

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Property owner hearing, consider adoption of Resolution of Public Interest and Necessity, authorizing exercise of eminent domain power to acquire property located at 307 West Elm Street (APN 037-270-17) for new Public Safety Building (CA/CD)

MEETING DATE: February 20, 2002

PREPARED BY: Randall A. Hays, City Attorney 

RECOMMENDATION: That the City Council adopt Resolution of Public Interest and Necessity, thereby formally authorizing the acquisition of property through the eminent domain process.

BACKGROUND: The purpose of this agenda item is twofold.

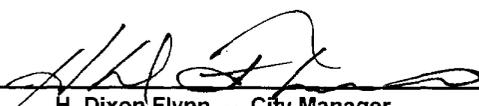
First, it is designed to provide the property owner the opportunity to appear and be heard on those topics contained in the Code of Civil Procedure (CCP) §1240.030. This requirement to afford the property owner this opportunity to be heard is found in CCP §1245.235.

The topics found in CCP §1240.030 that may be addressed by the property owner are as follows: a) does the public interest and necessity require the project? b) is the project planned or located in the manner that will be most compatible with the greatest possible good and the least private injury? and c) the property sought to be acquired is necessary for the project. The amount of compensation to be paid for the property is not a proper subject for this hearing. A property owner will often bring compensation up however.

In order to appear and be heard as outlined in the previous paragraph, a property owner is required to file a written request to appear within fifteen (15) days after the Notice of Hearing was mailed. Failure to file such a request, results in a waiver of the right to appear and be heard (CCP §1245.235 (b)(3)). The property owners, James and Carol Dean were notified of this requirement in a letter sent to them. A copy of that letter is attached. No written request to appear has been received at the time of drafting this memo.

The second purpose is to adopt a resolution establishing the need of the City to exercise the powers of eminent domain to acquire the property in question. The property that is being sought is to be used for the construction and use of a Public Safety Building.

APPROVED: _____


H. Dixon Elynn, City Manager

As can be seen from this memo the eminent domain process is governed by express statutory provisions. CCP §1245.240 specifically requires that a resolution of public interest and necessity be adopted by a two-thirds vote of all the members of the City Council. Since two-thirds of five is a number greater than three, it takes four affirmative votes to adopt the required resolution.

In addition to the attached letters, you will find a memo from Rad Bartlam, Community Development Director, discussing the project and the need for the project. Staff will make a short presentation relative to the project.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

CITY COUNCIL

PHILLIP A. PENNINO, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
EMILY HOWARD
KEITH LAND
ALAN S. NAKANISHI

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702
FAX (209) 333-6807

H. DIXON FLYNN
City Manager
SUSAN J. BLACKSTON
City Clerk
RANDALL A. HAYS
City Attorney

January 31, 2002

~~CERTIFIED MAIL 2/1/02~~

Mr. James and Mrs. Carol Dean
16 North Crescent Avenue
Lodi, California 95240

Re: ~~Notice of Hearing on Resolution of Necessity to Acquire Residence and Duplex at
307 West Elm Street, Lodi, California; San Joaquin County APN #037-270-17~~

Date: February 20, 2002
Time: 7:00 P.M.
Place: City Council Chambers, Carnegie Forum
305 W. Pine St., Lodi, California

Dear Mr. & Mrs. Dean:

This letter shall serve as your official notice pursuant to Code of Civil Procedure Section 1245.235 that the City of Lodi will hold a hearing to consider the adoption of a Resolution of Necessity, at the date, time and location listed above. At the hearing, the City Council will hear and consider evidence and argument, and make findings on the elements which a City Council must find as a prerequisite to filing an action to acquire the above described property through eminent domain. Those elements are: 1) that the public interest and necessity require the project; 2) that the project is planned or located in a manner that will be 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. (Code of Civil Procedure Section 1240.030) You and your representatives have the right to appear and be heard on each element set forth above.

If you wish to appear and be heard at the hearing on the Resolution of Necessity, you must file a written request to do so within 15 days after this notice was mailed. If you fail to file a written request to appear and be heard within the above time frame your right to appear and be heard will be waived.

