

12/11/18

item 7



City Council

Item #7
Resolution of Necessity
5131 Stars & Stripes Drive

December 11, 2018



City of Santa Clara
The Center of What's Possible

Overview

- Two Resolutions of Necessity for Council consideration – Item #7 and Item #8
- Background and context of items similar but staff will present them separately
- Council is considering the need to proceed with eminent domain action – NOT compensation
- Compensation would be determined through Court

2

POST MEETING MATERIAL



Background

- CityPlace project was approved in June 2016
- City approvals included: EIR, Zoning (Master Community Plan – MCP), Disposition and Development Agreement (DDA), Development Agreement (DA) and Infrastructure Master Plan
- The 240 acre development site is currently used as a golf course and therefore there are not currently the public improvements needed for the redevelopment of the property

3



Public Improvements

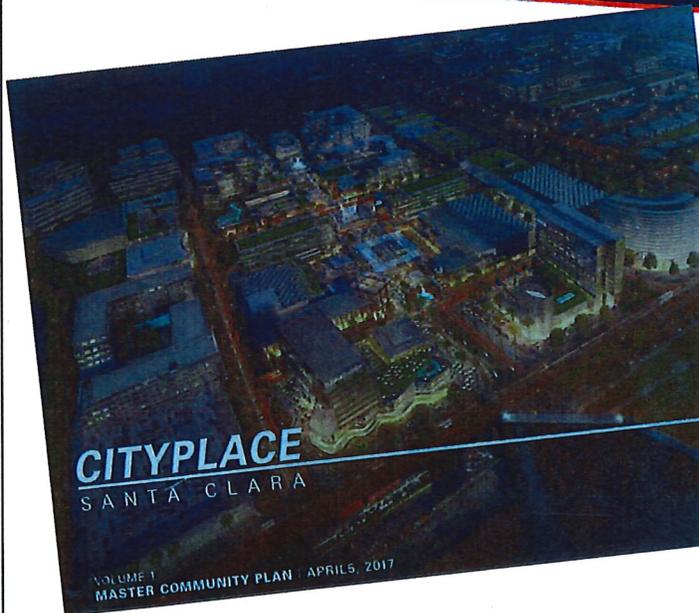
- Public infrastructure improvements include:
 - Roads
 - Utilities: Electricity, Water, Storm Drain, Sewer, Gas, etc.
 - Landfill Gas Collection Systems
- Other
 - Public Facilities: Transit Station, parks, etc.

4



Circulation Requirements

- Any redevelopment of the property would require the installation of a circulation network (cars, buses, bicycles, and pedestrians) that would allow for access to/from: Great America Parkway; Tasman Drive; Lafayette Street and Great America Train Station
- Installation of utilities are also typically constructed within public rights-of-ways



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EXHIBIT 3-11: PUBLIC AND PRIVATE STREETS*



City of Santa Clara
The Center of What's Possible

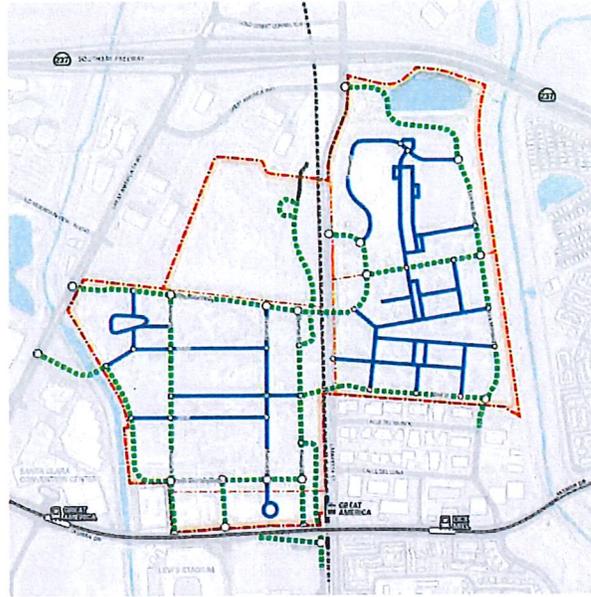
Street Network

LEGEND

- Streets
 - Public Street (dashed green line)
 - Private Street (solid blue line)
 - Service Road / Emergency Access (dashed red line)
- Transit
 - VTA Light Rail (dashed black line)
 - Capital Corridor (dashed black line)
 - Altamont Commuter Express (dashed black line)
- Boundaries
 - Site (dashed red line)
 - Parcel (dashed black line)

1" = 800'

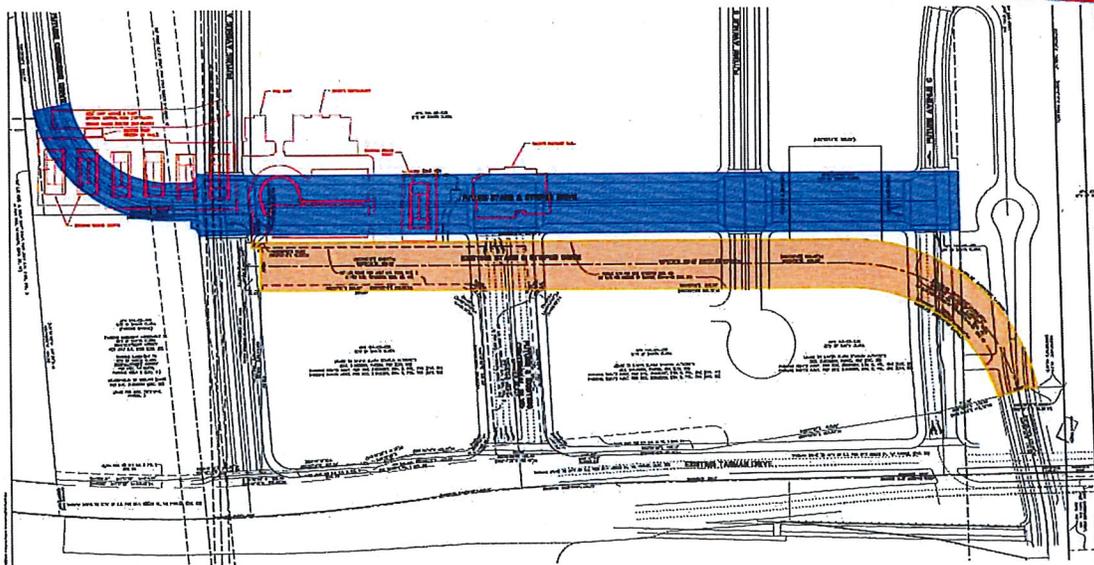
0 200' 400' 800' 1600'



*Plan is conceptual and subject to change. The redaction parcel area (only part of the legal parcels) is a City ability, facility and not part of the development area or FAR calculations. This depiction of the public and private streets indicates some of the access variants as shown in Exhibit 3-12 and reflects the characterization of streets at the time of this MSCP update (2016).



