

PIEDMONT UNIFIED SCHOOL DISTRICT
Council Chambers, City Hall
120 Vista Avenue
Piedmont, California 94611

MINUTES OF

Special Meeting of the Governing Board

December 11, 2012

CALL TO ORDER	President Rick Raushenbush called the meeting of the Board of Education to order at 6:15 p.m.
ESTABLISHMENT OF QUORUM	Vice President Andrea Swenson; Board Members Ray Gadbois, Sara Pearson and Roy Tolles were present.
Adjourn to Closed Session	The Board adjourned to Closed Session at 6:16 p.m. to discuss: Conference with Legal Counsel Mark Williams, Fagen Friedman & Fulfrost LLP – Anticipated Litigation regarding significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: 1 case.
Others Present in Closed Session	Superintendent Hubbard Michael Brady, Assistant Superintendent, Business Services Randall Booker, Assistant Superintendent, Educational Services
Convene to Open Session	President Raushenbush called the Regular Session of the Board of Education to order at 7:02 p.m. and led the Board and audience in the Pledge of Allegiance.
Others Present at Regular Session	Superintendent Constance Hubbard Michael Brady, Assistant Superintendent, Business Services Randall Booker, Assistant Superintendent, Educational Services
Report of Action Taken in Closed Session	No action was taken in closed session.
APPROVE RESOLUTION	Adopt Resolution 13-2011-12 10-2012-13 "Modification and Amendment to Qualified Special Tax and Establishing Specifications of the Election" A decision by the Court of Appeals governing Alameda County in the case <i>Borikas v. Alameda Unified School District</i> , was issued on Friday (12/7/2012) afternoon. The Court's decision requires the Board to consider a change to the Piedmont Unified School District's (PUSD) proposed school support tax measure, scheduled to appear on the March 5, 2013 special election ballot. The Board will consider modification of the tax rate structure to a flat rate of \$2,406 per parcel. Superintendent Hubbard thanked the City of Piedmont for accommodating us and having KCOM broadcast the meeting as it is very important that the meeting is televised so we can keep the community informed. Last Friday, December 7, our attorney let us know about the decision of an appellate court decision about the structure of their parcel tax in the case <i>Borakis vs. Alameda City Unified School District</i> . The court did not find in favor of the way that Alameda Unified School District structures their parcel tax, which is very similar to ours and many other districts in the state. On November 28, the School Board passed a resolution calling for

an election on March 5, 2013. We have until tomorrow, December 12, to file any changes to the election order. So the election order stands and we have until tomorrow to make file any changes to the election order regarding ballot wording or any components of the measure. We have called a special meeting so that we can modify the terms of the measure. The proposal is to change to tax to be in compliance with the appellate court ruling, which requires a flat tax. We would want it to be an 8-year tax that would supersede Measure B and take effect in July, 2013 so that we can be in compliance with the ruling as soon as possible.

There have been some questions about whether we should have acted so quickly. It is in the best interests of the community and the school district to comply with the ruling as soon as possible. We came to the rate by taking the total amount of parcel tax revenue our budget is dependent upon and our projections built on. The amount we are proposing provides the same amount that Measure A would have collected. It is the programmatic needs of the District that drive the amount of needed to keep the programs from the parcel tax. We are already struggling and any significant reduction in parcel tax revenue would affect programs and require layoffs. We really wanted to start with the base, and that is how we arrived at the flat number. ~~We also looked at how it applied to the issue to make sure we are in compliance with the ruling.~~

Mark Williams, an attorney with Fagen Friedman & Fulfroft, explained that Government Code Section 50079 allows school districts to impose parcel taxes. This is a very short statute passed almost 27 years ago and it speaks of "uniformity of tax rates." There has never been a case on it or a challenge until now. Many districts decided that uniformity of use meant as long as you apply a uniform formula you can distinguish between usage (commercial, non-commercial, undeveloped); this accords with common sense. The case *Borikas v. Alameda Unified School District* challenged this notion. The Alameda City Unified School District differentiated between businesses and residences and within businesses based on size. The Court struck that down: this is not a tax of empowerment that can vary according to parcel size or use. The ruling says this is a tax of limitation, applicable to all parcels regardless of size. It spoke about exemptions for disabled and senior citizens. This ruling was made last week and it puts us in a position to be able to revise the measure by tomorrow. Under statutory code, we have up to 83 days prior to the election to revise the measure.

A number of districts passed taxes in November that they cannot revise quickly. The timelines give the district the opportunity to come into compliance. Many questions have arisen. *Borakis* talks about business versus residential: can we make a distinction? *Borakis* says we are going to assess taxes per parcel at a flat rate. Many have asked if we can do a partial exemption. Our best look is no, because the statutory language talks about exemption or no exemption; we do not believe it will allow partial exemptions given the tone and findings based on *Borakis*. There has been discussion about when we should do this: now or when Measure B expires in 2014. From a legal point of view, it makes more sense to amend it sooner.

