

Elk Grove Unified School District's Failure to Recognize Fiscal Irresponsibility Prompting a Second Grand Jury Investigation

Issue

The 2001–2002 Grand Jury received a complaint filed by the Citizens of the Elk Grove Unified School District for Responsible Planning alleging that the Elk Grove Unified School District (EGUSD) failed to exercise prudent fiscal responsibility when it purchased the property now designated as school site #8, located at the corner of Bond and Bradshaw Roads. The Grand Jury reported their investigation findings on this case in their June 30, 2002 report, which is Attachment 1. EGUSD's response to the Grand Jury report is Attachment 2. The 2002-2003 Grand Jury is not satisfied with the response.

Method of Investigation

- Review of 2001-2002 Grand Jury materials
- Review of EGUSD's response to 2001-2002 Grand Jury report
- Meetings with District Superintendent
- Meetings with original complainants
- Meeting with Deputy Attorney General
- Meeting with California Department of Education, School Facilities Planning Division

Background and Facts

Facts uncovered by the 2001-2002 Grand Jury and published in their report dated June 30, 2002 are as follows:

- Staff of EGUSD did not follow set policies and procedures when selecting land for purchase to construct schools.
- EGUSD staff notified a select group of five agents (land developers/real estate brokers) that EGUSD was looking to purchase land in a specific area for the construction of school site #8.
- EGUSD staff did not engage in a search for sites, but rather relied on the agents to find available property to consider for purchase.

- One of the agents located a site that met the district's criteria and took an option to purchase the property on March 27, 2000 from the original owner for \$37,000 an acre. The property had been advertised for sale for eighteen months with a large sign with the agent's name clearly posted. The site was less than a mile from EGUSD offices.
- The agent notified EGUSD staff that he had located property they might be interested in, and the staff recommended to the EGUSD Board of Education that the district purchase the property soon after. On May 15, 2000 the board authorized the Assistant Superintendent to conduct a review process preliminary to the property purchase.
- An Assistant Superintendent ordered two appraisals of the property to be made by two different agents. One established the value at \$41,000 per acre and the other at \$65,000 per acre. EGUSD staff did not question the discrepancy in the two appraised values and agreed to pay the higher price without further negotiations with the agent.

The EGUSD's response to the 2001-2002 Grand Jury report indicates that the district has failed to recognize significant fiscal irregularities by their staff with regard to the purchase of this property. They explain that they were constrained by numerous legal requirements and could not enter into negotiations until preliminary items were completed. Granted, there are legal requirements that must be adhered to. However, if the district staff had noticed the "For Sale" sign on the property themselves and not told the real estate agent of their intent to purchase land in the immediate area, then the legal requirements would have likely taken place with the original owner and not the real estate agent. This fact is significant because the original owner sold the property for \$37,000 an acre in March 2000. The original owner may have asked for more from the district six months later, but it is doubtful that he would have sought \$65,000 an acre, the amount that the real estate agent was paid.

The EGUSD maintains that they were constrained by numerous requirements from the California Department of Education (CDE). The CDE does not determine land acquisition per se, but rather the suitability of the land for educational purposes and safety requirements. However, the district may negotiate an option on the property contingent upon final approval of the CDE. The EGUSD did not place an option on the property. They could have "locked up" the property in February or March 2000. They were not delayed by the California Department of Education's rules and procedures.

The EGUSD is correct that appraisals are required by the Office of Public School Construction, an arm of the State Allocation Board. Only one appraisal is necessary, although the school district may request more. Since the district pays a significant portion of the construction cost, a reasonable assumption is they would use the lowest appraisal, or ask for a third appraisal. In this case, the highest appraisal was used. The EGUSD argues that a public agency must pay "fair market value" and judged the higher appraisal to be more realistic. This is a specious argument.

By providing advance notice to an agent that the district was looking for property in the general area, the district gave the agent an advantage, and the district lost the opportunity to negotiate with the original owner and purchase the property for a lower price. The EGUSD staff demonstrated negligence and fiscal irresponsibility.

Findings and Recommendations

The 2002-2003 Grand Jury concurs with the 2001-2002 Grand Jury findings and recommendations. Further, the 2002-2003 Grand Jury finds that the actions taken to acquire the subject property are sufficiently questionable that EGUSD should consider appropriate disciplinary action.

Finding #1. The EGUSD gave insider information to a real estate agent which allowed the agent to make a profit in excess of \$2 million on school site #8.

Recommendation #1a. The EGUSD should take immediate disciplinary action against responsible staff.

