



REDEVELOPMENT AGENCY STAFF REPORT

DATE: July 20, 2011 HEARING UNFINISHED BUSINESS

SUBJECT: COMMUNITY REDEVELOPMENT AGENCY HEARING FOR A RESOLUTION OF NECESSITY DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF THE DESERT FASHION PLAZA AND THE TOWN AND COUNTRY CENTER.

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

In the Fall of 2010, the Redevelopment Agency of the City of Palm Springs commissioned a fair market value appraisal of the Desert Fashion Plaza and the Town and Country Center. In December of 2010, the Agency offered to purchase the properties for the appraised value. The Agency's primary goal was to acquire the property for redevelopment purposes and installation of public improvements in a manner consistent with the Agency's and City's adopted plans and policies, including the Museum Market Plaza Specific Plan. The Property Owner rejected the offer. The Agency in June of 2011 renewed its offer to purchase the properties and the Property Owner again rejected the offer. It is apparent that the Property Owner does not have any interest in selling the properties to the Agency. The Property Owner has received a notice that the Agency's Board of Directors will consider a Resolution of Necessity that will authorize the Agency to commence proceeding to acquire the properties by eminent domain.

The City has been in negotiations with the Property Owner for an agreement on financing a project implementing the Museum Market Plaza Specific Plan for the Desert Fashion Plaza portion of the property. The proposed agreement would implement the Museum Market Plaza Specific Plan as well as associated Mitigation Measures identified in the Environmental Impact Report prepared in conjunction with the Specific Plan. Thus, the proposed agreement would result in the satisfaction of the primary goal of the Agency; namely, the redevelopment of the property and installation of public improvements in a manner consistent with the adopted plans and policies of the Agency and City. The Agency can abandon the Resolution of Necessity proceedings.

RECOMMENDATION:

1. Accept public testimony for this Item at this time.
2. Abandon Proceedings on the Resolution of Necessity and authorize the Executive Director to execute an agreement with the Property Owner agreeing to cease eminent domain for the Desert Fashion Plaza property for a period of three years, contingent upon Property Owner executing a Project Financing Agreement with the City implementing the Museum Market Plaza Specific Plan.
3. In the alternative, and in the event the Property Owner and the City do not enter into a Project Financing Agreement, the Agency could consider and adopt Resolution No. ____, "A RESOLUTION OF THE BOARD OF THE REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF THE DESERT FASHION PLAZA PROPERTY (ASSESSOR'S PARCEL NUMBERS 513-560-002, 004, 007, 008, and 009) AND THE TOWN AND COUNTRY CENTER (APN'S 513-092-003, 009, 010) IN THE CITY OF PALM SPRINGS, CALIFORNIA, AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS.

STAFF ANALYSIS:

The redevelopment of the Desert Fashion Plaza has been a priority of the Agency for the past 30 years. In January 2010, staff and consultants of the City and the Agency engaged Property Owner of the Desert Fashion Plaza in a defined, six month program to negotiate a Development Planning Agreement ("DPA") that would provide essentially a set of mutually agreeable assumptions, timelines, and general requirements for the negotiation of both a Development Agreement and Owner's Participation Agreement for the redevelopment of the Desert Fashion Plaza (the "Project"). Nevertheless, during this period of time, the Property Owner did not provide the Agency with (1) the development cost and revenue analysis necessary to evaluate the need for and the amount of public assistance required to make the project feasible; (2) a definite, consistent scope of development; (3) a potential schedule of development; or (4) information about the Property Owner's financial ability to participate in a development project. Thus, the Property Owner and the Agency were unable to reach an agreement.

On August 6, 2010, the Redevelopment Agency advised the Property Owner that the Agency was unwilling to wait indefinitely for the Property Owner to propose and demonstrate financial capacity to redevelop the Desert Fashion Plaza.

