousand dollars or six months in County Jail, or both. Failure or refusal of any person to comply with a final decision under this chapter shall further constitute a public nuisance which may be abated in accordance with the procedure contained in Chapter 8.24.

B. A final decision rendered under this chapter may be enforced civilly by way of action for injunctive or other appropriate relief, in which event the prevailing party may be awarded attorney's fees and costs as determined by the court.

C. Nothing in this chapter shall preclude the prosecution of any civil cause of action under the law by any person with respect to the matters covered herein. (Ord. 239 §11(part), 1993).

SEC. 17.26.170 Responsibility for view preservation/restoration action and subsequent maintenance.

The view seeker shall be responsible for paying the cost of any and all view claim processes and determined preservation/ restoration actions unless the parties agree to share the costs in some other manner. Subsequent maintenance of trees and vegetation shall be the responsibility of the tree/vegetation owner, unless otherwise agreed to by the parties or required pursuant to any final arbitration decision or court order. If tree/vegetation owner agrees to remove a tree/vegetation in lieu of required pruning, the cost of any replacement plantings and their maintenance shall be borne by the view seeker.

SEC. 17.26.180 Liability.

(1) The city shall not be liable for any damages, injuries, costs or expenses which are the result of an advisory opinion issued by the Committee on Trees and Views, a city employee or official or any agreements or determinations resulting from mediation, arbitration or litigation concerning view claims or a view seeker's assertions pertaining to views granted or conferred herein.

(2) The applicant shall execute a financial responsibility agreement with the city and post a payment bond at the time a view claim is submitted as described in Section 17.26.090. The applicant must agree to pay the entire cost of the view claim process and view preservation/remediation, except as otherwise may be agreed between view seeker and the tree/vegetation owner or described herein. View seeker shall agree to indemnify city of any liability.

(3) Under no circumstances shall the city have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view claim.

(4) A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties.

SEC. 17.26.190 Severability.

SECTION 1. If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter.

The city council hereby declares that it would have adopted this and each section, subsection, phrase or clause of this chapter irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared invalid or unconstitutional on their face or as applied.

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any persons or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each any every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in accordance with law.

SEC. 17.26.200 Notification of subsequent owners.

It is not the intent or purpose of this chapter for the city to create either a covenant running with the land or an equitable servitude (for example, easement or license). However, the city will keep a record of agreements and decisions reached pursuant to Sections 17.26.080, 17.26.100, 17.26.110, 17.26.120 and 17.26.130 of which it is notified, and provide those agreements and/or decisions as part of the pre-purchase inspection report to prospective purchasers of property in the city who request such a report.

THIS PAGE INTENTIONALLY LEFT BLANK

RECEIVED

APR 27 2012

City of Rolling Hills
By_____

For the City Council's information

From: "Lynn Gill" <lynngill@impact-cg.com>
Date: April 27, 2012 10:45:15 AM PDT
To: "Rolling Hills, City of, Anton Dahlerbruch" <adahlerbruch@cityofrh.net>, "Hill Robin" <robincarol@aol.com>
Cc: "RHCA Kristen" <kraig@rhca.net>
Subject: Results of Trees and View Survey

Here are the results of the trees and view survey, which hopefully will provide insight into the preferences of Rolling Hills residents.

Tony, please share with City Council and Planning Committee. Robin and Kristen, with RHCA Board.

I will drop the completed survey forms off at City Hall.

Regards,
Lynn Gill

RECEIVED
APR 27 2012
City of Rolling Hills
By

TREES AND VIEW SURVEY RESULTS
APRIL 27, 2012

A survey to solicit the opinions of Rolling hills residents regarding trees and views was conducted at a neighborhood meeting at the home of Marion Ruth on April 26, 2012. The survey form (attached) was distributed to attendees at the meeting, and those that wished to participate returned a completed survey form at the end of the meeting. The surveyor remained after the meeting so that respondents would have an opportunity to carefully read, deliberate, and respond.

Three view/tree scenarios were included in the survey, and respondents were introduced to the topic, "Rolling Hills is blessed with wonderful views and a multitude of trees. Trees and views can conflict with each other, so both Rolling Hills Community Association and City of Rolling Hills have procedures for resolving view/tree conflicts between neighbors. RHCA is currently reviewing its view policy, and the City may do the same. This survey is to gather opinions of Rolling Hills residents that may be useful in policy deliberations by RHCA and the City." No discussion was allowed in order to not bias survey results.

