# Open Letter from Phil Frengs

## **Mr. Freng's letter is in black bold**) and

## *John Harbison's fact-check comments are in red italics*

**December 4, 2017**

**Dear Fellow PVHA Member:**

**I'm happy to have the opportunity to write to you again this year. I am currently a director of the Palos Verdes Homes Association and am standing for reelection. Annual meeting packages have been sent to your home. The Annual Meeting will be held at the Council Chambers at PVE City Hall on Tuesday, January 9, 2018, at 8:00PM. The election for directors closes on Wednesday, January 3, at 4:30PM. Your election package includes a self addressed, pre-paid envelope that will return your ballot to Moss Adams LLP. Please mail it early so that it will be received by that date.**

**In addition, PVHA has made arrangements for a drop box to be placed at the planning counter in City Hall. The box is located at the west end of the city offices, just inside the door and to the right of the staircase. You may deposit your envelope there up until 4:30PM on January 3, 2018.**

**I hope all members will participate. Our bylaws, typical of other mutual benefit corporations, require a majority of our members to be represented at the annual meeting and to participate in the election process. Your ballot serves as a proxy to determine that a quorum (50% plus one) is met.**

**As in the two previous elections for directors, John Harbison, a member and founder of several acronym-named non-incorporated groups, is running a slate of directors with the intent of displacing the incumbents. Mr. Harbison, his alphabet-inspired groups — and now one of the petition candidates — are litigants in two actions against PVHA. The first, a suit filed by Harbison in May 2013, resulted in summary judgment at Superior Court in September 2015 and has been appealed by PVHA, the City of Palos Verdes Estates and the Lugliani Family Trust. Oral arguments on that appeal will be heard at the State Appellate Court on December 14, 2017. "ROBE", Harbison's alter ego and Reid Schott filed another suit in May 2017 against PVHA in Superior Court that was dismissed in October 2017. Schott has since re-filed the same complaint as an individual.**

*The acronyms of groups to which that Mr. Frengs is referring have meaning, and reflect the purpose of each group:*

- *CEPC (Citizens for Enforcing Parkland Covenants) -- http://www.pveopenspace.com/*
- *ROBE (Residents for Open Board Elections – http://www.pvegoodgov.org/*

*Mr. Frengs' statement that the lawsuit in May 2017 against PVHA in Superior Court "was dismissed in October 2017" is false; Mr. Frengs is aware of that since he was present at the hearing on November 30, 2017 when this interchange occurred between PVHA's lawyer Brant Dverin and the Judge Kwan:*

> *THE COURT: Well, first of all, you said that I dismissed his prior petition. I never dismissed. I gave him leave to amend. I just want you to know that. In your argument there are a lot of…*
>
> *MR. DVEIRIN: I misspoke. You gave him leave to amend.*

*For the transcript,* ***click here****. For a condensed version of the most interesting excerpts,* ***click here****.*

**For the past two years, because of the lack of a quorum, elections could not be conducted. In Harbison's first try during the 2016 annual meeting and election 1,772 members were represented - 939 shy of a quorum (2,711 members constitutes a quorum). Surprisingly, on his second try at the 2017 annual meeting and election, after an exhausting campaign, 1,589 members were represented (1,122 fewer than a quorum). With a 10% reduction of participation 2017 over 2016, I hope that our community's distaste for this type of controversy does not again impact the upcoming election. A quorum seats the Board, returning staggered terms for its members so that a dissident group will no longer be able to use one election to take control of PVHA's board of directors.**

*There are many potential explanations for a lower voter turnout in the January 2017 election; a shift due to "distaste for this type of controversy" is just one possibility. Others are more likely including:*

