

CITY COUNCIL MEETING
NOVEMBER 11, 1987

REVIEW OF C-BASIN

CC-27(a)
CC-27(c)

City Manager Peterson reminded the Council that the matter before the Council for discussion was the review of C-Basin. The following letter which, had been received from the Law Offices of Freeman and Brown who represent Mr. Daryle Geweke was presented for Council review:

"Re: Park Basin "C"
Acquisition of Property
10 Acre Parcel

Dear Mayor and Council Members:

This office represents Mr. Daryle Geweke who is the purchaser, pursuant to a land sales contract, of three adjacent parcels of real property, Parcels #28, #29 and #30 lying to the north of Kettleman Lane, east of Highway 99 and adjacent to Lodi City limits belonging to Orrind D. Kettleman. Said contract of sale recites that "the city of Lodi is contemplating condemning approximately 10 acres of said parcel #30".

We have reviewed the Master Plan of Park Base "C" adopted by the City Council on October 15, 1986, and discussed the proposed acquisition of the portion of parcel #30 specifically, timing, configuration, use and damages.

Mr. Geweke has instructed us to attempt to minimize the adverse impacts the presently proposed acquisition would have on Parcel #30 while attempting to equitably accommodate the needs of the City of Lodi.

We subsequently contacted Mr. Ronald Stein, City Attorney, and inquired as to how soon the city needed the property, what methods were available to mitigate Mr. Geweke's damages and how could we work with the City of Lodi in the equitable resolution of these problems.

Mr. Stein advised that the City's department of Public Works wanted to proceed immediately with the acquisition of the property and the construction of the project; that as the plan had been adopted by the City Council, it could only be modified by the City Council; that we would therefore have to direct our concerns and proposals for mitigation to the City Council.

Continued November 11, 1987

Will you please schedule this matter for discussion by the City Council as soon as mutually convenient. As resolution of these problems need to be explored through open discussion, we would suggest an initial council study session for that purpose. Unfortunately, Mr. Freeman will be out of the country until the end of October. We will be pleased at that time to present to you our concerns and our proposal to mitigate Mr. Geweke's damages while accommodating the needs of the City of Lodi.

Thank you for your consideration and cooperation. We look forward to working with you and your staff in the equitable resolution of this problem.

Very truly yours,

s/Gerald A. Sperry"

City Manager Peterson indicated that the City has, to date, expended approximately \$12,000 in the development of the Master Plan for C-Basin.

City Attorney Stein elaborated on the City Manager's introduction indicating that Mr. Geweke is asking that the City change the configuration of the park basin in order that his client might have a 600 foot property depth from Beckman Road. Mr. Geweke has indicated that he would be willing to pick up the costs involved for redesigning the Master Plan for the requested reconfiguration of the park basin.

The City's Consultant, Mr. Richard Biegler, addressed the Council giving an indepth overview of the Master Plan of C-Basin and responded to questions regarding the matter as were posed by members of the Council.

Mr. Biegler pointed out that this is a special interest park with natural landscape features. The proposed marsh area would require low maintenance. The site, as it is presently proposed, would hold the required volume of water. Mr. Biegler indicated that he feels that it is an outstanding plan.

Mr. Arlie Preszler, 1150 West Kettleman Lane, Lodi, addressed the Council regarding the model airplane facility at the site.

Mr. Gerry Sperry, Attorney-at-Law representing Mr. Daryle Geweke, Law Offices of Freeman and Brown, 1818 Grand Canal Boulevard, Stockton, California, addressed the Council stating that he feels that a car dealership is an appropriate use of this land, and reiterating the request, that the City change the configuration of the park basin in

order that his client might have a 600 foot property depth from Beckman Road. Further, Mr. Sperry suggested that Mr. Geweke employ Mr. Biegler to work out a redesign of Park Basin "C" in a reasonable time frame that will accommodate all requirements. Mr. Sperry further suggested that Mr. Biegler's proposal for the redesign will be brought to the City Manager for approval.

