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MONTEREY PARK CITY COUNCIL HURT IN EMINENT DOMAIN BATTLE

PROPERTY OWNERS AT GARVEY AND GARFIELD CELEBRATE

MONTEREY PARK – Los Angeles County Superior Court Judge Daniel S. Pratt on June 29 issued a written tentative ruling strongly rejecting an attempt by the Monterey Park City Council and developer Magnus Sunhill Group, LLC to take private property by eminent domain in a highly watched case.

Property owners Pin Zu Wu and VHD Investment, Inc., through its president Phat Lu, as well as their real estate consultant Joe Tseng of Kotai Realty, celebrated with extra fireworks this Fourth of July.

The case involves the City's attempt to seize private property for the controversial Towne Centre Project, a proposed mixed-use development on 2.2 acres at the southeast corner of Garvey and Garfield Avenues in Monterey Park.

"God bless America," said Pin Zu Wu, whose property on Garfield Avenue was targeted by the City. "We fought back against the government," she said.

"This is an amazing Fourth of July," added Phat Lu, whose commercial property on East Garvey Avenue had also been threatened.

"After a year and a half of fighting to protect my clients, I am very happy that the judge was receptive to our arguments," said attorney Robert P. Silverstein, who represents Wu and Lu. Silverstein specializes in fighting government on behalf of property and business owners in eminent domain and land use matters.

Silverstein has won several high profile eminent domain cases recently. Last year Silverstein stopped the Los Angeles Redevelopment Agency in a nationally watched case at Hollywood and Vine on behalf of his client, Bernard Luggage, a 60-year-old family-owned business. Silverstein also saved the historic Florentine Gardens from eminent domain by the City of Los Angeles for a fire station project. And last December, Silverstein prevented the Los Angeles Unified School District's proposed destruction of an Echo Park neighborhood for a school project.

"This is especially meaningful coming near the Fourth of July, a holiday where we celebrate our freedom and the rights of the individual against abusive government," Silverstein added.

In his tentative ruling **[see attached]**, Judge Pratt wrote that the City of Monterey Park and its Redevelopment Agency "are restrained from any actions" until the City "fully complies with the requirements of the California Environmental Quality Act by preparing an EIR [Environmental Impact Report] for the Towne Centre Project."

Silverstein explained that the City failed to properly analyze the project's traffic, parking, noise, light/glare, public safety and cumulative impacts.

Most importantly, said Silverstein, the tentative ruling states that the City's violation of the law "bars the City's eminent domain procedures." The final ruling is expected shortly.

"The City and its development partner were sent a clear message that this type of heavy-handed activity will not be allowed," owner Phat Lu said.

Owner Pin Zu Wu agreed, stating: "The City tried to pressure us into selling at ridiculously low prices. We are very grateful that our lawyer was able to achieve this important milestone," Wu said.

Real estate expert Joe Tseng of Kotai Realty, who has consulted with Silverstein, Wu and Lu, commented that "the Monterey Park City Council and their development partners can no longer bully innocent property owners."

# # #

TENTATIVE ORDER

Petitioners PIN ZU WU and VHD INVESTMENT, INC.'s petition for a writ of mandate is **GRANTED.** CCP § 1094.5(f).

CITY OF MONTEREY PARK, THE CITY OF MONTEREY PARK CITY COUNCIL and THE REDEVELOPMENT AGENCY OF THE CITY OF MONTEREY PARK are **ORDERED** to fully comply with the requirements of the California Environmental Quality Act by preparing an EIR for the Towne Centre Project. Any project approvals already obtained are invalid. The CITY OF MONTEREY PARK, THE CITY OF MONTEREY PARK CITY COUNCIL and THE REDEVELOPMENT AGENCY OF THE CITY OF MONTEREY PARK are restrained from any actions in furtherance of the project unless an EIR has been prepared, publically circulated, and approved.

Respondent's and petitioners' requests for judicial notice are **GRANTED.** EC §§ 452, 453. The various sections of city's municipal code are noticed.

Respondent's supplemental request for judicial notice is **GRANTED.** EC §§ 452, 453. The court must take judicial notice of the date which a city ordinance was adopted and of city council resolutions. The court notes that the documents exist but the court has already ruled that the documents cannot be considered as part of the administrative record as they were not relied upon in the MND. Minute order April 17, 2007. Petitioners' objection to the material as irrelevant is SUSTAINED.

