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CITY COUNCIL MEETING

MAY 19, 1982

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BETTY SEMAS VS  
CITY OF LODI

Following introduction of agenda item "j" - "Betty Semas v. City of Lodi action concerning the Almond Drive Estates---" Robert Sternfels, Attorney-at-law representing Mrs. Semas addressed the Council regarding a possible compromise of the subject dispute.

Following a lengthy discussion, with questions being directed to Mr. Sternfels and to the City Attorney, Council, on motion of Mayor Reid, Pinkerton second, voted to take no action on this matter.

ROBERT B. STERNFELS, ESQ.  
LAURA E. BAINBRIDGE, ESQ.  
ELLEN A. BAINBRIDGE, ESQ.  
(OF COUNSEL)

BAINBRIDGE & STERNFELS  
ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

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1982 MAY 7 AM 9:27  
100 WEST PINE STREET, SUITE 4  
LODI, CALIFORNIA 95240  
PHONE (209) 334-3777  
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ALICE M. REIMCHE  
CITY CLERK  
CITY OF LODI 076 R01

May 5, 1982

Lodi City Council  
City Hall  
221 West Pine Street  
Lodi, CA 95240

Attention: Alice M. Reimche

Re: Betty Semas v. City of Lodi (Almond Drive Estates)

Dear Ms. Reimche:

Please schedule the Betty Semas v. City of Lodi action concerning the Almond Drive Estates as an agenda matter for the upcoming City Council meeting.

We would like the City Council to consider a possible compromise of the dispute.

Thank you for your cooperation in this matter.

Very truly yours,

  
Laura E. Bainbridge  
BAINBRIDGE & STERNFELS

LEB  
cc: Betty Semas  
10451

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2 1982 MAY 19 PM 1:34

3 ALISE M. REINGHE  
4 CITY CLERK  
5 CITY OF LODI

FILED

MAY 19 1982

NAOMI LINDHOLM

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7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

9  
10 BETTY SEMAS, )

11 Plaintiff, )

12 vs. )

13 CITY OF LODI, et al., )

14 Defendants. )

No. 158705

RULING ON DEFENDANT CITY OF  
LODI'S DEMURRER TO SECOND  
AMENDED COMPLAINT

15  
16 Plaintiff owns and operates a mobile home park in the  
17 City of Lodi, which is located 200 feet west of Cherokee Lane and  
18 fronts on Almond Drive. Almond Drive runs in an east-west direc-  
19 tion and connects with Cherokee Lane.

20 Ever since 1961, when plaintiff's predecessor in interest  
21 first acquired a permit to operate a trailer park at that loca-  
22 tion, access to Almond Drive has been by a 70-foot wide macadam  
23 driveway.

24 In 1981, the City of Lodi commenced installing concrete  
25 curbs, gutters and sidewalks along Almond Drive, and indicated to  
26 plaintiff the intention of reducing her driveway from 70 feet to  
27 30 feet. The second amended complaint alleges that plaintiff  
28 presented a request to the Lodi City Council that she be allowed

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1 to retain her 70-foot driveway, but that the request was refused  
2 after a hearing and she was granted a 35-foot driveway instead,  
3 giving the Lodi Department of Public Works the authority to in-  
4 crease the size of the driveway if it decided in its discretion  
5 that a hardship existed.

6 The second amended complaint, alleges further that it  
7 was the opinion of the City Engineer and the Department of Public  
8 Works that no hardship existed, so that plaintiff's request to  
9 retain her 70-foot driveway was refused, and a 35-foot concrete  
10 driveway has now been completed.

11 By her previous first amended complaint, plaintiff had  
12 sought equitable relief from this Court requiring the City of  
13 Lodi to widen the driveway to the former width of 70 feet. How-  
14 ever, after demurrer to the first amended complaint was sustained  
15 with leave to amend, plaintiff, by her second amended complaint,  
16 has abandoned attempts to obtain injunctive relief, and now seeks  
17 damages alone on the alternative theories of irrevocable license,  
18 interference with access rights, and estoppel.

19 The City of Lodi has demurred generally to the second  
20 amended complaint, and has presented arguments against the irre-  
21 vocable license and estoppel theories of recovery, but no argu-  
22 ment as to the interference with access cause of action contained  
23 in the second cause of action.

24 The demurrer to the first and third causes of action  
25 is hereby sustained without leave to amend, for the following  
26 reasons:

27 Estoppel cannot be asserted against a municipal corpora-  
28 tion or other public entity as to property held for public use.

1 (City of San Diego v. Cuyamaca Water Co., 209 Cal. 105; 10 Mc-  
2 Quillin on Municipal Corporations (3d ed., revised) section 28.56;  
3 56 Am.Jur.2d 608.) This is particularly true as to driveway  
4 access rights in public streets. (Alexander Co. v. City of  
5 Owatonna (Minn.) 24 N.W. 2d 244; see, Frederick v. City of  
6 Louisville (Ky.) 242 S.W. 2d 267.)