City of Santa Clara
The Center of What's Possible





D.E. II Restaurants Leasehold

- July 1999
- 5131 Stars & Stripes Drive
- 20 years (thru October 31, 2019) plus two 5-year options

9



Acquisition

- City needs to acquire Leasehold to allow for the construction of street
- City owns land, building and parking
- Discussions have been ongoing for several years
- Formal offer based on an appraisal was made on October 5, 2018

10



Tenant – D.E. II Restaurants

- Has right to secure its own appraisal
- Has been provided access to a relocation consultant paid by the City
- May be eligible for FF&E claims
- May be eligible for loss of business goodwill and relocation claims
- Can continue to negotiate

11



Findings in the Resolution

- The public interest and necessity require the project
- The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury
- The property sought to be acquired is necessary for the project.
- An offer under Section 7267.2 of Gov't Code has been made

12



Next Steps

- Adoption of Resolution
- File action and deposit funds with the Court
- Request for possession of property
- Court hearing

AND

- City can continue to negotiate a settlement with Lessee

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Recommendation

Adopt Resolution of Necessity to Acquire Property Interests at 5131 Stars & Stripes Drive from D.E.II Restaurants for a Public Project and Directing the Filing of Eminent Domain Proceedings.

14

12/11/18

#7

Simrat Dhadli

From: Manager
Sent: Tuesday, December 11, 2018 9:15 AM
To: Deanna Santana; Walter Rossmann; Ruth Shikada
Cc: Nora Pimentel; Simrat Dhadli
Subject: FW: [Urgent] Save David's Banquet Hall
Attachments: Davids 2018 Letter_TS.pdf

RECEIVED

DEC 11 2018

City Clerk's Office
City of Santa Clara

From: Tracy N. Salgado [<mailto:tracysalgado.od@gmail.com>]
Sent: Tuesday, December 11, 2018 9:12 AM
To: Manager
Subject: [Urgent] Save David's Banquet Hall

Hello Deanna,

Attached is a letter to show support for keeping David's Restaurant. Please review it before the city council meeting tonight.

Thanks and take care,

--

Tracy N. Salgado, O.D.
Cell: (209) 640-2509
Email: tracysalgado.od@gmail.com

Santa Clara County Optometric Society | sccos.org
Trustee of Division of Communications

POST MEETING MATERIAL



Santa Clara County Optometric Society

Member of American Optometric Association
Member of California Optometric Association
Member of Bay Area Optometric Council

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770 Scott Blvd
Santa Clara, CA 95050
Tel: (408) 296-0511

E-mail: mikechen.od@gmail.com

December 10, 2018

Deanna Santana, City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

I am writing you as a concerned board member of the Santa Clara County Optometric Society regarding the future plans for David's Restaurant and Banquet Hall, located at 5151 Stars and Stripes Dr, Santa Clara, CA 95054.

Our group of optometric doctors meets at David Ibrahim's banquet hall almost monthly for our professional association meetings. Both he and his staff have consistently upheld professional and quality service to our members. The facility is a unique space that perfectly accommodates a group of our size and has all the Audio-Visual equipment necessary to conduct our meetings at a fair price.

We are deeply concerned that the city's plan to build a street through this facility will displace our group of over 200+ members that rely on this unique space to hold important meetings for doctors all across the Santa Clara county. Not only this, but David's Restaurant has been a beacon to the Santa Clara community for over 30 years. They have grown and celebrated with this community through small family meals to large wedding celebrations or family reunions...etc. The need to build a road through this facility seems unnecessary and unfair especially since Mr. Ibrahim still has over a decade remaining on the lease term and this street can be run through alternate routes.

Our association has chosen to host our meetings in Santa Clara for the past 30+ years and will be deeply disappointed should David's Restaurant and Banquet Hall be forced to close their doors unjustly. We urge you to reconsider and hope you may seek out alternate solutions to accomplish your goals without sacrificing Mr. Ibrahim's business which has served the Santa Clara community in an outstanding fashion for over 30 years.

I look forward to your reply and hope that you may reach a fair decision.

Sincerely,

Tracy Salgado, OD

Division of Communications, Santa Clara County Optometric Society
TracySalgado.OD@gmail.com

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JENNY & JENNY, LLP
Attorneys

DEC - 3 2018

City Clerk's Office
City of Santa Clara

Eminent Domain
Inverse Condemnation
Real Estate Law

736 Ferry Street
Martinez, California 94553
Telephone: (925) 228-1265
Facsimile: (925) 228-2841
JennyandJenny.com

Scott E. Jenny, Esq.
Richard K. Jenny, Esq.

December 3, 2018

Deanna J. Santana
City Manager
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050
manager@santaclaraca.gov

Nadine Nader
Acting City Clerk
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050
clerk@santaclaraca.gov

Nora Pimentel, MMC
Assistant City Clerk
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050
clerk@santaclaraca.gov

Re: Realignment of Stars & Stripe Drive Project
APN: 104-30-36

Dear Ms. Santana, Ms. Nader & Ms. Pimentel,

This office represents David Ebrahimi and D.E. II Restaurants, Inc. dba David's Banquet and Conference located at 5131 Stars & Stripes Drive in the City of Santa Clara. This letter is in response to the CITY OF SANTA CLARA NOTICE OF INTENTION TO ADOPT RESOLUTION OF NECESSITY TO ACQUIRE REAL PROPERTY INTEREST FOR RELOCATION OF STARS AND STRIPES DRIVE scheduled to be held on December 11, 2018 at 7:00 p.m. We have received the November 21, 2018 notice of the above hearing and by this letter notify you that David's will be appearing to object to the adoption of the RON. The appearance may include Mr. Ebrahimi, undersigned counsel, and others.