- *Many changes that the Board implemented in the 2017 election effectively made it more difficult to reach a quorum compared to the 2016 election. These include:*
  - *Ballots handed in at the PVHA office were no longer accepted*
  - *Ballots sent to the PVHA office (either faxed or emailed) were no longer accepted*
  - *Ballots or proxies as walk-ins at the Annual Meeting were no longer accepted*
  - *Ballot errors appeared in terms of years served*
  - *Address errors as printed on the return address envelope caused concern and PVHA refused to address that concern by providing a way for members to verify receipt of their ballot*
  - *PVHA did not provide a location to pick up a replacement ballot after December 23rd until the date ballots were due as the PVHA office was closed during that period; the office manager did come into the office on several occasions, but no one knows how many members walked away because of locked doors.*
- *Burnout over elections after an intense Presidential Election in November 2016*

- *Attention shifting to concerns over the City of PVE's proposed Measure D taxation and dialogue over that election as well as two openings on City Council*

**I fear that if Harbison gains control of the Board, and if, as I believe, the Appeal will reverse the judgement, there may be a new trial. If Harbison chooses to pursue this case, having stacked the board of directors, he hopes that the Board will withdraw from that litigation. That strategy would leave PVHA without representation on a crucial issue in our community: the fate and use of parkland.**

*I have no control over any of the candidates on ROBE's slate. They are all individuals and can act as they see fit, with the information they have available to them. What I can say, is that I have much more confidence that the ROBE challengers are passionate and serious about respecting the deed restrictions and governing covenants and have pledged to never sell parkland. In contrast, three of the incumbents (Frengs, Fountain and Hoffman) have already voted and sold parkland and the PVHA since 2013 justified their actions by arguing in Court that they have total discretion to sell any or all parkland if they see fit. Please refer to the briefs written by the lawyers representing PVHA at www.pveopenspace.com.*

*So "the fate and use of parklands" is assured by a vote for the ROBE candidates, not the incumbents. (Note that Carol Swets and Carolbeth Cozen joined the Board after the land was sold and after the vote to pursue an appeal, so they are not tainted with having to explain their actions).*

**Please return only incumbent candidates to the board of directors of PVHA.**

**Contrary to Harbison's rhetoric, PVHA has no intention of selling parkland. As has been stated, all of the parkland was deeded to PVE in 1940, as the school sites were deeded to the school district in 1938. PVHA recovered two parcels from the district as part of the settlement and deeded them to PVE in the Memorandum of Understanding that is the subject of the litigation on appeal.**

*Stating that PVHA "has no intention of selling parkland" is a hollow promise, since PVHA already sold 1.7 acres in 2012 to a private resident which is expressly forbidden by the underlying deeds; Judge Meiers came to that conclusion in finding for CEPC in her ruling – click here. PVHA's "intentions" cannot be trusted since they already have violated that promise. In defending the 2012 sale of parkland, the PVHA has vigorously told the Court that they have the right to sell any or all parkland, and they cannot be challenged due to the business judgment rule. The PVHA under Mr. Frengs' leadership has vigorously argued in Court that they have full authority to sell parkland. Here is an example from one of their briefs:*

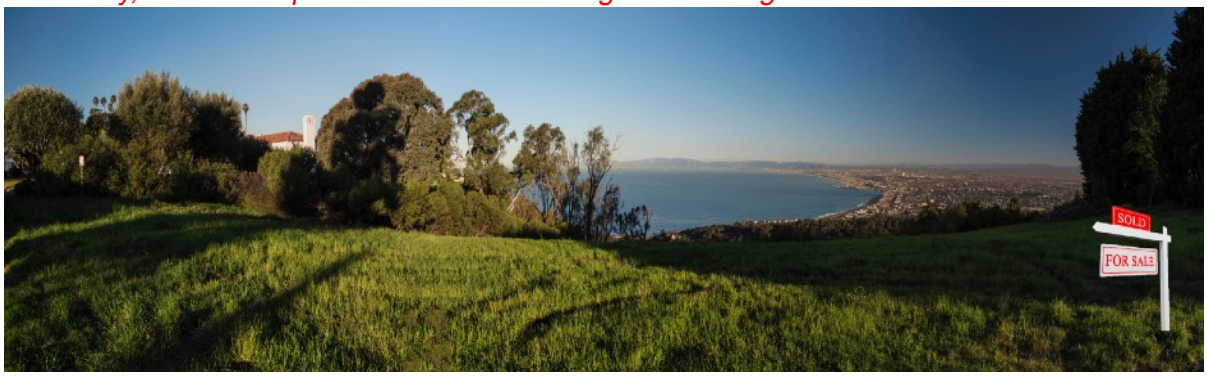
> *"The Palos Verdes Homes Association could not be bound by any such deed restrictions, since there has never been any amendment of its right and power to sell parkland under the Declaration No. 1." (page 20 of the APPELLANT'S OPENING BRIEF filed 11/9/16 – click here)*

