

From: [Patty McGraw](#)
To: [City Council](#); [MPClerk](#)
Cc: [Sean O'Connor](#)
Subject: Center Int'l Investments, Inc. - Objection to Resolution of Necessity - Goodviews Abatement Project
Date: Tuesday, October 4, 2022 12:47:41 PM
Attachments: [2022-09-29 Letter to City of Monterey Park re Response to RON.pdf](#)

[EXTERNAL EMAIL]

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Dear Clerk and Council Members,

Attached please find Center Int'l Investments, Inc.'s Objection to Resolution of Necessity in connection with Goodviews Abatement Project.

Sincerely,
Patty McGraw

Patty McGraw | Recruiting Coordinator
Assistant to Sean P. O'Connor, Michael Stewart and Matthew M. Sonne
SheppardMullin | Costa Mesa
+1 714-424-2849 | ext. 12849

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October 4, 2022

File Number: 83ZN-361828

City Clerk's Office
Monterey Park City Hall
320 W Newmark Ave.
Monterey Park, CA 91754

Re: Objection to Adoption of Resolution of Necessity to Acquisition of Certain Real Property Identified as Lot 1 of Tract No. 34875, Located at 1688 Garvey Ave., Monterey Park, CA

Dear City Clerk:

This firm represents Center Int'l Investments, Inc. ("CII"), owner of the above referenced property (the "Subject Property"). We have received notice of the City of Monterey Park's (the "City") intent to adopt a resolution of necessity authorizing the taking of the Subject Property by condemnation for the City's purported Goodviews Abatement Project (the "Project"). Based upon this notice, the City's hearing is scheduled for October 5, 2022, in Monterey Park, California.

CII objects to the proposed adoption of the resolution of necessity on each of the following specific grounds, and we request that this letter be included as part of the formal record on that agenda item:

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

The hearing of the resolution of necessity concerning the proposed Project is a sham as the City has already committed itself to acquiring the Subject Property.

Redevelopment Agency v. Norm's Slauson (1985) 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." (Ibid.)

The issue raised by the court in Norm's Slauson is equally present here. The City's instant action/proposed adoption of the resolution of necessity is not a legitimate process to initiate an eminent domain action. Instead, it appears to be done for tactical reasons relating to its ongoing efforts over the past several years to seize control of the Subject Property and deprive CII of its right to address problems with the Subject Property.

On April 25, 2017, the City and CII entered into a settlement agreement under which CII would implement a plan to stabilize the slopes on the Subject Property. However, the City refused to issue a grading permit to CII necessary to commence the slope stabilization despite CII's compliance with the existing regulations and policies. The City's refusal to issue this permit was a pretextual and strategic maneuver to gain control over the Subject Property and illegally strip CII of its vested development rights. On October 13, 2021, the City informed CII that it had defaulted on the settlement agreement and that the City would undertake nuisance abatement activities. On October 19, 2021, the City took control of the Subject Property— removing CII's lock on the Subject Property and replacing it with the City's own lock. On May 4, 2022, CII filed a petition for a writ of mandate and complaint for injunctive relief, praying for, among other things, a judgment that the City's actions constituted a taking. Then the City undertook nuisance abatement activities pursuant to Resolution Nos. 12255 (adopted June 16, 2021); 2022-R-22 (adopted April 20, 2022); 2022-R34 (adopted May 18, 2022); and Resolution No. 2022-R63 (adopted August 1, 2022).

As demonstrated by the foregoing, the City has already effectively taken the Subject Property, so any adoption of a resolution of necessity now will simply be "rubber stamping" a predetermined result. 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.

2. **The City Failed To Extend A Legitimate Precondemnation 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 precondemnation offer is invalid because the City is effectively seeking to acquire the Subject Property for free. While the City has offered \$6.4 million, that offer is conditioned on CII's ability to convey clear title. As the City is well aware, under the aforementioned settlement agreement between the City and CII, CII was required to cause liens to be recorded on the Subject Property well above the appraised value. In fact, in the City's October 5, 2022 Staff Report, in determining the fiscal impact, the City brazenly states that: "The Property was appraised and the fair market value was determined to be \$6.4M. This amount will be off-set by the recorded abatement liens on the Property, currently valued at \$7.3M and expected to exceed \$12M at the time the City issues a Notice of Completion for the GAP (on or about December 31, 2022)."

