

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SAN DIEGO
 SUPERIOR DEPARTMENT 67 HONORABLE EDDIE C. STURGEON, JUDGE

 PROTECT OUR COMMUNITY NOW, A)
 CALIFORNIA NONPROFIT PUBLIC)
 BENEFIT CORPORATION,)
 PETITIONER AND)
 PLAINTIFF,)

VS.)

POWAY UNIFIED SCHOOL DISTRICT, A)
 CALIFORNIA PUBLIC SCHOOL DISTRICT,)
 POWAY UNIFIED SCHOOL DISTRICT)
 BOARD OF EDUCATION; AND KIM PHELPS)
 IN HER CAPACITY AS SUPERINTENDENT,)
 RESPONDENT AND)
 DEFENDANT.)

 COSTCO WHOLESALE CORPORATION, A)
 WASHINGTON PROFIT CORPORATION,)
 REAL PARTY IN)
 INTEREST.)

SUPERIOR COURT CASE
 NO. 37-2020-00037296-
 CU-WM-CTL

REPORTER'S TRANSCRIPT

NOVEMBER 20, 2020

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APPEARANCES:

FOR THE PETITIONER
 AND PLAINTIFF:

PROCOPIO, CORY, HARGREAVES &
 SAVITCH LLP
 BY: MS. REBECCA L. REED

FOR THE RESPONDENT
 AND DEFENDANT:

ATKINSON, ANDELSON, LOYA,
 RUUD & ROMO
 BY: MR. STEPHEN M. MCLOUGHLIN

FOR THE REAL PARTY
 IN INTEREST:

ARMBRUSTER GOLDSMITH & DELVAC
 BY: MR. DAMON MAMALAKIS

BRIANNA LEE HARO, CSR NO. 13121
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San Diego Courtroom Reporters' Coalition

1 SAN DIEGO, CALIFORNIA, FRIDAY, NOVEMBER 20, 2020,

2 9:00 A.M.

3 * * * *

4
5 (THE FOLLOWING HEARING WAS REPORTED VIA VIDEO CONFERENCE
6 PER EMERGENCY RULE OF COURT 3(A).)
7

8 THE COURT: ITEM NUMBER 12, PROTECT OUR COMMUNITY
9 NOW VERSUS POWAY UNIFIED SCHOOL DISTRICT.

10 ON BEHALF OF THE PLAINTIFF, I HAVE --

11 MS. REED: GOOD MORNING, YOUR HONOR REBECCA REED.

12 THE COURT: THANK YOU.

13 ON BEHALF OF DEFENSE, I HAVE --

14 MR. MCLOUGHLIN: GOOD MORNING, YOUR HONOR.

15 STEPHEN MCLOUGHLIN ON BEHALF OF RESPONDENT.

16 THE COURT: ACTUALLY, I SHOULD BE USING THE PROPER
17 TERMS. THANK YOU. IT SHOULD BE RESPONDENT.

18 COUNSEL, I -- HAVE YOU -- TWO THINGS: FIRST
19 THING, HAVE YOU HAD ENOUGH TIME TO READ THE COURT'S
20 TENTATIVE, PLUS THE NUMEROUS QUESTIONS THAT THE COURT
21 WANTED TO INQUIRE TO?

22 MS. REED: YES, YOUR HONOR, I DID.

23 THE COURT: GO AHEAD.

24 MR. MCLOUGHLIN: YES, YOUR HONOR, I DID AS WELL.

25 THE COURT: OKAY. COUNSEL, I WOULD LIKE TO SPEND
26 SOME TIME WITH YOU, SO I WOULD LIKE TO FINISH MY WHOLE
27 CALENDAR FIRST, WHICH IS PRETTY LONG, SO I WOULD LIKE TO
28 TRAIL THIS, WITH YOUR PERMISSION TO 11:15, AND THAT WAY

1 WE CAN TAKE AS MUCH TIME AS WE NEED, BECAUSE THERE ARE
2 SOME QUESTIONS THE COURT OBVIOUSLY HAS AND OF COURSE I
3 WOULD LIKE TO HEAR YOUR ARGUMENT. WOULD THAT BE --

4 MS. REED: YEAH.

5 THE COURT: WOULD THAT BE AGREEABLE?

6 MS. REED: YES, YOUR HONOR, AND I APPRECIATE THAT
7 THOUGHTFULNESS.

8 MR. MCLOUGHLIN: YES, YOUR HONOR, I AGREE AS WELL.

9 MR. MAMALAKIS: YES, YOUR HONOR, I ECHO THE SAME
10 OPINION.

11 THE COURT: AND ONE OTHER THING, I DON'T KNOW IF
12 YOU HAVE A COURT REPORTER, BUT I WOULD LIKE TO HAVE A
13 COURT REPORTER PRESENT SO WE'RE VERY CLEAR FOR ANY TYPE
14 OF APPELLATE PURPOSE.

15 MR. MAMALAKIS: YOUR HONOR --

16 THE COURT: YES.

17 MR. MAMALAKIS: -- I JUST WANTED TO LET YOU KNOW
18 THAT REAL PARTY IN INTEREST COSTCO WHOLESALE IS ALSO
19 APPEARING FOR THIS HEARING.

20 THE COURT: EXCELLENT.

21 MR. MAMALAKIS: THIS IS DAMON MAMALAKIS.

22 THE COURT: WHO IS COSTCO?

23 COSTCO, MAKE AN APPEARANCE.

24 MR. MAMALAKIS: DAMON MAMALAKIS ON BEHALF OF REAL
25 PARTY IN INTEREST COSTCO WHOLESALE.

26 THE COURT: WELL, WELCOME, COSTCO.

27 ALL RIGHT. SO 11:15, COUNSEL. THANK YOU. WE
28 WILL GET INTO IT.

1 MS. REED: YOUR HONOR, SHALL WE GO AHEAD AND JUST
2 CALL BACK INTO COURTCALL AT THAT TIME?

3 THE COURT: YEAH. THERE'S NO REASON TO SIT AND
4 WAIT FOR THE NEXT TWO HOURS.

5 MS. REED: OKAY. THANK YOU.

6 THE COURT: RELAX FOR TWO HOURS.

7 MR. MCLOUGHLIN: THANK YOU, YOUR HONOR.

8 THE COURT: YOU'RE WELCOME. THANK YOU.

9 MS. REED: THANKS.

10 (RECESS.)

11 THE COURT: PROTECT OUR COMMUNITY NOW VERSUS POWAY.

12 MS. REED: REBECCA REED.

13 THE OPERATOR: YOUR HONOR, YOUR CASE IS LIVE.

14 THE COURT: GOOD.

15 COUNSEL, I'M GOING TO STEP OFF FOR ONE MINUTE
16 TO CLEAR MY HEAD.

17 MS. REED: FAIR ENOUGH.

18 THE COURT: I ASSUME YOU APPRECIATE THAT, AND THEN,
19 COUNSEL, WE CAN GO INTO LUNCH, SO WE'RE GOING TO TAKE OUR
20 TIME.

21 MS. REED: THANKS, YOUR HONOR.

22 THE COURT: GIVE ME JUST A MINUTE, LIKE I SAID, TO
23 CLEAR MY HEAD.

24 (RECESS.)

25 THE COURT: HERE WE GO, COUNSEL.

26 THANK YOU.

27 AGAIN, LET'S HAVE FULL APPEARANCES, PLEASE.

28 PROTECT OUR COMMUNITY NOW VERSUS POWAY UNIFIED

1 SCHOOL DISTRICT, ET. AL.

2 ON BEHALF OF THE PLAINTIFF, I HAVE --

3 MS. REED: YOUR HONOR, REBECCA REED.

4 THE COURT: THANK YOU, MS. REED.

5 ON BEHALF OF DEFENSE, I HAVE --

6 MR. MCLOUGHLIN: GOOD MORNING, YOUR HONOR.

7 STEPHEN MCLOUGHLIN ON BEHALF OF RESPONDENT,
8 POWAY UNIFIED SCHOOL DISTRICT.

9 THE COURT: AND COSTCO, WHO DO I HAVE?

10 MR. MAMALAKIS: GOOD MORNING, YOUR HONOR.

11 DAMON MAMALAKIS ON BEHALF OF REAL PARTY IN
12 INTEREST COSTCO WHOLESALE.

13 THE COURT: AND I THANK ALL OF YOU FOR WAITING, AND
14 I HAVE CLEARED MY MIND AFTER A VERY BUSY MORNING, BUT
15 LET'S TAKE OUR TIME.

16 THE WAY I WOULD LIKE TO PROCEED, COUNSEL, WITH
17 YOUR PERMISSION, IS, AS YOU NOTICED, HOPEFULLY, THAT I
18 HAD A NUMBER OF QUESTIONS; I WOULD LIKE TO GO THROUGH
19 THOSE FIRST, AND THEN IT IS THE PLAINTIFF'S MOTION, WE'LL
20 HEAR ARGUMENT FROM THE PLAINTIFF, AND THEN ARGUMENT FROM
21 THE DEFENSE, AND THEN SHORT REBUTTAL.

22 DOES THAT MAKE SENSE TO EVERYONE?

23 MS. REED: SURE, YOUR HONOR.

24 MR. MCLOUGHLIN: YES, YOUR HONOR.

25 THE COURT: EXCELLENT.

26 LET'S START WITH MY QUESTIONS. AND AGAIN,
27 I'VE GONE THROUGH EVERYTHING. LET'S TALK -- LET'S JUST
28 TALK ABOUT THAT.

1 WHEN I SAY THAT -- WHEN I SAY, WHO WERE THE
2 NEGOTIATORS? WERE THEY AT THE -- LET'S JUST START THERE.
3 WHO THEY WERE AND WHERE THEY WERE? WERE THEY AT THE
4 CLOSED MEETING? LET'S START WITH THAT.

5 MR. MCLOUGHLIN: YOUR HONOR, I CAN ADDRESS THAT.
6 THIS IS STEPHEN MCLOUGHLIN FOR THE RESPONDENT.

7 SO YES, THE CLOSED-SESSION ITEMS --

8 THE COURT: LET ME INTERRUPT ONE MORE TIME, AND
9 THEN I'LL TRY TO BE QUIET.

10 MAKE SURE YOU SAY YOUR NAME FIRST -- THANK YOU
11 FOR DOING THAT -- SO MS. REPORTER KNOWS WHO'S SPEAKING.

12 ALL RIGHT. AND THE REPORTER, WHO ARE YOU?

13 THE COURT REPORTER: GOOD MORNING, YOUR HONOR.

14 BRIANNA HARO, CSR NUMBER 13121.

15 THE COURT: ALL RIGHT. THANK YOU.

16 COUNSEL, GO AHEAD.

17 MR. MCLOUGHLIN: OKAY, YOUR HONOR. THANK YOU.

18 ONCE AGAIN, THIS IS STEPHEN MCLOUGHLIN FOR
19 RESPONDENT, POWAY UNIFIED SCHOOL DISTRICT.

20 SO THE QUESTION AT HAND ARE THE REAL PROPERTY
21 NEGOTIATORS THAT WERE IDENTIFIED IN THE THREE
22 CLOSED-SESSION BOARD MEETINGS THAT ARE CITED IN THE WRIT
23 THAT HAPPENED ON DECEMBER 3RD, 2013, JANUARY 17TH, 2017,
24 AND MARCH 14TH, 2019, AND THOSE NEGOTIATORS REFER TO
25 DISTRICT STAFF ONLY. SO EACH ONE OF THOSE AGENDA ITEMS
26 HAVE, ON THE DISTRICT'S MEETING MINUTES, WHO THEY WERE;
27 THEY INCLUDE DISTRICT STAFF MEMBER, LEGAL COUNSEL AND A
28 CONSULTANT. SO THEY DID NOT INCLUDE OR INVOLVE COSTCO,

1 THE OTHER TWO PROPOSALS, CAMBRIDGE OR BROOKFIELD, OR ANY
2 OTHER THIRD PARTY.

3 THE PURPOSE OF THOSE MEETINGS WERE TO -- FOR
4 THE DISTRICT, IN CLOSED SESSION, TO DISCUSS WITH ITS
5 NEGOTIATING TEAM WHAT TERMS AND CONDITIONS THEY WERE
6 LOOKING TO CONSIDER FOR THE PROPERTY, AND THAT'S
7 PERMITTED UNDER THE GOVERNMENT CODE SECTION 54956.8.

8 THE COURT: THANK YOU.

9 PETITIONER, DO YOU AGREE OR DISAGREE WITH THAT
10 STATEMENT OR DO YOU HAVE THE ABILITY TO DISAGREE OR AGREE
11 WITH THAT STATEMENT? YOU CLEARLY UNDERSTAND THE
12 QUESTION, PETITIONER.

13 MS. REED: I DO, YOUR HONOR. I WILL SAY THIS, THAT
14 THESE ARE ALLEGATIONS WE MADE IN OUR PETITION AND IT'S
15 NOT SOMETHING WE WERE FOCUSING ON FOR PURPOSES OF THE
16 TEMPORARY RESTRAINING ORDER AND, ULTIMATELY, INJUNCTION.
17 BUT WHAT TROUBLED ME IN THE STATEMENT I JUST HEARD FROM
18 MY COLLEAGUE IS THAT HE'S DESCRIBING THOSE CLOSED-SESSION
19 MEETINGS FOR NEGOTIATION OF TERMS CONCERNING THE
20 PROPERTY, THE COSTCO PROPERTY, AND THE DATES OF THOSE ARE
21 2013, 2017 AND MARCH 2019.

22 TO BE CLEAR, AND I THINK IN MY ARGUMENT YOU'RE
23 GOING TO HEAR THIS TODAY, YOUR HONOR, THE DISTRICT
24 OBTAINED A WAIVER FROM THE COMPETITIVE BIDDING
25 REQUIREMENTS IN ORDER TO DISPOSE OF THE PROPERTY IN
26 NOVEMBER OF 2019. AND --

27 THE COURT: I'M AWARE.

28 MS. REED: RIGHT, RIGHT.

1 SO AFTER THAT, IT ISSUED AN RFP, AND FROM
2 THERE, IT COMMENCED THE RFP PROCESS. SO THE IDEA THAT
3 THE DISTRICT WAS PERHAPS DISCUSSING AND TRYING TO
4 NEGOTIATE, CONSIDER TERMS FOR DISPOSITION OF THE PROPERTY
5 BEFORE THE COMPETITIVE BIDDING REQUIREMENTS WERE WAIVED,
6 IS A BIT DEFECT TO ME. BUT, FRANKLY, I DON'T WANT TO GET
7 LOST IN THIS POINT, BECAUSE IT REALLY MAKES NO DIFFERENCE
8 RELATIVE TO THE CORE ALLEGATIONS WE'VE MADE IN THE
9 COMPLAINT AND THE BASIS FOR THE TRO.

10 THE COURT: EXCELLENT. THANK YOU. MAKES IT
11 EASIER.

12 COUNSEL, THIS IS THE NEXT QUESTION, AND THIS
13 IS FOR THE PETITIONER, THERE WAS A PUBLIC HEARING
14 OBVIOUSLY IN NOVEMBER 2020. IN YOUR POSITION, DOES THAT
15 VOID THE LETTER OF INTENT?

16 MS. REED: SO, YOUR HONOR, THE NOVEMBER 2020
17 MEETING THAT YOU'RE REFERRING TO OCCURRED ON
18 NOVEMBER 4TH, 2020, AND IT WAS NOT A PUBLIC HEARING. IT
19 WAS NOT A HEARING AT ALL. IT WAS A TOWN HALL TO DISCUSS
20 QUOTE, UNQUOTE, FREQUENTLY ASKED QUESTIONS FROM THE
21 COMMUNITY, BECAUSE WE FILED THIS LAWSUIT. AND, FRANKLY,
22 THE COMMUNITY, AS A WHOLE, IS OUTRAGED BY THIS
23 DEVELOPMENT, BY THE -- BY POWAY UNIFIED DISTRICT'S
24 FAILURE TO INCLUDE THE PUBLIC AS PART OF THE
25 CONVERSATION, THE DISPOSITION OF THIS VALUABLE PROPERTY.

26 SO WHAT THEY DID IS -- AND WE INCLUDED AS A
27 FOOTNOTE IN THE REPLY LINK TO THAT TOWN HALL; I WATCHED
28 IT. IT WAS LONG AND IT WAS NOT A PUBLIC HEARING. FOLKS

1 FROM THE COMMUNITY CAME FORWARD AND UNEQUIVOCALLY
2 EXPRESSED THAT THEY DID NOT WANT A COSTCO AT THIS
3 LOCATION AND THAT THEY WERE VERY OUTRAGED. I MEAN, THESE
4 ARE ARTICULATE, INTELLIGENT FOLKS IN THIS COMMUNITY, VERY
5 WELL-LEARNED FOLKS IN THIS COMMUNITY, AND THEY SHOWED UP
6 TO TELL THE BOARD THAT THEY HAD GRAVE CONCERNS THAT THEY
7 HAD NOT BEEN INCLUDED IN THE DISCUSSION.

