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CONTACT: Mark Eliot
Director of Communications
(714) 730-7339 meliot@tustin.k12.ca.us

City of Tustin Stops Lawsuit Settlement Negotiations and Launches “Sneak Attack” on TUSD Construction Projects

Tustin, CA – The City of Tustin has terminated the lawsuit settlement negotiations with the Tustin Unified School District (TUSD) and scheduled a last-minute “emergency” council meeting on Monday, April 25 (a school holiday) in an attempt to delay and disrupt school construction projects, including the new gymnasium (Sports Pavilion) at Tustin High School. After three months of refusing to participate in the settlement negotiation process, the City has declined to respond to the District's proposal and has declared a halt to further negotiations.

“This is a desperate attempt to stave off defeat at the upcoming trial of the lawsuit between the City and the District that is scheduled to start in just over a week on May 2,” TUSD Board President Lynn Davis said. “The City has suddenly declared that, after nearly 50 years of expressly exempting public school districts from obtaining a grading permit, a dire ‘emergency’ supposedly exists that requires the City to immediately repeal the school district exemption that has been part of the Tustin City Code since 1963 when the City adopted its first grading ordinance.

“We encourage everyone to voice their concerns and e-mail the Tustin City Council Members (go to www.tustinca.org and click on City Council) or attend the City Council’s special meeting on Monday, April 25 at 7 p.m. or regular meeting on Tuesday, May 3 at 7 p.m. at City Hall, 300 Centennial Way.” – Lynn Davis, President, TUSD Board of Education

“The City has launched a sneak attack on TUSD knowing full well that our students, parents, administrators and staff would be out of town for the Spring Break holidays. The City posted a notice late Friday afternoon stating that it intended to hold a special meeting at 7 p.m. Monday. The purpose of the meeting is to adopt an ‘emergency’ ordinance to strip TUSD of its long-standing grading permit exemption and to enact new storm water runoff requirements to prevent the District from building any new school facilities without the City’s permission,” Davis stated. In the staff report accompanying the notice, the City specifically identified the new gym currently under construction at Tustin High as one of the projects that was being targeted by the emergency ordinance.

In February 2010, TUSD filed a complaint for declaratory and injunctive relief to stop the City of Tustin from interfering with the District’s efforts to make school improvements and build a new school to accommodate its growing student population. The City then filed a cross-complaint against the District and a trial was set for December 13.

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Last December, TUSD agreed to a six-month continuance of the trial date to pursue settlement negotiations with the City of Tustin. In January, District and City officials, including former City Manager David Biggs, met to discuss a settlement. The City promised to forward a settlement protocol to the District within the next two weeks. The District understood that the settlement protocol would include a process by which the City would “review and approve” the District’s grading plans on District construction projects, and would not require the issuance of grading permits.

Despite numerous promises to release the settlement protocol, the City did not forward the “Settlement Protocol” to TUSD. The District understands that the settlement protocol was being reviewed by a special committee of the Tustin City Council consisting of Mayor Jerry Amante and Councilmember John Nielson.

In March, TUSD’s attorneys were advised by the City’s attorneys that they were not authorized to release the settlement protocol, and the parties will need to restart the litigation. The District continued to request that the City release the settlement protocol, and engage in good faith settlement negotiations.

After three months from the promised delivery date, on April 8 the City sent its draft settlement protocol and on April 14 the District forwarded its comments and revisions to the settlement protocol. On April 20, the City terminated settlement negotiations without commenting on the District’s counterproposal. As a result of the City’s decision to terminate settlement negotiations, the District was left with no other option but to proceed to trial to reach a resolution on the merits.

In addition, last week the City issued a list of objections to TUSD’s grading plan and water quality management plan (WQMP) for Tustin High’s new gym in an attempt to hold up the grading for the new gym building even though TUSD was not required under state law or the City Code to obtain a grading permit. Recognizing that the City’s own grading ordinance exempted TUSD from having to get a grading permit from the City to proceed with the grading for the gym, the City then scheduled the emergency meeting for April 25 to repeal this exemption. Yet, in its attempt to work with the City, the District is in the process of responding to the comments and will reply within the next week.

