

1 ROBERT ALLEN ALEXANDER and
2 BARBARA MOUTON
3 2785 Hunter Street
4 East Palo Alto, CA 94303
5 Telephone: (415) 326-4527

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7
8 On Behalf of Themselves.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SAN MATEO

11 EAST PALO ALTO ASSOCIATION OF) Case No. 267915
12 CONCERNED HOME OWNERS AND RESIDENTS,)
13 an unincorporated association, ROBERT)
14 ALLEN ALEXANDER and BARBARA MOUTON,)
15 each individually and on behalf of)
16 all others similarly situated,)

17 Plaintiffs,)

18 v.)

19 Menlo Park, a California city, GERRY)
20 ANDEEN, individually and as Mayor of)
21 the City of Menlo Park, DOUGLAS DUPEN,)
22 PEG GUNN, KAY PAAR, BILLY RAY WHITE,)
23 all individually and as members of the)
24 City Council of Menlo Park, LEWIS AND)
25 TARLTON COMPANY, a business operating)
26 under the laws of California, LORRIN C.)
27 TARLTON, JR., individually and as a)
28 member and representative of LEWIS AND)
29 TARLTON CO., TOM and CLARENCE KAVANAUGH)
30 individually and as a co-developer with)
31 LEWIS AND TARLTON COMPANY, THE)
32 ENVIRONMENTAL CENTER, and DOES I)
33 through XX, and the Planning Commission)
34 of Menlo Park, and the STATE OF)
35 CALIFORNIA,)

36 Defendants.)

37 MEMORANDUM OF POINTS AND)
38 AUTHORITIES ON SUPPORT OF)
39 CONTINUANCE OF THE HEARING)
40 ON DEMURRER TO COMPLAINT)

41 DEPARTMENT OF THE PRESIDING)
42 JUDGE)

43 12 November 1982

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47 This motion is made pursuant to Rule 235 of the
48 California Rules of Court for the Superior Court. As set

1 forth in the Declaration of Robert Allen Alexander and Barbara
2 Mouton attached hereto, there is good cause for continuing the
3 present hearing for the following reasons:

4 1. Plaintiffs filed the above-entitled action IN
5 PROPRIA PERSONIA in an attempt to object to the process by which
6 defendants considered and approved the Environmental Impact Re-
7 port ("EIR") for the Dumbarton Distribution Center ("DDC") project
8 which defendants claim will not have a significant effect on the
9 environment.

10 2. Plaintiffs have been seeking counsel to represent
11 them in prior to filing this action. Because of the thirty(30)
12 day time limits from the Notice of Determination, Plaintiffs
13 had to file this action IN PRO PER in order to protect the
14 rights of concerned citizens.

15 3. Plaintiffs have been seeking counsel to represent
16 them in this matter as attorney of record, however, no one has
17 step forward on a pro bono basis. Plaintiffs can describe to
18 the court all the attempts it has made to secure counsel if the
19 Court so wishes.

20 4. As plaintiffs in pro per action filed in September
21 1982 was responding to significant environmental adverse impact
22 to the schools at or near the DDC project, baylands and neighbor-
23 hoods of East Palo, plaintiffs without assistance of counsel
24 filed their complaint and other documents.

25 5. plaintiffs contacted the Ravenswood City School
26 District who had representatives attend the public hearings
27 on the DDC project. Plaintiffs made several visits to RCSD's
28 Board meeting in an attempt to persuade them to join in this

1 matter.

2 6. RCSD meet with plaintiffs and on November 3, 1982
3 the law firm of BREON, GALGANI, GODINO & O'DONNELL was retained
4 to assist or represent plaintiffs in opposition to the "Hearing
5 on the Demurrer of the Complaint scheduled for hearing on
6 12 Novmeber 1982.

7 7. Plainitffs requested assistance on the Hearing on
8 The Demurrer. Plaintiffs had called the calendar clerk and was
9 told on several occassions that the only motion scheduled for
10 hearing on the 12 November 1982 was the Heainr on the Demurrer.

11 8. The Law Firm of BREON, GALGANI, GODINO & O'DONNELL
12 submitted papers and requested a continuance of the Demurrer to
13 the Complaint on 5 November 1982.

14 9. On November 4, 1982, defendants attorney, John
15 Briscoe sent to BREON, GALGANI, GODINO & O'DONNELL a "Stipulation
16 Re Heainr On Demurrer and on Petition for Writ of Mandate".

