

LAW OFFICES OF
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March 20, 2019

Via U.S. Mail and Email
Agustavson@srcity.org

Andy Gustavson
Senior Planner
Planning and Economic Development
100 Santa Rosa Avenue
Santa Rosa, CA 95404

Re: *Roseland Village Appeal Hearing*

Dear Mr. Gustavson:

Thank you for providing the July 24, 2017 County Counsel letter to the Sonoma County PRMD.

On February 28, 2019, the City of Santa Rosa Planning Commission hearing staff stated that there was communication between County Counsel and the City of Santa Rosa Attorney and/or an opinion about the Easement provided by the City of Santa Rosa. This communication and/or opinion is what I requested. Does such communication exist?

Please advise whether there is any City of Santa Rosa communication or opinion about the County entities and/or opinion regarding the Recorded and Prescriptive Roseland Easements.

The City of Santa Rosa should be aware that the absurdity of the County Counsel's July 24, 2017 conclusion is consistent with, for example, the "factual" recitations under "§A Background". Roseland Village NEVER owned "the current Commission Property." Conversely, Coddling Enterprises NEVER owned either the "Paulsen Property", or relevant here, the "Roseland Village" property.

Andy Gustavson
Senior Planner
Planning and Economic Development
March 20, 2019

Please see my letters of August 3, 2017 and March 26, 2018 attached responding definitively to the Sonoma County Counsel letter. The County also failed and refused to respond to John Paulsen's August 2, 2017 letter affirming the 50 years of existing uses and Prescriptive Easements consistent with the recorded Easements.

Because of the gross misstatements of objectively verifiable fact made by Mr. Mercado the City of Santa Rosa Attorney should revisit any opinion predicated on the misstatements. Please advise if I should communicate directly with the City Attorney.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,



Robert A. Nellessen

RAN:trv

cc: Roseland Village

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August 3, 2017
VIA EMAIL AND U.S.P.S. MAIL:
aldo.mercado@sonoma.county.org

Aldo Mercado
Deputy County Counsel
Office of the County Counsel
575 Administration Drive, Room 105-A
Santa Rosa, CA 95403

**RE: Roseland Village Property
John Paulsen, President
Recorded and Prescriptive Parking and Driveway Easements
at the Roseland Shopping Center**

Dear Mr. Mercado:

Thank you for your letter (and the enclosure) to me dated July 24, 2017, received July 31, 2017. In the future please, please provide a copy by email for a more prompt and assured receipt.

Addressing your letter to me first:

- (1) Is the first sentence of the second paragraph missing a line? ♦
- (2) Have you ever been to Roseland Village on a week day or weekend? When? I have photos taken on an average weekday, June 30th at 11:00 a.m. which show that over 70% of the parking spaces between the "Albertsons/Lucky's" concrete and Sebastopol Road are occupied by Roseland Village customers. Of course on weekends the percentage increases to 90%.
- (3) Since the reality of the historical Easement use is grossly **inconsistent with your letter assertions**, there must be, even a flawed, traffic study measuring and reporting the existing traffic flow and use. May I please have a copy?

Regarding your two (2) page letter on behalf of the County Counsel office to the County Permit and Resource Management Department attempting to justify ignoring the Recorded and historical Prescriptive Easements:

A. Background

- (1) What is the factual/documented basis for your statement that Hugh Coddling/Enterprises ever owned any of the Paulsen properties (APN 125-111-45, 46, 47, 48). We believe you are wrong.
- (2) In 1956, when the Recorded Easements were granted and the historical Prescriptive Easements were ongoing, the Paulsen property buildings were in place. The major Coddling building was the "Pam Market" at the location of the subsequent Albertsons. The Access/Engress/Egress and traffic patterns had been established on both halves of the Roseland Shopping Center by 1956.
- (3) You state that "Roseland Village owned the...[County] Commission Property." Is this really believed by your office or is it just being sloppy? Roseland Village is a Corporation owned by the Paulsen family.
- (4) Why does the County Counsel believe the "Paulsen Property has since expanded beyond what was originally owned by Coddling". Do you have ANY data to support this? Is this some Hubblesque observation?
- (5) "The current Commission Property parking configuration provides for approximately 270 parking spaces."