18 completed survey forms were returned to the surveyor, of which 17 had useable responses. One stated that "Not enough info because each property is unique," and did not provide responses. One responded for only the first scenario, so that responses for all scenarios do not total 17. About half of the attendees at the neighborhood meeting responded, an excellent response rate.

In each scenario, the view committee acted to award a view to the view-seeker. The respondents judged whether the committee acted fairly or unfairly.

Donovan Black assisted the surveyor to tabulate the survey responses . The completed survey responses are on file in City Hall.

SCENARIO	SITUATION	COMMITTEE ACTED FAIRLY	COMMITTEE ACTED UNFAIRLY
1	View-seeker had a view when his property was purchased. Tree-owner's trees impair the view.	16	1
2	View-seeker had no view when property was purchased. Committee provides him with a view.	3	13
3	View-seeker had view when property was purchased but does nothing to preserve the view. When a new tree-owner purchase the neighboring property, the view-seeker files a view claim against the new tree-owner.	5	11

SCENARIO	COMMENTS
1	"View-seeker should have his view restored, as it existed when he bought his property." [Fair response]
2	"View-seeker should have to pay for trimming." [Fair response] "Tree-owner should be able to keep the trees he bought." [Unfair response] "He [view-seeker] should be responsible for full cost of removal." [Fair response]
3	"View-seeker should have to pay for trimming." [Fair response] "New tree owner should keep the trees he bought. View seeker must be diligent to protect his view, and the tree owner should not be penalized for his inactivity." [Unfair response] "Shared cost of removal." [Fair response]
GENERAL	"All decisions based on existing view at time of purchase of impairment complaint, unless agreed to in writing at time of purchased, and filed with City/Association."

TREES AND VIEW SURVEY

RECEIVED
APR 27 2012
City of Rolling Hills
By

SCENARIO	NARRATIVE	COMMITTEE ACTED **FAIRLY**	COMMITTEE ACTED **UNFAIRLY**
1	Property Owner A purchases a property in Rolling Hills in 2002 for $3,000,000. The property has a beautiful view of the Queen's Necklace. The owner of the property next door allows his trees to grow and obscure Owner A's view. Appraised value of Owner A's property drops to $2,700,000. In 2012, Owner A files a view impairment complaint against the tree owner. The View Committee required the tree owner to reduce the height of his trees out of Owners A's view. Owner A's property is again valued at $3,000,000.		
COMMENTS			
2	Property Owner B purchases a property in Rolling Hills in 2002 for $3,000,000. The property has attractive landscaping which incorporates numerous trees. In 2012, Property Owner C purchases an adjoining property for $2,700,000. Owner C files a view impairment complaint against Owner B, and the View Committee requires Owner B to remove 10 trees and reduce the height of 10 trees to give Owner C the requested view. Property B's property value drops to $2,700,000 and property owner C's property (with view) increases to $3,000,000.		
COMMENTS			
3	Property Owner A purchases a property in Rolling Hills in 2002 for $3,000,000. The property has a beautiful view of the Queen's Necklace. The owner of the property next door allows his trees to grow and obscure Owner A's view. Owner A however does nothing to reclaim his view, and his property value drops to $2,700,000. In 2012, the tree-owner sells his property. Owner A files a view impairment complaint against the new owner. The view committee required the new tree owner to reduce the height of his trees out of Owners A's view. Property owner A's property is again valued at $3,000,000.		
COMMENTS			

28

From: "Lynn Gill" <lynn.gill@cox.net>
Date: July 24, 2012 12:53:53 PM PDT
To: "Rolling Hills, City of, Anton Dahlerbruch" <adahlerbruch@cityofrh.net>
Subject: Planning Commission Public Forum on View Preservation- August 9 7PM

Dear Planning Commission Members:

Please make my recent communications regarding the view preservation ordinance available to the public in the packet for the public forum on August 9, and add this summary.