So the City candidly admits that it intends to acquire the Property without paying any compensation for it.

3. **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.)

Here, the City has come nowhere close to fulfilling its obligation to acquire the Subject Property through negotiation. In fact, the City has made no effort to negotiate whatsoever. The City sent CII an offer on August 22, 2022. Almost immediately thereafter (on September 2, 2022), the City sent CII notice of its intent to adopt a resolution of necessity, originally scheduled for September 22, 2022 and then continued to October 5, 2022. The October 5, 2022 hearing date is only a month and a half removed from the offer, leaving CII with no meaningful time to evaluate the offer, much less negotiate with the City. This entire offer process was a pretext, underscoring the sham nature of this hearing, as set forth above.

Also, and as noted above, the City strongarmed possession of the Subject Property away from CII before even seeking a resolution of necessity. Moreover, based on the City's precondemnation offer, the City essentially seeks to acquire title to the property Subject Property for free. 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.)

4. **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. The City could have issued the grading permit to CII, allowed CII to stabilize the slopes, and let CII proceed with the development project that the City had approved. Instead City seeks to take over the stabilization of the slopes—providing the same public good that CII would have (but for the City illegally sabotaging its efforts) and maximal private injury to CII.

Further, the City could have taken less than the fee interest of the entire Subject Property, but instead decided to take all of the Subject Property (not just a portion of it) in fee. In its staff report, the City concluded, without any analysis, that is needed to take the entire Subject Property. In doing so, the City ignores the "least private injury" requirement.

SheppardMullin

City of Monterey Park
October 4, 2022
Page 5

Based upon the foregoing objections, CII 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

Sean P. O'Connor
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4861-3864-9654.3

From: [Sean O'Connor](#)
To: [Patty McGraw](#); [City Council](#); [MPClerk](#)
Cc: [Crispin Collins](#); [Alison Martinez](#)
Subject: RE: Center Int'l Investments, Inc. - Objection to Resolution of Necessity - Goodviews Abatement Project
Date: Tuesday, October 4, 2022 2:57:09 PM
Attachments: [Request to be heard on resolution of necessity.pdf](#)
[2022-09-29 Letter to City of Monterey Park re Response to RON.pdf](#)

[EXTERNAL EMAIL]

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Dear Clerk and Council Members,

In addition to the letter we submitted earlier today which we request be part of the record, Karrie On, Director for Center Int'l Investments, Inc, will speak on Wednesday evening. Attached is her Request to be Heard form.

Please let me know if you have any questions.

Sean

Sean O'Connor
+1 714-424-2846 | direct
SOConnor@sheppardmullin.com | [Bio](#)

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From: Patty McGraw <PMcGraw@sheppardmullin.com>
Sent: Tuesday, October 4, 2022 12:47 PM
To: citycouncil@montereypark.ca.gov; mpclerk@montereypark.ca.gov
Cc: Sean O'Connor <SOConnor@sheppardmullin.com>
Subject: Center Int'l Investments, Inc. - Objection to Resolution of Necessity - Goodviews Abatement Project

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September 12, 2022
Page 5

**REQUEST TO BE HEARD ON RESOLUTION OF NECESSITY
FOR THE ACQUISITION OF CERTAIN REAL PROPERTY**

**1688 Garvey Ave., Monterey Park
TR=34875 LOT 1 (APN 5254-002-031)**

Printed Name Karrie On Telephone 626-379-3268

Address Center Int'l Investments, Inc., 501 W. Garvey Ave. #207, Monterey Park, CA 91754

Date October 4, 2022

Karrie On
Signature

October 4, 2022

File Number: 83ZN-361828

City Clerk's Office
Monterey Park City Hall
320 W Newmark Ave.
Monterey Park, CA 91754

Re: Objection to Adoption of Resolution of Necessity to Acquisition of Certain Real Property Identified as Lot 1 of Tract No. 34875, Located at 1688 Garvey Ave., Monterey Park, CA

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"[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." (Ibid.)

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In this case, the Project violates the "least private injury" requirement. The City could have issued the grading permit to CII, allowed CII to stabilize the slopes, and let CII proceed with the development project that the City had approved. Instead City seeks to take over the stabilization of the slopes—providing the same public good that CII would have (but for the City illegally sabotaging its efforts) and maximal private injury to CII.

