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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
10

11 TUSTIN UNIFIED SCHOOL DISTRICT, a
12 School District of the State of California

13 Plaintiff,

14 v.

15 CITY OF TUSTIN, a California Municipal
Corporation; and DOES 1 through 25,
16 inclusive

17 Defendants

18
19 CITY OF TUSTIN, a California Municipal
Corporation,

20 Cross-Complainant,

21 v.

22 TUSTIN UNIFIED SCHOOL DISTRICT, a
23 School District of the State of California and
DOES 100 through 500, inclusive,

24 Cross-Defendants
25

CASE NO.: 30-2010 00345476

ASSIGNED FOR ALL PURPOSES TO
THE HONORABLE JOSEPHINE S.
TUCKER
DEPARTMENT: W12

**CROSS-COMPLAINT OF CITY OF
TUSTIN FOR DECLARATORY AND
INJUNCTIVE RELIEF**

HEARING DATES PENDING:
None

DATE ACTION FILED: 2/18/10
TRIAL DATE: None

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27 In a Cross-Complaint against Plaintiff Tustin Unified School District (“District”),
28 Cross-Complainant City of Tustin (“City”) alleges:

INTRODUCTION

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2 1. Based on the allegations in the Complaint, the parties do in fact have a legal
3 dispute about whether State and local law require the District to obtain a grading permit,
4 encroachment permit, and to seek approval of its water quality management plan from the
5 City, and whether the District is required to pay the City fees associated with the approval
6 process. The City maintains its position is well supported. However, although the City had
7 hoped the two public agencies could have avoided litigation, the City agrees that a
8 declaratory relief action is the best forum for the parties to resolve their legal dispute.

9 2. A genuine dispute between two public agencies exists regarding the
10 application of law to this situation that needs resolution, and judicial intervention makes
11 sense. The Complaint, however, is highly inflammatory and contains factual inaccuracies
12 and outright lies about the City Council and its staff. The Complaint attempts to make this
13 dispute personal, manufacturing a grand City conspiracy to deprive the District's students of
14 appropriate school facilities. This is disservice to the residents of Tustin, members of the
15 City Council and City staff who are simply trying to follow the law as they understand it.
16 The City shares the District's concerns about students and the very real need for the District
17 to make improvements to Tustin High School and to construct the new Heritage Elementary
18 School. The City's concerns, however, extend not just to the students on a school campus
19 but also to the safety and security of the parents and students going to and from the schools,
20 as well as the rest of the traveling public and the owners of properties adjacent to the school
21 sites.

22 3. The District is proposing to undertake work and is currently undertaking work
23 that can have a very significant impact on adjoining property and public streets and rights-
24 of-way. Rain and storm waters do not differentiate between commercial, residential, and
25 school properties. Rain waters, storm waters, and runoff need to be handled in an
26 appropriate manner consistent with all laws including very significant federal and state
27 legislation and regulations. The City and not the District is charged with the responsibility
28 of ensuring that storm waters are properly handled. The City is obligated under various

1 federal, state, and local laws to ensure that water quality requirements permit and that the
2 traveling public – including the students and their parents – are reasonably safe and secure
3 in the use of the City’s streets and rights-of-way.

4 4. The City recognizes that the District has the responsibility for ensuring that
5 school facilities and buildings are safe for the students and teachers. The City is not
6 attempting to oversee or second-guess the District in the construction of such classrooms
7 and facilities. Consistent with the express provisions of state law, the City’s sole concern is
8 the grading of school sites and how the school sites will handle storm waters and run off.
9 There are basic standards for all properties that have been adopted by federal, state, and
10 local authorities designed and intended to protect the traveling public and downstream
11 property owners. Storm waters and run off need to be properly divided and disposed of. If
12 not, adjoining or downstream properties and public streets may be flooded, emergency
13 services may be frustrated, and public safety personnel may not be able to get to properties
14 and persons who are threatened, including school sites and students on school campuses. It
15 is the City that has the obligation and responsibility to ensure that these requirements are
16 satisfied and complied with.

17 5. The City is asking the District to provide plans that comply with these various
18 laws and to have the work inspected to ensure that the work is completed in a manner
19 consistent with the approved plans. Once the District submits compliant plans, the City will
20 issue grading permits to the District. A grading permit is evidence that the District’s plans
21 *comply* with the Tustin City Code.