8 I RECALL ONE OF THE PARENTS SAYING, YOU KNOW,
9 LISTEN, POWAY, YOU HAVE NO PROBLEM CALLING US UP AND
10 TELLING US ABOUT MEETINGS WHEN YOU NEED MONEY FROM US,
11 WHICH WE GLADLY GIVE TO THIS DISTRICT FOR THE BENEFIT OF
12 OUR CHILDREN, BUT WHEN IT CAME TO ASSESSING THE USE OF
13 THE LAND, AND SPECIFICALLY COSTCO'S USE OF THE LAND, YOU
14 GUYS NEVER TOLD US YOU WERE GOING TO DO THAT. YOU NEVER
15 TOLD US COSTCO WAS INTERESTED IN THE LAND. INSTEAD, IN
16 AUGUST OF 2020, YOU GUYS WENT INTO CLOSED SESSION, IN
17 PRIVATE, WITH YOUR ATTORNEYS, AND YOU GUYS DECIDED YOU
18 WERE GOING TO SELECT COSTCO. YOU DIDN'T AGENDIZE THAT,
19 YOU DIDN'T TELL THE PUBLIC THAT WAS ON AN AGENDA, THAT
20 WAS NOT A PUBLIC HEARING.

21 SO TO BE CLEAR, THE NOVEMBER 4TH, 2020 MEETING
22 WAS NOT A PUBLIC HEARING. THEY DID NOT -- POWAY DID NOT
23 DISCUSS AND CONTINUE TO DISCUSS THE VIABILITY OF THE
24 OTHER PROPOSALS FOR THE PROJECT. WHAT THEY SAID TO THE
25 PUBLIC IS, LISTEN, WE'VE CHOSEN COSTCO, AND WHEN COSTCO
26 GETS AROUND TO DOING SOMETHING WITH THE LAND, THEN, YOU
27 KNOW WHAT, YOU CAN GO TALK TO THE CITY ABOUT THAT IN
28 THEIR ENTITLEMENT PROCESS.

1 SO, YOU KNOW, I THINK THIS IS VERY
2 DISCONCERTING, WHAT THEY DID ON NOVEMBER 4TH. TO ME, IT
3 WAS AN OPTIC SITUATION WHERE, IN LIGHT OF THIS LAWSUIT --
4 AND THEY KNEW THEY HAD A LOT OF OUTRAGED FOLKS IN THE
5 COMMUNITY -- THEY WANTED TO GO TALK TO THEM AND MAKE IT
6 APPEAR THAT THEY WERE ENGAGING THEM, BUT THEY WERE
7 ENGAGING THEM POST -- POST HOC, SO TO SPEAK. THEY WERE
8 ENGAGING THE COMMUNITY AFTER THEY MADE THE DECISION TO GO
9 WITH COSTCO, AFTER THEY ALREADY SELECTED COSTCO OVER
10 BROOKFIELD AND THE OTHER RESPONSE TO THE PROPOSAL. SO I
11 THINK THAT'S IMPORTANT FOR THE FOLKS TO UNDERSTAND THAT,
12 THIS DIDN'T MOVE THE NEEDLE AT ALL. THIS IS, WE'RE GOING
13 TO GET ON ZOOM AND WE'RE GOING TO ANSWER QUESTIONS, AND
14 THE COMMUNITY SHOWED UP AND THEY WERE OUTRAGED BY THE
15 FACT THAT THEY DIDN'T -- THEY COULDN'T PARTICIPATE IN THE
16 PROCESS.

17 THE COURT: RESPONSE, RESPONDENT.

18 MR. MCLOUGHLIN: YOUR HONOR, WE AGREE THAT THAT
19 PUBLIC MEETING WAS NOT A HEARING, AND I THINK THAT GOES
20 TO YOUR QUESTION AND YOUR POINT THAT THIS WASN'T A BOARD
21 ACTION. THE BOARD DIDN'T TAKE ANY ACTION IN NOVEMBER.
22 MY DECLARATION, EXHIBIT L, INCLUDES THE POWERPOINT THAT
23 WAS USED AT THAT PRESENTATION. AS YOU'LL SEE, IT DID
24 ADDRESS FREQUENTLY ASKED QUESTIONS; SOME OF THEM ARE NOT
25 RELATED TO THIS ISSUE; IT DEALT WITH ISSUES ABOUT THE NEW
26 SCHOOL AND TAX QUESTIONS. THIS WAS PART OF THE
27 DISTRICT'S ONGOING PROCESS TO GET COMMUNITY INPUT AND
28 DECIDE WHERE TO GO.

1 AND THIS GOES BACK TO THE MAIN POINT, WHICH I
2 THINK IS GOING TO BE THE MAIN ISSUE HERE, IS THE
3 AUGUST 13TH, 2020 AGENDA ITEM AND CLOSED-SESSION BOARD
4 MEETING WAS NOT APPROVING AN AGREEMENT WITH COSTCO. AND
5 THERE IS NO -- TO DATE, THERE'S NO AGREEMENT WITH COSTCO.

6 ON AUGUST 13TH, THE DISTRICT APPROVED THE LOI
7 SUBMITTED BY COSTCO AS ITS PROPOSAL, SO WE COULD CONFIRM
8 THAT THIS IS A FINAL PROPOSAL THAT COSTCO SUBMITTED SO WE
9 COULD COMPARE IT TO THE OTHER PROPOSALS, WHICH WE DID IN
10 SEPTEMBER. WE HAD A LOT OF COMMUNITY INPUT AND
11 CONVERSATION, AND AS A RESULT OF THAT, WE FELT LIKE WE
12 NEEDED TO HAVE THIS COMMUNITY MEETING TO DISCUSS MANY OF
13 THOSE ISSUES, BUT THERE WAS NOTHING DECIDED BY THE BOARD.
14 IT WASN'T A BOARD MEETING.

15 SO GOING BACK TO YOUR QUESTION OF WHETHER OR
16 NOT THE RFP AND COSTCO'S LETTER OF INTENT WERE NO LONGER
17 VIABLE AS A RESULT OF THIS MEETING, I THINK THE ANSWER
18 IS, NO, THAT THEY'RE STILL VALID. THE DISTRICT IS STILL
19 CONSIDERING COSTCO AND THIS MEETING WAS SIMPLY PART OF
20 THE DISTRICT'S ONGOING EFFORT TO MEET WITH THE COMMUNITY.

21 THE COURT: THANK YOU.

22 MS. REED: YOUR HONOR, I -- AND I HATE TO
23 INTERRUPT, BUT I DO THINK THERE'S A POINT OF
24 CLARIFICATION I COULD MAKE HERE THAT WOULD ASSIST THE
25 COURT, I REALLY DO.

26 THE COURT: PLEASE.

27 MS. REED: BECAUSE I DON'T WANT TO ENGAGE IN AN
28 EXERCISE OF SEMANTICS. LISTEN, WE AGREE, BUT LET'S BE

1 PRAGMATIC FOR A MOMENT. WE AGREE A LEASE HASN'T BEEN
2 EXECUTED, OR PERHAPS IT HAS, I DON'T KNOW. I'M HEARING
3 IT HASN'T BEEN WITH COSTCO. THE BOARD WOULD HAVE TO
4 RATIFY THAT LEASE. WE AGREE THAT HASN'T HAPPENED HERE.

5 WHAT REALLY THE PROBLEM WITH THIS CASE IS --
6 AND SORT OF THE CRUX OF THE CASE IS THE IDEA THAT NOT --
7 NOT THAT POWAY HAS GONE AND ENTERED INTO AND EXECUTED A
8 CONTRACT WITH COSTCO. IT'S THE IDEA THAT THEY REVIEWED
9 AND ACCEPTED COSTCO'S RESPONSE TO THE RFP OVER THE OTHER
10 RESPONSES IN VIOLATION OF THEIR OBLIGATION. SO WHEN WE
11 SAY -- AND COUNSEL LIKES TO USE THAT LANGUAGE -- THERE'S
12 NO DEAL HERE WITH COSTCO, BUT COUNSEL WILL HAVE TO AGREE
13 WITH ME THAT COSTCO WAS CHOSEN AS THE PERSON POWAY IS
14 GOING TO DO BUSINESS WITH OVER THE OTHER RESPONSES TO THE
15 RFP. AND THAT RFP PROCESS IS, BY STATUTE, IT IS A
16 STATUTORY PROCESS THAT THEY HAVE TO GO THROUGH, AND
17 THAT'S WHAT BRINGS US BEFORE THE COURT.

18 I REALLY WANT TO BE CLEAR HERE, WE'RE NOT --
19 IT WOULD BE SPECIOUS OF ME TO CLAIM THAT THEY'VE ENTERED
20 INTO AGREEMENTS WITH COSTCO. I DON'T THINK THAT THEY
21 HAVE. AND AGAIN, AND THEY WOULD HAVE TO BRING THEM
22 BEFORE THE BOARD FOR RATIFICATION. WE HAVEN'T SEEN THAT
23 AGENDIZED.

24 BUT I DO THINK IT'S IMPORTANT TO UNDERSTAND --
25 AND IT'S NOT A GAME OF SEMANTICS. I DON'T PLAY THAT
26 GAME. I'M A STRAIGHT SHOOTER. THE IDEA HERE IS THAT
27 THEY'VE SELECTED COSTCO AND THEY CAN'T SAY OTHERWISE.
28 THIS IS A DONE DEAL WITH COSTCO TO THE EXTENT THAT THEY

1 ARE NOW JUST WORKING OUT REDLINES ON A LEASE AND AN
2 OPTION AGREEMENT, BECAUSE STAFF WAS INSTRUCTED TO GO AND
3 NEGOTIATE AND ENTER INTO THOSE AGREEMENTS WITH COSTCO.
4 AND I JUST THINK THAT'S IMPORTANT WHEN WE'RE TALKING
5 ABOUT WHAT'S ALREADY TRANSPIRED HERE AND WHAT THE REAL
6 MEAT OF THE ISSUE IS BEFORE THE COURT.

7 THE COURT: SO IN WHAT YOU ARE SAYING, IS IT THE
8 PROCESS THAT -- THE PROCESS FOR GETTING TO THE RFP; IS --
9 IS THAT THE MEAT OF YOUR CASE?

10 MS. REED: THAT'S THE MEAT OF THE CASE, YOUR HONOR.
11 IT'S THAT THE PROCESS WAS FLAWED. THE PROCESS DEPARTED
12 FROM THE OBLIGATION THAT POWAY HAD, AND I SUSPECT POWAY
13 KNOWS THAT, IN FACT.

14 YOU KNOW, AGAIN, I GO BACK TO THE
15 AUGUST 13TH, 2020 SESSION, YOUR HONOR, AND I THINK THIS
16 IS REALLY CRITICAL, BECAUSE IF YOU LOOK AT THE
17 CHRONOLOGY -- AND THE COURT WILL APPRECIATE THIS. THE
18 CHRONOLOGY IS ALWAYS IMPORTANT IN EVERY CASE AND IT IS,
19 IN PARTICULAR -- PARTICULARLY CRITICAL IN THIS CASE.
20 POWAY GETS THEIR WAIVER FROM THE STATE BOARD OF EDUCATION
21 FROM THE COMPETITIVE BIDDING REQUIREMENTS IN NOVEMBER.
22 THEY GO AND ISSUE AN RFP. NOW, AT THAT POINT, WHAT'S
23 HAPPENED IS THE FACT THAT THEY'VE NOW WENT INTO AN RFP
24 PROCESS, IT TRIGGERED ALL OF THESE OBLIGATIONS ON THE
25 PART OF POWAY IN TERMS OF HOW THEY WERE GOING TO CARRY
26 OUT THAT RFP PROCESS.

27 SO THEY GO AND THEY ISSUE THE RFP, THEY GET
28 ALL OF THEIR RESPONSES PRESUMABLY BY FEBRUARY 3RD, 2020,

1 AND ONCE THEY HAVE THOSE RESPONSES IN HAND, IT TRIGGERED
2 THE COMMUNITY INVOLVEMENT STATUTE. IT REQUIRED THEM TO
3 DISPOSE OF THAT PROPERTY IN A MANNER THAT BEST SERVED THE
4 COMMUNITY. IT OBLIGATED THEM TO MAKE EACH OF THOSE
5 RESPONSES TO THE RFP PUBLIC AND TO EXAMINE EACH RESPONSE
6 IN PUBLIC. IT REQUIRED THEM TO HAVE A FAIR AND OPEN
7 PROCESS RELATIVE TO THE RFP PROCESS. IT REQUIRED THEM TO
8 ASSURE THAT THE BUILDING USE, THE ACTUAL BUILDING USE
9 HERE, COSTCO, WOULD BE COMPATIBLE WITH THE COMMUNITY'S
10 NEEDS AND DESIRES. THOSE ARE ALL CODIFIED. THAT'S ALL
11 IN STATUTE RIGHT THERE.

12 SO WHEN THEY GET THE RESPONSES TO THE RFP IN
13 HAND, PRESUMABLY BY FEBRUARY 3RD, 2020, YOUR HONOR, THE
14 VERY NEXT ACTION THEY TOOK, ACCORDING TO PUBLIC RECORD,
15 IS TO GO INTO CLOSED SESSION ON AUGUST 13TH, 2020, WHERE
16 THEY SAY, THEIR OWN MINUTES SAY THAT THEY TOOK ACTION
17 WITHOUT PUBLIC INPUT, WITHOUT PUBLIC NOTICE. NOBODY KNEW
18 THEY WERE DOING THIS, YOUR HONOR. THE BOARD TOOK ACTION
19 BY UNANIMOUS VOTE TO APPROVE THE LOI WITH COSTCO, AND --
20 AND THIS IS THE CRITICAL PART OF IT -- AND HAD DIRECTED
21 THE NEGOTIATION OF AN APPROPRIATE OPTION AGREEMENT AND
22 GROUND LEASE FOR SUCH TRANSACTION.

23 WHAT DOES THAT LANGUAGE MEAN? WHAT WERE THEY
24 DOING THERE IN CLOSED SESSION? WHAT THEY WERE DOING IS
25 THEY LOOKED AT THE COSTCO, THEY OPENED UP THE COSTCO
26 PROPOSAL AND THEY SAID, WE LIKE THAT, THIS IS GOOD.
27 STAFF, YOU GO AND YOU GO NEGOTIATE THAT GROUND LEASE AND
28 THAT OPTION AGREEMENT WITH COSTCO. THAT'S WHAT HAPPENED

1 ON AUGUST 13TH WITHOUT ANY PUBLIC INPUT. AND ALL YOU
2 HAVE TO DO, YOUR HONOR, IS OVERLAY THE OBLIGATION I CITED
3 TO IN THE EDUCATION CODE, AND IT'S EASY TO FIND, BUT THAT
4 ACT DID NOT COMPORT WITH THE STATUTE AT ALL.

5 AND I UNDERSTAND, AS I'VE MENTIONED BEFORE, I
6 UNDERSTAND WHY THE DISTRICT WANTS TO BACK AWAY FROM WHAT
7 THEY DID IN THE AUGUST MINUTES. NOTABLY, THEIR BRIEF HAS
8 CITES TO THOSE MINUTES. THEY DON'T WANT TO TALK ABOUT
9 WHAT I JUST MENTIONED, BUT THAT'S A DIRECT QUOTE FROM
10 THEIR MINUTES, AND I GET WHY, BECAUSE THOSE MINUTES
11 VIOLATED THE STATUTE.

12 AND THEN WHAT THEY DID, YOUR HONOR, IS THEY GO
13 TO AN OPEN SESSION ON SEPTEMBER 10TH, AND NOW THEY'VE
14 INVITED THE PUBLIC. COME IN, PUBLIC. WE'RE GOING TO
15 LOOK AT ALL THE RESPONSES TO THE RFP. AND THEY DON'T
16 TELL THE PUBLIC THAT THEY'VE ALREADY DIRECTED THE
17 NEGOTIATION OF A GROUND LEASE AND OPTION AGREEMENT WITH
18 COSTCO. THEY DON'T TELL THEM WHAT WENT DOWN ON
19 AUGUST 13TH, 2020. INSTEAD, THEY OPEN UP THE RESPONSES
20 TO THE RFP AND THEN THEY SAY, OH, WE NOW DECLARE COSTCO
21 IS THE MOST BENEFICIAL PROPOSAL. WE'RE SELECTING COSTCO.