Because of the holidays and the fact that David's is a restaurant which is exceptionally busy during the holidays, and because of the short notice of the hearing, we request that the hearing be continued until January 2019 at the earliest. Thank you.

Sincerely,



Scott E. Jenny

POST MEETING MATERIAL

SEJ/rkj

12/11/18

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Simrat Dhadli

From: Manager
Sent: Tuesday, December 11, 2018 8:29 AM
To: Deanna Santana; Walter Rossmann; Ruth Shikada
Cc: Nora Pimentel; Simrat Dhadli
Subject: FW: Support for David's Restaurant
Attachments: Davids 2018 Letter.docx

RECEIVED

DEC 11 2018

City Clerk's Office
City of Santa Clara

From: Bic Trinh, OD & Will To, OD [<mailto:events.programs@sccos.org>]
Sent: Tuesday, December 11, 2018 8:24 AM
To: Manager
Subject: Support for David's Restaurant

Dear Ms. Santana,

I am writing in support of David's restaurant. It has come to our attention that the city will be meeting tonight to discuss terminating the restaurant and we would like to petition on behalf of David's restaurant.

They have played an important role in the large Santa Clara County Optometric Society as we hold monthly meetings here.

Please see the attached letter that further details how important it is that we keep David's restaurant open.

Thank you for your time and consideration!

--
Warmly,
Bic Trinh O.D & Will To, OD
SCCOS Events and Programs Co-Trustees

POST MEETING MATERIAL



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We are deeply concerned that the city's plan to build a street through this facility will displace our group of over 200+ members that rely on this unique space to hold important meetings for doctors all across the Santa Clara county. Not only this, but David's Restaurant has been a beacon to the Santa Clara community for over 30 years. They have grown and celebrated with this community through small family meals to large wedding celebrations or family reunions...etc. The need to build a road through this facility seems unnecessary and unfair especially since Mr. Ibrahim still has over a decade remaining on the lease term and this street can be run through alternate routes.

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I look forward to your reply and hope that you may reach a fair decision.

Sincerely,

Bic Trinh, OD
Events and Programs, Santa Clara County Optometric Society
Events.programs@sccos.org

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E-mail: mikechen.od@gmail.com

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Sincerely,

Bic Trinh, OD

Events and Programs, Santa Clara County Optometric Society

Events.programs@sccos.org

12/11/18

ITEM 7



Jean E <jeandavidsrestaurant@gmail.com>

Fw: David's Restaurant Wedding Venue Option

2 messages

Sheila Amaral <socalgal86@yahoo.com>

Thu, Jun 1, 2017 at 3:58 PM

Reply-To: Sheila Amaral <socalgal86@yahoo.com>

To: "jeandavidsrestaurant@gmail.com" <jeandavidsrestaurant@gmail.com>

Well, there you have it...

On Thursday, June 1, 2017 3:57 PM, Sheila Amaral <socalgal86@yahoo.com> wrote:

Hi Ruth,

Thank you! Ok, I believe the facility is where it would be held. Thank you very much for getting back to me so quick.

Regards,
Sheila

On Thursday, June 1, 2017 3:48 PM, Ruth Shikada <RShikada@SantaClaraCA.gov> wrote:

Dear Ms. Amaral:

Congratulations on your upcoming wedding!

Unfortunately, the lease at David's Restaurant will be terminated as of June 17, 2017. However, the banquet facility (right next door) has a long term lease and this might be a viable venue for you.

Ruth Shikada
Assistant City Manager
City of Santa Clara
(408) 615-2219

From: Sheila Amaral [mailto:socalgal86@yahoo.com]

Sent: Thursday, June 01, 2017 2:41 PM

To: Ruth Shikada; Sheila Amaral

Subject: David's Restaurant Wedding Venue Option

Good afternoon Ms. Shikada,

I am inquiring the status of David's Restaurant/Banquet Facility. I am looking to book with this location for the September or August of next year for my wedding. I understand there is going to be a new

POST MEETING MATERIAL

development there in the future. Just want to know if I book with them and provide a deposit, that I will be able to have my wedding there. Time is of the essence to booking a venue.

If you could get back to me as soon as possible, I would greatly appreciate it.

Regards,
Sheila Amaral

The information contained in this email may be privileged, confidential and exempt from disclosure under applicable law. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately by reply email and delete this message from your computer. Thank you

Jean <Jean@davids-restaurant.com>
To: David <daviddavidsrestaurant@gmail.com>

Thu, Jun 1, 2017 at 5:34 PM

[Quoted text hidden]

--

Jean, Event Coordinator

12/11/18

7

Simrat Dhadli

From: Manager
Sent: Tuesday, December 11, 2018 8:18 AM
To: Deanna Santana; Ruth Shikada; Walter Rossmann
Cc: Nora Pimentel; Simrat Dhadli
Subject: FW: Regarding City Council Meeting Tonight: David's Banquet Hall
Attachments: scan0115.pdf

RECEIVED

DEC 11 2018

City Clerk's Office
City of Santa Clara

From: Gloria Chow [<mailto:gloriachowod@gmail.com>]
Sent: Tuesday, December 11, 2018 3:29 AM
To: Manager
Subject: Regarding City Council Meeting Tonight: David's Banquet Hall

Dear Ms. Santana,

Please see attached letter for your consideration before the meeting tonight. The Santa Clara County Optometric Society opposes the shutting down of David's Restaurant and Banquet Hall.

Thank you.

Gloria Chow, OD
Public Affairs, Santa Clara County Optometric Society
Clear Concepts Optometry

POST MEETING MATERIAL



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E-mail: mikechen.od@gmail.com

December 10, 2018

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City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

I am writing you as a concerned board member of the Santa Clara County Optometric Society regarding the future plans for David's Restaurant and Banquet Hall, located at 5151 Stars and Stripes Dr, Santa Clara, CA 95054.

Our group of optometric doctors meets at David Ibrahim's banquet hall 7-8 times per year for our professional association meetings. Both he and his staff have consistently upheld professional and quality service to our members. The facility is a unique space that perfectly accommodates a group of our size and has all the AV equipment necessary to conduct our meetings at a fair price.

