



City of Rolling Hills

INCORPORATED JANUARY 24, 1957

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Agenda Item No.: 5-C(2)
Mtg. Date: 01/11/16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: YOLANTA SCHWARTZ, PLANNING DIRECTOR *Ys*

THROUGH: RAYMOND R. CRUZ, CITY MANAGER *RC*

SUBJECT: CONSIDERATION OF A RESOLUTION NO. 1182 TO ADOPT ADMINISTRATIVE REGULATIONS INTERPRETING MEASURE B RELATING TO VIEW PRESERVATION

ATTACHMENTS:

- A. Chapter 17.26 View Preservation Ordinance, including Measure B language (underlined/bold/italics) (pages 11-18).
- B. Resolution No. 2015-24 of the Planning Commission recommending adoption of administrative regulations interpreting Measure B (pages 19-26).
- C. Minutes from Planning Commission public hearings (pages 27-48).
- D. Residents Correspondence (pages 49-116).
- E. Resolution No. 1182 of the City Council adopting administrative regulations interpreting Measure B (pages 117-124).

BACKGROUND

1. In March 2013, the residents of Rolling Hills passed Measure B, an initiative that amended the City's View Preservation Ordinance in several respects. Most notably, Measure B: 1) limited the view that may be restored to the view that existed when the current owner of a property actually acquired the property; 2) exempted trees that were mature at the time of property acquisition from the Ordinance; and 3) specified that the purpose of the Ordinance is to create "view corridors" and views through trees, rather than unobstructed views. In addition, Measure B specified that its provisions apply retroactively.

2. Measure B contains several ambiguities that have resulted in uncertainty in its application. As a voter-approved initiative, Measure B cannot be amended by the City Council, but may only be amended by the voters. However, to the extent that Measure B is unclear or susceptible to interpretation, the City may adopt administrative

regulations interpreting Measure B in order to achieve uniformity (and eliminate the potential for inconsistent case-by-case determinations) in the consideration of view complaints. Provisions of the Ordinance that were not amended by Measure B may be amended by an ordinance of the City Council upon the Planning Commission's recommendation.

3. On July 28, 2014, the City Council established an *Ad Hoc* Committee to propose amendments to the Ordinance and administrative regulations interpreting Measure B ("Regulations"). Councilmembers Pieper and Dieringer were appointed to the Committee. The *Ad Hoc* Committee met on August 4, October 27, November 10, November 24, 2014, and January 12, 2015. The Committee members reviewed and discussed potential amendments to the Ordinance and Measure B regulations.

4. Attachment A shows the current ordinance with added Measure B Language, which is underlined.

The Ad Hoc Committee identified a list of ambiguities resulting from Measure B:

1. Panoramic View vs. Corridors (17.27.050 E- Measure B added that the intent of restoration is to create "view corridors").
2. "Acquisition of property" - is placing a property in a family trust considered "acquisition" or is it when the original owner (i.e. parents) purchased the property (different scenarios of how one acquires property).
3. Maturing vs. Mature vegetation (Measure B - 17.26.090 (2) - view should not be restored if the vegetation was "mature" at the time of acquisition of the property. No industry definition of "mature" or "maturing".
4. The burden of proof -- requiring "clear and convincing" evidence versus "substantial evidence" as is normally the case in city decision-making.
5. Retroactivity clause -- how was it supposed to work, as applied to previous adjudications?

During their discussion the Ad Hoc Committee reached an agreement on interpretation of several issues, but were unable to agree on item #2 and #3 listed above and directed the Planning Commission to come to a resolution and make a recommendation to the City Council.

Item #1 is clarified by adding a definition of a "View Corridor" to the proposed ordinance.

Item #4, "clear and convincing" evidence, was clarified by the City Attorney's office as being: "Clear and convincing evidence refers to evidence indicating that the thing to be proved is highly probable leaving no substantial doubt (Black's Law Dictionary). This evidentiary standard is an intermediate standard, meaning that it is a greater burden than preponderance of the evidence (50%+1) but a lesser burden than evidence beyond a reasonable doubt". The Ad Hoc Committee and Planning Commission were satisfied with the explanation and felt that no further interpretation is necessary.

Item #5 is clarified in the proposed Interpretation of Measure B document, to state that any decision made by the CTV or City Council prior to March 13, 2013 is considered void and will not be enforced by the City.

5. With respect to the Regulations, the Ad Hoc Committee members were unable to agree on the circumstances which would result in a change in ownership of property and potential definition of "mature" trees.