On September 22, 2010, the Agency (1) authorized the preparation of an appraisal of the Properties, (2) solicit request for proposals, and (3) identify potential alternatives for financing any Agency or City participation in any approved project or the purchase of the Property.

Integra Realty completed an appraisal, which was discussed in the closed session immediately preceding the Council and Agency meeting on December 15, 2010. The Agency authorized the Executive Director or his designee to make a conditional offer to purchase the Property and negotiate in good faith with the Property Owner for the purchase of the Properties. An offer to purchase the property was made to the Property Owner in December, 2010 for the fair market value of the Property. The offer was rejected. A subsequent offer to purchase was made in June of 2011; that offer was also rejected; however, the offer was rejected in part because of the ongoing negotiations between the City and the Property Owner of an agreement that would provide for the financing of a development program that would implement the Museum Market Plaza Specific Plan.

Agency Counsel provided the Property Owner with written notice of the Agency's hearing on the draft Resolution of Necessity. The Property Owner acknowledged receipt of the notice and has advised the Agency that he will exercise his rights to appear and provide appropriate testimony. A copy of the Property Owner's written request to be heard and a copy of Agency Counsel's notice of hearing are attached to this staff report.

By adopting the proposed Resolution of Necessity, the Agency Board will authorize the filing of an eminent domain action to acquire the Property. Before adopting the Resolution of Necessity, the Agency Board must make the following findings based on evidence presented at the hearing:

1. The acquisition of private property for redevelopment purposes has been regarded as a "public use" for which the use of eminent domain is justified.

Here, there are several statutes in the California Code of Civil Procedure and Health and Safety Code that authorize the use of eminent domain for said purpose. (California Health and Safety Code sections 33037(b), 33342, and 33391, and California Code of Civil Procedure sections 1240.010 - 1240.050, 1240.110, 1240.120, and 1240.220). The Project is needed to alleviate blight and address the physical and economic conditions that are present throughout the redevelopment project area. It helps achieve many of the Agency's goals, including providing critical financial resources to alleviate adverse physical and economic conditions in the project area, helping establish a vibrant downtown, and implementing the Specific Plan.

2. The proposed 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 is developed with a mostly vacant and blighted regional mall. Because of its size, central location, and deteriorating condition, it negatively impacts the entire downtown area. The Property can not be feasibly redeveloped on a piecemeal basis. Reducing the area of the Project would compromise the

Project and result in diminished tax increment revenues, thus reducing opportunities to finance economic development, affordable housing, and public facilities.

3. The property interests described in the Resolution of Necessity are necessary for the Project.

Due to the size, location, and condition of the Property, the Project cannot go forward without acquisition of the Subject Property in fee. There is no alternative land on which the Project could feasibly be located and the Property is located in the downtown core area of the City, immediately adjacent to Palm Canyon Drive.


4. The offer required by Government Code section 7267.2 has been made to the owner of record.

A written offer to purchase and an appraisal summary statement for the Property was provided to the Property Owner on December 27, 2010. A subsequent offer to purchase was made on June 24, 2011. Both offers have been rejected. The Agency has been unsuccessful to date in attempts to acquire the Property through negotiations.

5. The Agency has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property.

The Agency has taken all steps required under law to initiate eminent domain proceedings.

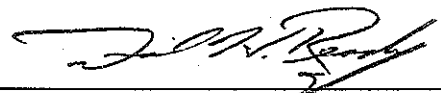
In light of the negotiations between the City and the Property Owner for a an agreement that would provide for the development of the Property in a manner consistent with the Museum Market Plaza Specific Plan, the Agency should refrain from commencing proceedings until or unless those negotiations fail to conclude with an agreement. In the event the City and the Property Owner enter into such an agreement, the Agency should abandon the eminent domain proceedings.



