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File No.: 39182-002

February 10, 2021

VIA E-MAIL & U.S. MAIL

City Clerk
City of Coachella
1515 6th Street
Coachella, CA 92236
cityclerk@coachella.org

Re: AHD Limited Partnership -- Objection to Adoption of Resolution of Necessity Hearing Scheduled for February 10, 2021

Dear City Clerk:

On behalf of AHD Limited Partnership, the property owner, we object to the City's adoption of a proposed Resolution of Necessity Hearing scheduled for hearing February 10, 2021.

The property that the City seeks to condemn is approximately 14.1 acres located south of Avenue 50 and adjacent to the 86-S Expressway.

Our client acquired this property for development. Given the property's location and freeway proximity and market opportunity for a freeway-oriented center, our client commenced the development process. Absent the City's Project, our client's development is consistent with the City's own goals for the area.

Over the ensuing years, our client invested significant time and resources in moving the property toward development. Multiple discussions and meetings with the City and its staff took place. Staff supported the project. The project went through preapplication review. Our client submitted its development project to the Planning Commission. As set forth in the staff report, the owner proposed "a viable development for the property." As a result, the Planning Commission approved a zone change, variance and conditional use permit.

Subsequently, our client went forward to City Council hearing for approval. As recognized by staff, the project "would appeal to a variety of clientele." It was well-designed and well laid out. The City recognized that the property owner had development experience in other locations.

Well aware of the desirability of our client's development project, the City Council began to raise faux concerns – concerns to delay further approval. At the same time the City was seeking to delay our client's project, the City was working with its acquisition team to acquire the property for this grade separation. The City wanted to delay the property owner's project because the City planned to take the property away from the owner.

The City's conduct in delaying project development while pushing forward on full-take acquisition has prevented development. The City is using its value-depressing, project-caused delay to avoid making a valid appraisal and offer.

The City offer does not satisfy the Government Code. The appraisal on which the offer is based *includes* the negative influence of the project. The City's "appraisal" values the property as blighted and fails to eliminate the project impact. The appraisal references that the property requires a "zone change." Absent the project, the property would not be zoned agricultural and the zone would already be changed. Further, as shown by the numerous documents and studies submitted to the Planning Commission and City Council, the property was a viable development. The City Council sought to and did stall the zone change and project approvals so it could continue pursuit of this condemnation process. To include the negative impacts of the project in the offer violates the Government Code section 7267.2. The City's appraisal was required to *exclude* the negative impacts of the project sought to be taken; it did not. Such inclusion of project blight is improper and renders the appraisal and offer invalid. (See *City of San Diego v. Rancho Penasquitos Partnership* (2003) 105 Cal.App.4th 1013, 1033-1034 [inclusion of project influenced zoning by City appraiser improper].)

The City's offer is likewise improper as it is based on outdated sales that do not reflect the current and increased market value of the property. The City's offer relies on sales that are a year and a half to two and half years old. The City's appraisal fails to appraise fair *market* value. Further, contrary to the Government Code requirements, there is no evidence of an "approved" appraisal on which the offer must be based. The City thus fails to satisfy the requirements of the Government Code 7267.2 specifically and generally.

The City has not designed its project, as it relates to the subject property, to cause the least private injury and greatest public good. The City can meet the same public good without taking the entire property. The City inappropriately located/designed the offramp to take more property than necessary to meet stated project purpose – the Avenue 50 interchange. The same traffic function can be served through an offramp system that consumes less of the subject property – for example, as depicted in Alternative 8. The City cannot take more land than needed to avoid compensating for damages, which is what its proposed action would do.

The City's proposed project does not need to take the entire property. The City's project documents confirm that the entire property will not be used for the project. In reality, the City seeks to acquire excess land for future speculation and/or assemblage with other private property, contrary to the Project use ostensibly identified in the City's proposed resolution. The City cannot secretly condemn land unnecessary for the stated purpose and then put the property to a different use, whether that be conveying the land to an adjoining owner or land banking the excess remaining property for future speculation. The City cannot condemn private property, in whole or in part, for a disguised undisclosed "public use." (*City of Stockton v. Marina Towers, LLC* (2009) 171 Cal.App.4th 93, 113-114.)

The City is rubberstamping a decision already made. The City has entered into an agreement with Caltrans committing to this project well-before this hearing. The City has divested itself of discretion to do anything but condemn rendering this decision an abuse of discretion.

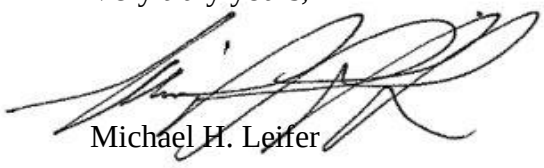
The City's process also violates the property owner's due process rights. The City is required to make findings *after* deliberation on the evidence and *after* providing the owner notice "an opportunity to be heard on *all* matters that are the subject of the resolution of necessity." (*City of Stockton v. Marina Towers, LLC* (2009) 171 Cal.App.3d 93, 109.) The City's notice provides a 250-word written comment or 3-minute public comment limit. That limit is arbitrary. The owner is specifically being targeted to have its property condemned. Applying the City Council's uniform general time limit for general-public comments directly conflicts and unreasonably deprives the property owner of the right to be heard. Indeed, the 250-word limit means that the City has arbitrarily cutoff and not considered most of this letter. The owner has a constitutional and statutory right to be heard. Such right requires the City to provide the owner a *meaningful* opportunity to be heard. A perfunctory, rubber stamp hearing, with an arbitrary, de minimus word/time limit, is no hearing at all. (*See Redevelopment Agency v. Norm's Slauson* (1986) 173 Cal.App.3d 1121 [rubber-stamp hearing is an arbitrary hearing entitled to no deference].) If anything, the City's arbitrary word/time restriction confirms that this hearing is nothing more than perfunctory and an abuse of discretion.

Further, the City provided less than 15-days' notice of this hearing. While working on this project for years, the City gives the property owner little to no time to object to the proposed course of action. It fails to provide the property owner a fair hearing. It fails to provide the owner a reasonable time to gather relevant documents and facts that demonstrate the proposed action is invalid. The property owner therefore objects to any assertion by the City that all

arguments/documents must be presented on the matters noticed as there has been a failure to provide fair notice.[1]

Based on the foregoing, the property owner objects to the City's proposed adoption of the purported resolution of necessity.

Very truly yours,



Michael H. Leifer

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cc: Michael I. Kehoe

[1] The property owner objects to any so-called administrative record. The City has provided only a one-page document giving less than 15-days' notice before this hearing. The only "record" is, thus, a single-page notice. The City's notice provides no evidence for the required findings or a meaningful hearing. To the extent the City claims the "record" is something more or different than the notice, it has not been identified or provided and, as such, is not part of any "record" presented to the Council. If, on the other hand, the City claims the "record" is a compilation of documents not presented at this hearing and of which the owner has not been provided any notice, such compilation is arbitrary, capricious and itself deprives the property owner of due process. This is particularly true as the property owner made a request for public records in advance of this hearing to which the City has failed to even respond, much less respond with responsive documents, within the legally required time. The property owner further objects on these grounds.