However, what you conveniently omit is that:

- A) The Development Parking allowance is only 90 "shared" commercial spaces.
- B) The total Coddling Building configuration was 70,000 sq. ft. The County Development Commission proposal is 300,000 sq. ft. of buildings. The ratio of sq. footage allowed therefore should be (at minimum) approximately four (4) times the Coddling parking sq. footage in 2000, which you have counted as 270 spaces. Accordingly, for the scale of proposed development 1157 parking spaces will now be necessary if the historical Parking easement is to be "not Burdened." This of course does not account for the approximate 200-270 spaces on the Coddling property currently being used daily - WITH NO CODDING OR COUNTY BUILDING(S)!

Aldo Mercado
Deputy County Counsel
Roseland Village Property
John Paulsen, President
August 3, 2017
Page 3

Right now your casual visual observation will confirm that on any weekday the customers of the Paulsen parcels use 70% of the available parking spaces and **ALL** of the Access/Ingress/Egress. On the weekend the use is closer to 90% of the 270 spaces in use by the Paulsen Tenants/customers.

B. Development of the CDC Property will destroy the existing Recorded and historical Prescriptive Access and Parking Easements owned by the Paulsen Parcels.

- (6) The Eshoo letter you reference was predicated on exhaustive observation and recording of the Easements use - IN REALITY. A blythe denigration of the accurate **observation** and reporting is not advancing the County's obligation to research and apply "FACTS." Real facts, not "alternative facts."

Reality is that only the Coddling Parcel and Paulsen Parcels **EVER** used the established Access and Parking dedicated areas, i.e., reciprocal Easements. The Prescriptive used established the extent of the Deeded Easements of Record. The Coddling/County Parcel abandoned the Access Easement before 2003. The extent of the Parking Easement as established by the Paulsen Parcels also before 2003 is the consistent and current use of the Parking Lot. In other words, since 2003 the Prescriptive Easements have been used Exclusively by the Roseland Shopping Center portion owned by the Paulsen Family (Thank you for pointing that out). In particular all use of the existing Roseland Shopping Center Deeded and Prescriptive Access/Ingress/Egress has also been used exclusively by the Paulsen property Tenants/customers.

- (7) Another FACT that I am sure the Traffic flow analyses undertaken by the County establish without question, is the dependence of the Paulsen parcel tenants and customers on the West St./Sebastopol Road/Roseland Village Traffic light to access east and west bound Sebastopol Road. When the County secured the "abandonment" of the prior Sebastopol Road ingress/egress in the approximate middle of the shared parking lot, it did so to make the entire Roseland Shopping Center, and in particular large commercial trucks, entirely dependent on unrestricted access to the West Street/Sebastopol Road Traffic light/lanes. Have you even looked at the Mid-Pen Development Plan?

Aldo Mercado
Deputy County Counsel
Roseland Village Property
John Paulsen, President
August 3, 2017
Page 4

- (8) Finally, for your historical edification, once Alberton's closed its doors the Coddling/Baugh property no longer used the Paulsen property for Access, and to reduce the homeless vandalism and theft (a continuing problem today the County ignores) Roseland Village erected a locking gate with only Paulsen tenants having the access key. The reciprocal recorded Access Easement was then and therefore used only by Paulsen property tenants and by **NO** Coddling/Baugh tenants/customers on the "Commission Parcel." The historical Prescriptive Ingress/Egress use has been exclusively for over 14 years, from the Paulsen parcels across the "Baugh/County" parcel to the Sebastopol Road Traffic light.

Accordingly, the County should take a step back and address, with real facts, what has occurred, when and why, before attempting to destroy the livelihood of the Owners and Tenants of Roseland Village.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Nellessen", with a long horizontal flourish extending to the right.

Robert A. Nellessen, Esq.

RAN:ljp
cc: John Paulsen

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March 26, 2018
VIA EMAIL AND HAND DELIVERY:
aldo.mercado@sonoma.county.org

Aldo Mercado
Deputy County Counsel
Office of the County Counsel
575 Administration Drive, Room 105-A
Santa Rosa, CA 95403

**RE: Roseland Un-permitted Campground Arsonists
Santa Rosa Fire Department Incident No. 2018-0006899
Roseland Parking Lot, Easement Book 1467 Page 415**

Dear Mr. Mercado:

This letter addresses two subjects.

First, the un-permitted campground on the County's portion of the Roseland "Baugh" contaminated property harbors arsonists. On Thursday, March 22, 2018, a recycling dumpster adjacent to the buildings on my client's Roseland Village property was intentionally set on fire. The arsonists were observed by merchants at Roseland Village. After they started the fire, the arsonists were observed returning to their un-permitted encampment. The County is fully aware that:

- (1) The County property contamination exceeds allowable residential levels.
- (2) The County un-permitted encampment harbors pervasive drug use, and now arsonists.