22 6. Two types of fees are charged to any applicant for a grading permit. There are
23 “plan check” permit fees, through which the City recovers its actual costs in reviewing the
24 plans, but nothing more. And there are inspection permit fees. Inspection permit fees are
25 the vehicle through which the City recovers its costs of inspecting the construction work
26 being permitted to ensure that it comports with the approved plans. The fees charged by the
27 City to the District for its grading and encroachment permits were calculated in the same
28 manner as they would for a private developer applicant. Nevertheless, the City has offered

1 to waive the inspection permit fees on the condition the District retain a qualified
2 professional to inspect the District's work and certify to the City that the work has been
3 completed consistent with the approved plans.

4 7. On or about March 9, 2010, City staff forwarded to the District its comments
5 on the District's grading plans for Tustin High School – for both the science center and the
6 quad projects -- and Heritage Elementary School. The City's comments set forth the few
7 technical corrections that need to be made to the plans before the permits can be issued. It
8 is now up to the District to make the necessary corrections and/or supply the additional
9 information, and the City will approve the plans and issue grading permits.

10 8. There are standard conditions that are applicable to grading permits, and the
11 standard conditions being proposed by the City are not unusual in any respect. These
12 conditions simply outline issues that will need to be addressed in any grading plans. These
13 conditions can be addressed in several ways that are solely dependent on the project and the
14 approach that a property owner – in this case the District – want to take. The City is very
15 flexible in the review of projects so long as the basic goal is achieved – the protection of the
16 traveling public, street rights-of-way, and downstream properties.

17 9. On or before March 15, 2009, City staff approved the District's encroachment
18 permits necessary to complete the proposed off-site construction work in the public right-of-
19 way.

20 10. Although the City continues to work in good faith with the District to process
21 the District's applications for grading permits, as of the date of this pleading, the City has
22 not yet approved the District's grading plans or issued grading permits to the District for the
23 construction of Heritage Elementary School or for the improvements to Tustin High School.
24 Nevertheless, as of approximately March 15, 2010, the District has begun grading activities
25 on both sites *in direct violation of the Tustin City Code*. The City must necessarily file the
26 instant Cross-Complaint to seek appropriate injunctive relief ordering the District to cease
27 its illegal grading activities.

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1 16. At all times herein mentioned, Cross-Defendants, and each of them, were the
2 agents, servants, and employees of each other, and at all times herein mentioned were acting
3 within the course and scope of said agency and employment.

4 17. The City has complied with all requirements of the California Tort Claims
5 Act, if any.

6 18. There is an actual controversy between the City and the District, and each of
7 them, relating to the legal rights and duties arising under Government Code sections 53091,
8 53092, and 53097 and arising under Tustin City Code section 8906 as applicable to the
9 construction projects identified in the District's Complaint.

10 19. A city has certain regulatory power over a school district, even though a
11 school district is an agency of the state. Government Code section 53091 generally requires
12 "local agencies" to comply with the building and zoning ordinances of cities and counties in
13 which they are situated. A school district is a local agency. (Government Code section
14 53090).

15 20. The City recognizes that its regulatory power over a school district is limited.
16 Although Government Code section 53091(a) provides that "[E]ach local agency shall
17 comply with all applicable building ordinances and zoning ordinances of the county or city
18 in which the territory of the local agency is situated," sub-division (b) goes on to exempt
19 school districts as follows:

20 "Notwithstanding the preceding provisions of this Section, this
21 Section does not require a school district ... to comply with the
22 *building ordinances* of a county or city." (Emphasis added.)

23 21. This exemption does not remove school districts from all local control.
24 School districts remain subject to local zoning ordinances and Government Code section
25 53097 specifically provides that school districts must abide by city ordinances that pertain
26 to grading, drainage, and road improvements.

27 22. Government Code section 53097 provides, in part:

28 "Notwithstanding any other provision of this article, the

1 governing board of a school district shall comply with any city
2 or county ordinance (1) regulating drainage improvements and
3 conditions, (2) regulating road improvements and conditions, or
4 (3) requiring the review and approval of grading plans as these
5 ordinance provisions relate to the design and construction of on-
6 site improvements which affect draining, road conditions or
7 grading [.]”

8 23. The District acknowledges that it is subject to Government Code section
9 53097, but the District and the City disagree about what it means to “comply” with “any
10 city or county ordinance” under this section.

11 24. The District contends that other cities and counties do not require school
12 districts to obtain grading permits. Instead, they allegedly allow districts to submit their
13 grading plans for a “courtesy review” and informal approval of the plans. (Complaint,
14 6:10-23) The District cites no law that provides for a “courtesy review”; rather, the
15 District alleges other municipalities and past practices at the City have allowed for this
16 informal review. The District further contends the City is not authorized to seek fees from
17 the District, to attach standard conditions of approval to the grading permit, or to insist
18 that the grading work be inspected to determine compliance with the permit. (Complaint
19 7:3-8:5.) As set forth above, a grading permit is evidence that the District has plans that
20 comply with the Tustin City Code. A “courtesy review,” whatever that means, implies
21 that the City has no say in whether those plans are satisfactory or not. Indeed, by all
22 appearances, that is precisely what the District wanted here, i.e., the power to conduct
23 whatever grading activities it wished without City approval.

