



11253 Brockway Rd., Suite E201  
Truckee, CA 96161  
T. 530.582.2280  
F. 530.582.2281  
www.stoel.com

GREG C. GATTO  
D. 530.582.2288  
greg.gatto@stoel.com

April 10, 2017

**RECEIVED**

**APR 10 2017**

NEVADA COUNTY  
BOARD OF SUPERVISORS  
EACH SUPERVISOR RECD.

**VIA EMAIL**

Nevada County Board of Supervisors  
950 Maidu Avenue Suite 200  
Nevada City, Ca 95959

**Re: Nevada County Board of Supervisors April 11, 2017 Hearing - File No. SR 17-0241 -  
Andresen Property, 10953 Floriston Avenue, Hirschdale, Nevada County, California**

Dear Honorable Members of the Board:

This law firm represents Larry and Cheryl Andresen, owners of the residence located at 10953 Floriston Avenue, in the unincorporated area of Hirschdale, Nevada County, California (the "Andresen Property"). I am writing in response to the Board's April 11, 2017 Agenda, Closed Session File No. SR 17-0241. Based on the Agenda and conversation with County staff, we understand that the Board will be making an initial consideration regarding whether to exercise its power of eminent domain to take a portion of the Andresen Property in order to benefit a few private individuals who have illegally maintained encroachments in the public right of way. Not only would a decision to take the Andresen property be unlawful, but it would be a poor policy and fiscal decision, exposing the County to considerable damages, solely in an attempt to allow several neighboring property owners to continue to illegally store junk and debris in the County right-of-way.

The County currently has a forty-foot wide right-of-way over Floriston Avenue. This dedicated property right is more than sufficient for all present and contemplated uses of the road. Indeed, public roads beyond the Andresen Property serve just three other property owners, the Leggs, the Teels, and the Department of Fish and Wildlife.

As depicted in the historical picture attached as **Exhibit A** (showing the property located at 10949 Floriston Ave., across the street from the Andresen Property), for many years, the right of way was unobstructed and clear for normal vehicular passage. However, over the years, several parties unlawfully constructed unpermitted sheds, planted shrubs, and began to store junk and other materials within the public right-of-way. (See pictures attached as **Exhibit B** depicting the sheds, bush, and junk storage piles that have accumulated within the right-of-way, and encroachment exhibit attached as **Exhibit C**).

It is indisputable that these encroachments violate County ordinances and state law. (*See, e.g.* Penal Code § 370; Civil Code § 3479; Nevada County Code Secs. G-IV 4.A.33, 35, & 40; (*People v. Henderson* (1948) 85 Cal.App.2d 653, 656 (“a structure maintained upon a public roadway is unlawful, and is a nuisance per se...”).) It is also irrefutable that these encroachments cannot continue to be maintained in the public right-of-way. (*City of Berkeley v. Gordon* (1968) 264 Cal.App.2d 461, 465 (“public body cannot grant a permit for a permanent encroachment on dedicated public land.”).) Thus, even if the County could lawfully take the Andresen Property, (which, under the circumstances, it cannot), the illegal encroachments must be removed.

Because the County has refused to enforce its own ordinances and abate what has become a patent nuisance per se, the Andresens have filed a civil action seeking removal of these illegal encroachments in order to restore the public roadway and end the usurpation of public property. Consequently, an additional right-of-way over the Andresens’ property is unnecessary, and condemnation is not authorized under the eminent domain statutes. (*City of Los Angeles v. Keck* (1971) 14 Cal.App.3d 920.)

More importantly, the condemnation of the Andresens’ property, while allowing adjacent neighbors to illegally maintain encroachments within the right-of-way, is a taking under the pretext of public use, when the actual purpose is to bestow a private benefit on these neighbors. (*Kelo v. City of New London, Conn.* (2005) 545 U.S. 469, 478.) If the County goes forward with an eminent domain action, not only is it likely the County will end up paying hundreds of thousands in attorneys’ fees to prosecute the action and defend against the Andresens’ cross-complaint<sup>1</sup>, but in addition, it will be exposed to significant damages.

The circumstances involved in this case closely mirror an action that was recently adjudicated against Sacramento County: *Hardesty v. Sacramento Metropolitan Air Quality Management District*, Case No. 2:10-cv-02414-GEB-JFM (E.D.Cal.). In the *Hardesty* case, Sacramento County and several public officials, including the chairman of the Board of Supervisors, were found liable for over \$100 million in compensatory and punitive damages for unlawfully discriminating against private property owners at the behest of a competing company. Similarly, here, the County is taking action against the Andresens in a discriminatory manner that deprives them of their civil and due process rights, while allowing a few private individuals to benefit by

---

<sup>1</sup> As explained in prior correspondence with the County, the totality of circumstances surrounding the County’s treatment of the Andresens in this matter violates the Andresens’ substantive and procedural due process rights (U.S. Const. amend XIV, §1; Cal. Const. art. 1, §7), constitutes a taking of the Andresens’ property rights (U.S. Const. amend. V; Cal. Const. art. 1, § 19), and singles the Andresens out for disparate treatment without any rational basis and in a wholly arbitrary manner in violation of the constitutional guarantees of equal protection under the law (U.S. Const. amend. XIV; Cal. Const. art. 1, § 7). By failing to require removal of the encroachments within the dedicated right-of-way, the County has also illegally gifted public resources.

Nevada County Board of Supervisors  
April 10, 2017  
Page 3

continuing to unlawfully use public property. The taking of the Andresen Property under such circumstances would be a gross abuse of discretion with obvious discriminatory intent.

The real question before the Board is whether the people of the County should be paying public funds in an attempt to continue to allow a few individuals to illegally appropriate public property for their own private benefit. No reasonable decision maker could conclude that under such circumstances an eminent domain action is in the best interest of its constituents.

We respectfully request that the Board refrain from an attempt to unlawfully take the Andresen Property for the private benefit of those individuals who are in violation of state and County law.

Respectfully,



Greg C. Gatto

Attachments

cc: Julie Patterson Hunter, Clerk of the Board  
Alison Barratt-Green and Rhetta VanderPloeg, Nevada County Counsel  
Michael B. Brown, Stoel Rives LLP

**EXHIBIT A**

---



**EXHIBIT B**

---









**EXHIBIT C**

---