Further, the City could have taken less than the fee interest of the entire Subject Property, but instead decided to take all of the Subject Property (not just a portion of it) in fee. In its staff report, the City concluded, without any analysis, that is needed to take the entire Subject Property. In doing so, the City ignores the "least private injury" requirement.

SheppardMullin

City of Monterey Park
October 4, 2022
Page 5

Based upon the foregoing objections, CII 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

Sean P. O'Connor
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4861-3864-9654.3

Direct No.: 213.236.2819
Our File No.: 07581-0004
asozio@bwslaw.com

October 5, 2022

VIA ELECTRONIC MAIL

Sean P. O'Connor, Esq.
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993

**Response to Objection to Adoption of Resolution of Necessity to
Acquisition of Certain Real Property Identified as Lot 1 of Tract No. 34875,
Located at 1688 Garvey Ave., Monterey Park, CA**

Mr. O'Connor,

The City of Monterey Park is in receipt of your letter of October 4, 2022, which will be made part of the record of proceedings, and has directed our office to respond.

At the outset, the City notes that it has complied with California law with respect to this matter. The record is replete with information about Center Int'l Investments, Inc.'s ("CII") refusal since at least 2015 to make necessary repairs to the above-referenced property ("Property"), resulting in the prosecution of a civil nuisance abatement action. As referenced in the City Council Staff Report, the only way for the City to ensure present and future protection of the health and safety of the public is for the City to acquire the fee simple interest in the Property, to be thereafter transferred to the Monterey Park Geologic Hazard Abatement District.

There is nothing predetermined about the October 5, 2022 hearing. As your client is well-aware, its complaint regarding the City not issuing permits for its private development project is nothing but a red herring. Among other things, your client failed to exhaust its administrative remedies regarding those permits. Additionally, we are advised the City has deposition testimony suggesting that CII's representatives did not intend to follow through with its private development. There is no lack of written evidence demonstrating the City's good faith attempts to work with your client to achieve the permanent abatement of the public nuisance that is present on the Property – all to no avail. That

October 5, 2022

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notwithstanding, the City Council was advised, and by this correspondence is again reminded, that it has the full, unfettered discretion to decide not to adopt the proposed Resolution of Necessity. CII or someone on its behalf is welcome to appear and speak at the hearing to explain the matter further to ensure the City Council is made fully aware of, and as stated in *Norm's Slauson*, will give "judicious consideration of the pros and cons of the issue" of whether issuance of a grading permit would have sufficiently stabilized the slopes.

Nor is there anything improper about the City's offer. Government Code Section 7267.2(b) requires the City's offer be accompanied by a written summary statement that includes (1) The date of valuation, highest and best use, and applicable zoning of property, as well as (2) the principal transactions supporting the determination of value. The City included the entire appraisal containing all of this information in its August 22, 2022 offer to CII. The Property was appraised on the assumption that it was free and clear of any significant liens, and it would be unjust to expect the City to acquire it now with the liens in place.

As to the issue of whether the City took sufficient steps to negotiate a purchase of the Property, the hearing to consider adoption of the resolution was continued one month from its originally-scheduled date of September 2, 2022. This provided CII with additional time to discuss with the City the prospect of a voluntary acquisition of the Property. While attorneys from our offices telephonically discussed this matter on September 2, 2022, the issue of a negotiated purchase did not come up. Indeed, we are advised that since at least September 9, 2022 your client is completely uninterested in resolving this matter amicably and specifically rejected the City Attorney office's repeated attempts (before and after September 2022) to negotiate the August 22, 2022 offer letter. As such, we are unaware of any efforts or attempts by CII or its counsel to avail themselves of the time period between the City's offer and the October 5, 2022 hearing to discuss the issue of acquiring the Property by negotiation with the City's representatives. See also Gov. Code § 7274 (a failure to comply with section 7267.1 does not "affect the validity of property acquisitions by ... condemnation"); *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 51.

October 5, 2022
Page 3

If you have any questions, you may contact me at 213-709-0329 or
asozio@bwslaw.com.

Sincerely,

Burke, Williams & Sorensen, LLP



Alan A. Sozio

AAS:ahp

cc: Karl H. Berger, Esq., City Attorney