

COSUMNES COMMUNITY SERVICES DISTRICT: WHY IS MACDONALD PARK STILL UNFINISHED?

SUMMARY

Based on a citizen's complaint, the 2018-2019 Sacramento County Grand Jury reviewed the Cosumnes Community Service District's (CCSD) usage of developer's fees and land dedications. CCSD received the fees and land dedications for the construction of a neighborhood park in the Camden Pointe/Camden Estates subdivisions. The park in question, MacDonald Park, was partially completed; approximately half of the park has lain undeveloped for many years.

At issue is whether that undeveloped portion constituted a breach of legal responsibility to use funds obtained under the provisions of the Quimby Act^a in a timely manner. As we will explore in the discussion below, CCSD's legal responsibility is to commit the funds, within a certain period of time, to the building of the park. It is under no legal obligation to spend those funds within any given period of time.

Also, at issue was an inability for residents and others to obtain specific information on Quimby Act fees and dedications, and their usage, as there were three governmental entities involved: CCSD (formerly the Elk Grove Community Services District), the City of Elk Grove, and Sacramento County.

The investigation focused on three issues: 1) Why hasn't MacDonald Park been completed?; 2) if CCSD still has Quimby fees which it collected from the developer of the Camden Pointe subdivision and from the developer of the Camden Estates subdivision, must CCSD return that money to the subdivisions' original property owners?; and 3) what are CCSD's duties in terms of safeguarding public records, and recreating them if they are destroyed?

The Grand Jury found that CCSD had a legal requirement, under the Quimby Act, to commit the use of the collected funds and dedications within a five-year period of collection and that CCSD met that obligation. Under the Quimby Act, there is no set time requirement for the actual construction of a park. We found that the delay in the completion of Phase 2 of MacDonald Park has understandably frustrated CCSD residents. Further, the Grand Jury found that although many CCSD records were destroyed in a fire that gutted their main headquarters in 2015, CCSD has a strong records retention policy that follows State law.

The general public has little understanding of Quimby Act funds and their mandates for use. The Grand Jury recommends that CCSD make a greater effort to educate CCSD residents about the requirements of the Quimby Act and the discretionary power CCSD has with regard to those funds. Further, CCSD should establish a separate accounting system which specifically tracks each Quimby fee collected and how it is spent. The Grand Jury also recommends that CCSD

^a Passed in 1975, the Quimby Act authorizes local governments to require developers to set aside land, donate conservation easements, or pay fees for park development or rehabilitations.

make good faith and thorough efforts to identify the records that were lost in 2015 and to recreate those records. CCSD should inform its constituents of those efforts.

BACKGROUND

In or around 1993, the County of Sacramento, on behalf of the Elk Grove Community Services District (later to become the Cosumnes Community Services District), received an acre of land and \$152,729 in fees (called Quimby fees) from the developer of Camden Pointe, a subdivision located within the district. The Elk Grove Community Services District imposed the assessment as a condition for granting approval to the developer to build homes in the subdivision.

The Quimby Act requires that land dedications and the fees are for the purpose of developing new or rehabilitating existing neighborhood or community parks or recreational facilities to serve the subdivision. CCSD was obligated to commit those fees within five years of their payment, or within five years of the issuance of permits to 50% of the lots created in the subdivision, whichever is later, or else return the fees to the original (or as defined in the act: “the then record owners”) homeowners, in the same proportion that the size of their lot bears to the total area of all lots in the subdivision.

In December 4, 2002, the County of Sacramento, on behalf of CCSD, received 1.079 acres of land and \$69,297 in Quimby fees from another developer for another subdivision, Sheldon Estates II. In 2006, CCSD committed to use those fees to construct Phase 2 of MacDonald Park on the 1.079 acres. Having committed those fees within five years of their payment, CCSD does not have any legal requirement to spend them by any certain time.

In February 2015, a fire occurred at the CCSD office in Elk Grove. As a result, records stored there were destroyed, either by the fire, or as a result of water damage. CCSD does not know which records were destroyed. It also did not have backups for many of the documents.

