

News Release

June 17, 2011

For Immediate Release

Contact:

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TUSD SIDESTEPS CITY AND STATE REGULATIONS

Failure to comply with water runoff permitting process endangers health, safety and the environment in our community.

TUSTIN, CA -- June 17, 2011 - In the continuing struggle to encourage Tustin Unified School District to comply with state law and city codes, the district has again flaunted public health, safety and environmental stewardship by refusing to obtain a city permit to ensure the water runoff from three new construction projects works with the Tustin's water management program.

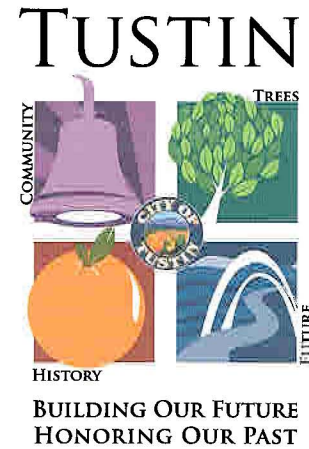
According to Interim City Manager William Huston, "This week, TUSD representatives came to our planning office to begin the permit process, and then inexplicably contradicted themselves stating that the district was not required to comply with city codes regarding water runoff." (See attached letters)

"Last year, the school district filed suit against the city, at the cost of hundreds of thousands of taxpayer dollars, bond money and other funding that could be better used for improvements to the long-neglected schools within the city," stated Huston. "Sadly, the cost of simply complying with the permit is \$10,000 but the district has chosen to waste school funds and city funds under the guise of "protecting" school projects. The citizens and students of Tustin would all be better off if the district focused its attention on protecting the environment as well as the health and the safety of those attending our schools or living near them."

At a recent council meeting, the city clarified the municipal code restating what is already state law: the school district must obtain approval from the city for a water management plan to ensure that the runoff from school sites does not contribute to waterway pollution, or create health and safety hazards to adjoining property and public streets and sidewalks. Every builder in the city, including Rancho Santiago Community College District and other public agencies, private developers and churches comply with this regulation without objection.

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Community Development Department



June 14, 2011

Pete Burns
Tustin Unified School District
300 "C" Street
Tustin, CA 92780

SUBJECT: GRADING APPLICATION SUBMITTAL FOR "MULTI-PURPOSES" BUILDINGS AT C.E. UTT, COLUMBUS TUSTIN, AND A.G. CURRIE MIDDLE SCHOOLS

Dear Pete:

Thank you for your call and visit yesterday to City Hall for the submittal of plans for the construction of "multi-purposes" buildings at C.E. Utt, Columbus Tustin, and A.G. Currie Middle Schools. Kim Bond, our Building Permit Technician, and I were pleased to meet with you and a representative from Barnhart, Inc. at the front counter to review your two (2) copies of plans and WQMPs for the submittal of grading plans for the projects. At that time, we indicated to you that an application for each project site would be needed. Applications are needed to help us better understand the scope of each project, the district's official contact information, and for project tracking purposes.

We provided you and the representative from Barnhart a copy of the Tustin City Code related to Grading and Excavation exemptions (old and the newly amended code versions). I indicated that if the proposed projects fall under an exemption category, no grading permit will be necessary. You and the representative from Barnhart reviewed the codes and indicated that your projects do not fall under any of the exemption categories and will require city permits.

When Ms. Bond and I provided you with the applications, you indicated that the applications were completed, but you had left them at the District's office. You also said that you would be back in fifteen (15) minutes with the applications. However, as you were about to leave, you abruptly returned to the counter and indicated that in your opinion, your projects are exempt from permit requirement and the submittals are intended for courtesy review only; therefore, you would not complete the applications.

The fact that you said you had already completed the permit applications, but had left them at the district office further indicates to us that you understood the permits were required. Therefore, we are at a loss to explain or understand why you believe these non-exempt projects are not subject to City approval.

When you are ready to submit complete applications, we will be happy to assist you. If you should have any questions, please do not hesitate to call me at 714-573-3031.