We are deeply concerned that the city's plan to build a street through this facility will displace our group of over 200+ members that rely on this unique space to hold important meetings for doctors all across the Santa Clara county. Not only this, but David's Restaurant has been a beacon to the Santa Clara community for over 30 years. They have grown and celebrated with this community through small family meals to large wedding celebrations or family reunions...etc. The need to build a road through this facility seems unnecessary and unfair especially since Mr. Ibrahim still has over a decade remaining on the lease term and this street can be run through alternate routes.

Our association has chosen to host our meetings in Santa Clara for the past 30+ years and will be deeply disappointed should David's Restaurant and Banquet Hall be forced to close their doors unjustly. We urge you to reconsider and hope you may seek out alternate solutions to accomplish your goals without sacrificing Mr. Ibrahim's business which has served the Santa Clara community in an outstanding fashion for over 30 years.

I look forward to your reply and hope that you may reach a fair decision.

Sincerely,

Gloria Chow, OD
Public Affairs, Santa Clara County Optometric Society
gloriachowOD@gmail.com

12/11/18

#7

November 28, 2018

RECEIVED

City Manager, Mayor
and City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

NOV 28 2018

City Clerk's Office
City of Santa Clara

City Manager, Mayor, City Council
and City of Santa Clara:

I see you have scheduled a special meeting for tomorrow (November 29) for a closed session concerning a letter from a law firm representing Santa Clara Related, LLC.

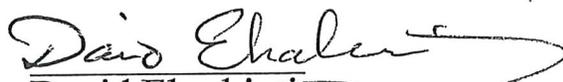
I received a letter from the City Manager about another City Council meeting set for December 11, 2018. One topic is the necessity, if any, of removing the Banquet Hall on Stars and Stripes to build a road in connection with the project planned by Santa Clara Related, LLC.

I do request that I, and others in support of my position, be allowed to address the City Council on that topic on December 11. I do not yet see any necessity for removing the Banquet Hall at this time or ever.

Pursuant to the California Public Records Act, I request a copy of the letter as well as each (other) public record which the City contends supports the need to remove the Banquet Hall from its current location.

I make the request as an individual and as the representative of D.E. II, Restaurants, Inc. which holds a lease to the Banquet Hall.

You may email me any notifications and records to david@davids-restaurant.com


David Ebrahimi
15170 El Camino Grande
Saratoga, CA 95070

POST MEETING MATERIAL

12/11/18

Item 7

Simrat Dhadli

From: Manager
Sent: Tuesday, December 11, 2018 3:46 PM
To: Deanna Santana; Walter Rossmann; Ruth Shikada
Cc: Nora Pimentel; Simrat Dhadli
Subject: FW: Eminent Domain - David's Restaurant and Banquet Hall
Attachments: Davids Restaurant Santa Clara City Council.pdf

From: Will To [<mailto:will.to@gmail.com>]
Sent: Tuesday, December 11, 2018 2:42 PM
To: Manager
Subject: Eminent Domain - David's Restaurant and Banquet Hall

Dear Ms. Deanna Santana,

Attached is a letter I wrote concerning the Eminent domain case on David's Restaurant and Banquet Hall that the City Council is meeting on tonight. Please let me know if you have any questions.

Regards,

Will



Will To, OD ABOC
Optical Illusions | Doctor of Optometry
408.960.4498 | will.to@gmail.com
[Schedule a Conference Call](#)



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POST MEETING MATERIAL



Santa Clara County Optometric Society

Member of American Optometric Association
Member of California Optometric Association
Member of Bay Area Optometric Council

President

Richard Tom, O.D.
874C Blossom Hill Rd
San Jose, CA 95123
Tel: (408) 226-8666
rtomic2020@sbcglobal.net

Secretary

Judy Lee
874C Blossom Hill Rd
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Tel: (408) 226-8666
rtomeye2020@sbcglobal.net

Treasurer

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Tel: (408) 246-5858
drkim2020@gmail.com

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JoeChengOD@gmail.com

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gloriachowod@gmail.com

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Tel: (415) 713-8777

ng.christinew@gmail.com

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minhnhatle@yahoo.com

Michael Chen, O.D.

770 Scott Blvd
Santa Clara, CA 95050
Tel: (408) 296-0511

mikechen.od@gmail.com

December 11, 2018

City of Santa Clara City Council
Attn: Deanna Santana, City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

I am writing you as a concerned board member of the Santa Clara County Optometric Society regarding the future plans for David's Restaurant and Banquet Hall, located at 5151 Stars and Stripes Dr, Santa Clara, CA 95054.

Our group of optometric doctors meets at David Ibrahim's Restaurant 7-8 times per year for our professional association meetings. Both he and his staff have consistently upheld professional and quality service to our members. The facility is a unique space that perfectly accommodates a group of our size and has all the AV equipment necessary to conduct our meetings at a fair price.

We are deeply concerned that the city's plan to build a street through this facility will displace our group of over 200+ healthcare providers that rely on this unique space to hold important meetings for doctors all across the Santa Clara County. Not only this, but David's Restaurant has been a beacon to the Santa Clara community for over 30 years. They have grown and celebrated with this community through small family meals to large wedding celebrations or family reunions...etc. The need to build a road through this facility seems unnecessary and unfair especially since Mr. Ibrahim still has over a decade remaining on the lease term and this street can be run through alternate routes.

Our association has chosen to host our meetings in Santa Clara for the past 30+ years and will be deeply disappointed should David's Restaurant and Banquet Hall be forced to close their doors unjustly. We urge you to reconsider and hope you may seek out alternate solutions to accomplish your goals without sacrificing Mr. Ibrahim's business which has served the Santa Clara community in an outstanding fashion for over 30 years.

I look forward to your reply and hope that you may reach a fair decision.

Regards,

William To, OD
Events and Programs, Santa Clara County Optometric Society
will.to@gmail.com

12/11/18

ITEM 7

Simrat Dhadli

From: Manager
Sent: Wednesday, December 12, 2018 7:59 AM
To: Deanna Santana; Walter Rossmann; Manuel Pineda
Cc: Nora Pimentel; Simrat Dhadli
Subject: FW: Regarding David's Banquet Hall
Attachments: Letter.docx

From: Christine Ng [<mailto:ng.christinew@gmail.com>]
Sent: Tuesday, December 11, 2018 4:57 PM
To: Manager
Subject: Regarding David's Banquet Hall

Dear Ms. Santana,

I am writing you as a concerned board member of the Santa Clara County Optometric Society regarding the future plans for David's Restaurant and Banquet Hall, located at 5151 Stars and Stripes Dr, Santa Clara, CA 95054.