A lengthy discussion followed with questions being directed to Staff, to Mr. Biegler and to Mr. Sperry.

Mr. Raymond Schaffter, 2200 Newbury Circle, Lodi, representing the Model Airplanners, indicated that they would like an opportunity for input during the replanning process.

On motion of Mayor Pro Tempore Snider, Pinkerton second, Council approved proceeding on Mr. Geweke's request with the following directions:

- A) The Council does not necessarily want to change the present facilities configuration of the Master Plan but is willing to review an alternate plan.
- B) Consultant Richard Biegler is to provide the City with a time and cost proposal for the redesign.
- C) The City and Mr. Geweke will review and approve Mr. Biegler's proposal. Mr. Biegler will be retained by the City for the redesign and Mr. Geweke is to be responsible for all the involved costs.
- D) Mr. Biegler is to work on a time and material basis, not to exceed the amount of the proposal.
- E) City staff time involved in the redesign will be monitored and accounted for. Mr. Geweke is to reimburse the City for these costs.

The motion carried by the following vote:

Ayes: Council Members - Pinkerton, Reid, Snider,
and Olson (Mayor)

Noes: Council Members - Hinchman

Absent: Council Members - None

Council Member Hinchman indicated that he is concerned about a park facility being located behind a commercial facility and that he feels it is in the City's best interest to work with the original plan.

Continued November 1, 1987

City Attorney Stein gave a status report on negotiations with the Kettleman family regarding property acquisition in the subject area.

COUNCIL COMMUNICATION

TO THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

DATE:
November 4, 1987

NO.

SUBJECT:

Consider Request of Daryl Geweke for Council Discussion and Resolution of Concerns relating to Park Basin "C" Acquisition, Southeast Corner of Vine Street and Beckman Road)

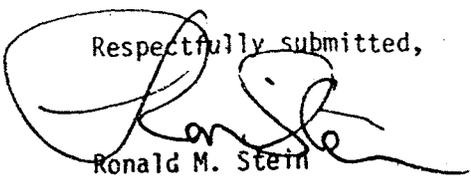
PREPARED BY: City Attorney

BACKGROUND INFORMATION: Attached hereto is a copy of a letter dated October 5, 1987, received from Gerald A. Sperry, of the law firm of Freeman & Brown regarding the C-1 Basin acquisition of property at Beckman Road and Vine Street. Mr. Sperry represents Daryl Geweke who is the potential purchaser of the property in question.

Also attached hereto for Council's review is a copy of the pertinent pages of the Agreement of Purchase and Sale and Escrow Instructions dated June 22, 1987 between Orrin D. Kettelman and the Estate of Gertrude M. Kettelman, and Daryl Geweke.

As you will read in Mr. Sperry's letter, he is asking that the City change the configuration of the park basin in order that his client might have a 600 foot property depth from Beckman Road.

Respectfully submitted,



Ronald M. Stein
City Attorney

RMS:vc

CCCBASI.N2/TXTA.01V

Law offices of

FREEMAN & BROWN

Professional Corporation

Maxwell M. Freeman
James Belton Brown
Judy A. Lovett
Erik R. Anderson
Gerald A. Sperry
A. Peter Rausch, Jr.

October 5, 1987

Honorable Mayor Evelyn Olson
Honorable City Council Members
City of Lodi
City Hall
Lodi, California

COPY

Re: Park Basin "C"
Acquisition of Property
10 Acre Parcel

Dear Mayor and Council Members:

This office represents Mr. Daryle Geweke who is the purchaser, pursuant to a land sales contract, of three adjacent parcels of real property, Parcels #28, #29 and #30 lying to the north of Kettleman Lane, east of Highway 99 and adjacent to Lodi City limits belonging to Orrind D. Kettleman. Said contract of sale recites that "the city of Lodi is contemplating condemning approximately 10 acres of said parcel #30".