Recommendation #1b. The Superintendent and Board of Education should provide oversight to the staff responsible for the purchase of school sites.

Finding #2. The EGUSD failed its fiduciary responsibility to the taxpayers by paying \$2.4 million more than the fair market value for school site #8.

Recommendation #2a. The district should require staff members responsible for the purchase of property, supplies, or services to sign a fiduciary responsibility statement. District staff should also be accountable under the EGUSD conflict of interest policy.

Recommendation #2b. The district should develop policies and procedures for the purchase of school sites that protect the financial interests of taxpayers.

Finding #3. The EGUSD failed to perform due diligence in the search for school site #8.

Recommendation #3. The district should require staff to do their own research on potential school sites and not rely solely on agents and developers.

Finding #4. The EGUSD refuses to admit a mistake was made and to take responsibility for its actions.

Recommendation #4. The district should take responsibility for its actions and implement policies and procedures to make sure this situation never happens again.

TO THE CITIZENS IN THE ELK GROVE UNIFIED SCHOOL DISTRICT:

The Elk Grove Unified School District is accountable to you. Apparently they do not agree. The Grand Jury can investigate, write a report, and receive an inadequate reply year after year. The EGUSD can obfuscate, delay, and refuse to talk without a subpoena, hoping to drag out the process long enough so that we will go away. This process cannot work for them if you, the good citizens in the Elk Grove Unified School District, demand better leadership from your elected officials.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2003 from:

- **Board of Education, Elk Grove Unified School District**

Attachment 1

Elk Grove Unified School District Fails Fiduciary Responsibilities

Reason for Investigation

The Grand Jury received a complaint alleging that the Elk Grove Unified School District paid more than twice the fair market value for a property located at the intersection of Bond and Bradshaw Roads.

Method of Investigation

Members of the Grand Jury interviewed the District Superintendent and members of his staff, the Elk Grove Unified School District Board President, the complainants and other interested parties. Because of the reluctance of some witnesses to appear before the Grand Jury and the sensitive issues involved, the Grand Jury requested the assistance of the Attorney General's office. Subpoenas were prepared and served, and on April 24, 2002, under questioning from a Deputy Attorney General, sworn testimony was received from additional witnesses.

Background

The Elk Grove Unified School District (District) encompasses an area that includes the southern portion of the City of Sacramento as well as the recently incorporated City of Elk Grove. The City of Elk Grove has experienced phenomenal growth over the past decade, and for that reason the District has had to construct new schools at a rapid pace.

A four year school construction bond measure was passed by the State of California in 1998.

During the first several months of 2000, the District attempted to purchase property for the construction of a mega-school to be located in the area of Elk Grove Florin and Gerber Roads. The District met with considerable resistance from residents who objected to a school in that area, and decided to look for property elsewhere. In order to take full advantage of the bond issue the District had to move quickly in purchasing an alternate site.

Facts

One of the areas the District identified as a possible school site was in the vicinity of the intersection of Bond and Bradshaw Roads. To locate available parcels of land in the area, the District contacted several well-known land developers/real estate brokers.

One land developer identified a 106 plus acre parcel that was for sale on the northwest corner of Bond and Bradshaw Roads. The Grand Jury understands that neither the previous owner of this land nor his real estate broker was aware of the District's interest in purchasing land in the area. The land developer purchased the parcel of land for \$4,000,000 (roughly \$37,000 an acre).

Within days of entering into this purchase contract, the land developer informed the District that he had property for sale at the corner of Bond and Bradshaw Roads. The District entered into negotiations with the land developer for the purchase of this property.

Two independent appraisals were commissioned by the District to determine the fair market value of the land. The first appraisal placed the value of the land at \$4,350,000 (roughly \$41,000 per acre). The second appraisal placed the value at \$6,942,000 (roughly \$65,000 an acre). Both appraisers used the same standards, but differed as to which properties were to be compared. Although the two appraisals differed greatly, District staff did not question the value set by the second appraisal. The Grand Jury was told the difference between the two appraisals was probably caused by the volatility of the real estate market during this time, July 2000.

According to testimony received by the Grand Jury, the District is required by law to base its sales price negotiations on the appraised value of the land plus or minus 10%. The Grand Jury also learned the District had the opportunity to negotiate a price with the seller of the property based on either appraisal. The District accepted the higher appraisal because it believed that it more accurately reflected the market value of the land. The District purchased the property for \$6,928,400 (roughly \$63,000 an acre).