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I look forward to your reply and hope that you may reach a fair decision.

Sincerely,

Christine Ng, OD, FAAO
Professional Affairs, Santa Clara County Optometric Society

--
Christine Ng, OD, FAAO
Santa Clara County Optometric Society



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Tel: (408) 390-0503

Email: JoeChengOD@gmail.com

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San Jose, CA 95116
Tel: (408) 259-2020

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Email: bntrinh@gmail.com

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Tel: (408) 528-0991

Email: minhnhattle@yahoo.com

Michael Chen, O.D.
770 Scott Blvd
Santa Clara, CA 95050
Tel: (408) 296-0511

E-mail: mikechen.od@gmail.com

December 11, 2018

Deanna Santana, City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

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Sincerely,

Christine Ng, OD, FAAO
Professional Affairs, Santa Clara County Optometric Society
Ng.christinew@gmail.com

12-11-18

Item #1

JENNY & JENNY, LLP
Attorneys

Scott E. Jenny, Esq.
Richard K. Jenny, Esq.

736 Ferry Street
Martinez, California 94553
Telephone: (925) 228-1265
Facsimile: (925) 228-2841
JennyandJenny.com

Eminent Domain
Inverse Condemnation
Real Estate Law

December 11, 2018

City of Santa Clara
City Council
c/o Deanna J. Santana, City Manager
manager@santaclaraca.gov
c/o Nadine Nader, Acting City Clerk
clerk@santaclaraca.gov
c/o Nora Pimentel, Assistant City Clerk
clerk@santaclaraca.gov
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

Re: *Realignment of Stars & Stripes Drive Project*
D.E. II Restaurants, Inc. dba David's Banquet and Conference
APN: 104-30-36

Dear City of Santa Clara City Council,

This office represents David Ebrahimi and D.E. II Restaurants, Inc. dba David's Banquet and Conference located at 5131 Stars & Stripes Drive in the City of Santa Clara. This letter is in response to the CITY OF SANTA CLARA NOTICE OF INTENTION TO ADOPT RESOLUTION OF NECESSITY TO ACQUIRE REAL PROPERTY INTEREST FOR RELOCATION OF STARS AND STRIPES DRIVE scheduled to be held on December 11, 2018 at 7:00 p.m. The following are our objections to the adoption of this Resolution of Necessity and to the taking of this business.

I. FACTUAL STATEMENT.

David Ebrahimi and D.E. II Restaurants, Inc. dba David's Banquet and Conference entered into a lease with the City of Santa Clara in June of 1999. The lease was for a 20-year term which would expire on 2019. The lease contains two 5-year options which would continue the lease until 2029.

In Section 19, the lease provides the only means for the City to terminate the lease. It states that the City can terminate this agreement for non-payment of rent (which has not occurred); if David's has failed to perform any covenant or condition (which has not occurred);

POST MEETING MATERIAL

upon the happening of an act or omission which terminates the operation of the business (which has not occurred); if David's transfers the lease to another without the City's consent (which has not occurred); if there is a levy of attachment or execution (which has not occurred); if David's declares bankruptcy (which has not occurred); if David's abandons the premises (which has not occurred); or if there is an emergency or catastrophe beyond the control of David's. None of these events has occurred and therefore the City is in breach of this written lease if it proceeds with this eminent domain action. This RON hearing is a violation of due process in that it is seeking to dissolve an active lease where the City is a party.

II. THE PROJECT FAILS TO SATISFY THE STATUTORY REQUIREMENT OF PROVIDING FOR THE GREATEST PUBLIC GOOD WITH THE LEAST PRIVATE INJURY.

California Code of Civil Procedure section 1240.030 states that the power of eminent domain may only be used if the following conditions are satisfied:

1. The public interest and necessity require the project;
2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury; and
3. The property sought to be acquired is necessary for the project.

The project as described fails to satisfy any of the three tests, and all three must be satisfied for the project to continue.

As for the first prong, that the public interest and necessity require the project, the project as planned fails to meet these criteria. David's would easily be able to operate within the new development Project and not be relocated. David's would be able to operate on Parcels 5A or 5B as shown in the Master Plan. The future land use of the current location of David's is for City Center Mixed-Use which would permit David's to continue to operate.

Furthermore the Project will not be completed until 2035 and there is no evidence that this first phase needs to occur today. Finally, the Project is not for public use but for private use. The properties will be transferred to private entities and developers which is a violation of both the state and federal constitutions. The attempt by the City to classify this as a road project is a classic eminent domain pretextual taking prohibited by law. Thus, neither the public interest nor necessity require the project as planned.

As for the second prong, that the project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury, this test fails as well. Again, David's would easily be able to operate within the new development Project and not be relocated, and the Project will not be completed until 2035. The balancing falls in favor of not relocating David's ever, and certainly not at this early point in the Project. This Project plan is

clearly not planned to cause the “least private injury” but is planned to inflict the greatest possible damage to David’s.

And finally, the project fails the third prong, that the property sought to be acquired is necessary for the project. David’s would easily be able to operate within the new development Project and not be relocated. There is no reason to relocate David’s at this time or ever.

Therefore, the Project as currently plans fails to satisfy the statutory, mandatory conditions of California Code of Civil Procedure section 1240.030, and cannot withstand the judicial scrutiny that lies ahead.

III. THE PROJECT IS NOT EVEN IN FINAL DESIGN YET, AND THEREFORE THE RESOLUTION IS FATALLY DEFECTIVE AS VAGUE.

The City is proposing to exercise one of the most tremendous and formidable powers the government can take against one of its own citizens. The City is proposing to sue David’s and take and relocate the business by force. David’s has already been forced to hire an attorney and to spend time on this project during the holiday season. If the City continues, David’s will be named in a lawsuit in the superior court.

The Master Community Plan of April 5, 2017 indicates throughout that every design is preliminary. To date there is no final plan for the development. It is premature to condemn and relocate David’s until and unless such time as a final plan is approved and adopted by the City.

