



Jim Mitrison <jim.mitrison@edcgov.us>

Item 48 on BOS November 17, 2015 Agenda

Bernard Carlson <1bcc@comcast.net>

Sun, Nov 15, 2015 at 6:41 PM

To: jim.mitrison@edcgov.us

Jim,

Please see that copies of this letter are put in each BOS packet.

Thank you,

Bernard Carlson

November 15, 2015

El Dorado County Board of Supervisors

Brian Veerkamp, Chair

Ron Mikulaco, First Vice-Chair

Shiva Frentzen, Second Vice-Chair

Michael Ranalli

Sue Novasel

RE: Item 48 on BOS November 17, 2015 Agenda

Dear Board Members,

With respect to agenda item #48 to order the Auditor to make a payment to the Diamond Springs Fire District of \$169,859 for reimbursement of an already purchased pumper truck which replaced an older truck. This is clearly illegal and beyond the authority of the BOS.

First, it is illegal in that mitigation fee act funds can't be used for replacement of old equipment only for additional new equipment or other facilities created by growth and additional needs. It plainly states in the Diamond Springs Fire District Mitigation Fee Act resolution that "The purpose of the development impact fees are to finance the public facilities and equipment as described in the Capital Improvement Plan, to mitigate THE IMPACT OF DEVELOPMENT ON FIRE PROTECTION SERVICES WITHIN THE DISTRICT (emphasis added)." The funds requested are for replacement (maintenance) of existing equipment. This has nothing to do with development creating a growth in services due to development.

15-1022 Public Comment Rcvd 11-16-15

Second, but more important is the fact that the money now belongs to the homeowners of record within the District and should have been refunded to the taxpayers years ago because of the District's failure to file a five year nexus study as required by the Mitigation Fee Act which they did attempt to do on 8/2/2011 via resolution # 11-0776 which was DENIED by the BOS. The last five year nexus study was filed and accepted on July 10, 2007 via reso # 179-2007 meaning there has not been a five year finding for at least eight years and four months. That means the unexpended funds in their mitigation fee act account became statutorily mandated to be refunded to the property owners of record and no funds can be expended for any purpose of the Diamond Springs Fire District whatsoever since July 11, 2012. The District and the BOS shall and by law refund all unexpended funds in their mitigation fee act account to the home owners of record.

The case of Walker, et al. v. City of San Clemente, et al. (filed 8/28/15) clearly states this in its recent analysis of the Mitigation Fee Act law (government code sections 66000-66008 and specifically section 66001 (d) (1) (2)) which states unequivocally on page three of that decision "We affirm (the trial court decision) because the City failed to make the five-year findings the Act requires and the statutorily mandated remedy for that failure is the refund of all unexpended Beach Parking Impact fees." The completely concurring (unanimous) three judge appellate court repeated itself on this section throughout the decision and reemphasized its decision on page 17 when it wrote "Section 66001, subdivision (d) (2), unmistakably declares, "If findings are not made as required by this subdivision, the local agency SHALL REFUND THE MONEYS in the account or fund." (Italics added by court) A statute's clear and unambiguous language controls the statute's meaning, and therefore we need not resort to extrinsic sources or rules of statutory interpretation to determine the statute's meaning."

This appellate court decision is controlling of the law in California. The unexpended money in the Diamond Springs Fire District account right now belongs to the homeowners of record within the district. To use those funds for any purpose other than a refund of the complete account to said homeowners would be a misappropriation of public money along with an illegal conversion of said moneys.

It is hereby requested that you follow the established law, not allow it to be ignored.

Sincerely,

Bernard Carlson, CEO

Friends of El Dorado County

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