

Memorandum of Points and Authorities Submitted by
Dan R. O'Neil and Bonnie J. O'Neil before the

Board of Directors of the Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021 9:00 a.m.
550 South Main Street, Orange, California

I. INTRODUCTION

This hearing involves a taking from 2601 Ritchey Street, Santa Ana, California. The proposed taking is of 4,236 square feet in fee, 741 square feet in a permanent highway easement and a temporary construction easement of 1,469 square feet. The offer from OCTA to the owners does not comply with *Government Code* §7267.2 and *Code of Civil Procedure* §1245.230. It does not contain a sufficient written statement of and summary of the basis for, the amount which it believes to be just compensation. It values the land taken the same as other less useful land without explanation. Further, the taking will result in the loss of an outdoor advertising sign licensed by the Department of Transportation, Office of Outdoor Advertising. No offer is made for this loss and the written statement fails to explain the omission.

II. STATEMENT OF FACT

2061 Ritchey Street is a 1.47 acre triangular shaped lot on the North West side of S.R. 55. It has 512 feet abutting S.R. 55 and 396 feet facing Ritchey Street. The proposed fee acquisition is an 8.5 foot wide strip that runs the entire length of S.R. 55. The permanent highway easement is 1.5 feet wide and runs the entire length of the fee acquisition. The temporary construction easement is a 3 foot wide strip running along the entire length of the permanent highway easement. Thus, a 10 foot strip running the length of S.R. 55 will be permanently taken and another 3 feet for the 60 month period of the temporary construction easement.

2061 Ritchie Street is operated as a storage company. It consists of a building where records are stored and outside parking for vehicle storage. On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 16 semi-trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost.

OCTA has offered to acquire the fee and permanent highway easement for \$65.00 per square foot. In making this offer, OCTA values all of the land the same, \$65.00 per square foot. This reasoning is flawed. The 10 foot strip along S.R. 55 is much more valuable than the land

Memorandum of Points and Authorities

March 22, 2021

facing Ritchey Street because it can be used for parking semi-trucks and trailers and the Ritchey side can't. These spaces will be lost if OCTA takes the 10 foot strip and the permanent highway easement. The appraiser valued all space on the lot at \$65.00 per square foot regardless of its ability to generate income. Neither the appraisal nor the offer to purchase explains this decision.

On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 14 trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost plus an additional 4 truck parking spaces that rent for \$300.

The appraisal suggests that the south side parking spaces can be saved by moving the driveway. The driveway can't simply be moved. The owners would have to apply for a permit from the City of Santa Ana. Any such permit would carry conditions that the owners bring the entire area up to current municipal code requirements including, sidewalks, lighting, fencing, curbs and possibly sewers and electrical.

On the North side of the building, there is an outdoor advertising sign operating under a permit issued by the California Department of Transportation, Office of Outdoor Advertising. It is located in the 10 foot strip that OCTA proposes to permanently take. The taking will obviously require the sign to be moved. If the sign is moved off of its assigned spot, it will lose its permit. It cannot be moved without a new permit issued by the Department of Transportation and approved by the City of Santa Ana. The chances of obtaining such a permit are virtually non-existent. OCTA makes no offer for the loss of this valuable sign and makes no explanation for the omission.

This omission is inexplicable because the O'Neils operated a similar sign on another location on S.R. 55, 1929 E St Andrew Place, that is subject to eminent domain proceedings. In appraising that property, the same appraiser, Meredith McDonald, noted:

During the site inspection, it was noted that the existing trucks parked at the larger parcel hangover onto the grass berm located along the eastern portion of the larger parcel. One of the trucks is a designated, approved outdoor advertising sign, approved by Caltrans. The outdoor advertising sign is attached to a truck trailer, with the wheels removed. It is not permanently attached to the real estate and considered to be a movable improvement. The trucks that overhang will need to be relocated for the construction contractor to be allowed access to the temporary construction easement area. **This appraisal report is based on an extraordinary assumption that the approved outdoor advertising sign/truck trailer can be relocated during the construction period, then relocated back at the completion of the construction period.**

The appraisal suggests that the loss on the north side can be mitigated by moving the parking spaces back 15 feet. If this is done, large doorways used for loading and unloading material will be blocked.

