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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C20

WESTERN RIVERSIDE COUNCIL OF)
GOVERNMENTS,)
)
PLAINTIFF/PETITIONER,)
)
VS.) CASE NO. 30-2010-00357976
)
THE CITY OF BEAUMONT; AND DOES)
1 THROUGH 100,)
)
DEFENDANT/RESPONDENT.)
_____)

HONORABLE DAVID R. CHAFFEE, JUDGE PRESIDING
REPORTER'S PARTIAL TRANSCRIPT
MAY 22, 2014

APPEARANCES OF COUNSEL:

FOR PLAINTIFF/
PETITIONER: JEFFREY V. DUNN
THOMAS J. EASTMOND
ATTORNEYS AT LAW

FOR DEFENDANT/
RESPONDENT: WALTER P. MC NEILL
RACHEL L. MC VEAN
ATTORNEYS AT LAW

KATHY D. HOFFMAN, CSR #5787
OFFICIAL COURT REPORTER

1 SANTA ANA, CALIFORNIA - THURSDAY, MAY 22, 2014

2 AFTERNOON SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN
4 COURT:)

5 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

6 ALL RIGHT. WELL, I HAVE TO SAY I'VE BEEN
7 SCRIBBLING FOR THE LAST THREE HOURS. MY HAND ACTUALLY
8 HURTS AS A RESULT OF TRYING TO GET THIS INTO SOME FORM THAT
9 IS UNDERSTANDABLE. AND SO I AM TO A DEGREE PROBABLY
10 LARGELY GOING TO BE EDITING IT AND READING AT THE SAME
11 TIME, OR READING AND EDITING AT THE SAME TIME, YOUR CHOICE
12 OF ORDER.

13 WHAT I WANT TO DO IS THIS: I ALWAYS ANTICIPATE
14 IN A CASE OF THIS NATURE THAT THERE WILL BE AN APPEAL. AND
15 I ANTICIPATE ALWAYS IN A CASE OF THIS NATURE THAT SOMEONE
16 WILL REQUEST A STATEMENT OF DECISION, AND SO UP FRONT, SO
17 THAT I DON'T FORGET LATER ON, I'M DIRECTING THE PREVAILING
18 PARTY, IF THERE IS A REQUEST FOR A STATEMENT OF DECISION,
19 TO PREPARE A PROPOSED STATEMENT OF DECISION AND TO ATTACH
20 TO IT AND INCORPORATE BY REFERENCE A TRANSCRIPT OF THAT
21 WHICH I AM ABOUT TO ENTER INTO THE RECORD IN TERMS OF THE
22 COURT'S RULING AND FINDINGS ON THIS CASE.

23 I SHOULD START, AS I THINK I TRIED TO DO MAYBE
24 BACKHANDEDLY THIS MORNING BY TALKING ABOUT THE LACK OF TIME
25 LIMITS FOR THIS TRIAL, BY COMPLIMENTING ALL FOUR OF THE
26 LAWYERS INVOLVED IN THIS CASE. NOT ONLY DID I FIND YOU TO

1 BE VERY NICE PEOPLE, WHICH IS ALWAYS A NICE THING BECAUSE
2 SO MANY PEOPLE IN OUR SOCIETY FIND LAWYERS TO BE ANATHEMA,
3 BUT I ALSO FIND YOU TO BE SCHOLARS AND EXCELLENT
4 PRACTITIONERS OF OUR PROFESSION.

5 MS. MC VEAN, I HAVE THE IMPRESSION YOU'RE KIND OF
6 EARLY ON IN YOUR CAREER.

7 MS. MC VEAN: YES, YOUR HONOR.

8 THE COURT: I THINK YOU HAVE GREAT PROMISE.

9 MS. MC VEAN: THANK YOU.

10 THE COURT: APPRECIATED YOUR BEING HERE, ESPECIALLY
11 SINCE YOU'RE CANADIAN.

12 MS. MC VEAN: THANK YOU, YOUR HONOR.

13 THE COURT: AND SO TO THE OLD HANDS, WHICH ARE THE
14 OTHER THREE OF YOU, YOU KNOW, THANK YOU FOR YOUR EXCELLENT
15 PRESENTATIONS, ALL THREE OF YOU. YOU KNOW, OBVIOUSLY IN A
16 CASE OF THIS NATURE, SOMEBODY WINS AND SOMEBODY LOSES, AND
17 THE CHIPS HAVE TO FALL WHERE THEY MAY. AND TO A DEGREE, AS
18 YOU WILL HEAR, I AM GOING TO BE GIVING SOMEWHAT A PIECE OF
19 MY MIND TO A CERTAIN DEGREE AS WELL.