24 25. State law provides that the District is obligated to comply with the City’s
25 grading and drainage ordinance and secure City approval of the District’s grading plans
26 related to the design and construction of on-site facilities. The City reads the phrase “to
27 comply” in Government Code section 53097 to mean that the Legislature intended school
28 district grading plans must be approved by the municipality. Under the Tustin City Code,

1 the City can approve plans through the grading permit process.

2 26. Further, the City alleges it is entitled to recover its reasonable costs
3 associated with the review of District plans, to insist upon standard conditions of
4 approval, and to insist that the District's work is inspected and certified to have been
5 completed consistent with the City-approved plans.

6 27. The City also alleges that when the District wants to avoid the liability
7 imposed by Government Code section 53097 for construction of off-site facilities that do
8 not comply with City ordinances, the District is required to obtain encroachment permits
9 from the City for such off-site construction activities. The District's decision not to
10 obtain encroachment permits is an acceptance of the potential liability as provided in
11 Government Code section 53097.

12 28. The City desires a judicial determination of the respective legal rights and
13 duties that arise under applicable law as relate to the construction projects identified in
14 the Complaint.

15 29. In addition to the foregoing, the City is entitled to ancillary injunctive
16 relief, in the form of a preliminary injunction and permanent injunction.

17 **SECOND CAUSE OF ACTION**

18 **(Nuisance Abatement Against all Cross-Defendants)**

19 30. The City realleges and incorporates by this reference Paragraphs 1 through 29
20 of this Cross-Complaint as if fully set forth herein.

21 31. Any violation of the Tustin City Code constitutes a public nuisance.

22 32. Code of Civil Procedure section 731 and Tustin City Code section 1122
23 authorize the City to seek injunctive relief to enjoin activities constituting a violation of the
24 Tustin City Code.

25 33. Tustin City Code section 8906 prohibits grading without a permit, with certain
26 exemptions.

27 34. As alleged in the Complaint, the City has not yet issued grading permits for
28 the planned work at Heritage Elementary School or Tustin High School. Nevertheless,

1 the District is conducting grading activities not exempted from the permit requirement at
2 the Heritage Elementary School site and Tustin High School without approved permits.
3 The Heritage Elementary School site is the site of a new K-5 elementary school to be
4 built on a 10-acre site located in the northwest corner of the former Marine Corps Air
5 Station at Tustin. Tustin High School is located at 1171 El Camino Real, Tustin,
6 California.

7 35. The District's grading activities at Tustin High School and the Heritage
8 school sites are in direct violation of the Tustin City Code Section 8906.

9 36. The City seeks a permanent injunction requiring the District to obtain the
10 necessary permits before continuing to grade the subject properties. The City further
11 requests that the permanent injunction prohibit the District from conducting any grading
12 activities without prior issuance of the City permits.

13 37. The City has no adequate remedy other than to seek the injunctive relief
14 sought herein.

15 38. Unless the requested injunctive relief is issued as sought, the City and its
16 residents will be irreparably injured and damaged in that the manner in which the District
17 is presently grading the subject properties constitutes a public nuisance, threat to the
18 health and safety of the residents of the City and surrounding area and the public interest,
19 convenience and necessity require that the provisions of the City's Grading and
20 Excavation Code be fairly, thoroughly, and evenly enforced throughout the City.

21 39. Issuance of the injunctive relief sought herein is necessary to prevent a
22 multiplicity of lawsuits.

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1 **WHEREFORE**, the City prays that the Court order, adjudicate and decree as
2 follows:

3 **On the First Cause of Action:**

4 1. For a declaration that:

5 (a) Under section 53097 of the Government Code, the District is
6 required to obtain a grading permit from the City for any grading work not
7 exempted by Tustin City Code section 8906;

8 (b) The District's proposed grading activities are not exempted from the
9 City's grading permit requirement;

10 (c) The City is authorized to recover its costs associated with reviewing
11 grading and encroachment permit applications;

12 (d) The City is authorized to insist that all construction work completed
13 pursuant to any District grading and/or encroachment permit must be inspected
14 by a qualified professional who certifies that the work completed is in
15 compliance with the City-approved plans; and,

16 (e) The City's authority to impose conditions of approval on grading
17 and encroachment permits is the same whether or not the applicant is a school
18 district.