III. DISCUSSION

As the Board knows, the exercise of the power of eminent domain requires a finding of public necessity. *Government Code* § 1240.030. There are three essential elements to the public necessity finding: (1) 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, and (3) the property sought to be acquired is necessary for the project. *Id*

Before adopting a resolution of necessity, the public entity must establish an amount it believes to be just compensation for the property and make an offer to the owner for that amount. *Government Code* § 7267.2 (a). The offer must be accompanied by a written statement of the basis for the amount established as just compensation. *See City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal. App. 3d 1005, 1011-1013.

Code of Civil Procedure §1245.220 requires a finding that the offer required by Section 7267.2 has been made before a resolution of necessity can be passed. The resolution of necessity must contain a declaration that either the offer required by Section 7267.2 of the *Government Code* has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence. *Code of Civil Procedure* § 1245.230(c)(4).

The offer required by *Government Code* §7267.2 must be supported by a written statement containing detail sufficient to indicate clearly the basis for the offer including: (1) the date of valuation, highest and best use, and applicable zoning of property; (2) the principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value; and (3) 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.

Failure to include an adequate written statement in support of an offer may constitute grounds for dismissal of an eminent domain action brought following the adoption of a resolution of necessity. *See City of San Jose v. Great Oaks Water Co., supra*; The adequacy of a written statement in support of an offer is properly raised at a resolution of necessity hearing. *People v. Cole.* (1992) 7 Cal. App. 4th 1281.

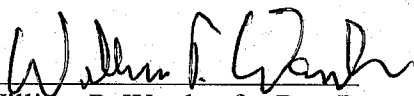
Pursuant to California *Code of Regulations* Title 25, Section 6182(i)(1)&(2) the

owner of real property is to be given a reasonable opportunity to present materials which he believes to be relevant to the question of valuation and suggest modifications in the proposed terms and conditions of the purchase. If the evidence presented indicates the need for a new appraisal, the public entity shall have its appraisal updated. If a modification of the amount of just compensation an appropriate price adjustment shall be made.

The subject offer lacks an adequate supporting written statement. It does not explain why it used for comparable sales properties that did not abut a major highway. It does not explain why it did not use comps from the I-405 widening project. It does not explain why it valued revenue generating parking spaces the same as land that cannot be used for vehicle storage. It does not explain why it did not perform a capitalization analysis for the lost parking. It does not explain why it does not consider the loss of the outdoor advertising sign. It does not explain why it assumes a driveway can be moved without regulatory repercussions.

O'Neil requests that the Board order a new appraisal based on the foregoing.

Dated: March 11, 2021



William P. Warden for Dan R.
O'Neil and Bonnie J. O'Neil,
Trustees

Written Testimony of
William P. Warden

before the

Board of Directors of the
Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021 9:00 a.m.
550 South Main Street, Orange, California

My name is William P. Warden. I am an attorney at law and have practiced in Orange County since 1994. Before that, I practiced in other states.

I have been involved in regulatory issues relating to outdoor advertising signs at 2061 Ritchey Street, Santa Ana, California since 2000.

In 2017 the California Department of Transportation, Office of Outdoor Advertising advised the property owners that they would have to obtain a permit under the California Outdoor Advertising Act, *Business & Professions Code* §5200 *et seq.* I was retained to represent O'Neil in connection with that effort. The California Outdoor Advertising Act requires advertisers to obtain a permit before displaying an outdoor advertising sign adjacent to a freeway. A permitted sign has to be 500 feet from any other permitted display on the same side of the freeway.

To bring O'Neil into compliance with the Outdoor Advertising Act, I worked with George Anzo who is the Department of Outdoor Advertising's Southern Area Manager. Mr. Anzo helped us to identify a location on the subject property where a permitted sign could be placed. He came to the property, staked the location and advised that the display had to be kept at that exact spot.