We have reviewed the Master Plan of Park Base "C" adopted by the City Council on October 15, 1986, and discussed the proposed acquisition of the portion of parcel #30 specifically, timing, configuration, use and damages.

Mr. Geweke has instructed us to attempt to minimize the adverse impacts the presently proposed acquisition would have on Parcel #30 while attempting to equitably accommodate the needs of the City of Lodi.

We subsequently contacted Mr. Ronald Stein, City Attorney, and inquired as to how soon the city needed the property, what methods were available to mitigate Mr. Geweke's damages and how could we work with the city of Lodi in the equitable resolution of these problems.

Mr. Stein advised that the City's department of Public Works wanted to proceed immediately with the acquisition of the property and the construction of the project; that as the plan had been adopted by the City Council, it could only be modified by the City Council; that we would therefore have to direct our concerns and proposals for mitigation to the City Council.

1818 Grand Canal Boulevard
Stockton, California 95207
209 474 1822
Telex: 709 474 1245

Reno Nevada Office
147 East Liberty Street
Reno, Nevada 89501
709 333 6200

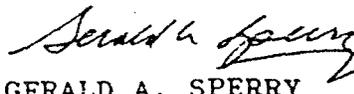
FREEMAN & BROWN

Honorable Mayor Evelyn Olson
Honorable City Council Members
October 5, 1987
Page Two

Will you please schedule this matter for discussion by the City Council as soon as mutually convenient. As resolution of these problems need to be explored through open discussion, we would suggest an initial council study session for that purpose. Unfortunately, Mr. Freeman will be out of the country until the end of October. We will be pleased at that time to present to you our concerns and our proposal to mitigate Mr. Geweke's damages while accommodating the needs of the City of Lodi.

Thank you for your consideration and cooperation. We look forward to working with you and your staff in the equitable resolution of this problem.

Very truly yours,



GERALD A. SPERRY

GAS:dm

cc: Daryle Geweke
Orrind Kettleman
Ronald Stein

573

AGREEMENT OF PURCHASE AND SALE
AND ESCROW INSTRUCTIONS

THIS AGREEMENT, made this 22 day of June, 1987, by and between ORRIN D. KETTLEMAN and ESTATE OF GERTRUDE M. KETTLEMAN, Deceased, individually and as Trustees, hereinafter called "Seller", and DARYL GEWEKE or his nominees, hereinafter called "Buyer",

W I T N E S S E T H:

WHEREAS, Seller is the owner of four parcels of real property, together with improvements thereon, located in the Lodi area, San Joaquin County, California, designated as "Parcels #26 (16.77 acres), #28 (1.52 acres), #29 (18.81 acres) and #30 (20.02 acres) in County Assessor's Map Book, Page 049-07 and more particularly described in Exhibit "A" attached hereto and made a part hereof.

WHEREAS, the City of Lodi is contemplating condemning approximately 10 acres of said Parcel #30.

WHEREAS, Buyer is desirous of purchasing all of Parcel #26, #28, #29 and the entire Parcel #30 or such portion of Parcel #30 remaining, depending on its size and location, after the City of Lodi condemns same, and Seller is desirous of selling all such real property to Buyer.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, it is agreed by and between the parties hereto as follows:

1. City of Lodi's Condemnation. At the present time the City of Lodi is contemplating condemning by eminent domain

approximately ten (10) acres of said Parcel #30. Buyer agrees to purchase and Seller agrees to sell all of said parcels including the Westerly ten (10) acre portion of Parcel #30 which will remain after the taking by the City of Lodi providing and on condition that the remaining portion of Parcel #30 is of the minimum size and shape as provided hereafter in paragraph 1.1.

1.1 Buyer agrees to purchase and Seller agrees to sell all of said parcels including such portion of Parcel #30 which remains either after the condemnation by the City of Lodi or the City of Lodi's failure to condemn such real property within 2 years of the date of this agreement providing and on condition that the remainder of Parcel #30 is of rectangular shape and has a minimum curb frontage of 625 feet and a minimum depth of 600 feet.

