

MEMORANDUM OF LAW

DATE: November 24, 1993

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Landslide on Decanture Court

In your memorandum of October 26, 1993, copy attached, you asked me if a waiver of the fees for a grading permit issued to the Boettchers who live on Decanture Court is legally allowed.

As noted in the Engineering and Development Director's memorandum of August 2, 1993 (copy attached), if the fees were waived, funds to reimburse the Engineering and Planning Departments would be required. The cost reimbursement fee program is based upon each applicant paying for what the City has to spend to process his permit. If the fees were waived, it would create a deficit in the accounts equal to the amount waived. When fees can be waived, this amount is normally charged to the City's General Fund. If this were to be accomplished the Manager would have to identify an available source of funds.

The second issue relates to the public purpose requirement for the expenditure of public moneys. The Constitution and the City Charter prohibit the City from paying out money if it is not for a public purpose. (CA Const. Art. XVI, section 6, and Charter section 93.) The City Manager's office has indicated that this permit is for a private purpose activity. The City has established a uniform cost recovery program for the processing of private activity permits. If the fees for the permit were waived, the Boettchers would receive a windfall of several thousand dollars worth of City services, while all other citizens in similar circumstances would be required to pay such fees. As the Manager has indicated, there appears to be no public purpose for this expenditure, therefore the City is unable to pay the fees for the Boettchers out of any public fund.

In summary, once the city establishes a citywide cost recovery fee program, all citizens in similar circumstances must be required to pay such fees. Neither the City Manager nor the City Council is allowed under such circumstances to waive fees for certain individuals since, in the absence of some identified public purpose, such a waiver constitutes a gift of public funds

in violation of the state constitution and the city charter.

John W. Witt
City Attorney

JKR:pev:800(x043.2)

Attachment

ML-93-103

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