



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
8

Meeting Date: **JUNE 2, 2011**

Subject:

Authorize the Rejection of the Claim of Ken and Jill Klempan

Recommendation:

Adopt Resolution No. 2011-0063, authorizing the rejection of the claim of Ken and Jill Klempan.

Background/Justification:

On May 6, 2011, Ken and Jill Klempan ("The Klempan's") filed a claim with the Authority alleging that as of February 17, 2011, they incurred loss of use damages to their home as a result of participating in the San Diego County Regional Airport Authority's Quieter Home Program ("The Program"). The Klempan's claim damages in the amount of \$78,686,50, including monthly expenses for the upkeep of the home for those months in which they claim they were unable to enjoy its use.

The Klempan's allege in their claim that construction work on their home by the contractors working on behalf of The Program should have been completed by December 31, 2009, but ultimately was not completed until February 17, 2011. The Klempan's further allege that all delays in completion were the sole responsibility of The Program and the result of negligence in maintaining applicable standards of care. As a result, the Klempan's claim they were deprived of the use and enjoyment of their home for an extended period of time.

The Klempan's' claim should be denied. An investigation into the situation revealed the Klempan's were made aware of the construction process and complications that can arise with scheduling different phases of work. It appears from the evidence that only minor, aesthetic items were unfinished during the delay period and not mechanical or structural, making their home usable for the time period for which they are claiming a loss.

Fiscal Impact:

Not applicable.

000059

Environmental Review:

- A. California Environmental Quality Act: The Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. The Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act: The Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

SUZIE JOHNSON
PARALEGAL



SDCRAA
MAY 06 2011
Corporate Services

San Diego County Regional Airport Authority
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S. Todd Neal
Direct Dial: (619) 525-3890
E-mail: todd.neal@procopio.com
Personal Fax: (619) 368-0190

March 28, 2011

BY FACSIMILE (619)400-2428 AND REGULAR MAIL

Mr. Breton K. Lobner, Esq.
General Counsel
San Diego County Regional Airport Authority
P.O. Box 82776
San Diego, CA 92138-2776

Re: Residence of Ken & Jill Klempan, San Diego, California

Dear Mr. Lobner:

I am writing to address the issue of loss of use damages which were suffered by the Klempan's relative to their property located at _____, San Diego, California (the "Property"). The Klempan's were deprived of the use and enjoyment of the Property for a substantial period of time which far exceeded what was reasonable or necessary as a result of their participation in the Quieter Home Program ("QHP"). This deprivation of use and enjoyment was caused by the negligence and breaches of applicable standards of care of QHP and the San Diego County Regional Airport Authority. Unfortunately, the Klempan's paid substantial monies to maintain the Property for extended periods of time during which they were prevented from using it. The purpose of this letter is to quantify these losses and make a demand for reimbursement.

As you know, on April 9, 2007 the Klempan's signed the Homeowner Participation Agreement and the avigation easement. Thereafter, eighteen months passed during which the Klempan's spent four months and substantial sums on structural repair work which was performed solely for the purpose of bringing the residence up to the necessary standard to participate in the QHP. Thereafter, QHP submitted a design package to the Klempan's on September 19, 2008. The Klempan's and their contractor signed off on the design package just three days later on September 22, 2008. The Klempan's contend that the substantial delays that occurred after this point were unreasonable and occurred only as a result of the negligence, breaches and lack of diligence by QHP and the San Diego County Regional Airport Authority.

Mr. Breton K. Lobner, Esq.
March 28, 2011
Page 2



Here, the actual completion date of the work performed by QHP and/or its contractors was February 17, 2011. This project should not have taken twenty-nine months to complete under any circumstances. In truth, this project should have been completed in 12-15 months (at most). It is clear that QHP also had this expectation because it had no transition in place when the contract between QHP and Savino Construction terminated on or about December 31, 2009. Thereafter, on February 19, 2010 the Klemkans were informed by QHP that the completion of their residence would be delayed until the work could be contracted out to a new contractor and that a delay of a few months was likely. Approximately sixty days later QHP reversed course and told the Klemkans that "With the exception of the work that will be completed to the posts on the front of your home, WE HAVE NO FURTHER WORK TO COMPLETE." (emphasis added).

Over the past few months it has been established that QHP wrongly claimed in April 2010 that it had completed all work. Although QHP initially denied it, the recent work demonstrated that there was continuing water intrusion which was occurring because of problems with the installation of windows.

Going to the heart of the matter, the Klemkans' incur the following monthly expenses to maintain the Property:

- a) Mortgage payment - \$4,524.16;
- b) Homeowner's insurance - \$234.38;
- c) Property taxes - \$838.09;
- d) Water/sewer - \$95.00;
- e) SDG&E - \$137.00;

These costs total \$5,828.63 per month and this figure is exclusive of replacement housing costs and additional maintenance/upkeep.

The QHP work should have been completed by December 31, 2009 and the inability of QHP and/or its contractors to complete the project prior to February 17, 2011 caused the Klemkans to pay the costs associated with maintaining the residence for approximately 13.5 months during which they were unable to use and enjoy the Property. Therefore, the Klemkans have authorized me to offer to settle all claims pertaining to the deficient work done by QHP and the San Diego County Regional Airport Authority for a payment in the amount of \$78,686.50. This offer shall remain open until close of business on April 6, 2011 at which time it shall be automatically withdrawn if not accepted. I want to make clear that this figure does not include substantial sums that the Klemkans have been forced to pay in attorney's fees (both to Petersen & Price and my law firm) to get QHP to move the process to completion. The attorney's fees have been incurred solely as a result of the lack of responsiveness and reasonable diligence by QHP. In the event that the Klemkans are forced to initiate litigation to be made whole, they will seek recovery of their attorney's fees and all other legally recoverable damages.

Mr. Breton K. Lobner, Esq.
March 28, 2011
Page 3



We look forward to your reply. Please contact me if you would like to discuss these issues.

Very truly yours,

A handwritten signature in black ink that reads "S. Todd Neal". The signature is fluid and cursive.

S. Todd Neal

STN

cc: Ken & Jill Klempan (by e-mail)

RESOLUTION NO. 2011-0063

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY AUTHORIZING THE REJECTION OF
THE CLAIM OF KEN AND JILL KLEMPAN.

WHEREAS, on May 6, 2011, Ken and Jill Klempan filed a claim with the San Diego County Regional Airport Authority for damages they allegedly incurred as a result of participating in the San Diego County Regional Airport Authority's Quieter Home Program; and

WHEREAS, at its regular meeting on June 2, 2011, the Board considered the claim filed by Ken and Jill Klempan, the report submitted to the Board, and found that the claim should be rejected.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the rejection of the claim of Ken and Jill Klempan; and

BE IT FURTHER RESOLVED THAT this Board Action is not a "project" as defined by the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §21065; nor is it a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 2nd day of June, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

000064