22 SO MY -- MY SUGGESTION TO YOU, YOUR HONOR, IS
23 LET'S PUT OUR COMMENTING HATS ON. WE HAVE COSTCO ALWAYS
24 BEING INTERESTED IN THIS SITE. THE SUPERINTENDENT
25 ADMITTED, ON NOVEMBER 4TH, THAT HE HAD HAD DISCUSSIONS
26 WITH COSTCO; IT WAS INTERESTED IN THE SITE. THEY WAIVED
27 THE COMPETITIVE BIDDING REQUIREMENTS, BECAUSE THEY COULD
28 NOT -- IF THEY WERE BEHOLDEN TO THOSE REQUIREMENTS, THEY

1 COULDN'T GO TALK TO COSTCO. THAT WOULD VIOLATE THE LAW
2 EGREGIOUSLY, BECAUSE THE COMPETITIVE BIDDING REQUIREMENTS
3 WOULD HAVE HAD TO HAVE THEM OPEN UP THE PROPERTY FOR
4 ANYBODY WHO WANTED TO COME IN AND MAKE A BID ON IT AND
5 THE HIGHEST BIDDER WOULD WIN. THAT MAY NOT BE COSTCO.
6 SO WHAT THEY DID IS THEY WAIVED THE COMPETITIVE BIDDING
7 REQUIREMENTS, THEY ISSUED THE RFP. COSTCO, WHO MAGICALLY
8 HAS ALWAYS BEEN INTERESTED IN THIS PROPERTY, RESPONDS TO
9 THE RFP. THEY GO INTO CLOSED SESSION. COSTCO, GO
10 NEGOTIATE THE DEAL WITH COSTCO. THEN THEY GO INTO THE
11 ONLY PUBLIC HEARING THE DISTRICT EVER HAD CONCERNING THE
12 SELECTION OF COSTCO AND THEY TELL THE PEOPLE -- AGAIN,
13 THEY DON'T TELL THEM WHAT HAPPENED ON AUGUST 13TH, BUT
14 THEY SAY, COSTCO, WE'RE GOING WITH COSTCO.

15 AND, YOUR HONOR, WE PUT EVIDENCE INTO THE
16 RECORD THAT SHOWS THAT MY CLIENT -- CERTAIN OF MY CLIENTS
17 AND OTHER MEMBERS OF THE COMMUNITY BEGGED THE DISTRICT TO
18 AGENDIZE THIS ISSUE SO THEY COULD TALK ABOUT IT. PLEASE
19 COME BACK AND TALK TO US ABOUT COSTCO AND WHETHER THIS IS
20 A GOOD FIT FOR THE COMMUNITY, AND THEY SAID, NO, NO, SO
21 WE FILED THE LAWSUIT. AND WHAT DID THEY DO IN RESPONSE?
22 THEY HAVE THE NOVEMBER 4TH TOWN HALL MEETING TO BASICALLY
23 TELL EVERYBODY, WE CHOSE COSTCO, AND IF YOU GUYS WANT TO
24 SAY ANYTHING ABOUT IT, GO TALK TO COSTCO WHEN THEY GO
25 THROUGH THEIR ENTITLEMENT PROCESS.

26 I MEAN, YOUR HONOR, YOU JUST TO HAVE LOOK AT
27 THE CODE SECTION AND IT'S SO CLEAR THAT THIS PROCESS --
28 AS YOU MENTIONED, YOUR HONOR, THAT WAS THE QUESTION TO

1 ME, IS THE PROCESS THE PROBLEM? YEAH, THE PROCESS IS THE
2 PROBLEM, BECAUSE THEY SHOULD NEVER HAVE GONE INTO CLOSED
3 SESSION AND DID WHAT THEY DID ON AUGUST 13. THEY SHOULD
4 NEVER HAVE DONE THAT. WHAT THEY SHOULD HAVE DONE IS GONE
5 INTO AN OPEN SESSION, OPENED UP EACH OF THE RESPONSES TO
6 THE RFP AND HAD A DIALOG WITH THE COMMUNITY ABOUT IT.

7 BUT MORE THAN THAT, YOUR HONOR, GIVEN THE FACT
8 THAT THEY HAVE TO FIND THAT THIS BUILDING USE, COSTCO, IS
9 COMPATIBLE WITH THE COMMUNITY'S NEEDS AND DESIRES, GIVEN
10 THE FACT THAT THEY HAVE TO -- TO MAKE SURE THAT THIS USE
11 BEST SERVES THE COMMUNITY, WHERE ARE THE FINDINGS OF
12 THAT? WHAT DID POWAY DO TO ASSURE THOSE THINGS WERE
13 TAKEN CARE OF?

14 YOUR HONOR, THERE IS ABSOLUTELY NOTHING IN
15 THEIR OPPOSITION THAT TALKS ABOUT WHY THIS BUILDING USE
16 IS COMPATIBLE TO THE COMMUNITY'S NEEDS AND DESIRES, OTHER
17 THAN FOR THEM TO SAY, WE RECEIVED PUBLIC INPUT. WELL,
18 THAT'S SUBSTANDARD. THEY HAVE TO ASSURE THAT THE
19 BUILDING USE IS COMPATIBLE WITH THE COMMUNITY'S NEEDS.
20 AND HOW DO YOU DO THAT, YOUR HONOR? YOU SIT DOWN, AS A
21 BOARD, POWAY UNIFIED SCHOOL DISTRICT BOARD, AND YOU GO,
22 OKAY, GUYS, WE HAVE THESE REQUIREMENTS TO SATISFY, WE
23 HAVE TO MAKE SURE COSTCO IS COMPATIBLE WITH THE
24 COMMUNITY'S NEEDS AND DESIRES. WE ALSO HAVE TO MAKE SURE
25 THAT WHEN WE LEASE THIS PROPERTY, IT'S IN A MANNER THAT
26 BEST SERVES THE COMMUNITY. THOSE ARE OUR REQUIREMENTS
27 UNDER THE STATUTE. WHAT DO WE DO? WELL, MINIMALLY, THEY
28 HAVE TO GET SOME PUBLIC INPUT ON THAT, ALL OF WHICH

1 THEY'VE BEEN OBJECTING TO THIS COSTCO USE, MINIMALLY.

2 BUT I'D ALSO SUBMIT, YOUR HONOR, WHERE DO YOU
3 GO TO FIGURE OUT THAT INFORMATION? YOU -- YOU KNOW, YOU
4 PULL OPEN THE COMMUNITY PLAN THAT THE CITY OF SAN DIEGO
5 HAS ENVISIONED FOR THAT COMMUNITY, CALLED THE COMMUNITY
6 PLAN, AND YOU LOOK AT IT. AND IT'S NOT JUST A ZONING
7 REGULATION, IT'S WHAT THE CITY SAID, I -- WE WANT TO SEE
8 FOR BLACK MOUNTAIN RANCH. WE HAVE SUCH RARE, SPECIAL
9 PROPERTY UP THERE, 27.22 ACRES OF MOSTLY
10 AGRICULTURAL-ZONE LAND ADJACENT TO A WILDLIFE BORDER. WE
11 WANT TO MAKE SURE THAT THIS PARTICULAR SITE REMAINS AT
12 LEAST LOW-DENSITY RESIDENTIAL, IF A SCHOOL CAN'T BE BUILT
13 ON IT. DON'T YOU AT LEAST CONSIDER THAT, THE COMMUNITY
14 PLAN, WHAT THE CITY ENVISIONED FOR THE COMMUNITY?

15 SO -- AND EVEN IF YOU DISAGREE WITH ME, YOUR
16 HONOR, ON THAT POINT, EVEN IF YOU DISAGREE WITH ME, JUST
17 TAKE A LOOK AT THEIR OPPOSITION. THERE IS NOT ONE FACT,
18 ONE PIECE OF EVIDENCE, THE WHO, WHAT, WHEN, WHERE, WHY,
19 THE MEAT OF WHAT WE CALL EVIDENCE, THERE'S NONE OF THAT
20 IN THEIR BRIEF THAT TALKS ABOUT WHAT THEY DID TO CONSIDER
21 THE COMMUNITY. AND SO -- AND I KNOW I'M LONG-WINDED AND
22 I'M SORRY FOR THAT, YOUR HONOR --

23 THE COURT: NO, GO AHEAD, COUNSEL.

24 MS. REED: YEAH.

25 THE COURT: JUST GO AHEAD AND MAKE YOUR FULL
26 ARGUMENT. WE'RE PAST THE POINT.

27 MS. REED: WE'RE THERE. I'M IN IT.

28 THE COURT: GO AHEAD. WE HAVE TIME.

1 MS. REED: THANKS. I APPRECIATE IT.

2 I GUESS THE SUGGESTION THAT THE DISTRICT MADE,
3 AND I THINK THAT THE COURT ADOPTED IN ITS TENTATIVE, BUT
4 THE SUGGESTION THAT IT CONSIDERED COMMUNITY INPUT ON THIS
5 ISSUE ALL THE WAY BACK TO 2012, WELL, THAT CAN'T BE.
6 THAT CANNOT BE, GIVEN THE CHRONOLOGY IN THIS CASE THAT I
7 MENTIONED IS SO CRITICAL. THE REASON IT CAN'T BE IS THE
8 CLOCK, FOR PURPOSES OF THIS CASE, STARTED TO RUN WHEN THE
9 DISTRICT RECEIVED ITS PROMPTED RFP ON FEBRUARY 3RD, 2020.
10 THAT'S WHEN THEY HAD THE RESPONSES IN HAND, THAT'S WHEN
11 THEY DECIDED TO GO GET COMMUNITY INPUT RELATIVE TO THE
12 RFP PROCESS. THAT RFP PROCESS DIDN'T COMMENCE UNTIL
13 THEN, OR ARGUABLY, WHEN THEY GET THE WAIVER FROM THE
14 BOARD ON NOVEMBER 19TH, 2019. THERE'S NO WAY THE
15 SUGGESTION THAT THEY WENT AND RECEIVED PUBLIC INPUT AS
16 EARLY AS 2012, THAT JUST DOESN'T COMPORT WITH THE FACTS.

17 THE COURT: ANYTHING ELSE?

18 MS. REED: YEAH. I'M SORRY. I'M GOING THROUGH
19 SORT OF MY CHECKLIST, BECAUSE I WENT OUT OF ORDER. I
20 JUST WENT OFF HERE --

21 THE COURT: IT'S ALL RIGHT.

22 MS. REED: -- AND I APOLOGIZE FOR THAT.

23 THE COURT: TAKE A MINUTE.

24 MS. REED: YEAH, I APPRECIATE THAT.

25 SO AS I SAID, YOU KNOW, THEY REFUSED TO
26 AGENDIZE THIS ISSUE FOR PUBLIC INPUT, BECAUSE WHAT THEY
27 WOULD LIKE TO DO, I THINK, IS SAY, WELL -- AND THIS IS
28 ONE OF YOUR QUESTIONS, YOUR HONOR. WHAT HAPPENED ON

1 SEPTEMBER 10TH, 2020, ABSOLVED US OF OUR INTENT. YEAH,
2 WE MADE THE DECISION WE DID IN CLOSED SESSION ON
3 AUGUST 13TH, 2020. WE DIDN'T TELL THE PUBLIC ABOUT THAT.
4 IN FACT, IT TOOK ATTORNEYS TO GO GET A COPY OF THOSE
5 MINUTES. BUT WE WENT IN ON SEPTEMBER 10TH, 2020 AND WE
6 HAD AN OPEN SESSION AND WE DEEMED COSTCO THE MOST
7 BENEFICIAL INTEREST. AND AGAIN, THAT JUST DOESN'T
8 COMPORT WITH STATUTES.

9 AND I DO THINK IT'S WORTH MENTIONING, YOUR
10 HONOR, BECAUSE YOU POINTED THIS OUT IN YOUR TENTATIVE AND
11 IT'S SOMETHING THE DISTRICT ARGUED, WHICH IS THAT IT
12 WASN'T REQUIRED TO COMPLY WITH EDUCATION CODE 17472,
13 WHICH REQUIRED THE DISTRICT TO MAKE EACH RESPONSE TO THE
14 RFP PUBLIC AND TO EXAMINE EACH RESPONSE IN A PUBLIC
15 SESSION. THE DISTRICT HAS MADE MUCH ADO TO SAY, WE'RE
16 NOT BOUND BY THAT OBLIGATION. AND I'LL TELL YOU WHY I
17 THINK THEY'RE DOING THAT, IT'S BECAUSE THEY VIOLATED THAT
18 CODE SECTION ON AUGUST 13TH, 2020. I THINK THAT'S WHY
19 THEY ARGUED SO VEHEMENTLY THAT DIDN'T APPLY.

20 BUT, YOUR HONOR, ON PAGE 6 OF OUR REPLY BRIEF,
21 WE VERY CLEARLY SHOWED THE COURT THAT THE STATE BOARD OF
22 EDUCATION DID NOT WAIVE THE DISTRICT OUT OF THOSE
23 REQUIREMENTS. WHILE THE STATE BOARD WAIVED THEM OUT OF
24 THEIR COMPETITIVE BIDDING REQUIREMENTS, IT SAID, YOU'RE
25 GOING TO HAVE TO FILE A REQUEST FOR PROPOSAL PROCESS NOW
26 OF THE COMPETITIVE BIDDING, BUT YOU'RE STILL GOING TO
27 HAVE TO COMPLY WITH THE PUBLIC NOTICE PROVISION OF THE
28 STATUTE, YOU STILL HAVE TO, WHICH IS THAT AT THE TIME AND

1 PLACE FIXED IN THE RESOLUTION FOR MEETING OF THE
2 GOVERNING BODY, ALL PROPOSALS WHICH HAD BEEN RECEIVED
3 SHALL, IN PUBLIC SESSION, BE EXAMINED AND DECLARED BY THE
4 BOARD. THAT DIDN'T HAPPEN HERE. THAT WAS VIOLATED
5 AUGUST 13TH, 2020. THEY HAD NO BUSINESS GOING INTO
6 CLOSED SESSION AND SAYING, WE WANT COSTCO, GO NEGOTIATE A
7 LEASE WITH COSTCO, BEFORE THEY HAD EVER OPENED THOSE
8 RESPONSES UP IN PUBLIC AND CONSIDERED ALL OF THE RFP
9 RESPONSES IN PUBLIC.

10 AND I THINK IT'S ALSO WORTH MENTIONING, YOUR
11 HONOR, I REALLY THINK THIS IS AN IMPORTANT POINT, THE
12 AUGUST 13TH, 2020 MINUTES REFER TO AN UPDATED LOI, AN
13 UPDATED LOI. WHAT WAS GOING ON BEFORE AUGUST 13TH, 2020?
14 I DON'T EVEN HAVE A PUBLIC RECORD OF POWAY UNIFIED
15 DISTRICT THAT TALKS ABOUT AN ORIGINAL LOI WITH COSTCO, AN
16 AMENDED LOI WITH COSTCO. CLEARLY, IF THERE WAS AN
17 UPDATED LOI, UPDATED, ON AUGUST 13TH, 2020 THAT WAS
18 APPROVED BY THE BOARD, THAT HAS TO FOLLOW AN ORIGINAL
19 LOI. IT SHOULD BE DISCONCERTING TO ALL OF US ON THIS
20 CALL THAT THAT'S NOT EVEN REFERENCED IN ANY PUBLIC RECORD
21 OF POWAY UNIFIED.

22 IN OTHER WORDS, AT SOME POINT BEFORE
23 AUGUST 13TH, THEY CLEARLY HAD AN LOI FROM COSTCO IN HAND
24 AND HAD DONE SOMETHING WITH THAT. SO THIS NOTION THAT,
25 OH, WE OPENED UP THE RESPONSES TO THE RFP AND WE LIKED
26 COSTCO ON SEPTEMBER 10TH, 2020, THAT'S SILLY. IT JUST
27 DOESN'T COMPORT WITH THE FACTS AND IT SHOULD ALL CONCERN
28 US.

1 AND I ALWAYS SAY, AND I THINK THIS IS REALLY
2 IMPORTANT, THAT PUBLIC AGENCIES, THEY'RE NOT PRIVATE
3 DEVELOPERS, THEY'RE NOT PRIVATE OWNERS. PEOPLE PUT THEIR
4 TRUST IN THE PUBLIC AGENCIES, AND TO EARN THAT TRUST AND
5 MAINTAIN THAT TRUST, WE COUNT ON OUR AGENCIES TO FOLLOW
6 THEIR PROCESSES LAWFULLY; AND WHEN THEY DON'T, IT
7 UNDERMINES THE TRUST IN THE PUBLIC AGENCY, IT HURTS
8 EVERYBODY.

