



## AGENDA REPORT

**Meeting Date:** June 6, 2016

**Item Number:** F-1

**To:** Honorable Mayor & City Council

**From:** Ryan Gohlich, AICP, Assistant Director of Community Development

**Subject:** HEARING DATE FOR AN APPEAL OF THE COMMUNITY DEVELOPMENT DEPARTMENT'S APRIL 13, 2016 DETERMINATION REGARDING VIEW PRESERVATION ASSOCIATED WITH NEW CONSTRUCTION AT 1200 STEVEN WAY.

**Attachments:** 1. Appeal Petition (includes original determination documents)

---

### RECOMMENDATION

It is recommended that the City Council set a hearing date for an appeal of the Community Development Department's determination that a proposed new residence at 1200 Steven Way will not substantially disrupt views of the Los Angeles area basin from the level pad of the property located at 1211 Laurel Way.

### DISCUSSION

On April 13, 2016, the Community Development Department issued a letter finding that proposed new construction of a 28-foot tall, two story residence located at 1200 Steven Way will not substantially disrupt a view of the Los Angeles area basin from an upslope property located at 1211 Laurel Way. The determination included a 14-day appeal period. On April 26, 2016, a timely appeal was filed by the law offices of Steckbauer Weinhart, LLP, on behalf of the Delijani Trust, the owner of 1211 Laurel Way.

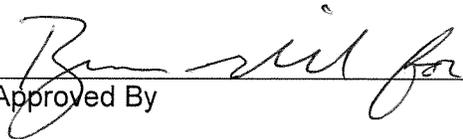
The determination that a view from 1211 Laurel Way would not be substantially disrupted by new construction at 1200 Steven Way was made pursuant to the view preservation provisions for the Hillside Area of the City identified in BHMC §10-3-2522.

**PROCESS**

Pursuant to Beverly Hills Municipal Code Section 1-4-105, the procedure for appeals of discretionary decisions made by a City official is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the evidence and information presented in the appeal is the same as was presented to the City official, the Council can then set a public hearing to consider the appeal. However, if the appeal petition contains new information, the Council may order that the official rehear the matter.

Planning Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information beyond that already considered by the Community Development Department is presented therein. Therefore, staff recommends that the Council formally schedule this matter for a formal public hearing on June 21, 2016 to consider the appeal.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By \_\_\_\_\_

# **ATTACHMENT 1**

## **APPEAL PETITION**



STECKBAUER  
WEINHART, LLP

333 S. Hope St., 36th Floor  
Los Angeles, CA 90071

Phone: 213.229.2868  
Fax: 213.229.2870

www.swesq.com

By: Sean A. Topp  
stopp@swesq.com

April 26, 2016

VIA HAND DELIVERY

City Clerk  
City of Beverly Hills  
455 North Rexford Dr., Room 290  
Beverly Hills, CA 90210

RECEIVED  
CITY OF BEVERLY HILLS  
2016 APR 26 A 11:40  
CITY CLERK'S OFFICE

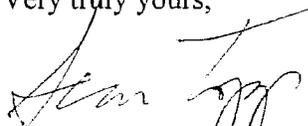
Re: Appeal of April 13, 2016 Decision by City Planner Ryan Gohlich

Dear City Clerk:

Pursuant to Beverly Hills Municipal Code section 1-4-101, et seq., enclosed is the Ramin Delijani Trust's appeal of the April 13, 2016 decision by City Planner Ryan Gohlich related to the planned development at 1211 Laurel Way, Beverly Hills, CA 90210 along with the applicable \$5,149.00 filing fee.

Based on the fact that a key exhibit to this appeal contains color photographs, we have enclosed eight (8) color copies of the appeal and its exhibits so that each council member and each city planning department staff member can have a complete color copy of this appeal. If you have any questions feel free to call me or Bill Steckbauer of my office at any time.

Very truly yours,

  
Sean A. Topp  
STECKBAUER WEINHART, LLP

SAT  
Enclosures  
cc: Client

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN  
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO \_\_\_\_\_ COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

4/25/16

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Ryan Gohlich, Asst. Director, City Planner (Official, Board or Commission involved) rendered on April 13, 2016, \_\_\_\_\_; which decision consisted of: The grounds submitted for this appeal are as follows: **(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)**

The owner of 1211 Laurel Way, the Ramin Delijani Trust hereby appeals the decision April 13, 2016 decision of Ryan Gohlich, Assistant Direct/City Planner of the Beverly Hills Community Development Department regarding the proposed development at 1200 Steven Way. The grounds for appeal are set forth in full in Attachment 1 hereto.

RECEIVED  
CITY OF BEVERLY HILLS  
2016 APR 26 P 2:23  
CITY CLERK'S OFFICE

The undersigned discussed the decision being appealed with:

See Attachment 1 hereto

\_\_\_\_\_  
(Department Head(s) Involved)

on \_\_\_\_\_

Date

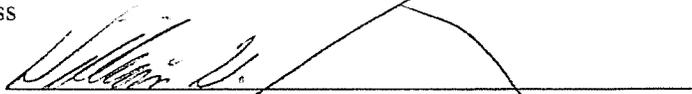
It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

William W. Steckbauer, Esq.

333 S. Hope St., Los Angeles, CA 90071 (213) 229-2868

Name

Address



Signature of appealing party/Attorney for Ramin Delijani Trust

333 S. Hope St., Los Angeles, CA 90071

Address

Tel: (213) 229-2868 / Fax: (213) 229-2870

Telephone Number & Fax Number

Fee Paid \$5,149

(For City Clerk's use)

DATE RECEIVED 4/26/16

LOG NO. 21x16

Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Community Development  
Involved Department

## Attachment 1 to Appeal Petition to Beverly Hills City Council

I am the representative of the Ramin Delijani Trust, under declaration of trust dated August 17, 1981. ("Trust") The Trust is the fee owner of that certain real property located at 1211 Laurel Way, Beverly Hills, California 90210 ("1211 Property") and legally described as follows: Lot 26 of Tract No. 15008, as per Map recorded in Book 488, Pages 3 to 9, inclusive of Maps, recorded in the Office of the County Recorder of Los Angeles County, State of California.

