

Eureka City Schools | Board of Education

District Office - 2100 J Street - Eureka, CA 95501

(Room 116)

Regular Meeting

6:30 PM

May 19, 2022

MINUTES

A. CALL TO ORDER OF OPEN SESSION

Clerk Fernandez called the open session to order at 5:00 p.m.

Members Present: Johnson, Fernandez, Duncan

Members Absent: Taplin, Ollivier

Staff Present: Van Vleck, Ziegler, Storts, Will, Leonard, Harris

B. PUBLIC COMMENT ON CLOSED SESSION ITEMS

No public comment on closed session Items. Clerk Fernandez notes Closed Session Item C(6) is related to Developer Fee Study Objections.

C. CLOSED SESSION (Closed to Public) (Room 118)

Clerk Fernandez moved the meeting to closed session to discuss closed session Items C(1) through C(6).

[Note: President Ollivier arrived in Closed Session at 5:05 p.m.]

- (1) Employee Discipline, Dismissal, Release, Accept the Resignation of a Public Employee (GC § 54957)
- (2) Public Employment (Gov. Code §54957) - See Personnel Action Report Consent Agenda Item No. M(11)
- (3) Public Employee Appointment (Gov. Code §54957) - See Personnel Action Report Consent Agenda Item No. M(11)
- (4) Conference with Labor Negotiator Superintendent Van Vleck Regarding Eureka Teachers Association, Classified White and Blue Collar Units, and/or Unrepresented Employees (Confidential and Classified and Certificated Management) (GC § 54957.6)
- (5) Conference with Real Property Negotiator Superintendent Van Vleck Regarding Jacobs Building Property Concerning Price and/or Terms of Payment (GC § 54956.8) (Interested Parties: City of Eureka / Lead Negotiator: Brian Gerving and California Highway Patrol / Lead Negotiator: NaTonya Forbes)
- (6) Conference with Legal Counsel – Anticipated Litigation, One Case (GC § 54956.9) - Significant Exposure to Litigation Pursuant to Gov. Code §54956.9(d)(2) or (d)(3)

D. BOARD RECESS | 6:00-6:30 p.m. – Attend Chamber Mixer, Hosted by Eureka High School (Welding Shop) (1915 J Street)

The Board did not take a Board Recess.

E. RECONVENING OF OPEN SESSION (Room 116)

President Ollivier reconvened the meeting at 6:32 p.m.

Members Present: Johnson, Ollivier, Fernandez, Duncan, Watson

Members Absent: Taplin

Staff Present: Van Vleck, Ziegler, Storts, Leonard, Harris

F. REPORT OUT FROM CLOSED SESSION

In closed session item (1), the Governing Board acted to issue a Letter of Reprimand and suspend a Food Service Worker for two work days. The vote was unanimous in favor of the motion. Trustee Taplin absent.

G. PLEDGE OF ALLEGIANCE TO THE FLAG – Lafayette Elementary School

Students from Lafayette Elementary School led the Board in the pledge of allegiance and 5th grade students shared what they like best about their school.

H. PUBLIC HEARING

- (7) Notice of Public Hearing and of Proposal For Implementing School Facilities Fees as Authorized By Education Code Sections 17620 And Government Codes 65995

President Ollivier announced all public comment about this item, and D/A Item 28 and Item 29, will take place during this public hearing. Clerk Fernandez read instructions relating to public comment.

Will Zerlang addressed the Board. Zerlang is a Eureka resident and owner of several local businesses. He is not support of the developer fees. He provided a letter to the Board via email and read excerpts out loud to the Board. He reviewed current building fees and is concerned about costs increasing substantially. He provided several suggestions regarding the process, should the Board move forward on this item. He requested an extension of current permits (for projects moving through the system) and hopes only plans submitted after approval would have to incur the fees.

Danielle Zerlang thanked the Board for having the opportunity for public comment. She has four students who went through local schools and recognizes struggles. She believes putting fees on ADUs will stifle projects in the process or future projects. If the Board approves the fees, she hopes the Board will consider removing the fees after the grant is completed. She has spoken with local planning departments and some planning departments have lower fees to build, which encourages building

in other areas, which will ultimately hurt enrollment and building within Eureka. She understands the school has to do this to get the Pre-K funding. She would like this discussed annually if the Board moves forward.

Rob McBeth addressed the Board as a citizen of Eureka. He is a graduate of EHS and a lifelong resident of Humboldt. He is opposed to the facility fees and does not believe it will benefit the community. He is also upset with the State for requiring the District to have the facility fees in order to apply for the grant. He hopes the Board will find another solution.

Kevin McKenny, a local developer, addressed the Board. He thanked ECS for having a meeting early on to discuss the fees and the concerns. At that meeting, he asked the District about doing a lower fee. He is concerned about the methodology of the report, which does not go into detail on what is needed in order to support the fees. He disagrees with the report and does not believe the information is very thorough. He has found problems with those reports in the past. The concerns are noted in the letter from the attorney. He would like the report to be looked at in a more concise manner.