9 SO GOING BACK TO YOUR QUESTION, IS THIS ABOUT
10 THE PROCESS? YEAH, IT'S ABOUT THE PROCESS. DO THE
11 PROCESS CORRECTLY, BECAUSE IT CAN ONLY HELP THEM IN THE
12 LONG RUN BE ABLE TO GARNER AND MAINTAIN THE TRUST OF THE
13 PUBLIC. THEY CAN'T -- THEY CAN'T JUST GET AWAY FROM
14 THESE OBLIGATIONS, AND THESE OBLIGATIONS, AS I SAID, ARE
15 STATUTORY.

16 YOU KNOW, IF I WAS GOING TO GO SELL MY
17 PROPERTY TO COSTCO, WELL, I CAN GO DO THAT. COSTCO, YOU
18 GO DEAL WITH THE ZONING ISSUES AFTER THE FACT. BUT THIS
19 WAS POWAY UNIFIED SCHOOL DISTRICT. IT HAD TO ASSURE THAT
20 THIS USE WOULD COMPLY WITH THE PUBLIC. IT CAN'T JUST
21 OFFSHORE THE OBLIGATIONS ON COSTCO AFTER THE FACT. WHO,
22 BY THE WAY, DID NOTHING WRONG HERE, WE RECOGNIZE. IT'S
23 NOT RESPONSIBLE TO KNOW WHAT THE EDUCATION CODE
24 REQUIREMENTS ARE OF POWAY UNIFIED. IT WAS POWAY
25 UNIFIED'S RESPONSIBILITY TO SAY, COSTCO, HOLD ON, WE GOT
26 TO OPEN UP ALL THE RESPONSES IN PUBLIC, EXAMINE THEM IN
27 PUBLIC AND MAKE A DECISION WITH PUBLIC INPUT. AND, OH,
28 BY THE WAY, WE'VE GOT TO GO LOOK AT THE COMMUNITY PLAN

1 AND CONSIDER WHAT THE COMMUNITY WANTS FOR THE SPACE, SO
2 JUST HOLD OFF, COSTCO. LET'S GO THROUGH THE PROCESS
3 LAWFULLY; THAT WAS POWAY UNIFIED'S BURDEN.

4 SO I LOOK AT THIS ISSUE AND IT JUST SEEMS SO
5 CLEAR TO ME. AND I APPRECIATE THE THOUGHTFULNESS OF YOUR
6 RULING AND THE THOUGHTFULNESS OF YOUR QUESTIONS AND I
7 KNOW HOW HARD YOU WORK. I LISTENED TO YOUR CALENDAR
8 TODAY AND I WOULD HAVE TROUBLE BOGGING THROUGH A CALENDAR
9 LIKE THAT. BUT THIS CASE MATTERS, IT REALLY DOES. AND I
10 WOULD SAY, THERE'S NO SKIN OFF POWAY UNIFIED'S BACK TO GO
11 BACK AND LISTEN TO YOUR PEOPLE IN THE COMMUNITY, THE
12 PEOPLE WHO SUPPORT THAT SCHOOL, THE PEOPLE WHO PAY THEIR
13 TAXES EVERY YEAR FOR THAT SCHOOL, WHO HAVE THEIR CHILDREN
14 IN THAT SCHOOL. YOU LISTEN TO THEM ABOUT WHAT THEY WANT
15 FOR THAT SPACE. BECAUSE I LISTENED TO THAT
16 NOVEMBER 4TH, 2020 TOWN HALL MEETING AND NOT ONE PARENT
17 EXPRESSED THEIR SUPPORT FOR THIS PROJECT, NOT ONE. SO TO
18 CUT OFF THEIR VOICES IN VIOLATION OF THE CODE IS A
19 TRAVESTY. AND THERE'S NO SKIN OFF THEIR BACKS, GO BACK
20 AND DO IT LAWFULLY, OPEN IT UP, AGENDIZE IT, PUT IT ON A
21 PUBLIC HEARING, LISTEN TO THE PEOPLE, LOOK AT THE
22 COMMUNITY PLAN AND THEN MAKE YOUR FINDINGS. MAYBE WHAT
23 YOU DO IS SAY, WE THINK COSTCO IS THE BEST, WE'VE
24 LISTENED TO EVERYBODY NOW. MAYBE THEY DO MAKE THAT
25 DECISION, BUT THIS IS THE OPPORTUNITY TO PUT THE PAUSE
26 BUTTON ON THIS.

27 BECAUSE IF YOUR HONOR WILL RECALL, AT THE
28 ORIGINALLY SCHEDULED HEARING ON THIS MOTION, COUNSEL

1 REPRESENTED THAT THEY WERE GOING INTO SESSION ON
2 DECEMBER 4 TO MAKE A DECISION ABOUT COSTCO. PERHAPS
3 THAT'S CHANGED AND THAT'S A GOOD QUESTION FOR COUNSEL
4 TODAY. PERHAPS THEY'RE NOT GOING TO DO THAT NOW. BUT
5 PUT THE PAUSE BUTTON ON THIS AND THEY SHOULD BE REQUIRED
6 TO GO BACK AND FOLLOW THE PROCESS CORRECTLY. ULTIMATELY,
7 THAT'S WHAT OUR PETITION FOR WRIT OF MANDATE IS ASKING.

8 BECAUSE, YOUR HONOR, I'LL TELL YOU THIS: OUR
9 COMPLAINT IS ONE, NOT JUST IN WRIT, THERE'S A TAXPAYER
10 WAGE CLAIM THERE ALSO. AND THE LAW MAKES REALLY CLEAR,
11 IF YOU DON'T FOLLOW THE LAW, IF A GOVERNMENT AGENCY
12 DOESN'T FOLLOW THE LAW AND THE PROCESS, THEN DISPOSING OF
13 THE PROPERTY IN VIOLATION OR IN DEROGATION OF THAT LAW
14 CONSTITUTES TAXPAYER WASTE. THAT'S WHAT WE WOULD HAVE
15 HERE, YOUR HONOR.

16 IT'S MY CONTENTION, MY SINCERE CONTENTION THAT
17 IF THE DISTRICT OFFLOADS THIS PROPERTY TO COSTCO AND
18 EXECUTES A DEAL WITH THEM ON DECEMBER 4TH BINDING THEM TO
19 A DEAL WITH COSTCO FOR THE NEXT 40 TO 60 YEARS WITH AN
20 OPTION TO PURCHASE, THE DISPOSAL OF THAT PROPERTY, IT'S
21 GONE. THERE IS NO REMEDY FOR THE PLAINTIFF HERE IN THAT
22 CASE, IF I CAN PROVE TO YOU ON THE MERITS, YOUR HONOR, AT
23 A TRIAL ON THE MERITS THAT WE'RE RIGHT ON THIS, AND THAT
24 WOULD BE TAXPAYER WASTE.

25 SO I DON'T SEE THE HARM RIGHT NOW TO -- TO THE
26 DISTRICT TO PUT THE PAUSE BUTTON ON AND SAY, LISTEN, I'M
27 GOING TO RESTRAIN YOU FOR THE TIME BEING, AND IT PUTS THE
28 PAUSE BUTTON ON THINGS. AND, FRANKLY, WHAT I ANTICIPATE,

1 IF THAT HAPPENS, AND MY HOPE WOULD BE THAT COUNSEL AND I
2 WOULD GET ON THE PHONE AND WE WOULD FIGURE OUT HOW TO
3 MOVE FORWARD THROUGH A LAWFUL PROCESS THAT WOULD
4 ACCOMPLISH THE DISTRICT'S OBLIGATIONS AND OBJECTIVES
5 WHILE ASSURING THE PUBLIC THAT POWAY UNIFIED DISTRICT HAS
6 DONE THE RIGHT THING BY CODE.

7 YOUR HONOR, THAT REALLY IS MY ARGUMENT IN A
8 NUTSHELL, BUT I URGE YOUR HONOR TO TAKE THIS UNDER
9 SUBMISSION AND TO RELOOK AT THAT CHRONOLOGY AND TO LOOK AT
10 THOSE MINUTES FROM AUGUST 13TH, 2020, BECAUSE I THINK THEY
11 MAKE A DIFFERENCE HERE IN THIS ANALYSIS.

12 I APPRECIATE YOUR TIME.

13 THE COURT: ONE QUESTION -- I MAY COME BACK TO YOU
14 AFTER I HEAR THE OTHERS -- WHAT'S YOUR POSITION, IS IT --
15 I JUST WANT TO MAKE SURE. IS IT THE PETITIONER'S --
16 WHAT'S YOUR POSITION OF THE PROPOSAL PROCESS THAT
17 HAPPENED IN FEBRUARY OF 2020 WHEN THE PROPOSALS CAME IN?
18 ARE YOU SAYING THAT THAT WAS DEFECTIVE ALSO --

19 MS. REED: NO, YOUR HONOR.

20 THE COURT: AFTER FEBRUARY 2020?

21 MS. REED: NO, YOUR HONOR. TO BE CLEAR, WE HAVE NO
22 OBJECTION TO THE DISTRICT OBTAINING A WAIVER FROM THE
23 STATE BOARD OF EDUCATION FROM THE COMPETITIVE BIDDING
24 PROCESS, WE HAVE NO OBJECTION TO THE RFP THEY ISSUED, WE
25 HAVE NO OBJECTION TO THEM RECEIVING THEIR RESPONSES TO
26 THE RFP. BUT AS I MENTIONED, I THINK IT'S IMPORTANT,
27 ONCE THEY HAD THE RESPONSES TO THE RFP IN HAND, IT
28 TRIGGERED ALL OF THOSE STATUTES I'VE BEEN TALKING ABOUT

1 AND ALL OF THE DISTRICT'S OBLIGATIONS UNDER THEM.

2 THE COURT: THANK YOU FOR CLEARING THAT UP.

3 MS. REED: THANK YOU.

4 THE COURT: WE SHALL NOW START WITH THE DEFENSE --
5 DEFENSE, RESPONDENT. COULD YOU PLEASE ANSWER -- THE
6 PETITIONER BROUGHT UP A GOOD QUESTION I WOULD LIKE TO
7 KNOW, IF YOU ARE ABLE TO. DOES POWAY UNIFIED EXPECT IT
8 TO GO FORWARD ON DECEMBER 4TH? IF YOU COULD JUST GIVE ME
9 AN ANSWER ON THAT AND THEN MAKE YOUR ARGUMENTS,
10 RESPONDENT.

11 MR. MCLOUGHLIN: NO, YOUR HONOR. TO RESPOND TO
12 THAT QUESTION, NO, THE DISTRICT DOES NOT PLAN TO GO
13 FORWARD WITH APPROVING ANY AGREEMENT WITH COSTCO ON
14 DECEMBER 4TH. AND I DO WANT TO CLARIFY THAT I DID NOT
15 SUGGEST AT THE LAST HEARING THAT THAT WAS UNDER
16 CONSIDERATION. I DID MENTION AT OUR LAST HEARING THAT
17 THE BOARD WAS NOT GOING TO DO ANYTHING IN NOVEMBER, SO
18 THE EARLIEST COULD BE DECEMBER, BUT THERE WAS NO DECISION
19 MADE AT THAT TIME, AND SUBSEQUENTLY, WE CAN CONFIRM THAT
20 THE DISTRICT IS NOT GOING TO TAKE ANY ACTION ON
21 DECEMBER 4TH. SO --

22 THE COURT: THANK YOU.

23 MR. MCLOUGHLIN: -- I WOULD LIKE TO JUST ADDRESS --
24 AND I THINK FIRST OF ALL, WE NEED TO TAKE A STEP BACK AND
25 ADDRESS THE SPECIFIC REQUIREMENTS OF THE EDUCATION CODE,
26 BECAUSE AS YOU PROBABLY KNOW, SCHOOL DISTRICTS, WITH
27 THEIR SURPLUS PROPERTY, DEAL WITH THESE ISSUES ALL THE
28 TIME. THEY HAVE SURPLUS PROPERTY, THEY NEED FUNDING FOR

1 THEIR EDUCATION PROGRAMS, SO WHEN THEY START THIS
2 PROCESS, IT USUALLY BRINGS UP A LOT OF COMMUNITY CONCERN
3 AND INPUT. SO THE EDUCATION CODE DOES PROVIDE A PROCESS,
4 A SPECIFIC PROCESS THAT REQUIRES THE SCHOOL DISTRICT TO
5 CONSIDER AND GATHER COMMUNITY INPUT, AND BASED ON THAT
6 INPUT, DECIDE, AS WELL AS CONSIDERING THE DISTRICT'S
7 NEEDS AND THE STUDENTS' NEEDS, WHAT TO DO.

8 SO THE EDUCATION CODE CREATES A SPECIFIC
9 REQUIREMENT REGARDING THAT, AND THAT STARTS WITH
10 EDUCATION CODE 17387. AND THAT SECTION IS CITED IN THE
11 WRIT AS WELL AS THE OPPOSITION AND IT BASICALLY REQUIRES
12 SCHOOL DISTRICTS TO FORM RPACS. THESE ARE THE ADVISORY
13 COMMITTEES THAT ARE ASSIGNED TO GATHER THAT COMMUNITY
14 INPUT. THEY'RE ACTUALLY MADE OF COMMUNITY MEMBERS. THE
15 CODE SECTION HAS SPECIFIC PEOPLE THAT NEED TO BE MEMBERS
16 OF THAT TO DO SO. THAT COMMUNITY INPUT IS GATHERED
17 THROUGH THAT PROCESS.

18 SO WHAT THE RPAC DOES IS IT MEETS IN PUBLIC
19 SESSION, IT INVITES AND IT NOTICES THESE MEETINGS SO
20 PEOPLE CAN PROVIDE INPUT. THEY GATHER THAT INPUT, THEY
21 PUT IT INTO A REPORT, ALONG WITH THE MEETING MINUTES, SO
22 THAT INCLUDES SUMMARIES THAT -- EVERYBODY'S COMMENTS, AND
23 THEN THEY PRESENT IT TO THE BOARD, AND THEN THE BOARD
24 TAKES THAT INPUT, AS WELL AS THEIR CONCERNS AND THEIR
25 NEEDS, AND MAKES A DECISION.

26 THE DISTRICT COMPLIED WITH THAT SECTION. I
27 THINK THAT'S NOT IN DISPUTE. THEY FORMED THE RPAC. THEY
28 HAD SEVERAL COMMUNITY MEETINGS THAT WERE PUBLICLY

1 ANNOUNCED. THEY GATHERED THAT INFORMATION AND THE BOARD
2 ACCEPTED THE RPAC REPORT AND DECIDED TO PROCEED WITH A
3 WAIVER, AND THAT'S ANOTHER THING THAT IS NOT IN DISPUTE.

4 THE DISTRICT SOUGHT A WAIVER AND RECEIVED IT
5 FROM THE STATE. WE DO NEED TO NOTE THAT THE WAIVER
6 PROCESS ISN'T JUST A SIMPLE FORM THAT REQUIRES US TO
7 SUBMIT AN APPLICATION AND DOCUMENTS THAT WE COMPLIED WITH
8 THAT REQUIREMENT FOR AN RPAC. SO THE STATE REVIEWED THE
9 PROCESS, REVIEWED THE COMMUNITY INPUT WE RECEIVED AND
10 APPROVED A WAIVER. SO IF THERE WAS AN ISSUE THERE, THAT
11 WOULD HAVE COME UP.

12 WE ALSO NEED TO TALK ABOUT THE AUGUST MEETING,
13 BECAUSE I THINK THAT IS IMPORTANT, AS MY COLLEAGUE
14 MENTIONED, BUT I THINK THERE'S JUST A -- FRANKLY, A
15 MISREPRESENTATION OF THAT LANGUAGE. AT THAT MEETING, AT
16 THAT HEARING IN CLOSED SESSION, THE BOARD REVIEWED AND
17 ACCEPTED AN UPDATED IOR FROM COSTCO. SO THAT MEANS THAT
18 THROUGHOUT THE RFP PROCESS, THE DISTRICT ACCEPTED
19 PROPOSALS FROM COSTCO AND WHOEVER ELSE WANTED TO PROPOSE,
20 AND THEN AFTER THAT, COSTCO SUBMITTED A REVISED PROPOSAL,
21 WHICH THEY REFER TO AS THE REVISED IOR. SO THE DISTRICT,
22 IN CLOSED SESSION, REVIEWED THAT, MADE SURE THAT IT WAS
23 ACCEPTABLE THROUGH THE RFP PROCESS, AND THEN THEY
24 REPORTED OUT THAT THAT REVISED IOR WAS ACCEPTED.