I am informed and believe that Cojo Investments, LLC is the owner of the neighboring property located within 300 feet of the 1211 Property with a legal address of 1200 Steven Way. (the "Stevens Way Property"). The Stevens Way Property is currently improved with a single story residential home. The Stevens Way Property is slightly downhill to the South East of the 1211 Property. The owner of the Stevens Way Property is proposing to demolish the existing single story residence and construct an entirely new two story single family residence that will equal if not exceed the maximum height limit set forth in the City of Beverly Hills Code, Article 25, entitled Single-Family Residential Development Standards For The Hillside Area Of The City. The proposed development will measure twenty-seven feet (27') above a new raised grade, which results in the project being thirty feet (30') above the existing grade. I and my representatives have met on several occasions with the principal of Cojo Investments, LLC and with Beverly Hills City Planning officials to voice our sincere concerns that this spec home development, if allowed to be constructed, will substantially disrupt, destroy and interfere with the protected Los Angeles basin view from the 1211 Property. (See Municipal Code section 10-3-2522) .

On September 24, 2015, at the City of Beverly Hills a meeting was held regarding the proposed development at the Stevens Way Property. Present at the meeting were the following individuals:

1. Mr. Ray Balderas - City Planning Staff
2. Dr. and Mrs. Isaac Hakim (neighbor to the South)
3. Mr. Michael Delijani
4. Shahram Deljani
5. Mr. Hamid Gabbay, and
6. Mark Egerman, Esq.

Ray Balderas informed the group that based on a City review of the plans for the Stevens Way Property development, such plans appeared to comply with all code requirements of the City of Beverly Hills and, therefore, did not need to be reviewed by the Planning Commission. Mr. Balderas did indicate that he would require the owner of the Stevens Way Property to put up story poles for further review and inspection.

An additional meeting was subsequently held at the 1211 Property on November 4, 2015 to inspect the placement of the story poles on the Stevens Way Property and the view from the 1211 Property. In attendance at this meeting were representatives from and the attorney for the Stevens Way Property, City Officials, including Mr. Balderas, representatives and the attorneys for the owner of the 1211 Property and Mr. Sheldon Nemoy, who was retained by the owners of the 1211 Property to photograph and prepare an onsite visibility study of the Los Angeles Basin

from the 1211 Property. This study was subsequently prepared and submitted to the City of Beverly Hills on January 25, 2016. A true and correct copy of the Visibility Study is attached hereto as Exhibit A.

On April 13, 2016, Beverly Hills City planner, Ryan Gohlich, issued a letter to our attorney stating that “I hereby find that the proposed new construction at 1200 Steven Way will not substantially disrupt a view of the Los Angeles area basin from your client’s property, and that construction in excess of 14’ is authorized in accordance with the plans submitted to and on file in the Community Development Department.” He further noted that “[t]his is a final determination, which may be appealed directly to the City Council within 14 days of the date of this letter in accordance with the procedures set forth in Article 1 of Chapter 4 of Title 1 of the Beverly Hills Municipal Code. A true and correct copy of Mr. Gohlich’s April 13, 2016 letter, along with the Visibility Study which was attached thereto are collectively attached hereto as Exhibit B. There has been no submittal, review or determination by the Beverly Hills Planning Department; the decision has been made by Mr. Gohlich alone. Mr. Gohlich’s decision is arbitrary, improper and based upon his misreading of the Beverly Hills rules governing View preservation and must be reversed. There is no doubt that city planner Gohlich’s arbitrary determination is in error and the proposed Steven Way Property project violates Beverly Hills Municipal Code section 10-3-2522. Views add millions of dollars of value to properties in Beverly Hills and the arbitrary and unsupportable decision of the Assistant Director/City Planner will result in the destruction of protected view and substantially diminish the value of the 1211 Property. Such decision must be overturned.

Specifically, Beverly Hills Municipal Code section 10-3-2522 provides:

A. Except as authorized by a Hillside R-1 permit issued pursuant to article 25.5 of this chapter, and notwithstanding the provisions of section 10-3-2503 of this article concerning building heights, no structure in the Hillside Area shall be constructed to a height in excess of fourteen feet (14’) if such construction in excess of fourteen feet (14’) would substantially disrupt a view of the Los Angeles area basin from the level pad which contains the primary residential building on a property within three hundred feet (300’) of the subject property, and such view would not have been substantially disrupted by development of a fourteen foot (14’) structure. Notwithstanding the provisions of subsection D of the definition of “height of building”, section 10-3-100 of this chapter, for purposes of this section, measurement of the height of the building or structure to be constructed at any point shall mean the vertical distance between that point and the point below it on a plane defined by ground level as it existed on September 4, 1992, at all points along the building or structure perimeter. (emphasis added).

Thus, it is clear that in order to permit the proposed development at the Stevens Way Property to proceed in the manner in which it has been approved, its developer must prove to the City (“no structure ... shall be constructed in excess of 14 feet...”) that the proposed development in excess of fourteen feet (14’) would not “substantially disrupt a view of the *Los Angeles area basin*” from a qualifying neighboring residence. The 1211 Property is a qualifying residence within 300 feet of the subject. Mr. Gohlich does not state that he visited the subject properties and was not present during the November 4, 2015 meeting at the 1211 Property to

view the substantial disruption of view from the 1211 Property in reaching his arbitrary decision. It appears from his April 13<sup>th</sup> letter that he merely reviewed the View Study commissioned by the owner of the 1211 Property (See, Exhibit B hereto).