IV. THE PROJECT WILL NOT BE COMPLETED WITHIN SEVEN YEARS OF THE TAKING.

California Code of Civil Procedure section 1240.220 requires that the condemning agency use the property within seven years from the date the complaint is filed:

(a) Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire property to be used in the future for that use, but property may be taken for future use only if there is a reasonable probability that its date of use will be within seven years from the date the complaint is filed or within such longer period as is reasonable.

(b) Unless the plaintiff plans that the date of use of property taken will be within seven years from the date the complaint is filed, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section and shall state the estimated date of use.

In this case, the Master Community Plan of April 5, 2017 states that there are seven phases to this project with a completion date in 2035. Taking David’s property rights now is a

violation of the seven-year requirement. The Notice of the Resolution of Necessity fails to even allege that the property will be used within seven years, and is therefore fatally flawed.

V. THE “PROJECT” DESCRIBED IN THE RESOLUTION OF NECESSITY IS PRETEXTUAL, IS NOT CONSISTENT WITH THE ENVIRONMENTAL DOCUMENTS, HAS NOT BEEN ENVIRONMENTALLY STUDIED, FAILS A CEQA ANALYSIS, AND THUS ANY ACTION TAKEN IS VOID.

The map which is at the heart of this RON Hearing is not even consistent with the Master Community Plan of April 5, 2017. Exhibit 3-1 to the Master Community Plan is not consistent with the construction drawings submitted to David’s in support of the RON Hearing. The roads are not aligned the same way. Thus, the RON Hearing drawing has not been vetted through any environmental review process and has not been approved by this Council. Given the current layout of the road as shown in the RON, there is no public necessity for this project at this time because it does not assist in transportation in any way as designed for this RON.

The Master Community Plan’s environmental review was approved at the REGULAR CONCURRENT MEETING OF THE CITY OF SANTA CLARA CITY COUNCIL SANTA CLARA STADIUM AUTHORITY SPORTS AND OPEN SPACE AUTHORITY CITY OF SANTA CLARA HOUSING AUTHORITY TUESDAY, JUNE 28, 2016. The agenda item was for the CityPlace Santa Clara Project located at 5155 Stars and Stripes Drive, et. al., on an approximately 240 acre site. (APNs: 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-001-102, 097-01-039 and 097-01-073)[PLN2014-10554, CEQ2014-01180, SCH#2014072078]. The Council adopted Resolution No. 16-8337 entitled “A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA APPROVING AND CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING CEQA FINDINGS WITH RESPECT THERETO, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CITY PLACE SANTA CLARA PROJECT LOCATED AT 5155 STARS AND STRIPES DRIVE, ET AL, SANTA CLARA” approving and certifying an Environmental Impact Report and adopting California Environmental Quality Act (CEQA) Findings, a Statement of Overriding Considerations (SOC) and the Mitigation Monitoring and Reporting Program (MMRP) with an amendment to paragraph 7 indicating that Exhibit 1 to the Resolution, the MMRP, shall be amended to reflect that the Montague/Zanker intersection lies within the City of San Jose jurisdiction rather than the County of Santa Clara jurisdiction with the corresponding fair share funds being reallocated to the City of San Jose thus increasing the City of San Jose share and decreasing the County of Santa Clara share of the fair share fee.

Thus, the only environmental approval was for the entire 240-acre Plan. Among the significant effects on the environment would be the elimination of buildings and services and the re-routing of traffic in the area during construction and thereafter. These effects need to be

evaluated under CEQA. There has not been any CEQA review of a smaller project such as the one shown on the RON construction plan. Thus, the RON action is flawed and void if adopted.

Furthermore, the City is not able to break up this Master Plan into smaller phases and avoid the fact that this is one Master Plan. The scope of a project is defined by the environmental documents. California law defined the "project" by the specific plans and environmental documents. In *City of National City v. State of California* (1983) 140 Cal. App. 3d 598, the court defined a project. In footnote 2 on page 603, the *National City* court stated:

In determining what is a project within CEQA, California Administrative Code, title 14, section 15378 provides:

(a) Project means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, . . .'

More specifically, subdivision (c) states:

The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (Emphasis added & some internal quotes omitted)

Although the *National City* case was decided within the context of an unsuccessful attempt by the city to compel the State of California to go forward with the project as defined, its rule concerning the description of the project has been applied since in a condemnation case. In *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App. 3d 577 the court considered an order by the trial court dismissing the condemnation action because the plaintiff's EIR did not properly describe the project so as to include the defendant's real property. The trial court's order was affirmed. The *Henson* court stated (p. 592, emphasis added):

CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. (City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452 [263 Cal.Rptr. 340].) CEQA attempts to avoid this result by defining the term "project" broadly. (Ibid.) A project under CEQA is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. (McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136, 1143 [249 Cal.Rptr. 439].)" (Emphasis

added.)

The *Henson* court continued (p. 592, emphasis added):

An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR; the defined project and not some different project must be the EIR's bona fide subject. (Mira Monte Homeowners Assn. v. County of Ventura (1985) 165 Cal.App.3d 357, 365 [212 Cal.Rptr. 127].) 'CEQA compels an interactive process of assessment of environmental impacts and

responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.' (Id., at p. 366, internal quotation marks omitted.)

After concluding that the project description in the EIR did not correctly describe the project so as to include the Henson's property which was being condemned, the court stated (p. 594):

Accordingly, the procedure followed by appellant violated section 15004, subdivision (b)(1) of title 14 of the California Code of Regulations (hereinafter referred to as Guidelines), which provides that "With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

Thus, the "project" is defined by the specific plan and environmental documents, and cannot "become submerged by chopping a large project into smaller ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences."

In fact, The City of Santa Clara responded to David's request for public records concerning the proposed road by referring to the June 28, 2016 Council agenda (item 14) on the subject of the Master Development Plan. The November 5, 2018 letter from the City Manager regarding the December 11 meeting states in its first paragraph that the City is "*considering* constructing a road." Thus, no final decision to construct the road has been made. Such action would require environmental review which has not occurred. Furthermore, the law does not permit the local legislative body to approve a road under an agenda item that only refers to the matter of taking away the Banquet Hall.