25 AND THE LANGUAGE SPECIFICALLY IN THE BOARD
26 MEETING MINUTES, THE REPORTING OUT LANGUAGE IS, QUOTE, AT
27 A FUTURE BOARD MEETING, OPEN SESSION, THE BOARD WILL BE
28 PRESENTED A SUMMARY OF EACH RECEIVED FINAL REQUEST FOR

1 PROPOSAL RESPONSE AND ACTION MAY BE TAKEN TO FORMALLY
2 APPROVE THE PROPOSAL, WHICH IS THE MOST BENEFICIAL TO THE
3 DISTRICT. BUT THERE'S NOTHING IN THAT LANGUAGE THAT
4 INDICATES THAT THE DISTRICT DEEMED COSTCO THE MOST
5 BENEFICIAL PROPOSAL AT THAT POINT OR INSTRUCTED STAFF TO
6 NEGOTIATE DIRECTLY WITH COSTCO. IT SIMPLY ACKNOWLEDGED
7 THAT COSTCO REVISED ITS PROPOSAL THROUGH THE REVISED LOI
8 AND ACCEPTED THAT, AND THEN INSTRUCTED -- NOTICED
9 EVERYBODY THAT, AT A FUTURE BOARD MEETING, WE WOULD
10 CONSIDER ALL PROPOSALS AND DEEM THE MOST BENEFICIAL ONE,
11 AND THAT'S BASED ON THE REQUIREMENT OF THE WAIVER.

12 SO IF YOU FASTFOWARD TO THE SEPTEMBER MEETING,
13 THIS IS WHEN THE DISTRICT DID EXACTLY THAT. IT COMPLIED
14 WITH THE WAIVER. IN MY DECLARATION, WE HAVE AN EXHIBIT
15 THAT DEMONSTRATES THE PUBLIC SESSION, OPEN MEETING, WHERE
16 ALL OF THE PROPOSALS WERE PRESENTED. THE DISTRICT
17 CONSIDERED THEM. WE HELD A PUBLIC HEARING SO EVERYONE
18 WAS ALLOWED TO COMMENT, AND THEN BASED ON THAT
19 ANALYSIS -- THAT, AGAIN, WAS DONE IN OPEN SESSION -- THE
20 DISTRICT DEEMED COSTCO THE MOST BENEFICIAL PROPOSAL, AND
21 THEN INSTRUCTED STAFF TO BEGIN NEGOTIATIONS WITH COSTCO.

22 AFTER THAT, WE ALSO --

23 THE COURT: MAY I INTERRUPT? MAY I INTERRUPT?

24 MR. MCLOUGHLIN: SURE.

25 THE COURT: CAN I ASSUME, RESPONDENT, OR MAYBE NOT,
26 SO CORRECT ME IF I'M WRONG, THAT THE FIRST TIME THAT THE
27 PUBLIC WAS MADE AWARE OR WAS -- THAT THIS RFP FROM COSTCO
28 WAS MADE AVAILABLE TO THE PUBLIC WAS ON

1 SEPTEMBER 10TH, 2020, IN THAT PUBLIC HEARING; IS THAT
2 CORRECT?

3 MR. MCLOUGHLIN: YOUR HONOR, I BELIEVE THAT'S
4 CORRECT. I'M NOT SURE, BUT I BELIEVE THAT'S CORRECT.

5 THE COURT: SO THE FIRST TIME ANY NOTICE -- I WANT
6 TO MAKE SURE IT'S IN MY MIND. THAT THE PUBLIC (SIC)
7 SAID, WELL, COSTCO IS COMING IN HERE, THAT WOULD BE
8 SEPTEMBER THE 10TH, AS TO THEIR REQUEST FOR PROPOSAL,
9 CORRECT?

10 MR. MCLOUGHLIN: WELL, YOUR HONOR, THE DISTRICT DID
11 ANNOUNCE -- SO THEY RELEASED THE RFP, WHICH WAS THE
12 INITIAL REQUEST FOR PROPOSALS, SO THAT PROPOSAL PROCESS
13 WAS ANNOUNCED, AND THEN THEY RECEIVED PROPOSALS FROM
14 COSTCO AND CAMBRIDGE AND BROOKFIELD, AND SO THOSE WERE
15 SUBMITTED AND THEN THAT WAS ANNOUNCED. AND I'M NOT SURE
16 -- THAT'S SOMETHING I WOULD HAVE TO CLARIFY, BUT I
17 BELIEVE THAT THE DISTRICT RECEIVED THE REVISED IOR. I
18 BELIEVE IT'S DATED THE SAME DATE OR AROUND THE SAME DATE
19 OF THAT CLOSED SESSION MEETING.

20 THE COURT: IS THAT --

21 MR. MCLOUGHLIN: SO THE DISTRICT HADN'T RECEIVED IT
22 UNTIL THEN.

23 THE COURT: SO THE FIRST TIME THE DISTRICT GOT THE
24 REVISED WAS EARLY -- LET'S SAY SOME TIME IN AUGUST, 12TH
25 OR 13TH, CORRECT? AS FAR AS YOU KNOW?

26 MR. MCLOUGHLIN: YES, AS FAR AS I KNOW.

27 THE COURT: AND THEN MADE IT AVAILABLE TO THE
28 PUBLIC AT THE SEPTEMBER 10TH HEARING, CORRECT? AS FAR AS

1 YOU KNOW?

2 MR. MCLOUGHLIN: YES.

3 THE COURT: ALL RIGHT.

4 MR. MCLOUGHLIN: AS FAR AS I KNOW.

5 THE COURT: THANK YOU, COUNSEL. GO AHEAD AND
6 PROCEED.

7 MR. MCLOUGHLIN: RIGHT. THANK YOU.

8 SO, YOUR HONOR, THIS ALSO GOES BACK TO THE
9 GENERAL POINT OF THE EDUCATION CODE AS WELL AS THE
10 WAIVER. THE EDUCATION CODE AS WELL AS THE WAIVER
11 REQUIRES SCHOOL DISTRICTS TO RECEIVE PUBLIC INPUT
12 REGARDING THE SURPLUS PROPERTY PROCESS AND CONSIDER THAT
13 IN THEIR DECISION, BUT, ULTIMATELY, THE DISTRICT MAKES
14 THE DECISION OF WHAT IS THE MOST BENEFICIAL PROPOSAL,
15 CONSIDERING PUBLIC INPUT.

16 AS WE MENTIONED IN THE OPPOSITION, WHICH IS
17 PROBABLY OBVIOUS, ALL THE TIME, YOU'RE GOING TO HAVE
18 COMMUNITY INPUT THAT'S VARIED. THERE'S NO UNIFORMED
19 COMMUNITY INPUT. I UNDERSTAND THAT OPPOSING COUNSEL
20 BELIEVED THAT THE COMMUNITY IS UNIFORMLY AGAINST THIS,
21 BUT THAT'S, FRANKLY, NEVER TRUE. SO THE BOARD AND THE
22 REGULATION AND THE WAIVER ALLOWS AND REQUIRES US TO
23 CONSIDER PUBLIC INPUT, BUT THAT'S ONLY PART OF THE
24 PROCESS. OFTENTIMES, IN THESE SITUATIONS, THERE'S VOCAL
25 COMMUNITY MEMBERS WHO ARE DISAPPOINTED, WHO BELIEVE THAT
26 THE PROCESS WAS AGAINST THEIR BEST INTEREST, BUT THE
27 BOARD IS REQUIRED TO CONSIDER THAT WITH OTHER COMMENTS
28 FROM THE COMMUNITY AND THEN MAKE THE DECISION THAT'S IN

1 THE BEST INTEREST OF THE DISTRICT.

2 AND AS MENTIONED BY OPPOSING COUNSEL, AND IT'S
3 TRUE, THE DISTRICT IS A PUBLIC AGENCY. IT'S NOT A
4 DEVELOPER, SO IT'S NOT IN THE BUSINESS OF DETERMINING
5 WHETHER A PROPOSAL CAN FULFILL THE REQUIREMENTS SET FORTH
6 BY THE CITY, BY THE COUNTY, ZONING REQUIREMENTS. THAT'S
7 WHY, IN THE RFP, WE MADE IT CLEAR TO EVERYBODY THAT THEY
8 WOULD BE REQUIRED TO GET ANY APPLICABLE APPROVAL FROM THE
9 CITY. SO THE AGREEMENT WILL BE SET UP IN A WAY WHERE
10 WHOEVER'S SELECTED WILL HAVE A PERIOD, AN OPTION PERIOD
11 TO PURSUE THOSE ISSUES, WORK WITH THE CITY, DO WHATEVER
12 THEY NEED TO DO; AND IF THEY DETERMINE THAT THEIR
13 DEVELOPMENT CAN BE APPROVED BY THE CITY, IF THE ZONING
14 CAN BE CHANGED, IF ANY OF THE REQUIREMENTS CAN BE
15 AUGMENTED OR CHANGED TO FIT THEIR DEVELOPMENT, THEN THEY
16 CAN PROCEED. SO THE DISTRICT IS NOT IN THE BUSINESS OF
17 MAKING THAT DETERMINATION, FRANKLY, NOT RELATED TO THE
18 CORE POINT, WHICH IS TO CONSIDER COMMUNITY INPUT, WHICH
19 THE DISTRICT DID BY PUTTING THAT IN THEIR RFP INDICATING
20 THAT WHOEVER COMES FORWARD IS GOING TO NEED TO ADDRESS
21 ANY SPECIFIC CITY REQUIREMENTS FOR THE DEVELOPMENT.

22 OPPOSING COUNSEL ALSO MENTIONED THAT THERE IS
23 ESSENTIALLY NO SKIN OFF THE DISTRICT'S NOSE IF WE TAKE A
24 PAUSE HERE AND GO BACK AND FORCE THE DISTRICT TO GO
25 THROUGH THIS PROCESS, BUT THAT'S, FRANKLY, NOT THE CASE.

26 FIRST OF ALL, THIS PROCESS IS A DETAILED,
27 COSTLY PROCESS. THE DISTRICT HAS ALREADY DONE MORE THAN
28 IT'S REQUIRED TO DO TO OBTAIN COMMUNITY INPUT. THEY'VE

1 SPENT A LOT OF MONEY, A LOT OF TIME, AND THE DISTRICT,
2 FRANKLY, NEEDS FUNDING. THAT'S ONE OF THE REASONS
3 THERE'S A SURPLUS PROPERTY PROCEDURE IN PLACE TO HELP
4 DISTRICT OBTAIN FUNDING. AND IF THIS PROCESS IS DELAYED
5 BECAUSE THEY REALIZE A GROUP OF COMMUNITY MEMBERS CAN
6 RAILROAD AND STOP THE PROCESS AT ANY POINT, THE DISTRICT
7 IS GOING TO HAVE A DIFFICULT TIME PUTTING THEIR PROPERTY
8 TO ITS BEST USE, WHICH THE DISTRICT HAS DETERMINED, BASED
9 ON ALL THIS ANALYSIS, THE BEST USE IS TO PURSUE A LEASE
10 WITH THE MOST BENEFICIAL PROCESS.

11 AND -- AND THERE'S A COUPLE QUESTIONS IN YOUR
12 TENTATIVE THAT I WANT TO ADDRESS, AND ONE OF THE MAIN
13 ONES IS FOR US TO SPECIFICALLY CITE TO THE COMMUNITY
14 INPUT THAT WAS GATHERED BY THE DISTRICT, AND I THINK --
15 THE COURT: UH-HUH.

16 MR. MCLOUGHLIN: -- WE'VE MENTIONED IT. WE ALREADY
17 COMPLIED WITH THE EDUCATION CODE REQUIREMENT REGARDING
18 RPAC; WE FORMED IT, AND THEY'VE HELD SEVERAL MEETINGS
19 WHERE PUBLIC AND COMMUNITY INPUT WAS GATHERED. THAT'S
20 WHAT'S REQUIRED BY THE EDUCATION CODE. EDUCATION CODE
21 17387 IS PART OF THAT CHAPTER THAT ESTABLISHES THE RPAC.
22 THAT'S THE REQUIREMENT. WE GATHERED THAT INFORMATION.

23 THEN, ABOVE AND BEYOND THAT, WE HELD SEVERAL
24 PUBLIC HEARINGS WHERE THE COMMUNITY WAS INFORMED OF THE
25 DISTRICT PROCESS, INFORMED OF WHAT THE DISTRICT WAS
26 DOING, AND THE DISTRICT AND THE BOARD SPECIFICALLY
27 CONSIDERED COMMUNITY COMMENT AND IMPACT. WE HAD TO HOLD
28 A MEETING, A PUBLIC HEARING WHERE WE APPROVED THE WAIVER.

1 WE DISCUSSED THE OPTIONS ON TWO OCCASIONS, BOTH ON
2 AUGUST 8TH, 2019 AS WELL AS NOVEMBER 14TH, 2019 WHERE
3 THIS PROCESS WAS DISCUSSED IN OPEN SESSION WITH THE
4 BOARD. COMMUNITY INPUT WAS GATHERED AND CONSIDERED.
5 WE ALSO HAD A TOWN HALL ABOVE AND BEYOND THAT,
6 WHICH WAS HELD ON JANUARY 20TH, 2020, WHERE WE PRESENTED
7 MORE INFORMATION TO THE COMMUNITY AND GATHERED INPUT.
8 AND I KNOW OPPOSING COUNSEL IS SUGGESTING THAT SOME OF
9 THESE MEETINGS, SPECIFICALLY THE NOVEMBER MEETING AND THE
10 TOWN HALL MEETING, ARE NOT VALID BECAUSE THEY WEREN'T
11 PUBLIC HEARINGS OR THEY WEREN'T DONE BEFORE THE BOARD,
12 BUT I THINK THAT'S ONE OF THE MAIN POINTS. THAT'S NOT A
13 REQUIREMENT, THAT'S SOMETHING THAT WE'RE DOING TO HELP
14 THE BOARD INFORM THEIR DECISION, GATHER THIS INFORMATION.
15 OUR FIRM HAS BEEN INVOLVED IN THESE DEALS WITH
16 SCHOOL DISTRICTS THROUGHOUT THE STATE AND I CAN TELL YOU
17 THAT INVARIABLY THERE'S COMMUNITY INPUT THAT IS NOT HAPPY
18 WITH A DEVELOPMENT. THEY EITHER WANT TO SEE THE PROPERTY
19 USED FOR ANOTHER USE, THEY'RE DISAPPOINTED THAT A SCHOOL
20 IS NOT GOING IN, AND WE HEAR THOSE CONCERNS, WE
21 UNDERSTAND THEM. THE CODE SECTION REQUIRES US TO
22 CONSIDER THEM THROUGH THE RPAC, WHICH WE DID. THE WAIVER
23 REQUIRES US TO DEMONSTRATE THAT WE CONSIDERED THOSE
24 CONCERNS, WHICH WE DID. WE'VE DEMONSTRATED THAT.
25 THE AUGUST MEETING, I THINK, FRANKLY, IS A RED
26 HERRING. IT DOES ADDRESS COSTCO, BUT JUST IN TERMS OF
27 UPDATING THEIR PROPOSAL. THE DISTRICT ACCEPTED THAT
28 PROPOSAL, BUT THEN EXPLICITLY STATED, AT A FUTURE BOARD

1 MEETING, THE DISTRICT WOULD CONSIDER ALL PROPOSALS AND
2 DEEM THE MOST BENEFICIAL TO THE DISTRICT, WHICH THEY DID
3 IN SEPTEMBER. THERE'S NOTHING IN THE CODE SECTION THAT
4 REQUIRES THE DISTRICT TO ALLOW THE COMMUNITY TO ANALYZE
5 EACH PROPOSAL AND DETERMINE WHETHER IT THINKS IT WILL FIT
6 WITH THE CITY'S -- IN THE CITY REQUIREMENTS OR WHAT IT
7 BELIEVES IS ITS MOST REQUIRED DEVELOPMENT. IT ONLY
8 REQUIRES THE DISTRICT TO CONSIDER THAT COMMUNITY INPUT
9 AND THEN TAKE IT INTO CONSIDERATION, CONSIDERING THE
10 DISTRICT'S NEEDS, THE PROPERTY USE AND WHAT IS AVAILABLE
11 TO IT, AND THEN MAKE THE BEST DECISION IT CAN, BASED ON
12 WHAT IS THE MOST BENEFICIAL TO THE DISTRICT, WHICH THE
13 WAIVER REQUIRES, AND THE DISTRICT DID IN SEPTEMBER.