The City Attorney prepared the following explanation of different scenarios for "acquisition of property", which the Planning Commission considered in their deliberation.

1. Measure B limits potential view restoration to the view that existed when a "current owner" "actually acquired the property." What constitutes a change in ownership affecting the date that an owner "actually acquired" property?
 - a. **The Issue:** If a complainant may only acquire the view that existed when the current owner actually acquired the property, it is important to identify the circumstances that constitute a change in ownership. Measure B is silent on this issue. The California Revenue & Taxation Code (R&T Code) defines a change in ownership for purposes of property tax reassessment. The City may adopt the definition of a change in ownership set forth in the R&T Code or adopt a reasonable alternative definition for purposes of the Ordinance.
 - b. **Option A:** Adopt the definition of a change in ownership set forth in the R&T Code. This option will provide certainty to parties, City officials and staff. However, the definition in the R&T Code excludes certain transfers that would normally result in a change in ownership, such as an inheritance by a child from his or her parents if certain requirements are met. The inheritance exclusion would allow a child who inherits property to apply to restore the view that his or her parents enjoyed when the parents acquired the property, if evidence of the view exists. Other exemptions contained in the R&T Code will have similar consequences. The hypotheticals below illustrate how the R&T Code treats the most common transfers of property.
 - c. **Option B:** Adopt an alternative definition of a change in ownership. The alternative definition must be reasonable and certain enough to place the public on notice as to what view they may seek to restore. Several alternatives exist. For instance, the City could adopt the definition of change in ownership set forth in the R&T Code with the exception of the inheritance exclusion.

Hypothetical A (revocable trust)

Parents purchase a house in 1950. In 1951, they place the house into a revocable trust, naming themselves as trustees and their children as beneficiaries. In 1990, the parents

die, which has the legal consequence of making the trust irrevocable. The house remains in the trust until 2000, when the children sell the house on the open market and share the proceeds.

Transfer	Not a Transfer	Whose View From When?
1950 purchase of house	1951 placement of house into revocable trust	Parents, 1950
1990 death of parents, which makes trust irrevocable by law		Children, 1990 (but see discussion of Reassessment Exclusion in Hypo D below)
2000 sale of house		Buyer, 2000

Hypothetical B (irrevocable trust)

Parents purchase a house in 1950. In 1955, husband dies. In 1957, widow places house into irrevocable trust, naming children as beneficiaries. In 1970, widow dies. Children maintain ownership of the house through the trust and lease the house for 5 year terms.

Transfer	Not a Transfer	Whose View From When?
1950 purchase of house	1955 death of husband	Widow, 1950
1957 placement of house into irrevocable trust	1970 death of widow	Children, 1957 (but see discussion of Reassessment Exclusion in Hypo D below)
	Leasing of the house, as long as each lease term is under 35 years	Children, 1957

Hypothetical C (no trust; life estate)

Grandparents purchase a house in 1950 and do not place the house into a trust. In 1980, grandparents deed house to grandchild with reservation of life estate for the grandparents' lives. Grandparents die in 2000.

Transfer	Not a Transfer	Whose View From When?
1950 purchase of house	1980 deed to grandchild because life estate is reserved	Grandparents, 1950
2000 death of grandparents, ending life estate		Grandchild, 2000 (if no Reassessment Exclusion, discussed in Hypo D) Grandchild, 1950 (if Reassessment Exclusion applies)

Hypothetical D (no trust; inheritance)

Parents purchase a house in 1950 and do not place the house into a trust or prepare a will. In 2000, parents die and children inherit house. Alternatively, the same scenario, but the parties are grandparents and grandchild rather than parents and child.

Transfer	Not a Transfer	Whose View From When?
1950 purchase of house		Parents, 1950
2000 death of parents and inheritance by children	Children, 1950 (if Reassessment Exclusion applies)	Children, 2000 (if no Reassessment Exclusion)

Two voter propositions (Prop. 58 and Prop. 193, effective November 6, 1986 and March 27, 1996, respectively, and both codified as R&TC §63.1) authorize transfers of property between parents and children and grandparents and grandchildren to be excluded from property tax reassessment; however, the exclusion is not automatic. Without the exclusion, such a transfer would result in a change in ownership under the Rev. & Tax Code and the transfer date would serve as the new base year for calculation of property taxes under Prop. 13. In most cases, the base year change would increase the property tax assessment. Therefore, Prop. 58 and Prop. 193 authorize an eligible new owner to opt into the reassessment exclusion. However, because the exclusion is not automatic (in rare cases, reassessment may have favorable tax consequences or a transfer may be ineligible for the exclusion), state law does not categorically exempt transfers by inheritance from changes in ownership.