Katie Korotzer, co-chair of the School Support Tax Committee,

spoke on behalf of the campaign and her co-chair, Doug Ireland. In light of the proposed changes to the structure of the tax due to the *Borakis* decision, she would like to share their point of view. All homeowners equally and regardless of parcel size enjoy the opportunity and benefits of a Piedmont education. The need to locally fund our schools by collecting \$9.5M has not changed. In light of the need, our District needs to modify the structure and swiftly revise the parcel tax measure to conform to the decision, which can be accomplished in the March election.

President Raushenbush said that the decision before the Board this evening is to whether to revise the adopted parcel tax measure to conform with the court ruling. We were all comfortable with the structure of the parcel tax and its progressive nature but this is not allowable under *Borakis*. We do have the opportunity to revise it to conform to the court decision. We need to stick with the March 5 election date so we can be in compliance with the ruling as soon as possible. Our needs have not changed. This issue has been forwarded to Senator Hancock's office. Hopefully there will be some assistance but there are those, including all businesses, who will benefit from this decision. While I do not think a legislative fix is a certainty, we are working on it.

Vice President Swenson received 45 emails in support of the flat tax; a few wanted the District to raise more money. Three emails expressed concern about the senior exemption and other issues previously addressed and resolved. The reason we are here is the State has neglected its responsibility to educate its children and it has fallen on us to solve this problem locally. The \$9.5M raised by the parcel tax is central to the District's ability to educate. It funds math, science and technology, music, visual and performing arts. These are not frills; they are crucial for our Piedmont education. She does not think any member of the Board is supportive of a regressive tax, but the legislation is clear and we need to adhere to current law. If the legislation is changed, a later board can change the structure and replace this parcel tax.

Board Member Pearson states that our need for the \$9.5M has not changed. She supports the flat tax and changing the effective date to July 1, 2013 to comply with the ruling. She struggled with the senior exemption but knows that legally we cannot offer a partial exemption for seniors and believes our schools benefit the entire community and should be supported by all. She agrees with an exemption for SSI. It makes sense to revise the measure and hold the election on March 5 to be in compliance as soon as possible. It helps administration to know the election results before layoff notices are due on March 15. If the decision is changed in the future, we can go back and create a differentiated tax structure. It is important to remember that the tax is levied annually and an advisory committee will be making a recommendation to the Board. The Board is not compelled to levy the entire amount every year. The \$9.5M is a reasonable amount and has been reviewed, though we will still need to have some cuts. She is willing to help work on a legislative or judicial remedy to the court decision.

Board Member Gadbois agrees with the other Board members. We are fortunate that we have the opportunity to do something about the ruling. We have already deliberated on all the issues: revenue, senior exemption, terms of the tax. Our work tonight is to

change the structure to comply with the ruling. We have three options. One is to keep the current structure, which is my preference and although I disagree with the ruling, it would not be prudent to not comply with the ruling. Another option is to postpone the election, which would delay compliance. I do not think the decision will be resolved in a few months. The third option is to stay on schedule, comply with the decision, hold the election in March and begin the measure one year earlier in 2013, to not change the total amount of revenue, and to do what we can to pursue legislative change to allow a more progressive structure.

Board Member Tolles thanked the Superintendent and staff for moving so quickly on this issue. He wants to start the new tax in 2013 as it is a fiscal risk to the District. The court decision is unfortunate as the way the Board set it up with a progressive tax structure is preferred. The court made clear that we cannot do that. Over 25% (those with the smallest parcels) are going to take the brunt of this decision, which is not what the Board wants. The State has reduced funding in each of the past 5 years, and our revenue is 22% less than what the State is supposed to pay us. We make it up locally. We have already made cuts by increasing class sizes, reducing the number of teachers' aides and increasing library hours. My argument was that we needed a larger escalator. My first thought was we needed more time for discussion and public comment. When I understood the issues behind the decision, I agree with moving forward quickly as we may be risking tax revenue. We are assuming we are bumping the levy by 5% now and not in March-April. I wish there was some way to get around this structure but I support the measure as stated and feel like we need to keep moving and get in compliance as soon as we can.

George Childs, Piedmont resident, is really angry that this change is being thrust upon the community at this late date as a matter of urgency and he feels he is being denied full public discourse. He thinks the way to rectify this is to put it off until the June ballot. He asks why the outcome [the court decision] could not have been anticipated sooner and incorporated into the original resolution. He disagrees with the interpretation of the *Borakis* ruling and believes we could uniformly levy the same amount per square foot. Those with small parcels who can least afford it are hardest hit. This could drive a few people out of town. He believes the SSI exemption is meaningless for Piedmont and a senior exemption makes good sense. He thinks an annual levy of less than the full amount is not going to happen. He is not happy and hopes the Board takes into consideration alternatives.