Tina Christianson addressed the Board in her capacity at HAR. She hopes the Board has reviewed the letter from Humboldt Builders Exchange. HAR is in agreement with everything in the Humboldt Builders Exchange letter. The current pricing for a new house is \$300 per sq. foot. She notes an increase on a typical house would be in excess of \$1,800. Schools are declining in enrollment and there are more charter schools opening. She would like the Board to look at the report and analyze it for accuracy.

Public hearing closed.

I. ADJUSTMENTS TO THE AGENDA

- (8) Approval of the Agenda

No adjustments to the Agenda.

It was M/S by Johnson/Duncan to approve the Agenda. Student Board Representative: yes 1, no 0, absent 0. Governing Board: yes 4, noes 0, absent 1 (Taplin). Motion carried.

J. INFORMATION

- (9) Student Reports – No student reports.
- (10) Superintendent's Report – Van Vleck acknowledged the new look of the Boardroom, which is being updated by the Maintenance Team. ECS just received a community school grant, which is exciting. The grant will build a

community center at each of the elementary schools to address social/emotional health and family involvement. Van Vleck congratulated Teri Waterhouse as her new position as the Superintendent of South Bay and Kristi Puzz as the new Principal at Winship Middle School.

(11) Board Members' Reports

Watson notes there are only three weeks left in school and she is excited to end her senior year. She provided information on recent awards at EHS and states spring fever week is next week, including club fairs and powder puff.

Ollivier took part in the student Board member interviews and notes Watson has set the bar high. She thanked Watson for her work on the Board.

Fernandez thanked everyone for coming out and providing public comment. He also thanked Watson for her work on the Board, as she has a successful future ahead.

Duncan also enjoyed participating in the student board member interviews. He is distraught over the issue of the developer fees but does want to do what is best for the students.

K. PUBLIC COMMENT ON NON-AGENDA ITEMS

No public comment.

L. CONSENT CALENDAR

It was M/S by Fernandez/Duncan to approve the following Consent Calendar items:

- (12) Approval of Personnel Report No.14
Referred to the Board by:
Renae Will, Director of Personnel Services and Public Affairs
- (13) Approval and Adoption of the School Calendar and Schedule of Holidays for the 2023-2024 School Year
Referred to the Board by:
Renae Will, Director of Personnel Services and Public Affairs
- (14) Approval of Resolution #21-22-031, Revised Date for Observance of Abraham Lincoln's Birthday in 2023-2024 School Calendar
Referred to the Board by:
Renae Will, Director of Personnel Services and Public Affairs
- (15) Approval of Minutes from the Regular Meeting on April 27, 2022
Referred to the Board by:
Fred Van Vleck, Ed.D., Superintendent

- (16) Approval of April 2022 Warrants
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (17) Approval of Memorandum of Understanding between Eureka City Schools and Cutten Elementary School: "Out of the Box" Drop Off at Sequoia Zoo
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (18) Approval of Intent to Apply for the 2022-23 Agricultural Career Technical Education Incentive Grant – Eureka High School
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (19) Approval of AP Statistics Curriculum, BFW
Referred to the Board by:
Gary Storts, Assistant Superintendent of Educational Services
- (20) Approval of Elementary Social Studies Curriculum Adoption, TCI
Referred to the Board by:
Gary Storts, Assistant Superintendent of Educational Services
- (21) Approval to Accept Donation to Eureka High School: Auto Shop Program
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (22) Approval of Corp Yard Solar/Microgrid Project Change Order
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (23) Approval to Accept Donation to Lafayette Elementary from McCrea Subaru/Adopt A Classroom
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services
- (24) Approval of Revised Classified and Certificated Management Salary Schedules Due to Changes in Work Days
Referred to the Board by:
Renae Will, Director of Personnel Services and Public Affairs
- (25) Approval to Surplus Middle School Science Textbooks
Referred to the Board by:
Gary Storts, Assistant Superintendent of Educational Services
- (26) Approval of Intent to Apply for 2022-23 Carl D. Perkins Career and Technical Education Grant
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

- (27) Approval of Declaration of Equipment as Surplus and Authorization to Sell
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Student Board Representative: yes 1, no 0, absent 0. Governing Board: yes 4, noes 0, absent 1 (Taplin). Motion carried.

M. DISCUSSION/ACTION

- (28) Resolution #21-22-028; Adopting Level 1 Developer Fee Justification Study
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Ziegler notes Items M(28) and M(29) are very similar and will provide the overview at the same time. He reviewed the history of developer fees, including regulations, and fees over time due to the adjustments. The Board is required to complete a justification fee, which they have done. On August 26, 2021, the Board directed staff to move forward in the process and on January 13, 2022, the Board approved the contract with Jack Schrader, with a 5/0 vote. He notes Fortuna and McKinleyville already charge these fees and Freshwater and Cutten are both looking into charging the developer fees.