20 AND IT'S NOT ALWAYS EASY TO SWALLOW. AS
21 ADVOCATES, I REMEMBER THIS SO WELL WHEN I WAS A LAWYER ALL
22 THOSE YEARS AGO, WE ALL FEEL AS LAWYERS MORE THAN A LITTLE
23 RESPONSIBILITY TO OUR CLIENTS TO FIX IT, TO WIN FOR YOUR
24 CLIENTS REGARDLESS. THAT ISN'T THE NATURE OF THE BUSINESS.
25 AND SO, YOU KNOW, I AM TELLING YOU UP FRONT THAT I
26 APPRECIATE YOUR ADVOCACY, AND I APPRECIATE YOU AS PEOPLE,

1 IRRESPECTIVE OF THE RESULT OF THIS.

2 AND, YOU KNOW, BELIEVE ME, ALL FOUR OF YOU ARE
3 WELCOME HERE ANY DAY, ANY TIME, TO TRY ANOTHER CASE. I
4 WOULD BE HAPPY TO HAVE YOU. YOU MAY NOT BE HAPPY TO HAVE
5 ME, HOWEVER. SO WE BEGIN, AND STRANGELY ENOUGH, I WAS TOLD
6 A LONG TIME AGO NEVER PUT YOURSELF INTO A DECISION OR
7 OPINION, AND YET I'M ABOUT TO DO THIS BY SAYING THIS:

8 I AM AN OLD, EMPHASIS ON THE WORD "OLD,"
9 COLLEGIATE OARSMAN. PERHAPS YOU HAVE SEEN THE MOTIVATIONAL
10 POSTER SHOWING AN EIGHT-OARED RACING SHELL IN ACTION ON THE
11 WATER UNDER THE HEADING OR TITLE OF "TEAMWORK." THERE IS
12 SOMETHING SIMPLE BUT ELEGANT ABOUT A SPORT WHERE NINE
13 PEOPLE CLIMB INTO A 60-FOOT LONG, BY 24- TO 32-INCH WIDE,
14 200-POUND RACING SHELL, AND AFTER LONG ARDUOUS WEEKS,
15 INDEED, MONTHS OF TRAINING, LINE UP ON THE STARTING LINE TO
16 ACHIEVE A SINGLE PURPOSE, TO BEAT ALL CHALLENGERS OVER A
17 2,000 METER COURSE.

18 WHAT'S REQUIRED IN THIS? STRENGTH, SKILL ON THE
19 PART OF EVERY PERSON IN THE BOAT, BUT AT THE END OF THE
20 DAY, ALL THAT IS WASTED IF EACH OF THOSE OARSMEN, OR ANY OF
21 THOSE OARSMEN, IS OUT OF SYNC OR NOT PULLING TOGETHER.

22 THE INSTANT CASE REPRESENTS AN INTERGOVERNMENTAL
23 DISPUTE OVER THE AGE OLD PROBLEM OF HOW TO FUND SIGNIFICANT
24 INFRASTRUCTURE CONSTRUCTION PROJECTS. IN THIS CASE THE
25 PROJECTS TRANSCEND THE TYPICAL LOCAL STRUCTURE, TO INCLUDE
26 REGIONAL TRANSPORTATION. THE CREATION OF THE TUMF PROGRAM

1 REPRESENTS A REGIONAL STRATEGY TO FINANCE AND CONSTRUCT
2 REGIONAL ARTERIAL HIGHWAYS AND ROADWAYS IN A COGENT,
3 SYSTEMATIC, AND HOPEFULLY ECONOMIC FASHION.