Since the fire, CCSD has revised its records retention policy to better safeguard its records.

Special Districts

To understand CCSD, it may be helpful for the reader to have a basic understanding about community services districts, which, in accordance with California law, are a type of special district¹.

Under California law, a special district is “an agency of the State, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions with limited boundaries.”^b A special district may cross city boundaries and county boundaries.

What makes special districts special is “focused services. ... They deliver specific public services within defined boundaries. ... Special districts have most of the same basic powers as counties and cities. They can sign contracts, employ workers, and acquire real property through purchase

^b CAL. GOV'T CODE § 56036(a). This definition of special districts excludes school districts and special assessment districts.

or eminent domain. Following constitutional limits, they can also issue bonds, impose special taxes, levy benefit assessments, and charge service fees.”²

According to the Sacramento Local Agency Formation Commission, Sacramento County has more than one hundred special districts. These special districts provide, among other things, drinking water, electricity, garbage service, fire protection, and parks and recreation.

Community Services Districts

CCSD is a particular kind of special district. It is a community services district. In 2010, there were 325 community services districts in California.³ There are three Community Service Districts in Sacramento County (Cosumnes CSD, Rancho Murieta CSD, and San Juan CSD).

In enacting the law which gave authority for the creation of community services districts, the California legislature declared that “for many communities, community services districts may be ... (1) A permanent form of governance that can provide locally adequate levels of public facilities and services. (2) An effective form of governance for combining two or more special districts that serve overlapping or adjacent territory into a multifunction special district.”⁴

A community services district may provide one or more of more than thirty services listed in the law. They include supplying water; collecting and disposing solid waste; providing fire, rescue, and ambulance services; operating parks and recreation facilities; and providing mosquito abatement and vector control services.⁵

A community services district is governed by a board of local residents elected by local residents. “Through board meetings and local presence, the community has a direct say in what types and levels of service it receives. Overall this independent form of local government is able to be much more responsive to a community’s needs (than a city or a county can).”⁶

Cosumnes Community Services District (CCSD)

An Elk Grove Parks Department was originally created in 1923, with the creation of an Elk Grove Fire Department two years later. In 1985, the Elk Grove Fire Department combined with the Elk Grove Parks and Recreation District to become the Elk Grove Community Services District. In 2006, the Elk Grove Community Services District merged its fire services with the Galt Fire Protection District to become the Cosumnes Community Services District. According to its website, CCSD “serves an estimated 190,680 south Sacramento County residents in a 157-square mile area. (Its) award-winning parks and recreation services - - including the operation of more than 90 parks - - operate exclusively within the Elk Grove community. Fire protection and emergency medical services are provided for the cities of Elk Grove and Galt and unincorporated areas of south Sacramento County.”⁷

CCSD’s funding sources include state and federal grants, Landscape and Lighting Assessment District funds, Mello Roos Special taxes, Park Impact fees, and Quimby fees.

METHODOLOGY

The Grand Jury

- Interviewed:
 - Officials from CCSD
 - A resident of CCSD.

- Studied:
 - The statutes pertaining to special districts
 - Government Code section 56036(a)
 - California Constitution Article XIIC, Section 1(c), commonly known as Proposition 218
 - The Community Service District Law - Government Code section 61001 and following
 - The Quimby Act (Government Code section 66477)
 - “What’s So Special About Special Districts? A Citizen’s Guide to Special Districts in California” (Fourth Edition) California Senate Local Government Committee, October 2010
 - The CCSD Website
 - Letters and Email messages from CCSD
 - A publication by California Tax Date entitled “What is a Community Services District?”
 - CCSD’s administrative regulations and policies
 - The California Public Records Act (Government Code sections 6250 and following).

DISCUSSION

Quimby Fees

The Quimby Act of 1975 authorizes cities, counties, and special districts to require developers to pay land and /or fees as a condition for being granted approval to build homes on subdivisions.⁸

Quimby fees “are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision⁹.” Funds generated cannot be used for the operation or maintenance of parks or park facilities.

