

Barbara M. Thomas, Esq.
1223 9th Street
Alameda, CA 94501
(510) 205-7007

BarbaraThomasEsq@comcast.net

Mayor and Members of the City Council
by email to the City Clerk/City Attorney

January 2, 2019

Council Agenda Items 6 C,D,E January 2, 2019
Keyser Marston Fiscal Analysis Omissions

Dear Madam Mayor and Members of the City Council:

Please include this information and the attached documents in consideration of the above agenda items.


Although the City of Alameda and Councilmembers were served with a Verified Petition for Preremptory Writ of Mandate/Prohibition/Stay under the California Environmental Quality Act on December 18, 2018, this was not included in the Keyser Marston Fiscal Analysis, prepared by David Doezeema for the fiscal impacts on the City of Alameda for the Items 6 C, D, and E on the January 2, 2019, Council agenda.

The Peremptory Writ challenges the approval of the Mitigated Negative Declaration adopted by the City Council of Alameda on December 4, 2018, for item No. 2018-6162. No resolution number is yet available for this item. Agenda Items 6, C, D and E are based on the environmental analysis being challenged in court. There may be fiscal impacts due to this Peremptory Writ and to the ballot measures the City is considering placing on the ballot using the same environmental work by Douglas Herring for the McKay Avenue Homeless Accommodation.

There are three additional items that the City Council should consider. Copies of those are provided herewith. The names and address of the recipients has been sanitized in the interests of safety and freedom from further harassment. This information will be provided to the Court under seal.

1. Email from Marilyn Ashcraft, sbn 114837 requesting meeting with my clients **after** service of Alameda County Superior Court Case No. HG18933140 upon her. After more contact by Ashcraft, she did meet with my clients Friends of Crab Cove. She did not at any time contact me, the attorney, and ask for permission. It should be noted that under State Bar Rule No. 2-100 attorneys are not allowed to meet with represented lay persons. A complaint has been filed with the California State Bar.
2. Email from Douglas Biggs attempting to meet with my clients. Mr. Biggs is a Real Party in Interest and was also served on Dec. 18, 2018.
3. A letter from a New York lawyer, threatening my client over comments made at this Council meeting on December 4, 2018 concerning an unidentified person, that the attorney identifies as Jason Biggs. It should be noted that this attorney is not licensed to practice law in California, therefore his conduct was referred to the California State Bar, New York Nassau County Courts, and the District Attorney.

Sincerely,


Barbara Thomas,

Sent from my iPhone

Begin forwarded message:

From: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>

Date: December 21, 2018 at 11:21:21 AM PST

To: "XXXXXX"

Subject: Can we talk soon?

Hi XXXXXX,

I would like to talk with you about the McKay Avenue project and Friends of Crab Cove's concerns. Are you available this afternoon to talk by phone or meet for coffee? Or does another day work? Please let me know. Thanks.

Marilyn

Marilyn Ezzy Ashcraft

Mayor, City of Alameda

(510) 747-4745

Begin forwarded message:

From: Doug Biggs <DBiggs@apcollaborative.org>

Date: December 29, 2018 at 5:23:01 PM PST

To: XXXXXXXX

Cc: rafael s <rafael.silberblatt@gmail.com>

Subject: An appeal to withdraw the initiative

Dear XXXXXX:, I hope your holidays are going well, and I don't want to intrude on them too much, but I do want to reopen the question I asked at our last meeting, about conditions under which you would consider withdrawing the initiative.

You have done an excellent job of ensuring that the community's needs and concerns are heard, and incorporated into the project, and I think you are positioning your organization well to have a significant and ongoing voice in the project. By withdrawing the initiative at the City Council meeting, I believe you will gain further strength and an ally in the City being willing to enforce the agreements being established for operation standards.

As you can see from the staff report, the city will possibly call a special election, as was done in prior similar efforts, and put on 1 if not 2 counter initiatives. Their impact study paints an extremely bleak picture of the fiscal impacts your initiative would have on the citizens of Alameda, who would have to come up with substantial funds to turn the site into open space. The report also touches on other legal and administrative amenities that could be available to us to move the project forward even if the initiative were to pass, all of which would entail significant additional costs to all parties.

APC is circulating a letter to the community requesting withdrawal of the initiative that has already garnered almost 400 signatures from leaders of most of the major faith based organizations in Alameda, local businesses, over 45 of your neighbors, representatives from the same social justice organizations that rose to defeat measure K, local schools and teachers, representatives of environmental groups and frequent users of Crab Cove. The letter with their signatures can be viewed at <http://caringalameda.org/letter-to-the-community/>. We are confident that with their support, and the funds we have set aside for this purpose (currently approximately \$100,000) we can conduct a successful campaign to defeat the initiative. I would like to avoid that campaign though, not just to save the City and all parties involved from unnecessary and burdensome

expenses, but also to help the community move away from the politics of divisiveness and ensure that your voice can remain at the table.