There are two possible interpretation of the view ordinance, both of which are currently permitted under present interpretation of the ordinance:

1. **An owner had a view which was established on the date he/she purchases his/her property.** A neighbor's vegetation has grown up to block the view. After discussions by the view-owner with the tree/vegetation owner, the latter refuses to trim his trees/vegetation. The View Preservation Committee requires the vegetation-owner to trim his trees/vegetation to restore view-owner's established view.
2.
3. **An owner has no established view when he/she purchases his/her property.** The owner approaches his/her neighbor requesting that they trim/remove trees/vegetation to provide him with a view. The tree/vegetation owner refuses to remove sufficient trees/vegetation to create the view that the view-seeker desires. View Seeker files an abatement action against the tree/vegetation owner, and the View Preservation Committee requires tree/vegetation owner to trim/remove trees/vegetation to give the view-seeker the view they desire.

The vast majority of Rolling Hills residents with whom I have discussed this think that scenario #1 is fair and should be preserved in the ordinance.

The vast majority also think that scenario #2 is unfair, as it gives the view-seeker a view that they never had, and increases their property value. This is at the expense of the tree/vegetation owner whose property value is decreased. In effect the process re-distributes property value from the tree/vegetation owner to the view-seeker.

The recent Murrell v. Rolling Hills Community Association case sets a value precedent of $15,000 per tree in Rolling Hills. However, tree valuation guidelines used by the International Arboriculture Association sets values on ornamental trees and vegetation at much higher values—in excess of $50,000 for a mature specimen tree.

I encourage the Planning Commission to clarify the language of the view preservation ordinance to enable scenario # 1—to protect a view established when a property owner purchases his/her property.

More importantly, to disallow scenario #2.

RECEIVED
JUL 24 2012
City of Rolling Hills
By _____

Best regards,
Lynn Gill
31 Chuckwagon Road

bcc: interested RH residents

THIS PAGE INTENTIONALLY LEFT BLANK

Stephen and Christine Greenberg
32 Portuguese Bend Road
Rolling Hills, California 90274

RECEIVED

MAR 2 0 2012

City of Rolling Hills
By_____

March 20, 2012

City of Rolling Hills
Planning Department
Committee on Trees and Views

Re: Ordinance and Proposed Action

Twenty-seven years ago, when we moved to Rolling Hills, we felt so lucky to be a part of this community. If you told us a year ago that our City had an ordinance that could destroy our property to create a view for our neighbors, the Reis who purchased a property with no view, we would not have believed it.

Not only did the Reis never have a view but there has never been a view in the history of their property. We have provided you with a history of photographic evidence, letters from two previous owners of the property, testimonials from long-time, highly respected residents, all stating that there has never been a view, as well as the real estate listing from the date the Reis' purchased the property. It seems clear that our trees pre-date the history of the City, pre-date the Reis' parcel, pre-date the ordinance and pre-date the Reis' purchase of the property.

This was a subdivision in 1972 where a new parcel was created and a residence was constructed behind existing, mature trees. The current interpretation by the Committee on Trees and Views is retroactive, unconstitutional and flies in the face of all basic principals of law when applied in our case. We have been unable to find a single case that created a view that did not exist in the history of a property. As we previously asked, where could you build behind an existing view obstruction and then require that obstruction be removed to create a view? Most view ordinances serve to restore and protect documented views (views that existed at the time of purchase).

Our City Attorney stated that the *Echevarrieta v. City of Rancho Palos Verdes* case was strikingly similar. We disagree. In that case the view seeker had views that became obstructed by down slope neighbors' trees and the trees did not exist prior to the establishment of either Keilbach's or appellant's lots (see attached documents). Our trees did exist prior to the establishment of the Reis' lot. Our case is the opposite. We can see no real similarities in the ordinances nor the facts of either case.

While we do not know what the actual intent of our ordinance was, it seems clear that the words "maturing landscape" imply that the views were being obscured by growing landscape and in fact not designed to create views by the removal of mature landscape. If so then it should be clearly stated as such so we do not have to guess as to its meaning. The Committee's interpretation of the ordinance should state the intent of the ordinance is to create all views that could exist regardless of what those views were at the time of purchase or age or history of existing, neighboring landscape. All vegetation should be removed if it interferes with the creation of any views that could exist. However, the ordinance does state "it shall order such restorative action as is necessary to abate the view impairment and to restore the complainant's view." The complainants are the Reis and they never had a view to restore nor any other owner of that property. There has never been a history of a view in that parcel because the parcel did not exist before 1972.