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code §§ 21100, 21151; 14 CCR §§ 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. The fair argument test is a "low threshold" test for requiring the preparation of an EIR. No Oil, supra, 13 Cal. 3d at 84. This standard reflects a preference for requiring an EIR to be prepared, and a preference for resolving doubts in favor of environmental review. Mejia v. City of Los Angeles (2005) 130 Cal. App. 4th 322, 332. "Where the question is the sufficiency of the evidence to support a fair argument, 'deference to the agency's determination is not appropriate. County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern (2005) 127 Cal. App. 4th 1544,1579 (quoting Sierra Club v. County of Sonoma (1992) 6 Cal. App. 4th 1307, 1317).

The court finds there is substantial evidence in the record to support a fair argument that an Environmental Impact Report is necessary. The evidence includes:

Traffic

The petitioners's traffic expert stated the "the project may have significant unmitigable impacts related to traffic, circulation, and safety issues, and that the mitigation measures proposed by in the traffic study do not, and cannot, successfully mitigate the project's significant traffic and circulation impacts. At a minimum, an EIR should be prepared for the Project." 6C AR 2430. Comments from experts may not simply be ignored. There must be good faith reasoned analysis in response. Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commr's (2001) 91 Cal. App. 4th 1344, 1367.

Sweet (Petitioner's expert) found nine errors in the traffic analysis which corrupts the conclusions and proposed mitigation measures. He opines that correcting the errors would "contribute to the project's significant unmitigable impacts." 6C AR 2431. Even one of the planning Commissioners (Hamner) questioned the validity of the study and the MND's conclusions. 2 AR 90:15-17, 103:17-20.

There is also evidence in the record that the project may require additional offsite parking. 2 AR 85:23-86:4. 6C AR 2635:12-22, 2648-54.

Noise and Vibration

Expert testimony disputes the MND's findings with respect noise impacts. Hans Giroux explained that there is a significant possibility that existing baseline levels at the project site may exceed the threshold and that the project may cause significant noise impacts. 6C AR 2428. Furthermore, a very large project at the northeast corner of Garfield and Garvey should have been analyzed as a source of cumulative noise impacts. 6C AR 2428. Giroux also indicates that there may be significant unmitigable vibration impacts. Id.

Light and Glare

A 10 foot by 20 foot advertising sign represents a significant source of light and glare to surrounding areas. 6C AR 2418. The "mitigation" measure is a proposed exception to municipal code to allow the "Jumbotron." The need for a variance supports a finding of significant impact. 6C AR 2411.

Public Services and Safety

The Jumbotron will distract drivers and create a significant safety impact. 6C AR 2411, 2417, 2418. Mitigation measures do not attempt to address nighttime glare and safety issues. 6A AR 1434. The City cannot defer study of mitigation measures. Sundstrom v. County of Mendicino (1988) 202 Cal. App. 3d 296, 1580.

Cumulative Impacts

Cumulative impact analysis is particularly important in the urban setting. Kings County Farm Bureau. v. City of Hanford (1990) 221 Cal. App. 3d 692. The MND ignores a large mixed used project proposed for the northeast corner of Garfield and Garvey. Although the project had not been finalized it was reasonably foreseeable and three planning commissioners urged the preparation of an EIR to consider the cumulative impacts of the adjacent projects. 2 AR 99, 107.

Courts have repeatedly affirmed that the fair argument standard is a low threshold test. League for Protection of Oaklands's Historic Resources v. City of Oakland (1997) 52 Cal. App. 4th 896. Evidence supporting a fair argument of a significant environmental impact will trigger preparation of an EIR, even if the record contains contrary evidence. Sundstrom v. County of Mendicino (1988) 202 Cal. App. 3d 296, 310. Petitioners have presented a fair argument of significant environmental impacts. Therefore, the petition for writ of mandate is granted.

The improper use of an MND also bars the City's eminent domain procedures. See Burbank-Glendale-Pasadena Airport Auth. v. Hensler (1991) 233 Cal. App. 3d 577, 596 (dismissal of agency's eminent domain action proper in light of agency's non-compliance with CEQA). Judgment is granted in petitioners favor in the related case number BC360996.

Since the court has invalidated any project approvals already obtained, the petitioners' non-CEQA claims (violations of the Brown Act, State Redevelopment Law, conflict of interest laws and due process rights) are moot. However, the respondent should address the concerns raised by petitioners in any future proceedings.