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Our File No.: 11113-001

Marie Calderon, City Clerk
City of Banning
99 E. Ramsey St.
Banning CA 92220

Sent Certified Mail, Return Receipt Requested

NOTICE OF TORT CLAIM

To the City Clerk and City Council, City of Banning California

Please take notice that pursuant to the appropriate statutes, Michale Cashe and Ingeborg Graves hereby notify the City of their intention to file suit with the City under the following circumstances and facts.

The parties own real property located at 9814 E. Charles St; Banning. The Parcel Number is 543-0909-004. In January, 2006, the City Council and the Planning Commission apparently passed on a new general plan and zoning ordinance. According to the information provided by the City, the only notice was through a publication in the local newspaper.

According to the official records, at some point, the listed parcel zoning was changed from RA-1 to Industrial. Apparently, 3 other parcels on their same side of the street were also changed. It is not clear from reading the minutes, when this zoning change from RA-1 to Industrial took place.

In a public records request for copies of Notices given, all the City could come up with was a copy of a newspaper ad that ran in the local newspaper. There is no indication that any of the other required notices were given when a zone is changed.

§ 65854. Public hearing upon ordinance or amendment; notice
The planning commission shall hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance. Notice of the hearing shall be given pursuant to Section 65090 and, if the proposed

ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091.

Section 65854 of the Government Code **requires** that any proposed ordinance or amendment to a zoning ordinance that affects the permitted uses of real property **shall** comply with §65091 of the Government Code.

There is no evidence that I have seen that the City even attempted to comply with Section 65091 of the Government Code in this project. For the past 5 years, the owners of this property were in the dark that in fact, the City stole their property by rezoning it as industrial. This was all done without the required legal notice or an opportunity to be heard, in other words, a violation of due process in every sense of the word.

I understand this speedy attempt to change the zone had to do with the ill-fated Liberty Energy Project and that there were various allegations of corruption on this project. All that notwithstanding, until Ms. Cashe went to the Planning Department to inquire about a permit a short while ago, did she find out that in fact, her house was now a non-conforming use and as such, the City would not issue a permit for so much as a new light switch. This was the first notice she had that the property had been "re-zoned". I use that word loosely because in the context of what the City did, they basically condemned the property in a way that they thought they would not have to condemn it rather than bringing a condemnation action and paying for the properties in question.

The fact of the matter is that the City took their property and made it worthless through an illegal zone change really does not change the facts here. The City did such a good job of hiding what they did, the owners did not even find out about it until the past few weeks.

The deal is this. If the City re-zones back the owners parcel and the adjoining 3 parcels back to RA-1 at the cities expense and, pays the Owners \$10,000 to cover their emotional distress and other damages, plus \$2,000 in attorney's fees, they will consider the matter closed.

You should also know, Ms. Graves is a holocaust survivor. She had her childhood home taken by the authorities and she was sent to a concentration camp where some of her family was murdered. She had thought that by coming to America, she would not have to face the theft of their property without notice and without compensation. This house was her retirement income and now the City has stolen it from her.

If the City refuses to do these things, their only alternative will be to file an inverse condemnation action for their property and they will certainly see if the neighbors want to join in. I think the value of the property in such an action will be prospective to 2006 when its value was considerably higher. There is no justification for rezoning this property but there certainly was no lawful reason the City did not provide proper notice

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to the parties so they could appear at the public hearings. Since our client's did not get notice, their due process rights were violated. In addition to an inverse condemnation action, they plan to bring a civil rights action against the City and the appropriate officials that created this travesty.

In my 14 years on the Moreno Valley Planning Commission, I have never seen such a callous disregard for the rights of the property owners and quite frankly, I find that the conduct of the City was reprehensible in this matter.

Let me know if there is anything else you need from me.

Yours truly,

Geller & Stewart, LLP

Michael S. Geller

Cc: Clients

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