4 THE FACT THAT THE COUNTY OF RIVERSIDE, AND EVERY
5 LOCAL GOVERNMENTAL ENTITY IN WESTERN RIVERSIDE COUNTY, OR
6 WESTERN REGION OF RIVERSIDE COUNTY, EVENTUALLY JOINED IN
7 THIS ENDEAVOR, REPRESENTS NOT ONLY THE IMPORTANCE OF THIS
8 TRANSPORTATION INFRASTRUCTURE, BUT ALSO THE VIABILITY OF
9 THE ENTERPRISE. LIKE ROWING, THE ONE CAVEAT IS, AND WAS,
10 THAT ALL OF THE MEMBERS OF THE TUMF PROGRAM NEED TO PULL
11 TOGETHER.

12 AS DEMONSTRATED BY EXHIBITS 1003 AND 1004, THE
13 CITY OF BEAUMONT ADOPTED THE TUMF MODEL ORDINANCE. ITS
14 LEGISLATIVE BODY, THE CITY COUNCIL, THEREBY PROVIDING CLEAR
15 POLICY DIRECTION, REQUIRED THAT THE CITY COMPLY WITH THE
16 REQUISITES OF THE TUMF PROGRAM.

17 THE PROBLEM APPEARS TO BE THE INCONSISTENCY, OR
18 THE APPARENT INCOMPATIBILITY, OF THE C.F.D. CREATED BY THE
19 CITY IN 1993 TO BUILD INFRASTRUCTURE WITHIN THE CITY
20 LIMITS, INCLUDING TRANSPORTATION INFRASTRUCTURE. AFTER THE
21 PASSAGE BY THE BEAUMONT CITY COUNCIL OF THE ORIGINAL TUMF
22 ORDINANCE IN 2003, CITY STAFF, FROM THE CITY MANAGER ON
23 DOWN, ADOPTED A POSITION THAT THE CITY'S TUMF OBLIGATIONS
24 WERE SATISFIED BY THE CITY TRANSPORTATION PROJECTS, LARGELY
25 FUNDED AND CONSTRUCTED THROUGH C.F.D. 93-1.

26 THEIR ARGUMENT, SIMPLY STATED, IS THAT ANY WORK

1 DONE ON A CITY ROADWAY IDENTIFIED BY THE TUMF NEXUS STUDY,
2 AS INCLUDED WITHIN THE TUMF NETWORK, WAS A QUALIFIED TUMF
3 PROJECT, FOR WHICH THE CITY SHOULD BE CREDITED AS HAVING
4 CONSTRUCTED AS ITS OWN, OR AS PART OF ITS TUMF OBLIGATION.

5 THE COURT IS SATISFIED AND FINDS THAT THE
6 POSITION OF CITY STAFF WAS MOTIVATED BY CERTAIN COMMITMENTS
7 TO BEAUMONT AREA DEVELOPERS, AS WELL AS AN IMPERATIVE TO
8 HELP FUEL FURTHER AND GREATER DEVELOPMENT WITHIN BEAUMONT
9 CITY LIMITS. SIMPLE ECONOMICS EXPLAIN WHY CITY STAFF WOULD
10 TAKE SUCH A POSITION.

11 UNDER THE C.F.D., THE CITY ISSUED BONDS THAT PAID
12 FOR THE TRANSPORTATION PROJECTS. THE BONDS WERE SECURED BY
13 LIENS ON THE INDIVIDUAL PARCELS WITHIN THE CITY'S LIMITS.
14 THE BONDS, PAID BY A SUPPLEMENTAL -- OR A SUPPLEMENTAL BILL
15 ADDED TO THE ANNUAL PROPERTY TAX LEVY. NO UP FRONT MONEY
16 WAS REQUIRED TO BE PAID BY ANY DEVELOPER WHO OPTED FOR THIS
17 FORM OF FINANCING.

18 THE DEVELOPERS THEREBY HAD NO CARRYING CHARGES
19 FOR THE COST OF BORROWED MONEY TO PAY UP FRONT FOR
20 CONSTRUCTION OF THESE TRANSPORTATION PROJECTS. MOREOVER,
21 THE COSTS ARE EFFECTIVELY HIDDEN FROM THE PROPERTY BUYERS,
22 WHO DO NOT SEE PRICE INCREASES TO COVER DEVELOPER
23 OUT-OF-POCKET DEVELOPMENT COSTS. INSTEAD, THE BUYER PAYS
24 FOR THE PROJECT INCREMENTALLY OVER THE LIFE OF THE BOND
25 THROUGH THOSE TAX ASSESSMENTS OR ADDITIONS TO THE TAX
26 BILLS.

