

QUESTIONS AND ANSWERS:

MARK FABIANI

Special Counsel to the San Diego Chargers

I'm Mark Fabiani, Special Counsel to the President of the San Diego Chargers. I've been fortunate to appear on the Mighty 1090 many times over the years, and I am grateful today for the opportunity offered by 1090 to provide answers to many of the questions that are asked most often by Chargers fans regarding the stadium issue.

Q: Tonight many of us will be watching the NFL's San Diego forum, put on by the League to discuss the team's potential move to Los Angeles. Most fans seem to have little hope that the team will stay. So, after all of this time, how did things get to such a dire and seemingly hopeless point?

A: There's not much point reviewing our 14 years of work, except to say that we tried everything we could think of over that period of time to find a stadium solution:

- We made nine separate stadium proposals.
- We worked with seven different San Diego City mayors over a decade-long period of time.
- And we searched for solutions in Chula Vista, Oceanside, National City, and Escondido.

Rather than rehashing the last 14 years, it makes more sense to try to narrow down the reasons to explain precisely why we have reached this point.

And, at least from the Chargers' perspective, we are where we are because -- at three critical moments -- the leadership of the City of San Diego and the Chargers were unable to come to a mutual understanding. The outcome of these three crucial decisions explains why we have reached this point.

- First, we are here because three separate San Diego mayors, dating back to 2011, rejected our idea for a downtown joint use stadium-convention center. In the end, the City's leadership simply had a different vision for the downtown convention center.
- The second reason we are at this point is that in January 2015, right after the owner of the St. Louis Rams announced that he would seek entitlements for a stadium site in Inglewood, the City of San Diego announced the appointment of another task force to work on the stadium issue – and gave the new group, CSAG, until October to finish its

work. We warned at the time that the task force approach would waste extremely valuable time and that as a result the City would be unable to complete the required environmental clearances in time for a vote in 2015. San Diego's City Attorney cautioned the same thing, in writing, at the start of February. But once again, the City's vision for handling this stadium issue differed from the team's vision.

- The third reason we are at this point is this: In June 2015, the City insisted on pursuing a quickie environmental clearance process that the Chargers franchise simply was not comfortable with. We tried to explain to the City that no other project of this scope and controversy in California had ever been approved based on a quickie environmental review, and we supplied the opinions of the best environmental lawyers in California to back us up. But, once again, the City's vision of how to proceed was different from the team's vision.

Now, time will tell who was right, and who was wrong, in each of these three instances. And all of you reading this will be able to make up your own minds about that.

But in each of these three cases the Chargers franchise has a very specific suggestion for how to proceed, and in each specific instance the City rejected that suggestion.

Q: Mayor Faulconer has said repeatedly that the City of San Diego has met all of the deadlines in 2015 that were imposed by the NFL. How do you respond to that?

A: Unfortunately, nothing could be further from the truth:

- On January 30, 2015 San Diego's Mayor told all of us that his newly appointed CSAG would come up with a real financing plan for the stadium.¹ This did not occur. Instead, CSAG came up with a plan that required the sale of a portion of the Mission Valley site to a developer for \$225 million – something that would have required a real, time-consuming 12-to-18 month Environmental Impact Report, not the quickie EIR that the

¹ "That's never been done before,' Faulconer said. 'Yes, we've had renderings. Yes, we've had ideas floated about how you can possibly, maybe, fund it, but those aren't plans. A plan is when somebody tells you this is where it's going to go, this is how we're going to build it, and most importantly, this is how it's going to be paid for.'" *Fox 5 News*, January 30, 2015.

"This independent group will give San Diegans the first real plan in the past 13 years,' Faulconer said in a statement." *NBCSanDiego*, January 30 2015.

City tried to perform for the stadium. So the City's negotiators, at our very first meeting in June, immediately abandoned the very heart of the CSAG report.²

- On June 8, 2015, the Mayor, the City Attorney, and a member of the County Board of Supervisor came forward to say that there would be an election on December 15.³ Of course that deadline was never met.
- In July, and again in August, the same group of government leaders stepped forward and promised an election on January 15, 2016. Again, that deadline was not met.
- On August 10, the City's representatives promised the NFL that their quickie EIR would be certified by the City Council by October 15. That date has come and gone.
- In short, the City has failed to meet even a single significant deadline – including the most important one, set by NFL representatives during their April 2015 visit to CSAG: Develop an actionable financing plan that has the support of the team and that can be implemented by the end of 2015.