Ziegler reviewed the grant parameters and the requirements in order to obtain the financial hardship status, including charging developer fees. Regarding the bonds, it is anticipated the District will meet the timeframes for approval of the projects through DSA but that is ultimately in DSA's hands. In the event other local Districts apply for developer fees, the fees would be reduced and shared with the other District. Conversely, if just one District does the developer fees, that District would receive the fees.

Ziegler addressed enrollment questions and notes the projected enrollment in the report provides for a 42 student increase annually, over the course of 25 years. He also reviewed the parameters for the new TK program in California. As part of this process, there is a biannual (every two years) requirement to revisit the developer fees. The District is planning to revisit this annually. Ziegler reviewed some of the mitigation efforts, which would allow some exceptions to the developer fee, including the potential for financing the fee.

The District is required to charge the highest Level 1 fees in order to qualify for the financial hardship. There is no flexibility regarding the exception, as the District is required to follow the code. It is noted after the Board meets the hardship requirements, there is leeway at any time to change the amount, provided the Board is not trying for the hardship funds. If the Board adopts this, the fees would have to be implemented/collected within 60 days. OPSC will dictate on if the fees would applied to permits to build that were applied for prior to approval by the Board to

pass the developer fees. There are two rounds of the grant, and if the District on the first round, it is possible ECS may apply for the 2nd round.

ECS needs to build Title 5 classroom in order to address the need for preschool/TK/K classrooms. The Board discussed parameters regarding senior housing exemptions. It is believed that any addition to an existing construction under 500 sq. feet would be exempt from the fee.

Funds raised through the developer fee process are kept in a separate account and there would be an annual reporting showing how the funds are being used. The funds can be used for facilities, not for maintenance or salaries.

Van Veck acknowledged the letter received from the attorney for the Northern California Association of Home Builders (NCHB). This letter will be added to the board pack. [Letter attached to final minutes.]

It is staff's recommendation to adopt the resolution with language with language added that the Board considered the evidence submitted by the public, confirmed with District staff that the issues raised can be addressed by supplementing the Study, and direct staff to bring the supplement back to the Board for consideration.

It was M/S by Johnson/Fernandez to approve Resolution #21-22-028; Adopting Level 1 Developer Fee Justification Study with language added that the Board considered the evidence submitted by the public, confirmed with District staff that the issues raised can be addressed by supplementing the Study, and direct staff to bring the supplement back to the Board for consideration no later than June 28, 2022. Student Board Representative: aye 1, no 0, absent 0. Governing Board: yes 4, noes 0, absent 1 (Taplin).

- (29) Resolution #21-22-030; Establishing and Adopting School Facilities Fees Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

This is the second step in the process to implement the fees. This would authorize the District to move forward in assessing and collecting the fees.

It was M/S by Fernandez/Johnson to approve Resolution #21-22-030; Establishing and Adopting School Facilities Fees. This will be reviewed by the Board in no later than six months. Student Board Representative: aye 1, no 0, absent 0. Governing Board: yes 3, noes 1 (Duncan), absent 1 (Taplin).

In regard to the "no" vote, Trustee Duncan notes he is completely opposed to more fees being put onto the builders and the community.

- (30) Accept Low Bid for Zane Building 1 Roof Project
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

The District received one bid from McMurray & Sons. McMurray & Sons' bid came in at \$135,590.

It was M/S by Duncan/Johnson to approve and accept the Low Bid for Zane Building 1 Roof Project from McMurray & Sons. Student Board Representative: aye 1, no 0, absent 0. Governing Board: yes 4, noes 0, absent 1 (Taplin).

- (31) Resolution #21-22-029; Adopt an Initial Study/Mitigated Negative Declaration Pursuant to the California Environmental Quality Act for the Eureka High School - Albee Stadium Renovation Project
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Ziegler notes this is another step in the process of moving forward with the Albee Stadium Project at EHS.

It was M/S by Johnson/Duncan to approve Resolution #21-22-029; Adopt an Initial Study/Mitigated Negative Declaration Pursuant to the California Environmental Quality Act for the Eureka High School - Albee Stadium Renovation Project. Student Board Representative: aye 1, no 0, absent 0. Governing Board: yes 4, noes 0, absent 1 (Taplin).

- (32) Process for Filling Board Member Vacancies
Referred to the Board by:
Fred Van Vleck, Ed.D., Superintendent

Van Vleck notes Trustee Taplin has resigned from the Board. She has an amazing legacy at ECS. Her resignation is effective on June 18, 2022. At this point, the Board needs to determine if they want to do a provisional appointment or wait and let the seat be filled in the next general election. The Board notes she has been a honor working with Trustee Taplin. She has dedicated over 60 years to the District.

It was M/S by Duncan/Ollivier to approve the filling the Board member vacancy with a provisional appointment. Student Board Representative: aye 1, no 0, absent 0. Governing Board: yes 3, noes 1 (Fernandez), absent 1 (Taplin).

Trustee Fernandez explained his "no" vote, noting he appreciates Trustee Taplin's service to the District but disagrees with the provisional process given the general election in November.

