

CENTURY LAW GROUP LLP

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July 2, 2020

Attention: Liza Tamura, City Clerk
Manhattan Beach City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

**Re: *Written Testimony Submitted for the Notice of Proposed Eminent Domain Proceeding
and Opportunity to Be Heard Scheduled for July 21, 2020, at 6:00 p.m.***

This correspondence serves as the written testimony of Michele Chalfant as Trustee of the Angelen Gendian Testamentary Trust (“Property Owner” and/or “Trust”) for consideration by the City Council of the City of Manhattan Beach (“City”) at the hearing for the adoption of a resolution of necessity for the acquisition of portions of property located at 1727 Artesia Boulevard, Manhattan Beach, CA (“Subject Property”) owned by the Trust. This correspondence further serves as the Trust’s written request to appear at the hearing on July 21, 2020, at 6:00 p.m.

It is the Trust’s understanding that the City seeks to acquire through eminent domain a temporary construction easement. In addition to the temporary construction easement, the City will also acquire an 8 foot area of land for its road widening project (“8 Foot Area”). The Trust does not contest: (a) that the public interest and necessity require the Project; (b) that the Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury; (c) that the property interests sought to be acquired are necessary for the Project; and (d) that an offer has been made to the owners of record for the temporary construction easement only.

However, the Trust does take issue with the City’s characterization of the property interests to be acquired through Eminent Domain. The Trust does not agree that the 8 Foot Area which it seeks to acquire through a resolution of necessity can be characterized as a “dedication.” If the 8 Foot Area were, in fact a dedication, then the Trust would not be entitled to just compensation for a taking of this property through Eminent Domain. As set forth herein, the 8 Foot Area is not subject to an enforceable dedication against the Trust and, therefore, the Trust is entitled to just compensation through the Eminent Domain Law due to the City’s taking of the property as the owner of the Subject Property including the 8 Foot Area.

It is the Trust's understanding that the City mistakenly believes that it is not required to compensate the Trust for the 8 Foot Area City because the 8 Foot Area was dedicated to the City for the widening of the right-of-way through the August 15, 2006, City Council Resolution No. 6055 ("Resolution No. 6055"). Resolution No. 6055 granted a conditional use permit ("CUP") to the prior owner of the Subject Property, Stuart Sackley, to operate a convenience store. In order to obtain an approval for the CUP, the City required the dedication of the 8 Foot Area to the City for purposes of a future widening of the right-of-way for an additional right-hand turn pocket.

However, following the passage of Resolution No. 6055 in August 2006, the City did nothing to perfect its rights with regards to the 8 Foot Area dedication from Mr. Sackley. In other words, the dedication of the 8 Foot Area was never recorded with the County Recorder's office either by the City or by the Mr. Sackley either through recording the dedication itself or the Resolution No. 6055.

The Trust acquired the Property on or about March 12, 2014. It had no notice of the dedication of the 8 Foot Area to the City by the prior owner as the dedication was never recorded. The prior owner never disclosed to the Trust that a dedication of the 8 Foot Area had been made to the City. The dedication was not found in the Title Report obtained by the Trust prior to the purchase of the Subject Property. Nor did an inspection of the Subject Property identify a dedication of the 8 Foot Area for a future widening of the City's right-of-way.

Simply put, Civil Code Sects. 1213 and 1214, require every conveyance of real property be recorded to be enforceable. " 'The recording statutes operate to protect the expectations of the grantee and secure to him the full benefit of the exchange for which he bargained.' (*Citizens for Covenant Compliance*, supra, 12 Cal.4th at pp. 358-359.)" *Gamerberg v. 3000 E. 11th St., LLC* (2020) 44 Cal.App. 5th 424. When it purchased the Subject Property, the Trust relied upon the fact that any encumbrance on the property, whether it be an easement, dedication, or restriction to use, would appear on the property's title. The purpose of Civil Code Sects. 1213 and 1214 is to protect the Trust from instances such as these where there is an issue with title to the Subject Property which is not recorded. Because the conveyance of a dedication by Mr. Sackley to the City was not recorded to provide the Trust with notice of its existence, it is not enforceable against the Trust because it was not recorded.

The case, *Philips v. Laguna Beach Co.* (1922) 190 Cal. 180, 184-185, 211 P. 225, is instructive. In *Philips*, the Supreme Court of California held that a dedication of land for use of the public for park purposes had been created and could be enforced as to Laguna Beach Company. Laguna Beach Company passed a resolution allowing for the use of land for public park purposes. While Laguna Beach argued that the dedication offered through a tract map had not been formally accepted, the Court held that the public's open use of the property for public park purposes constituted an acceptance of the dedication. However, the Court refused to enforce the dedication against a *bona fide* purchaser (the lender of a loan secured by a deed of trust for the property or the purchaser of the property) because the *bona fide* purchaser had no notice of the dedication. The resolution of dedication by the Laguna Beach Company was not recorded and there was nothing in the record title to impart notice of the dedication to a subsequent buyer. Moreover, an inspection of the property provided no indication that the

property had been dedicated for public park uses.

The same facts and circumstances are presnt here where, the Trust, as a *bona fide* purchaser of the Subject Property had no knowledge of the dedication. Like *Philips*, the resoluton was not recorded and there was nothing in the record title which provided the Trust with notice of the dedication. Nor would a physical inspection of the Subject Property give any indication that a dedication had been made of the 8 Foot Area. Given the holding in *Philips*, the City has no basis to enforce the dedication made by Mr. Sackley against the Trust. As such, the Trust is entitled to just compensation for the City's acquisition of the 8 Foot Area.

There are also other statutuies which obligate the City to record the dedication or Resolution No. 6055 in order to preserve its abilty to enforce the dedication as to subsequent purchasers. Government Code Sect. 7050 provides that an irrevocable offer of dedication of real property for public purposes "shall be executed, acknowledged, and recorded in the same manner as a conveyance of real property." Again, the dedication by Mr. Sackley was never recorded and, therefore, the requirements of Government Code Sect. 7050 are not met.

Further, Government Code Sect. 27281.5(a) requires that any restriction imposed upon real property which limits the ability of the owner to convey the real property and which is imposed by a governmental or municipal entity, but is not owned by the governmental or municipal entity, must be specifically set forth and recorded so as to impart constructive notice of the restriction. The Trust contends that Resolution No. 6055's requirement that the 8 Foot Area be dedicated for a future expansion of the City's right-of-way constitutes a restriction limiting Mr. Sackley's ability to convey the real property. As such, the requirement that the 8 Foot Area be dedicated for a future expansion of the City's right-of-way was required to meet the requirements of Government Code Sect. 27281.5(a). Again, it failed to do so.

Based on the above, the Trust asks the City to consider an amendment to its resolution such that the 8 Foot Area is not mischaracterized as "the eight foot dedication area sought to be acquired" but as "the eight foot area sought to be acquired." The Trust also asks the City to make an offer pursuant to Government Code Sect. 7267.2 for the 8 Foot Area given that the Trust is entitled to just compensation for the taking of its property for the road-widening project.

Sincerely,



Edward O. Lear, Esq.
on behalf of the Angelen Gendian Testamentary Trust