By law, Quimby fees “shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.”¹⁰

The grand jury is not aware of any legal authority requiring a special district to spend its Quimby funds by a certain time once the special district timely commits them.

Camden Pointe

In or around 1993, the developer of the Camden Pointe subdivision (previously called Sheldon Passage) applied for approval to build homes in the subdivision. The subdivision is within CCSD's boundaries. As a condition for granting the approval, an assessment of land and fees was imposed, as permitted under the Quimby Act.

In or around 1993, the County of Sacramento, on behalf of Cosumnes Community Services District's predecessor, received an acre of land and \$152,729 in fees from the developer of Camden Pointe.

In or before 1995, CCSD'S predecessor committed to use the land and the Quimby fees to build a park. CCSD's predecessor has since spent \$133,000 to construct Phase 1 of MacDonald Park on the one acre of land. Because Sacramento County provided accounting services for CCSD's predecessor at that time, CCSD is not able to determine how much of that money was from the Quimby fees, and how much, if any, was from another source.

According to CCSD, any money from the Camden Pointe Quimby fees which was not spent on Phase 1 of MacDonald Park was spent on other parks such as Jan Rau Community Park, Jones Family Park, and Lombardi Park. These parks on average are approximately one mile from the Camden Pointe subdivision.



Figure 1
The area bounded by Sheldon Rd on the North, Elk Grove-Florin Rd on the East, Bond Rd on the South, and Hwy 99 on the West comprise Camden Pointe and Sheldon Estates II (also shown is the general area of CCSD Benefit Zone 3).

Whether these parks are neighborhood or community parks for the Camden Pointe subdivision was a decision for CCSD to make. A Court of Appeal interpreted the phrase “neighborhood or community parks” of a subdivision as meaning parks which are “in sufficient proximity to the subdivision to serve (its) future residents.”¹¹

CCSD believed that spending the Camden Pointe Quimby fees on these parks was in compliance with the Quimby Act because all three of the parks benefit the residents of Camden Pointe, although some residents of the District did not agree. If CCSD did spend some of the Camden Pointe Quimby fees on the three aforementioned parks, CCSD should explain to its Camden Pointe residents how those parks serve and benefit them.

CCSD currently charges the residents of the Camden Pointe subdivision a fee for maintenance of Phase 1 of MacDonald Park. This is consistent with CCSD’s practice of establishing “Benefit Zones.” Assessments vary in different benefit zones based on the amenities within the area.

CCSD has fulfilled its legal obligation with regard to the Quimby fees which it collected from the Camden Pointe developer. It does not have any money left from those fees to distribute in accordance with the Quimby Act.

Sheldon Estates II

On December 4, 2002, the developer of the Sheldon Estates II subdivision dedicated 1.079 acres of land and paid \$65,297 in Quimby fees to CCSD’s predecessor for approval to build homes in the subdivision. The subdivision is within CCSD’s boundaries. (Sheldon Estates II was previously called Camden Estates.) In 2006, CCSD committed to use the land and the fees to construct Phase II of MacDonald Park.

The brochures for the Sheldon Estates II homes showed a drawing of MacDonald Park as fully completed. This drawing may have led some purchasers of homes in the subdivision to believe that CCSD would soon use the Quimby fees to complete the construction of Phase 2 of MacDonald Park. Phase 2 of MacDonald Park would be the portion that fronts Beckington Drive. See Figure 2, below:

Figure 2: Aerial view of MacDonald Park



However, there is no evidence that CCSD made any promise, or gave any indication, to the Sheldon Estates II home buyers that the Quimby fees would be spent on MacDonald Park, or how the Quimby fees would be spent at all.

In fact, CCSD has not yet spent any of the Quimby fees which it collected from the Sheldon Estates II developer. And, construction of Phase 2 of MacDonald Park has not yet begun.

CCSD explained that it has not used the Sheldon Estates II Quimby fees to construct Phase 2 of MacDonald Park because it does not have funds to maintain that portion of the park once it is completed.

CCSD has met the statutory timeliness requirement regarding the commitment of the Quimby fees. There is no further legal requirement for CCSD to spend the Quimby fees by any particular time.