As explained in the Visibility Study attached hereto as Exhibit A, including in the pictures contained therein, the development at the Stevens Way Property will most certainly result in a substantially disruption of the view of the Los Angeles area basin from my home at 1211 Laurel Way. In fact, as the Visibility Study concludes **“the view from 1211 Laurel Way, Beverly Hills, California will be reduced to approximately one third of its potential view due to the existing structure to the south and the proposed development at 1200 Steven Way, Beverly Hills, California.”** Neither the developer of 1200 Steven Way nor any member of the city planner’s office has offered any evidence to dispute these findings. This further proves that city planner Gohlich’s April 13, 2016 decision is truly arbitrary and capricious and made in error and in violation of Article 25, 10-3-2522.

Section 10-3-2522 provides for the consideration of two elements in the conjunctive. In other words, this section requires that two separate considerations must be reviewed and must both exist in order to reach a proper determination under 10-3-2522. The section provides in pertinent part:

“no structure in the Hillside Area shall be constructed to a height in excess of fourteen feet (14’) [(1)] if such construction in excess of fourteen feet (14’) would substantially disrupt a view of the Los Angeles area basin from the level pad which contains the primary residential building on a property within three hundred feet (300’) of the subject property, and [(2)] such view would not have been substantially disrupted by development of a fourteen foot (14’) structure.

No logical or reasonable neutral person giving consideration to these two expressed considerations could have possibly concluded that the proposed development would not violate this section. First, it is without a doubt that the existing single story residential unit on the Stevens Way Property does not disrupt, substantially or otherwise the Los Angeles area basin view from the 1211 Property . One need only look at the pictures attached to the View Study. While one may at first glance look at these pictures and conclude that the Los Angeles view is impaired by the existing foliage, foliage is not the issue here and may not be considered in the analysis under 10-3-2522. Foliage and its impact upon views is addressed in this neighborhood by the governing CC&R’s which protect views impaired by the overgrowth of foliage. The owner of the Stevens Way Property is imminently aware of these CC&R’s as the owner has filed legal action against another third party neighbor seeking to have that neighbor perform view restoration tree trimming of trees that they claim block the existing view from the Stevens Way Property. (See attached complaint filed by the owner of the Stevens Way Property on November 26, 2014 attached hereto as Exhibit C). Moreover, the owner of the Stevens Way Property has already told the owner of the 1211 Property that they will be trimming and removing trees that impair the view from the 1211 Property.

In the analysis made pursuant to 10-3-2522, the City is not considering a view disruption from the growth of foliage, it is considering the allowance of the construction of a **permanent**

**structure**, and a permanent blockage and permanent and substantial disruption of views that may not be addressed by the association CC&R's. Therefore, one must look beyond the trimable foliage in making a determination under section 10-3-2522. This, Mr. Gohlich most certainly failed to do.

Section 10-3-2522 defines the protectable view of a homeowner as “...view of the Los Angeles area basin from the level pad which contains the primary residential building...” There is no further clarification of what constitutes the view of the Los Angeles area basin. However, in preparing the Trousdale Estates View Restoration ordinance, Beverly Hills Staff recently prepared a staff report that defined the “Protectable View” in pertinent part as:

“The view of the Los Angeles area basin may include but is not limited to city lights (Beverly Hills and other cities) ocean , and horizon. The term ‘protectable view’ does not mean an unobstructed panorama of all or any of the above.” (See Exhibit D hereto).

This staff report also noted the use of the same Los Angeles area basin view in the view preservation regulations for the Hillside Area of the City, i.e., 10-3-2522.

Although the City Council members may not be able to physically inspect the substantial view disruption from the soon to be permitted development at the Stevens Way Property, Council members are directed to the array of pictures in the View Study, and in particular the night pictures depicted on the last page of the View Study. In these pictures the substantial disruption, no almost total destruction, of the view of the city lights of the Los Angeles basin is clearly depicted and can be seen through the yellow colored building envelop of the proposed development. This viewing will also note the abomination and view destruction that the City of Beverly Hills previously allowed through the permitted construction of the adjacent structure just to the South of the 1211 Property. The southern view is all but gone through the City's previous approvals of other development and the south easterly view is now proposed to be destroyed. This must not happen.

Moreover, during at least one meeting at the 1211 Property regarding this issue, city planning staff informed various of my representatives, in my presence, that that the proposed Steven Way Property development would not substantially disrupt my view of the “buildings downtown.” Disrupting the view of the buildings is not the standard under the Municipal Code which nowhere mentions or even infers a view of the downtown buildings. Instead, the standard provided by Section 10-3-2522 is that the view of the “Los Angeles area basin” as a whole cannot be substantially disrupted. City planner Gohlich failed to recognize this standard in making his determination, failed to view the properties himself, failed to make his determination with the aid of the full planning commission and failed to consider the substantially disrupted view independent of any temporary view interference of the overgrown foliage on the Stevens Way Property, all of which failures results in his findings running afoul of Municipal Code section 10-3-2522 and constitute an abuse of discretion which must be overturned.

Based on these facts, the City Planner clearly erred and abused his discretion in making his arbitrary finding that the Steven Way Property development would not run afoul of

Municipal Code section 10-3-2522 and the City Planner's April 13, 2016 decision violates Municipal Code section 10-3-2522 . The April 13, 2016 determination by city planner Ryan Gohlich must be overturned and the project at 1200 Steven Way must be required to comply with Municipal Code section 10-3-2522 and be limited to a height of no more than 14 feet above the existing grade.