**Over the course of these past two years and again this year Harbison has conducted a campaign of misrepresentation, untruths and outright lies. A few examples include:**

- **Use of a misleading photo of parkland adjacent to 900 Panorama on all of his campaign materials in print and on the internet, I have called him on this, but he**

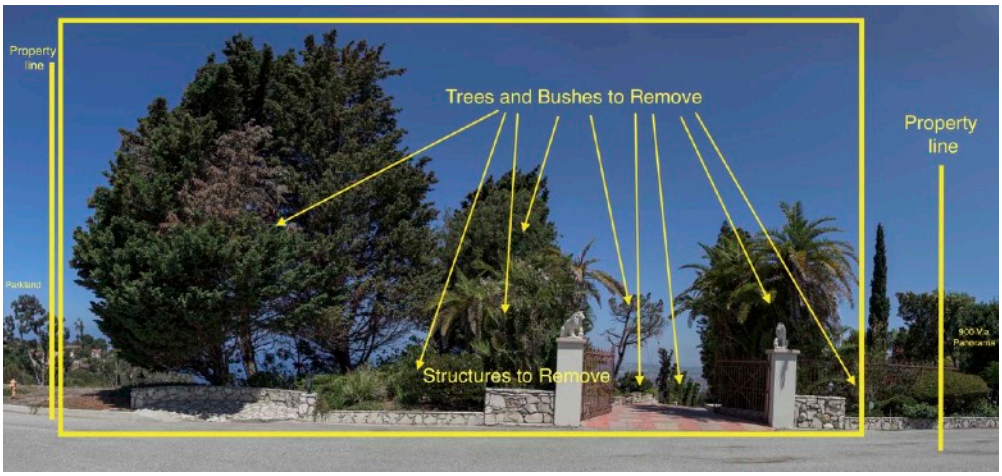
**persists in misrepresenting this photo as the parkland subject to litigation. It is not. He also shows it with his "for sale" sign imposed on it, as if PVHA wants to sell this parkland. The property that is the subject of the first lawsuit is largely below that house, severely sloped and not visible from the street.**