Here, this means that the RON Notice referring to this Project as a mere road relocation project is again pretextual and is in fact a part of the Master Plan discussed herein. Neither the Master Plan nor the realigned road have been finalized or vetted through the environmental process. The real Project is not to be completed within seven years of this action by the City.

This is further proven by the following section. Therefore, the Notice and the RON are false, pretextual, misleading, flawed and void.

VI. THE ENVIRONMENTAL DOCUMENTS DO NOT ADDRESS, ANALYZE OR PERMIT THE USE OF EMINENT DOMAIN.

No environmental document has addressed the use of eminent domain as against any property rights and therefore no action can be taken regarding same. The only reference is in the Master Community Plan of April 5, 2017 which states:

The acquisition process approved by this Council is addressed in Chapter 8, Infrastructure Overview. Section 8.1 includes a section entitled "Property Acquisition, Dedication & Easements Concept" and states that the majority of the infrastructure shall be constructed within the public right-of-way or dedicated easements. There is no mention of the use of eminent domain to take private property rights from any business or individual. This section also again states that the project layout is merely proposed and not final by stating "[t]he eventual project layout within the project boundaries will ultimately determine the entity that owns, operates and maintains each infrastructure element."

In the Preliminary Infrastructure Master Plan dated August 5, 2016, Section 1.2 states:

1.2 Property Acquisition, Dedication and Easements

The Mapping, property acquisition, dedication and acceptance of streets and other infrastructure improvements will occur through the Subdivision Map process in accordance with the City's Subdivision Code and Regulations. Except as otherwise noted, all infrastructure described in this Plan shall be constructed within the public right-of-way or dedicated easements to provide for access and maintenance of infrastructure facilities. The eventual project layout within the Project boundaries will ultimately determine the entity that owns, operates and maintains each infrastructure element. City Resolutions to address the private infrastructure elements and specific public utility easements will be allowed within the Project as may be necessary to service the development. Utilities in these areas will be installed in accordance with the standards in this Plan and applicable City Regulations for public acquisition and acceptance within public utility easement areas, including provisions for maintenance access.

Nowhere in the document does it then go on to specifically note any property acquisition. David's has a property right in its lease which is not discussed in any environmental document.

Therefore, there has been no environmental review of the actions this Council is threatening to take and therefore the actions would be void as a matter of law.

VII. GOVERNMENT CODE SECTION 7267.2 HAS NOT BEEN SATISFIED.

As set forth in *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App3d 1005 at 1013, “[t]he provisions of Government Code 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.” The precondemnation offer fails to meet those mandatory requirements. California Government Code section 7267.2 states:

(a) (1) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefore, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body’s ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. The amount shall not be less than the public entity’s approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

(2) At the time of making the offer described in paragraph (1), the public entity shall provide the property owner with an informational pamphlet detailing the process of eminent domain and the property owner’s rights under the Eminent Domain Law.

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall

include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

(c) Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. The public entity may, but is not required to, satisfy the written statement, summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

(d) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount that it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price that is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(e) As used in subdivision (d), "offered for sale" means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published specified price, set no more than six months prior to, and still available at, the time the public entity initiates contact with the landowner regarding the public entity's possible acquisition of the property.

Thus, prior to adopting this Resolution of Necessity, the City has an affirmative obligation to provide a written statement and summary "which shall contain detail sufficient to indicate clearly the basis for the offer." The City's offer has failed to meet this requirement.

The "offer" states that it is an offer to purchase the leasehold interest of David's "in conjunction with this public improvement project." As noted above, the Project is not properly identified and thus the offer fails in the first paragraph. The offer is for a mere \$5,000.00.

The California Relocation Assistance and Real Property Acquisition Guidelines require that David's be paid full payment (just compensation) for David's interest prior to vacating the real property unless David's waive such requirement. By this letter, David's clearly states that it does not waive this requirement and demands that it be paid just compensation prior to vacating the real property. The "offer" letter correctly states that if David's rejects the City's offer, David's is entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California. By this letter, David's demands that a court

of law (by way of a jury trial) determines the amount of compensation prior to being forced to vacate the property.

The \$5,000.00 offer is an unconscionably low amount and fails to satisfy this statutory requirement. First, the "offer" uses a date of value of July 5, 2018. This appraisal is therefore over five months stale. The economy has changed in David's favor since then. To be a valid appraisal, the date of value must be at the date of the Resolution of Necessity hearing. David's requests a new appraisal be performed with a more recent date of value.

David's is entitled to the fair market value of the property being taken. California Code of Civil Procedure section 1263.310 states:

Compensation shall be awarded for the property taken. The measure of this compensation is the fair market value of the property taken.

The statutory definition of fair market value is found in California Code of Civil Procedure section 1263.320 (a):

The fair market value of the property taken is the **highest price** on the date of valuation that would be agreed to by a seller being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and the buyer being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. (Bolding added.)

Therefore, David's is entitled to the "highest price" for the property being taken. Not the average price, or the most reasonable price, but the "highest price." The property is to be valued under its "highest and best use." This means the most advantageous and profitable use to which the property is adaptable, considering the present and future business conditions of the surrounding market.

The "offer" appraiser initially correctly states that the appraisal is based upon the standard of the "highest price" (in the BASIS OF VALUATION) section. However, the appraisal then switches back to the definition of "most probable price" by citing the Dictionary of Real Estate Appraisal, 4th Edition. By using the definition and standard of "most probable price" rather than "highest price," the appraisal is in violation of the statutory scheme and state constitution. It is therefore fatally flawed and invalid. David's requests that a proper appraisal be performed using only the proper definition of "highest price."

Finally, and perhaps most importantly, the appraisal is not even signed by an appraiser. The offer and appraisal is only signed by the City Manager. The appraisal is therefore void. It cannot form the basis of a proper appraisal as required by law when it is not signed by an appraiser.

Based upon the above, the City has failed to provide a proper appraisal as required by law.

VIII. THE CITY HAS FAILED TO PROVIDE ANY LOCATION FOR DAVID'S TO RELOCATE.

The California Relocation Assistance and Real Property Acquisition Guidelines require

When a government agency takes property using eminent domain and a business is operating in the property, the agency has certain relocation requirements and obligations to the business owner. Below is a list of relocation requirements that the defendants' believe the City in this case has failed to comply with.

