



View Rights Under Assault In Palisades Neighborhoods

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Pacific Palisades is a special place, tucked between the ocean and mountains, where many homeowners enjoy sweeping views of Santa Monica Bay, the shoreline, canyons and dramatic, undeveloped mountain landscapes. Anthony Marguleas, president of Amalfi Estates on Sunset, has commented that a good ocean view can increase a property's value by \$500,000 or more, depending on the quality or type of view.



The Zabrocky family, who have lived on Turquesa Lane in Marquez Knolls since 1993, stand in front of the McAdams residence, which is now partially blocking their ocean view.

Several Palisades neighborhoods have special view sections, such as the Asilomar/El Medio bluffs area, Sunset Mesa, Castellemmare ("Castle by the Sea") and parts of Marquez Knolls. However, many homeowners are finding that their view rights are being attacked by new home construction and major remodeling projects.

Many people who purchase homes with views believe that their view rights are protected as a matter of law. They believe that neighboring property owners cannot construct an addition or allow their landscaping to grow that would impair their views. However, currently there is no federal, state, or local law that generally protects the treasured view rights of Palisades property owners. Although City Councilman Bill Rosendahl announced a year ago that Los Angeles should have a view protection ordinance, arguing that municipalities such as Rancho Palos Verdes, Sausalito and Tiburon have had view rights ordinances for years. But at this time, there appear to be strong political forces against enacting a view rights law in Los Angeles.

In the absence of government protection, American 'common law' provides that as a general rule, a landowner has no natural right to air, light, or an unobstructed view. The courts have generally refused to tamper with the American 'common law' view on the grounds that it is 'solely within the province of the legislature to gauge the relative importance of social policies and decide whether to effect a change in the law.' (Sher v. Leiderman (1986) 181 Cal.App.3d 867, 878.)

Without governmental or common-law protection, many homeowners believe that their CC&Rs protect their view rights because they contain express language concerning view rights. A reasonable layperson's reading of many of the CC&Rs in effect in Sunset Mesa, Castellammare, Marquez Knolls and elsewhere, would support that interpretation. However, the law regarding CC&Rs is not as clear as many homeowners assume. When disputes have erupted between property owners, the courts generally struggled how to apply the CC&Rs. The California Supreme Court has even stated that CC&R-related law is the "the most complex and archaic body of American property law remaining in the twentieth century." (Citizens for Covenant Compliance v. Anderson, 1996, 12 Cal.4th 345, 348 (citation omitted).) Law professor and author Edward Rabin uses stronger language: 'The law in this area is an unspeakable quagmire.'

Currently, there are at least five separate lawsuits involving disputes related to view rights and CC&Rs in the Palisades. The view rights provided by the CC&Rs for Marquez Knolls has been the subject of two published Court of Appeal decisions and there is currently another appeal pending regarding those CC&Rs. The Court of Appeal's decision in the pending appeal in the Zabrocky v. McAdams case could impact all of the pending litigation.

The Zabrocky v. McAdams case was brought in 2001 by John Zabrocky and Jalene Zabrocky, homeowners in the Marquez Knolls area, to enforce the CC&Rs, which included the following provision: "No structures [shall be] erected that may at present or in the future obstruct the view from any other lot " (Marquez Knolls CC&Rs, No. 11). Specifically at issue was a neighbor's planned 2,100-sq.ft. addition to their existing house which, according to the Zabrockys, obstructed and detracted from their view of the ocean and bluffs. The neighbors were Lloyd McAdams and Heather Baines.

One of the great benefits of the Marquez Knolls area is the incredible ocean views that are provided to most

homes. The CC&Rs that the developers (the Lachman brothers) recorded in 1963, before they began selling the individual lots, were expressly intended to provide view protection rights. Nevertheless, despite what looks like clear language prohibiting obstruction of views, the trial court (Santa Monica Superior Court) and the Court of Appeal struggled with the interpretation of the Marquez Knolls CC&Rs.

The first trial judge in *Zabrucky v. McAdams* ruled that it was impractical to interpret the CC&Rs as precluding the defendants' addition because almost every house in the Marquez Knolls area at least partially blocks another house's ocean view. The Zabruckys appealed that decision, which appeal was supported by the Marquez Knolls Property Owners Association through an amicus curie (friend of the court) brief.

In 2005, the Court of Appeal, in a landmark decision, reversed the trial court, ruling that the CC&Rs did restrict additions to houses that obstruct views. But the Court also added the word 'unreasonably' to paragraph 11 in the CC&R's (cited above). The Court then reversed the case back to the Los Angeles Superior Court for retrial to determine whether the defendants' addition would unreasonably obstruct the Zabruckys' view.

In 2006, the *Zabrucky v. McAdams* case was retried before a different judge in the West Los Angeles courthouse. According to an expert hired by McAdams, the loss of a view of the bluffs was deemed to have a 10 percent impact on the overall view, whereas the experts for Zabrucky testified to a much greater impact, between one-third and one-half of the ocean view.

Many people would think even the 10 percent loss was an 'unreasonable' obstruction. But the trial court judge found against the Zabruckys, concluding that the defendants' obstruction of the Zabruckys' views was 'minimal.' The judge's finding was based on his conclusion that the addition only affected their view of the meeting of the Palisades bluffs and the ocean, and not of the ocean or the 'Queen's Necklace' (the string of lights along PCH).

Apparently, the trial judge believed mixed views of land and water are entitled to less protection than pure 'ocean' views. Many Pacific Palisades homeowners are surprised--even shocked--by that interpretation because one of the main aesthetic features of the topography of the Palisades is the mix of ocean, beach, bluffs, canyons and mountains.

The Zabruckys are appealing the trial judge's decision, having filed their opening brief on March. However, this time the Marquez Knolls Property Owners Association declined to file an amicus curie brief. As a result, 18 Marquez Knolls property owners on their own had to file a brief on March 23 in support of an interpretation of the CC&RS that would protect and enforce view rights. The McAdams brief is due by June 4. The oral argument will probably be scheduled for fall, and decisions are usually within 90 days of argument.

The Zabruckys' appeal is basically asking the court to provide some guidance as to what 'reasonable' means in the contest of the view rights provided for by the CC&Rs. More specifically, what does 'unreasonably obstruct the view from any other lot' mean? The Zabruckys also argue that the expansion of a residence beyond its preexisting footprint in a manner that 'obstructs' another's views should be deemed unreasonable.

Elsewhere in the Palisades, entire neighborhoods are in litigation over the view rights provided by their CC&Rs.

In Sunset Mesa, a number of ocean-view property owners are seeking to have the CC&Rs there declared to be unenforceable so they can expand their homes beyond the original footprint, to the detriment of their neighbors' views.

In Castellammare and Marquez Knolls, lawsuits are pending to permit or halt construction of houses that threaten to reduce views from neighboring houses.

View rights are particularly in danger because many of the older homes, built in the 1960s, are targets for expansion, even if at the expense of other people's view enjoyment. If the Zabruckys lose their battle, developers and others seeking to build bigger structures will surely use that decision to support their attack on neighboring homeowners' view rights. The final outcome of the Zabrucky case may affect the character of the Palisades for decades to come.

Those who relied on the view protection rights provided by the CC&Rs in purchasing their property and paying a premium for their views should review their legal rights in light of the challenges that the Zabruckys and others are currently battling. Action in support of proponents for view rights, such as the amicus briefs filed in the pending Zabrucky appeal, may help turn the tide in favor of protecting view rights. As to your individual rights, the advice of an attorney specializing in this area is always recommended and crucial.

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