

Support Material Agenda Item No. 29

Board of Directors Meeting

**November 6, 2024
10:00 AM**

Location:

San Bernardino County Transportation Authority
First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

DISCUSSION ITEMS

Project Delivery

29. US 395 Phase 2 Project Hearings to Consider Resolutions of Necessity for Property Interests Within the Cities of Hesperia and Victorville

That the Board, acting as the San Bernardino County Transportation Authority:

I. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-023 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Hazboon Family Trust (Assessor's Parcel Number 3064-371-11). The resolution must be approved by at least a two-thirds majority.

Correspondence was received after publication of the agenda and is attached for your information.

Objection from Allen Matkins Leck Gamble Mallory & Natsis LLP, representing the interests of The Hazboon Family Trust.

Allen Matkins

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VIA ELECTRONIC MAIL

November 4, 2024

San Bernardino County Transportation Authority
Clerk of the Board of Directors
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410

Email: clerkoftheboard@gosbcta.com

**Re: Objections to the San Bernardino County Transportation Authority Board of Director's November 6, 2024, hearing on a proposed resolution of necessity for partial condemnation of the Hazboon family's property located at 10368 Highway 395 (APN 3064-371-11) in connection with SBCTA's US-395 Widening Project
Agenda Item No. 29**

To the Clerk of the Board:

This firm represents Sidqi S. Hazboon and Latifeh S. Hazboon, Trustees of the Hazboon Family Trust dated March 16, 1998, owners of property that is the subject of the November 6, 2024, hearing regarding the Board's intent to adopt a resolution of necessity authorizing condemnation for a portion of the property located at 10368 Highway 395, and designated as San Bernardino County Assessor's Parcel Number 3064-371-11, for Phase 2 of the US-395 Widening Project. Specifically, SBCTA seeks to acquire a 14,057-square-foot fee interest, a 4,628-square-foot permanent slope easement, and a 303-square-foot temporary construction easement.

We submit this letter in lieu of appearing and objecting at the hearing to detail and preserve the Hazboon family's objections to SBCTA's proposed resolution of necessity. We request that this objection letter appear in the record for Agenda Item Number No. 29 regarding the resolution of necessity.

We also request that copies of this objection letter be distributed to each Board member prior to their considering the resolution of necessity.

OBJECTIONS

SBCTA has not satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, SBCTA failed to make an offer of just compensation based on an adequate appraisal of the property. Thus, SBCTA cannot adopt a resolution of necessity.

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good faith negotiations before initiating a condemnation offer. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

SBCTA has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn the Hazboon family's property. Specifically, SBCTA is required to pay the Hazboon family the fair market value of the property that SBCTA intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, SBCTA's appraisal must accurately reflect the fair market value of the Hazboon family's property and account for all relevant considerations.

But SBCTA's appraisal is seriously defective, as detailed below. Because of these significant defects in the appraisal, SBCTA has not properly made an offer under Government Code section 7267.2, and the Board cannot make a finding that it has. Thus, the Board cannot properly adopt a resolution of necessity.

SBCTA's appraisal misses the proper value of the property by ignoring the property's improved condition, and instead valuing it as vacant land.

The Hazboon family owns roughly 4.65 acres improved with multiple commercial buildings, a parking lot, two paved driveways, extensive landscaping, and a large single-family home all in the City of Hesperia. A stone-fabrication business and animal-feed store operate on the Hazboon family's property. Both businesses rely on and utilize the parking lot at the front of the property for parking and storage.

Even though the Hazboon family's property is improved, SBCTA's appraiser disregarded the improvements, which is improper. By defining the property as "land only," the appraiser excluded from the analysis various severance damages (as discussed below). No law allows SBCTA to appraise an *improved* property using the fiction that it is *vacant*. An aerial image of the Hazboon family's property is below.



Additionally, by defining the Hazboon family’s property as “land only,” the appraiser was able to avoid using the income-capitalization approach. Given the commercial nature of the property, which is zoned as Commercial Industrial Business Park, the income-capitalization approach is generally considered to be more accurate than the sales-comparable approach, and SBCTA’s appraiser should have used it.

SBCTA’s appraisal also values the permanent slope easement at just 75% of fee value, despite acknowledging that the Hazboon family is relinquishing the “right to occupy, develop, and use” the easement area. In fact, the *only* utility that the easement area will retain is the Hazboon family’s ability to use the area for setback requirements and FAR calculations. These limited uses are certainly not worth 25% of fee value. The slope easement should be valued much closer to full fee value.

SBCTA’s appraisal used non-reflective and outdated comparable sales.

To determine land value, the appraisal includes seven “comparable” sales, all of which consist of unimproved dirt lots. Six of these comparable sales are located in different cities from the Hazboon family’s property, and none of the properties have the same zoning designation as the Hazboon family’s property.

