



El Dorado County Board of Supervisors

Final Draft Response

to the

2013-14 Grand Jury Midterm Report

June 10, 2014

**EL DORADO COUNTY GRAND JURY 2013-
2014**

**REPORT NUMBER 13/14-
06**

**Board of Supervisors Permit Fee Waivers and
Refunds**

Reason For Report

The Grand Jury became aware of the Board of Supervisor's practice of waiving some permit fees that are otherwise required by the Board's own policies and ordinances. Those same fees are paid by other payers in similar circumstances.

Background

Board of Supervisors Resolution Number 180-2007, dated 7/10/2007, establishes a building fee schedule that provides specific fees. It gives the Director of Development Services the ability to authorize the refund of any fee erroneously paid or when no permit work is performed.

Board of Supervisors Policy Number B-2, Fee Waiving, revised 2/7/1989, amends policies and procedures regarding consideration of requests for waiver of County fees, permit charges and other administrative costs. It authorizes the Chief Administrative Officer (CAO) to waive permit fees if the CAO makes one of six specific findings.

Board of Supervisors Resolution Number 45-2008, dated 2/12/2008, declares property owners affected by the Angora fire eligible for Permit Fee Waivers.

Article XVI, section 6 of the California Constitution prohibits a gift of public money to an individual without public purpose.

Methodology

The Grand Jury interviewed members of the Board of Supervisors and county staff. The Grand Jury reviewed:

- Board of Supervisors Resolution Number 180-2007.
- Board of Supervisors Policy Number B-2.
- Resolution Number 45-2008.

- A Board of Supervisors meeting agenda Item 11-1161 in which the Board approved the refund of grading permit and asbestos dust mitigation fees.
- A Board of Supervisors Board meeting agenda Item 12-1103 in which the Board approved the waiver of any and all permit fees for needed improvements to wheelchair and handicap access to a home.
- A List of Building Permits with Waived Fees for Years 2009 through October 3, 2013 provided by the County's IT department.
- Article XVI, section 6 of the California Constitution.

Discussion

A list of permit fee waivers for the five year period 2009 through October 3, 2013 was reviewed. Almost all were waived by the County Administrative Officer pursuant to the specific provisions of El Dorado County Fee Waiving Policy B-2 with three exceptions.

1. A waived fee for Permit Number 203375 grading and asbestos dust mitigation.
2. A waived fee for Permit Number 209320 for construction of a wheelchair access ramp following the catastrophic injury suffered by the home owner's teenage son.
3. Fees for homes damaged or destroyed in the Angora fire of 2007.

The waivers appear to have been granted without an attempt to identify and reimburse permit fees paid by other owners for grading permits, homes remodeled to accommodate the needs of a family member incapacitated by a catastrophic injury or properties destroyed by a fire other than the 2007 Angora fire. Similarly situated property owners were not treated in a commensurate manner.

The Board of Supervisors reimbursed permit fees in each of these situations without stating the public purpose that made it appropriate to do so.

Article XVI, section 6 of the California Constitution prohibits any "gift" of public money to an individual. Expenditures of public funds must have a public purpose. (75 Ops.Cal.Atty.Gen. 20) However, under the public purpose doctrine, public funds may be expended only if a direct and substantial public purpose is served by the expenditure, and private individuals are benefitted only as an incident to the promotion of the public purpose. (California Housing Finance Authority v. Elliott (1976) 17 Cal.3d 575, 583.)

Findings

1. Permit fees were required and paid for a Grading Permit and asbestos mitigation. The Board authorized reimbursement of the already paid fees. They were subsequently reimbursed.

Response: The respondent agrees with the finding.

2. Permit fees were required for a wheel chair ramp to be added to a home after the owner's teenage son was critically injured. The Board authorized waiver of these fees.

Response: The respondent agrees with the finding.

3. The Board has approved waiver of permit fees for owners of property burned in the Angora fire of 2007. Neither Resolution No. 180-2007 nor Policy B-2 nor any other policy authorized refund of these fees. No public purpose was stated for the refund of these fees.

Response: The respondent disagrees partially with the finding. The Board of Supervisors waived permit fees for replacement of structures previously approved but destroyed by the catastrophic wildfire. The County continued to collect building fees from fire victims who were expanding their previously approved structures.

4. The Grand Jury found no evidence that the Board sought out or provided relief to others in similar circumstances for grading of property, property lost in fire or the remodeling of a home made necessary by a family member's critical injury.

Response: The respondent disagrees partially with the finding. Policy B-2 leaves the discretion to pursue a fee waiver up to the individual applicants. Most projects will not fall under the narrow exception criteria outlined in Policy B-2, and it would not be a reasonable use of public resources to individually research each project for fee waiver eligibility.

5. The Grand Jury finds that reimbursement of these fees was a gift of public funds in violation of Article XVI of the California Constitution.

Response: The respondent disagrees with the finding. The Board of Supervisors believes that the fee waivers provided meet the definition of public purpose. The Angora Fire destroyed over 250 homes and devastated many families. It was in the best interest of those families and the community in general to hasten the reconstruction of homes and lives. Property owners had already paid permit fees when the homes were originally constructed. As noted, the County continued to collect building fees for expansion projects.

Recommendation

1. The Grand Jury recommends that the Board of Supervisors no longer waive or reimburse permit fees unless they are specifically allowed by a Board Policy, California Constitution or State statute. Waving fees in an ad hoc manner gives the impression of collusion and favoritism.

Response: The recommendation has been implemented. The Board of Supervisors believes that the identified fee waivers are consistent with Board discretionary authority

to waive fees because the waivers were in the best interest of the public. While reasonable people can disagree whether these specific circumstances fall within the confines of Policy B-2, policies established by the Board of Supervisors provide general guidance, and should not be construed to limit the Board's lawful authority to consider unique situations that have an overall public benefit. In general, Policy B-2 has worked, but the Board may consider revising it from time to time to better express the types of public purposes for which fee waivers are appropriate.