1 CONTRARIWISE, TUMF REQUIRES UP-FRONT PAYMENTS OUT
2 OF POCKET FROM DEVELOPERS. OF COURSE, IT IS EXPECTED THAT
3 THESE COSTS WILL BE RECOUPED BY AN INCREASE IN SALES PRICE
4 OF THE PROPERTIES THAT ARE CONTAINED WITHIN THE DEVELOPER'S
5 PROJECT. THIS SOMETIMES RESULTS IN A RISK OR GAMBLE THAT
6 CERTAIN DEVELOPERS ARE UNWILLING TO ASSUME.

7 THE NET EFFECT OF THIS DICHOTOMY IS, FOLLOWING
8 THE BEAUMONT PREFERENCE, TO GIVE BEAUMONT THE EDGE IN
9 ATTRACTING DEVELOPERS AND GREATER DEVELOPMENT AS AGAINST
10 ALL OTHER WESTERN RIVERSIDE JURISDICTIONS THAT IMPOSE THE
11 MANDATED TUMF FEE UP FRONT.

12 SMALL WONDER THEN THAT THE BEAUMONT IMPERATIVE
13 WAS ALSO TO KEEP ALL MONEY COLLECTED VIA C.F.D. 93-1 IN
14 TOWN AND SPENT ONLY ON LOCAL IMPROVEMENTS AND FACILITIES.
15 ALL OF THIS LEADS INESCAPABLY TO THE COURT'S FINDING THAT
16 CITY MANAGEMENT AND STAFF CONTRACTORS VIOLATED THE
17 DIRECTIVES OF THE CITY'S TUMF ORDINANCES TO SATISFY THIS
18 IMPERATIVE.

19 IN THE END, IT APPEARS THAT THE CITY EXPECTED TO
20 BE TREATED DIFFERENTLY IN THE TUMF PROGRAM THAN ALL OTHER
21 MEMBERS OF THAT PROGRAM.

22 MOREOVER, IT IS CLEAR THAT CITY STAFF CHOSE TO
23 OVERLOOK THE CLEAR MANDATE OF THE CITY COUNCIL REVEALED BY
24 ITS ADOPTED TUMF ORDINANCES, INCLUDING THE DIRECTION TO
25 COMPLY WITH THE TUMF PLAN. OF PARTICULAR NOTE IS THE TUMF
26 REQUIREMENT THAT POST-2003 FINANCING MECHANISMS, SUCH AS

1 C.F.D. 93-1, BE MADE TO CONFORM TO THE TUMF PROGRAM, AND
2 THE REQUIREMENT THAT NEW FINANCING PLANS OR BOND ISSUES FOR
3 TRANSPORTATION, OR FOR THAT MATTER, CREDIT OR DEVELOPMENT
4 AGREEMENTS, HAVE PRE-APPROVAL FROM W.R.COG.

5 A WORD ABOUT CONFORMANCE OF C.F.D. 93-1 WITH TUMF
6 IS APPROPRIATE. THE COURT'S QUESTIONS OF MR. MC NEILL
7 ABOUT C.F.D. 93-1 AND LIMITING ITS COVERAGE TO EXCLUDE
8 REGIONAL TRANSPORTATION, THOSE QUESTIONS, THAT IS, WERE NOT
9 SIMPLY IDLE THOUGHTS. IN THE COURT'S ESTIMATION, C.F.D.
10 93-1 COULD HAVE BEEN, AND, INDEED, SHOULD HAVE BEEN,
11 MODIFIED TO EXCLUDE REGIONAL TRANSPORTATION PROJECTS, WHILE
12 CONTINUING TO COVER OTHER LOCAL PROJECTS, INCLUDING WATER,
13 SEWAGE, AND LOCAL TRANSPORTATION.

