

November 25, 2020

File Number: 0794-219143

City of Santa Ana  
20 Civic Center Plaza, 8th Floor  
Santa Ana, CA 92702  
Attn: Daisy Gomez, Clerk of the Council

Re: Objection to Adoption of Resolution of Necessity to Acquisition of Certain Real Property Identified as Parcel Nos. 016-031-54 and 016-031-38, Located at 2301 South Main Street, Santa Ana, CA

Dear Ms. Gomez:

This firm represents Wells Fargo Bank, N.A. ("Wells Fargo"), owner of the above referenced property (the "Subject Property"). We have received notice of the City of Santa Ana's (the "City") intent to adopt a resolution of necessity authorizing the taking of certain portions of the Subject Property by condemnation for the City's proposed Warner Avenue Widening from Main Street to Grand Avenue (the "Project"). Based upon this notice, the City's hearing is scheduled for December 1, 2020, in Santa Ana, California.

Wells Fargo and the City have been working together in a mutually cooperative manner concerning the Project for several years now. And while Wells Fargo appreciates the City's cooperation, Wells Fargo objects to the proposed adoption of the resolution of necessity. This written objection is being provided in lieu of our personally appearing at the hearing, and we request that this letter be included as part of the formal record on that agenda item.

Well Fargo objects to the adoption of the resolution of necessity on each of the following specific grounds:

1. **The City Failed To Extend A Legitimate Pre-Condemnation Offer Pursuant To Government Code Section 7267.2.**

Government Code section 7267.2 requires that the City make a legitimate offer of just compensation based upon an approved appraisal prior to initiating condemnation proceedings. A written statement and summary basis for the offer must include sufficient details to indicate clearly the basis for the offer. (Gov. Code, § 7267.2, subd. (b).) These provisions are not merely discretionary guidelines, but mandatory requirements which must be observed by any public entity planning to initiate eminent domain proceedings through a resolution of necessity. *City of San Jose v. Great Oaks Water Company* (1987) 192 Cal.App.3d 1005, 1013.

One of the primary requirements of Section 7267.2 is that the public entity must establish the just compensation for the property to be taken. Concerning just compensation, "[t]he owner is to be put in as good a position pecuniarily as he would have occupied if his property had not



been taken from him." People ex rel Dep't Pub. Works v. Lynbar, Inc. (1967) 253 Cal.App.2d 870, 880.

In this instance, the City's pre-condemnation offer is invalid insofar as it was based on an artificially low valuation of the property interests to be acquired from the Subject Property. The City's offer, dated July 9, 2020, was for the amount of \$354,000. But there are several inadequacies in that offer.

First, the offer is woefully inadequate in recognizing the curative measures that must be made to the Subject Property to mitigate damages caused by the Project. The only "cost to cure" element in the City's offer is for the restriping of the parking lot at a cost of \$13,225. Wells Fargo and the City have been working together for several years now regarding what curative measures are necessary, and through this process the City is aware that there are far more curative measures required. For example, because the Project entails the permanent closure of the driveway on Warner Avenue closest to the intersection, the Drive-Through ATMs will need to be relocated to another portion of the Subject Property. This is necessary because currently the Drive-Through ATMs are located in a manner such that vehicles using those Drive-Through ATMs exit the Subject Property via the driveway that will be permanently closed and will have no safe way to exit unless those Drive-Through ATMs are relocated. Relatedly, the canopies covering the Drive-Through ATMs will need to be relocated. Further, hardscaping and landscaping will need to be done as part of this redesign, the cost of which have not been included in the City's offer.

Still another large omission from the City's offer is the cost associated with the relocation of the electrical transformer that is necessitated by the Project. Southern California Edison will do this relocation work, and has informed Wells Fargo that it, as owner of the Subject Property, must contract with and pay Southern California Edison for the cost of this transformer relocation. The cost related to the relocation of the transformer is clearly caused by the Project, yet the City's offer does not reflect any compensation for this cost. Wells Fargo has brought this issue to the attention of the City, but the City has not increased its offer to account for this additional cost.

## **2. The City Failed To Make All Reasonable Efforts To Acquire The Subject Property Pursuant To Government Code Section 7267.1.**

Government Code section 7267.1 imposes an affirmative obligation on a public entity seeking to condemn property to seek to acquire that property first by negotiation. Johnston v. Sonoma County Agricultural Preservation & Open Space Dist. (2002) 100 Cal.App.4th 973, 988. "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation." (Gov. Code, § 7267.1, subd. (a).) The duty to negotiate is designed to avoid litigation.

"In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the



greatest extent practicable, make every reasonable effort to acquire property by negotiation." (8 Witkin, Summary of Cal. Law (9th ed. 2004) Const. Law, § 972.)