The District admits that it was unaware the parcel had previously been for sale over a year at approximately \$4,000,000. The District staff did not canvass the area looking for property for sale but instead turned to a select group of real estate agents and land developers to locate desirable property. District staff also admitted that the original broker for this piece of property was not among the group contacted. Had District staff members responsible for property acquisition driven by the corner of the property, a short distance from District Headquarters, they would have seen a large broker's sign advertising the property. Also, had the District advertised its interest in purchasing property in the area, the original broker for the property told the Grand Jury he would have contacted the District.

Finding and Recommendation

Finding #1. District staff members exhibited a very careless attitude toward their fiscal responsibilities when negotiating the purchase of property. The Grand Jury also concluded that had the District been more diligent in its search for school property, it might have purchased the property for a price closer to the lower appraised value of \$4,350,000. The Elk Grove Unified School District failed in its fiduciary responsibility to taxpayers in the purchase of property located

at the intersection of Bond and Bradshaw Roads. This failure resulted in a loss to taxpayers of approximately \$2.4 million.

Recommendation #1. The Elk Grove Unified School District should:

- a. develop formal policies and procedures for the purchase of school site property that protect financial interests of the taxpayers and eliminate the appearance of favoritism to any landowner, land developer or real estate agent;
- b. publish in a newspaper of general record an official notice of any decision by the District to establish a new school or seek a new site location. An offical notice should also be delivered to the local Board of Realtors;
- c. direct staff to use all available resources for the selection of property for school construction including physical inspection of properties for sale within the area of interest as well as Multiple Listing and newspaper ads.

Response Required

Penal Code Section 933.05 requires that specific responses to both the finding and recommendation contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Board of Education, Elk Grove Unified School District**

The following grand jurors recused themselves from any participation in the investigation, discussion, preparation editing or approval of this report:

- **Rhea Brunner**
- **A. Michael Koewler**
- **James M. Moose, Jr.**
- **Jimmie E. Ward**

The Grand Jury Advisor Judge also recused himself from providing legal advice on this report.

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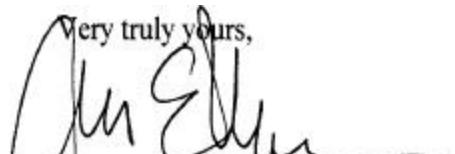
September 30, 2002

The Honorable Michael T. Garcia
Presiding Judge
Sacramento County Superior Court
720 Ninth Street, Dept. 47
Sacramento, CA 95814

Re: Elk Grove Unified School District's Response to Finding and
Recommendation of Grand Jury Report

Dear Judge Garcia:

Transmitted herewith pursuant to sections 933-933.05 of the Penal Code is the Specific Response of the Elk Grove Unified School District to Finding and Recommendation of Grand Jury Report.

Very truly yours,

James E. Thompson
BEST BEST & KRIEGER LLP

JET:plm
Enclosure

**Specific Response of Board of Education of Elk Grove Unified School
to Finding and Recommendation of Grand Jury Report**



RESPONSE TO FINDING NO. 1:

The Elk Grove Unified School District asserts that its acquisition of the Bond/Bradshaw site (Site) was in the public interest and did not result in any waste or unnecessary use of taxpayer dollars entrusted to the District. The price paid by the District for the Site was based on a qualified, professional appraisal of the fair market value of the property. Due to procedures that the District was first required by law to follow, the District could not have purchased the property at a substantially lower price. As a result, there was no loss to the taxpayers. This District has a history of sound fiscal management and has been praised many times in past years by the Grand Jury.

The assertion that the District paid more than twice the fair market value of the Site is not true. The District was required by law to offer to pay the fair market value of the property established at that time. The District's approved appraisal showed that the fair market value of the property was \$65,000 per acre in September 2000.

Any alleged "delay" in the District making an offer to purchase the property was due to the District having to first follow numerous procedures required by law. It was not due to any lack of diligence by District staff to discover the availability of the property; nor did the District deliberately choose to pay more than the appraised fair market value of the property. In late February 2000, the Board made a decision to begin a new search for a school site. At that time, apparently the original owner listed the Site for sale at a price of \$45,000 per acre as documented by statements made by the broker who sold the property on behalf of the original owner. The seller the District purchased the property from later told the District that he purchased the land without an appraisal. The Grand Jury report asserted that it was purchased for \$37,000 per acre. There was no way that the District could simply "tie the property up" at that price in February 2000 because the District's site selection process for this property had not begun, the necessary approvals had not been obtained, and the required fair market value appraisal of the property had not been determined.