Douglas Holland, City Attorney



Tom Wilson, Assistant City Manager



DAVID H. READY, CITY MANAGER

Attachments: Resolution of Necessity
Request to Be Heard
Notice of Hearing

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CALIFORNIA, DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF THE DESERT FASHION PLAZA (APN 513-560-002, 004, 007, 008, AND 009) AND THE TOWN AND COUNTRY CENTER (APN 513-092-003, 009, 010), PALM SPRINGS, CALIFORNIA, AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS.

The Board of the Community Redevelopment Agency of the City of Palm Springs finds:

A. The purpose of the proposed redevelopment of the Desert Fashion Plaza, including the implementation of the adopted Museum Market Plaza Specific Plan ("Project") is to alleviate blight and address the physical and economic conditions that are present in the Redevelopment Plan for Merged Area No. 1, and the policies and goals set forth therein as well as the Agency's Design for Development, and the City of Palm Springs Museum Market Plaza Specific Plan.

B. The Project is consistent with the adopted General Plan for the City of Palm Springs.

C. Pursuant to the California Environmental Quality Act (CEQA), the Agency finds that the approved and adopted Resolution 22625 of the City Council of Palm Springs, which certified an Environmental Impact Report for the Museum Market Plaza Specific Plan, including without limitation, the making of amendments to the General Plan and Zoning Ordinance of the City, the making of certain findings relative to environmental effects identified in the EIR, the adoption of a Statement of Overriding Considerations, and the adoption of a Mitigation Monitoring Plan and Reporting Plan, is the controlling and applicable environmental document for the Project.

D. It is desirable and necessary for the Board of the Redevelopment Agency of the City of Palm Springs to acquire fee simple title in the Desert Fashion Plaza and the Town and Country Center, Palm Springs, California, as more particularly described in (Exhibit A), which exhibit is attached hereto and made a part hereof by this reference and hereinafter referred to as the "Subject Property."

E. The Community Redevelopment Agency of the City of Palm Springs is vested with the power of eminent domain to acquire all real property interests by virtue of Article 1, Section 19, of the Constitution of the State of California; Health and Safety Code sections 33037(b), 33342, and 33391; California Government Code sections 6500-6522; and California Code of Civil Procedure sections 1240.010 - 1240.050, 1240.110, 1240.120, and 1240.220.

F. Pursuant to Code of Civil Procedure section 1245.235, the Community Redevelopment Agency of the City of Palm Springs has provided the owner of the Subject Property, a copy of the "Notice of Hearing Regarding Adoption of a Adopt Resolution of Necessity" informing the owner of the date and time any interested person can be heard before the Board, on the following matters, and to have the Board give consideration to testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity to commence eminent domain proceedings:

1. Whether the public interest and necessity require the Project;
2. Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the Project;
4. Whether the offer required by Government Code section 7267.2, subdivision (a), (b), and (c) together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner and whether said offer and statement/summary were in a form and contained all of the factual information required by Government Code section 7267.2, subdivisions (a), (b), and (c);
5. Whether the Agency has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property, as well as any other matter regarding the right to take said Property by eminent domain.

G. Pursuant to the provisions of section 7267.2 of the Government Code of the State of California, the Agency has made an offer to the owner of record to acquire the Subject Property for just compensation and provided same with an appraisal summary statement.

H. The Agency considered this matter as an item placed on its agenda at its regular meeting of July 20, 2011.

I. All the findings and conclusions made by the Board pursuant to this Resolution are based upon substantial evidence in the entire record before the Board, including the records and documents on file in the Agency's offices, and are not based solely on the information provided in this Resolution.

J. Prior to taking action, and at various times over the last three years, the Board has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including each of the Project-related documents relevant to the adoption of this Resolution, and all oral and written evidence presented to it during all meetings and hearings.

K. The Board has duly considered all pertinent information presented to it on the issue before it, and specifically whether: (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 Subject Property is necessary for the Project.

