

**RESOLUTION NO. 185**

RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE PALOS VERDES HOMES ASSOCIATION  
ADOPTING GUIDELINES AND ESTABLISHING PROCEDURES  
FOR IMPLEMENTING THE ASSOCIATION'S AUTHORITY TO MAINTAIN VIEWS,  
AND ESTABLISH A POLICY THAT THE FINAL ACTION OF PVHA  
WILL BE TO REACH AN OPINION AND ALL MATTERS RELATED TO  
ENFORCEMENT OF THE ASSOCIATIONS AUTHORITY SHALL BE THE RESPONSIBILITY OF  
AND AT THE EXPENSE OF INDIVIDUAL MEMBERS NOT PVHA

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

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

WHEREAS, The Board of Directors (the "Board") of the Palos Verdes Homes Association (the "Association" or "PVHA") previously adopted Resolution No. 146, Resolution 150, Resolution 156, Resolution 159, Resolution 165, Resolution 169, Resolution 172 and Resolution 182 to establish procedures for its members to apply for an opinion of PVHA as a basis to seek to cut back trees or plantings pursuant to Article V, Section 7;

WHEREAS, The Association has had experience with Resolution No. 146, No. 150, No. 156, No. 159, No. 165, No. 169, No. 172 and 182;

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

WHEREAS, In the course of resolution the parties may agree to the removal of trees or other plantings; tree removal requires the agreement of parties. No Association opinion shall require removal of trees or plantings.

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

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

WHEREAS, The Association wishes to adopt both guidelines and establish procedures for its members to utilize the authority of the Association to establish PVHA's opinion that trees and other plantings have grown to a greater height than in the opinion of the PVHA is warranted to maintain the view, in situations where the parties can not resolve the issue between themselves;

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

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

In its decision in the case of *Nahrstedt v. Lakeside Village Condominium Ass'n* (1994) 8 Cal.4th 361, 33 CR2d 63, the California Supreme Court gave a comprehensive history and overview of homeowners associations. The opinion sets out certain basic principles including:

“An equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the land against which the CC&R’s are recorded; or it otherwise imposes burdens on the affected land that are so disproportionate to the restrictions beneficial effects that the restriction should not be enforced.”

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

In its 1999 decision in the case of *Lamden v. LaJolla Shores* (1999) 21 Cal.4th 249, the California Supreme Court established the principal that as a matter of law California Courts must defer to a community association’s board decisions. The court held that where a duly constituted community association board upon reasonable investigation in good faith exercises discretion within the scope of its authority under its restrictions, courts should defer to the Board’s authority and presumed expertise. The court states “thus we adopt today for California Courts a rule of judicial deference to community association Board decision making.”

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

WHEREAS, Article VI, Section 11 of the Restrictions provides that they are “...enforceable by Palos Verdes Homes Association or by the owner or owners of any property...”

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

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

WHEREAS, A leading California commentator has stated that neighbor versus neighbor disputes are improper for an Association’s legal action;

WHEREAS, Members seeking the opinion of the Association pursuant to Article V, Section 7 has resulted in PVHA being involved in disputes and litigation. The litigation and other problems associated with Article V, Section 7 have required inordinate amounts of expense and PVHA staff time;

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

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following procedure and policy for the processing of all view impairment applications submitted to the Association, and a policy that all matters related to enforcement of an opinion of PVHA that trees or other plantings have grown to a greater height than is warranted to protect the view of and protect adjoining property shall be the responsibility of individual members not PVHA; and the final action by PVHA will be establishing its opinion.

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

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

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

3. “View” means primary view from a primary living area of a residence which consists of a visually impressive scene or vista such as a scene of the Pacific Ocean, off-shore islands, city lights of Los Angeles basin, or the mountains.

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

5. "Adjoining Property" means in contact with one another.

B. Applications. Strict compliance with 1-4 below is required for an application to be accepted by PVHA.

1. Applicants shall submit information on an application form provided by the Association. The applicant must sign the PVHA form with no modifications.

2. Applicants shall be required to document that the Applicant's property adjoins the property with the trees or shrubs; and state efforts to resolve the obstruction issue with the neighbor, including copies of all correspondence between the parties.

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

4. Applicants shall execute a financial responsibility agreement with the Association at the time an application is submitted. The applicant must agree to indemnify and reimburse the Association for its fees and expenses related to the application including any appeal to the Board of Directors and particularly if PVHA is named as a defendant in a lawsuit.

C. Mediation – Advisory Opinion.

1. The Association will send a notice to the owner of the property where the vegetation is located ("owner" or "affected property"), along with a copy of the application.

2. The Notice will inform the owner of the affected property that a mediator will be appointed.

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

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

5. The advisory opinion shall constitute the opinion of the PVHA unless either party appeals the decision to the Board and pays the appeal fee within thirty (30) calendar days of the mailing of the decision.

6. If there is no appeal; after the appeal period expires the Board shall review the opinion to assure that it is not arbitrary or unreasonable.

D. Appeal. If a member appeals, as a condition of the appeal the appellant must comply with 1-2 below.

1. The appealing party shall submit on an appeal form provided by the Association. The party must sign the PVHA form with no modifications. The appealing party must pay an administrative appeal fee to the Association, at the time the appeal is filed. PVHA will set the fee from time to time to reflect the expense to PVHA associated with processing the appeal.

2. The member who is appealing must execute a financial responsibility agreement and must agree to

indemnify and reimburse the Association for its fees and expenses related to the dispute including any appeal to the Board of Directors and particularly if PVHA is named as a defendant in a lawsuit.

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

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

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

E. Trimming and Enforcement of Article V Section 7.

1. PVHA's final act in the process is to establish an opinion.

2. PVHA will not be involved in scheduling trimming; or any effort to enforce the provisions of Article V Section 7. It has been the experience of PVHA, that trimming requires the cooperation of the owner or a court order.

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

PASSED, APPROVED AND ADOPTED this 10th day of May, 2019