Reassessment Exclusion Eligibility:

- a) The transfer (by sale, gift or inheritance) occurred on or after November 6, 1986;
- b) The transferred property was the principal residence of the transferor;
- c) The transfer was one of the following: a) from parents to their children, b) from children to their parents, or c) from grandparents to their grandchildren;
- d) A claim and proof of eligibility was filed with the County Assessor within three years after the date of the transfer or before the property was sold to a third party, whichever is earlier.

2. Measure B exempts from the Ordinance "any vegetation which is already mature at the time any party claiming a view impairment actually acquired the property" and provides that "mature" and "maturing" shall be defined by industry standards predominantly accepted by arborists. It has become apparent that arborists classify trees as "mature" and "maturing" in numerous ways, resulting in differences of opinion regarding the maturity of trees at issue in a view impairment complaint. The *Ad Hoc* Committee determined that the Sunset

Western Garden Book is an authoritative reference guide for determining whether vegetation is “mature” or “maturing.” That book provides a range of heights at which vegetation is considered “mature.” The *Ad Hoc* Committee members disagreed as to whether vegetation should be considered “mature” by the City when it reaches the *lowest or average* height of the range.

6. The Planning Commission held several public hearings on the interpretation of Measure B and received oral and written testimony. In addition, the Planning Commission while reviewing a view obstruction case received four reports from Certified Arborists evaluating the trees under consideration in the view case. The Commission was looking towards the arborists to provide a methodology of defining “mature” vs. “maturing trees”. Unfortunately the reports were conflicting, two deemed the trees “mature” and two deemed the same trees as “maturing”. It became clear to the Planning Commission that there isn’t a “good” characterization of how to define the age of trees.

7. Following the public hearings and public input, the Planning Commission is recommending the following interpretation of Measure B.

Definition of Maturity

Measure B exempts vegetation that was “mature” at the time of acquisition of property from restorative action, but does not define “mature.” The Planning Commission agreed on the following interpretation of this item:

- a. For those trees that have not been previously cut or trimmed, maturity is to be defined as vegetation that has grown to the maximum height it is likely to reach as set forth in the Sunset Western Garden Book. (Definition of “mature height” is taken from ISA language).
- b. Trees that were previously cut or trimmed are unlikely to reach their maximum height and shall not be considered “mature” for the purposes of the View Preservation Ordinance.

Acquisition of Property

Measure B limits views eligible for restoration to those in existence when the current property owner actually acquired the property, but provides no information regarding when a property transfer results in a change of ownership. The Planning Commission agreed on the following interpretations regarding the most common types of property transfers:

- 1) Inheritance- the person inheriting the property may apply to restore a view from the date that the previous owner acquired the property. This would be consistent with standard property tax exemptions.
- 2) Sale to third party- Acquisition limiting the buyer’s ability to restore a view to the date of the sale as evidenced by a deed.
- 3) Trusts- Placement into a revocable trust is not an acquisition, but an acquisition will occur when a revocable trust becomes irrevocable, when

property is placed into an irrevocable trust, or when the trust assets are distributed to beneficiaries. This rule would be consistent with the property tax rules regarding change in ownership.

Retroactivity of Measure B

Measure B specified that its provisions apply retroactively "to the date Chapter 17.26 was first made an Ordinance to the City of Rolling Hills". This is vague and the Council Ad Hoc Committee agreed that this provision needs clarification that Measure B's retroactivity provision has the effect of invalidating all view restoration orders issued by the City prior to passage of Measure B, (March 18, 2013).

8. COMMENTS (WRITTEN AN ORAL)

Below is a summary of the most common comments received during the Planning Commission public hearings regarding the Administrative Interpretation of Measure B. The Minutes of the Planning Commission meetings are enclosed as Attachment C to this report.

Following the Planning Commission's adoption of the Resolution interpreting Measure B, staff received additional communication.

A. RECENT CORRESPONDENCE

Tom Heinsheimer, 7 Johns Canyon Road proposes minor changes to the language interpreting Measure B, (Attachment D, p. 61). He suggests that as part of a decision, the City should rely on historical aerial photographs to show whether there were trees in the area when the owner "acquired" the property. Staff researched availability and cost of such aerial photographs and found that aerial photographs are available on a website, provided by Tom Heinsheimer, in 7-9 years increments since 1954 at a minimal cost. Should the City Council find that such photos would be beneficial in administering the View Preservation Ordinance and Measure B, staff will purchase the service.