Before offering to purchase the property, the District had to obtain approvals from the Facilities Planning Division of the California Department of Education, and the

Department of Toxic Substances Control. In addition, under the California Environmental Quality Act, the District was required to do a study to identify any potentially significant environmental impacts, and to determine what measures could be taken to offset those impacts. The site evaluation process required the District to hire consultants, conduct physical inspections of the property, and prepare numerous environmental documents. Also, before making an offer to purchase the property, the District was required to appraise the property. The District is obligated by statute to assure that the property owner is justly compensated based on a "highest and best use" valuation. In this instance, the "highest and best use" was for General Plan Map Classification of "Low Density Residential" (1-12 dwelling units per acre). All of these steps, except certification of the Environmental Impact Report (EIR), had to be completed before the District's staff could start the negotiations to buy this property for a school site

The Grand Jury ignored a basic premise of real estate purchases - it is the seller, not the buyer, who determines what price will be accepted for the property. In this instance, the seller would only accept a price close to the highest appraised value.

An initial feasibility study of the Site was completed in May 2000, and staff made a favorable finding regarding the feasibility of the Bond/Bradshaw site. After taking public comments at a District Board meeting on May 15, 2000, the Board authorized staff to begin the formal review process of the Site, which involved all of the steps described above. District staff notified the owner of the Site that although the District was pursuing a purchase of that property, the actual purchase could only take place after the District concluded the necessary CEQA certification and California Department of Education approvals. If the District decided to purchase the property, the amount offered would be the Board approved appraisal of the fair market value. Two appraisal reports were completed for the District by September 2000 utilizing current zone designation of AR-5 and General Plan Map Classification of "Low Density Residential" (1-12 dwelling units per acre). The Board of Education, in a regularly scheduled meeting, authorized District staff to make an offer for the purchase of the property. Pursuant to Code, the offer is to be no less than the approved appraised amount, and subject to the certification of an Environmental Impact Report (EIR).

Although the Site may have been available for sale to the public in February 2000, the District had not completed the mandatory site selection steps, environmental review,

or appraisal process. There was no legal way that the District could have simply purchased the property for a school site at that time. Although the District staff proceeded swiftly, they could not complete all steps necessary to begin negotiations for the purchase of the Site at its fair market value until September 18, 2000. By that time, the fair market value appraisal of the property at "highest and best use" was \$65,000 per acre. For the reasons stated above, the District disagrees with Finding No. 1.

RESPONSE TO RECOMMENDATION NO. 1:

The Board of Education will continue to routinely examine its procedures and practices on building future schools, including school site acquisitions. The District was already in the process of the review before the Grand Jury investigation and will continue to examine its process in the future.

Response to Recommendation No. 1(a):

The District believes that it has implemented this Recommendation. The District believes that it can further carry out Recommendation No. 1 through (1) continued compliance with State laws with respect to public acquisitions; and (2) broadening its procedures related to the Grand Jury's Recommendation Nos. 1(b) and 1(c).

Response to Recommendation No. 1(b):

The District will broaden its current notification procedures, beginning with the next occasion in which the District's Board of Education decides to establish a new school or seek, through purchase, a new site location not within a pending or approved subdivision

Response to Recommendation No. 1(c):

The District will broaden its current selection procedures, beginning with the next occasion in which the District's Board of Education decides to establish a new school or seek, through purchase, a new site location not within a pending or approved subdivision.

Re: Elk Grove Unified School District's Response to Findinand
Recommendation of Grand Jury Report

CERTIFICATE OF SERVICE

I declare that I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within action. My business address is c/o Best Best & Krieger LLP, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On September 27, 2002, I caused to be served the within:

SPECIFIC RESPONSE OF THE ELK GROVE UNIFIED
SCHOOL DISTRICT TO FINDING AND RECOMMENDATION
OF GRAND JURY REPORT

on the following persons:

The Honorable Michael T. Garcia Presiding Judge
Sacramento County Superior Court 720 Ninth Street, Dept. 47 Sacramento, CA 95814

- [X] By causing a true copy thereof to be delivered to the party or parties at the address(es) listed below, by and/or through the services of Capitol Mall Courier Services.

and on

Clerk, Board of Education

Elk Grove Unified School District 9510 Elk Grove -Florin Road
Elk Grove, CA 95624

- [X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California. I am familiar with my company's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mail box in Sacramento, California, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 30, 2002, at Sacramento, California.



DEBBIE A. PRIOR