Q: But in fairness to the City and the Mayor, wouldn't it have at least been possible to meet these deadlines if the Chargers hadn't walked away from the negotiating table in June of 2015? Why did the Chargers walk away from negotiations? And how is it reasonable to expect compromise or progress when the Chargers walked away from talks with the City? It seems pretty straightforward as to why there was never an election considering talks were dead.

A: The fact is that the team did negotiate with City officials. But the negotiations didn't start until June, after CSAG had wasted the first five months of the year coming up with a proposal that the City quickly abandoned.

² Statement by the Mayor's Office to *The Voice of San Diego*: "The CSAG's suggested plan included ancillary development but the City/County plan does not, and therefore it would not be appropriate for the EIR to study ancillary development. The City/County plan does not rely on ancillary development for a stadium to be financed. The CSAG report was a series of recommendations prepared by private individuals. The plan the City/County team is developing is based on negotiations and discussions with the Chargers and the NFL. Just because a recommendation is in the CSAG report does not make it part of the City/County plan." (Emphasis added.)

³ *Los Angeles Times*, June 9, 2015: "After an hour-long meeting Monday with Chargers representatives, San Diego Mayor Kevin Faulconer announced that the city is prepared to hold a Dec. 15 special election to seek voter approval to build a stadium to replace aging Qualcomm Stadium in Mission Valley."

Final

And the negotiations in June failed for the reason that the Chargers – and San Diego’s own City Attorney – predicted at the start of 2015: After waiting for CSAG to finish its work, there simply was not enough time for the City to satisfy the requirements of the California Environmental Quality Act and place something on the ballot in 2015.

Q: Both the Mayor and the City Attorney have defended the quality of their draft Environmental Impact Report. Why does the team disagree?

A: When you hear City officials talk about what a great job they have done, well, you shouldn’t be surprised. After all, the number one goal of some politicians is to say nice things about themselves so they can be re-elected.

And when you hear about the EIR, please keep in mind that the EIR was written in less than three weeks after the City Council appropriated \$2 million to hire the firm that did the writing.

And when you hear the public officials praising themselves, please keep in mind that no project of this kind, in California history, has ever been successfully completed based on such a rushed environmental review process.

Q: But what exactly is wrong with the EIR? Isn’t it possible that the Chargers are simply criticizing the EIR in order to advance the franchise’s desire to move to Los Angeles?

A: Let’s start with the basics. The most sophisticated developers and builders in California regularly take 12-to-18 months to complete EIRs not because they enjoy wasting time or spending millions of extra dollars, but because that is the amount of time, effort and resources it takes to do the job right and have your EIR survive attack in the courts. The idea that an EIR on a billion dollar, controversial stadium project could successfully be completed in a few weeks is, simply put, unprecedented.

In addition, the City’s EIR has now been examined by a variety of outside experts, including the lawyers retained by the Chargers – who we think are the best environmental clearance lawyers in all of California. San Diego’s leading environmental lawyer has also reviewed the City’s EIR and called it a “piece of trash,”⁴ and although we might use different language, we agree with that conclusion.

Q: The Mayor has told the NFL that, for the first time ever, both the City and County have committed several hundred million dollars to a stadium project in San Diego. Isn’t this a huge step forward?

⁴<http://www.mighty1090.com/episode/cory-briggs-downtown-has-always-been-an-option/>

Final

A: Unfortunately, this is not the case. Both the City and County financial promises will turn into firm commitments only if:

- Voters approve at the ballot box;
- The County Board of Supervisors reverses its written policy against taxpayer funding of stadiums and then votes over a period of years to appropriate the money; and
- The quickie EIR is somehow upheld by the courts after lengthy litigation, and all of the other lawsuits that will be filed against the project are resolved in the City's favor – again, after lengthy litigation.

So, as of this moment, neither the City nor the County has committed anything to this project. Pledges made by the Chargers and the NFL represent, even at this late date, the only firm financial commitments that have ever been made to a stadium project in San Diego over the last 14 years.

