City of Albany City Council Meeting
September 18, 2017

Additional correspondence received after agenda preparation packet
To the Council:

I support the City's efforts to remove the cross from Albany Hill Park and have been watching with concern as the Lions have taken their inaccurate claim of ownership of the land and cross all the way to federal court. Although of course I don't have full knowledge of how this case is being handled behind the scenes, I am writing out of a concern that the City might not be addressing the property law issues that undermine the Lions' case and don't want to take the chance that this legal avenue is being ignored. Please forgive me if I am offering information you are already using.

My own legal background, research and consultations with two property law attorneys convince me that the Lions' suit against the City is without merit and the City has a strong case for requesting that the Court grant a motion to dismiss. The City has its own constitutional obligations that it must meet regarding religious displays on public land and cannot allow the Lions' lawsuit to bully the City into forsaking its constitutional obligations.

This is a land use case, not a constitutional rights case, and the City must be sure to work with a good property attorney in defending this suit. The Lions in their suit are assuming a property right that they do not have, essentially claiming that the cross (and presumably the square footage of the land on which it stands) is their property, that the easement grants them ownership of that property, and that the City is interfering with their property rights without due process and in violation of their religious liberty.

Making these claims does not change the fact that the Lions do not have ownership rights to the land or even the cross. In property law, an easement does not confer ownership but rather grants the easement holder lesser rights for use of the property for a specific purpose. The language of the easement in this case is as simple as it is clear. It is for ingress and egress to maintain the cross.

Typically, there are two types of ingress/egress easements and this case doesn't quite match either of them. One is typically landlocked property, where a property owner needs to cross over another property owner's land to get to their own property. The easement gives the landlocked owner the rights of ingress and egress (coming and going) to get to their own property. The second common type of ingress/egress easement is the type utilities have, either to run pipes or wires or have a meter on your property and/or to maintain those things.

The Lions seem to be claiming the landlocked property type of easement, claiming that the City has interfered with their easement right to get to their property. But this is wrong.

An easement is not the same as a division of property, as if, for example, former Mayor Call had divided the parcel and deeded to the Lions the square footage that the cross involves. Property records are clear that Call didn't do that. But the Lions seem to be confusing an easement with this sort of property right.

An easement is different. It gives the easement holder (the "dominant tenant," the Lions in this case) the right to use part of somebody else's property. But by law it must be less than a full property right. It does not deprive the "servient tenant" (the City in this case) of use of its own land. For example, an easement allowing exclusive use of a part of a storage cellar would be invalid because it deprives the servient tenant of use of their own land. That is essentially what the Lions are demanding, that this spot of land be forever theirs for exclusive use of the cross. Thus even if the easement did grant the Lions the permanent right to have the cross right there, it would be invalid because it deprives the city of any use of that part of the City's property.

The other typical type of easement is known as a utility easement, such as we all have on our property for water meters and such. We are allowed to make alterations with our property as long as the utility can come and go and maintain their pipes or meters. Utility easements are different and usually controlled by statutes and city planning, governed by different needs due to the necessary interconnections of utilities. If the Lions are looking at it this way, they may have the mistaken
idea that the easement somehow gives the Lions perpetual rights to the cross, the way a utility would have rights to their pipes.

But this easement conveys no such ownership right. Rather it is more like easements other governments grant to service organizations for maintenance of monuments. Such easements do not grant ownership of the monuments to the service organizations, only a right of ingress and egress for maintenance, as long as the government wants to allow the monument on its property.

This easement only allows the land to be used for the stated purpose. It does not give the Lions any right to have the cross remain where it is. If the City removed the cross, it would not violate the easement because the easement does not specifically provide for the right to keep the cross in its present place. Without a specific provision like that, the City can move the cross at any time without violating the easement.

In conclusion, the Lions have no property rights to the cross and thus no standing for their damage claims and claims of violations of their constitutional rights are also invalid. The City will of course need to address the constitutional issues presented, but it must not neglect engaging a good property attorney who will mount a strong defense to protect our residents and our public park land against this spurious lawsuit.

Sincerely,

Pamela Tellew
Albany CA
Dear City Council Members,

I am unable to attend tonight’s meeting but I want to let you know in the strongest terms that the cross on Albany Hill must come down. Or, in this time of inclusion, we should allow any other religious group to put up a 20-foot symbol. The cross is an embarrassment and was put up at a time when the John Birch Society had a place in this town. Those days are over.

For the 30 years that I’ve lived on Albany Hill, it has pained me that such a symbol on public land can reign over a community, a clear breach of the division between church and state. The Lions Club should be ashamed of itself.

Thanks for the job you all do,

Stefanie Kalmin
723 Adams St.
The cross should not be displayed on public land. I am a Christian, and I support the separation of church and state. It isn't that difficult.

Kathy Tomasic
540-718-9279 cell
735 Gooding Way, Apt 737
Albany, CA 94706
As a partial counter to the sophistry contained in the Nichols' suit, here are photos showing the attachment of the old electrical service to the tree.
Dear City Council of Albany, CA,

I am a long-time resident of Albany and I would like to express my concern about the Christian cross that is on top of Albany Hill and that the Lions Club maintains there. I would like to join the groups and individuals in our city that are urging the city of Albany to work cooperatively with the Lions Club to remove or relocate the Albany Hill cross from public to private land.

I am upset to hear that the Lions Club has initiated a lawsuit, and would like to encourage the council to maintain a position of cooperation in this issue, but to also push our community towards being inclusive, which is what the cross does NOT do. The cross privileges one religious group over another, and I believe you as council members understand that this is your job as public servants. Let me join the group that is supporting and urging you to continue to do so.

Please help us get the cross off of public land and to maintain a strong position while working with the Albany Lions Club.

Thank you so much!

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Best, Karen

“Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or both. The limits of tyrants are prescribed by the endurance of those whom they oppress.” -Frederick Douglass