*For clarity, here is the photo to which Mr. Frengs is referring:*



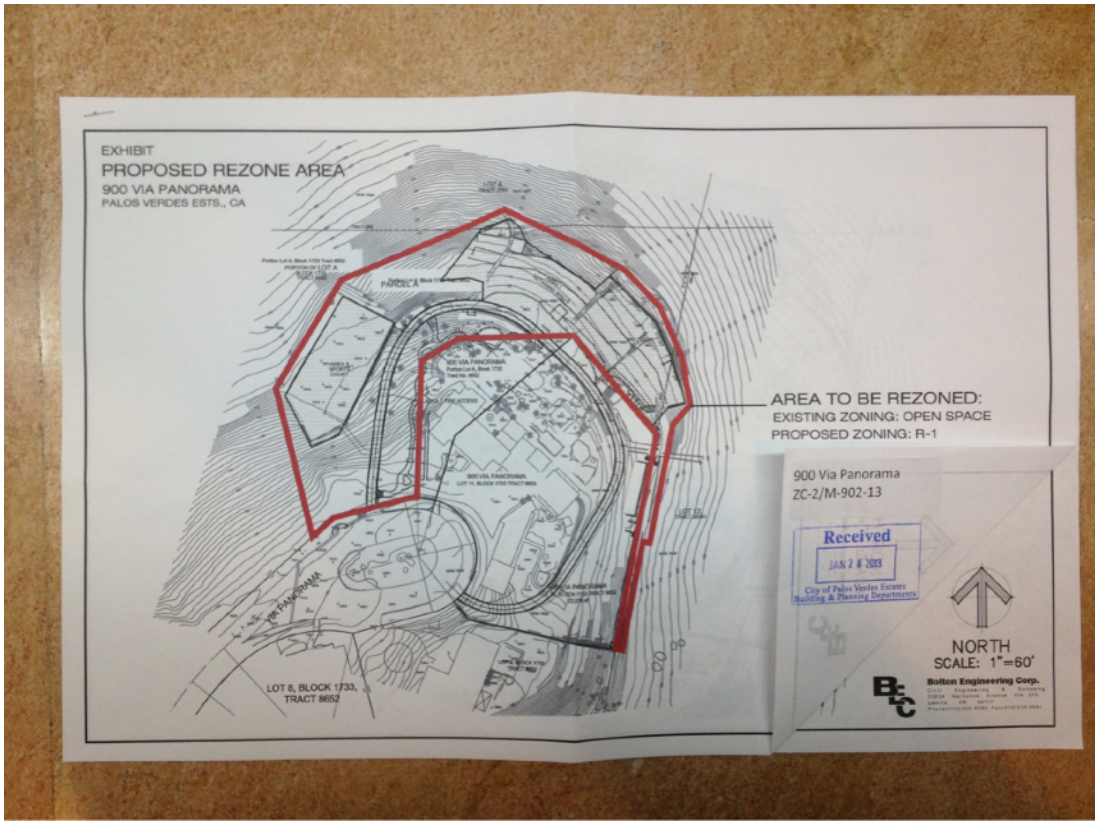

*Everything in the above photo used to be parkland, and the point of the CEPC lawsuit and Ruling is to protect ALL parkland from ever being sold to a private entity. The left side of the photo (thankfully) remains parkland. But contrary to Mr. Frengs' assertion, the right portion of the photo (which includes the "For Sale sign") is on the parcel of parkland sold to Lugliani by the PVHA in 2012. Here is the map which shows that roughly half of the flat parkland facing along Via Panorama was in the area sold:*


*The entirety of this photo below (between the property lines indicated) is the subject of the illegal land sale; please note the extensive encroachments that Lugliani had built over 37 years of ownership of the adjacent house to the right of this parkland:*




*Mr. Frengs is correct that some of the 1.7 acres sold was steep hillside behind the Lugliani house, but incorrect when he states that the parkland is "largely below that house." The flat area along Via Panorama on the left that remains parkland is used by the public almost*

*every day; people park on the street or on the parkland to enjoy the view and/or enjoy a picnic. In terms of view quality and accessibility, it is as good as it gets in PVE from any parkland. Yet the PVHA and the City of PVE have relentlessly asserted that the parkland has little or no value to the public due to its steepness and inaccessibility. Here is the topographical map showing the area along Via Panorama -- some of the land is flat, while some is steep -- typical of PVE typography.*




**And, PVHA is not interested in or able to sell parkland.**

*Mr. Frengs in his 2016 letter tried this same misdirection by saying:*

*"PVHA is not selling Parkland. Parkland is owned by the City of PVE not PVHA."*

*But that did not stop Mr. Frengs and the PVHA Board from conspiring with the City of PVE in 2012 to transfer City owned parkland to PVHA as part of a larger deal to immediately sell the same parkland parcel to a private individual. Therefore, if CEPC does not prevail in this lawsuit, there would be nothing to prevent the PVHA from conspiring again with the City of PVE to sell parkland under different circumstances and in other locations. The result would be that both the City of PVE and the PVHA would benefit as they did in the 2012 sale when PVHA received $400,000 and the City $100,000 for the sale of 1.7 acres of parkland to a private individual. The point of the CEPC lawsuit and Ruling is to affirm that PVE parkland cannot be sold without adhering to existing deed restrictions, excerpted as follows:*