We believe that any action against our property would be unlawful. Why do we say that? Because basic principals of law and common sense provide that if you have suffered a loss you have the right to be made whole. We have taken nothing from the Reis; they never had a view. To take any action affecting our trees would be taking value and enjoyment from our property and rewarding the Reis with a financial bonanza. We would be the party who suffers the loss and would be entitled to full compensation.

This process has never been fair or balanced and has never considered our property value or enjoyment of our trees. How can anyone believe that the severe damage to and/or the removal of 73 trees to create a view that never existed is reasonable? This Committee has aggressively pursued getting the Reis the largest panoramic views possible for the least amount of money. When a resident requests such a large number of trees that a CEQA is filed then why isn't this the responsibility of the view seeker to pay the costs as they are the beneficiaries of the action. Is it the City's policy to bear the financial burdens of CEQA for all view seekers? Or just in our case? Since the CEQA has now been done twice in our case as residents and taxpayers we feel we are entitled to a full accounting of costs associated with assisting the Reis. Why should our tax dollars be spent to assist one resident in getting a financial windfall. Staff time and City resources should be spent to benefit the City at large and not just one resident. Has our City set a dangerous and costly precedent, which encourages residents to seek as large a view as possible at the taxpayer's expense?

How is it fair when the City pays for the costly CEQA report for the Reis and yet when it comes to the cost of restoring our property the reimbursement is so disproportionate to the actual cost of restoration that it appears to be punitive.

This is a view creation not a view restoration. We should be fully compensated for all loss of value to our property.

This ordinance brings out the worst kind of greed in people who stand to get something they did not pay for at the expense of someone else.

Our view ordinance should make it easier for residents to restore documented views and not create views. Creating views not only devalues property values of owners who paid for a view but it is fraught with legal problems. This could be a costly undertaking for our City. I feel most residents of Rolling Hills do not want their tax dollars spent in this way.

Sincerely,

Tina Greenberg

(5) Zoning and Planning ß 6--Operation and Effect of Plans and Regulations--Retroactive Operation of Foliage Height Limit. --A city ordinance limiting the height of foliage on residential property so as to preserve views did not, by its retroactive operation, violate the due process rights of a property owner who was required to trim his trees after a neighbor's view restoration permit application was approved. The ordinance did not have an automatic retroactive reach. Homeowners were allowed to keep foliage at the height it had attained on the effective date of the ordinance, and it was only when another homeowner applied for a view restoration permit that the inquiry began as to whether the foliage had to be trimmed. The ordinance first required resort to informal dispute resolution and provided for noticed hearings and rights of appeal. Further, there was no evidence of an improper motive on the part of the city; the only motive appeared to be view restoration.

Not our Ordinance

(6) Constitutional Law ß 115--Due Process--Substantive Due Process--Enactment Held Not Vague or Overbroad--Ordinance Limiting Height of Foliage. --A city ordinance limiting the height of foliage on residential property so as to preserve views was not unconstitutionally vague. The provision in the ordinance relating to existing foliage could fairly be read to mean that if foliage exceeded 16 feet in height at the time the ordinance took effect, the owner was prohibited from letting it grow any higher, and that if a neighbor applied for a view restoration permit, foliage exceeding 16 feet could be ordered to be trimmed. The provision relating to nonconsenting property owners allowed the view restoration commission to impose whatever reasonable conditions and restrictions were appropriate or necessary to protect the public health, safety, or welfare. There was nothing unconstitutional about this delegation of broad discretionary powers to the commission and the city.

COUNSEL: Sullivan, Workman & Dee and Robert Hampton Rogers for Plaintiff and Appellant.

Carol W. Lynch, City Attorney; Richards, Watson & Gershon, T. Peter Pierce and Gregory M. Kunert for Defendants and Respondents.

JUDGES: Opinion by Hastings, J., with Vogel (C. S.), P. J., and Epstein, J., concurring.

