



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

**SUBJECT: PUBLIC USE AND NECESSITY
HEARING – NAZLOO & GEVERGIZ**

DATE: 05-24-04

Approved

Date

Council District: 7

RECOMMENDATION

Adoption of a resolution:

- (1) Determining that public use and necessity require the acquisition of a portion of the property located at 888 Story Road, owned by Dennis K. Nazloo and Tony A. Gevergiz.
- (2) Finding that: (a) The property to be taken is necessary for the completion of the Story Road Widening Project (Senter Road to McLaughlin Avenue); (b) The proposed project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury; (c) City staff established an amount of just compensation not less than the approved appraisal of the fair market value; (d) City staff presented an offer to the owners for the full appraised amount; and (e) The proposed taking and use are authorized by law.
- (3) Directing the City Attorney to file an eminent domain action to acquire the above property interests.

CEQA: Exempt, PP04-03-084.

BACKGROUND

Story Road is an east-west arterial street in San José. The existing four-lane Story Road between Senter Road and McLaughlin Avenue is designated as a six-lane arterial in the General Plan and needs to be widened due to increased traffic demand.

The Story Road Widening Project will widen the street to six lanes, eliminate bottlenecks and better manage traffic demand. The scope of the project includes street and sidewalk improvements, new median islands, landscaping, streetlights, drainage system, a new traffic

signal at Story Road/Remillard Court and traffic signal modification at the intersection of Story Road and Lucretia Avenue. The project requires acquisition of the subject property. The remaining property in the project area already is under City ownership. The project is scheduled for award in October 2004.

ANALYSIS

The subject property is located at the southwest corner of Story Road and Lucretia Avenue. It consists of an approximate 14,868 square foot parcel that is improved with a building currently used as a restaurant. The project will not affect the building, and the business can continue operating. However, nine parking spots will be eliminated. A preliminary analysis of the loss of parking indicates that there may be a loss of goodwill to the business of approximately \$59,000. The acquisition to be taken in fee represents an approximate 4,186 square foot area located along the northern and eastern edges of the larger parcel, adjacent to the existing frontage on Story Road and Lucretia Avenue. The take area is currently improved with asphalt paving only.

On October 7, 2003, City staff presented the owners of the property with a purchase offer of \$176,000, based upon the full amount of the approved appraisal. The property owners responded with a counter offer in the amount of \$1,253,965, which was based on both a significantly higher per square foot property value in addition to large severance damages from the purported loss of business that would be caused by the take.

City staff had both its appraisal and the property owners' appraisal reviewed. The reviewer verified that the City's appraisal was accurate and that the property owners' appraisal was flawed. Staff renewed negotiations with the property owners and renewed the City's offer. The property owners continued to maintain that their compensation should be \$1,253,965 and have given the City no additional information that would indicate why the City should accept this offer. Staff has also obtained a Loss of Goodwill appraisal that determined that the acquisition would reduce the businesses value by \$59,000, and the City has orally proposed adding this amount to the final compensation for the take with the property owners. This proposal was also rejected by the property owners. The City's attempts to negotiate a purchase with the owners have therefore reached an impasse as it does not appear that a negotiated purchase can be reached.

The acquisition of this property enables the project to initiate construction in January 2005 in accordance with the schedule. Because this is a roadway improvement and the property taken is necessary for the completion of this project, the proposed take of property will create the greatest possible public good with the least private injury. A map showing the subject property is attached as Exhibit A.

PUBLIC OUTREACH

Not applicable

COORDINATION

Preparation of this staff memorandum has been coordinated with City Attorney's Office, the City Manager's Budget Office and the Department of Planning, Building and Code Enforcement.

COST IMPLICATIONS

The appraised amount of \$176,000 will be deposited into the State Treasury Condemnation Fund. The court may determine that additional funds must be deposited later. There may also be a loss of goodwill payment of approximately \$59,000.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
429	4051	Story Rd.: Senter to McLaughlin	118253	\$600,000	NA	Page 820	

CEQA

Exempt, PP04-03-084.

KATY ALLEN
Director, Public Works Department

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