In addition, it must be further investigated whether the project at 1200 Steven Way is actually a two story residence less than thirty feet above the existing pad or whether it is actually a three story residence that improperly exceeds the thirty foot (30') height limit provided by Municipal Code section 10-3-2503. Specifically, the plans for this project claim that the bottom floor is simply a "basement" and therefore this alleged basement has not been included in determining the height of the building. Identifying this bottom floor as a "basement" is suspect and improper as the project proposes that this bottom floor basement will have open windows facing the street on the east and west side of the building. Basements do *not* have windows. This mislabeled "basement", is actually a first floor and this proposed new development is actually a three story structure disguised as a two story structure to improperly evade the height restrictions clearly set forth in the City Code. The height measurement must be taken from this newly excavated first floor pad which if done, would clearly demonstrate a violation of 10-3-2503 and provide an independent grounds or the reversal of the City planning commissioner's sole determination and a disapproval of the proposed plans as presented to the City.

It also must be investigated whether the total square footage of the 1200 Steven Way project exceeds the 15,000 square foot limit provided by 10-3-2502 once the full square footage of the true first floor (alleged basement) is actually included in the total square footage of the project. This was not considered by the city planner's department and this City Council must order the city planner's department to conduct such an investigation and include all appropriate square footage in its determination.

For these reasons, city planner Ryan Gohlich's April 13, 2016 determination that the Steven Way Property development does not violate the Beverly Hills' municipal code must be overturned and no development permits issued for the construction of any new dwelling structure with a height in excess of 14 feet.

## Exhibit A

Sheldon Nemoj was retained by the owner of 1211 Laurel Way, Beverly Hills, California to conduct a pictorial onsite visibility study of the Los Angeles basin as viewed from 1211 Laurel Way, Beverly Hills, California, with particular reference as to the impact that the proposed development at 1200 Steven Way, Beverly Hills, California would have on the easterly view of the Los Angeles Basin.

The study was done on November 4, 2015, by Sheldon Nemoj. The pictures were taken from the level pad of 1211 Laurel Way, Beverly Hills, California from a point six feet above the finished grade of the pad.

Present at the time of the study with Sheldon Nemoj were representatives of the City of Beverly Hills; representatives of the owner of 1211 Laurel Way, Beverly Hills, California; and representatives of the developer of 1200 Steven Way, Beverly Hills, California. The pictures were taken by Sheldon Nemoj on November 4, 2015, between approximately 4:00 p.m. and 5:30 p.m. and between 8:00 p.m. and 8:30 p.m.

Story poles connected by a red ribbon had been constructed by the developer on 1200 Steven Way, Beverly Hills, California and were represented to accurately represent the height of the proposed new development. Sheldon Nemoj assumed the height of the story poles correctly represented the height of the new project.

## **ONSITE VISABILITY STUDY OF THE LOS ANGELES BASIN FROM 1211 LAUREL WAY BEVERLY HILLS, CALIFORNIA**

**NOVEMBER 4, 2015**

### Objective of Visibility Study

The developer of 1200 Steven Way, Beverly Hills, California proposes to demolish the existing single story residence at 1200 Steven Way, Beverly Hills, California, raise the grade of the lot by three feet, and construct a

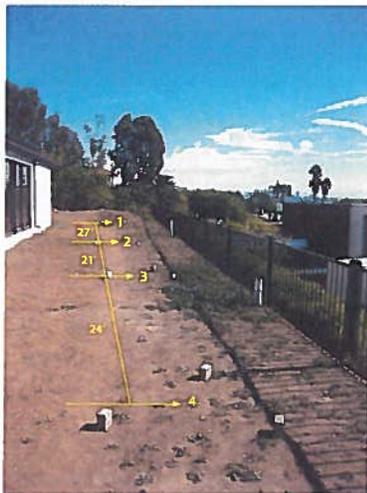
two story single family residence measuring 27 feet in height from the raised grade, or 30 feet in height from the existing grade. The purpose of this Visibility Study is to show the nature

and extent of the loss of view from 1211 Laurel Way, Beverly Hills, California if the currently proposed two story 30 foot high project is built at 1200 Steven Way, Beverly Hills, California.



Close up view from 1211 Laurel Way, Beverly Hills, looking east over 1200 Steven Way, Beverly Hills, showing blocked view area based on height of story poles placed on 1200 Steven Way.

### View Points



### Placement of View Points

Placement of View Points: This picture depicts the view points at which the pictures for this study were taken at a height of 6 feet above grade. View point 1 is the easterly most view point, and view point 4 is the westerly most view point. The distance between view point 1 and 2 is 27 feet. The distance between view point 2 and 3 is 21 feet. The distance between view point 3 and 4 is 24 feet.



View Point 1



View Point 1 with blockage



View Point 2



View Point 2 with blockage



View Point 3



View Point 3 with blockage



View Point 4



View Point 4 with blockage

### Panorama Views

The two pictures below are a panoramic view from 1211 Laurel Way, Beverly Hills, California from the most easterly view to the most westerly view, one taken during the daytime and one taken at night. The view of the central section of the Los Angeles Basin is blocked by a large three story structure immediately south and

adjacent to 1211 Laurel Way, Beverly Hills, California. A substantial portion of the easterly view from 1211 Laurel Way, Beverly Hills, California will be blocked by the proposed project at 1200 Steven Way, Beverly Hills, California. If the project at 1200 Steven Way, Beverly Hills, California is constructed as presently designed, the

view from 1211 Laurel Way, Beverly Hills, California will be reduced to approximately one third of its potential view due to the existing structure to the south and the proposed development at 1200 Steven Way, Beverly Hills, California.



Without Blockage



With Blockage



Without Blockage



With Blockage

## Exhibit B



Ryan Gohlich, AICP, Assistant Director / City Planner  
Community Development Department

April 13, 2016

Mark Egerman  
280 S. Beverly Dr.  
Suite 304  
Beverly Hills, CA 90212

Re: 1200 Steven Way View Preservation

Dear Mr. Egerman:

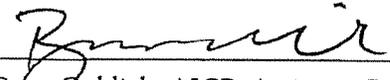
The purpose of this letter is to update you, as legal counsel for the property owners of 1211 Laurel Way, as to the City's decision regarding view preservation pertaining to proposed new construction at 1200 Steven Way.