17 10. On November 5, 1982 a hearing was held at the
18 San Mateo County Court House before Judge Bible's law clerk
19 Catherine Burke. Patricia A. Mills from the Breon firm was
20 present in addition to John Briscoe for the defendants and
21 Robert Allen Alexander and Barbara Mouton.

22 11. Ms. Mills requested time to review defendants
23 pleadings, and the voluminous administrative record and to
24 prepare a response. Said request was for thirty (30) days.

25 12. Defendants attorney requested that the hearing
26 set for 12 November 1982, be heard not later than 19 November
27 1982 because his clients were being prejudiced by the long
28 delay.

1 13. Plaintiffs are not holding up or attempting to
2 delay defendants. Defendants cannot go forward with this
3 DDC project until the title is cleared. At the August 10, 1982
4 City Council meeting Councilwomen Paar stated:

5 And they are specifically referring to what they refer to
6 as the ravenwood triangle, which was land that was to be
7 acquired from Caltrans as mitigation for the Dumbarton Bridge
8 and the do note that there has been a law suit filed by Mr.
9 Tarleton against Caltrans and against the Midpeninsula Regional
10 Open Space District; and it seems to me that that issue ought to
11 be resolved through the lawsuit or whatever without having it
12 come before us to resolve.

13 There are several potential lawsuits that are preventing defendants
14 from proceeding in this matter. Yet counsel for the defendants
15 blame plaintiffs for this delay. No work has been commenced
16 on this project. Plaintiff has not attempted to go into Court
17 for their TRO. Defendants cannot begin any action until the
18 issue of title is also resolved. (See Administrative Record
19 Volume I).

20 14. At the hearing on the 5 November 1982, the
21 Court granted Attorney Mills a continuance. She had until
22 15 Novmeber 1982 to file documents or papers and 19 Novmeber
23 1982 to appear.

24 15. On 8 November 1982, Attorney Mills informed Robert
25 Alexander that her law firm Breon, Galgani, Godino, & O'Donnell
26 could not represent plaintiffs. Two reasons were set forth
27 first after reveiwing the files the interest of RCSD (school
28 district) and the interest of plaintiffs were not identical.
The plaintiffs concerns exceeded those of RCSD. RCSD must
be careful in the way in which it expends it funds. RCSD has
been brought before the Grand Jury and caution must be

1 maintained. The second reason is financial. RCSD authorized
2 the law firm to challenge the defendants demurrer. After
3 appearing in court, the Clerk located the lost motion on the
4 Writ of Mandate. On 19 November 1982 the law firm would have
5 to proceed on both matters. This exceeded the authority of the
6 RCSD. RCSD must now weigh the financial impact of defending
7 this suit and if they so defend it will be limited to school
8 district concerns.

9 16. On 9 November 1982, Robert Allen Alexander
10 spoke with Judge Bible's law clerk and explained the above-
11 mentioned problem. Plaintiff's application for a continuance
12 was based on the mistaken belief or fact that they had legal
13 counsel. Plaintiffs still do not have legal counsel.

14 17. Plaintiffs had filled out an application for
15 a grant from Stanford law school environmental section and if
16 granted to plaintiffs this would be more than enough to
17 support the above entitled action. Said grant will be forth
18 coming on or about 3 December 1982.

19 18. Plaintiffs have reviewed the alleged complete
20 administrative record. There are many crucial documents that
21 are not a part of this record. Plaintiff needs time to gather
22 these documents and request the courts permission to add them
23 to the defendants administrative record.

24 19. Plaintiffs are also seeking funds and legal
25 representation through other sources and since the continuance
26 will not impact upon defendants proceeding with the DDC because
27 it is already encumber, plaintiffs request this court to look
28 at the equities when deciding to grant or deny the continuance

1 request made by plaintiffs.

2 That John Briscoe, attorney for the defendants told Attorney Mills that
3 he was going to sue plaintiff's for filing frivolous complaint, and therefore
4 this makes it even more significant that plaintiff's be given adequate time to
5 secure an attorney for this action.

6 If Plaintiff is required to go forward on the 19 November 1982, plaintiff
7 will be calling several witnesses with respect to whether the notice were
8 properly sent and whether other of our allegations have been complied with.
9 This will be longer than a twenty minute hearing. If the hearing will be two
10 or three days plaintiff knows that the Court usually reschedules these
11 matters much later. Plaintiff beg the court to consider this in making its
12 determination.

13 DATED: 11 November 1982

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