Please reference Santa Rosa Fire Department Incident number 2018-0006899 when identifying how the County will resolve this issue within the next 48 hours. Please be advised the County is on notice that it will be jointly and severally liable for any future damage.

Second, pursuant to the Recorded Easement, Book Number 1467, page 415, Recorded September 12, 1956 the property owners agreed:

Aldo Mercado
Deputy County Counsel
Roseland Village Property
John Paulsen, President
March 26, 2018
Page 2

"GRANT OF RECIPROCAL EASEMENTS"

"THIS AGREEMENT, made this 25th day of July, 1956, by and between: ROSELAND VILLAGE, a California Corporation, hereinafter referred to as "First Party"; and CODDING ENTERPRISES, a California Corporation, hereinafter referred to as "Second Party:."

... "2. The 'second party hereby grants unto first -party, or its assigns, a non-exclusive easement to use and to allow the use of the vehicular parking lots and drive-ways which presently exist, or will be developed hereafter, on the property of the second party...for the ingress, egress, and parking of motor vehicles...easement to be on the real property of the grantor, the second party herein..."

... "3. It is understood and agreed by and between the parties hereto that the easements granted herein are to be held by the respective grantees, their assigns or successors, as appurtenant to the land owned by the said respective grantees,"

"4. It is further understood and agreed...that said second party will care for and maintain, and shall pay for said care and maintenance, the parking lots and drive-ways upon the said property of the second party."

The historic and referenced parking lot and access is now almost impassable. (Photos enclosed) Please confirm that as soon as practicable the County will ensure repair and maintenance of the existing asphalt parking and access on its property. Next week is predicted to have weather allowing for the repaired asphalt work.

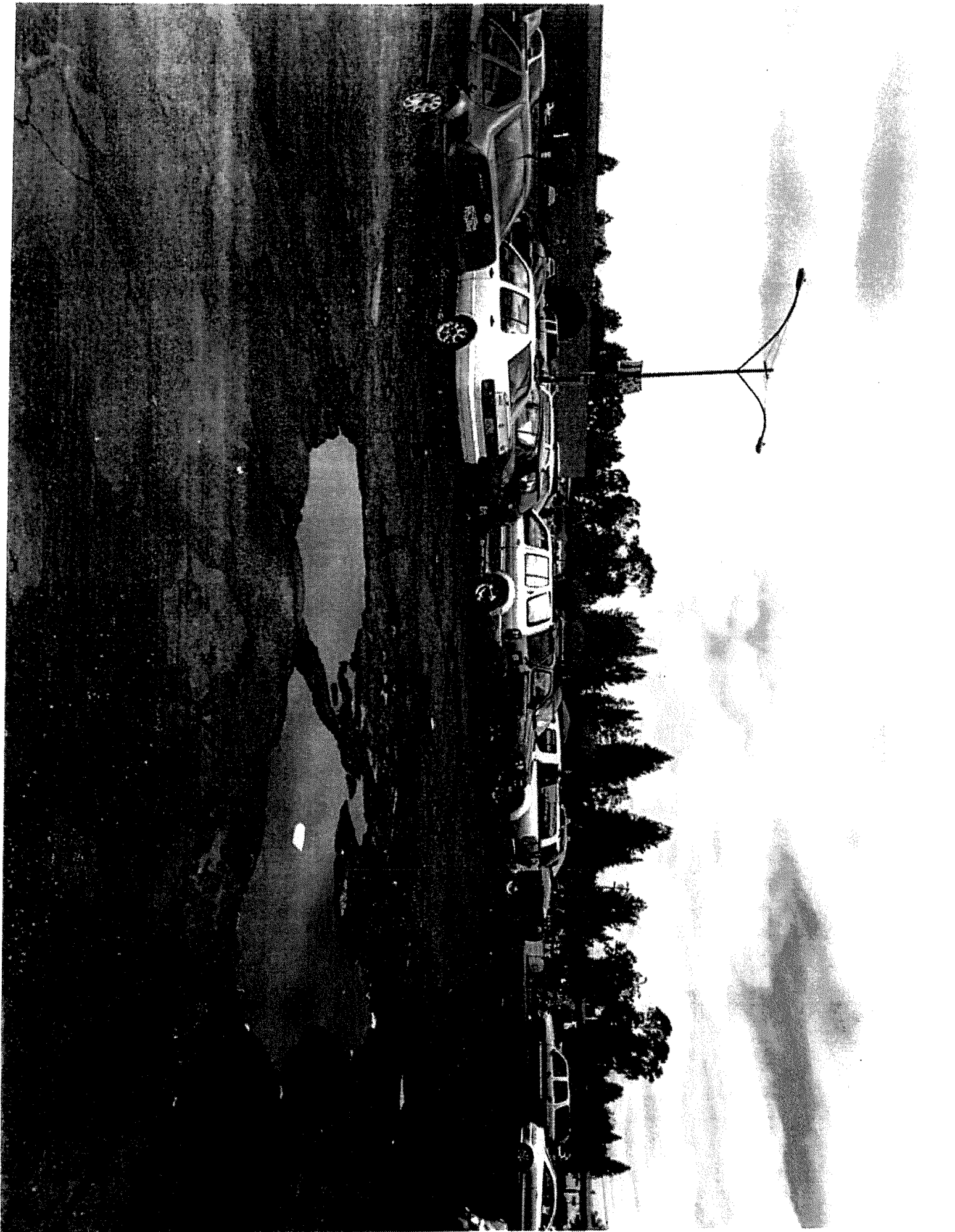
Thank you for your courtesy and cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Nellessen".

