

ATTACHMENT C

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A PROFESSIONAL CORPORATION

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March 21, 2013

Certified Mail, Return Receipt Requested

San Mateo County Board of Supervisors
455 County Center, 4th Floor
Redwood City, CA 94063-1663
Attention: Alycia Moulton

Re: Property Acquisition – Vacant Property, Bayshore Highway, Burlingame, CA
(APN 026-142-020) - State Parcel No. 62635
Resolution of Necessity for Acquisition of Property by Eminent Domain
Owners: Robert Paul Wadell, Jr. and Angela Kathie Bramble

To The Honorable San Mateo County Board of Supervisors:

This San Mateo County Board of Supervisors ("Board") has on its agenda for May 7, 2013, a hearing to consider adoption of a Resolution of Necessity for the acquisition of the above-entitled property ("the subject property") by eminent domain. This office represents Robert Paul Wadell, Jr. and Angela Kathie Bramble the owners of the property ("the owner or owners").

We hereby submit this letter on behalf of the owners in order to object to the Board's proposed action on several grounds, including (1) that adoption of the resolution would be in violation of law because the Board has failed to comply with applicable statutory procedures which are prerequisites to such a resolution, including the requirements of the California Environmental Quality Act ("CEQA"); and (2) the failure to furnish a proper Appraisal Summary Statement; and (3) the failure to conform to procedural requirements; and (4) the failure to make a proper Government Code 7267.2 offer; and (5) the failure to provide a form of the proposed resolution which effectively precludes any comment, objection, etc., by the owners, exacerbated by the inability to attend a meeting without sufficient notice; and (6) the Notice fails to satisfy the time requirements of CCP § 1245.235.

A. THE BOARD MAY NOT ADOPT A RESOLUTION OF NECESSITY BECAUSE IT HAS FAILED TO COMPLY WITH STATUTORY PROCEDURES

Sections 1245.230 et. seq., of the Code of Civil Procedure and Government Code Sections 7267.1 and 7267.2 set forth the procedures that must be followed prior to adoption of a resolution of necessity by a public entity. The Board has failed to follow those procedures.

Under Government Code Section 7267.2, prior to adopting a resolution of necessity, the condemnor must make an offer to the owners of interests in the subject property to acquire the property, which must contain a written statement of, and summary of the basis for, the amount it

has established as just compensation. The Board has failed to make a bona fide offer under Government Code Section 7267.2 to the owners.

Case law has made it clear that the provisions of Section 7267.2 "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 Co., (1987) 192 Cal.App.3d 1005, 237 Cal.Rptr. 845, 849. Adoption of the proposed resolution is therefore premature until the Board complies with these requirements.

The Board has not made specific findings as required by law to establish the necessity of eminent domain proceedings, that the property in question is necessary for a proposed project, and that the project is planned or located in a manner that will be most compatible with the greatest public good and least private injury. Nor is there any credible evidence to support such conclusions.

The Board action in proceeding to consider the proposed resolution without complying with these mandatory requirements, among others, reveals that the true intent behind this proposed action is to compel the owners to convey their property interest to the Board at a lesser value.

B. THE BOARD CANNOT ADOPT THE RESOLUTION UNTIL THE REQUIREMENTS OF CEQA HAVE BEEN MET

Similarly, the proposed resolution cannot validly be adopted until all of the requirements of CEQA and the State CEQA Guidelines have been met. California courts have established that public acquisition of property is a "project" within the meaning of CEQA, and therefore subject to all the requirements of CEQA and the State CEQA Guidelines. Nevertheless, the Board will be in clear violation of CEQA, as well as other provisions of law.

The legislative committee comment to Code of Civil Procedure Section 1240.030 provides in pertinent part as follows:

"Subdivision (a) [of the statute] prevents the taking of the property by eminent domain unless the public interest and necessity require the project. 'Public interest and necessity' include all aspects of the public good including but not limited to social, economic, environmental and aesthetic considerations
..."

The San Jose, supra, case stated further at page 1017 as follows:

"We conclude that the City violated CEQA by failing to make a determination whether a subsequent or supplemental EIR was required by the redesign of the project, or whether an addendum to the final EIR would suffice. There should be an opportunity for public hearings and comments prior to this determination. If at that time it does appear that the changes in the project design are sufficiently substantial to require revisions of the EIR - as appears to be the case from the evidence in the record - then a subsequent or

supplemental EIR will be required."