OPINION BY: HASTINGS

OPINION

[*475] [**167] **HASTINGS, J.**

Jon Echevarrieta (appellant) appeals from a judgment entered in favor of respondents the City of Rancho Palos Verdes (the City) and the City of Rancho Palos Verdes City Council (the City Council) after the trial court denied appellant's petition [***2] for writ of mandate. At issue is a "view protection" ordinance of the City. We affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Ordinance

Voters in the City approved Proposition M on November 7, 1989. It was codified in section 17.02.040 of the Rancho Palos Verdes Municipal Code (hereinafter referred to as the Ordinance), and was most recently

EPV-Echevarrieta
The trees did not exist prior to the establishment of either Keilbach's or appellant's lot.

nts
er-
ita-
ght
irst
son
r a
ion
m-
ap-
the
the
re-
be
ted
cil.

The Application Process

Since 1966, Norbert Keilbach has lived on Greve Drive in the City. His home faces south towards the Pacific Ocean and Catalina Island. Appellant lives on Ganado Drive, on a slope directly below Keilbach's home. Appellant has several trees which are near the border of his property and Keilbach's, which purportedly block Keilbach's view of the ocean and Catalina [*476] Island. [1] Appellant purchased his property [**168] in 1964. The trees did not exist prior to the establishment of either Keilbach's or appellant's lots.

1 There are 8 trees which are the subject of the dispute: 2 pine trees which measure approximately 40 feet, 1 pine tree which measures approximately 60 feet, 1 pine tree which measures approximately 20 feet, 1 ash tree measuring approximately 40 feet, 1 olive tree which measures 40 to 50 feet, 1 ornamental plum tree which measures 20 feet and 1 scrub oak tree which measures 40 to 50 feet.

My trees did exist prior to the establishment of the Reis' lot.

of several trees, trimming, lacing and topping of the remaining trees. Based on this direction, staff prepared an Environmental Initial Study and found that there would not be a significant effect on the environment because mitigation measures would be implemented, and prepared a Mitigated Negative Declaration, (MND).

6. On November 28, 2011 Mrs. Greenberg submitted a letter challenging the findings of the environmental review as well as objecting that the alleged retrospective application of the View Ordinance to this case constitutes a "taking" and denies Mrs. Greenberg due process. The City Attorney prepared responses to Mrs. Greenberg's environmental challenge as well as to other letters received from Rolling Hills' residents on the subject of environmental impacts. The response is attached.

In addition, the City Attorney's office reviewed applicable case law regarding the "taking" issue and found that the same contention was rejected on strikingly similar facts in a recent case in City of Rancho Palos Verdes ("RPV"). In *Echeverrieta v. City of Rancho Palos Verdes (2001) 86 Cal. App. 4th 472,* the property owner sued RPV alleging that the City's tree preservation ordinance constituted a taking of property. In that case, the view protection ordinance prohibited residents from permitting vegetation to grow beyond certain height limitations if it would significantly impair another resident's view. (*Id.* at p. 475.) If existing vegetation already exceeded the height limitation and impaired a view, the ordinance required the view owner to first attempt informal resolution of the matter with the vegetation owner. If that failed, the view owner could apply to the view restoration committee (VRC) for a view restoration permit. (*Ibid.*) In *Echevarrieta,* the permit seeker had views of the Pacific Ocean and Catalina Island which were obstructed by the down slope neighbor's trees. (*Id.* at pp. 475–476.) After multiple hearings before the VRC, the down slope neighbor was required to remove some trees and trim others, and the view permit seeker was required to plant shrubs between his property and his neighbor's to mitigate his neighbor's privacy concerns. (*Ibid.*) After the RPV City Council rejected the down slope neighbor's appeal, he unsuccessfully sued RPV. (*Id.* at pp. 476–477.) On appeal, the down slope neighbor argued that the ordinance violated the takings clauses of the Fifth Amendment to the federal Constitution, and article 1, section 19 of the California Constitution. (*Echevarrieta, supra,* 86 Cal.App.4th at pp. 479–480.) With respect to the takings clause contention, the *Echevarrieta* court ruled that the imposition of limitations on the height of preexisting foliage was a legitimate exercise of the police power which did not rise to the level of a taking under well-established precedent. (*Id.* at pp. 479-481.)