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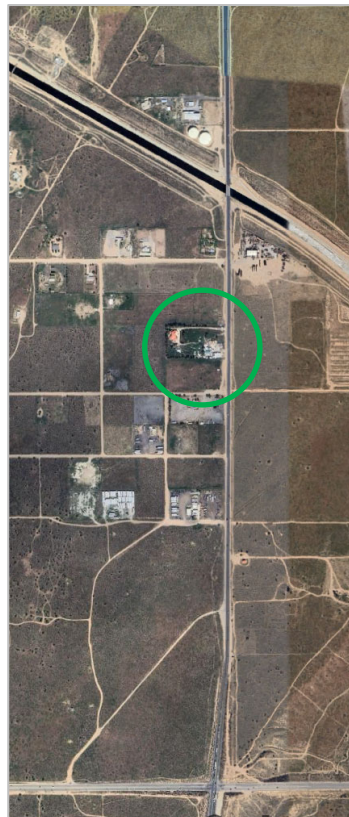
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One property has no legal street access. All “comparable” sales are unentitled.

Many of the “comparable” sales are stale: they are several years older than SBCTA’s date of value. Some sales went as far back as July 2022, which was a different economic environment. Such outdated “comparable” sales do not reflect fair market value in the current real-estate market. This should be reflected in SBCTA’s appraisal.

SBCTA’s project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

The Hazboon family’s property is located on the westerly side of Highway 395, along with several other improved properties. In comparison, the easterly side of Highway 395 consists almost entirely of *undeveloped* land. SBCTA’s project calls for widening Highway 395 by pushing the right-of-way westward onto these improved properties rather than eastward onto mainly vacant land. An aerial view of the area in question is included below, with the Hazboon family’s property circled in green.



A public agency may not exercise the power of eminent domain for a proposed project unless it establishes 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.” (Code Civ. Proc., § 1240.030, subd. (b).) SBCTA’s project is not planned to result in the least private injury to the Hazboon family and other property owners. SBCTA could have expanded the right-of-way to the east across mostly undeveloped, vacant land.

By expanding the right-of-way westward, SBCTA is taking portions of several developed properties, including the Hazboon family’s. This will result in significant severance damages for their remainder property and will severely impair the business operations of the Hazboon family’s commercial tenants.

SBCTA’s appraisal grossly underestimates the Hazboon family’s severance damages.

SBCTA’s appraisal concluded that the proposed taking will result in \$0 of severance damages. But SBCTA’s appraisal offers *no support* for this conclusion. Rather, SBCTA’s appraisal claims that SBCTA’s proposed taking will not result in any change “to the utility or highest and best use of the property and no diminution in value.” There is no support provided for these claims. SBCTA’s appraiser’s land-only valuation enabled the appraiser to wholly ignore the Hazboon family’s severance damages.

For example, SBCTA’s appraisal completely ignores the severance damages that will arise from the permanent loss of multiple parking spaces that currently serve the property’s commercial tenants. SBCTA’s fee acquisition and permanent slope easement will require the partial demolition of the commercial parking lot and the relocation of an electric transformer and propane storage tanks. This will permanently remove several parking spaces, potentially resulting in a legally non-conforming parking lot. This will greatly reduce the value of the property in the after condition of the project and make the property less attractive to commercial tenants.

SBCTA’s fee acquisition and permanent slope easement will also require the removal of existing signage for the businesses operating at the property. This signage is prominently located adjacent to the highway, but it will need to be moved much further back (likely into the existing parking lot) as a result of the project. It is also unclear if new signage will need to comply with current City standards.

There is also no discussion in the appraisal about how SBCTA intends to maintain access throughout project construction to ensure that the businesses can continue their operations, that customers can continue accessing the businesses, and that the Hazboon family can access their residence at all times. As shown below, the permanent slope easement comes right up to the edge of one of the commercial buildings, and the temporary construction easement overlays the entire driveway leading to the commercial parking lot. There is no way for the businesses to operate if ingress and egress is restricted for the duration of the temporary-construction-easement period. It is

also unclear if the building abutting the slope easement will be allowed to remain as-is, or if it will need to be cut and refaced, relocated, and/or rebuilt to satisfy setback requirements.



Conclusion

Because the evidence presented in these objections establishes that SBCTA's appraisal is fundamentally flawed, SBCTA must commission a new appraisal that properly assesses the Hazboon family's property, and SBCTA must make a new offer before proceeding with a resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).)

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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The Hazboon family therefore respectfully requests that SBCTA's Board *not* proceed with the premature adoption of any resolution of necessity and that SBCTA instead obtain a new, proper appraisal and begin good-faith negotiations with the Hazboon family in connection with SBCTA's US-395 Widening Project.

Very truly yours,



K. Erik Friess

KEF:sma