The Board has failed to comply with the requirements of CEQA and has not addressed the significant effects on the environment which may be caused by the Board's proposed project.

Adoption of the proposed resolution is, therefore, premature until the Board complies with these requirements.

**C. THE BOARD'S FAILURE TO SATISFY PUBLIC INTEREST AND NECESSITY
AND OTHER REQUIREMENTS OF THE EMINENT DOMAIN LAW
PRECLUDES THE ADOPTION OF THE RESOLUTION**

1. The proposed project is not planned or located in a manner that will be the most compatible with the greatest public good and least private injury. The Board has not properly or adequately evaluated or considered the private injury which will occur to the owners from the project, and has not weighed or balanced other alternatives which would lessen the private injury while permitting the proposed project.

2. The acquisition of the property as proposed is not necessary for the project.

3. The vote by the Board in deciding whether to adopt the Resolution of Necessity will be affected by a conflict of interest or other improper influence.

4. The proposed acquisition will not be used for the stated purpose within the time period required by law.

5. The proposed taking is of excess property not authorized by law.

6. The proposed taking is for a use not authorized by law.

7. The condemnor lacks the power to take the affected properties by eminent domain.

8. The proposed acquisition is not for a public use.

9. The Board is not authorized to acquire the properties for the stated use.

10. The property being acquired, and the totality thereof, is not necessary for the project.

11. Portions of the proposed taking are already devoted to an existing public use, and the proposed project and takings are not a more necessary public use.

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Attention: Alycia Moulton
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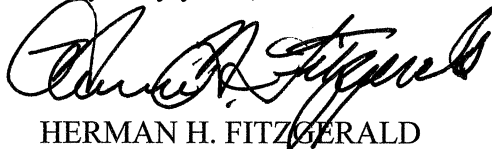
D. CONCLUSION

The owners object to the Resolution and request that this letter be submitted to the Board and included as an Exhibit to the hearing and part of the Administrative Record to serve as owners' objections to the adoption of the resolution, and further request the Board to allow the opportunity to appear and be heard at the Resolution Hearing to argue the objections if this office deems it necessary.

In the event that this letter cannot serve as the owners' formal objections, please advise me in writing substantiated with any legal basis.

For the above reasons, it is respectfully submitted that the resolution not be passed.

Very truly yours,



HERMAN H. FITZGERALD

HHF:alm

From: Omer Tamturk <omerc21@yahoo.com>
To: "orhantolu C21@gmail.com" <orhantoluc21@gmail.com>, Steve Porter <sporte...
Date: 4/3/2013 8:54 AM
Subject: Hearing for 1290 and 1288 .
Attachments: Part.002

Hello Mrs Moulton,

Per our conversation this morning please place us in the Hearing dated May 7, 2013 . Fox investments holds over 6 acres development land between 1288- 1340 on Bayshore Hwy . We have purchased additions to make it work with city requirements and the view corridor compliance . We do not wish to hold up the city over pass project and would like assist county any way we can as we did with city of Burlingames creek project at 1300 /1290 Bayshore . We will discuss this matter with our attorney and our partners and see if we can find a solution without wasting boards valuable time .

Very Best ,

Omer Tamturk

GLENN L. BLOCK
GLB@CALEDLAW.COM
DIRECT DIAL – 818-957-0477

April 1, 2013

Alycia Mouton
County of San Mateo
455 County Center, 4th Floor
Redwood City, CA 94063-1663

**Re: May 7, 2013 - Board of Supervisor's Hearing re: Resolution of Necessity
State Parcel 62631
1299 Bayshore Highway, Burlingame, CA (APN 026-141-020)**

Dear Ms. Moulton,

We have been retained as eminent domain counsel to 99 Old Bayshore LLC with respect to the County's proposed acquisition by eminent domain of a portion of the above-referenced property for the Burlingame Interchange Project ("Project"). 99 Old Bayshore LLC is the owner of the real property.

Consideration of the proposed Resolution of Necessity is presently scheduled for public hearing at the May 7, 2013 Board of Supervisors' meeting.

99 Old Bayshore LLC respectfully requests the right to appear and address the Board of Supervisors at the hearing.

Thank you.

Very truly yours,



Glenn L. Block
California Eminent Domain Law Group,
a Professional Corporation

cc: 99 Old Bayshore LLC