Given the Board direction for a provisional appointment, Van Vleck requested availability for future meetings. It is determined the applications

will be reviewed at a Special Meeting on Friday, June 3, 2022 at 4:30 p.m.
There will be a special meeting for interviews on Thursday, June 9th, at 5:00 p.m.

N. DISCUSSION

- (33) Citizens' Oversight Committee (COC) Annual Report to the Board
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Denise Jones, President of the COC, provided the annual written report to the Board. Jones reviewed report which notes the posting requirements (including the locations at the District and the website), review of the bond expenditures, and the requirements regarding the annual report. She appreciates the District for the transparency and the monthly presentations by Charley Batini. Jones notes the auditing firm concluded the District has properly expended the funds for Measure S. She thanked the District for the compliance and reporting. The COC feels welcome to ask questions and have discussions, which is a wonderful thing. She thanked Paul, Charley, and Jen, along with the maintenance crew.

- (34) Food Services Department Update
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Ziegler introduced Kevin Ralston, the District's new Food Service Director. Ralston notes there has been a lot of changes throughout COVID-19 but many successes as well. He reviewed the Central Kitchen staff, the Food Service Site Teams, the local school sites served (including Pacific View, Glen Paul, and the Eureka Community Center, etc.), a summary of the meal programs (including the summer program, the afterschool supper program, and the fresh fruit and vegetable grant), the challenges and opportunities moving out of the pandemic, and the trends and projections. Ralston reviewed the funding courses for the 2022-23 school review including the NSLP Equipment Grant, Kitchen Infrastructure Grant, Supply Chain Assistance, and Local Procurement, etc. He reviewed the implementation plan for universal meals and challenges ahead, including SB 1383 and supply chain concerns. The Board thanked Ralston for the Board dinners, which are always delicious and appreciated.

- (35) Enrollment Update
Referred to the Board by:
Paul Ziegler, Assistant Superintendent of Business Services

Ziegler reviewed the CBEDS projections, noting a slight decrease in enrollment. Currently, the District is slightly ahead of the enrollment number projected for this time last year. Ziegler notes these numbers are conservative, as the District does not want to over project when building the classrooms. He also reviewed ADA, intradistrict enrollment, etc.

(36) Local Control Accountability Plan Update

Referred to the Board by:

Gary Storts, Assistant Superintendent of Educational Services

Storts provided an update to the Board on the LCAP. It has been submitted to HCOE for review and will come back to the Board for preview on June 2nd.

(37) Annual District English Learner Advisory Committee (DELAC) Presentation

Referred to the Board by:

Gary Storts, Assistant Superintendent of Educational Services

Storts provided the annual report to the Board on DELAC. He reviewed the DELAC members, which is comprised of ELAC members at the sites and other school staff and parents. At least 51% of the DELAC must be parents of EL students. Storts reviewed the DELAC responsibilities (elections/bylaws, conducting district-wide needs assessment), accomplishments, and process for improving services based on input/engagement efforts.

(38) Annual CTE Report (Career and Technology Plan for Secondary Schools including Continuation High School and Dual Enrollment)

Referred to the Board by:

Gary Storts, Assistant Superintendent of Educational Services

Storts provided the annual report to the Board on Career and Technology Plan for Secondary Schools including Continuation High School and Dual Enrollment. He reviewed program opportunities at each site, CTEIG funding, dual enrollment classes, etc.

(39) Policy Updates from CSBA - December 2021 and Revisions to BB 9400 (First Review)

Referred to the Board by:

Fred Van Vleck, Ed.D., Superintendent

This is the 1st review of the policies. These policies will come back to the Board on Consent at the next Board meeting.

O. CLOSED SESSION

Closed session did not continue.

P. RECONVENING OF OPEN SESSION

Not applicable. Closed session did not continue.

Q. REPORT OUT FROM CLOSED SESSION

Not applicable. Closed session did not continue.


R. INFORMATIONAL ONLY ITEMS

(40) Information Only: June 2022 - Review of CDE Calendar of Events

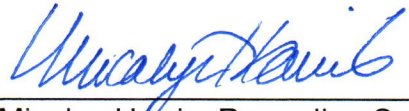
S. ADJOURNMENT

President Ollivier adjourned the meeting at 8:55 p.m.

Respectfully submitted,



Fred Van Vleck, Ed.D.
Secretary of the Board of Education



Micalyn Harris, Recording Secretary



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

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May 16, 2022

Via Electronic Mail
estagg@scslscal.org

Erin Stagg
School and College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, CA 95403

Re: Objection to Level 1 Developer Fee Study

Dear Ms. Stagg,

As you know, our office represents the Northern California Association of Home Builders ("NCHB"). Please let this letter serve as NCHB's notice that it objects to the Level 1 Developer Fee Study (the "Study") prepared on behalf of Eureka City Unified School District (the "District") and dated April 5, 2022. The Study contains significant legal and methodological errors and fails to provide a legal justification for the issuance of developer fees pursuant to Education Code Section 17620, subdivision (a). It is our understanding that the District intends to take action at its May 19, 2022 Board meeting to approve the Study and commence imposing fees on developers within the District's boundaries. We strongly urge the District Board not to take this action as the Study is flawed, and there are alternative ways for the District to qualify for financial hardship grant funds under the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program.