As noted above, the City's initial offer was based on an offer of compensation that neglected to account for curative measures that must be made to the Subject Property as a result of the Project. Wells Fargo brought the issue to the City's attention, but the City has failed to make a revised and proper offer sufficient to place Wells Fargo in the same pecuniary position it would be if a portion of the Subject Property were not taken by the City via eminent domain proceedings.

As the City's offer was predicated upon an artificially low valuation of the interests to be acquired from the Subject Property and the curative measures that must be made to the Subject Property, that offer was inadequate as a matter of law and would not constitute an effort to acquire the property interests "expeditiously and by negotiation" as required by California Government Code section 7267.1. (Gov. Code, § 7267.1.)

3. **The City's Proposed Project Is Not Planned Or Located In The Manner That Will Be Most Compatible With The Greatest Public Good and The Least Private Injury.**

One of the necessity components that must be analyzed when considering the adoption of a resolution to authorize the taking of private property is whether the proposed project for which the property is sought to be taken is planned or located in a manner that is most compatible with the greatest public good and causes the least private injury. (Code Civ. Proc., § 1240.030, subd. (b).) In the absence of substantial evidence supporting the City's determination as to the planning and location of the proposed project, the resolution of necessity is invalid.

In this case, the Project violates the "least private injury" requirement. Most notably, the Project calls for the permanent closure of the driveway closest to the intersection on Warner Avenue. It is the closure of this driveway that requires Wells Fargo to completely reconfigure the Subject Property by, among other things, changing the location of the Drive-Through ATMs, changing locations of the canopies covering the Drive-Through ATMs, redesigning on-site traffic flow, changing locations of driveways, relocating the electrical transformer and repaving/restriping the parking lot. Wells Fargo has repeatedly explained to the City the problems associated with closing the driveway on Warner Avenue and urged the City to redesign the Project in a manner that would not require the closure of the driveway. Despite this, the City has insisted on proceeding with the Project that includes the permanent closure of the driveway on Warner Avenue, causing great injury to Wells Fargo in the process.

To be sure, less injurious alternatives to the Project are available. The simplest solution would be to redesign the Project so that the driveway on Warner Avenue would not need to be closed. This solution has been rejected by the City. In short, the Project was not designed in a way that is most compatible with the greatest public good and least private injury.



4. **The Hearing On The Proposed Resolution of Necessity Is Inappropriate Because The Agency Is Already Irrevocably Committed To Adopting The Resolution Of Necessity**

Wells Fargo is concerned that no meaningful consideration of its objections and concerns will take place at the hearing of the resolution of necessity concerning the proposed Project given that the City appears to have already committed itself to acquiring the Subject Property.

Redevelopment Agency v. Norm's Slauson (1991) 173 Cal.App.3d 1121, addressed such a situation. In that case, the Redevelopment Agency of the City of Huntington Park brought an action in eminent domain to take a major portion of a restaurant's parking lot. The redevelopment agency's attempt to take the property in question was preceded by an agreement between the agency and a developer by which the agency agreed to acquire the property for transfer to the developer and the developer would build a condominium project thereon. The Court of Appeal started its analysis with an explanation of the purpose of a hearing on a resolution of necessity:

"Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure, section 1240.030." Id. at pp. 1124-25. In affirming the trial court's determination that the agency had no right to take the property, the court concluded that: "[i]t seems clear that the hearing which led to the adoption of the resolution of necessity was a sham and the Agency's policy-making board simply 'rubber stamped' a predetermined result." Id. at p. 1127. The Court also stated that: "By the time the agency actually conducted a hearing to determine the 'necessity' for taking the property in question, it had, by virtue of its contract with the developer and issuance of revenue bonds, irrevocably committed itself to take the property in question, regardless of any evidence that might be presented at the hearing." Id.

The concerns raised by the court in Norm's Slauson apply with equal vigor here as the City has irrevocably committed to acquire the Subject Property in order to proceed with the Project. Presumably, numerous contracts have been executed with various third party vendors and contractors and the City will simply be "rubber stamping" a predetermined result. Accordingly, Wells Fargo is concerned that despite what objections or evidence may be presented at the December 1, 2020 hearing on the resolution of necessity for the proposed Project, the hearing will be nothing more than a procedural technicality due to the fact that the City has irrevocably committed itself to take the Subject Property.

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Based upon the foregoing objections, Wells Fargo respectfully requests that the City not adopt the resolution or, at a minimum, continue the hearing on this agenda item until such time as the objections are addressed. Please contact me if the City has any questions or comments concerning this letter.

Very truly yours,

*Sean P. O'Connor*

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