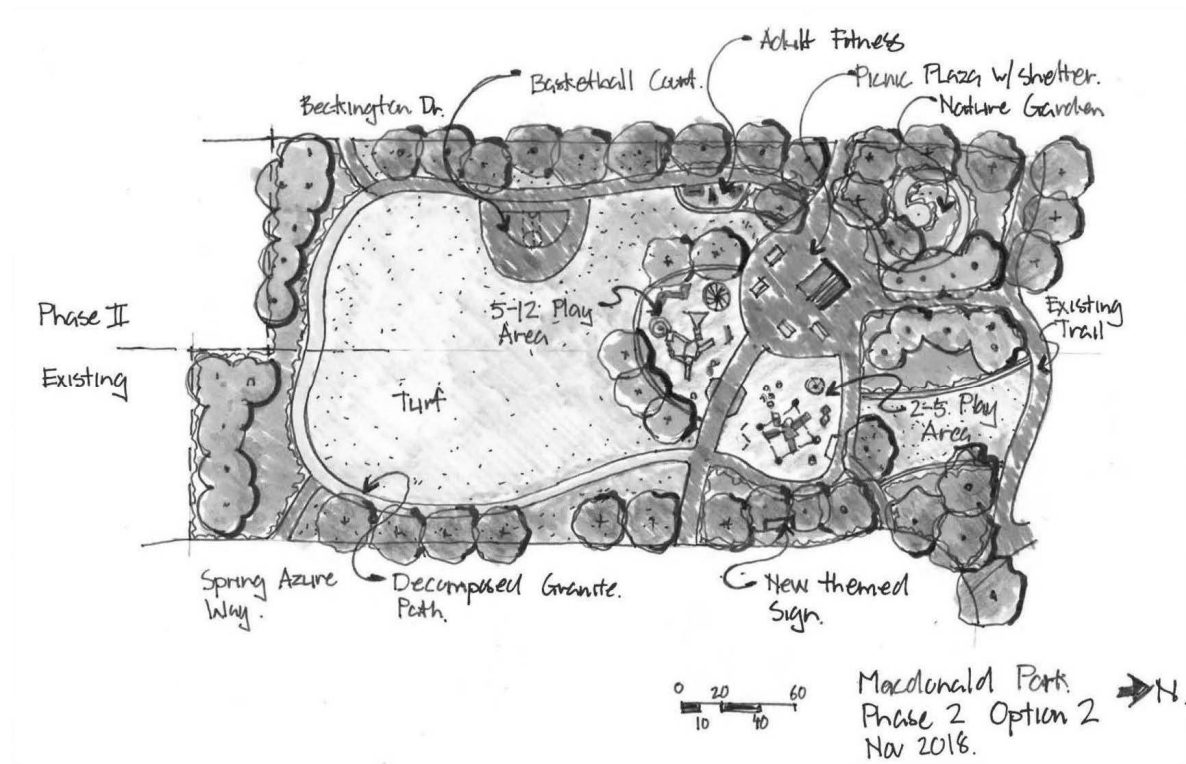
So how does Phase 2 of MacDonald Park get constructed? CCSD funds maintenance operations for parks, streetscapes and trails through a mechanism called “Landscape and Lighting assessments.” CCSD has divided its service area into “Benefit Zones.” Currently there are 17 benefit zones. Generally, assessments are based on the cost of providing maintenance to the amenities in that Benefit Zone. By law, assessments can only increase annually at a rate equal to the Consumer Price Index (CPI). Because of this, the existing assessment for this Zone has not been able to keep up with rising costs. This has happened before, and the law allows for what is called an “overlay assessment.” CCSD can call for an election (in this instance by mail) and, if 50% + 1 of the returned ballots approve the overlay assessment, it will go into effect.

Sheldon Estates II lies in Benefit Zone 3 (See Figure 1). CCSD has indicated that it will use the Quimby funds to complete Phase 2 of MacDonald Park, provided that the Benefit Zone 3 residents vote to create an overlay district to impose a fee on themselves to raise funds to maintain that half of the park.