1.2 It is understood and agreed that the commencement date of this agreement depends entirely upon when the City of Lodi completes or withdraws its condemnation of a portion of Parcel #30. Until such time, it cannot be determined the extent of the property being purchased herein by Buyer or whether the condition set forth above in this paragraph has been satisfied.

2. The Real Property. The parcels of real property (#26, #28, #29 and #30) the subject of this purchase and sale are more particularly described on Exhibit "A", attached hereto and made a part hereof.

3. Purchase Price. Buyer agrees to pay to Seller the total sum of TWENTY-SIX THOUSAND TWO HUNDRED SIXTY AND NO/100 DOLLARS (\$26,260.00) an acre for the purchase price for said parcels of



CITY OF LODI

PUBLIC WORKS DEPARTMENT

COUNCIL COMMUNICATION

TO: City Council
FROM: City Manager
MEETING DATE: November 4, 1987
AGENDA TITLE: Public Hearing to Consider Adoption of Resolution of Necessity for the Acquisition of Additional Land for the C-Basin, Southeast Corner of Vine Street and Beckman Road, by Eminent Domain Procedures

RECOMMENDED ACTION: That the City take the initial step in eminent domain proceedings by adoption of a resolution of necessity for the acquisition of the park/basin by a vote of two-thirds of all of the Councilmembers.

BACKGROUND INFORMATION: At the October 14, 1987 City Council meeting, Council set a hearing for November 4, 1987 to consider adoption of a resolution of necessity for the acquisition of additional land for C-Basin by eminent domain proceedings, pursuant to Code of Civil Procedure Section 1245.220. Notice of said hearing was mailed to property owners Orrin D. and Gertrude M. Kettelman on October 16, 1987. The City has not received notice from the Kettelmans indicating any desire to be heard at the November 4 hearing.

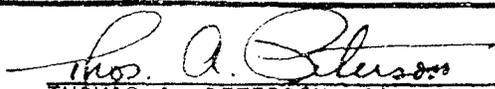
The City's right of way negotiator, Jerry Heminger, first contacted the owners on April 27, 1987. Through numerous contacts since that time, he has reached verbal agreement with the Kettelmans to purchase the 10 acre parcel necessary for the basin or a 12± acre parcel which would "square off" their remainder. Problems with a third party and the agreement between the Kettelmans and that party have held up consummation of the formal agreement.

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

1. The public interest and necessity require the project.
2. 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. The property sought to be acquired is necessary for the project.

State law provides that a public entity may exercise the power of eminent domain only if it has adopted a resolution of necessity by a vote of two-thirds of all of the members of the governing body.

APPROVED:


THOMAS A. PETERSON, City Manager

FILE NO.

It is important to be aware that once the resolution of necessity has been adopted, the City must commence an eminent domain proceeding to acquire the property within six months after the date of adoption or, if the City has filed such proceeding, the City must serve the complaint and the summons relating to the proceeding. If it does not, the property owner may file an action for inverse condemnation to:

1. Require the City to take the property and pay compensation therefor, and/or
2. Recover damages from the City for the interference with the possession and use of the property resulting from adoption of the resolution.

However, the City Council is permitted to rescind the resolution of necessity as a matter of right at any time before the property owner commences an action.



Ronald M. Stein
City Attorney

RMS/ma

RESOLUTION NO. 87-150

RESOLUTION OF NECESSITY REGARDING EMINENT DOMAIN
PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.220 ET SEQ.

BE IT RESOLVED by the Council of the City of Lodi as follows:

The Council of the City of Lodi finds, determines, and hereby declares:

1. That the public interest, necessity, and convenience require the acquisition, construction, and completion of a public improvement, to wit: the acquisition of additional land for the C-Basin, Southeast corner of Vine Street and Beckman Road within San Joaquin County, described as a portion of the south one-half of the north one-half of the southwest one-quarter of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian.