In short, the Study justifies the imposition of developer fees solely to fund deferred maintenance projects and modernization needs that currently exist throughout the District's facilities and which would exist whether or not any new development occurs in the District. These costs cannot be reasonably attributed to the impact of future new development within the District, and it would be palpably unfair to force new families moving to Eureka to shoulder the cost of renovating the District's aging school facilities on their own, when that renovation would clearly benefit all of Eureka's families equally.

For the reasons laid out further herein, NCHB respectfully requests that the Board take no action to implement the developer fees as recommended pursuant to the Study's legally flawed justification and to instead issue an alternative study or pursue an alternative course of action that takes the points raised herein into account.

Please be advised that should the Board issue a resolution implementing the school facility developer fees as recommended by the Study in its current form and upon the justification therein identified, it would be subject to legal challenge and invalidation.

Education Code Section 17620 Does Not Permit the Imposition of Developer Fees to Pay for Deferred Maintenance or Pre-existing Modernization Needs

The Study itself gets off on the wrong foot by boldly misrepresenting the language of the operative statute. On page 4, the Study claims that Education Code Section 17620 provides authority to levy fees “for the construction or modernization of school facilities.” This language is presented as a direct quotation from the statute. However, Section 17620 states no such thing. It provides for fees to fund “construction and reconstruction of school facilities.” (Education Code § 17620, subd. (a) [emphasis added].)

The distinction is critical, because while the law permits developer fees to be assessed as a source of funding for the reconstruction of school facilities to increase their capacity in response to new development, the law does not permit developer fees to be used to fund deferred maintenance/modernization needs that do not result directly from the impact of new development.

Education Code Section 17620, subdivision (a)(3), provides that “‘construction or reconstruction of school facilities’ does not include any item of expenditure for” the purposes of deferred maintenance described in Education Code Section 17582.

Deferred maintenance purposes are described in Education Code Section 17582 to include but not be limited to “major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing, and floor systems; the exterior and interior painting of school buildings; the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials; the encapsulation or removal of asbestos-containing materials; the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials; and the control, management, and removal of lead-containing materials.”

In *Shappell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 238 the Sixth District California Court of Appeal opined that developers should not be “accountable for costs of correcting problems of deferred maintenance or modernizing existing structures which are still functional” but rather should only be accountable for fees to fund reconstruction to the extent necessary to maintain a similar level of service or where such renovation provides enhanced capacity for increased enrollment caused by new development.

Neither of these grounds exists here or is identified by the Study as being the purpose of the developer fees to be assessed. From all appearances, it appears that the Study, by simply replacing words in the statute, is claiming that the District may impose fees to pay for its deferred maintenance/modernization needs without further justification. Whether the projects are categorized as reconstruction, renovation, modernization or anything else, if the actual work to be done consists of deferred maintenance of the type prohibited from being funded through developer



fees under the law, the fees will be void and developers forced to pay them will be entitled to a refund.

The Deferred Maintenance/Modernization Costs the Fee is Being Sought to Fund Are Pre-Existing and not Reasonably Attributable to the Impacts of New Development.

The fee scheme recommended by the Study violates the Mitigation Fee Act because the modernization to be funded is not in any way necessitated by or caused by new development. In short, there is no causal “nexus” whatsoever between new residential units being built and the District’s need to modernize its aging school facilities—and the Study makes no attempt to demonstrate the causal nexus.

The Mitigation Fee Act provides, in Government Code Section 66001, subdivision (a), that “in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall” among other things, “[d]etermine how there is a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed.”

Further, Section 66001, subdivision (g), provides that a fee “shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain existing levels of service or (2) achieve an adopted level of service that is consistent with the general plan.”

The entire premise of the Study is that developer fees are justified to pay for “modernization” that is necessary to “maintain the existing level of service or achieve an adopted level of service that is consistent with a general plan.” (Study, page 7.) However, the Study fails to establish how the District’s modernization needs are specifically the consequence of new development and are not just the natural result of its existing facilities aging over time. The Study does not address levels of service beyond merely averring to the general need to keep school buildings upright—which, again, is purely a deferred maintenance cost that would exist whether or not new development occurs at all.

To justify fees on the grounds identified (maintaining levels of service), the Study would have to demonstrate an actual causal relationship between new development and the need to spend money on school reconstruction. The Study makes no attempt to do so; it merely refers to the existing need to refurbish facilities on a roughly 25-year increment and assigns those existing deferred maintenance obligations to be paid for by new development. The Study does not claim, for example, that there are nonfunctional school facilities that need to be refurbished to meet new demand stemming from new development, which facilities would not need to be refurbished otherwise.