Sincerely,


Elizabeth A. Binsack
Community Development Director



June 15, 2011

Via E-mail and First Class Mail

Ms. Elizabeth Binsack, Director
Community Development Department
City of Tustin
300 Centennial Way
Tustin, CA 92780

Re: Multi-Purpose Room Projects
Currie, Utt, and Columbus-Tustin Middle Schools
Tustin Unified School District v. City of Tustin

Dear Ms. Binsack:

I have received your June 15th e-mail, enclosing a copy of your letter dated June 14, 2011. Unfortunately, your account of what occurred at our informal meeting on June 13, 2011, does not square with the true facts. I have already sent you an e-mail today taking issue with the allegations in your letter, all of which allegations I dispute and deny. In addition, I specifically deny that I in any way "indicated" that the above-referenced projects "will require City permits." In fact, the letter that I presented to you on Monday morning (which, curiously, you make no mention of in your letter) stated just the opposite.

What I recall happened is that, on Monday, June 13, 2011, I, along with Don Rondeau of Barnhart, Balfour, Beatty, met with you at the counter at City Hall to submit the precise grading plans, WQMPs, hydrology reports, and soils reports for each of the new multi-purpose room projects to be built at the above-referenced middle schools (collectively, the "Projects"). At Monday morning's meeting, I presented you with a transmittal letter, bearing the date of June 8, 2011, explaining the reasons why the Tustin Unified School District (the "District") was soliciting the City's comments regarding these three different sets of grading-related documents (collectively, the "Grading Plan Materials") for the three Projects.

Although you represented to me that you had read the letter, you declined to retain possession of it and handed it back to me. However, since you have attempted to completely ignore my June 8th letter in the June 14th letter that you e-mailed to me today, I am providing it to you again as an enclosure with this letter.

BOARD OF EDUCATION

Jonathan Abelove • Tammie Bullard • Lynn Davis • James Laird • Francine Scinto

Admittedly, I would describe our meeting on Monday as cordial, but you nonetheless refused to accept the three sets of Grading Plan Materials that I was trying to submit to you in connection with the Projects. In fact, you provided me with a copy of the City's Ordinance No. 1400 and told me that, unless the District agreed to formally apply to the City for grading permits for each of the Projects, the City's Community Development Department (for which you serve as the Director) would not allow any of the Grading Plan Materials for the Projects to even be submitted for consideration by your staff.

Regrettably, although my transmittal letter clearly stated that the District was interested in obtaining the City's comments on the three sets of Grading Plan Materials, you informed me that the District would not be permitted to submit any such Documents for the City's review unless the District simultaneously submitted grading permit applications for each of the Projects.

As you know, however, requiring the District to apply for grading permits from the City is tantamount to requiring the District to surrender its sovereign rights as a state agency and to comply with all of the provisions of the City's Grading Code, including, but not limited to, the requirements that the District (1) pay permit fees to the City in violation of the Government Code; (2) allow the City's grading inspectors to have supervisory authority and control over the District's grading projects; and (3) satisfy whatever conditions or exactions the City imposes on the District in issuing permits, such as compelling the District to give the City free land for street-widening purposes or requiring the District to assume the City's landscape obligations along City streets. In the above-referenced lawsuit (the "Lawsuit"), the District is disputing the City's right to use the grading permit application process as a backdoor way of forcing the District to comply with these (and other) unauthorized provisions that are in direct conflict with state law.

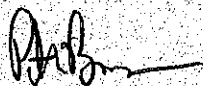
The District is in full agreement with the sworn deposition testimony of the City's Building Official, Mr. Henry Huang, that the City does not have jurisdiction over the "grading" or "earthwork construction" of building pads for new school facilities. Mr. Huang also testified in the Lawsuit that it is the DSA, not the City, that has jurisdiction over such grading activities and that these activities are "exempt" from City review. The grading permit exemption covering the "earthwork to build the building pad underneath the building" that Mr. Huang expressly acknowledged at his deposition was in no way affected by the adoption of Ordinance No. 1400, and it remains in full force today.

Given Mr. Huang's unequivocal statements about the existence of this exemption, and considering the fact that the grading for each of the Projects is limited to the earthwork construction of building pads for the new multi-purpose rooms, there would appear to be no legal requirement under state or local law to submit any grading plans for the Projects to the City for its review and comment. Indeed, the District continues to maintain that section 53097 of the Government Code does not require school districts in California to obtain grading permits from local municipalities.

Nevertheless, the District has sought to be a good neighbor to the City by submitting the Grading Plan Materials for the Projects. Unfortunately, you have chosen to exult form over substance and have demanded that the District submit grading permit applications for grading activities which the City's Building Official openly admits do not require a grading permit from the City.

This will confirm, therefore, that the City has elected to forego the opportunity to provide input on the Grading Plan Materials for the Projects.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Peter Burns', with a long horizontal flourish extending to the right.

Peter Burns