*"That, except as hereinafter provided, said realty is **to be used and administered forever for park and/or recreation purposes only** … for the benefit of the (1) residents and (2) non-resident property owners within the boundaries of the property heretofore commonly known as "Palos Verdes Estates"…¶ 3 (pp 6-7)*

*"That, except as provided in paragraph 3 hereof, **said realty shall not be sold or conveyed**, in whole or in part, by the Grantee herein except subject to the conditions, restrictions and reservations set forth and/or referred to herein and **except to a body suitably constituted by law to take, hold, maintain and regulate public parks;** provided, that portions of said realty may be dedicated to the public for parkway and/or street purposes. ¶ 3 (p 7)*

*"That, except as provided above, [exceptions are for utility easements] **no buildings, structures or concessions shall be erected, maintained or permitted** upon said realty, except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes." ¶4 (p 9) "*
*— For the full document in context, click here*

***If the California Appeals Court supports the Appeal against the judgement of the California Superior Court Judge, then the City and Home Association will have established the right to sell any or all of PVE parkland.** Why would the PVHA and City of PVE want to do that? Clearly, the PVHA incumbents cannot be trusted to protect our parkland.*

- **Stating that PVHA's Board supported relocating the trail above Via Elevado for the purpose of "creating an 8 acre private space" for residents. The Board, in fact, simply stated in a letter to the City that if the residents wanted to move the trail up the hill, it would be supportive and would consider funding along with the City and the neighbors. Never was the Board presented anything more than that, and there was no mention of fencing. The matter died on its own at the parkland Committee. I attempted to correct him but he persists even now to misrepresent the facts.**

*The fact that the proposal died on its own in the Parklands Committee is irrelevant, although we are grateful that the Parklands Committee acted appropriately. The only thing relevant is the letter from Marc Paulin, President of PVHA, which stated PVHA support for the project which clearly violated the same deed restrictions as the Panorama Parklands parcel A just ruled upon by Judge Meiers. To read the letter, click here. The proposal which describes the fencing and other details, click here. Therefore, to say there was no mention of fencing suggests that Mr. Frengs failed to read the proposal before giving the project PVHA Board support. Another example of not taking his fiduciary duty seriously.*

- **He [John Harbison)] asserts that for this year's election there will be only one mailing, when he knows for a fact that PVHA has scheduled three mailings: two post cards, and the annual meeting packet. Harbison also sent his mailing two weeks ago and, with my mailing, there will be at least five mailings.**

*My assertion on Nextdoor this month (click here) was "One ballot mailing rather than three ballot mailings (as in several past years)." While it is good that the PVHA is sending out two reminder postcards, that is not the same as three mailings of ballots (as has been done*

*under prior elections at PVHA). But with a reminder card, the member must still take the initiative to go to the PVHA office to get a replacement ballot, and given that the PVHA is closed from 5:00 PM December 22nd to 8:30 AM January 3rd, that will suppress voting since the ballots are due by 4:30PM January 3rd.*

- **He argues that proxies may not be presented at the meeting, and that ballots cannot be delivered at the meeting, which is true. The reason is not to reduce a quorum, but rather to administer the election process with a third party inspector of elections and a professional service firm conducting the count for quorum purposes and, upon a quorum being reached, tabulating the ballots. PVHA members have plenty of time to complete their ballots, mail them in the pre-addressed envelope or drop them off at the secure box at City Hall.**

*Since 1941, there has been a quorum in only 26 out of 77 years (33%), and only 4 years since 2001 (29%). In all the elections since 2001 that achieved a quorum, 3 ballots were mailed. The only documentation of the response by mailing that was recorded in the board minutes was in 1970 and the report showed that a quorum was not reached after the first, second or even third mailing, but only when proxies brought into the annual meeting were counted. Therefore, votes that are no longer accepted at the Annual Meeting can make a difference in achieving a quorum.*