L. All other legal prerequisites to the adoption of the Resolution have occurred.

NOW, THEREFORE, it is found, determined, and resolved by the Board of the Community Redevelopment Agency of the City of Palm Springs as follows:

1. The above recitals are true and correct and are matters on which these findings are based.
2. The public interest and necessity require this Project.
3. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury as determined.
4. The taking in fee simple title of the real property more particularly described in Exhibit A is necessary for the Project.
5. The offer required by Government Code section 7267.2 was made to the owner of record on December 27, 2010 and June 24, 2011.
6. The proposed use of the Subject Project will not unreasonably interfere with or impair the continuance of the public use as it currently exists or may reasonably be expected to exist in the future, pursuant to California Code of Civil Procedure section 1240.510.
7. The use for which the Subject Property is sought to be taken is a more necessary public use than the use to which the property is currently appropriated, pursuant to California Code of Civil Procedure Section 1240.610.
8. While continuing to make every reasonable effort to acquire the Subject Property interests by negotiation, the Executive Director of the Redevelopment Agency of the City of Palm Springs or his duly authorized designee be, and is hereby, authorized and directed, within six months of the date of this Resolution to institute and conduct to conclusion an action in eminent domain for the acquisition of the Subject Property and to take such action as may be deemed advisable or necessary in connection therewith, conditioned upon the identification of a source of funds to finance the acquisition of the Property, ratified or otherwise approved by the Board.

PASSED AND ADOPTED by the Agency Board Members of the Community Redevelopment Agency of the City of Palm Springs on the 20th day of July, 2011.

David H. Ready, Executive Director

ATTEST:

James Thompson, Assistant Secretary

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, Assistant Secretary of the Community Redevelopment Agency of the City of Palm Springs, do hereby certify that Resolution No. ____ is a full, true and correct copy, and was adopted at a regular meeting of the Community Redevelopment Agency of the City of Palm Springs on the ___ day of ____, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, Assistant Secretary
Community Redevelopment Agency
City of Palm Springs, California

EXHIBIT A
(materials to follow)

RECEIVED
CITY OF PALM SPRINGS
2011 JUL 11 AM 11:15
JAMES THOMPSON
CITY CLERK

July 8, 2011

Clerk of the Board of Directors
Redevelopment Agency of the City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Re: WRITTEN REQUEST TO BE HEARD AT HEARING
REGARDING ADOPTION OF A RESOLUTION OF
NECESSITY TO ACQUIRE AN INTEREST IN REAL
PROPERTY BY EMINENT DOMAIN [CALIFORNIA CODE
OF CIVIL PROCEDURE 1245.235]

Dear Clerk of the Board:

This letter is a written Request to be Heard at the hearing scheduled by the Redevelopment Agency of the City of Palm Springs ("Agency") at the Agency's regular meeting scheduled for July 20, 2011, at 6:00 p.m., at City Hall Council Chamber, 3200 E. Tahquitz Canyon Way, Palm Springs California. This Request to be Heard is filed by the undersigned in response to a letter regarding NOTICE OF HEARING REGARDING ADOPTION OF A RESOLUTION OF NECESSITY TO ACQUIRE AN INTEREST IN REAL PROPERTY BY EMINENT DOMAIN [CALIFORNIA CODE OF CIVIL PROCEDURE 1245.235], dated July 1, 2011, which letter was mailed to the undersigned by Douglas C. Holland, Agency Counsel, on July 1, 2011. (A copy of said letter is enclosed.) Please be advised that the undersigned is exercising the right to appear and be heard, personally and/or by legal counsel, and/or to submit written testimony, before the Agency's Board of Directors at the above scheduled hearing, on the matters and issues referenced in Subsections (a) through (e) of Section 2 of Mr. Holland's July 1, 2011 letter, and any other matters as may be necessary or appropriate.