Pursuant to Beverly Hills Municipal Code Section 10-3-2522, new construction over 14' in height in the Hillside Area is subject to certain restrictions if said new construction over 14' in height would "substantially disrupt a view of the Los Angeles area basin..."

Based on a review of the story poles installed at 1200 Steven Way, as well as a site visit by staff (inclusive of review of view simulations) to your client's property at 1211 Laurel Way, I hereby find that the proposed new construction at 1200 Steven Way will not substantially disrupt a view of the Los Angeles area basin from your client's property, and that construction in excess of 14' is authorized in accordance with the plans submitted to and on file in the Community Development Department.

This is a final determination, which may be appealed directly to the City Council within 14 days of the date of this letter in accordance with the procedures set forth in Article 1 of Chapter 4 of Title 1 of the Beverly Hills Municipal Code. All applicable appeal fees are due at the time of appeal filing. Please feel free to contact me at 310-285-1118 or [rgohlich@beverlyhills.org](mailto:rgohlich@beverlyhills.org) if you have any questions regarding this letter.

Sincerely,

  
\_\_\_\_\_  
Ryan Gohlich, AICP, Assistant Director / City Planner  
Community Development Department

Attachments: 1200 Steven Way View Simulation

## Exhibit C

1 MARC E. ROHATINER (State Bar No. 82709)  
2 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP  
3 11400 West Olympic Boulevard, 9<sup>th</sup> Floor  
4 Los Angeles, California 90064-1582  
5 Telephone: (310) 478-4100  
6 Facsimile: (310) 479-1422  
7 Attorneys for plaintiff, COJO  
8 INVESTMENTS, LLC

Superior Court of California  
County of Los Angeles

NOV 26 2014  
Sheri R. Carter, Executive Officer/Clerk  
By: Nelly Valles Deputy

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES, WEST DISTRICT

10 COJO INVESTMENTS, LLC, a California  
11 limited liability company  
12 Plaintiff,  
13 vs.  
14 ISAAC HAKIM, individually and as  
15 Trustee of the Isaac and Shirley Hakim  
16 Living Trust; SHIRLEY HAKIM,  
17 individually and as Trustee of the Isaac and  
18 Shirley Hakim Living Trust; and DOES 1  
19 through 30, inclusive,  
20 Defendants.

Case No. SC123452  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

Trial Date: None

CASE MANAGEMENT CONFERENCE  
DATE: 3/14/15  
Date  
Ded + O  
830m

21 FIRST CAUSE OF ACTION

22 (Breach of Written Covenants As Against All Defendants)

- 23 1. The true names or capacities, whether individual, corporate, associate,  
24 governmental or otherwise, of defendants sued herein as DOES 1 through 30, inclusive,  
25 are unknown to plaintiffs at the present time and plaintiffs, therefore, sues said defendants  
26 by such fictitious names; plaintiffs after obtaining leave of Court, if necessary, will amend  
27 this complaint to show such true names and capacities when they have ascertained same.  
28 2. Plaintiffs are informed and believe, and thereon allege, that defendants, and  
each of them, designated herein as DOES 1 through 30, inclusive, are responsible in some  
manner for the occurrences and happenings herein alleged, and that plaintiffs' injuries and

1 damages as herein alleged were and are the direct and proximate result of the actions of  
2 said defendants, and each of them. Said defendants are sued as principals or agents,  
3 partners, servants and employees of said principals, or any combination thereof, and all of  
4 the acts performed by them as agents, partners, servants and employees were performed  
5 within the course and scope of their employment, and with the knowledge, consent,  
6 approval and ratification of said principals, and each of them.

7 3. Plaintiffs are informed and believe, and thereon allege, that at all times  
8 mentioned herein, each of the defendants was the agent, employee and partner of each of  
9 the remaining defendants, and was acting within the scope and authority of such agency,  
10 employment and partnership and with the knowledge, consent, approval and ratification of  
11 the remaining defendants, and each of them.

12 4. Whenever in this complaint reference is made to any act of a defendant, such  
13 allegation shall be deemed to mean the acts of the defendants named in the particular cause  
14 of action, and each of them, acting individually, jointly and severally.

15 5. At all times mentioned herein, plaintiff, COJO Investments, LLC  
16 ("Plaintiff"), was and now is a limited liability company organized and existing under the  
17 laws of the State of California and is authorized to and is doing business in Los Angeles  
18 County, California. Since on or about May 24, 2013, Plaintiff has owned a single family  
19 residence located at 1200 Steven Way, Beverly Hills, California 90210 (the "COJO  
20 Property").

21 6. Plaintiff is informed and believes, and thereon alleges that at all times  
22 mentioned herein, defendant, Isaac Hakim, individually and as Trustee of the Isaac and  
23 Shirley Hakim Living Trust and Shirley Hakim, individually and as Trustee of the Isaac  
24 and Shirley Hakim Living Trust (collectively "Defendants"), were and now are the  
25 residents and owners of 1211 Steven Way, Beverly Hills, California 90210, County of Los  
26 Angeles, State of California (the "Hakim Property").

27 ///

28 ///

1           7.     The COJO Property and the Hakim Property are adjoining properties and are  
2 located within the boundaries of Beverly Hill Estates. The COJO Property is upslope from  
3 the Hakim Property.

4           8.     The single family residences in Beverly Hills Estates, including the COJO  
5 Property and the Hakim Property, are governed by a recorded Declaration of  
6 Establishment of Protective Covenants and Restrictions ("Declaration") which was dated  
7 August 12, 1953 and recorded in the Los Angeles County Recorder's Office on September  
8 4, 1953. A true and correct copy of the Declaration is attached hereto as Exhibit "A" and  
9 incorporated herein by reference.

