

January 23, 2017

VIA E-MAIL AND U.S. MAIL

Noel Weiss, Esq.
Law Offices of Noel Weiss
13700 Marina Pointe Drive #922
Marina Del Rey, CA 90292
E-Mail: noelweiss@ca.rr.com

Re: **Your Email of December 16, 2016 Regarding Green Hills Memorial Park's Annual Review**

Dear Mr. Weiss:

I write in response to your December 16, 2016 email to the City Council, the City Manager, and myself. In your email, you make the following claims: that the City Council discussed in closed session which body, Planning Commission or City Council, would perform the annual review of Green Hills Memorial Park's compliance with the conditions of its conditional use permit, in violation of the Ralph M. Brown Act, Gov't Code § 94950 et seq.; that the City Council failed to report after the session the action that had been taken regarding the Green Hills annual review; and that the City Council's taking over the annual review constitutes an amendment to Green Hills' conditional use permit, and therefore is not an action that can be taken outside a noticed public hearing, pursuant to the Rancho Palos Verdes Municipal Code.

In fact, your email reflects your misunderstanding of both what occurred on December 6, 2016 and the staff report to the Planning Commission attached to your email. While I am not at liberty to reveal the contents of the closed session, I can tell you that there was no action taken by the Council in the closed session and I can give some background I believe will alleviate your confusion as to the events in question.

As you are aware, the Master Plan and Conditional Use Permit (CUP) for the Green Hills Memorial Park was updated in 2007 (Planning Commission Resolution 2007-33). Pursuant to Condition N-3, the CUP was subject to an annual compliance review process. The previous annual review, the 2014 Annual Review, was commenced by the Planning Commission on February 25, 2014. Over the course of some nine months, the Planning Commission considered the matter more than eight different occasions. The Planning Commission finally concluded the Annual Compliance Review on November 11, 2014, with Resolution 2014-29 which Green Hills challenged for exceeding the Commission's authority. Green Hills' November 25, 2015, appeal came nine (9) months after the commencement of the Annual Compliance Review. The City Council review of the matter was then delayed by efforts by the parties to mediate the disputes,

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which were ultimately unsuccessful. Finally the City Council conducted a public hearing on September 1, 2015, and the matter was further considered by the City Council on November 17, 2015. At that time the City Council adopted Resolution 2015-102 approving the 2014 Annual Review and an amended CUP. This was some 20 months after the initiation of the Annual Review.

Subsequently on behalf of your clients you have filed the following lawsuits:

1. Loveys v. City of Rancho Palos Verdes, Los Angeles Superior Court Case No. BS160652, filed Feb. 16, 2016 – This petition for administrative mandamus seeks review of City Council Resolution No. 2015-102, adopted on November 17, 2015, which amended the CUP for the cemetery. As stated above, Resolution No. 2016-102 was the culmination of an extraordinarily lengthy annual review of Green Hills' operations. The Planning Commission resolution required Green Hills to, among other things, seek a variance for the Pacific Terrace Mausoleum. The City Council granted the appeal in part and denied it in part, first preserving the Planning Commission's requirement for a variance, but later concluding an amendment to the CUP was a more appropriate procedure for addressing the issues. You are seeking relief that would prohibit rooftop burials, re-instate the City Council's first resolution on Green Hills' appeal of the annual review, require Green Hills to obtain a variance, and finding that there has been a taking of your clients' property.

2. Loveys v. City of Rancho Palos Verdes, Los Angeles Superior Court Case No. BC629637, filed Aug. 5, 2016 – This lawsuit for damages is based on substantially the same facts and allegations as the petition for administrative mandamus described above. Instead of relief directed at reversing the effects of Resolution No. 2015-102 and re-instating the City Council's earlier decision, this case seeks damages in excess of \$17 million.

3. Loveys v. City of Rancho Palos Verdes, Los Angeles Superior Court Case No. BS166493, filed Dec. 5, 2016 – This petition for traditional mandamus seeks a writ of mandate compelling the City to provide an interpretation of provisions of its municipal code with respect to whether rooftop burials on mausoleums in the cemetery are permitted and if so, what permitting process is required to authorize them. The effect of the request for interpretation in this case, filed subsequent to the two cases described above, is to force the City to take a position on issues involved in this cases in order to gain some sort of advantage in litigation. Also reflecting that objective, the petition in this case also seeks a writ compelling the City to release legal billing statements received by the City for the work of its attorneys in defending the other litigation.

The filing of these three lawsuits in the space of a year, all on behalf of the same plaintiffs and relating to the same subject matter – Green Hills Memorial Park and the mausoleums within its boundaries – coupled with the history of your clients' opposition to any action the City has taken with respect to Green Hills over the last several years, establishes that there is a risk of litigation against the City in connection with any action the City Council takes

pertaining to the cemetery. Under the circumstances, discussion in closed session of strategy and procedure for dealing with issues related to Green Hills is within the scope of the threatened litigation exception to the open meeting requirements of the Brown Act.