- **Finally, he misstates the PVHA bylaws again insisting that when a quorum is not attained, the Board has an obligation to conduct the election daily until a quorum is reached. In fact, the bylaw states clearly that the Board "may adjourn day-to-day." Harbison changes the word "may" to "must" in a dishonest effort to mislead our members.**

*I agree that the By-Laws use "may" in this case and hence the PVHA has a right but not a duty to adjourn day-to-day. But the PVHA has asserted that they have never adjourned day-to-day. I found this to be false when I examined old newspapers articles and the Board minutes and found multiple instances of such an adjournment until more votes could be collected – specifically in 1931, 1941, 1942, 1969 and 1971. After we included copies of those articles and referenced minutes as documentation in a Declaration in the Lawsuit over the Quorum, PVHA's response was a demand that the information was inadmissible since "all newspaper articles are hearsay" and hence inadmissible, and a transcription of Board minutes is also "not admissible without a copy of the Minutes" – a strange assertion since I had requested to make a copy of the relevant minutes with my phone and was forbidden to do so by PVHA's manager.*

*Further, in the November 30, 2017 Hearing on the Quorum Lowering Case, Judge Kwan pressed the PVHA on this "adjournment" clause and strongly urged PVHA directors in the courtroom to extend the election if needed:*

> *"**THE COURT:** So they could, if they wish. Am I correct to say let's extend the election to see if we can get more people participate? Let's send out letters to say, hey, we don't have enough quorum from you guys. We need to elect a new board. You know, it's that time of the year. We only got 1,700 votes and we need at least 2,700 so that we can elect a new board. Please come on, guys. It's been five years since we have had a new*

*board. Is that -- they could do that if they want, right? My reading of this paragraph --*

***MR. DVEIRIN**: **I could not be more clear that a homeowner association's discretion lies with the board and they can pretty much do what they want as long as it complies with the bylaws.***
*I don't find what you're saying to be a reasonable way to handle it, but that would be up to the board. The board has a right to act not reasonably.*
***THE COURT**: But what I'm saying is the board has a right to not act reasonably."*

*Note that in January 2017 Directors Hoffman and Cozen both voted to "adjourn day-to-day" and extend the election, but the other three Directors (Frengs, Fountain and Swets) voted against that resolution.*

- **Again, I hope that our members will reject this effort by a vocal minority of our members to hijack the board of directors for its own purposes. PVHA stands for and supports maintaining Palos Verdes, both PVE and Miraleste, as we have come to know it, in keeping with the vision of its founders who set up PVHA as a corporation to insure their intent would be maintained over time.**

*Whether these views are from a minority or not is not known – especially after PVHA steadfastly refuses to even open and count ballots. What is factual is that:*

- *ROBE obtained signatures from 432 different PVHA members when they nominated candidates in the last few years.*
- *The Incumbent directors collected no signatures on nominating petitions even though that is required in the Resolution 177 they wrote and approved in 2016 (click here)*
- *ROBE offered to drop its lawsuit if the PVHA agreed to open the ballots from last year's election and report the results; should the incumbents receive more votes than any of the ROBE challengers, the challengers would willingly step down. PVHA still refuses to count the ballots unless a quorum is reached first.*

**Very truly yours,**

**Philip J. Frengs**

*In summary, if you'd like to read all the source documents, see www.pveopenspace.com for information on the Panorama Parklands sale and www.pvegoodgov.org for information on ROBE's efforts to promote Open Board Elections and bring democracy to the PVHA.*

*The focus of CEPC's effort is to have the illegal 2012 sale of parkland reversed (and have the area restored to its natural state before encroachments) and to prevent encroachments from occurring again by reinforcing the validity of the underlying deed restrictions.*

*By arguing in court that they have the discretion and right to sell any parkland, the current incumbents on the Board of Directors at PVHA are not good stewards since they did not defend the 1923 Protective Covenants and underlying deed restrictions (from 1932 and 1940) that were intended to protect our parkland forever for public recreational purposes. We need Directors that take those responsibilities seriously and pledge to honor the deed restrictions.*