As you know, the City offered to pay you the full appraised value of the property (\$277,500) by letter dated October 2, 2001 and subsequently provided copies of its appraiser's comparable sales analysis to your counsel, Janice Magdich. A copy of that analysis is again enclosed and shall serve as the City's written summary of the basis for the amount it has established as just compensation for the condemnation of the property.

Of course, the City remains committed to working with you toward a negotiated settlement. Unfortunately, we have never received a response to our offers or our most recent meeting with your counsel. As such, the City must move forward with the Resolution of Necessity to ensure we can meet our construction timetable.

If you have any questions please call me.

Sincerely,

A handwritten signature in black ink, appearing to be 'KB', with a large, sweeping horizontal stroke extending to the right.

Konradt Bartlam
Community Development Director

cc: Janice D. Magdich, Esq.
City Manager
City Attorney
Police Chief



**MEMORANDUM, City of Lodi, Community Development
Department**

To: City Attorney
From: Community Development Director 
Date: February 13, 2002
Subject: Dean Property Located at 307 W. Elm Street

As you have requested, this memorandum addresses the background relative to site alternatives and purchase offers for the Police Department building project.

Prior to designing a new facility for the Police Department, staff from several different departments met to consider alternatives for addressing the space needs. Options reviewed included the expansion of the existing building, relocation of the department to locations outside of the downtown area and the proposed site, which includes the Dean property. One of the central decision points in reaching the proposed site was the adjacency of the County Court building at 315 West Elm Street and the need to overhaul the current jail facility to meet Department of Justice standards.

Currently, prisoners are transported by the Sheriff's Department bus, from our jail to the Elm Street court. This transport is inefficient, time consuming and potentially dangerous. With the construction of a new facility, a new jail could be designed that would have direct access to the court facility, however in order to accomplish this important link, the Dean property is required.

Once that decision had been reached, we had Robert Ford & Associates complete an appraisal of the property for purposes of making an offer to purchase the Dean property. On February 28, 2001 our initial offer was made to the Deans. After several telephone conversations with Ms. Dean, a second letter was sent on April 3, 2001. After more conversation with Ms. Dean that did not result in any formal response to our offers, we authorized the appraiser to update their original appraisal for purposes of offering a final offer. On October 2, 2001 the City made an updated offer based on the new appraisal. In December 2001, we were contacted by Ms. Janice Magdich of the law firm Herum Crabtree Brown who has been retained by the Deans. Since that time we have provided Ms. Magdich with background material that we hoped would lead to a conclusion of the acquisition process. However, as of this date, no response has transpired.

When Recorded, Return to:
City of Lodi
City Clerk's Office
P.O. Box 3006
Lodi, CA 95241-1910

DRAFT

RESOLUTION NO. 2002-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI FINDING THAT PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION FOR PUBLIC SAFETY BUILDING PURPOSES PROPERTY OWNED BY JAMES E. DEAN AND CAROL A. DEAN AS TRUSTEES OF THE JAMES E. DEAN FAMILY TRUST, COMMONLY REFERRED TO AS ASSESSOR'S PARCEL NUMBER 037-270-17 (307 WEST ELM STREET)

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BE IT RESOLVED by the City Council of the City of Lodi (hereinafter referred to as "City") as follows:

Section 1. The City finds and determines that public interest and necessity require the development of a Public Safety Building by the City of Lodi, through the acquisition for such purpose the fee title interest in real property owed by James E. Dean and Carol A. Dean as Trustees of the James E. Dean Family Trust, commonly referred to as A.P.N. 037-270-17.

Section 2. Pursuant to Article I, Section 19 of the California Constitution and Section 37350.5 of the California Government Code, a City may acquire property for public use through the eminent domain process. The public use to which the property herein referenced is to be put, is for the construction and use of a Public Safety Building.

Section 3. An offer required by §7267.2 of the Government Code has been made to the owners of record of the real property sought to be taken by these eminent domain proceedings.

Section 4. The City finds and determines that the subject project has been planned and is to be located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The City finds and determines that the acquisition of the real property interest depicted in Exhibits "A" and "B" attached hereto, situate in the City of Lodi, County of San Joaquin, State of California, is necessary for the construction and maintenance of the aforesaid public improvement, and the taking of said real property interest is necessary therefor.

