



(916) 323-7713

March 12, 1985

Mr. Dick Frank  
San Luis Obispo County Assessor  
Room 100, County Government Center  
San Luis Obispo, CA 93408

Attention: Mr. Jerry L. Ogden  
Deputy County Assessor

Dear Mr. Ogden:

Development Agreement  
Z and the City of E

I have reviewed the agreement documents you sent with your letter dated March 5, 1985. These agreements between the City of E and Z further clarified the question we have discussed by phone. You tell me that the City has contracted with Z under an agreement whereby the City conveys an industrial site to Z with the condition that Z will construct facilities within a limited described time. If the facilities are not constructed, then the ownership of the site reverts to the City. Your question was whether you have properly appraised this Z land site by using comparable land sales occurring in the open market at other locations where the City was not a party.

In my view, you have properly appraised the Z site when you use sales of comparable industrial sites outside the City's development. You are commanded to appraise by the market value standard. (Rev. & Tax. Code §§ 110 and 110.1.) The market value standard is the price that property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other. (A. F. Gilmore Company v. Los Angeles County, 186 Cal. App. 2d 471.) Where the City conveys land to Z at land values below the open market standard, then such city conveyance cannot reasonably be used to reflect

market value. Some critics may assert that Revenue and Taxation Code Section 402.1 commands the assessor to measure the market value of the Z site by considering the ownership restrictions placed on the land by the City. However, such assertions are unfounded. Revenue and Taxation Code Section 402.1 deals with land restrictions on the "use" of the land and not on the "ownership" of the land. Z's use of the land is not restricted except to the extent that it must construct the type of industry which it agreed with the City to construct. Its ownership of the land is restricted only to that extent and construction must be completed within a specified time. So, Section 402.1 would only require that you consider the restrictions to the site which deal with the type of facilities which must be built. So long as your comparable sales reflect sites where similar property is constructed then such sales may be used for the Z site and Section 402.1 would be satisfied. It is irrelevant that Z has a limited time to construct its facilities. So long as Z has title to the site then its property taxes should be measured by the market value standard as described in Sections 110 and 110.1. The sale price of the site by the City to Z should be ignored unless such sale comports reasonably to comparable sales occurring in the private sector.

Very truly yours,

Robert R. Keeling  
Tax Counsel

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