Robert A. Nellessen, Esq.

RAN:ljp
cc: Santa Rosa Fire Department
Santa Rosa Police Department
Re Incident No. 2018-0006899
(March 22, 2018)
Roseland Village



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April 11, 2019
VIA EMAIL AND U.S.P.S. MAIL:
zmatley@w-trans.com

Zack Matley
W-Trans
490 Mendocino Ave. Suite 201
Santa Rosa, CA 95401

W-Trans
490 Mendocino Ave. Suite 201
Santa Rosa, CA 95401

RE: Traffic Impact Study for the Roseland Village Project SOX580

Dear Mr. Matley and W-Trans:

Your Report from Project SOX580 (Sonoma County and MidPen was provided to me yesterday. Mr. Paulsen/Roseland Village and I were **never** contacted about, muchless advised of, the "Study."

There are two (2) glaring omissions in your Report which render it both incomplete and suspect.

- (1) The Reciprocal Easements are expressly for "store buildings" and use for "retail business establishments." Your Report ignores both the express Recorded Easement language and the voluminous documentation of actual retail business establishment parking lot usage **currently** in excess of 30% of the allocated APN 125-111-37 (Coddington) available parking space on any given weekend. A casual walk through the sight would have been eye opening, as well as demolish your Reports suppositions and conclusions.

If Sonoma County has wilfully failed to provide evidence of the documented and undeniable use, we are happy to provide you with photographic and sworn testimony so you may complete your Report, honestly. Would you like the documentation? No?

- (2) The historical “prescriptive” Parking Easement serves to “flesh out” the extent (number of parking spaces actually used) and also constitutes its own separate legally enforceable Easement. Knowing of the open and notorious legally enforceable prescriptive Easement, what effort did your company undertake to determine actual use and legally enforceable use? None?

My representation, and the personal knowledge of John Paulsen who was born at Memorial and attended Roseland grade school and accompanied his father (signatory Viggo Paulsen) during his Roseland maintenance and administration, have been long known to Sonoma County and the City of Santa Rosa. Were you directed **not** to interview witnesses for historical truths invalidating your abstract conclusions? We remain available if learning the truth about the parking and essential driveway ingress/egress is not inconvenient to you/the City of Santa Rosa/Sonoma County.

- (3) On your report p. 39 you finally mention “Parking Easement with Adjacent Property” and reference the Recorded “Parking and Driveway Easement.” You acknowledge “the Easements” “include drive-ways.” Nonetheless your Report contends that the “drive-way” or ingress-egress access is “a private matter that is currently being addressed.” Sonoma County, MidPen and the City of Santa Rosa all refuse to “address” the Easements reality. Welcome to the collusion.

Wholesale ignored, again, is the currently in use Recorded Easement that is essential for economic viability of the “Roseland Village” half of the Roseland Shopping Center. This Deeded and used vehicular access from the eastern half of Roseland Village to West Avenue is destroyed by the proposed Sonoma County/MidPen plan.

Why is this not discussed by you? We know why it was not discussed by Sonoma County/MidPen. Do the City of Santa Rosa and Sonoma County have a mutual interest in subordinating the truth?

