

William J. Zisk
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July 4, 2004

Roseville City Council
City Council Chambers
311 Vernon Street
Roseville, CA 95678

Re: July 7, 2004 City Council Meeting:
Item Number 51 on council agenda:
Harding Boulevard to Royer Park Bikeway Project -
Final Environmental Impact Report and Route Alignment Selection

Subject: OBJECTIONS and PROTEST to:
Adoption of RESOLUTION NO. 04-246 certifying a final environmental impact report relating to the Harding Boulevard to Royer Park Bikeway Project, making findings of fact and statements of overriding considerations, and adopting a mitigation monitoring program; and, adoption of the preferred bikeway alignment Route A, and directing staff to pursue final design and construction of Route A consistent with the FEIR.

Mayor Rockholm and members of the City Council:

As a directly affected "HUMAN BEING" and "RESIDENT PROPERTY OWNER" during the course of the past thirty-eight (38) years, William J. Zisk hereby objects and protests the proposed certification of a DEIR and FEIR for the proposed phase II Harding Boulevard to Royer Park Bikeway Project, State Clearinghouse No. 2000122078, based upon the following grounds:

1. The DEIR and FEIR are inadequate and incomplete as to compliance with the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, section 15000 et. Seq.).
2. The city council, planning commission, transportation commission and staff have not proceeded in a manner required by law, its decisions are not supported by findings and the findings are not supported by substantial evidence. (Code Civ. Proc., section 1094.5, subd.(b)).
3. There is substantial evidence in the record during the thirty-eight (38) year history of the prior proceedings in the proposed project, whereby the City of Roseville instituted an action in eminent domain on parcels 013-040-03 and 013-040-05 of the private property of William J. Zisk and Lois E. Zisk for no lawful reason, whatsoever. The action was commenced on December 20, 1973 (Placer Superior Court No. 41104) on what is currently proposed as a portion of Route A, the preferred route. Prior to instituting the action in eminent domain, the City of Roseville did not have any portion of the Zisk property appraised; nor did the city make an offer of just compensation to the Zisk's; nor did the city comply with any part of Government Code section 7267.1 through 7267.7; nor did the city enter into any negotiations prior to the action in eminent domain; nor did the city demonstrate that public funds were allocated for acquisition; nor did the city have an adopted "project" on December 20, 1973; nor did the city comply

with the CEQA requirement of performing a full blown EIR prior to instituting an action in eminent domain; nor did the city fulfill the requirements of the final order in condemnation in timely paying the "Total Sum" of the Judgment into court; nor has William J. Zisk and Lois E. Zisk ever received one (1) cent in any form of compensation from the City of Roseville to the present date. The City of Roseville has deferred the CEQA requirements of an EIR for over thirty-two (32) years and is now proposing to certify a DEIR and FEIR for a proposed project that was non-existent 32 years ago, when the condemnation action, Placer County Superior Court NO. 41104 was filed in Auburn, purportedly condemning parcels 013-040-03 and 013-040-05 of the private Zisk property for a "tentative" plan for a "future" proposed bicycle trail. The California legislature and the congress of the United States has not provided any special authority to the City of Roseville to utilize the police powers to condemn private property thirty-two (32) years in advance of a "tentative plan for a future proposed project".

4. California Code of Regulations, Title 14, Chapter 3, Article 7, section 15088 (b) states:

"The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."

Section 15088.5 - Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

5. The project proponent virtually eliminated any and all project alignment alternatives, with the exception of Route A, prior to the draft environmental impact report going to print, thereby eliminating public comment and consideration of alternative route alignments and selection.

6. The proposed preferred alignment of a portion of proposed Route A between cross-sections 390 and 400 is erroneously shown to be delineated on private property owned by William J. Zisk and Lois E. Zisk.

7. The DEIR and FEIR is inadequate and incomplete in regard to addressing the hydrology and flooding impacts as they relate to each of the proposed alignment alternatives. All of the proposed project alternative alignments lie within the "floodway" of Dry Creek.

8. The DEIR and FEIR is inadequate and incomplete regarding the significant impacts of any proposed grading of stream banks or fill materials and walls being placed within the floodway channel of Dry Creek between cross sections 390 and 400 of the proposed preferred alignment of Route A. The seven (7) year reclamation project conducted by the Zisk family within the Dry Creek channel between 1967 and 1973 improved the flood carrying capacity of Dry Creek by over 200% on the Zisk property. The seven year reclamation project performed by the Zisk family at a cost of over \$200,000.00 was a conditional requirement of the City of Roseville prior to issuance of a permit to construct a new home on the Zisk private property adjacent to the secluded passive surroundings created by the Zisk family adjacent to Dry Creek. Upon completion of the secluded quite passive surroundings on the Zisk private property, the city refused to issue the permit to build our new home for no lawful reason.

9. The DEIR and FEIR are inadequate and incomplete and have not been addressed in regard to the significant impacts that would be encountered on parcels 013-040-03, 013-040-04, and 013-040-05 if the proposed preferred alternative Route A were to be considered, the potential impacts of fire, theft, break-ins, vandalism, trespass, and the invasion of the privacy and the passive surroundings created by the Zisk family so long ago would be destroyed. Obviously, a cable with signs on it would not be a deterrent to the significant impacts as described above as well as the significant liabilities that would be incurred by the city if the preferred Route A were to be considered. William J. Zisk is strongly opposed to any consideration of a proposed Route A on the north bank of Dry Creek and will pursue recovery of damages in any way affiliated to the proposed implementation of a public access on the above described three parcels. On the other hand I strongly support the alternative of a continuation of the existing trail system on the south side of Dry Creek from the Harding Boulevard Bridge to Lincoln Estates Park and beyond on public property. That property is city owned and is currently being utilized by bicycles and pedestrians and was specifically dedicated by the McAntyre family for that purpose.

If you have any questions on the foregoing, please do not hesitate to contact me immediately.

Sincerely,

William J. Zisk