2. That the real property hereinafter described is suitable, adaptable, necessary, and required for the public use of said City of Lodi, as hereinabove set forth.

3. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

4. That the City of Lodi acquire the hereinafter described real property for a park/basin by donation, purchase, or by condemnation in accordance with the provisions of the Code of Civil Procedure of the State of California relating to eminent domain. That the City Attorney is hereby authorized to prosecute in the name of the City of Lodi, any and all actions or proceedings required to acquire the necessary property and/or to fix the compensation to be paid for property damage resulting from the construction and maintenance of said improvements; and in the absence of a satisfactory price agreement with the owner of the land, the City Attorney is hereby directed to immediately commence proceedings under Title Seven, Chapter Three of the Code of Civil Procedure of the State of California, to condemn the property hereinafter described for the purpose of taking said land for the public use of said City as hereinabove set forth.

5. To make application to a Court of competent jurisdiction for an order fixing the amount of such security in the way of money deposits as said Court may direct, and for an order permitting said City of Lodi to take immediate possession and use of said property, or interest in real property, or existing improvements for the public use as hereinabove set forth; to make deposit of such security or monies in such amount so fixed and determined and in such manner as said Court in which said condemnation proceedings are pending may direct.

6. The real property or interest in real property which the City of Lodi is by this Resolution authorized to acquire for said public

improvements is situated in the County of San Joaquin, State of California, and is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

7. Pursuant to Government Code Section 7267.2, a written offer was made to the owners of record in the amount of \$262,500 for 10 acres, or \$315,000 for 12 acres..

DATED: November 4, 1987

I hereby certify that Resolution No. 87-150 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 4, 1987 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Alice M. Reimche
City Clerk

EXHIBIT A

LEGAL DESCRIPTION
PROPERTY LOCATED SOUTH OF VINE STREET
AND EAST OF BECKMAN ROAD WITHIN SAN JOAQUIN COUNTY

Being a portion of the south one-half of the north one-half of the southwest one-quarter of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the center of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, thence South 1-04' East, 668.4 feet along the east line of the southwest one-quarter section to the northeast corner of that Kettleman parcel shown in Volume 6, Page 284, Record of Surveys, San Joaquin County Records, and the True Point of Beginning, thence North 87-41' West, 1038.0 feet along the north line of the south one-half of the north one-half of said southwest one-quarter section, thence South 1-04' East, 420.0 feet, parallel with said east line, thence South 87-41' East, 1038.0 feet, parallel with said north line of said south one-half to said east line, thence North 1-04' West, 420.0 feet, along said east line to the True Point of Beginning.

NOTICE OF PUBLIC HEARING
BEFORE THE LODI CITY COUNCIL

Notice is hereby given that on November 4, 1987 the City Council of the City of Lodi, at its regular meeting to be held on that date at 7:30 p.m. in the Council Chambers located at 221 West Pine Street, Lodi, California, intends to adopt a Resolution of Necessity regarding Eminent Domain, pursuant to Code of Civil Procedure (CCP) Section 1245.220, for the property located at the Southeast corner of Vine Street and Beckman Road, Lodi, and more particularly described as that certain real property in the County of San Joaquin, State of California, described as follows:

Being a portion of the south one-half of the north one-half of the southwest one-quarter of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the center of Section 7, Township 3 North, Range 7 East, Mount Diablo Base and Meridian, thence South 1°04' East, 668.4 feet along the east line of the southwest one-quarter section to the northeast corner of that Kettleman parcel shown in Volume 6, Page 284, Record of Surveys, San Joaquin County Records, and the True Point of Beginning, thence North 87°41' West, 1038.0 feet along the north line of the south one-half of the north one-half of said southwest one-quarter section, thence South 1°04' East, 420.0 feet, parallel with said east line, thence South 87°41' East, 1038.0 feet, parallel with said north line of said south one-half to said east line, thence North 1°04' West, 420.0 feet, along said east line to the True Point of Beginning.