Q: From everything said by the Chargers so far, the EIR seems to be the biggest obstacle to getting a deal done in San Diego. But Isn't financing just as big a problem? How much are the Chargers willing to invest?

A: Because we simply weren't able to get over the environmental clearance issues with the City, we were never able to even reach the financing question. No matter what financing plan you have, if that plan rests on the flimsy foundation of a fatally flawed EIR, then you aren't going to end up getting very far, unfortunately. And, regrettably, that's the situation we now face in San Diego. The entire deal that the City has proposed is undermined by the legally indefensible environmental clearance process that the City has followed.

Q: We have heard some people, including newspaper columnists and radio talk show hosts, argue that if the NFL owners will simply give San Diego another year, we can finally find a stadium solution in 2016. How do you react to this? Have the Chargers ever discussed with the NFL the possibility of more time for the City of San Diego?

A: When you hear this, you should ask yourself: Why is that necessarily the case? After all, the current Mayor has been in office since early 2014, and we have seen little genuine progress since.

The City seems firmly wedded to a fatally flawed environmental review process that will eventually be struck down by the courts – but only after lengthy litigation.

Final

In short, our view is that if we go along with the City's strategy, we will suffer the same fate as the City's recent convention center expansion project: Many years of wasted work. Many millions of wasted dollars. And no result at the end.

Q: But the City Attorney and the Mayor seem so confident that they will prevail in court. How can the lawyers for the Chargers argue otherwise?

A: Fans ask me this all the time: How can the Chargers' lawyers feel so strongly about this issue one way, and the City's lawyers feel equally strongly in the other direction? The answer is simple: How the Chargers look at this issue, and how the City looks at this issue, is determined entirely by the risks that each party is being asked to assume.

Under the City's quickie EIR plan, the City is taking no risk whatsoever. If the City's plan loses at the ballot box, or is struck down after several years of litigation by the courts, the City loses nothing other than the taxpayer money that will go to the successful plaintiffs' lawyers. So, if you are a City politician, why wouldn't you bet on even a small chance at winning, because if you lose, you don't really lose.

The Chargers, on the other hand, are being asked to assume all of the risk. The teams bear all the risk of losing the election, or losing the EIR challenge in court. The franchise will have wasted several years of time, given up a certain opportunity in the Los Angeles market, and, when all is said and done, likely squandered whatever negotiating leverage we had in our home market.

We hope our fans can understand why the Chargers are – after 14 years of effort – not willing to assume such enormous risks.

Q: Considering the Chargers are so protective of their 25% ticket base from Los Angeles, should the Chargers be granted permission to move to LA, isn't it logical to assume they would block San Diego from ever getting another team, especially if LA has 2 teams in their market competing for fans? By this current logic, aren't they going to be protective of whatever fan base remains in San Diego?

A: San Diego and Los Angeles are regarded by the NFL as completely separate markets, and the League would control the San Diego market if it became vacant. As we have consistently said, the Chargers will always respect whatever decisions are made by the NFL's owners – and that would go for the future of the San Diego market as well.

Q: Should the Chargers be forced to stay in San Diego, how hard do you think it will be to repair the burned bridges?

Final

A: I don't want to speculate on how the NFL's owners might vote. What I can say with certainty is that we will respect whatever decision the owners make, and we will respond appropriately to whatever that decision is. And no matter what happens, we hope our fans will at least understand how hard we have worked to explore every possible option in San Diego over the last 14 years.

Q: What do you say to fans who are so bitterly disappointed by how all of this has gone down?

A: The failure by politicians to come up with an actionable plan has absolutely nothing to do with the great fans of the Chargers. The fans are not to blame for the fact that over the years one elected official after another has been elected after promising "no taxpayer money for an NFL stadium."

So it is incredibly unfair that the Chargers' great fans now may have to bear the brunt of the decisions made by the politicians over the last 14 years.

For our part, the Chargers have made clear from the very outset that we would do everything possible to find a stadium solution in the San Diego region – and we have worked diligently at that for 14 years.

And the Chargers have also made clear that we will respect whatever decision the NFL's owners make regarding both San Diego and Los Angeles, and we are going to repeat that commitment of respect for the NFL process at the NFL's forum on Wednesday.