14 THE CITY COULD HAVE REDUCED THE LIMIT OF BONDED
15 INDEBTEDNESS AUTHORIZED FROM THE 655-MILLION-DOLLAR AMOUNT
16 INDICATED BY MR. MC NEILL, TO, FOR INSTANCE, 600 MILLION,
17 OR FOR THAT MATTER, 550 MILLION, IF SO NECESSARY, TO
18 REFLECT WHAT I WOULD CALL A TUMF INCREMENT, AND THEN
19 COMPLIED WITH THE TUMF PROGRAM REQUIREMENTS TO IMPOSE A
20 TUMF FEE UPON NEW DEVELOPMENT.

21 INSTEAD, THE CITY OPTED FOR WHAT ONE COULD CALL
22 THE, QUOTE, WILLFUL CHILD, END QUOTE, SYNDROME. INDEED,
23 THE EVIDENCE REFLECTS THAT CONTRARY TO TUMF ORDINANCES,
24 CITY STAFF TRIED REPEATEDLY TO MAKE THE TUMF PROGRAM
25 CONFORM TO THE C.F.D. 93-1 PROGRAM, RATHER THAN CONFORM THE
26 C.F.D. 93-1 TO TUMF.

1 IN MAKING ITS FINDINGS, THE COURT IS CONSTRAINED
2 TO COMMENT IN SOME SMALL FASHION ON THE CREDIBILITY OF THE
3 WITNESSES. HERE, THE COURT NOTES THAT IT WAS EXTREMELY
4 IMPRESSED WITH THE CHARACTER, QUALITY, AND CREDIBILITY OF
5 PETITIONER'S EXPERTS, MESSRS. CHYLINSKI AND ZIMMERMAN.
6 MR. ZIMMERMAN'S ANALYSIS OF THE CITY'S ROAD PROJECTS
7 ALLEGEDLY ON THE TUMF NETWORK, PROVIDED AN ENCYCLOPEDIA
8 VIEW OF THE DEFICIENCIES IN THE CITY'S CLAIMS TO HAVE
9 MEANINGFULLY PARTICIPATED IN AND CONTRIBUTED TO THE TUMF
10 PROGRAM.

11 SIMILARLY, MR. CHYLINSKI'S REVIEW AND ANALYSIS OF
12 THE FINANCIAL AND COMPLIANCE ISSUES OF THE CITY'S CLAIMED
13 COMPLIANCE WITH TUMF WERE REVEALING; INDEED, THEY WERE
14 STARTLING. RESPONDENT'S WITNESSES, PARTICULARLY,
15 MESSRS. DILLON, HUGHES, AND MOORJANI EITHER LACKED SPECIFIC
16 KNOWLEDGE OR WERE NOT CREDIBLE IN THEIR TESTIMONY REGARDING
17 COMPLIANCE WITH THE TUMF CONTRIBUTION REQUIREMENTS.

18 AT BOTTOM, THE COURT FINDS THAT IN NO INSTANCE
19 DID THE CITY'S CLAIMED CONSTRUCTION OF TRANSPORTATION
20 IMPROVEMENTS SATISFY THE TUMF REQUIREMENTS TO ADD TRUE
21 ROADWAY CAPACITY. IF ANYTHING, THE EVIDENCE SHOWS POOR
22 LOCAL TRANSPORTATION PLANNING AND EXECUTION, RESULTING IN
23 BOTTLENECKS AND DELAYS THAT IMPAIR THE NECESSARY ADDED
24 CAPACITY.

25 MOREOVER, THE COURT FINDS THAT THE CITY FAILED TO
26 COMPLY WITH THE TUMF PLAN, REQUIRING PRE-APPROVAL FOR

1 POST-2003 FINANCING OR DEVELOPER AGREEMENTS OR DEVELOPER
2 CREDITS, AND GENERALLY FAILED AT EVERY TURN TO COMPLY WITH
3 VIRTUALLY ANY OTHER TUMF PLAN REQUIREMENT.

4 THE EVIDENCE SADLY REVEALED SOMETHING MORE THAT
5 THE COURT FEELS OBLIGED TO SPEAK TO. THE EVIDENCE AND
6 TESTIMONY REVEALS THAT CITY MANAGEMENT AND STAFF ENGAGED IN
7 A PATTERN AND PRACTICE OF DECEPTION THAT TRANSCENDS THE
8 TYPICAL GIVE AND TAKE OF DISPUTE NEGOTIATION. HAD THIS
9 BEEN A TYPICAL CIVIL TRIAL CONTAINING ALLEGATIONS OF FRAUD,
10 I WOULD HAVE FOUND FRAUD BY CLEAR AND CONVINCING EVIDENCE
11 AS AGAINST THE CITY.

