

## BUSINESS & FACILITIES UPDATE

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### **California Court of Appeal Invalidates School District Board's Imposition of \$500,000 Fee on New Residential Development and Requires Refund.**

Education Code section 17620 authorizes a school district to levy a fee against any new residential construction within school district boundaries to fund the construction of school facilities. Such fees are known as “Level 1” fees. Under California Government Code section 66001, to impose Level 1 fees on a developer, the district must: (i) identify the purpose of the fee; (ii) identify the use to which the fee is to be put and if the use is to finance public facilities, identify the facilities; and (iii) establish a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

In February 2012, the Campbell Union School District (“CUSD”) hired a consultant to prepare a Level 1 fee study. The fee study calculated that CUSD’s enrollment exceeded capacity by 311 students, and projected growth of 359 additional students over the next five years. It devoted one paragraph to addressing how much new residential construction was expected within CUSD’s boundaries in the next five years, stating only that there were in excess of 133 residential units that could be constructed in that time period. The study projected a cost of \$22,000 to house students in new facilities based on projected costs of constructing two hypothetical new schools which CUSD conceded were not needed. In reliance on the study, the CUSD Board enacted a resolution imposing a fee of \$2.24 per square foot on new residential construction.

SummerHill Winchester, LLC owned a residential development project within CUSD’s boundaries at the time the Board enacted the resolution. It tendered approximately \$500,000 fees to CUSD under protest, and subsequently filed a challenge to the resolution and assessment seeking refund of fees and a declaration that the fees were invalid. Summerhill argued, among other things, the fees lacked an essential nexus between the amount of the development fees imposed and CUSD’s alleged need to construct facilities for reasons attributable to the development project.

The trial court agreed, concluding that the fee study did not contain sufficient support for the Board’s resolution enacting the fees. The fee study failed to: (i) project the total amount of housing that was to be constructed in the district; (ii) adequately estimate the number of new students in the district resulting from the new development; and (iii) did not establish the necessary relationship between the number of new students and the proposed capital facilities. The trial court noted as significant that the fee study cost calculation was heavily dependent on two hypothetical new schools, which may never be constructed. The trial court ultimately ordered CUSD to refund SummerHill’s fees. CUSD appealed.

The Court of Appeal affirmed. Facilities fees are justified only to the extent that they are limited to the cost of increased services made necessary by virtue of the development. The fee study failed to establish this essential nexus and thus, the Board abused its discretion in relying on the fee study to impose the fees. The study failed to adequately project: (i) the total amount of new housing expected within the District; (ii) the number of new students that would result from such housing; (iii) whether new facilities would be required to accommodate increased enrollment; and (iv) the type of such facilities, if any. The Board's decision to enact fees was invalid because the Board did not decide that its enrollment increases would necessitate the construction of new schools, but it nevertheless based the amount of the development fee on the cost of building new schools. The key missing element was what new facilities would be necessary for the new students generated by the residential development.

*SummerHill Winchester LLC v. Campbell Union School District et al.* (2018) 30 Cal.App.5th 545.

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