14 SO I UNDERSTAND AND THE DISTRICT UNDERSTANDS
15 AND THAT'S WHY WE KEEP HAVING THESE PUBLIC HEARINGS. WE
16 UNDERSTAND THAT THERE'S A LOT OF COMMUNITY MEMBERS OUT
17 THERE THAT HAVE STRONG OPINIONS. WE'VE DONE OUR BEST TO
18 CONSIDER THIS, BUT THE CODE SECTION REQUIRES THAT, BUT IT
19 ALSO MAKES IT CLEAR THAT SCHOOL DISTRICTS AREN'T REQUIRED
20 TO HAVE THEIR DECISION DICTATED BY THE COMMUNITY.
21 THEY'RE REQUIRED TO GATHER AS MUCH INPUT AS WE CAN, TAKE
22 THAT INTO CONSIDERATION, EXPLAIN WHY THE PROPOSAL WE
23 SELECTED WAS THE MOST BENEFICIAL, WHICH WE DID IN THAT
24 SEPTEMBER MEETING.

25 I THINK OPPOSING COUNSEL IS TRYING TO IGNORE
26 THAT SEPTEMBER MEETING BY SUGGESTING THAT IT WAS A SHAM
27 AND THE DISTRICT ALREADY DECIDED TO AWARD TO COSTCO IN
28 AUGUST, WHICH IS, FRANKLY, NOT THE CASE. AS DEMONSTRATED

1 BY THE REPORTING OUT MINUTES IN THE AUGUST MEETING THAT
2 THIS -- THIS ACCEPTANCE OF COSTCO WAS SIMPLY TO ACCEPT AN
3 UPDATE, THEIR UPDATED PROPOSAL, WHICH IS AN UPDATED
4 LETTER OF INTENT.

5 AND ALSO I DO WANT TO GO BACK TO THAT AUGUST
6 MEETING, BECAUSE IT ALSO STATES -- AND I'LL QUOTE IT
7 AGAIN, BECAUSE I THINK IT'S IMPORTANT. SO IT SAYS THAT
8 THE BOARD TOOK, BY UNANIMOUS VOTE, TO APPROVE AN UPDATED
9 LETTER OF INTENT FROM COSTCO FOR THE PROPOSED GROUND
10 LEASE OF THE PROPERTY AND HAS DIRECTED NEGOTIATION OF AN
11 APPROPRIATE OPTION AGREEMENT AND GROUND LEASE FOR SUCH
12 TRANSACTION. AT A FUTURE BOARD MEETING, OPEN SESSION,
13 THE BOARD WILL BE PRESENTED A SUMMARY OF EACH RECEIVED
14 FINAL REQUEST FOR PROPOSAL RESPONSE AND TAKE ACTION TO
15 FORMALLY APPROVE THE PROPOSAL, WHICH IS THE MOST
16 BENEFICIAL TO THE DISTRICT.

17 SO THAT WAS DONE IN THE SEPTEMBER MEETING AND
18 ALL PROPOSALS WERE PRESENTED. THE DISTRICT CONSIDERED
19 THEM. THEY EXPLAIN -- THE BOARD EXPLAINED THEIR REASONS
20 FOR IDENTIFYING COSTCO AS THE MOST BENEFICIAL PROPOSAL,
21 IN ACCORDANCE WITH THE WAIVER, AND WE'RE STILL IN THE
22 PROCESS OF NEGOTIATING AND DETERMINING THE TERMS. THERE
23 HASN'T BEEN AN AGREEMENT SUBMITTED OR CONSIDERED BY THE
24 PARTIES. WE'RE STILL IN THE PROCESS OF DOING THOSE
25 NEGOTIATIONS. THERE'S NOTHING SET IN STONE. THE
26 DISTRICT IS STILL DETERMINING IF IT CAN ENTER INTO AN
27 AGREEMENT WITH COSTCO, MAKING SURE IT ADDRESSES ALL THE
28 CONCERNS THAT ARE BROUGHT UP IN THE RFP, SPECIFICALLY

1 THAT IT HAS A PLAN TO WORK WITH THE CITY TO GET ITS
2 PROPOSAL APPROVED. AND IF THAT HAPPENS AND IF THAT'S THE
3 CASE, THEN THE DISTRICT, AGAIN, WILL BRING BACK A
4 PROPOSED AGREEMENT IN OPEN SESSION AND THAT, AGAIN, WILL
5 GIVE THE COMMUNITY TIME TO COMMENT ON THAT AND MAKE THEIR
6 OPINIONS BE KNOWN. AND THEN THE DISTRICT WILL CONSIDER
7 COMMUNITY INPUT, WHICH WAS GATHERED THROUGHOUT THIS
8 PROCESS, AND THEN MAKE A DETERMINATION OF WHAT IS IN THE
9 BEST INTEREST OF THE DISTRICT AS WELL AS THE COMMUNITY,
10 TAKING IN ALL THESE FACTORS INTO ACCOUNT.

11 AND AGAIN, WE UNDERSTAND -- I'VE BEEN THROUGH
12 THIS A LOT -- COMMUNITIES HAVE VERY PASSIONATE OPINIONS
13 ABOUT DEVELOPMENT. IT'S FRUSTRATING FOR A LOT OF THEM.
14 BUT THE EDUCATION CODE DOES NOT REQUIRE THE SCHOOL
15 DISTRICT TO KOWTOW TO A COMMUNITY MEMBER OR EVEN A GROUP
16 OF COMMUNITY MEMBERS THAT HAVE A STRONG OPINION. IT JUST
17 REQUIRES US TO ACCEPT AND CONSIDER THEIR INPUT, WHICH THE
18 DISTRICT DID, AS REQUIRED BY THE EDUCATION CODE, AS
19 REQUIRED BY THE WAIVER, THEY'RE SUPPOSED TO IDENTIFY IN
20 OPEN SESSION THE MOST BENEFICIAL PROPOSAL BASED ON
21 CONSIDERATIONS OF ALL THAT, WHICH THEY DID IN SEPTEMBER,
22 AND THAT'S WHERE WE'RE AT AT THIS POINT.

23 WE COMPLIED WITH THE EDUCATION CODE, WE
24 COMPLIED WITH THE WAIVER, WE'RE RESPECTFUL AND
25 CONSIDERATE OF THE COMMUNITY'S INPUT, BUT AT THE END OF
26 THE DAY, THE DISTRICT HAS AN OBLIGATION TO ENSURE THAT
27 ITS PROPERTY IS PUT TO THE BEST USE FOR ITS STUDENTS AND
28 FOR ITS STAFF TO RECEIVE, FRANKLY, REALLY DESPERATELY

1 NEEDED MONEY FOR ITS EDUCATION PROGRAMS, AND THAT'S WHAT
2 IT IS DOING AND THAT'S WHAT IT WILL CONTINUE TO DO.

3 MS. REED: YOUR HONOR, MAY I RESPOND TO JUST A
4 COUPLE OF THOSE POINTS? I REALLY FEEL LIKE --

5 THE COURT: NOT YET.

6 MS. REED: I APPRECIATE THAT.

7 THE COURT: WE'VE GOT TIME.

8 ALL RIGHT. ALL RIGHT. LET ME ASK, THOUGH,
9 TWO QUESTIONS.

10 THE FIRST QUESTION -- AND AGAIN, THIS IS TO
11 THE RESPONDENT, AND I THINK YOU'VE ANSWERED, BUT I WANT
12 TO MAKE IT CLEAR -- THE HARM, YOUR HONOR, IF I MAY USE
13 PLAINTIFF'S TERMS, IF WE PUT THE PAUSE BUTTON ON, THE
14 HARM, YOUR HONOR, IS, ONE, WE'VE DONE A LOT OF WORK, WE
15 SPENT A LOT OF MONEY AND THE DISTRICT NEEDS MONEY. ARE
16 THERE ANY OTHER HARMS OR IS THAT?

17 WHAT'S THE HARM IF I SAY -- IF I WOULD WANT TO
18 DO WHAT THE PLAINTIFF IS SUGGESTING, WHY DON'T WE DO
19 THIS? WHY DON'T WE SLOW DOWN, GET THE PUBLIC INVOLVED,
20 LET THEM THOROUGHLY LOOK AT THE RFP AND THEN LET THE
21 BOARD VOTE? WHAT'S THE HARM?

22 RESPONSE.

23 MR. MCLOUGHLIN: YES, YOUR HONOR. I THINK GOING
24 BACK TO THAT, NUMBER ONE, THAT THERE IS HARM, BECAUSE,
25 FRANKLY, WE BELIEVE THAT THIS -- THE REASON WHY THIS WAS
26 FILED WAS TO SCARE AWAY DEVELOPERS, SO IF THEY SEE THAT
27 THIS PROCESS IS GOING TO BE GUMMED UP AT THIS PROCESS,
28 WHICH, AS WE MENTIONED, DEVELOPERS HAVE TO GO THROUGH A

1 WHOLE HOST OF OTHER ISSUES WITH THE CITY, WHICH WILL
2 INVOLVE COMMUNITY DEVELOPMENT, THAT WILL SCARE AWAY
3 DEVELOPERS. THE DISTRICT WILL NOT BE ABLE TO REMOVE THIS
4 PROPERTY.

5 ALSO, IT WILL ESTABLISH A PRECEDENT, WHICH
6 WE'RE CONCERNED WITH, THAT IT WILL END UP -- THE
7 COMMUNITY HAS A RIGHT TO INTERJECT OR DELAY THE PROCESS
8 OR ESTABLISH WHAT THEY THINK SHOULD BE DONE BY A MINORITY
9 OF COMMUNITY MEMBERS AND STOP THE DISTRICT FROM IMPOSING
10 WHAT IT BELIEVES IS IN THE BEST INTEREST OF THE DISTRICT
11 AND THE OTHER COMMUNITY MEMBERS. AND, FRANKLY, THE
12 QUESTION IS, YOU KNOW, WHERE DOES IT STOP? WE'RE GOING
13 TO INVOLVE THIS COMMUNITY GROUP, THERE MIGHT BE OTHER
14 COMMUNITY GROUPS THAT COME IN LATER SAYING THEY DIDN'T
15 HAVE A CHANCE TO COMMENT, SO THE PROCESS WILL BE DELAYED.

16 AND I THINK THE EDUCATION CODE SAW THIS AS AN
17 ISSUE THAT WE HAD TO PUT A CAP ON IT, SO TO SPEAK,
18 OTHERWISE DISTRICTS WOULD BE OVERWHELMED, AND THAT'S WHY
19 THEY ESTABLISHED THE COMMUNITY INPUT PROCESS THROUGH ITS
20 SEPARATE COMMITTEE, THE RPAC COMMUNITY, WHICH IS REQUIRED
21 TO BE MADE OF COMMUNITY MEMBERS, GATHER COMMUNITY INPUT
22 WITH PUBLIC HEARINGS, WHICH IT DID, BUT THEN THE
23 EDUCATION CODE MAKES IT CLEAR THAT IT NEEDS TO STOP, WE
24 NEED TO HAVE A PERIOD HERE.

25 AND WE ALSO HAVE A WAIVER THAT WAS GRANTED BY
26 THE STATE, SO IF WE HAVE TO GO BACK TO THE STATE AND
27 INDICATE THAT WE HAVE TO DO ANOTHER WAIVER, IT'S GOING TO
28 CAUSE MORE DELAYS. FRANKLY, THE STATE HAS ALREADY

1 APPROVED THE WAIVER AND APPROVED THE DISTRICT'S PROCESS,
2 SO IT WOULD CAUSE ADDITIONAL DELAYS, IT WOULD ESTABLISH A
3 BAD PRECEDENT. AND, FRANKLY, I DON'T SEE WHERE THIS
4 WOULD END. IF THAT HAPPENED, WE WOULD BE IN CYCLES JUST
5 COMMUNICATING TO THE COMMUNITY, IF THEY DON'T LIKE THE
6 DISTRICT'S DECISION, THEY DON'T LIKE WHERE IT'S GOING,
7 THEY CAN CONTINUE TO ABATE AND GUM UP THE PROCESS AND
8 FILE LEGAL ACTIONS FROM NOW UNTIL ETERNITY.

9 THE COURT: THANK YOU.

10 ALL RIGHT. PETITIONER, YOU'RE UP.

11 MS. REED: YEAH, I'LL TRY TO BE SUCCINCT HERE.

12 YOUR HONOR, WHAT I JUST HEARD RELATIVE TO THE
13 HARM IN CONNECTION WITH THE INJUNCTION IS SOMETHING I
14 HAVE NEVER HEARD, AND I DO A LOT OF INJUNCTION PRACTICE.

15 THE IDEA, FIRST OF ALL, THAT THEY'VE GOT TO GO
16 BACK AND GET ANOTHER WAIVER IF THE COURT PUTS THE PAUSE
17 BUTTON ON HERE; THEY KNOW THAT'S NOT TRUE. THEY DON'T
18 HAVE TO GO BACK AND GET ANOTHER WAIVER. THEY'VE BEEN
19 WAIVED OUT OF THE COMPETITIVE BIDDING REQUIREMENT.
20 THAT'S NOT WHAT WE'RE SUGGESTING AND THAT'S JUST ABSURD
21 AND, FRANKLY, DISINGENUOUS AND THEY KNOW IT.

22 AND THE IDEA THAT THIS IS GOING TO SCARE OFF
23 DEVELOPERS IF THE COURT PUTS THE PAUSE BUTTON ON. FIRST
24 OF ALL, THAT'S PURE CONJECTURE AND SPECULATION. I WORK
25 WITH DEVELOPERS ALL THE TIME. THEY WOULDN'T BE SCARED
26 OFF BY THIS, TO SAY THE LEAST. I DON'T THINK COSTCO IS
27 SCARED OFF, AND THAT'S WHO THE DISTRICT CHOSE. THAT'S --
28 WHAT OTHER DEVELOPER RESPONDED TO THE RFP? THEY'VE

1 ALREADY REJECTED THE OTHER TWO. THEY'VE SELECTED COSTCO.
2 SO WHAT I JUST HEARD, I'M, FRANKLY, OFFENDED BY, AND I
3 HAVE TO SAY THAT. IT'S DISINGENUOUS, TO SAY THE LEAST.
4 I THINK THE COURT ASKED THEM A SALIENT
5 QUESTION TODAY, WHICH IS, WHEN DID THE PUBLIC FIRST LEARN
6 OF THE RESPONSE BY COSTCO? YOUR HONOR, IT WAS
7 SEPTEMBER 10TH, 2020. SO HOW IN THE WORLD DID THE
8 DISTRICT GO AND OBTAIN THE COMMUNITY INPUT THEY SAY THEY
9 DID BEFORE THAT DATE IF THE PUBLIC DIDN'T EVEN KNOW THE
10 DISTRICT WAS CONSIDERING COSTCO?

11 THE DISTRICT HAS BEEN TALKING ABOUT THE RPAC
12 COMMITTEE. WE AGREE THEY SET UP AN RPAC; THEY WERE
13 REQUIRED TO DO THAT. IT'S A COMMITTEE. BUT I'M ON THE
14 POWAY DISTRICT WEB SITE RIGHT NOW, AND THE COURT CAN TAKE
15 A LOOK AT IT ITSELF, THE VERY LAST MEETING HELD BY THE
16 RPAC WAS APRIL 24TH, 2012. SO THIS RPAC THAT RECEIVED
17 ALL THE COMMUNITY INPUT THAT COUNSEL SAYS, HOW COULD THEY
18 HAVE RECEIVED INPUT RELATIVE TO THE DISPOSAL OF THE
19 PROPERTY TO COSTCO, WHEN COSTCO -- THE PUBLIC DIDN'T EVEN
20 KNOW THE DISTRICT WAS CONSIDERING COSTCO UNTIL 2020?
21 THAT'S DISINGENUOUS. IT'S WRONG.

22 YOU HAVE TO LOOK AT WHEN COULD THE PUBLIC HAVE
23 COMMENTED ON COSTCO? IT WOULD HAVE BEEN AT THE
24 SEPTEMBER 10TH MEETING AND IT WOULD HAVE BEEN -- AND THEN
25 THEY MADE THEIR DECISION. SO ANYTHING THAT HAPPENED IN
26 JANUARY, AS COUNSEL SUGGESTED, WE HAD A TOWN HALL -- THEY
27 HAD A TOWN HALL IN NOVEMBER -- THAT'S IRRELEVANT.

