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Via Email and Federal Express

March 4, 2021

Clerk of the Board  
Orange County Transportation Authority  
550 South Main Street  
Orange, CA 92863-1584  
Email: *clerkoffice@octa.net*

**Re: OCTA Board of Director's intent to adopt a Resolution of Necessity  
1021 Duryea Ave., Irvine, APN 430-115-01: John Washer, Trustee  
Hearing Date: March 22, 2021**

Members of the Board:

Our office represents John Washer, owner of the referenced property, and Cabinets Plus, the business operated thereat. We request that this letter be made part of the record at the March 22, 2021, hearing at which the Board will determine whether it will adopt a resolution of necessity in the above referenced matter. This letter shall serve as an objection pursuant to Code of Civil Procedure §1245.230(d), which requires that an offer be made in accordance with Government Code §7267.2 prior to adoption of a resolution of necessity. We also request the opportunity to appear and be heard at the time of the hearing.

A purported offer has been made to Mr. Washer, but it does not comply with the legal requirements for such an offer. Prior to adopting a resolution of necessity, an offer must be made to the owner pursuant to Government Code §7267.2. Subsection (b)(3) of this code section provides that the offer include:

If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits. (Gov't Code, §7267.2(b)(3).)

John Washer owns the subject property on which Cabinets Plus designs, constructs, and delivers interior cabinet configurations throughout southern California. The proposed acquisition by OCTA involves a fee take of approximately 3,121 square feet off the western portion of the subject property that fronts the 55 Freeway, plus two separate temporary construction easements totaling approximately 1,393 square feet. As a percentage of the referenced property, the acquisition itself may not appear to be substantial, taking into account the approximately 49,772 square feet of the property as a whole; however, the effects the partial acquisitions will have on the property and the tenantability will be substantial.

The proposed acquisition will negatively impact access to the loading portions of the business' warehouse; impede the circulation needed for loading and unloading operations; and interfere with the work flow and processes Cabinets Plus relies on and has had in place for years. The appraisal in support of OCTA's prelitigation offer pursuant to Government Code §7267.2 was completed by Hennessey & Hennessey, LLC, dated August 26, 2020 (the "Hennessey Appraisal"). Beginning on page 68 of the Hennessey Appraisal, OCTA's appraiser discusses the effects of the project as it relates to the proposed acquisitions on the Washer property. In pertinent part, the appraiser states:

As a part of the project, I have been informed that OCTA has obtained a license agreement with the adjacent property owners to use abutting properties for circulation and parking purposes. The new lot will replace the 23 parking spaces impacted during the exclusive use period of the TCE term. It is an extraordinary assumption of this report that the loss of use of 23 parking spaces will be mitigated by the creation of a new parking area.

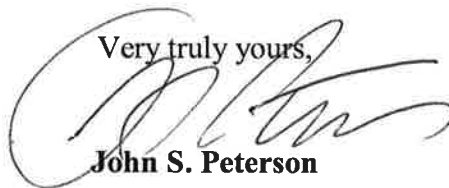
As a part of creating this new circulation and parking lot, the fence enclosing the north side of the parking lot will be removed, and the temporary storage containers in that area will be relocated. The fence and these items will be restored after the use of this parking arrangement has terminated. Creating the offsite parking and moving the storage containers are outside the scope of this appraisal assignment.

Based on this analysis, the Hennessey Appraisal concludes that the Washer property will suffer \$0 in "severance damages" (damage to the remainder property as a result of the partial acquisition). "This is because the fee acquisition does not negatively impact the functional utility of the subject development." (Hennessey Appraisal, pg. 75).

As acknowledged by the Hennessey Appraisal, the referenced property will lose 23 parking spaces. There is no specificity or plan certainty related to OCTA's mitigation plan, other than to say a license has been obtained with an adjacent property owner. The Hennessey Appraisal assumes this, and this alone, will fully mitigate the disruption to the current uses of the subject property, and therefore the highest and best use will not be impacted and severance damages are not warranted to be awarded per Government Code §7267.2(b)(3). Meanwhile, beyond the reference in the Hennessey Appraisal, Mr. Washer has not received a written offer for, or an adequate description of these licensed areas intended to mitigate the parking space losses. As such, Mr. Washer is not in a position to properly evaluate the validity or the sufficiency of the offer and the impact on Cabinets Plus.

Further specifics and the explanation required in the Government Code must be provided to Mr. Washer in order to comply with the prelitigation offer requirements before the resolution of necessity can be adopted. (See the Law Revision Commission Comment to Code of Civil Procedure 1245.230(b): "The description must be sufficiently precise to enable the owner to determine the physical extent of the taking and the interest sought.") To state that losing 23 parking spaces will be fully mitigated, is not the same as describing how the mitigation will be carried out by OCTA in order to support a conclusion of \$0 for damages to the remainder.

Given the extent of the proposed taking as it relates to the subject property, a substantial reconfiguration of the business operations may be in order. At a minimum, in its offer OCTA must provide adequate specificity regarding the "licensed areas" if it intends to include same as part of its offer and proposed mitigation. This will directly affect the highest and best use analysis required in the eminent domain valuation analysis. The analysis set forth in the Hennessey Appraisal does not rise to the standard set forth in Government Code §7267.2, and thus the offer made to Mr. Washer is inadequate.

Very truly yours,  
  
**John S. Peterson**

Michael L. D'Angelo, Esq.