Here, the District has not and cannot show a causal nexus. If no new development occurred in Eureka over the next 25 years, its school facilities would still require the same modernization upkeep (i.e., deferred maintenance). Pinning the upkeep costs of old facilities on new development is also deeply unfair. Those just moving to Eureka will have contributed nothing to these facilities’



worn-down state of repair but will be forced to carry the burden of renewing Eureka's school facilities for the benefit of all. This is precisely what the Study would implement.

This is not only unfair but also illegal. California case law and Section 66001, subdivision (g), have long prohibited developer fees from being used to pin the costs of old obligations on new development. In *Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, the Court of Appeal sustained a challenge to a fire hydrant fee imposed as a condition of being granted a new building permit. The court held that the fee was invalid because it sought to make new residential development shoulder the cost for replacing a 97-year old water main when the main should have been replaced 47 years previously. (Id. at p. 1220.) In other words, the fee was invalid because it attempted to make new development pay for an old deficiency.

Likewise, in *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, the Court of Appeal invalidated a condition on a development project that required dedication of 14% of the project's land to realign an intersection. The court found that the dedication requirement (a "fee" under the Mitigation Fee Act) was invalid because the project itself had no traffic impacts, and the dedication was sought merely to implement a long-planned intersection improvement. (Id. at 1476.) In other words, it is clear that developer fees cannot be used to fund agency projects that have no causal nexus to the development being burdened.

And again, as mentioned above, in *Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th 218, 234-239, the Court found that a school district could not properly impose the full cost of new, already-needed school facilities on new development, but could only extract such funds that were proportional to the amount of increased enrollment actually attributable to the new development. The *Shapell* court further noted, along those same lines, that the school district could only charge fees for refurbishment to the extent necessary to maintain a similar level of service in light of increased facilities needs. Existing facilities deficiencies were not a valid use of fees extracted pursuant to the Mitigation Fee Act.

Pursuant to *Shapell* and Section 66001, subdivision (g) which codifies it, the Study must show how new development causes the continuing need for the District's facilities to be modernized on a 25-year interim. If it cannot, the fee is illegal. The Study makes no such demonstration of causation, and so the developer fees and any resolution implementing them are illegal. The Study merely reasons backward from how much money the District would like to extract by cherry-picking generic statewide values that have no bearing on Eureka and then skipping over the essential causal relationship justifying the imposition of fees.

Furthermore, the Study admits that the fees are intended to fund a grab-bag of District spending priorities by making theoretical new development pay for them. It mentions that the fees may also be used to pay for over-budget deferred maintenance projects from 2014 and 2020 bonds, to fund compliance with universal TK program requirements entirely unrelated to new development, and "other modernization needs," none of which have any causal nexus to new development and would be clearly illegal uses of developer fees. The proposed use of developer fees on new residential development to fund these District renders the fee illegal and invalid, as the Study makes no attempt to justify the use of fees for these purposes as required by the Mitigation Fee Act.



To be clear, this is not the typical case where new development has an actual impact on existing facilities capacity and thus necessitates the imposition of a fee to pay for facilities sufficient to meet the increased demand. There are no facilities capacity issues here, as the District's enrollment has not increased for many years, following a state-wide pattern of declining public school enrollment, and will likely continue to decline even with new development.

In fact, the Study states on page 7 that the facilities needs at issue are not related to capacity and exist "regardless of the availability of capacity to house student enrollments, inclusive of student enrollment generated from new development." Further, the information contained in the Study regarding planned development in the District for the next 25 years is inconsistent with the City's public planning documents such as the General Plan regarding the population trends of the area, as well as assuming the theoretical construction of housing that 1) will not accommodate families with children (such as half of the City's planned development being in the form of accessory dwelling units that the City publicly acknowledges is intended for elderly residents, and could not legally accommodate families), 2) is currently not able to be fully built due to limitations in the City and County's sewer and water infrastructure, and 3) is likely to be the replacement of much older construction that will need to be replaced, rather than the construction of new homes. Moreover, the study's entire premise and justification is based on informal statements by the City Planner and Planner for the County regarding the number of anticipated housing units to be built in the area in the next 25 years. These informal statements are not tied to actual studies, reports, or formal positions taken by the Planning Departments, and thus cannot serve as the foundation for the entire study. Moreover, these development estimates are not consistent with the patterns in housing development in the City and County for the last 20 years, as reflected in the City's General Plan and Housing Element updates.

Capacity is not the problem facing the District's facilities; nor is maintaining level of service in Eureka's schools. Rather, the District has significant deferred maintenance obligations to cover and other priorities it would rather spend that money on, and the Study improperly, and in a manner inconsistent with law, offers it a way to push its deferred maintenance costs on others. By pinning those significant costs on the new families theoretically expected to move to Eureka over the coming years, however, the District would be risking making Eureka unaffordable to move to, stunting the area's overall economic growth and diverting new jobs and families, and thus enrollment, away from Eureka.

As explained herein and in the court cases cited above, as well as in Government Code Section 66001, subdivision (g), pre-existing facilities deficiencies are not the responsibility of new development, and any fee that attempts to force new development to pay for the District's deferred maintenance and existing facilities deficiencies is illegal and will be subject to refund under the Mitigation Fee Act.