Amongst other arguments which you have made, you have argued that the City Council's actions on November 17, 2015, were inconsistent with the Planning Commission's actions on November 11, 2014. Based upon the prior 20 months of proceedings before the Planning Commission and City Council, it could be anticipated that there would be a similar intent to draw out the 2016 Annual Review, and potentially use the separate forums of the Planning Commission and City Council to undercut the City's actions.

The CUP in Conditions AQ-14 and N-3 provides for the Annual Compliance Review with the conditions of approval. City staff commenced the 2016 Annual Review on February 25, 2014. Condition N-3 provided as follows:

“N-3: As indicated in mitigation measure AQ-14 above, the project shall be reviewed by the Planning Commission annually, commencing on the date of final approval, to review the applicant's compliance with all conditions of approval associated with the Master Plan and Master Plan Revision. At that time, the Planning Commission may add, delete, or modify the conditions of approval as deemed necessary and appropriate. Notice of said review hearing shall be published and provided to owners of property within a 500' radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090.”

Notwithstanding Condition N3, RPVMC Section 17.78.040(B) provides:

“The amendment to the project shall be considered by the same body which took the final action in granting the original application, utilizing the same hearing and noticing procedures, review criteria and appeal procedures as required by this title, for consideration of the original application.”

Based on Section 17.78.040(B), City practice has been that when a matter is appealed, the body considering the appeal thereafter assumes jurisdiction over the matter. In the case of the following matters, as final approval ended up with the City Council, the City Council has retained the jurisdiction for future reviews:

1. Terranea
2. Trump Golf Resort
3. Marymount University
4. Crestridge Project

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The City Attorney consulted with the City Manager and Director of Community Development concerning the application of the provisions of Section 17.78.040(B) in the matter of the Green Hills Annual Review. Moreover, they considered carefully the prior Annual Review which as earlier stated, was before the Planning Commission for nine months, and took over 20 months to complete. There is obviously a flaw in conducting annual reviews which take two years to complete. In fact, the 2015 review was skipped entirely and disappeared into the two year 2014 Annual Review.

Accordingly, the City Manager, on the advice of the City Attorney, concluded that (i) Section 17.78.040(B) would permit the Annual Review to be conducted directly by the City Council, and thereby short circuit potential multiple hearings and appeals as had been the case with the 2014 Annual Review, and (ii) each procedure would limit the City's legal exposure to arguments such as you are making in the lawsuits listed above that the City Council's actions are illegal in that they are inconsistent with the Planning Commission's actions.

To make the City Council aware of the fact we anticipated that you would legally contest the approach staff had decided to pursue, on December 6, 2016, a closed session was held under the authority of Brown Act Section 54956.9(d)(2). This subsection permits a closed session to be held where "a point has been reached where, in the opinion of the legislative body . . . on the advice of its legal counsel, based on facts and circumstances, there is a significant exposure to litigation against the local agency." 54956.9(d)(2). As earlier stated, I will not disclose the details of that discussion, but the "facts and circumstances" and the concerns over a protracted process is described in this letter. After answering numerous questions, we felt comfortable that the Council understood the reasons for the staff actions. The Council did not take any specific action or give direction, but permitted the City Manager and City Attorney to pursue the path they had decided upon.

This discussion with the City Council was properly scheduled as a closed session to discuss significant exposure to litigation. The City Council did not vote on anything nor was there any action taken in the closed session within the meaning of Government Code § 54957.1. Thus, there was no violation of the Brown Act or the City's municipal code.

In addition, the City has already scheduled a special meeting for a public hearing for January 31, 2017 at which it will consider the 2016 Annual Compliance Review. We trust that the Annual Review will be shortly concluded within one or two public meetings, and thus cut off a year or more of public proceedings before the Planning Commission, as was the case of the 2014 Annual Review.

The closed session to which you objected was properly conducted with the City Council to discuss legal challenges anticipated in connection with the Annual Review. The City Manager and City Attorney determined they had the authority to bring the matter directly before the City Council under the authority of RPVMC Section 17.78.040(B). That matter will be before the City Council on January 31, 2017. You will have a full opportunity to speak at the hearing on

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the matter. In fact, the day after this hearing, we are scheduled to pursue mediation with you to hopefully resolve the growing list of litigation matters. It is our hope that you focus on a positive mediation outcome and do not add another specious lawsuit to this growing list.

Very truly yours,

ALESHIRE & WYNDER, LLP



David J. Aleshire
City Attorney

DJA/jsa

cc: Doug Willmore, City Manager
Ara Mihranian, Director of Community Development
Christina M. Burrows, Assistant City Attorney
June Ailin, Litigation Counsel
Honorable Mayor and Members of the City Council