7 . Plaintiff has cited no case holding that an abutting  
8 owner can obtain an irrevocable license to driveway access to a  
9 public street of any particular width simply because installation  
10 of a driveway of that width in the past constituted expenditure  
11 of funds for an improvement within the irrevocable license doctrine.

12 No cases have been found applying the irrevocable  
13 license theory as against public entities. The principal cases  
14 in California invoking irrevocable licenses (Cooke v. Ramponi,  
15 38 Cal.2d 282; Stoner v. Zucker, 148 Cal. 516; Hammond v. Mustard,  
16 257 Cal.App.2d 484), deal with privately-owned real property.

17 The doctrine of irrevocable license is predicated on  
18 the doctrine of equitable estoppel. (Belmont County Water  
19 District v. State of California, 65 Cal.App.3d 13.) It there-  
20 fore goes without saying, that, if estoppel cannot be asserted  
21 against a municipal corporation as to property held for public  
22 use, neither can irrevocable license.

23 In an analogous situation, the rule is firmly established  
24 that a person cannot obtain an irrevocable license as against a  
25 government body by connecting to a sewer service and expending  
26 money for improvements in reliance on such a parol license.  
27 (Elliott v. City of Pacific Grove, 54 Cal.App.3d 53; 10 McQuillin  
28 on Municipal Corporations, supra, section 31.31.)

1 Unquestionably, the Lodi City Council, as the governing  
2 body having control of the streets in Lodi, had the authority in  
3 the exercise of its police power to deny plaintiff's application  
4 for continuance of a 70-foot driveway opening on Almond Drive.  
5 (Delta Rent-A-Car Systems, Inc. v. City of Beverly Hills, 1 Cal.  
6 App.3d 781; Stevenson v. City of Downey, 205 Cal.App.2d 585;  
7 Flemming v. Maturin (La.) 14 So. 2d 356; Elder v. Mayor of City  
8 of Newport (R.I.) 57 A. 2d 653; 10 McQuillen on Municipal Corpor-  
9 ations, supra, section 30.64.)

10 This, however, does not mean that the Lodi City Council  
11 or the Lodi Department of Public Works had the right to substan-  
12 tially or unreasonably impair plaintiff's access to Almond Drive  
13 for her mobile home park without making just compensation therefor.

14 Plaintiff would certainly have the right to bring suit  
15 against the City of Lodi in inverse condemnation for damages  
16 caused by "substantial impairment" of her right of access as an  
17 abutting property owner. (Breidert v. Southern Pacific Co., 61  
18 Cal.2d 659; County of Monterey v. W. W. Leasing Unlimited, 109 Cal.  
19 App.3d 636; Wagner v. State of California ex rel., Department of  
20 Public Works, 51 Cal.App.3d 472; United California Bank v. People  
21 ex rel. Department of Public Works, 1 Cal.App.3d 1.)

22 The second cause of action of the second amended com-  
23 plaint at least attempts to assert a theory of interference with  
24 access to the mobile home park. However, as it now reads, it  
25 fails to state a proper cause of action in inverse condemnation  
26 for recovery of damages for "substantial impairment" of access  
27 by an abutting property owner.

28 The demurrer to the second cause of action is hereby

1 sustained with 20 days leave to amend.

2 Attorneys fees would not be recoverable as presently  
3 pleaded, in the absence of a showing of contractual or statutory  
4 authorization. However, they would be recoverable in inverse  
5 condemnation. (Code of Civil Procedure section 1036.)

6 The motion to strike paragraphs 14 and 15 of the second  
7 amended complaint is hereby granted since the allegations con-  
8 tained therein as to the temporary restraining order which was  
9 dissolved are totally immaterial to any of plaintiff's theories  
10 of recovery, even the theory of inverse condemnation.

11 Although the Court can take judicial notice of the re-  
12 cords of the Lodi and San Joaquin County Planning Commissions,  
13 the Lodi City Council, and the Lodi Department of Public Works,  
14 which are attached to the City of Lodi's points and authorities  
15 in support of its demurrer (Evidence Code section 452(b); O'Keefe  
16 v. Atascadero County Sanitation District, 21 Cal.App.3d 719;  
17 Almond v. County of Sacramento, 276 Cal.App.2d 32; Agostini v.  
18 Strycula, 231 Cal.App.2d 804), there is nothing in those docu-  
19 ments that is of any real importance to this ruling.

20 Dated: May 18, 1982.

21  
22   
23 FRANK KIM  
24 Superior Court Judge  
25  
26  
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