25 CCR 6000. 6006. Regulations

(a) Each public entity before undertaking or participating in activity, which will result in the displacement of persons shall adopt rules and regulations that implement the requirements of the Act, are in accordance with the provisions of the Guidelines, and prescribe additional procedures and requirements that are appropriate to the particular activities of the public entity and not inconsistent with the Act or Guidelines.

§ 6010. Prior Determinations

(a) Displacement. No public entity may proceed with any phase of a project or other activity, which will result in the displacement of any person, business or farm until it makes the following determinations:

(1) Fair and reasonable relocation payments will be provided to eligible persons as required by Article 3 (Relocation Payments) of the Guidelines.

(2) A relocation assistance program offering the services described in Article 2 (Relocation Advisory Services) of the Guidelines will be established.

(3) Eligible persons will be adequately informed of the assistance, benefits, policies, practices and procedures, including grievance procedures, provided for in these Guidelines.

(6) A relocation plan meeting the requirements of section 6038 has been prepared.

§ 6032. Relocation Assistance Advisory Program

Such program shall be administered so as to provide advisory services which offer maximum assistance to minimize the hardship of displacement and to ensure that (a) all persons displaced from their

dwellings are relocated into housing meeting the criteria for comparable replacement housing, and (b) all persons displaced from their places of business or farm operations are assisted in reestablishing with a minimum of delay and loss of earnings.

§ 6040. Minimum Requirements of Relocation Assistance Advisory Program

(a) Each relocation assistance advisory program undertaken pursuant to this Article shall include, at a minimum, such measures, facilities or services as may be necessary or appropriate in order to:

(1) Fully inform eligible persons under this Article within 60 days following the initiation of negotiations but not later than the close of escrow on the property, for a parcel as to the availability of relocation benefits and assistance and the eligibility requirements therefor, as well as the procedures for obtaining such benefits and assistance, in accordance with the requirements of section 6046. For projects by private parties with an agreement with a public entity, the "initiation of negotiations" shall be the later of the date of acquisition or the date of the written agreement between the private entity and the public entity for purposes of acquiring or developing the property for the project.

(2) Determine the extent of the need of each such eligible person for relocation assistance in accordance with the requirements of section 6048.

(4) Provide current and continuing information on the availability, prices, and rentals of comparable sales and rental housing, and of comparable commercial properties and locations, and as to security deposits, closing costs, typical down payments, interest rates, and terms for residential property in the area.

(5) Assist each eligible person to complete applications for payments and benefits.

(7) Assist each eligible person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.

(9) Supply to such eligible persons information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal or state programs, offering assistance to displaced persons.

(a) If the public entity has not fulfilled or is not substantially fulfilling its relocation responsibilities, it shall cease displacement until such time as its responsibilities are fulfilled. When appropriate project implementation shall be suspended or terminated.

While the City has been working with David's regarding relocation, the assistance has been and is incomplete. The City has failed to comply with the above California Code of Regulations sections, including but not limited to:

- Failing to provide David's with fair and reasonable relocation payments;
- Failing to adequately provide the business with required advisory services;
- Failing to adequately and effectively inform the business of relocation requirements;
- Failing to provide adequate advisory services to the business resulting in hardship;
- Failing to inform and provide the business with the availability of relocation benefits and assistance;
- Failing to adequately survey and analyze the business' relocation needs;
- Failing to adequately provide the business with continuous and current information on the availability of suitable replacement sites;
- Failing to assist the business in applying for relocation payments; and
- Failing to assist the business in obtaining a suitable replacement site.

David's should be granted the relief under CCR 25 CCR §6000, §6006 entitled Remedies "If the public entity has not fulfilled or is not substantially fulfilling its relocation responsibilities, it *shall cease displacement* until such time as its responsibilities are fulfilled. When appropriate project implementation shall be suspended or terminated (emphasis added).

David's is entitled to these remedies and that until the City has fulfilled or substantially fulfilled its relocation obligations, displacement shall cease.

Additionally, the City has failed to comply with the portions of California Government Code Section 7260.5, *et seq.* as follows.

7261. (a) Programs or projects undertaken by a public entity shall be planned in a manner that (1) recognizes, at an early stage in the planning of the programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of these problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(c) This advisory assistance shall include those measures, facilities, or services which are necessary or appropriate to do all of the following:

(1) Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance.

(2) Provide current and continuing information on the availability, sales prices, and rentals of comparable replacement dwellings for displaced homeowners and tenants, and suitable locations for businesses and farm operations.

(3) Assure that, within a reasonable time period prior to displacement, to the extent that it can be reasonably accomplished, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of displaced families and individuals, decent, safe, and sanitary dwellings, sufficient in number to meet the needs of, and available to, those displaced persons requiring those dwellings and reasonably accessible to their places of employment, except that, in the case of a federally funded project, a waiver may be obtained from the federal government.

(5) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

(6) Supply information concerning other federal and state programs which may be of assistance to those persons in applying for assistance under the program.

(7) Provide other advisory services to displaced persons in order to minimize hardships to those persons.

Government Code Sections 7260, et seq. are declarations from the Legislature with regard to the displacement of persons and businesses as a direct result of programs or projects undertaken by a public entity. The City has not provided for the resolution of the problems associated with the displacement of David's as directed by Government Code Section 7261(a) above. Nor has the City provided current and continuing information on the availability of suitable locations for these businesses as directed by Government Code Section 7261(c)(2) or sufficiently assisted David's in obtaining and becoming established in a suitable replacement location as directed by 7261(c)(5), supplied information concerning other federal and state

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programs which may be of assistance to these defendants per 7261(c)(6) or provided other advisory services to these displace defendants in order to minimize hardships per 7261(c)(7).

All relocation efforts must cease, beginning with the flawed adoption of a Resolution of Necessity at this junction.

IX. CONCLUSION.

My client does not want to lose any property for this Project. For the foregoing reasons, my client objects to the City of Santa Clara adopting this Resolution of Necessity.

Finally, because of the holidays and the fact that David's is a restaurant which is exceptionally busy during the holidays, and because of the short notice of the hearing, we request that the hearing be continued until January 2019 at the earliest.

Thank you.

Sincerely,

Scott E. Jenny

/SEJ