19 **On the Second Cause of Action**

20 2. That this Court issue a preliminary injunction enjoining and restraining the
21 District, its agents, employees, servants, successors and assigns, and anyone acting
22 on its behalf or in concert with it from conducting grading activities on the
23 Heritage Elementary School site and on Tustin High School unless and until the
24 District obtains grading permits from the City for such activities;

25 3. Further, that should the District, or its successors or assigns, fail to comply
26 with the terms of the preliminary injunction, the City may, after 24 hours notice to
27 the District, or its attorney of record, take whatever action is deemed reasonably
28 necessary by the City to secure such compliance, including seeking an order of

1 contempt from this Court and/or entering onto the property where illegal grading
2 activities are taking place to abate the nuisance, assessing all reasonable costs of
3 such action, including reasonable attorneys' fees, against the District;

4 4. Further, that the District, or its successors or assigns, permit appropriate
5 officials of the City to enter onto the Heritage Elementary School site and/or
6 Tustin High School at any time between the hours of 7:00 a.m. and 7:00 p.m., for
7 the purpose of conducting inspections to ensure compliance with the terms of the
8 preliminary injunction.

9 5. That this Court issue a permanent injunction, enjoining and restraining the
10 District, its agents, employees, servants, successors and assigns, and anyone acting
11 on its behalf or in concert with it from conducting grading activities on the
12 Heritage Elementary School site and on Tustin High School unless and until the
13 District obtains grading permits from the City for such activities;

14 6. Further, that should the District, or its successors or assigns, fail to comply
15 with the terms of this order, the City may, after 24 hours notice to the District, or
16 its attorney of record, take whatever action is deemed reasonably necessary by the
17 City to secure such compliance, including seeking an order of contempt from this
18 Court and/or entering the property where illegal grading activities are taking place
19 to abate the nuisance, assessing all reasonable costs of such action, including
20 reasonable attorneys' fees, against the District; and,

21 7. Further, that for a period of two (2) years after issuance of a permanent
22 injunction, the District, or its successors or assigns, permit appropriate officials of
23 the City to enter onto the subject properties at any time between the hours of 7:00
24 a.m. and 7:00 p.m. for the purpose of conducting inspections to ensure compliance
25 with the terms of the permanent injunction.

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WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

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On the Cross-Complaint:

- 8. That the City be awarded all costs, including reasonable attorneys' fees.
- 9. That the City be granted such other and further relief as the Court may deem fit, just and proper.

DATED: March 22, 2010

WOODRUFF, SPRADLIN & SMART, APC

By: *La Morgan*
DOUGLAS C. HOLLAND
M. LOIS BOBAK
LAURA A. MORGAN
Attorneys for Defendant, and Cross-Complainant
CITY OF TUSTIN a California Municipal
Corporation

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- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on **March 22, 2010** at Costa Mesa, California.


Shari Riggs

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am over the age of 18 and not a party to the within action; I am employed by
4 WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard,
Suite 1200, Costa Mesa, California 92626-7670.

5 On **March 22, 2010** I served the foregoing document(s) described as **CROSS-
6 COMPLAINT OF CITY OF TUSTIN FOR DECLARATORY AND INJUNCTIVE
7 RELIEF**

- 8 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on
the attached mailing list;
9 by placing the original a true copy thereof enclosed in sealed envelopes
addressed as follows:

<p>11 Edmond Connor 12 CONNOR, FLETCHER & WILLIAMS 2600 Michelson Drive, Suite 1450 13 Irvine, CA 92612 Phone: (949) 622-2600 14 Fax: (949) 622-2626 Email: <i>econnor@businesslit.com</i></p>	<p>Attorneys for Plaintiff TUSTIN UNIFIED SCHOOL DISTRICT</p>
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16 **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary
17 business practices, at the business offices of WOODRUFF, SPRADLIN & SMART,
and addressed as shown on the attached service list, for deposit in the United States
18 Postal Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN
& SMART for collection and processing correspondence for mailing with the United
19 States Postal Service, and said envelope(s) will be deposited with the United States
Postal Service on said date in the ordinary course of business.

20 **(BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for
21 collection following ordinary business practices, at the business offices of
WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached
22 service list, for collection and delivery to a courier authorized by
to receive said documents, with delivery fees
23 provided for. I am readily familiar with the practices of WOODRUFF, SPRADLIN
& SMART for collection and processing of documents for overnight delivery, and
24 said envelope(s) will be deposited for receipt by _____ on
said date in the ordinary course of business.

25 **(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the
26 interested parties via facsimile transmission to the fax number(s) as stated on the
attached service list.

27 **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of
28 the addressee(s).

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