12 TO BE CLEAR, HOWEVER, AND I WANT TO MAKE THIS
13 VERY CLEAR, THIS IS NOT SOMETHING TO EVER BE ASCRIBED TO
14 THE CITY'S CURRENT COUNSEL, MR. MC NEILL OR MS. MC VEAN.
15 YOU'RE LAWYERS, NOT PARTICIPANTS.

16 FINALLY, MR. MC NEILL URGES THAT THE COURT IS
17 PROSCRIBED BY LAW FROM IMPOSING A REMEDY REGARDING OR
18 REQUIRING THE CITY TO COLLECT A TUMF FEE RETROACTIVELY, IF
19 YOU WILL, FROM THE DEVELOPERS IN THE CITY FOR THE
20 APPLICABLE DEVELOPMENT TIME PERIOD OF 2005 TO 2009.
21 HOWEVER, THAT IS NOT THE REMEDY SOUGHT BY PETITIONER.

22 HERE PETITIONER SEEKS, AND THE COURT GRANTS, A
23 WRIT OF MANDATE, COMPELLING RESPONDENT CITY TO REMIT SUMS
24 COMMENSURATE WITH THE TUMF FEES IT HAD COMMITTED TO REMIT
25 DURING THE RELEVANT TIME PERIOD OF 2005 THROUGH 2009. AND
26 I DO NOT SPECIFY THE EXACT DATES. THE RECORD IS CLEAR AS

1 TO THE START DATE AND THE ENDING DATE WHEN THE CITY WAS
2 REMOVED FROM THE TUMF PROGRAM.

3 HERE, THE COURT FINDS THAT THE AMOUNT REQUIRED TO
4 BE REMITTED IS TO BE THE TOTAL AMOUNT OF 42,994,879, PLUS
5 INTEREST, TO BE CALCULATED AT THE LEGAL RATE BEGINNING
6 OCTOBER 2009 AND TO THE PRESENT. AND PETITIONER WILL DO
7 THAT CALCULATION, SUBMIT A DECLARATION ACCOMPANYING A
8 PROPOSED JUDGMENT THAT OUTLINES HOW THE CALCULATION WAS
9 MADE, AND HOW THE SUM -- WHAT THE TOTAL AMOUNT OF THAT SUM
10 IS TO BE ADDED TO THE AMOUNT OF THE JUDGMENT.

11 I'M DIRECTING MR. DUNN/MR. EASTMOND TO PREPARE
12 THE JUDGMENT AND TO CIRCULATE, OF COURSE, TO MR. MC NEILL,
13 AND ALSO OF COURSE TO THE COURT. WE CONCLUDE. ANY
14 QUESTIONS?

15 MR. MC NEILL: FOR THE RECORD, RESPONDENTS REQUEST A
16 STATEMENT OF DECISION.

17 THE COURT: YOU HAVE TO FOLLOW THE CODE OF CIVIL
18 PROCEDURE. SO YOUR ORAL REQUEST IS NOT SUFFICIENT. YOU
19 NEED TO MAKE IT IN WRITING WITHIN THE TIME FRAME PRESCRIBED
20 BY THE CODE, BUT I'M NOT SURPRISED.

21 MR. MC NEILL: WELL --

22 THE COURT: ALL RIGHT. TO EACH OF YOU, I THANK YOU
23 FOR YOUR PARTICIPATION HERE AND YOUR EXCELLENT
24 PRESENTATIONS. I WISH YOU ALL WELL. AND GO ARMY, BEAT
25 NAVY. THAT'S MORE FOR MS. TAYLER BERGER.

26 (DISCUSSION OFF THE RECORD.)

1 THE COURT: IT'S BEEN A LONG FOUR WEEKS. EVERYBODY GO
2 HOME AND GET RESTED UP FOR THE NEXT ROUND.

3 MR. DUNN: THANK YOU, YOUR HONOR.

4 (END OF PROCEEDINGS.)

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