

MINUTES  
GARDEN GROVE AGENCY  
FOR  
COMMUNITY DEVELOPMENT

A regular meeting of the Garden Grove Agency for Community Development was called to order in the Council Chamber of the Community Meeting Center, 11300 Stanford Avenue, on Tuesday, May 10, 2005, at 6:18 p.m.

ROLL CALL: PRESENT: (4) CHAIR NGUYEN, MEMBERS ROSEN, DALTON, KREBS

ABSENT: (1) MEMBER LEYES

ALSO PRESENT: Director, Matthew Fertal; Assistant Director, Les Jones; Economic Development Manager, Chet Yoshizaki; Special Counsel, Celeste Brady and Douglas Evertz; and Secretary, Ruth Smith.

PUBLIC INPUT PERTAINING TO CLOSED SESSION

There were no comments from the public pertaining to the Closed Session item; however, Member Rosen announced that he would not participate in or attend the Closed Session due to a conflict of interest because of the proximity of his residence to the subject property.

ADJOURN TO CLOSED SESSION

At 6:19 p.m., under the Ralph M. Brown Act, the meeting was adjourned to Closed Session in the Founders Room, to discuss the following:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR PURSUANT TO GOVERNMENT CODE SECTION 54956.8

Properties: Parcels commonly referred to as the "Promenade Center" and "Former Costco Site" at northwest corner of Brookhurst and Chapman and comprised of the following parcels listed by Assessor Parcel Number (APN), address, and current owner(s):

APNs 132-402-09, 12, 13, 16, 18, 34, 36, 37 and 38 (9500 block of Chapman Avenue) HGGA Promenade L.P., BB Promenade, LLC and 3535 Promenade, LLC

APN 132-402-32 (11822 Gilbert Street)  
Gilbert Street Developers, LLC

Agency's Negotiator:

Matthew Fertal, City Manager/Agency Director

Negotiating Parties:

Garden Grove Agency for Community Development  
Thomas Lynch, of HGGA Promenade L.P. and Hughes Investments  
Thomas Falcon, Gilbert Street Developers, LLC

Under Negotiation: Price and terms related to the potential acquisition of certain rights and restrictions contained in recorded reciprocal easement agreements (together, "REA") affecting the Promenade Center and the Former Costco Site. The specific REAs at issue include: (i) Reciprocal Easement and Operation Agreement between Hughes/Lyon Garden Grove Associates ("HGGA") and Costco Wholesale Corporation recorded February 27, 1987, as Document No. 87-108247; (ii) Amended and Restated Reciprocal Easement Agreement between HGGA and the Chikasawas recorded February 27, 1987, as Document No. 87-108242; and (iii) supplements to the above-referenced REAs dated 1987 and 1990. The purpose of the Closed Session is to apprise and update the Agency Board as to the status of the acquisition negotiations to acquire rights in and extinguish certain provisions of the REA.

MEMBER LEYES JOINED THE CLOSED SESSION AT 6:20 P.M.

RECESS

At 7:12 p.m., the Chair declared a recess.

RECONVENE

At 7:17 p.m., the meeting was reconvened in the Council Chamber with Chair Nguyen and all Members in attendance, and Chair Nguyen announced that the item previously disclosed was discussed and no others; and no action was taken.

RECESS

At 7:18 p.m., the Chair declared a recess.

## RECONVENE

At 7:30 p.m., the meeting was reconvened with Chair Nguyen and all Members in attendance.

## ORAL COMMUNICATIONS - PUBLIC

Michael Tidus, representing Gilbert Street Developers, addressed the Agency concerning the agenda item pertaining to the Resolution of Necessity. He spoke about the Reciprocal Easement Agreement (REA) and indicated they should be paid fair market value for the property. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

Nick Ni, representing Gilbert Street Developers, addressed the Agency concerning the agenda item pertaining to the Resolution of Necessity. He too noted that they want full market value for the property. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

Vickie Talley, representing Hughes Investments, addressed the Agency concerning the agenda item pertaining to the Resolution of Necessity, referencing a communication dated May 10, 2005, wherein they note their offer of \$4.6 million for the 9.16-acre site and requested the Members vote against the proposed Resolution of Necessity. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

Thom Falcon, representing Gilbert Street Developers, addressed the Agency concerning the agenda item pertaining to the Resolution of Necessity, noting that they had met with Hughes Investments unsuccessfully, and further noting that the REA would be valuable for parking spaces. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

Tom Lynch, representing Hughes Investments, addressed the Agency concerning the agenda item pertaining to the Resolution of Necessity, noting that Wal-Mart is interested in their site and has indicated theirs is the best site. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

Harry Pearce addressed the Agency, noting that he opposes the proposed condemnation, further noting that any gain in revenue would be taken down by a lawsuit that would most probably be filed. (F: A-53.3) (XR: A-55.303) (XR: A-55.110) (XR: A-55.106)

MINUTES (F: Vault)

It was moved by Member Rosen, seconded by Member Krebs, and carried by unanimous vote, that the minutes of the Adjourned Regular Meeting of the Agency held March 29, 2005, be and hereby are approved.

PUBLIC HEARING TO CONSIDER A PURCHASE AND SALE AGREEMENT WITH PAUL AND LIDIA PLACINTA FOR THE SALE OF AN AGENCY-OWNED REMNANT PARCEL LOCATED AT 11071 PALOMA AVENUE (F: A-84.1)

Staff report dated May 10, 2005, was introduced and reviewed by staff.

Chair Nguyen declared the public hearing opened and asked if anyone wished to address the Agency on the matter.

Paul Placinta addressed the Agency, indicating he is available to answer any questions the Agency Members might have.

There being no comments from the audience, the public hearing was declared closed.