28 AND I REALLY -- I CONTINUE TO TAKE UMBRAGE

1 WITH THE IDEA THAT IT WAS IN SEPTEMBER THAT THE DISTRICT
2 INSTRUCTED THEIR STAFF TO NEGOTIATE WITH COSTCO. YOUR
3 HONOR, I -- I'M NOT MAKING THIS STUFF UP. COUNSEL SAID
4 WE ARE MISREPRESENTING WHAT HAPPENED ON
5 AUGUST 13TH, 2020. NO. I'M READING THE DISTRICT'S OWN
6 MINUTES AND COUNSEL CONTINUES TO ELIMINATE THE SENTENCE
7 THAT, ON AUGUST 13TH, 2020, THEY DIRECTED THE NEGOTIATION
8 OF AN APPROPRIATE OPTION AGREEMENT AND GROUND LEASE FOR
9 SUCH TRANSACTION WITH COSTCO. HOW DO YOU GO AND
10 NEGOTIATE A GROUND LEASE AND AN OPTION AGREEMENT UNLESS
11 YOU KNOW WHO THE LEASEE IS AND THE BUYER IS? HOW DO YOU
12 DO THAT?

13 IT'S REALLY CLEAR, YOUR HONOR. I MEAN, THE
14 WOOL SHOULDN'T BE PULLED OVER ALL OF OUR EYES. IT'S VERY
15 CLEAR, ON AUGUST 13TH, THEY SELECTED COSTCO. THEY WENT
16 AND DECIDED TO EXPEND THE COST ON NEGOTIATING A GROUND
17 LEASE AND OPTION AGREEMENT WITH COSTCO IN AUGUST, IN
18 CLOSED SESSION, WITHOUT ANY PUBLIC NOTICE, WITHOUT THE
19 PUBLIC EVEN KNOWING THEY WERE CONSIDERING COSTCO.
20 THAT'S -- THAT'S IN THEIR MINUTES. TO SAY THAT OCCURRED
21 IN SEPTEMBER, THAT'S JUST SPECIOUS AT BEST.

22 SO I LOOK AT THIS, YOUR HONOR, AND I GO
23 BACK -- AND I WANT TO BE CURTAILED TO SOME EXTENT HERE IN
24 MY COMMENTS. BUT YOU LOOK AT THIS, YOUR HONOR, THERE'S
25 NO WAY ON GOD'S GREEN EARTH THAT THEY CONSIDERED PUBLIC
26 COMMENT RELATIVE TO COSTCO FULL STOP. THEY COULDN'T
27 HAVE, BECAUSE THE PUBLIC KNEW ABOUT IT FOR THE FIRST TIME
28 ON SEPTEMBER 10TH, THE SAME DAY THEY SAID, WE'RE

1 SELECTING COSTCO. NO FINDINGS -- AGAIN, NO FINDINGS THAT
2 COMPLIED WITH THE STATUTE THAT SAYS THIS IS IN THE BEST
3 INTEREST OF THE COMMUNITY, THAT THE BUILDING USE, COSTCO,
4 WILL BE THE BEST USE OF THAT LAND FOR THE COMMUNITY.
5 NONE OF THAT HAPPENED. AND THEN THEY HELD SOME WINDOW
6 DRESSING TOWN HALL AFTER THE FACT. YOU CAN'T CONSIDER
7 COMMUNITY PUBLIC INPUT OR PUBLIC INPUT AFTER THE FACT,
8 POST HOC. IT WAS SUPPOSED TO BE CONSIDERED BEFORE THEY
9 MADE THE DECISION. IT WAS SUPPOSED TO BE PART OF THE
10 DECISION THEY WERE MAKING.

11 WHAT I'M HEARING TODAY JUST UNDERSCORES THE
12 POINT I CONTINUE TO MAKE, PUBLIC AGENCIES OWE DUTIES TO
13 THE PUBLIC. DO THE RIGHT THING. BE HONEST. FOLLOW THE
14 PROCESS CORRECTLY. THAT'S WHAT THIS LAWSUIT IS ABOUT.
15 GO BACK AND COMPLY WITH THE CODE. THAT'S ALL WE'RE
16 ASKING, YOUR HONOR. WE'RE NOT SAYING THEY HAVE TO BEND
17 TO OUR WILL; WE'VE NEVER SAID THAT. THAT'S ABSURD. WHAT
18 WE'RE SAYING IS, GO BACK AND LISTEN TO YOUR CONSTITUENTS,
19 THE PEOPLE WHO PAY THE TAXES TO POWAY UNIFIED AND FUND
20 YOUR OPERATIONS ON A DAILY BASIS, THE PARENTS WHO PUT
21 THEIR CHILDREN IN THE SCHOOL DISTRICTS, ALL OF WHOM SO
22 FAR -- AND I HAVEN'T HEARD COUNSEL NEGATE THIS, BECAUSE
23 HE CAN'T -- NOT ONE OF THEM HAVE COME OUT AND SUPPORTED
24 THIS. AND THEY'RE OUTRAGED THAT THEIR OWN POWAY UNIFIED
25 SCHOOL DISTRICT, THE AGENCY THEY'VE TRUSTED, THEY'RE
26 OUTRAGED THAT THEY WOULD GO AND HAVE THIS SORT OF CLOSED
27 SESSION, BEHIND CLOSED-DOOR DISCUSSION ABOUT COSTCO,
28 ABOUT A VALUABLE PIECE OF LAND IN THEIR COMMUNITY IN

1 VIOLATION OF THE LAW; THEY'RE OUTRAGED BY THAT,
2 RIGHTFULLY SO, SO THEY'RE PLEADING THE COURT.

3 WHAT MY CLIENTS ARE SAYING, IS, YOUR HONOR,
4 THEY'RE GOING TO RAILROAD THIS THROUGH; AND YOU HEARD IT
5 TODAY, THEY'RE GOING TO. THEY DON'T HAVE TO BEND TO THE
6 WILL OF THE PUBLIC, THEY SAY. MY CLIENTS ARE PLEADING
7 WITH THE COURT TO SAY, PUT THE PAUSE BUTTON ON, CREATE AN
8 OPPORTUNITY TO GO BACK AND DO THE RIGHT THING. WE'RE NOT
9 ASKING THEM TO GO BACK -- THEY DON'T HAVE TO GO BACK AND
10 GET ANOTHER WAIVER --

11 THE COURT: COUNSEL.

12 MS. REED: YEAH.

13 THE COURT: LET ME STOP FOR A MINUTE.

14 MS. REED: SURE.

15 THE COURT: BECAUSE I WANT TO MAKE SURE I FULLY
16 UNDERSTAND WHAT YOU'RE SAYING.

17 MS. REED: SURE.

18 THE COURT: YOU SAY, PUT A PAUSE BUTTON ON AND GO
19 BACK AND DO THE RIGHT THING. WOULD THAT BE, SCHOOL
20 DISTRICT, GO BACK, JUST HAVE ANOTHER HEARING, LET
21 EVERYBODY SPEAK AND WE'RE DONE? IS THAT WHAT YOU'RE
22 SAYING?

23 MS. REED: WELL, I THINK THEY'VE GOT TO DO THAT AND
24 I DO THINK THEY'VE GOT TO COMMIT SOME FINDINGS RELATIVE
25 TO WHAT THEY CONSIDERED IN TERMS OF THE PUBLIC -- THE
26 COMMUNITY'S BEST INTEREST, YEAH, THEY'VE GOT TO DO THAT.
27 THEY'VE GOT TO GO APPLY THE STATUTES TO THEIR --

28 THE COURT: I ASSUME THAT COULD BE DONE WITHIN

1 60 DAYS?

2 MS. REED: I THINK THAT'S FAIR. I WOULD IMAGINE IT
3 COULD TOO, YOUR HONOR.

4 THE COURT: ALL RIGHT. I'M GOING TO -- WHEN SHE'S
5 DONE, I HAVE ANOTHER QUESTION FOR YOU TOO. LET ME GO
6 AHEAD AND GET THAT OUT NOW, AND THEN I'LL HAVE THE
7 DEFENSE RESPOND.

8 YOU'VE LOOKED AT -- I'M SURE YOU HAVE, AND I
9 DID TOO. I LOOKED AT THE PROPOSAL.

10 MS. REED: YEAH.

11 THE COURT: AND JUST ROUGHLY -- AND I'M SPEAKING TO
12 THE PETITIONER -- IT LOOKS LIKE COSTCO PAID ALMOST DOUBLE
13 WHAT THE OTHER BIDS ARE --

14 MS. REED: YOU KNOW --

15 THE COURT: LET ME FINISH. STOP, STOP. LET ME
16 FINISH.

17 MS. REED: SURE.

18 THE COURT: TELL ME, IF COSTCO SAYS, JUDGE, WE'RE
19 PAYING DOUBLE. HOW IS THE DISTRICT AND THE PARENTS
20 HARMED IF THEY'RE GETTING DOUBLE MONEY FOR THEIR -- YOU
21 KNOW, DOUBLE MONEY? WHAT'S YOUR RESPONSE TO THAT?

22 MS. REED: YEAH, I APPRECIATE THAT QUESTION, YOUR
23 HONOR. AND, FRANKLY, I WILL TELL YOU THIS, MY CLIENT HAD
24 THEIR PROPOSALS APPRAISED AND WE INTEND TO OFFER THAT
25 INTO EVIDENCE IN CONNECTION WITH THE HEARING. WE HAD AN
26 ACTUAL APPRAISER AND FINANCIAL EXPERT TAKE A LOOK AT
27 THOSE PROPOSALS. AND WHILE, AT FIRST BLUSH, IT APPEARS
28 TO BE WHAT YOU SAY, AND I APPRECIATE THAT, BECAUSE WHEN I

1 FIRST GOT THE CASE I THOUGHT, WELL, IT LOOKS TO BE A
2 GREAT FINANCIAL OPPORTUNITY --

3 THE COURT: OKAY. ONLY WHAT'S BEFORE ME, COUNSEL.

4 MS. REED: YEAH. I CAN ASSURE YOU -- YEAH, NO, MY
5 POINT IS, I CAN ASSURE YOU THAT IT'S NOT THE BEST -- IT'S
6 NOT THE BEST FINANCIAL PROPOSAL, AND THAT'S WHAT WE WILL
7 BE PRESENTING, IS EVIDENCE IN CONNECTION WITH THE HEARING
8 ON THE MERITS OF THIS CASE.

9 THE COURT: ALL RIGHT.

10 MS. REED: SO WE HAVEN'T BEEN ABLE TO PRESENT THAT
11 EVIDENCE THUS FAR, BUT WE CERTAINLY WILL BE DOING THAT
12 ULTIMATELY.

13 THE COURT: THANK YOU. I INTERRUPTED YOU.

14 GO AHEAD AND CONCLUDE, AND THEN WE'LL HAVE A
15 RESPONSE FROM THE RESPONDENT.

16 MS. REED: YEAH, I APPRECIATE THAT.

17 SO, YOUR HONOR, I THINK I HIT THE SALIENT
18 POINTS AND I THINK THE COURT IS FAMILIAR ENOUGH WITH
19 INJUNCTIONS TO APPRECIATE THE HARM ARTICULATED BY MY
20 COLLEAGUE, THAT SIMPLY DOESN'T RISE TO THE LEVEL OF HARM
21 TO OUTWEIGH THE THREATENED HARM HERE, WHICH IS THE
22 DISPOSAL OF THIS VALUABLE REAL PROPERTY THAT'S HELD IN
23 TRUST FOR THE PUBLIC, AND THOSE ARE MY FINAL COMMENTS.

24 THANK YOU.

25 THE COURT: THANK YOU.

26 RESPONDENT, ANSWER MY QUESTION TOO. AGAIN, I
27 ASKED HER -- STRIKE THAT. I ASKED THE PETITIONER THEIR
28 POSITION. THEY SAY, JUDGE, JUST HAVE A MEETING, 60 DAYS,

1 OWE IT UP, LET PEOPLE TALK, MAKE THE APPROPRIATE FINDINGS
2 AND WE'RE DONE. WHAT'S YOUR RESPONSE TO THAT,
3 RESPONDENT?

4 MR. MCLOUGHLIN: YES, YOUR HONOR. AND I THINK
5 OPPOSING COUNSEL HIT THE POINT, IT SOUNDS LIKE THEY'RE
6 GOING TO PRESENT INFORMATION INDICATING THAT THE COSTCO
7 PROPOSAL IS NOT THE BEST FINANCIAL BENEFIT FROM THE
8 DISTRICT. SO THEY'RE ESSENTIALLY GOING TO ARGUE THAT
9 THEIR OPINION OF WHAT CONSTITUTES THE BEST APPRAISAL OR
10 THE VALUE OF THE PROPERTY SHOULD SUPERSEDE WHAT THE
11 DISTRICT HAS DETERMINED. AND I THINK THE EDUCATION CODE,
12 AGAIN, MAKES IT CLEAR THAT THE PROCESS, THE COMMUNITY
13 INPUT PROCESS IS NOT INTENDED AND DOES NOT REQUIRE THE
14 DISTRICT TO GET THE COMMUNITY INVOLVED IN DETERMINING
15 WHICH PROPOSAL IS THE BEST AND WHAT VALUE IT HAS.

16 THE COMMUNITY INVOLVEMENT REQUIREMENT IS AT
17 THE BEGINNING, IT STARTS WITH THE RPAC TO SAY, WE HAVE
18 THIS SURPLUS PROPERTY, WHAT SHOULD WE DO WITH IT? DO YOU
19 THINK IT SHOULD BE DEVELOPED? SHOULD IT REMAIN IN THE
20 SAME WAY? SHOULD IT BE TURNED INTO A SCHOOL DISTRICT?
21 GIVE US YOUR INPUT. THEN WE GATHER THAT INPUT AND THEN
22 THE DISTRICT MAKES A DETERMINATION, WHAT IT NEEDS TO DO,
23 AND THEN IT PROCEEDS, WHETHER IT'S A WAIVER OR A BID
24 PROCESS, AND THAT IT DETERMINES WHAT PROVIDES THE BEST
25 FINANCIAL ISSUES.

26 SO IT SOUNDS LIKE OPPOSING COUNSEL IS GOING TO
27 PRESENT INFORMATION TO THE BOARD TRYING TO CONVINCE --
28 INFORMATION TO THE COURT TRYING TO CONVINCE THE COURT

1 THAT THEIR ASSESSMENT OF THE PROPOSAL SHOULD SUPERSEDE
2 THE DISTRICT, OR THE COMMUNITY SOMEHOW HAS A ROLE IN
3 DETERMINING WHAT'S THE BEST FINANCIAL BENEFIT FOR THE
4 DISTRICT, WHICH, FRANKLY, IS NOT PART OF THE EDUCATION
5 CODE, AND I THINK THAT'S IMPORTANT TO KEEP IN MIND.

6 AND AGAIN, GOING BACK TO THAT PRECEDENT THAT,
7 YEAH, WE CAN SUGGEST WE'RE JUST GOING TO HAVE A MEETING
8 AND THAT WOULD BE FINE. BUT AS YOU HEARD FROM OPPOSING
9 COUNSEL, IT'S NOT GOING TO END AND THEY'RE GOING TO
10 PRESENT ALL THIS INFORMATION ARGUING THAT THE DISTRICT'S
11 ANALYSIS IS WRONG. IF THE DISTRICT STILL PROCEEDS WITH
12 COSTCO, THEN THEY'RE GOING TO PRESENT THEIR INFORMATION
13 SAYING THAT THE PROPOSALS ARE DIFFERENT, AND THAT'S,
14 FRANKLY, GOING TO LEAD US DOWN THE ROAD WHERE, A, EITHER
15 WE'RE GOING TO BE DELAYED FOREVER; OR B, THE PROCESS IS
16 GOING TO BE CIRCUMVENTED BY COMMUNITY MEMBERS WHO ARE
17 PROVIDING THEIR OWN ANALYSIS AS TO THE FINANCIAL VALUE OF
18 THE PROPERTY.

19 THE RFP PROCESS GIVES THE DISTRICT THE OPTION
20 TO CONSIDER ALL THESE DIFFERENT FACTORS, SO THE PAYMENT,
21 THE PAYMENT PLAN, THE TIME PROCESS THAT'S PROPOSED BY THE
22 PROPOSAL, AND THAT'S AT THE DIRECTION AND IN THE
23 PROVIDENCE OF THE BOARD. IT'S NOT ABOUT THE COMMUNITY.
24 THE COMMUNITY DOES NOT GET TO MAKE THOSE DECISIONS. THEY
25 CAN EXPRESS THEIR OPINION GENERALLY AS TO WHAT THEY THINK
26 THE PROPERTY SHOULD BE USED FOR OR SHOULD BE DEVELOPED,
27 BUT THEY'RE NOT IN THE ROLE OF MAKING THE DECISION OR
28 MAKING THE DETERMINATION AS TO WHAT PROPOSAL IS THE BEST

1 FOR THE DISTRICT OR, FRANKLY, FOR THE COMMUNITY. BECAUSE
2 WE COULD GO OUT AND TRY TO GET TONS OF DECLARATIONS FROM
3 DIFFERENT COMMUNITY MEMBERS SAYING THEY HAVE DIFFERENT
4 OPINIONS, BUT THAT'S NOT REQUIRED AND IT'S NOT POSSIBLE.