The CCSD Board of Directors has called for such an election. Ballots will be mailed to property owners in this Benefit Zone on May 1, 2019; property owners can return ballots until June 19, 2019. The Grand Jury will not know the outcome of this vote at the time this report goes to press. If the overlay is approved, CCSD will begin a community discussion on design elements for Phase 2 of MacDonald Park. CCSD estimates that the average time required to build a new small park is approximately 27 months.

Figure 3, below, is a sketch of what the combined phases of MacDonald Park may look like;

Figure 3: Artist's rendition of a proposed fully completed MacDonald Park



Records

The Grand Jury investigated the complainant's allegation concerning CCSD's handling of a public records request. The records requested were regarding Quimby funds committed for MacDonald Park and were made to the County of Sacramento, the City of Elk Grove, and CCSD. CCSD was the lead agency, as it was the one controlling the funds. Each agency responded that it did not have the records and suggested that the resident check with the other two agencies.

CCSD explained that it did not have the requested records due to a fire at its office in 2015. According to CCSD, the requested records were either destroyed by the fire or damaged by water. CCSD also acknowledged that it did not have backup copies of the documents which were destroyed, and it does not know which records were destroyed.

Upon request by this Grand Jury, CCSD was able to work with other agencies and re-create the requested records pertaining to the commitment of Quimby funds for MacDonald Park.

The Legislature passed the California Public Records Act (PRA) in 1968. The PRA requires that all records maintained by state or local public agencies, including special districts, are open to

the public, with certain limited exceptions.^c The PRA includes provisions for access, inspection, disclosure, and timeliness. The PRA covers only records that already exist. It does not require government agencies to secure their records in a safe place, or to have backup copies in case the originals are destroyed. Nor does it require agencies to create records, lists, or compilations that do not already exist. California Government Code, Title 6, Division 1, Chapter 7 does set the rules for Special Districts and the destruction of records but does not go beyond that limited scope.

CCSD has a well-defined policy titled “Public Inspection of CCSD Documents” that puts the requirements of the PRA into effect. This policy sets a clear process for requesting public records and makes it simple to do so, including a user-friendly web page. The policy also establishes a tracking system for public records requests.

In addition to the PRA, CCSD is bound by the public records retention law pertaining to special districts.^d

At the time of the 2015 fire, CCSD’s records retention policy essentially followed the State Records Management Act¹². CCSD’s policy also required that “(a)ll District Records shall be retained in a safe, secure storage area(s) ”¹³ The policy does not define the words “safe” and “secure”. Subsequent to the 2015 fire, CCSD concluded that its demanding policy was insufficient to safeguard its records.

In 2017, CCSD revised its records retention policy to be even stricter in terms of safeguarding its records. The revised policy now specifically states that one of its purposes is the “safeguarding of District records.... ”¹⁴ In addition, the policy requires that CCSD’s “necessary” records be “retained in safe, secure storage areas,” and adds a requirement that these records be “adequately protected and maintained.”¹⁵

CCSD’s previous policy required the general manager merely to “oversee the development and maintenance of an appropriate record keeping system.”¹⁶ The revised policy makes the general manager “responsible for the administration”¹⁷ of the new policy” of safeguarding CCSD’s records and providing adequate protection and maintenance for them.

It is obvious that the CCSD takes seriously the safeguarding of its records. It is now up to the general manager and his staff to implement CCSD’s policy so that 1) CCSD does not lose any more records and 2) CCSD has adequate backup copies in the event that they are lost.

Because the law requires CCSD to produce only those records which it has, persons who request records from CCSD have no legal recourse when CCSD no longer has them.

One resident suggested that CCSD should make a thorough, good-faith effort to determine what records are permanently lost, and to recreate those lost records. The Grand Jury found value in this suggestion to the extent it pertains to the recreation of records of Quimby Act dedications

^c Those exceptions include personnel issues, potential litigation, property negotiations, etc.

^d CAL. GOV’T CODE § 60200 et seq.

and payments. There may be justification for the recreation of other documents, but the scope of this report was limited to Quimby Act funds.