10          9.     The Declaration was Amended on three occasions with the following  
11 recorded documents:

12           a.     A first amendment dated on or about September 29, 1953 (the "First  
13 Amendment"). A true and correct copy of the First Amendment is attached hereto as  
14 Exhibit "B" and incorporated herein by reference.

15           b.     A second amendment dated on or about June 2, 1989 (the "Second  
16 Amendment"). A true and copy of the Second Amendment is attached hereto as Exhibit  
17 "C" and incorporated herein by reference; and,

18           c.     A third amendment dated on or about February 28, 1992 (the "Third  
19 Amendment"). A true and correct copy of the Third Amendment is attached hereto as  
20 Exhibit "D" and incorporated herein by reference.

21          10.    The First Amendment added a new Section 11 to Article I of the Declaration  
22 entitled "Right to Maintain Trees, Hedges, Shrubbery, and Plants Above A Certain  
23 Height." This section provides in pertinent part:

24 ///

25 ///

26 ///

27 ///

28 ///

1 Section 11. Right to Maintain Trees, Hedges,  
2 Shrubbery, and Plants Above A Certain Height.

3 No lot or home owner, or contract purchaser  
4 thereof shall maintain, cause to be maintained, or  
5 permit to be maintained on any such lot, trees,  
6 shrubbery, or planting of such a height as to  
7 wholly or partially block out, interfere with,  
8 screen, or obstruct the view to the east, west,  
9 and south, outward and downward, toward  
10 the City of Los Angeles and of Beverly Hills,  
11 of an from the buildable areas of the next  
12 adjoining owner or owners of lots lying about  
13 the level of the first lot or home owner or  
14 contract purchaser, and should any such lot or  
15 home owner or contract purchaser fail to keep  
16 and maintain such trees, shrubbery, and planting  
17 below such height, the Declarant or its successors  
18 shall have the right to enter upon the property or  
19 such lot or home owner or contract purchaser  
20 thereof to cut down such trees, shrubbery, and  
21 planting to the point that they do not interfere  
22 with, screen out, or obstruct the view of the  
23 next adjoining upper lot owners, and the  
24 expenses thereof shall become due and  
25 payable from such owner and purchaser to  
26 Declarant or its successors within five (5) days  
27 after the written demand therefor.

11. The Third Amendment provides for these same protections in Section 8 of  
Article I entitled "Right to Maintain Trees, Hedges, Shrubbery, and Plants Above A  
Certain Height." This section provides in pertinent part :

18 Section 8. Right to Maintain Trees, Hedges,  
19 Shrubbery, and Plants Above A Certain Height.

20 No lot or home owner, or contract purchaser  
21 thereof shall maintain, cause to be maintained, or  
22 permit to be maintained on any such lot, trees,  
23 shrubbery, or planting of such a height as to  
24 wholly or partially block out, interfere with,  
25 screen, or obstruct the view to the east, west,  
26 and south, outward and downward, toward  
27 the Cities of Los Angeles and of Beverly Hills,  
28 of and from the buildable areas of the next  
adjoining owner or owners of lots lying above  
the level of the first lot or home owner or  
contract purchaser.

The above-referenced sections contained in the First Amendment and the Third  
Amendment are collectively referred to as the "Landscaping Restrictions."

///

1           12.    The Declaration and the amendments were duly recorded and created and  
2 are enforceable covenants.

3           13.    Both as a matter of common law and under the express terms of the  
4 Declaration and the amendments, Plaintiff has the right to enforce the Landscaping  
5 Restrictions against Defendants.

6           14.    Defendants are currently maintaining landscaping on the Hakim Property  
7 that is in violation of the Landscaping Restrictions (the "Non-complying Landscaping")  
8 and as a result, are in breach of the Declaration and the amendments.

9           15.    Despite repeated demand therefor, Defendants have refused to bring the  
10 Non-complying Landscaping into compliance with the Landscaping Restrictions.

11           16.    The maintenance of the Non-complying Landscaping has a very negative  
12 impact on the views from and the value of the COJO Property. By reason of the foregoing,  
13 Plaintiff has sustained general, special, consequential and incidental damages in an amount  
14 not yet ascertained. The exact amount will be established according to proof at time of  
15 trial.

16           17.    Unless Defendants are restrained by this Court from violating the  
17 Landscaping Restrictions and are affirmatively ordered to comply with the Landscaping  
18 Restrictions by removing the Non-complying Landscaping, Plaintiff will suffer great and  
19 irreparable injury.

20           18.    Plaintiff has no plain, speedy or adequate remedy at law for all of the  
21 damages that it will sustain in that by the nature of the injury, a loss of view from real  
22 property, the amount of such damage will be extremely difficult to ascertain

23           WHEREFORE, Plaintiff prays for judgment as follows:

24 First Cause of Action

25           1.    For general, special, consequential and incidental damages according to  
26 proof;

27           2.    For a temporary restraining order, a preliminary injunction and a permanent  
28 injunction both enjoining defendant, their agents, servants and employees, and all persons

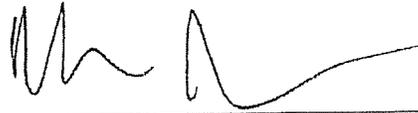
1 acting under, in concert with, or on their behalf from violating the Landscaping  
2 Restrictions and affirmatively ordering Defendants to comply with the Landscaping  
3 Restrictions by removing the Non-complying Landscaping;

4 3. For costs of suit incurred herein; and,

5 4. For such other relief as the Court deems proper and just.