7. Also enclosed with this report is correspondence received since the Committee's last meeting and includes Mr. Lynn Gill letters who also raises the concern that the application of the ordinance violates the "takings" clause of the Fifth Amendment, citing a United States Supreme Court case in which the owners of condemned property challenged the city's exercise of eminent domain power on the grounds that takings were not for public use because the property was to be transferred to a private developer. (*Kelo v. City of New London, Conn.* (2005) 545 U.S. 469.) The Court in that case held that city's exercise of eminent domain power in furtherance of economic development plan satisfied constitutional "public use" requirement. However, eminent domain case law is inapplicable to the Greenberg/Reis case because the City is not acquiring the Greenbergs' property, but rather enforcing a regulation against it.

THIS PAGE INTENTIONALLY LEFT BLANK

City of Rolling Hills INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD
ROLLING HILLS, CALIF. 90274
(310) 377-1521
FAX: (310) 377-7288

March 30, 2012

Dr. Lynn Gill
31 Chuckwagon Road
Rolling Hills, CA 90274

Dear Dr. Gill,

While the Committee on Trees and Views has been deliberating the view complaint filed by 1 Wagon Lane Road (Reis) with regard to a view impairment at 32 Portuguese Bend Road (Greenberg), you have submitted correspondence and made a number of statements challenging the validity, legality and legitimacy of the City's view ordinance. You have urged changes to the view ordinance and expressed your opinion regarding the case. This letter is to address these matters and specifically, your email of March 27, 2012.

The Committee on Trees and Views is responsible for applying the view ordinance to cases it receives - cases presented to them following the submission of a complaint and unsuccessful mediation. The Committee is not responsible, nor is it within its scope, to address the policy issue(s) related to the merits or purpose of the view ordinance. The policy issue(s) are legislative in nature and as such, are under the jurisdiction of the City Council and, in its advisory capacity, the Planning Commission.

Your challenges to the Committee are focused, in part, on legal concerns with the view ordinance and, in part, on components of the view ordinance. With regard to the legality of the view ordinance, please refer to the attached memorandum from the City Attorney's office. Notably, the attached does not address the legislative decision of many years ago to create the view ordinance as it currently exists and is applied.

With regard to components of the ordinance - the date a view is established, ambiguity in the ordinance, the definition of "view," the definition of a "view site," serial view complaint applications, who pays for view remediation and the use of mediation - the City Council has been forwarded your email. The City Council meets the second and fourth Monday of the month and, under Public Comment at a meeting, you may also share your thoughts. It is the City Council's discretion to agendize the matter for discussion.

On specific matters noted in your email:

- It is the practice of the Committee on Trees and Views and the City Council to incorporate by reference through a photograph and/or directly in its Resolution of Approval a height limit of other landscaping within the established view from the view site. This is to preclude the submission of on-going "serial" complaints for new, future landscaping within the established view.

continued on next page

Printed on Recycled Paper

- While language in the existing view ordinance generally assigns the cost of restorative action to the complainant and subsequent maintenance to the owner of the vegetation, the language also provides the Committee on Trees and Views (and the City Council) the authority and flexibility to assign additional costs, e.g., maintenance and re-landscaping, to the complainant if it is warranted by the scope of the project.

- The existing view ordinance is intentionally broad and discretionary in order to provide the Committee on Trees and Views and the City Council with flexibility and the discretion to be reasonable considering both sides in coming to a solution. The view ordinance provides that residents are entitled to a view, allowing peers on the Committee or Council to determine an effective and measured approach to resolving the complaint.

With regard to the current case before the Committee on Trees and Views that has prompted so much community attention to and discussion about views, I would like to reiterate from our discussion last week that the Committee in its deliberations has focused on providing a corridor - not a panoramic - view to the property owners of 1 Wagon Lane. The Committee has also retained an arborist, at the expense of 1 Wagon Lane, to develop a solution that would minimize the need for tree removal. While the property owner of 32 Portuguese Bend Road offered the removal of 100 trees from her property (if the removal included the stumps), the Committee found that potentially only +/- 70 of them may be in the view corridor of the Santa Monica Bay and of the City Lights. However, based on the arborist's recommendations, there could be fewer trees addressed by crown reduction, lacing, trimming or removal.

If you have any questions or would like to discuss this further, please don't hesitate to call me.

Thank you.