It was moved by Member Krebs, seconded by Member Rosen, and carried by unanimous vote, that the Purchase and Sale Agreement by and between the Garden Grove Agency for Community Development and Paul Placinta and Lidia Placinta, be and hereby is approved in the amount of \$9,000.00; and the Chair and Secretary are authorized to execute the pertinent documents on behalf of the Agency when appropriate to do so.

CONSIDERATION OF A RESOLUTION OF NECESSITY TO ACQUIRE AND EXTINGUISH BY EMINENT DOMAIN PORTIONS OF CERTAIN RECIPROCAL EASEMENT RIGHTS AFFECTING CERTAIN REAL PROPERTIES OWNED BY HGGA PROMENADE AND OTHER ENTITIES LOCATED AT THE 9500 BLOCK OF CHAPMAN AVENUE, IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS 132-402-09, 12, 13, 16, 18, 34, 36, 37 AND 38; AND CERTAIN REAL PROPERTY OWNED BY GILBERT STREET DEVELOPERS, LOCATED AT 11822 GILBERT STREET, IDENTIFIED AS ASSESSOR'S PARCEL NO. 132-402-32, FOR REDEVELOPMENT AND OTHER PUBLIC PURPOSES (F: A-55.303)  
(XR: A-55.110) (XR: A-55.106)

It was noted that this matter was continued from the meeting of April 12, 2005.

Member Rosen announced that he has a conflict of interest inasmuch as he resides within 500 feet of this site. Therefore, he will leave the meeting room during the discussion of this matter.

MEMBER ROSEN LEFT THE MEETING ROOM AT 8:35 P.M.

Staff report dated April 12, 2005, was reintroduced, along with a communication dated May 3, 2005, from Harry Pearce; a communication dated May 9, 2005, from Gordon Weyland; and a communication dated May 10, 2005, from Hughes Investments wherein they express their offer of \$4.6 million for the property owned by Gilbert Street Developers.

Member Krebs expressed his appreciation to the other Agency Members for continuing this matter for a month, thus enabling him to go through all the documentation in a thorough manner. He noted his disappointment that little or no progress was made between the two parties involved. He indicated that he is prepared to vote, but would request the Chair to recess the Agency to enable the parties to talk further for 30 minutes.

Member Dalton inquired whether there is any indication that the matter can be resolved in 30 minutes.

Member Krebs commented that he is simply calling on past experience he has had in somewhat similar circumstances.

Member Leyes noted that there was opposition for La Quinta at the time to purchase their property. He further noted that historically, the easement encumbering the other has been used as a club and he is not sure 30 minutes would change anything. Additionally, for the economic development of this parcel he is not sure it is right for the Agency to take such a heavy hand; however, inaction also favors one side over the other. Inasmuch as this is a difficult decision, he suggested providing them with an additional three weeks and continuing this matter to May 31, 2005.

Chair Nguyen asked Mr. Falcon and Mr. Lynch if they believe 30 minutes now would make any difference. Mr. Falcon responded only if the offer is greater than \$4.6 million, and Mr. Lynch responded it would not; however, if the matter is continued, they would continue to see if they can work it out, but Mr. Falcon's group needs to respond.

Member Dalton noted that he does not believe an equitable decision in their minds will be made in three additional weeks.

Member Krebs moved, with Member Leyes seconding for discussion, the adoption of the Resolution of Necessity, the title of which was read by Legal Counsel, being A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT DETERMINING THE PUBLIC INTEREST AND NECESSITY REQUIRING THE ACQUISITION AND EXTINGUISHMENT BY EMINENT DOMAIN OF PORTIONS OF THOSE CERTAIN RECIPROCAL ACCESS EASEMENT AND OPERATION AGREEMENTS (COLLECTIVELY, "REA") AFFECTING CERTAIN REAL PROPERTY OWNED BY HGGA PROMENADE L.P., BB PROMENADE, LLC, AND 3535 PROMENADE, LLC ("HGGA"), LOCATED AT THE 9500 BLOCK OF CHAPMAN AVENUE AND IDENTIFIED AS ASSESSOR'S PARCEL NOS. 132-402-09, 12, 13, 16, 18, 34, 36, 37 AND 38 ("HGGA PROPERTY"), AND CERTAIN REAL PROPERTY OWNED BY GILBERT STREET DEVELOPERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ("PARTICIPANT"), LOCATED AT 11822 GILBERT STREET AND IDENTIFIED AS ASSESSOR'S PARCEL NO. 132-402-32 ("SITE") FOR REDEVELOPMENT AND OTHER PUBLIC PURPOSES; DIRECTING AND AUTHORIZING AGENCY COUNSEL AND AGENCY CONDEMNATION COUNSEL TO PREPARE, COMMENCE, AND PROSECUTE AN ACTION IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, FOR THE PURPOSE OF CONDEMNING, ACQUIRING, AND EXTINGUISHING THOSE PORTIONS OF THE REA WITH RESPECT TO SHARED PARKING AND DISCRETIONARY USE (AS DESCRIBED BELOW); AND MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH.

Member Dalton commented that the parties are too far apart, and action has to be taken.

Chair Nguyen noted her disappointment that the parties have been unable to reach an equitable conclusion. She is not in favor of the use of eminent domain, but this is taking shared parking rights. She is not favoring one party over the other, but is looking at what is best for the City. She called for the vote.

Motion to adopt the Resolution failed to carry by the following vote:

AYES: MEMBERS: (3) DALTON, LEYES, NGUYEN  
NOES: MEMBERS: (1) KREBS  
ABSENT: MEMBERS: (1) ROSEN

MEMBER ROSEN REJOINED THE MEETING AT 8:50 P.M.

ADJOURNMENT

At 8:51 p.m., the meeting was declared adjourned.

RUTH E. SMITH  
SECRETARY