I am available to meet with you and your group, and, if you wish, staff and/or electeds from the City to see if some form of mutually beneficial agreement can be worked out. I look forward to hearing from you soon. Thank you, and Happy Holidays!

Doug Biggs

Executive Director

Alameda Point Collaborative

677 W. Ranger Ave.

Alameda, CA 94501

(510)898-7849

www.apcollaborative.org

Check out www.caringalameda.org for information on our exciting new project!

CHRISTOPHER RAY, ESQ
LEAD ATTORNEY, OF COUNSEL

JOHN ANTHONY
LEAD ATTORNEY, OF COUNSEL

DAVID GOULD
LEAD ATTORNEY, OF COUNSEL



CHELSEA D. GILBERT
SETTLEMENTS, LEAD

CHRISTOPHER A. RAY ESQ
SETTLEMENTS, OF COUNSEL

THE OFFICE OF DASH AND ASSOCIATES
LITIGATION DEPARTMENT

DASH & ASSOCIATES
2480 LAWN DRIVE, 2nd FLOOR
EAST MEADOW, NY 11554
MAIN-LINE: (877) 759-4451
FAX: (888) 994-9958
www.dashandassociates.co

December 21, 2018

Via Certified Mail – Signature Required

Alameda, CA 94501

Re: Jason Biggs - Defamation

Dear [REDACTED]:

Our office has been retained by the above referenced individual, Jason Biggs ("Mr. Biggs"), in connection with certain defamatory statements that you made at a televised city council meeting on December 4th, 2018.

On December 4th of this year, you attended a meeting of the city council of Alameda, California. Part of that meeting was scheduled for a discussion of the McKay Wellness Center, and you spoke at the podium in the last slot on the schedule. During your allotted time you spoke in alleged in detail that Mr. Biggs engaged you in a hostile and abusive encounter while gathering signatures in support of your position regarding the Open Space Initiative at McKay Avenue. You referenced him by name. These statements were published, within the meaning of the applicable defamation laws, to the entire gathered crowd, the entire Alameda city council, and to everyone with access to the live television broadcast and the Alameda city council's online web stream.

As you know, the alleged encounter between you and Mr. Biggs simply never occurred. The entire alleged encounter was fabricated. It is at the periphery of plausibility that such an elaborate fabrication occurred accidentally - you spoke in great detail about Mr. Biggs and this alleged encounter.

The sheer breadth of your publication, and its permanent entry into the records of the Alameda, California city council's records in the form of recordings and minutes of the meeting has proven permanently and severely injurious to our client's reputation. He has experienced

December 21, 2018

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immediate, serious, and objective economic damages as a direct and proximate result of your wanton fabrication, and wide distribution, of the entire fabricated anecdote. These harms will continue to accrue to Mr. Biggs for as long as the records of the city council of Alameda continue to be preserved.

Our client's demands are simple. You are to cease repeating this fabricated account as though it were factual or based in fact, to any person or in any forum, online or otherwise, orally or in writing. You will make a written retraction of that story either by written direction to the city council of Alameda to make proper notation in its minutes of the city council meeting, by publication of the same in a local newspaper at your own expense, or other comparable and comprehensive retraction of more or less the same public reach as your initial defamatory publication. Our client estimates his objective and immediate economic harms resulting from your statements in the amount of \$20,000.00, which forms the basis for the civil remedies he intends to pursue through a California civil litigator if this simple demand goes unmet.

We have consulted with our client regarding his available options and avenues of redress, and he has authorized us to engage in confidential settlement negotiations. Our client has agreed to allow you a reasonable amount of time to meet his demand. However, if we do not hear from you or your representative within 30 days from the date of this letter, our client will be retaining a litigator in connection with this matter to pursue his remedies through the applicable civil courts of California.

Our client wishes, to the extent possible, to maintain an amicable relationship with you and to avoid the lengthy and expensive process of litigation. I look forward to hearing from you, or your representative, to discuss this matter more meaningfully.

Please note that this letter constitutes a notice of intent to sue and any and all documents, including electronically stored communications, relating to our clients and any potential claims our client may have, should be preserved to every extent possible.

Very truly yours,



CHRISTOPHER RAY, ESQ.

christopher.ray@dashandassociates.co

(877) 759-4451 ext. 1003

CC: Jason Biggs
Michael Sherman