The property owners have been notified that they have the right to be heard on the matters referred to in CCP Section 1240.030 as it relates to this property. Specifically, CCP Section 1240.030 permits the City of Lodi to exercise the power of eminent domain to acquire the property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be most compatible with the greatest public need and the least private injury.
- c. The property sought to be acquired is necessary for the project.

Pursuant to CCP Section 1245.234, the property owners must file a WRITTEN REQUEST to be heard within 15 days after the notice was mailed. The governing body need not give an opportunity to appear and be heard to any person who fails to file a written request. If the property owners intend to be heard on the matter, they need to bring in or mail their request to Alice M. Reimche, City Clerk, 221 West Pine Street, Call Box 3006, Lodi, CA 95241-1910, phone 333-6702. THEIR FAILURE TO FILE A WRITTEN REQUEST TO APPEAR AND BE HEARD WITHIN 15 DAYS AFTER THE NOTICE WAS MAILED WILL RESULT IN WAIVER OF THE RIGHT TO APPEAR AND BE HEARD.

If the property owners challenge the subject matter in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at, or prior to, the public hearing.

Dated: October 14, 1987

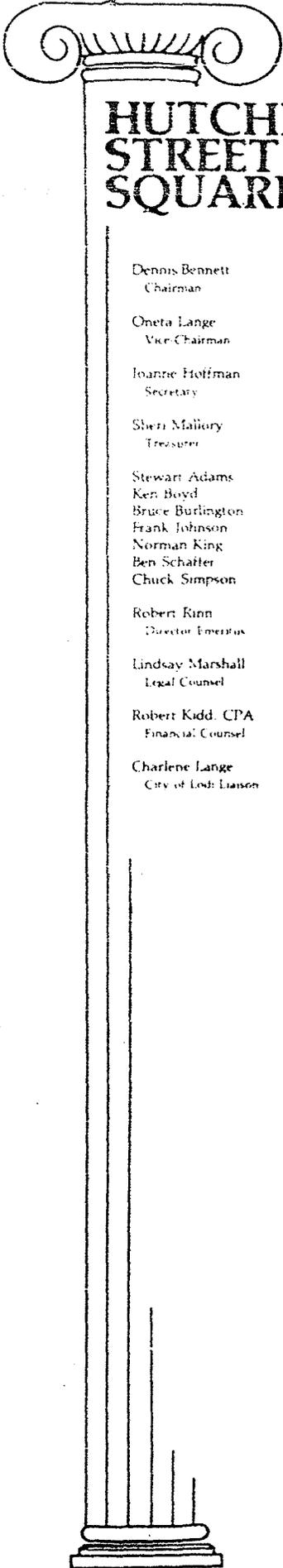
BY ORDER OF THE LODI CITY COUNCIL

Alice M. Reimche
Alice M. Reimche
City Clerk

Approved as to form

Original signed by Ronald M. Stein

Ronald M. Stein
City Attorney



**HUTCHINS
STREET
SQUARE**

Dennis Bennett
Chairman

Oneta Lange
Vice-Chairman

Joanne Hoffman
Secretary

Sheri Mallory
Treasurer

Stewart Adams
Ken Boyd
Bruce Burlington
Frank Johnson
Norman King
Ben Schaffer
Chuck Simpson

Robert Rinn
Director Emeritus

Lindsay Marshall
Legal Counsel

Robert Kidd, CPA
Financial Counsel

Charlene Lange
City of Lodi Liaison

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ALICE H. REIMCHE
CITY CLERK
CITY OF LODI

November 4, 1987

Mayor Evelyn Olson
City of Lodi

Dear Mayor Olson,

The Old Lodi Union High School Site Foundation requests the opportunity to meet with the Lodi City Council in closed session, Wednesday, November 18, 1987 to discuss pending litigation concerning Hutchins Street Square.

Sincerely,


Dennis G. Bennett
Chairman

DGB:cl