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SDUHSD SUPERINTENDENT

Hon. Vincent P. Di Figlia
Judge of the Superior Court, Ret.
750 State Street, # 214
San Diego, CA 92101
(619) 508 8292

November 19, 2008

Ken Noah, Superintendent
San Dieguito Union High School District
710 Encinitas Boulevard
Encinitas, CA 92024

Dear Superintendent Noah:

I was retained by San Dieguito Union High School District to analyze any claims or allegations of district wrongdoing relative to Community Facilities District 94-2 and, more specifically, the controversy concerning the Calle Barcelona site for a proposed new middle school.

Given what I have come to learn of the highly charged nature of this controversy, I feel it necessary to address all elements of my involvement in this matter, including the circumstances involving my retention.

As noted in your Letter to Residents of CFD 94-2 dated September 22, 2008, my initial contact was in my office with Messrs. Steven Ma, Eric Dill and Daniel Shinoff who asked if I would entertain accepting the assignment. I indicated that I would. I have been unable to retrieve the exact date of that meeting from my calendar. To the best of my recollection, it occurred in the last week of July 2008.

My next contact was on August 14, 2008. Present at that meeting were Messrs. Ma, Dill, Shinoff and Ms. Joyce Dalessandro. While you briefly attended, you were not in attendance for more than a few minutes. At that meeting I was given a book of documents to assist me in understanding the history of CFD 94-2, the acquisition of the Calle Barcelona site, and the analytic process whereby the district identifies, prioritizes and ultimately utilizes funds within CFD 94-2. Mr. Ma was principally responsible at that meeting for explaining the materials presented.

With reference to the instant controversy, Mr. Ma presented the factors, e.g., changing demographics, and the proximity of two existing middle schools, one and three miles away, which ultimately led to the district's decision to forego construction on the Calle Barcelona site.

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It is my understanding that the materials provided to me have been made available to all interested homeowners in addition to other public records which I have not reviewed. I attach as Exhibit A, a copy of the Table of Contents so that interested homeowners can readily identify what I have reviewed.

In addition to Mr. Ma's presentation, Ms. Dalessandro and Mr. Shinoff provided oral historical facts for my consideration, chief among which was the infamous sign identifying the Calle Barcelona property as the site of a future middle school. It is my understanding this sign was in place for five years preceding the District's acquisition of the Calle Barcelona property, and it was not removed until 2005.

Ms. Dalessandro and Mr. Shinoff also informed me of the even more unfortunate ex parte meeting between your predecessor and two board members with the City Manager and two City Council members of the City of Carlsbad following publication of the Asset Management report (Tabs 15 and 16 of the materials supplied to me).

Pursuant to your notice to Residents of CFD 94-2, my next activity in this matter was at the open meeting of October 3, 2008. I informed those present that they were free to examine the materials I had reviewed and that, in addition, no claim of attorney/client privilege would be made. Specifically, I asked those wishing to speak to provide any information at their disposal which would reflect wrongdoing on behalf of the district or any member of its staff. As examples, I mentioned misappropriation of funds or misrepresentations by district staff. No one spoke to those issues.

Sadly, attendance was sparse. I heard from Mr. Amin Forkar who indicated in essence that he really didn't care if the school was built, but was concerned that the property might be sold and developed.

Mr. Leonard Steinberg refused to speak, ostensibly because Mr. Shinoff, counsel for the district, was present and the meeting was recorded.

Ms. Biana Kipolovek did speak and acknowledged that she was provided with documents from the developer of her home indicating no guarantees were being made that in fact a school would be built on the site. All the material and information I have received would indicate that the sign was not placed by district personnel.

While I was disappointed in the turnout on October 3, in retrospect I find it telling that not a single person appeared to accuse the district or any employee of malfeasance or nonfeasance with respect to its decision to forego building a school on the site.

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Given the comments by Mr. Forkar and the recent efforts by members of the community to have deed restrictions on the property constituting a restraint on alienation, it seems apparent that the main concern of the district's critics is the potential for sale of the parcel for other uses.

While the district and its board members have been speculating as to why the critics are hiding the ball, it may very well be that there is no ball to hide. If that comment sounds flippant, please forgive me. As I told you when I was retained, as a judge I am accustomed to reserving my judgment until I have heard both sides of a controversy. In this case, the lack of participation by the district's critics precludes me from doing so.

Necessarily my review in this matter was to determine if the district has conducted its business consistent with its educational mandate, in accordance with the powers and restrictions imposed by law including Mello Roos and sound business practices. In the absence of any evidence to the contrary, I conclude that it has.

While I was not retained to give legal advice and would not do so in any event, having spent 13 years as a City of San Diego deputy city attorney in the civil division, I have a good deal of experience in municipal law. The California Government Code provides a wide range of defenses and immunities for public entities and public employees. These include, inter alia, immunity for discretionary acts, Government Code §820.2, and misrepresentation, Government Code §822.2. Your legal counsel may advise you on these issues.

I think you, your staff and the board for allowing me to review this matter. I regret it could not be more productive.

Very truly yours,



Hon. Vincent P. Di Figlia
Judge of the Superior Court (Ret.)

VPD/mdw
Attachment: (Ex. A)

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