6 DATED: November 26, 2014

WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP

7  
8  
9 By: 

MARC E. ROHATINER

Attorneys for plaintiff, COJO INVESTMENTS,  
LLC

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Exhibit D



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** January 25, 2011

**To:** Honorable Mayor & City Council

**From:** Susan Healy Keene, AICP, Director of Community Development

**Subject:** Trousdale Estates View Restoration

**Attachments:** Draft Ordinance  
View Restoration Process Flow Chart

---

### INTRODUCTION

In response to a request by Trousdale Estates residents, the City Council, on April 7, 2009, directed staff to consider regulations addressing views obstructed by foliage in the Trousdale Estates and Hillside Areas. Staff is introducing a proposed Trousdale Estates view restoration ordinance during a study session to provide an opportunity for Councilmembers to become familiar with the proposed ordinance. Staff took the preliminary step of arranging a meeting on January 7, 2011 for the City Council liaison to the Planning Commission (Vice Mayor Brucker and Councilmember Brien) to review the proposed ordinance with Planning Commissioners Nanette Cole and Craig Corman (the Planning Commission View Restoration Subcommittee).

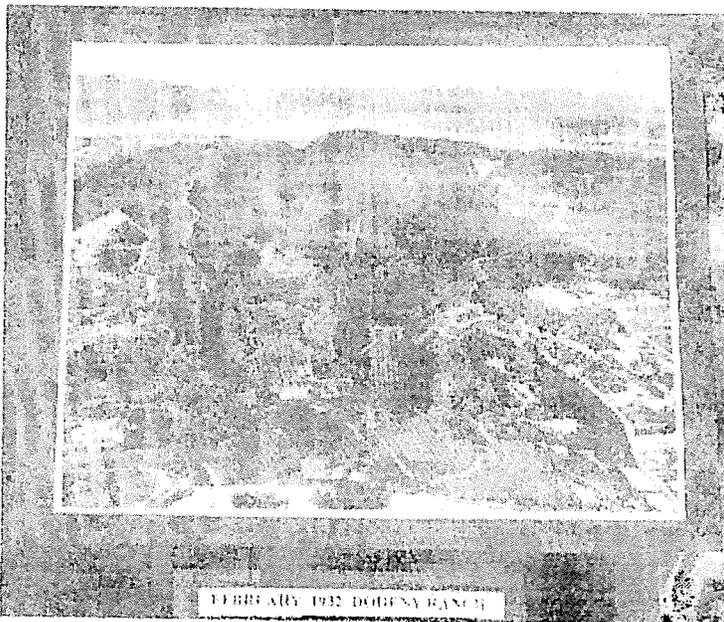
The ordinance was recommended to the City Council by the Planning Commission in December, 2010 and represents a year and a half of work by the Planning Commission and City residents to develop regulations with broad support. There are, however, policy considerations regarding staffing and cost to the City related to enforcement of view restoration determinations that would be made pursuant to the ordinance if an ordinance is adopted. This report introduces this policy issue and staff recommends further, detailed discussion of various enforcement options be directed to an ad hoc committee. Staff is also seeking direction as to any additional information the City Council may require in preparation for a public hearing on the proposed ordinance.

### BACKGROUND

Pursuant to Council's direction, on May 28, 2009, the Planning Commission began a discussion of view preservation in the hillside areas that ultimately included seven public meetings with

dozens of speakers, eight Planning Commission subcommittee meetings and two bus tours. Early in the review process, the Planning Commission realized the complexity of developing view restoration standards and determined that the City's two hillside areas, the Hillside Area and Trousdale Estates, may require different standards due to their different characteristics. As a result, the Commission decided to focus its view restoration discussion on Trousdale Estates as a pilot area to develop view restoration standards that could also serve as a model for the larger and more complex Hillside Area.

The City Council was advised by the Community Development Department of the change in scope of the view restoration ordinance in a staff report presented at the City Council's November 30, 2010 study session. In addition to narrowing the focus of the view restoration discussion to Trousdale, the Planning Commission, in response to public comment, clarified that the present discussion would address only foliage and trees on private property, not City trees and foliage that may be blocking private views.



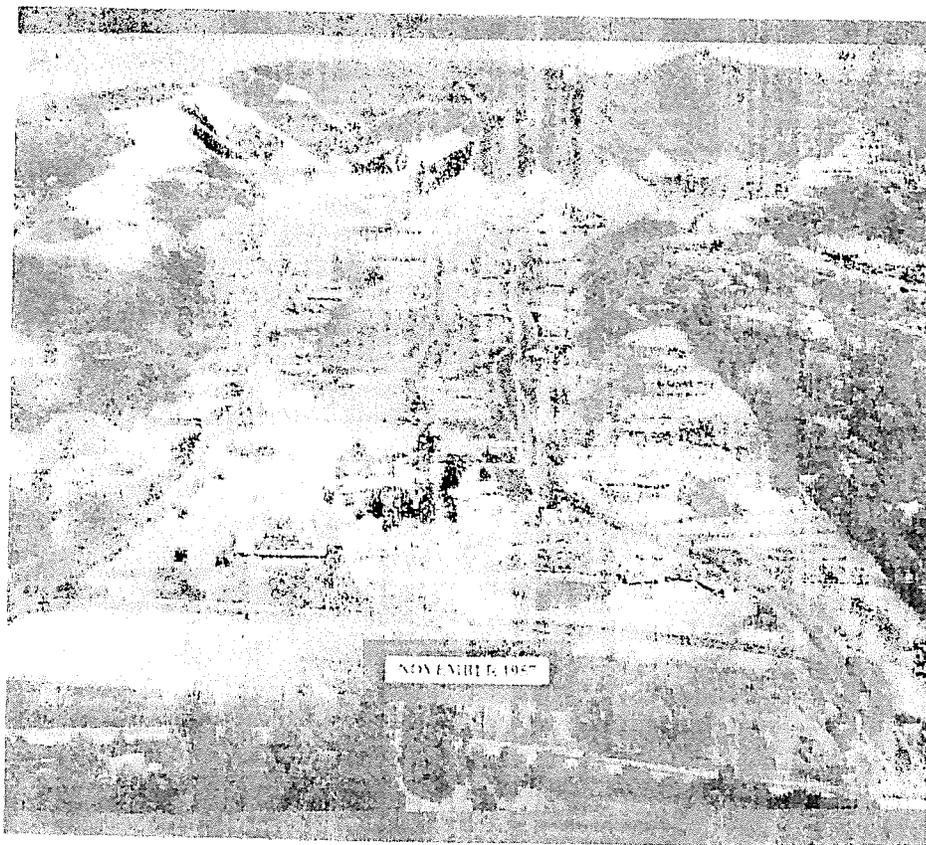
The City of Beverly Hills annexed Trousdale Estates' 402 acres on July 26, 1955. Trousdale Estates required major grading to create 596 single-family residential lots with flat building pads and a majority of lots with views (see photo below). The 596 lots in Trousdale represent ten percent (10%) of the single-family homes in the City and almost four percent (4%) of total housing units in the City. This is compared with the 984 lots in the Hillside Area, developed individually or in small tracts over a period of time with a variety of building pad and view situations. Trousdale has a history of view preservation standards since such standards

