

MEMORANDUM OF LAW

DATE: May 14, 1986

TO: Councilwoman Judy McCarty
FROM: City Attorney
SUBJECT: Funds Collected from Subdividers for
Construction of Tierrasanta Bridge

In your memorandum of March 26, 1986 you asked five questions about the funds collected by the City for the improvements to Tierrasanta Boulevard and its associated bridge. Prior to responding to your questions, a short discussion of the background is appropriate.

In 1978 Shapell-Lomasantas was processing a map and a rezoning for a residential subdivision in the area east of I-15 and north of Tierrasanta Boulevard known as El Dorado Hills. Condition No. 10 of that map required that the subdivider either build one half of the Tierrasanta Boulevard bridge over the San Diego river or contribute \$200 per dwelling unit for each unit in this map and in each of the later subdivisions of the El Dorado Hills for the purpose of constructing the bridge.

The developer accepted the contribution option and has contributed some \$260,000 into a fund to construct the bridge. The funds are set aside in a separate trust account by the City Auditor. All interest earned on these accounts is transferred to the General Fund in accordance with a long standing City policy. (See, City Attorney Opinion No. 74-8 (1974).)

With this background, we will answer your questions in the order presented.

1. Can we transfer the funds collected from the developers for this identified project to another related but separate project?

No, funds must remain in the fund for which they were collected.

Our rationale is as follows: Government Code section 66484 sets forth standards for when fees can be collected for bridges and thoroughfares. Subparagraph (e) provides:

Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which

more than one bridge is required to be constructed, a fund may be so established covering all of the bridge projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement. (Emphasis added.)

In our discussions you indicated that you desired to expend the funds for another program, the bridge at Jackson Drive. We cannot say if this bridge is a proper expenditure for the Tierrasanta Boulevard bridge fund. It does not appear to be within the area of the originally assessed subdivisions. The statute and the implementing ordinances limit the expenditure to those facilities serving the area benefited.

2. If the answer to No. 1 is no, why not?

We believe that this question is answered by our response to question one.

3. If not, please provide this office with what action would be necessary to accomplish transferring these funds.

The legislative system regarding bridges and thoroughfares is found in Government Code section 66484 and San Diego Municipal Code section 102.0409, and does not provide a procedure for transfer of impact fees. Since the funds were collected to mitigate a specific impact, they were not considered to be taxes. 62 Op. Att'y Gen. 663 (1979). If the funds were to be used for some other purpose, not related to the impact to be mitigated, the fees would then be characterized as a tax (Trent Meredith Inc. v. City of Oxnard, 114 Cal.App.3d 317 (1981)).

If the funds were classified as a tax, they would have been collected in violation of Proposition 13 because they exceed the 1% maximum. Cal. Const. art. XIII A. To collect special taxes in excess of 1% maximum requires a 2/3 vote of the affected voters, Cal. Const. art. XIII A, section 4. We know of no case where a development impact fee has been converted to a special tax for another purpose. If you desire, we could examine the feasibility of bringing such a proposal before the electorate.

The only other alternative to proceeding with the original project would be to refund the money to the current homeowners. None of City or State procedures describe a procedure for refunding; however, the immediately preceding Government Code provisions relating to impact fees for drainage (section 66483 et

seq.) has such a procedure at section 66483.2.

Any surplus remaining shall be refunded as follows:

(a) There shall be refunded to the current owners of property for which a fee was previously collected, the balance of such moneys in the same proportion which each individual fee collected bears to the total of all individual fees collected from the particular drainage or sewer area;

(b) Where property for which a fee was previously collected has subsequently been subdivided into more than one lot, each current owner of a lot shall share in the refund payable to the owners of the property for which a fee was previously collected in the same proportion which the area of each individual lot bears to the total area of the property for which a fee was previously collected; and

(c) There shall be transferred to the general fund of the county or city any remaining portion of the surplus which has not been paid to or claimed by the persons entitled thereto within two years from the date either of the completion of the improvements, or the adoption by the legislative body of a resolution declaring a surplus, whichever is later to occur.

If we were to follow this procedure, it would be effective.

4. Can the interest be kept in the same account rather than be transferred into the General Fund?

In City Attorney Opinion No. 74-8 (1974) this office indicated that, absent a specific legislative or contractual obligation, the City may properly credit interest earned to the General Fund. In this case, the City Council has the authority to amend San Diego Municipal Code section 102.0409 to require that interest earned on development impact fees remain in the specific fund.

5. Can the interest going into the City's General Fund from this account be transferred to another account without going into the General Fund?

This is a policy decision of the City Council. The City Council may allocate the interest to any proper activity it so designates.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

JKR:mem:225(x043.2)

Enclosure

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