FINDINGS

- F1. CCSD timely complied with the law that it commits the Camden Pointe Quimby fees within five years of their payment. It spent all of those fees for the construction of Phase 1 of MacDonald Park, and possibly for some other parks which would serve the Camden Pointe subdivision. CCSD has fulfilled its legal obligations with regard to those fees.
- F2. CCSD timely complied with the law that it commits the Sheldon Estates II Quimby fees within five years of their collection. There is no time limit by which CCSD must spend the Sheldon Estates II Quimby fees to construct Phase 2 of McDonald Park.
- F3. CCSD residents are understandably frustrated that sixteen years after collecting the Sheldon Estates II Quimby fees, and thirteen years after committing to spend those fees to construct Phase 2 of MacDonald Park, CCSD still retains those fees. Residents do not have a clear understanding of the retention and use of those funds.
- F4. CCSD makes a good faith effort to comply with the California Public Records Act.
- F5. CCSD makes a good faith effort to keep adequate and appropriate District records to fulfill legal requirements.
- F6. CCSD's records retention policy requires its records be safeguarded and adequately protected.

RECOMMENDATIONS

- R1. CCSD should educate the district's residents about the requirements and discretions it has with regard to the Quimby fees which it collects. CCSD should have open discussions about Quimby fees and dedications with its constituents by June 30, 2020.
- R2. CCSD should inform the district's residents what CCSD intends to do with the Sheldon Estates II Quimby fees if the vote on the overlay district fails, at the first Board meeting following the vote.
- R3. CCSD should establish an accounting system which specifically tracks each Quimby fee collected from a developer and how that money is spent. This should be by June 30, 2020.
- R4. CCSD should make a good faith and thorough effort, by June 30, 2020, to identify and recreate the records of collected but unspent Quimby Act funds that were lost due to the 2015 fire and inform its constituents of that effort.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses from the following agency within 90 days:

- Cosumnes Community Services District Board of Directors
Gil Albiani, Board Chair
8820 Elk Grove Blvd.
Elk Grove, California 95624

Mail or hand-deliver a hard copy response to by September 30, 2019 to:

David De Alba, Presiding Judge Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

In addition, please email response to:

Becky Castaneda, Grand Jury Coordinator at castanb@saccourt.com

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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Endnotes:

¹ CAL. GOV'T CODE § 61001(c)(1).

² California Senate Local Government Committee. *What's So Special About Special Districts? A Citizen's Guide to Special Districts in California*. 4th ed. Sacramento: California Senate Local Government Committee, October 2010, p. 1.

³ *Ibid*, p. 5.

⁴ CAL. GOV'T CODE § 61001(b).

⁵ CAL. GOV'T CODE § 61100.

⁶ California Tax Data. "What is a Community Service District?" <http://www.californiataxdata.com/pdf/CSD.pdf>.

⁷ Cosumnes Community Services District. Elk Grove, California (website). Accessed June 1, 2019.

<https://www.youresd.com/>.

⁸ CAL. GOV'T CODE § 66477.

⁹ CAL. GOV'T CODE § 66477(a)(3).

¹⁰ CAL. GOV'T CODE § 66477(a)(6).

¹¹ Home Builders Assn. of Tulare/Kings Counties v. City of Lemoore, 185 Cal. App. 4th 554 (Cal. Ct. App. 2010).

¹² CAL. GOV'T CODE § 12270 et seq.

¹³ Cosumnes Community Services District, *Policy No. 0042*. (Elk Grove: Cosumnes Community Services District Administration Building).

¹⁴ Cosumnes Community Services District, *Records Management Policy, Revised 6/7/2017* (Elk Grove: Cosumnes Community Services District Administration Building).

¹⁵ *Ibid*.

¹⁶ Cosumnes Community Services District, *Records Management Policy, 2/19/2009*. (Elk Grove: Cosumnes Community Service District Administration Building).

¹⁷ Cosumnes Community Services District, *Records Management Policy, Revised 6/7/2017*. (Elk Grove: Cosumnes Community Services District Administration Building).