Lastly, the Board confirmed in its August 26, 2021 meeting that this effort is for the purpose of allow the District to qualify for financial hardship grant funds under the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program as it meets the law's requirements to offer expanded pre-school and transition kindergarten commencing in the 2022-23 school year. However, the applicable regulation requires only that the District certify that




is has “**made all reasonable efforts to fund its matching share of the project** by demonstrating it is levying the developer fee **justified under law** or an alternative revenue source equal to or greater than the developer fee otherwise justified under law.” (2 CCR Section 1860.14(a).)

This language makes clear that as long as the District has made reasonable efforts to fund its matching share through efforts that are justified under law, it meets the requirement for eligibility for the hardship grant. As we have described above, the District currently does not meet the legal standard to levy developer fees under the law, and thus is not justified in levying developer fees. We also understand the District has explored all other current sources of funds and has not identified other sources as its bonding capacity does not provide for it, and there are no other available state funds to cover its matching share. Thus, the District has met the standard for eligibility and does not need to actually adopt the developer fees to qualify for the hardship grant funding.

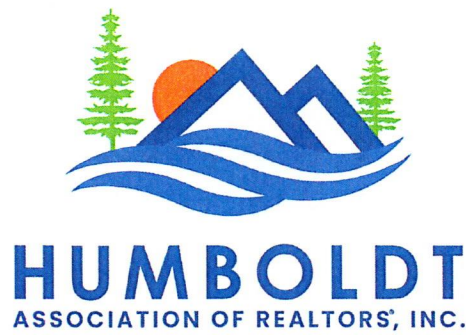
We would be more than happy to offer further input to the Board on this issue, but respectfully recommend that the District not move forward with adopting the Study and implementing developer fees in the District. The long-term consequences on the District’s enrollment, and on the ability of the District’s families to afford housing, and thus remain in the District, will be significant. If the District does move forward, NCHB will have no choice but to explore all of its options.

Sincerely,

LAW OFFICES OF YOUNG,
MINNEY & CORR, LLP


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ATTORNEY AT LAW





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AFFILIATE LIAISON

Lisa Hall

EXECUTIVE OFFICER

Kristen Kelley

May 17, 2022

Eureka City Schools Board of Education
2100 J Street
Eureka, CA 95501

RE: The Humboldt Association of Realtors objects to proposed Developer fees and the Developer fee justification study.

Dear Eureka City Schools Board of Education,

The Humboldt Association of Realtors objects to the Level I Developer Fee Justification Study for Eureka City Schools submitted April 5th, 2022: Humboldt County does not qualify for these Level I Developer Fees, and the District has stated uses for the funds that are not supported by Education Code Section 17620.

We believe moving forward with the developer fees would be a waste of Eureka City Schools resources and time due to the inaccuracy of the Justification Study and the misuse of the proposed funds collected.

As stated in Education Code Section 17620 and section 65995 "construction or reconstruction of school facilities does not include, regular maintenance or routine repair, inspection, sampling, analysis or removal of asbestos-containing materials, or the purpose of deferred maintenance."

Deferred Maintenance as defined in Section 17582

"Major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing, and floor systems; the exterior and interior painting of school buildings; the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials; the encapsulation or removal of asbestos-containing materials; the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials; and the control, management, and removal of lead-containing materials."



As stated in the Justification study, the funds would be used for replacement and/or modernization of school facilities, completing projects included in the 2014 and 2020 bonds, retrofitting of classrooms to meet Title 5 requirements. While the District would need substantial funds to complete these projects, it would be unlawful to use any developer fees collected for the purposes in the Justification Study.

Imposing Developer Fees will hinder Humboldt County's ability to hit the RHNA numbers (again).

Humboldt County has not been able to hit the Regional Housing Needs Assessment (RHNA) consistently. The upcoming RHNA has asked significantly more of Humboldt County as compared to years past, and developer fees would hinder not only larger subdivisions but also any community member taking advantage of programs such as SB9. Any addition that would result in an increase in assessable space that exceeds 500 square feet would be subject to these fees.

This means for the average person in Humboldt County, assuming they make an average household income in Humboldt County (\$49,235 [2020]), and are building an average size ADU in California, this would add \$2,945.85 to the cost of permitting that ADU. That is 5% of the total HOUSEHOLD income for the year on top of the cost of building. With the County relying heavily on members of the community to help reach the RHNA numbers, imposing developers fees would put even more of a burden on the community that we are asking for help. The District would be encouraging higher development prices for all in Humboldt County, present and future.

We strongly urge the District Board not to take this action as the Study is inaccurate, and there are alternative ways for the District to qualify for financial hardship grant funds under the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program. But instead encourage development for the health and safety of all of Humboldt County.

Please see next page for any source material referred to in this letter.

