

From: [Bart Hechtman](#)
To: [City Clerk](#); [CityCouncilListPublic](#)
Cc: [Abel, Adam](#); [Scott H. Miller](#); [Jeremy Cunningham](#)
Subject: [EXTERNAL] 1975 Cleveland Avenue Resolution of Necessity July 11 Council Hearing
Date: Tuesday, June 27, 2023 4:45:23 PM
Attachments: [Ltr to SR City Council 6.27.2023.pdf](#)

Dear City Clerk,

Attach please find an advance copy of my letter of this date regarding an item on the City Council's Agenda for July 11. Please distribute it promptly to the Mayor, Councilmembers and applicable City staff. The original will follow by US Mail.

Sincerely,

Bart Hechtman



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June 27, 2023

Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechtman

Gerry Houlihan

Mayor Natalie Rogers and
Members of the City of Santa Rosa City Council
100 Santa Rosa Avenue
Santa Rosa, CA 95404

**Re: Highway 101 Pedestrian/Bicycle Overcrossing Project
July 11 Resolution of Necessity Hearing
1975 Cleveland Avenue**

Dear Mayor Rogers and Santa Rosa City Council Members,

This office represents the Trustees of the Hornstein 1998 Revocable Trust, the owners of 1975 Cleveland Avenue, where Dick's Sporting Goods and Patelco Credit Union are located. A portion of that parcel is the subject of the Resolution of Necessity hearing you will be holding on July 11th to authorize the use of eminent domain. This letter provides the Trustees' objections to the City Council's adoption of that Resolution.

The Hornsteins' objections are primarily based on the finding you are required to make in the Resolution by Code of Civil Procedure Section 1245.230(c)(2), that *"the proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury"*. We assert that the City Council cannot factually make this finding, in part because this location for the overcrossing will cause significant private injuries, including but not limited to the following:

- Significant risk of injuries to pedestrians and cyclists, and of resulting liability to the Hornsteins, due to the location of the end of the overcrossing in proximity to the Dick's truck loading lane, notwithstanding the improvements we believe the City has agreed to which mitigate but do not eliminate the increased risk of large trucks injuring pedestrians and/or bicyclists.
- Significant risk of injuries to pedestrians and cyclists, and of liability to the Hornsteins, due to the interface between vehicles in the parking lot coming to or leaving from Dick's or the Credit Union and pedestrians/bicyclists cutting through that parking lot because it is the shortest route between the end of the

overcrossing and the commercial developments to the north of the subject property, including Coddington Mall. Signage may reduce but will not eliminate the increased risk of vehicles injuring cut-through pedestrians and/or bicyclists.

- Private injury to the Hornsteins due to the project making it attractive for students (and even possibly SRJC faculty and staff) to park on the Hornstein property and use the overcrossing to access SRJC. It is common knowledge that the college is chronically under-parked, and the Hornsteins' parking lot will provide an attractive alternative to other options available to the students. This activity will create maintenance issues as well as possible parking shortages for the customers of Dick's and the Credit Union, and the likely need for a new employee to monitor the parking lot and arrange towing for vehicles left in the parking lot while their occupants are at SRJC, which would result in increased operating expenses and decreased net operating income to the Hornsteins.
- Private injury to the Hornsteins arising from increased maintenance due to the cut-through pedestrians and bicyclists. These are primarily students who unfortunately do not always bother to find receptacles for their trash, which will leave the parking lot littered and less attractive to the customers of Dick's and the Credit Union, resulting in fewer customers.
- Private injury to the Hornsteins arising from reduced visibility of the Highway signage. The overcrossing will obscure the signage (and the property in general) for travelers on Highway 101 driving north.

Additionally, we assert that the City Council cannot make the Code of Civil Procedure Section 1245.230(c)(2) finding because there exists an alternate location for the project that offers at least equivalent public good, with far less private injury. That alternative is located south of the Hornsteins' property, on Bear Cub Way. It was fully analyzed in the Initial Study with Negative Declaration dated January 2021 which was prepared by CalTrans and approved per the Notice of Determination issued by CalTrans on March 23, 2021; the same document that analyzed the location that would utilize the Hornsteins' property. It is clear from the CEQA document that the Bear Cub Way alternative provides at least equivalent access for the passage of pedestrians and cyclists over Highway 101 to and from the SRJC campus, which is the purpose of the overcrossing project. It is also clear from the analysis of the Bear Cub Way alternative in that CEQA document that it will eliminate or vastly reduce virtually all of the private injuries described above which will occur if the overcrossing is located on the Hornsteins' property.

On these grounds we contend that the City Council cannot lawfully make the finding required by Code of Civil Procedure Section 1245.230(c)(2).

While none of the findings the City Council is required to make in the Resolution directly address compensation, the City Council should be aware that even though the land that the City seeks to acquire from the Hornsteins is very small, the financial impact to the Hornsteins' remaining property will be extraordinary because all of the private injury risks described above affect the market value of that remaining property. It is the Hornsteins' appraiser's opinion that the compensation that will need to be paid to the Hornsteins by the City for the taking of their land and the placement of the overcrossing project on it is at least \$1,741,000. The Hornsteins want the City Council to know that up front so that it can ensure that the City has sufficient budget for this project before it starts construction.

The Hornsteins are happy to be a part of the Santa Rosa community. They have no desire to litigate against the City where they make their living. But this overcrossing project is misplaced, and in this location will likely result in physical injuries to citizens of Santa Rosa in addition to the financial injuries that the Hornsteins and ultimately the taxpayers will suffer. If the City Council adopts the Resolution presented to you on July 11th, each Councilmember will knowingly accept the responsibility for those injuries. There is a safer alternative just south, on Bear Cub Way. The Hornsteins urge you to vote "no" on the adoption of the Resolution and instruct City staff to focus City resources on making that Bear Cub Way alternative a reality.

I will be unable to attend the hearing on July 11 due to a long-scheduled family trip, but the Hornsteins will attend by zoom. While the Hornsteins do not intend to "raise their hand" to speak at the hearing, they will be available to answer any questions that any of the Councilmembers may have for them.

Very truly yours,



BARTON G. HECHTMAN

BGH:jlc

cc: Michael Hornstein
Scott Miller, Esq.
Adam Abel, Esq.