Section 6. The City has prepared a negative declaration for this project.

Section 7. The City Attorney of the City of Lodi is hereby authorized, empowered, and directed to perform as follows:

- a. Commence an action or actions in eminent domain in the Superior Court of the State of California, County of San Joaquin, in the name of the City of Lodi to acquire necessary real property interests; and

- b. To incur in the name of the City of Lodi, and on behalf thereof, all obligations and expenses necessary to acquire the above-mentioned real property interests.

Section 8. The City Clerk of the City of Lodi is hereby directed to cause a certified copy of this Resolution to be recorded in the office of the San Joaquin County Clerk/Recorder.

Dated: February 20, 2002

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I hereby certify that Resolution No. 2002-____ was introduced and read by the City Council of the City of Lodi in a regular meeting held February 20, 2002, and was duly adopted at said meeting by a four-fifths vote as follow:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

PHILLIP A. PENNINO, Mayor
City of Lodi

Attest:

SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:

RANDALL A. HAYS
City Attorney

2002-____

EXHIBIT A

ACQUISITION FOR PUBLIC SAFETY BUILDING

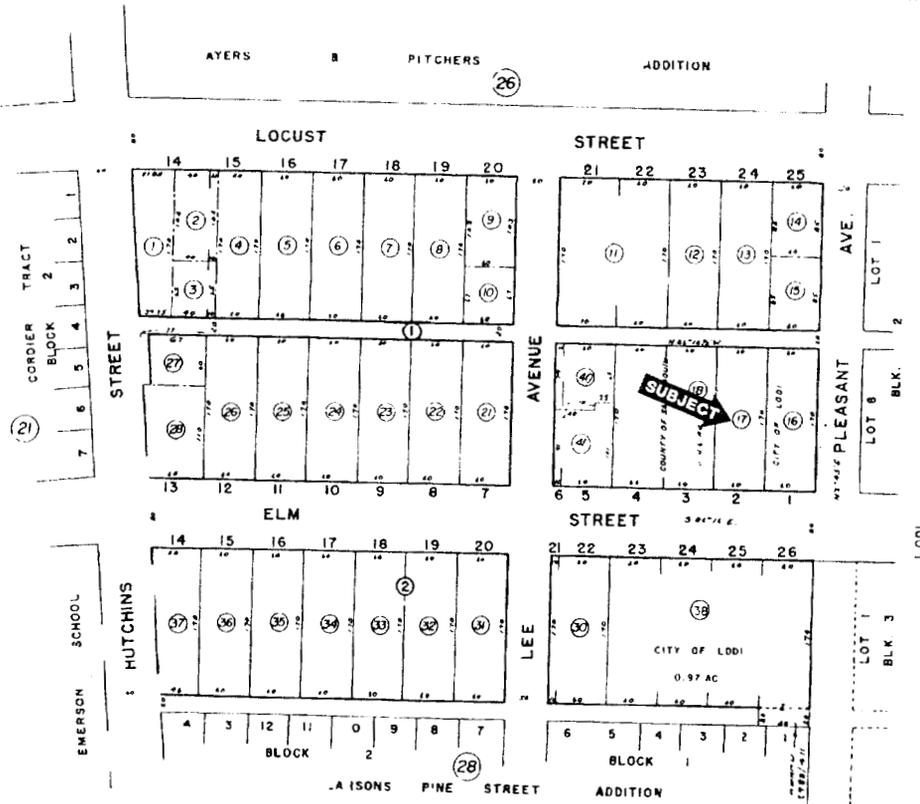
That real property situate in the City of Lodi, County of San Joaquin, State of California, more particularly described as follows:

Lot 2, In Block 1, as shown upon map entitled, West Lodi, filed for Record September 10, 1909, in Vol. 3 of Maps and Plats, page 35, San Joaquin County Records.

EXHIBIT B

THIS MAP FOR
ASSESSMENT USE ONLY

037-27



Blk 43

WEST LODI
SCALE 1"=100'
SAN JOAQUIN COUNTY
ASSESSORS MAPS

EXHIBIT B