“The fact that the City is moving forward with such haste to repeal the exemption is not just to hinder and delay the gym project; rather it is more of an attempt to prevent us from proving at the upcoming trial that what we have been saying all along is true – that the District is exempt from obtaining a grading permit under the City’s own ordinance,” Davis said. “If that is not true, then why is the City suddenly trying to repeal that exemption on the very eve of trial?”

"What is truly regrettable is that, instead of making a good faith effort to negotiate a settlement with the District and thereby avoid the time and expense of a court trial, the City has brazenly refused to even respond to our settlement proposal and has unilaterally terminated settlement negotiations, deciding to move ahead aggressively to enact an emergency ordinance to further oppose TUSD’s efforts to renovate Tustin High School and all future facility improvements at several school campuses throughout the City,” Davis said.

Internal documents that the City was required to turn over in the litigation have revealed that City officials were angry when TUSD did not agree to the City’s plan to close Tustin High School and build a new high school on the Tustin Marine Base. At the time in 2008, the City demanded that TUSD sign a 200-page contract agreeing to build a new high school as part of the Tustin Legacy project on the base

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within five years. “There was no financing for such an outlandish scheme and, fortunately, TUSD rejected the City’s proposal because the District could have potentially faced bankruptcy today,” Davis said.

“However, certain City Council members were very upset that TUSD would not agree to mothball Tustin High and so they helped fund efforts to block the passage of Measure L that was designed to raise funds to help renovate Tustin High at a fraction of the cost of building a new high school,” Davis added.

“The City of Tustin’s ongoing frustration and resentment over TUSD’s refusal to go along with the City’s plan to shutter Tustin High and sell off the land to real estate developers which would have provided only partial funding to build a new high school on the former marine base is what led to the City’s sudden decision in 2009 to reverse almost 50 years of precedent and to start demanding that TUSD obtain grading permits from the City for all of its school construction projects,” Davis said.

“In short, the City was exacting retribution when it tried in 2009 to stop the Heritage School project from being built on a site other than the one that the City felt would better promote the success of the Tustin Legacy project. Likewise, the City’s attempts in 2009 to halt the construction of the new Science Center and Plaza project at Tustin High were designed to punish TUSD for successfully gaining passage of Measure L to renovate Tustin High,” Davis stated.

“In its nearly 40-year history, the Tustin Unified School District has spent hundreds of millions of dollars building dozens of award-winning schools without the City of Tustin ever requiring grading permits before now,” Davis said. “Previously, Tustin followed the same procedures we still use successfully today with the City of Irvine and County officials in the unincorporated area. The City of Tustin’s unprecedented demands have caused needless delays and higher costs to taxpayers,” he added.

“The last thing we wanted to do was file a lawsuit, but we needed to protect our rights,” Davis said. “All we want to do is improve our schools so our students can continue to achieve scholastic excellence. Our residents want and deserve to have these state-of-the-art schools and campus modernization projects.”

The Tustin Unified School District has always had state approvals, environmental permits and financing needed to begin its school improvement projects, yet the City now insists that the school district comply with an additional layer of municipal red tape and bureaucratic regulations that do not apply to schools because they are regulated by the state.

The voters of Tustin twice approved bond measures to provide TUSD the resources needed to implement improvements to the schools such as a much-needed new state-of-the-art science center and sports pavilion at Tustin High School. TUSD has also been building Heritage School located on a 10-acre site that the District owns in the northwest corner of the former Tustin Marine Corps Air Station.

Construction of similar science buildings at Foothill High and Beckman High, other projects and building of new schools have proceeded within the portions of TUSD that are in the unincorporated Orange County area and in the City of Irvine in cooperation with those municipalities and with none of the red tape and bureaucratic demands being made by the City of Tustin.

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