Lynn Gill, 31 Chuckwagon provided correspondence (Attachment D, p. 51-58) stating that the recommendation of the Planning Commission of a definition of "mature" trees would render all trees in the City "maturing" and subject to remediation; that using the top height of trees for defining a "mature" tree is an inappropriate measure; that this interpretation is in conflict with the will of the residents and the intent of Measure B. In his explanation he states that he learned from an expert arborist that the height and diameter of mature trees are normally distributed in a bell-shaped distribution, which is exhibited as a range. He proposes that the City define "mature" trees as those that reach 75% of the average growth as shown for that particular tree in the Sunset Western Garden Book. The Sunset Western Garden Book provides a range that a tree can grow to (see examples, Attachment D, p. 59).

As to the recommendation by the Planning Commission of classifying trees that were cut or trimmed as not mature, Mr. Gill states that this interpretation will encourage residents to not to maintain their trees, as they could then never be considered "mature". He states that maintaining trees is a good thing and should be done regularly; and therefore the Planning Commission's definition is faulty and bad public policy.

In addition, Mr. Gill submitted a copy of the Argument for Measure B prepared by the residents, highlighting the residents' intent, (Attachment D, p. 60).

B. COMMENTS RECEIVED AT PLANNING COMMISSION PUBLIC HEARINGS RELATING TO MEASURE B.

Lynn Gill, 31 Chuckwagon Road spoke to the definition of "mature" and provided several documents which define a mature tree as a tree that has reached at least 75% of its typical final height and spread. He suggested that this definition in conjunction with the mature height range listed in Sunset Western Garden Book be used to determine if a tree is mature. (In the most recent correspondence Mr. Gill recommends that maturity be calculated as 75% of the average height of a tree).

Tina Greenberg, 32 Portuguese Bend Road suggested that with regard to ownership and inheritance, that she feels that the view should be established when the heirs take possession of the property and that she feels inheritance should be like if a car is inherited. It should be valued at today's value not the original value. She stated that there are ways to document views, including a website that documents views. She also testified that she feels the issue of mature vs. maturing is being over analyzed and the intent of Measure B was to protect existing large trees that were there when a property was purchased. She stated that the intent is to provide people with the view they purchased and not create views for people who did not have views. As for the maturity of trees, she stated that she feels there is only one relevant definition and that is when a tree reaches its species height.

Marcia Schoettle, 24 Eastfield Drive stated that the issue of maturity of trees is being over analyzed and she agreed with the statements made by Tina Greenberg that no one should be entitled to a view that they did not have when they bought the property. She also testified that there are some blurred areas in Measure B but she feels that the realtors doing business in the City have an obligation to inform buyers of the view regulations and that views should be documented.

Mike Schoettle, 32 Portuguese Bend Road suggested that the view be established when a property changes hands regardless of whether it is being sold or inherited.

Jim Aichele, 14 Crest Road West stated that he agrees with Mr. Schoettle regarding the inheritance issue and that he does not feel that age of a tree has anything to do with tree's maturity.

Steve Nuccion, 18 Portuguese Bend Road addressed the Planning Commission

stating they purchased a property with a view and the ordinance is being used against them because of the interpretation of the word maturing. He stated that there are multiple definitions for maturing which could include age and he feels that using the Sunset Western Garden Book definition, which uses height, is not accurate.

Arvel Witte, 5 Quail Ridge Road South testified that the previous views cases should not be disregarded due to the retroactivity portion of Measure B.

John Nunn, 1 Crest Road West stated that he feels Measure B has been a good step in the right direction.

CONCLUSION

9. The attached draft Resolution reflects the recommendations of the Planning Commission based on the Ad Hoc Committee's review and recommendations, public input and the Commissions' deliberation and understanding of Measure B.

10. It is recommended that the City Council convene the public hearing, receive public testimony, and commence deliberations on the proposed Administrative Regulations Interpreting Measure B.

NOTIFICATION

11. Notice of this public hearing was published in the Palos Verdes Peninsula News on December 31, 2015 and a notice to inform the community was included in City Newsletter. The agenda was emailed to those residents who previously expressed interest in this topic together with the link to the website, where the staff report is available. The staff report and the agenda was also provided to the RHCA.

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