5 AND, FRANKLY, I THINK IT'S OBVIOUS, IF WE
6 SURVEYED THE COMMUNITY MEMBERS, YOU MIGHT HAVE A MAJORITY
7 THAT HAS ONE OPINION, BUT YOU'RE GOING TO HAVE OTHER
8 PEOPLE THAT HAVE DIFFERENT OPINIONS, AND THE DISTRICT'S
9 ROLE AND JOB IS TO BALANCE ALL THOSE OPINIONS AND THEN
10 MAKE A DETERMINATION OF WHAT'S IN THE BEST INTEREST OF
11 THE DISTRICT; THAT'S THE DISTRICT'S ROLE, THAT'S THE
12 DISTRICT'S PROVIDENCE. IT'S NOT UP TO THE COMMUNITY. WE
13 TAKE THEIR INPUT, WE CONSIDER IT, WE THANK THEM FOR IT,
14 BUT AT THE END OF THE DAY, IT'S THE BOARD'S ROLE,
15 SPECIFICALLY THE BOARD'S ROLE TO DECIDE WHAT'S THE MOST
16 BENEFICIAL PROPOSAL, AND THAT'S WHAT HAPPENED HERE.

17 THE AUGUST 13TH NEGOTIATIONS WERE JUST TO
18 CLARIFY WHAT THE FINAL PROPOSAL WAS FOR COSTCO. THE
19 DISTRICT DID THAT AND THEN IT PRESENTED IT TO THE
20 COMMUNITY, CONSIDERING THE RPAC REPORT AND ALL THE
21 COMMUNITY INPUT THAT WAS GATHERED THROUGH THE MULTIPLE
22 MEETINGS WITH THE COMMUNITY, AND THEN THE DISTRICT GETS
23 TO DECIDE, THE BOARD GETS TO DECIDE WHAT'S IN THE BEST
24 INTEREST OF THE DISTRICT. AND THIS PROCESS WOULD
25 CIRCUMVENT THE ROLE OF THE BOARD AND WOULD BE BASED ON
26 THE EDUCATION CODE THAT, FRANKLY, DOES NOT ALLOW OR
27 REQUIRE THE COMMUNITY TO INSERT THEIR OPINION ON THE
28 BEST, MOST BENEFICIAL PROPOSAL FOR THE DISTRICT.

1 THE COURT: GOT IT.

2 OKAY. ANYBODY WANT TO SAY ANYTHING ELSE?

3 MS. REED: YEAH, YOUR HONOR. I WOULD JUST SAY THAT
4 I THINK COUNSEL JUST UNDERScored WHY IT'S NOT ANY SKIN
5 OFF THEIR NOSE TO HAVE ANOTHER PUBLIC MEETING. THEY'RE
6 SAYING THAT EVEN IF WE PRESENT EVIDENCE OF THIS
7 FINANCIALS IMPROPRIETY OF THIS PARTICULAR SELECTION OF
8 COSTCO, THEY'RE NOT GOING TO CONSIDER IT, BECAUSE THEY
9 DON'T HAVE TO. SO HOW IS THAT GOING TO DELAY OR SLOW
10 THIS DOWN?

11 IT SOUNDS LIKE THEY DON'T WANT TO HEAR FROM
12 THEIR OWN COMMUNITY, WHICH IS A TRAVESTY. I THINK THE
13 TRANSCRIPT IS GOING TO BE PROBLEMATIC IN THAT REGARD FOR
14 POWAY UNIFIED SCHOOL DISTRICT. THEY SHOULD HAVE A
15 MEETING AND LISTEN TO THEIR CONSTITUENTS. THEY CAN THEN
16 MAKE THE DECISION, BASED ON THE FACTS OF WHAT THEY HAVE
17 TO CONSIDER AND NOT CONSIDER, AND THEN, ULTIMATELY, MAKE
18 THE CALL. SO THOSE ARE MY FINAL COMMENTS.

19 THANK YOU, YOUR HONOR.

20 THE COURT: NO PROBLEM.

21 ONE LAST QUESTION TO BOTH OF YOU.

22 COUNSEL, DO I NEED TO SET A HEARING FOR A
23 PRELIMINARY INJUNCTION TODAY?

24 MS. REED: YES. I THINK -- YOUR HONOR, I WOULD
25 ARGUE THAT WE BRIEFED THIS PRETTY EXHAUSTIVELY AND NOW --
26 YOU KNOW, COUNSEL HAS HAD TIME TO RESPOND. I THINK IF
27 THE COURT'S INCLINED TO ISSUE INJUNCTIVE RELIEF, I THINK
28 IT COULD JUST ISSUE AN INJUNCTION. IF IT WANTS TO ISSUE

1 A TRO FOR THE NEXT 14 DAYS OR SO, THEN I WOULD SAY, YES,
2 WE'VE GOT TO COME BACK ON A HEARING FOR AN INJUNCTION PER
3 STATUTE.

4 THE COURT: THANK YOU.
5 DEFENSE.

6 MR. MCLOUGHLIN: YES, YOUR HONOR. I THINK WE DO --
7 RIGHT. YEAH, I THINK WE'RE ON THE SAME PAGE.

8 I JUST WANT TO MAKE SURE THAT WE'RE CLEAR ON
9 WHAT'S GOING ON. SO THE DISTRICT HAS A BOARD MEETING IN
10 DECEMBER, BUT WE'VE CONFIRMED WE'RE NOT GOING TO TAKE ANY
11 ACTION AT THAT TIME.

12 THE COURT: THAT'S WHY I WANT TO MAKE SURE. I WANT
13 TO KNOW HOW MUCH TIME I HAVE.

14 IF -- ACTUALLY, THIS IS WHY WE DO ARGUMENT.
15 YOU BOTH HAVE BROUGHT UP ISSUES THAT THE COURT WANTS TO
16 THINK ABOUT, BUT I'VE GOT MY HEAD AROUND IT PRETTY GOOD,
17 I WILL TELL YOU THAT, BUT, OBVIOUSLY, THINGS HAVE BEEN
18 BROUGHT UP IN THIS HEARING THAT HAS BECOME MORE CLEAR TO
19 THE COURT.

20 IF -- CAN I GET THIS OUT IN TWO WEEKS? DOES
21 THAT -- WHAT IS TODAY? I DON'T KNOW WHAT TODAY IS. IT'S
22 BEEN BUSY. THAT'S THE 4TH. IF I GET IT OUT BY THE 3RD,
23 DOES THAT -- WOULD THAT BE OKAY? THAT'S WHAT I'M TRYING
24 TO SAY. I'M SORRY.

25 MS. REED: YOUR HONOR, ARE YOU SUGGESTING IF YOU
26 GET YOUR RULING OUT ON THE 3RD, WE'RE STILL FINE AS OF
27 THE --

28 THE COURT: THAT'S WHAT I'M SUGGESTING.

1 MS. REED: I THINK THAT'S RIGHT, GIVEN COUNSEL'S
2 REPRESENTATIONS TODAY. I'LL TAKE HIS REPRESENTATIONS TO
3 HEART.

4 THE COURT: OKAY.

5 MR. MCLOUGHLIN: YES, YOUR HONOR.

6 THE COURT: COUNSEL, IS THERE -- LET'S MAKE IT
7 CLEAR WHAT I'M DOING TODAY. IS THERE A STIPULATION THAT
8 THIS IS FOR A PRELIMINARY INJUNCTION?

9 MS. REED: NO, YOUR HONOR. I THINK IT'S STILL
10 NOTED AS A TEMPORARY RESTRAINING ORDER HEARING. I JUST
11 SUGGESTED -- I GUESS GIVEN THAT I DO SO MANY OF THESE
12 TOO, THAT THE FACT THAT IT'S BEEN FULLY BRIEFED, I THINK
13 THE COURT COULD RULE ON AN INJUNCTION. I THINK COUNSEL
14 WOULD PROBABLY AGREE ON THAT TOO. I THINK WE BRIEFED THE
15 ISSUES PRETTY EXHAUSTIVELY. I DON'T THINK EITHER OF US
16 HAVE ANY MORE TO ADD. THE DISTINCTION BEING, I GUESS, IF
17 YOU ISSUE A TRO THAT'S IN EFFECT, THAT'S FOR 14 DAYS, WE
18 HAVE SET UP THAT HEARING FOR AN INJUNCTION; OTHERWISE, I
19 THINK THE INJUNCTION COULD REMAIN IN PLACE UNTIL THE
20 DISTRICT GOES BACK AND SATISFIES THEIR OBLIGATIONS UNDER
21 THE CODE.

22 THE COURT: RESPONDENT.

23 MS. REED: AND I SHOULD SAY, I'M SORRY. I
24 MISSPOKE. THEIR OBJECTION WOULD BE IN PLACE THROUGH THE
25 HEARING ON THE MERITS OF OUR CLAIM.

26 THE COURT: CORRECT. YEAH, I UNDERSTAND THAT.

27 MS. REED: YEAH.

28 THE COURT: RESPONDENT.

1 MR. MCLOUGHLIN: SO I'M SORRY. SO IS THE ISSUE
2 BEFORE THE COURT THE DECEMBER 3RD DATE?

3 THE COURT: THE ISSUE IS WHETHER I'M GOING TO TREAT
4 THIS AS A TRO OR AS A PRELIMINARY INJUNCTION, THAT'S THE
5 ISSUE, COUNSEL.

6 MR. MCLOUGHLIN: OKAY. YES, YOUR HONOR, WE'RE IN
7 AGREEMENT.

8 THE COURT: AGREEMENT THAT IT'S A TRO, WHICH WOULD
9 REQUIRE A PRELIMINARY HEARING IN ABOUT -- IT WILL BE MORE
10 THAN 14 DAYS. I'LL TAKE A WAIVER. OR, JUDGE, EITHER
11 YOU'RE GOING TO DO A PRELIMINARY INJUNCTION OR YOU'RE
12 NOT. UNDERSTAND THE DISTINCTION, RESPONDENT?

13 MR. MCLOUGHLIN: YES. I THINK WE -- YEAH, YOU'RE
14 EITHER GOING TO DO A PRELIMINARY INJUNCTION OR YOU'RE
15 NOT, YOUR HONOR, AT THIS POINT. WE AGREE. WE'VE
16 BRIEFED --

17 THE COURT: OKAY. SO LET'S MAKE SURE. HOLD ON.

18 PLAINTIFF -- WHY -- IT'S BEEN A LONG DAY,
19 COUNSEL.

20 PETITIONER.

21 MS. REED: YEAH.

22 THE COURT: ARE YOU AGREEING -- HOLD ON. I WANT TO
23 MAKE SURE, BECAUSE THIS IS IMPORTANT FOR THE RECORD.

24 ARE WE AGREEING, THAT, JUDGE, YOU HAVE THE
25 AUTHORITY TO RULE ON THIS AS A PRELIMINARY INJUNCTION?

26 MS. REED: YES, YOUR HONOR, YOU ABSOLUTELY HAVE THE
27 AUTHORITY TO RULE.

28 THE COURT: OKAY. COUNSEL, I WANT YOU TO STAY ON

1 THE PHONE JUST FOR A MINUTE. I'VE GOT TO STEP OFF.
2 OKAY. DON'T LEAVE.

3 MS. REED: OF COURSE.

4 (RECESS.)

5 THE COURT: I'M BACK. ARE YOU STILL THERE OR DID
6 YOU GO TO LUNCH?

7 MS. REED: STILL HERE.

8 MR. MCLOUGHLIN: WE'RE HERE, YOUR HONOR.

9 THE COURT: FAIR ENOUGH.

10 LISTEN CAREFULLY, COUNSEL, AND I KNOW YOU
11 ALWAYS DO. I WOULD LIKE A STIPULATION THAT ALL PAPERS,
12 MOVING PAPERS, THE OPPOSITION -- I DON'T KNOW IF THERE
13 WAS A REPLY -- REPLY, AND THE COURT'S TENTATIVE, KEY
14 WORD, TENTATIVE RULING, WILL BE TREATED AS A MOTION FOR
15 PRELIMINARY INJUNCTION, AND THEN BASED ON THAT, I WILL
16 ISSUE A FINAL RULING BY DECEMBER 3RD. THAT'S AN
17 IMPORTANT -- BECAUSE I'M MAKING A BIG DISTINCTION BETWEEN
18 A PRELIMINARY INJUNCTION AND TRO.

19 SO WITH COUNSEL'S PERMISSION, STIPULATION, ON
20 BEHALF OF THEIR PARTIES, PETITIONER, DO YOU AGREE THAT
21 THIS -- EVERYTHING THAT'S BEEN FILED, PLUS THE TENTATIVE,
22 CAN BE TREATED AS FOR A PRELIMINARY INJUNCTION?

23 PLAINTIFF -- STRIKE THAT. PETITIONER.

24 MS. REED: YOUR HONOR, YOU'RE NOT MESSING UP. I
25 WAS GOING TO SAY, YOU'RE NOT MESSING UP. WE STILL ARE A
26 PETITIONER AND A PLAINTIFF ON ACCOUNT OF --

27 THE COURT: THAT MAKES ME FEEL A LOT BETTER.

28 RESPONDENT, YOU AGREE?

1 MR. MCLOUGHLIN: YES, YOUR HONOR.

2 THE COURT: WELL DONE.

3 ALL RIGHT. I'VE GOT WORK TO DO.

4 COUNSEL, HERE'S -- THE COURT --

5 COSTCO, YOU THERE? HOPEFULLY YOU LISTENED
6 TOO.

7 THE COURT --

8 MR. MAMALAKIS: YES, I AM, YOUR HONOR.

9 THE COURT: I APPRECIATE IT.

10 I WANT EVERYBODY TO KNOW, I CLEARLY UNDERSTAND
11 THE IMPORTANCE. IT IS A BIG DEAL, ANY TIME THE COURT
12 MAKES DECISIONS LIKE THIS, AND I JUST PROMISE YOU, YOU
13 KNOW ME, I'LL GIVE YOU A HUNDRED AND 10 PERCENT ON MY
14 DECISION, BUT -- AND AGAIN, THIS IS WHY WE DO ARGUMENT;
15 VERY HELPFUL TO THE COURT. YOU'VE ANSWERED MY QUESTIONS,
16 SO I'M CLEAR IN MY MIND, AND THEN I'VE JUST GOT TO MAKE
17 MY DECISION.

18 SO THANK YOU, THANK YOU. GO HAVE LUNCH NOW;
19 YOU'VE EARNED IT.

20 MS. REED: YOU TOO, YOUR HONOR. THANK YOU SO MUCH
21 FOR YOUR TIME, FOR YOUR TIME AND THOUGHTFULNESS. IT'S
22 MUCH APPRECIATED.

23 MR. MCLOUGHLIN: THANK YOU, YOUR HONOR.

24 THE COURT: YOU'RE WELCOME.

25 (WHEREUPON THE COURT WAS IN RECESS IN THIS MATTER.)

26 ---000---

27

28

1 STATE OF CALIFORNIA)

2 : SS.

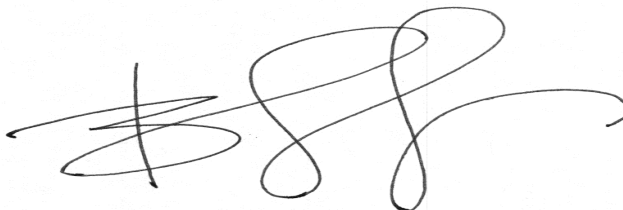
3 COUNTY OF SAN DIEGO)

4
5 I, BRIANNA LEE HARO, OFFICIAL PRO TEMPORE REPORTER OF
6 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR
7 THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY:

8
9 THAT AS SUCH REPORTER, I REPORTED IN MACHINE SHORTHAND
10 THE PROCEEDINGS HELD IN THE FOREGOING CASE;

11 THAT MY NOTES WERE TRANSCRIBED INTO COMPUTER FORMAT
12 UNDER MY DIRECTION, AND THE PROCEEDINGS HELD
13 NOVEMBER 20, 2020, CONTAINED WITHIN PAGES 1 THROUGH 56 ARE
14 A TRUE AND CORRECT TRANSCRIPTION.

15
16 DATED THIS 29TH DAY OF NOVEMBER, 2020.

17
18
19
20


21 BRIANNA LEE HARO, CSR NO. 13121

22 OFFICIAL COURT-APPROVED PRO TEMPORE COURT REPORTER

23 SAN DIEGO COURTROOM REPORTERS' COALITION

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