

Regular Council Meeting

September 28, 2023

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CITY OF FRESNO
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FRESNO CITY COUNCIL



Public Comment Packet

ITEM(S)

10:05A.M. ID 23-1323

Actions pertaining to the acquisition of fee interest and a permanent street easement and right of way for the construction of a storm drain pipeline along the McKinley Avenue alignment between Armstrong Avenue and Laverne Avenue (Council District 7)

Contents of Supplement: Public comment received

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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September 21, 2023

VIA U.S. MAIL AND E-MAIL to [REDACTED]

Ms. Nancy Bruno
Fresno City Hall
2600 Fresno St.
Fresno, CA 93721

Re: September 28, 2023 City of Fresno City Council
Meeting to Consider Resolution of Necessity
Site Address: 2045 N. Armstrong Ave., Fresno, CA 93727
Assessor's Parcel No.: 574-130-05
Owner: Sukhwinder Singh

Dear Ms. Bruno:

Wanger Jones Helsley PC has been retained as eminent domain litigation counsel to Mr. Sukhwinder Singh ("Mr. Singh") with respect to the City of Fresno's ("City") proposed acquisition by eminent domain of approximately five acres of the above-referenced property ("Subject Property") for the construction of a storm drain pipeline on McKinley Avenue between Armstrong Avenue and LaVerne Avenue ("Project"). Please direct all future communications on this matter to our office.

Mr. Singh hereby objects to the City's consideration of adopting the above-referenced Resolution of Necessity. This matter should be removed from consideration at the September 28, 2023 meeting because it is premature: The City has not yet made a complete offer of just compensation to Mr. Singh for the property impacted by the taking. The prior offer did not take

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into account the creation of an uneconomic remnant of the remaining five acres of land owned by Mr. Singh and the City has failed to provide Mr. Singh a reasonable opportunity to engage in substantive negotiations without the necessity of litigation. Until the parties are afforded the opportunity to engage in substantive negotiations, it is premature for the City to proceed with consideration of a Resolution of Necessity to take any portion of the Subject Property.

However, if the meeting proceeds as presently scheduled over these objections, we request the opportunity to be heard at the public hearing on September 28, 2023.

1. Consideration of the Proposed Resolution of Necessity Is Premature Because the City Has Not Made a Legally Sufficient Offer

The City's offer of \$924,000.00 as compensation for the acquisition of the property is insufficient. The City's appraisal does not properly reflect the fair market value of the Subject Property as required by California Code of Civil Procedure § 1263.320 and does not give proper consideration to the reduction in value of Mr. Singh's remaining property as a result of the taking as required by California Code of Civil Procedure § 1263.420. The value per acre is not consistent with the fair market value of the land which would place the value at \$2 million as there are two sources of water for this parcel—one connecting from the canal and a drilled well. The well alone has been appraised at \$250,000. The City's offer thus does not meet the legal requirements of "just compensation" to which Mr. Singh is entitled for the acquisition of the Subject Property.

2. The Offer Does Not Address the Creation of an Uneconomic Remnant of the Remaining Five Acres

The appraisal performed by The Dore Group notes that the Subject Property is currently used for agricultural purposes but states that an income approach was not used because there is insufficient information regarding the subject's production and expenses. Mr. Singh currently resides in a home on the Subject Property with his family and uses approximately ten acres of the land to grow produce, which he sells in order to support himself and his family and/or rents the property to local farmers. The City has proposed to purchase approximately five acres of the Subject Property for a total of \$924,000.00 for the Project. However, this acquisition would leave Mr. Singh with a five-acre parcel that is of insufficient size and no longer economically feasible to farm produce for sale or large enough to rent to prospective farmers. A forced acquisition of the Subject Property on these terms would negatively affect Mr. Singh's economic livelihood without just compensation. Based on the lack of consideration of the productive value of the Subject Property and the resulting impacts to productivity from a reduced parcel size, the present offer is insufficient.

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3. The City Should Not Proceed With the Meeting on a Resolution of Necessity Because the City Has Not Made "Every Reasonable Effort" to Acquire Mr. Singh's Property By Negotiation

California Government Code § 7267.1, as well as State and Federal acquisition regulations, require that the City make every reasonable effort to acquire expeditiously real property by negotiation. Here, Mr. Singh has not yet had the opportunity to reasonably respond to the City's initial offer. Mr. Singh has now retained counsel and an independent real estate appraiser to properly analyze and evaluate the value of the Subject Property, as well as potential impacts of the Project on the remaining portions of the property should a portion be taken by the City for the Project.

Mr. Singh is willing to enter into substantive discussions about just compensation and engage in good-faith negotiations with the City if the City is reciprocally willing to do the same. For these reasons, the City should postpone the Meeting on adopting a Resolution of Necessity until the parties exhaust good faith negotiations.

4. Mr. Singh's Counteroffer

For these above reasons, Mr. Singh makes the following counteroffer in which the City may purchase substantially all of the Subject Property, approximately 10 acres, excepting the residential house lot which consists of approximately 0.92 acres, for a sum of \$3,000,000.00. A sale of the Subject Property on these terms is just in that it would allow Mr. Singh to purchase a substantially similar and agriculturally viable parcel of land on which to re-establish and continue his independent agricultural occupation that presently supports himself and his family. By purchasing the entire 10 acres, Mr. Singh is not left with the uneconomic remnants as the existing proposed take eliminates Mr. Singh's ability to use the remaining acreage for farming or other uses as it is too small to farm economically.

This valuation is further supported by the fact that the Subject Property presently has two resources for water: one through connection to the canal and one through a drilled well. The drilled well has been appraised at a value of \$250,000.

For the foregoing reasons, among others, Mr. Singh respectfully submits that the City should not consider adoption of the proposed Resolution of Necessity on September 28, 2023 until the City has a chance to consider Mr. Singh's counteroffer.

Should you have any further questions, please do not hesitate to contact our office.

Sincerely,

Jay A. [REDACTED] n