Sincerely,

Anton Dahlerbruch
City Manager

AD:hl
03-30-12Gill-ltr.docx

Enclosure

c: Mayor and City Council
Planning Commission
Michael Jenkins, City Attorney
Yolanta Schwartz, Planning Director

City of Rolling Hills INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD
ROLLING HILLS, CALIF. 90274
(310) 377-1521
FAX: (310) 377-7288

March 30, 2012

Dr. and Mrs. Stephen Greenberg
32 Portuguese Bend Road
Rolling Hills, CA 90274

Dear Dr. and Mrs. Greenberg

For several months while the Committee on Trees and Views has been deliberating the view complaint filed by 1 Wagon Lane Road (Reis) regarding a view impairment at 32 Portuguese Bend Road (Greenberg), you have submitted a number of letters and made a number of statements in regard to the validity, legality and legitimacy of the City's view ordinance. Further, in your letter of March 20, you asked questions about the cost of the California Environmental Quality Act ("CEQA") review. This letter is to address these matters.

The Committee on Trees and Views is responsible for applying the City's view ordinance to the cases it receives - cases presented to them following the submission of a complaint and unsuccessful mediation. The Committee is not responsible, nor is it within its scope, to address the policy issue(s) related to the merits or purpose of the view ordinance. The policy issue(s) are legislative in nature and as such, are under the jurisdiction of the City Council, and as an advisory body, the Planning Commission. Matters of policy would be more appropriately directed to the City Council.

The challenges you raise in your letter are focused, in part, on legal issues related to the view ordinance and, in part, on its merits, purpose and goal. With regard to the legal concerns you raised, please refer to the attached memorandum prepared by the City Attorney's office. Notably, the attached does not address the legislative decision of many years ago to create the view ordinance as it currently exists and is applied. Again, your interest in the reasoning and merits of the view ordinance and any discussion about changing it are appropriate to address with the City Council, not the Committee.

With regard to the cost of complying with CEQA, the City's time and documentation with this case are significantly more than was initially expected. There would appear to be three primary reasons for this.

First and foremost, there is no CEQA exemption applicable in this case.

Second, when the CEQA analysis was initially prepared, it was anticipated that most of the trees within the view would be topped, trimmed and laced with a minimal number being removed. Later during the Committee's deliberations, you offered to have 100 trees removed (with stump removal). In response to your proposal, the Committee tentatively

continued on next page

Printed on Recycled Paper

determined that +/- 70 of the 100 trees were in the view and thus, approximately 58 could be removed, with the remaining view-impairing trees being topped, laced or trimmed. This change in approach required more staff time to update the CEQA analysis. (As you know, the Committee has since returned to its original approach and is exploring with an arborist an action that would again minimize the need for tree removal.)

Third, in the CEQA process the City responds to all public and agency comments received during the CEQA comment period. With the letters submitted, a substantial amount of time has been spent responding to and updating the CEQA analysis.

Therefore, in summary, other than publishing the notice for the Negative Mitigated Negative Declaration ($173.34), filing the notice with the County ($150) and the subsequent mailing of the notice to agencies ($33.30), the primary cost of the CEQA process has been City staff and City Attorney time. City staff does not track its hours specifically related to CEQA. The City Attorney's fees related to CEQA are approximately $7,600. To date, it has been the City's practice to cover these costs within our budget. However, the City Council has the discretion to change this policy.

Finally, just to clarify, the Committee on Trees and Views has tentatively voted to provide the property owners of 1 Wagon Lane with only corridor views of the Santa Monica Bay and the City Lights and not a panoramic view. Moreover, the Committee has encouraged you to negotiate with the Reis', independent of the City and through a private agreement, to provide the corridor view. When/if the City orders a restorative action, both parties will have no control over the measures implemented to resolve the complaint, specifically how the trees are addressed, the cost of the remediation and the responsibility for on-going maintenance costs. As such, you are again encouraged to work with your neighbor to develop a solution that addresses the view corridors and on-going maintenance.

If you have any questions or would like to discuss this further, please don't hesitate to call me.

Thank you.

Sincerely,

Anton Dahlerbruch
City Manager

AD:hl
03-30-12Greenberg-ltr.docx

Enclosure

c: Committee on Trees and Views
Fred F. Corbalis III, Spierer, Woodward, Corbalis, Goldberg
Elizabeth Calciano, Assistant City Attorney
Yolanta Schwartz, Planning Director