On June 29, 2017 the owners filed an application for a permits for Ritchey Street. On July 19, 2017 the Department of Outdoor Advertising advised us that it could not process the applications because it did not include consent from the City of Santa Ana. George Anzo then contacted Santa Ana's Building and Planning Agency. Building and Planning advised Mr. Anzo that they would not issue a permit. On November 17, 2017 Mr. Anzo advised O'Neil that its application was rejected.


During this time, I was in negotiations with the City Attorney's Office. On February 8, 2018 the City Attorney's Office sent Mr. Anzo a letter stating that it had no intention of filing an enforcement action against O'Neil. On June 11, 2018 Mr. Anzo issued a second denial of O'Neil's application stating that the City Attorney's letter was not sufficient consent. Finally, on

February 21, 2019 the City Attorney's Office sent a letter stating that it consented to O'Neil's proposed sign. On February 25, 2019 Mr. Anzo sent a letter stating that the application was granted.

I recently contacted Mr. Anzo and asked if the sign on the current location could be moved back because OCTA was taking a 10 foot strip along the highway. He advised that the signs could not be moved without a new permit approved by both the Department of Transportation and the City of Santa Ana. Based on my experience with this matter, I do not believe that a new permit is obtainable. And, even if it was, the sign would be much less visible from S.R. 55

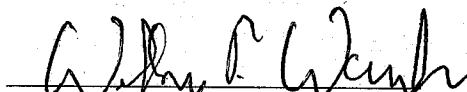
Respectfully Submitted:

March 11, 2021


William P. Warden

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters stated on information and belief or as opinions and I believe them to be true and correct.

Dated:


William P. Warden

Written Testimony of
Dan R. O'Neil

before the

Board of Directors of the
Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021, 550 South Main Street, Orange, California

My name is Dan R. O'Neil. My wife, Bonnie, and I are the Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust 1995, executed on January 31, 1996. The Trust owns the real property located at 2061 Ritchey Street, Santa Ana, California.

2061 Ritchey Street is a 1.47 acre triangular shaped lot on the North West side of S.R. 55. It has 512 feet facing S.R. 55 and 396 feet facing Ritchey Street. OCTA proposes to acquire a 4,263 partial fee interest, a 741 square foot permanent highway easement and a 1,469 square foot temporary construction easement. The proposed fee acquisition is an 8.5 foot wide strip that runs the entire length S.R. 55. The permanent highway easement is 1.5 feet wide and runs the entire length of the fee acquisition. The temporary construction easement is a 3 foot wide strip running along the entire length of the permanent highway easement. Thus, a 10 foot strip running the length of S.R. 55 will be permanently taken and another 3 feet for the 60 month period of the temporary construction easement.

OCTA has offered to acquire the fee and permanent highway easement for \$65.00 per square foot. In making this offer, OCTA values all of the land the same, \$65.00 per square foot. This reasoning is flawed. The 10 foot strip along S.R. 55 is much more valuable than the land facing Ritchey Street because it can be used for parking trucks and trailers and the Ritchey side can't. In making the assumption that all of the land was of the same value, the appraiser mistakenly assumed that the property was used by a trucking company. It is not used by a trucking company. It is used by a storage company and some spaces are more valuable than others for a storage company. Moreover, none of the comps used by the appraiser are applicable to 2061 Ritchey Street. None are located on a major freeway such as S.R. 55. See attached Exhibit "A." There should have been numerous comps from the I 405 widening project, but for some reason they were ignored.

On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 14 trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost an additional 4 truck parking spaces that rent for \$300 per month will be lost.

Most alarmingly, there is an outdoor advertising sign operating under a permit issued by the California Department of Transportation, Office of Outdoor Advertising located on the north side of the building. It is located in the 10 foot strip that OCTA proposes to permanently take. It currently rents for \$7,500 per month. The appraisal makes no mention of the sign and makes no offer for its loss. This is surprising because we operate a similar sign on 1929 E St Andrew Place. That property is also subject to eminent domain proceedings in connection with the S.R. 55 widening project. In appraising that property, the same appraiser, Meredith McDonald, noted:

During the site inspection, it was noted that the existing trucks parked at the larger parcel hangover onto the grass berm located along the eastern portion of the larger parcel. One of the trucks is a designated, approved outdoor advertising sign, approved by Caltrans. The outdoor advertising sign is attached to a truck trailer, with the wheels removed. It is not permanently attached to the real estate and considered to be a movable improvement. The trucks that overhang will need to be relocated for the construction contractor to be allowed access to the temporary construction easement area. **This appraisal report is based on an extraordinary assumption that the approved outdoor advertising sign/truck trailer can be relocated during the construction period, then relocated back at the completion of the construction period.**

The assumption that the sign can be moved during construction then moved back is wrong. In 2017 we applied for a permit for the Ritchey Street sign from the California Department of Transportation, Division of Outdoor Advertising. George Anzo who is the Southern Area Director came to Ritchey Street and staked the exact spot where the sign had to be located. He told us that under the Outdoor Advertising Act each sign had to be 500 feet from the next permitted sign and that it could not be moved off of its designated spot. He told us that our spot was one of the last permissible locations on our side of SR-55 between the I-5 and the I-405.

On June 29, 2017 we filed an application for a permit. The Department of Outdoor Advertising initially would not process our application because we did not have consent from Santa Ana. Later the Department denied our application because the Santa Ana Building and Planning would not issue a permit. Finally, my attorney was able to get an approval through the City Attorney's Office and the Department granted our application. It is my understanding that the City Attorney wishes no further involvement.

George Anzo has advised my attorney that if the display is moved, our permit will be cancelled and that we would need a new permit for a different location. The new permit would require approval by the City of Santa Ana as well as the Department of Transportation. I do not believe that it will be possible to obtain another approval from the City of Santa Ana.

Moreover, even if we get permission to move the display, it will be about 25 feet further from the highway and will be much less visible. I have also been told that during construction equipment will be parked in the easement further reducing visibility. I will not be able to

maintain current rates during the construction period. This also needs to be taken into account in a new appraisal.

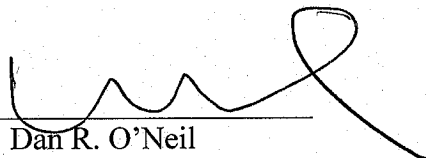
Other issues of concern are that the appraiser mistakenly states that access is provided by way of three driveways from St. Andrew Place. This is wrong. Access is provided by two driveways from Ritchey Street.

The appraiser proposes mitigating some of the loss of parking by moving the existing driveway. The assumption that the existing driveway can just be moved is flawed. In order to move the driveway, the owners would have to apply for a permit from the City of Santa Ana. Anyone who has done business in Santa Ana knows that a permit issued in response to such an application would carry requirements that the owners bring the entire area in compliance with the current municipal code including sidewalks, lighting, fencing, curbs and any other requirements that the planning staff can dream up. It is not just a matter of moving the driveway.

I would request that the Board order a new appraisal taking into account our loss of revenue from parking and the outdoor advertising sign and the impracticability of moving the driveway.

Thank you for your attention to this matter.

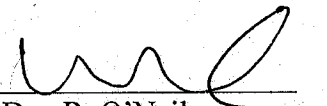
Dated: 3/11/21



Dan R. O'Neil

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters stated on information and belief or as opinions and I believe them to be true and correct.

Dated: 3/11/21



Dan R. O'Neil

EXHIBIT "A"

Comp. No. 1, 201 N. Berry Street, Brea, CA 92821. This is not on any freeway.

Comp. No. 2, NWC Noritsu Ave. & Knott Ave., Buena Park, CA 90620. Not on freeway. Mostly unimproved.

Comp. No. 3, 800 E. Walnut Avenue, Fullerton, CA 92831. This is not on any freeway.

Comp. No. 4, 4 Orion, Aliso Viejo, CA 92656. This is not on any freeway. This property was mostly grass/dirt lot

Comp. No. 5, 4412 E. La Palma Avenue, Anaheim, CA 92807. This is not on any freeway. This property was mostly grass/dirt lot

Comp. No. 6, 1205 N. Kraemer Blvd., Anaheim, CA 92806. This is not on any freeway. This property was mostly grass/dirt lot