Sincerely,



John Wessman
Palm Springs Promenade, LLC
Wessman Holdings, LLC

JW/mh
Enclosures

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cc: Steve Pougnet
Ginny Foat
Chris Mills
Lee Weigel
Rick Hutchinson
Douglas C. Holland



July 1, 2011

Mr. John Wessman
Palm Springs Promenade, LLC
Wessman Holdings, LLC
555 S. Sunrise
Suite 200
Palm Springs, CA 92264

Mr. Curt Ealy
Ealy, Hemphill & Blasdel
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, CA 92270

Re: NOTICE OF HEARING REGARDING ADOPTION OF A RESOLUTION OF
NECESSITY TO ACQUIRE AN INTEREST IN REAL PROPERTY BY
EMINENT DOMAIN [CALIFORNIA CODE OF CIVIL PROCEDURE
1245.235]

Gentlemen:

On behalf of the Redevelopment Agency of the City of Palm Springs ("Agency"), I am providing you with notices required under law regarding the Agency's consideration of the acquisition of Properties identified in my letters to you and your attorney dated December 27, 2010, and June 24, 2011.

1. Notice of Intent of the Redevelopment Agency of the City of Palm Springs to Adopt a Resolution of Necessity. The Agency's Board of Directors intends to consider the adoption of a Resolution of Necessity on July 20, 2011 that, if adopted, will authorize the Agency to acquire properties commonly referred to as the Desert Fashion Plaza (APN 513-560-002, 4,7,8, & 9) and the Town and Country Center (APN 513-092-003, 9, 10) in Palm Springs, California, by eminent domain for redevelopment purposes and the installation of public improvements (the "Project") in a manner consistent with the agency's adopted Redevelopment Plan for Merged Area No. 1, the Agency's Design for Development, and the City of Palm Springs Museum Market Plaza Specific Plan.

2. Notice of Your Right to Appear and Be Heard. Please take notice that the Agency's Board of Directors, at a regular meeting scheduled for July 20, 2011 at 6:00 p.m., or as soon thereafter as the matter may be heard, at City Hall Council Chamber, 3200 E. Tahquitz Canyon Way, Palm Springs, California, will hold a hearing on whether such a Resolution of Necessity should be adopted, as required by California Code of Civil Procedure section 1245.220, prior to the commencement of an eminent domain proceeding to acquire real property.

You have a right to appear and be heard and/or submit written testimony before the Agency's Board of Directors at the above scheduled hearing on the following matters and issues,

July 1, 2011

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and to have the Agency's Board of Directors give judicious consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity.

- a. Whether the public interest and necessity require the proposed Project;
- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed Project;
- d. Whether the offer required by Government Code section 7267.2, subdivisions (a), (b), and (c), together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and statement/summary were in a form and contained all of the factual information required by Government Code section 7267.2, subdivisions (a), (b), and (c), a copy of which is attached hereto; and
- e. Whether the Agency has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take said Property by eminent domain.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After this Notice Is Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the Clerk of the Board of Directors within fifteen (15) days after this Notice was mailed. You must file your request to be heard at 3200 Tahquitz Canyon Way, Palm Springs, California 92262.

The date of mailing appears at the beginning of this Notice.

California Code of Civil Procedure section 1245.235(b)(3) provides that "failure to file a written request to appear and be heard within fifteen (15) days after the Notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues that are the subject of the hearing.

If you elect not to appear, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the Property will not be considered by the Agency's Board of Directors at this hearing.

July 1, 2011

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The amount of the compensation to be paid for the acquisition of the Property is not a matter or issue being heard by the Agency's Board of Directors at this hearing. Your nonappearance at this hearing will not prevent you from claiming greater compensation in a court of law. This Notice is not intended to foreclose future negotiations between you and the representatives of the Agency on the amount of compensation to be paid for the Property.

If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the Agency to take the Property by eminent domain.

If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues that are the subject of this hearing and that are concerned with the right to take the property by eminent domain.

If the Agency's Board of Directors elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, the Agency will commence eminent domain proceedings in Superior Court. In that proceeding, the court will determine the amount of compensation to which you are entitled.

Very truly yours,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DOUGLAS C. HOLLAND
AGENCY COUNSEL