Helen Steers left before speaking.

Jon Elliott, speaking as a resident, said that as a compliance attorney for 30 years, he knows is extremely disruptive when a court steps in and disbands an ongoing practice. He counsels people what will happen if they do or don't comply. We are here tonight deciding whether to buy insurance. We don't know if the decision will be revised. The cost of guessing wrong could be millions of dollars to the District at a time we need every dollar. It would be imprudent not to consider revising the parcel tax measure to comply with the ruling. When it is sorted out, the Board may be able to revise the structure of the parcel tax. In the meantime,

he supports the decision of the Board to approve the resolution.

Rick Smith, Piedmont resident, supports the direction of the Board to move forward with a new structure for the parcel tax. The need for \$9.5M will not go away and he believes the households of Piedmont will approve the tax and do so in a supporting way. He hopes the board moves forward with the resolution.

Rick Schiller, resident, agrees with Mr. Childs that the situation is unfortunate. He believes a senior exemption is necessary. Many districts have them. He has a different interpretation of *Borakis* and thinks the Board is taking a conservative point of view that puts a greater burden on those least able to pay, young families and seniors. Portola Valley has more seniors than Piedmont and less than 20% opt out of the \$458 tax. San Ramon has a lower number of seniors and only 28% take the exemption of the \$144 tax. An SSI exemption is merely symbolic. A partial senior exemption would result in a minimal loss of revenue and would be made up by the significant tax break for larger lots due to Measure A because those people will donate more to the schools. He believes a partial senior exemption would be allowed as it is in Section 5007.1, which allows community colleges to offer partial exemptions and to base tax on the square footage of dwellings. He agrees that the money is needed by the schools and thinks this the time is right for a partial exemption of \$400 for seniors.

President Raushenbush says it would have been nice to know about the *Borakis* decision earlier. He notes that Alameda USD won in the trial court and lost at the appellate court. He is sure it was a surprise to many school districts that have similar structures. He cannot read the decision as allowing a square foot rate tax. He finds it contradictory to be concerned about the impact on the smallest parcels and then advocate a senior exemption, which would raise taxes for everyone else more. The danger with a partial exemption is that the court in the *Borakis* decision picked the lowest rate in the tax for everyone; a partial exemption would be a risk for us and not prudent. Section 50079.1 has some alternative language but unfortunately, that is not the section we are under. That section is for community colleges. Right now we have a choice of a flat tax and we can decide what that amount will be. With the tax we will still have deficit spending that will require either more state money additional cuts.

Ms. Pearson asked administration the implications of putting the election off until June. Superintendent Hubbard explained it would be problematic to change the tax rate for 2013-14 with an election the first week in June. Also we want to get into compliance as soon as possible. We need to make sure we have fiscal stability as soon as possible and if we put the election off, the Second Interim Report would show we cannot pay bills the third year. It would be unlikely we could file an acceptable budget, which would result in a reduction in our credit rating because in 2014-15 we would have no guaranteed income for the budget hole.

Mr. Tolles responded to several things Mr. Childs said. We cannot do a tax by square foot and a partial exemption would result in a lower rate and would be a big risk. Prop 13 is a significant senior exemption. The driving factor behind tonight's action is a legal case brought by businesses who wanted to pay so much. We

have very few businesses and those districts that relied on parcel tax on businesses are in much deeper trouble than us.

Mr. Gadbois asked about the interpretation of uniform square foot. Alameda USD had a square foot rate structure for the tax on businesses. Mr. Williams said the first page of the decision differentiates between the size of commercial structures. Footnote 24 on page 24 states that the legislature prohibits variable tax rates based on size of the parcel. The corollary is that they will take the same position of size of structure, so, yes, they directly address that.

Mr. Tolles would recommend that the Board revise the tax and go back to a progressive structure if there are legislative changes to this decision. President Raushenbush said if the legislature gives the Board some discretion, that would be the time for the public hearings.

Vice President Swenson moved that the Board approve Resolution 10-2012-13 Modification and Amendment to Qualified Special Tax and Establishing Specifications of the Election." The motion was seconded by Ms. Pearson.

The motion passed as follows:

AYES: Tolles, Gadbois, Pearson, Swenson Raushenbush

NOES: None

ABSENT: None

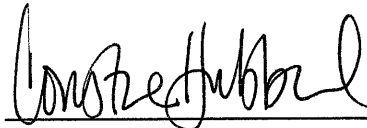
ABSTAIN: None

Adjournment

There being no further business, and with no objection by the Board, Vice President Raushenbush adjourned the meeting at 8:06 p.m.



RICK RAUSHENBUSH, Board President
Piedmont Unified School District
Board of Education



CONSTANCE HUBBARD
Secretary, Piedmont Unified School District
Board of Education