How could your company be so abjectly unaware of the existing Roseland traffic flow **REQUIRING** access across the formerly known as Codding parcel (APN 125-111-37) for Roseland Village to access West Avenue?

Zack Matley
W-Trans
Traffic Impact Study Project SOX580
April 11, 2019
Page3

Is there **no** outside or intra-office communication recognizing this undeniable reality? Did no one ever actually visit the site?

In conclusion, with input from the owner of Roseland Village never having been considered, the value of hindsight being 20-20, and the undeniable parking lot recorded and prescriptive use, and the recorded and prescriptive driveway ingress egress access to West Avenue now undeniably before you, what is your intention to fully and fairly analyze the proposed Roseland Village Project parking and Traffic Impacts on Roseland Village, a corporation, and the neighborhood?

Very truly yours,

A handwritten signature in blue ink, appearing to read "R. Nellessen", with a stylized flourish at the end.

Robert A. Nellessen, Esq.

RAN:ljp
cc: John Paulsen (via email)
City of Santa Rosa
County of Sonoma

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April 29, 2019
Via Hand Delivery and Email
Agustavson@srcity.org

Andy Gustavson
Senior Planner
Planning and Economic Development
100 Santa Rosa Avenue
Santa Rosa, CA 95404

**Re: *Roseland Village v. Sonoma County; Sonoma County Community
Development
City Council Meeting May 7, 2019***

Dear Mr. Gustavson:

Thank you for forwarding a link to the City of Santa Rosa Planning and Economic Development Department Staff Report.

On or about February 14, 2019 at the City of Santa Rosa Planning Commission, the Staff and Sonoma County/Applicant referenced a communication exchange directly between the Sonoma County Counsel's office, and I thought someone at the City of Santa Rosa.

In reviewing the materials package, I saw a July 24, 2017 letter from Mr. Mercado to his client the Sonoma County PRMD. Mr. Mercado's letter had been given to Mr. Paulsen who replied on August 3, 2017 and also forwarded it to me.

Because Mr. Mercado's letter contained blatant inaccurate factual misrepresentations, I directed a letter to him on August 2, 2017. Significantly, that letter was **not** in the materials package you received from Sonoma County/MidPen/Urban Mix. Accordingly, herewith I provide it **and** the Verified Complaint, to enforce the recorded and historical prescriptive easement.

Andy Gustavson
Roseland Village v Sonoma County, et al
April 29, 2019
Page 2

Please confirm at your earliest convenience that these materials are provided to the City of Santa Rosa City Council.

Can you please email me a copy of the May 7, 2019 City Council agenda?

Please convey any questions you have.

Very truly yours,

A handwritten signature in blue ink, appearing to read "R. Nellessen", with a long horizontal flourish extending to the right.

Robert A. Nellessen

RAN:ljp
cc: Clients

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August 3, 2017
VIA EMAIL AND U.S.P.S. MAIL:
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Office of the County Counsel
575 Administration Drive, Room 105-A
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John Paulsen, President
Recorded and Prescriptive Parking and Driveway Easements
at the Roseland Shopping Center**

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- (7) Another FACT that I am sure the Traffic flow analyses undertaken by the County establish without question, is the dependence of the Paulsen parcel tenants and customers on the West St./Sebastopol Road/Roseland Village Traffic light to access east and west bound Sebastopol Road. When the County secured the "abandonment" of the prior Sebastopol Road ingress/egress in the approximate middle of the shared parking lot, it did so to make the entire Roseland Shopping Center, and in particular large commercial trucks, entirely dependent on unrestricted access to the West Street/Sebastopol Road Traffic light/lanes. Have you even looked at the Mid-Pen Development Plan?

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- (8) Finally, for your historical edification, once Alberton's closed its doors the Coddling/Baugh property no longer used the Paulsen property for Access, and to reduce the homeless vandalism and theft (a continuing problem today the County ignores) Roseland Village erected a locking gate with only Paulsen tenants having the access key. The reciprocal recorded Access Easement was then and therefore used only by Paulsen property tenants and by NO Coddling/Baugh tenants/customers on the "Commission Parcel." The historical Prescriptive Ingress/Egress use has been exclusively for over 14 years, from the Paulsen parcels across the "Baugh/County" parcel to the Sebastopol Road Traffic light.

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Robert A. Nellessen, Esq.

RAN:ljp
cc: John Paulsen