were included in many, if not all, of the Codes, Covenants and Restrictions documents (CC&Rs), that were placed on the Trousdale tracts by the developer, Paul W. Trousdale, beginning in 1955. These CC&Rs regulated development in Trousdale Estates including height, density, setbacks and maintenance of views:

"No hedge or hedgerow, or wall or fence or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot or lots in said tract." (language from a set of Trousdale CC&Rs)

Although the CC&Rs had expired by 2000, much of their content and intent was incorporated by the City Council into the City's Zoning Code in 1985. One regulation that was not incorporated into the City's Codes was a standard preventing obstruction of views by foliage. Since the CC&Rs expired, there have been no regulations in Trousdale Estates requiring the maintenance of foliage such that it does not obstruct a view; however, the City's Zoning Code does include standards that address the obstruction of views by structures in both the Hillside Area and

Trousdale Estates. In the Hillside area there is a view preservation review that applies to new development and in Trousdale, the maximum fourteen-foot height limit for structures essentially prevents structures from obstructing views.



Trousdale Estates Graded 1957

### DISCUSSION

The City's goal in developing a view restoration ordinance, as expressed by the Planning Commission in the attached ordinance in the "Purpose and Intent" section (page 2 of the attached ordinance) and reinforced in the "Required Findings" section (page 10 of the attached ordinance), is as follows:

Restore and preserve certain views from substantial disruption by the growth of privately owned trees and foliage while also providing for the following important City values:

- Residential privacy and security;
- Garden quality of the City;
- Safety and stability of the hillsides; and,
- Trees and vegetation in the City as an integral part of a sustainable environment, including energy efficiency.

This goal would be accomplished by establishing a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views with an emphasis on the following key issues:

- early neighbor resolution of view restoration complaints;
- an understanding that there should be no expectation that any particular view or views would be restored or preserved;
- outreach and education so residents consider the potential to block neighbors' views before planting foliage and when maintaining foliage; and,
- development of a view restoration process that would not result in any significant additional cost to the City.

### View Restoration Ordinance Proposed by the Planning Commission

View restoration ordinances typically have three main components:

1. Regulations: establishment of a right to a view, definition of a view, criteria to determine views that merit protection, and findings to determine when a protected view has been disrupted;
2. Review Process: development of a process to administer the above regulations; and,
3. Enforcement: direction as to how decisions resulting from the process shall be enforced.

Below is a summary of the three components of the view restoration ordinance proposed by the Planning Commission.

#### 1. Regulations

The ordinance defines key terms and certain defined terms used in this report are included below for reference:

##### A. Definitions

**Foliage:** A general term used to refer to an aggregation of plants and trees including hedges.

**View Owner:** Any owner or owners of real property in Trousdale Estates that has a protectable view, and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view.

The distance at which foliage could be considered to be blocking a view was the subject of much public discussion and 500' represents a consensus that is also consistent with a number of other cities' view preservation ordinances.

**Foliage Owner:** An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this Article and which property is within five hundred feet (500') of a view owner's property.

**Protectable View:** A protectable view may include any view of the Los Angeles area basin from a viewing area as defined in this section. The view of the Los Angeles area basin may include but is not limited to city lights (Beverly Hills and other cities), ocean, and horizon. The term "protectable view" does not mean an unobstructed panorama of all or any of the above. A protectable view shall not include views of vacant land that is developable under the Beverly Hills Municipal Code.

This definition is, in part, based on the existing view preservation regulations for the Hillside Area of the City which specifies a view as a view of the Los Angeles area basin from the level pad which contains the primary residential building on a property. The definition here of "protectable view" and the definition of view in the existing Hillside Area development standards also differ in that the Hillside Area view is a view within 300' (not 500') of the subject property.

**Viewing Area:** An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. A viewing area may be a room of the primary residential structure at level finished grade, or a patio, deck or landscaped area at level finished grade that does not extend beyond the level pad. There may be one or more viewing areas on a property. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36") above the finished grade of the level pad.

There was a great deal of discussion as to whether this definition was too broad as it allows the viewing area to be from a number of locations on the property rather than requiring the applicant or staff to choose one view to be considered. In addition, it is noted that for the purposes of this Trousdale view restoration section, the point at which the protectable view is determined (36" above finished grade; approximately a seated position) is different than the point at which view is determined under the existing Hillside Area view preservation code section in which the view is determined from a point six feet (6') above the finished grade of the pad (approximately a standing position at eye-level). A majority of the Planning Commission agreed that more flexibility to determine the viewing area was warranted because of the limits on the definition of protectable view (Los Angeles Area basin only) and the further limits imposed by the required findings for a view restoration permit (Page 10 of the ordinance, "J Required Findings").

**Protected View:** A protectable view that has been determined by the reviewing authority to merit restoration.

**Restorative Action:** Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

**View Restoration Guidelines:** Guidelines for implementation of the ordinance to be prepared by the Community Development Department, adopted by the Planning Commission, and made available to the public.