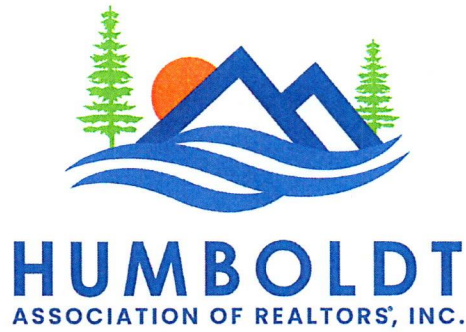

Kristen Crooks

Humboldt Association of Realtors®

Government Affairs Director
Education Coordinator

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Academic Year	Charter School Enrollment	Non-Charter School Enrollment	Total Enrollment
2021-22	11.5%	88.5%	5,892,240
2020-21	11.5%	88.5%	6,002,523
2019-20	11.0%	89.0%	6,163,001
2018-19	10.6%	89.4%	6,186,278
2017-18	10.1%	89.9%	6,220,413
2016-17	9.7%	90.3%	6,228,235
2015-16	9.2%	90.8%	6,226,737
2014-15	8.7%	91.3%	6,235,520

Graph Pulled from Data Reporting Office, California Department of Education

National Center for Education Statistics

Education Code 17620 Verbiage

(3) For purposes of this section and Section 65995 of the Government Code, “construction or reconstruction of school facilities” does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

Study Verbiage

The purpose of fees being levied shall be used for the replacement and/or modernization of school facilities. The District will provide for the replacement and/or modernization of school facilities, in part, with developer fees. Developer fees will assist with completing projects included in the 2014 and 2020 bonds along with any other modernization facility needs. In addition, due to the recent universal transitional kindergarten requirement, the District is in the process of determining if retrofitting of existing classrooms to meet Title 5 requirements or if additional transitional kindergarten classrooms will be required to house transitional kindergarten students.”



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May 19, 2022

Mr. Paul Ziegler
Assistant Superintendent
Eureka City Schools
2100 J Street
Eureka, California 95501

RE: City of Eureka School Facilities Fee

Mr. Ziegler:

I have read the measure being presented to the City of Eureka School Board this evening, and am concerned with the effect this will have on the building community, and ultimately the consumer (home buyer, renter). While I recognize the District may be facing financial hardship, the measure to assess a facilities fee will have a more adverse affect on housing and the consumer than it will in solving the District's financial woes.

Census.gov publishes the median household income for Eureka, CA at \$43,199. Depending on the source, or bank, the recommended amount of income that shall be spent on housing (mortgage, property taxes, insurance) is 35-45% of pre-tax income. Assuming the most liberal model, with household income of \$43,199 and 45% of said income dedicated to housing, the maximum exposure one could afford for housing would be \$19,440/annually (\$1620/month).

Depending on the source (Realtor.com, Zillow.com, ColdwellBanker.com) the median home price in the 95501 zip code ranges from \$400,000 to \$450,000. Assuming the most liberal home price of \$400,000, with a 12% down payment (average down payment in United States), 30 year loan @ 4%, the monthly mortgage payment would be \$1680/month. Real estate taxes would be +/- \$4000/yr (1% of assessed value), previously approved school bond fees would be \$68/yr (\$17/\$100,000 value), and insurance +/- \$1200/yr produces annually additional real estate expenses of \$5268/yr (\$439/month).

Assuming a standard home is 1500 square feet (sf), the proposed fee at \$4.79/sf will result in an additional cost of \$7185/home. Provided the developer of a new single-family home has a profit margin 15%, the resultant cost of said fee when passed to the home buyer would be \$8262.75. Assuming this increase in cost is included in financing of a home (without a change in down payment), the mortgage cost would be an additional \$39/month based on the aforementioned loan assumptions.

Taking all the costs and assumptions presented herein, the median Eureka household can afford a mortgage of \$1620/month. A median home in Eureka sells for \$400,000, producing a mortgage payment of \$1680/month or a total housing cost of (mortgage, taxes, insurance) of \$2119/month. As it presently stands, the median home in Eureka, CA is \$499/month more than the median family can afford, or +/- 31% more than can be afforded. Adding an additional \$39/month to said cost makes said home \$538/month more than the median family can afford, or an additional 2.4%.

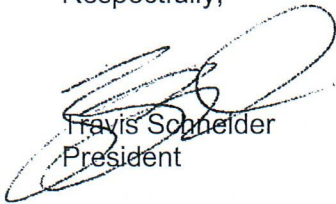
In essence, greater than 50% of households in the City of Eureka can't presently afford. I recognize there may be some shortcomings in the model I have presented herein; however, I think the bones of the

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argument are strong and adding additional fees to home construction and development will further decrease affordability and distance those taking the plunge to develop housing. Ultimately the measure will likely 'kill' most planned projects within the fee boundaries and drive already inflated housing costs for existing homes to a more unaffordable level.

For a City that is already struggling to meet State of California Mandated Housing development the subject fee will further hamper efforts to bring housing, let alone 'affordable' housing to the market. I encourage the District to explore other means to resolve their financial hardship without saddling developers and ultimately the consumer (i.e. home buyer, renter) with higher housing costs.

Respectfully,



Travis Schneider
President