

jnsbranti@modbee.com" />
THE SACRAMENTO BEE sacbee.com

Village I hit with big fees for schools despite pact

Published Monday, Jul. 19, 2010

Modesto's Village I homeowners may have been wrongly charged millions of dollars in extra property taxes, and they may be on the hook for millions more because of how school construction funds were spent.

A 1994 deal with the Modesto and Sylvan school districts was designed to limit how much Village I homeowners paid for school construction, and it assured that taxes would be reduced if state money was received to pay for five schools in northeast Modesto.

That has not happened.

Instead, Village I's Mello-Roos property taxes have risen each year. School officials now calculate homeowners are "obligated" to pay about twice as much for schools as originally promised.

Inflation is cited as the reason for most the increases, and school officials say they had legal authority to boost collections by millions more for assorted other reasons.

The 1994 deal specified that Village I's share of school construction would "not exceed \$52,735,600."

But about \$51.8 million already has been collected from Village I residents and builders, and an additional \$37.2 million in state building funds has been received.

School officials, nevertheless, have plans to continue collecting extra Village I property taxes for 27 more years. They say they need that cash to pay off about \$23 million in school construction bonds, which they sold using special Village I tax collections as collateral.

Last year, most Village I homeowners paid an extra \$390 in property taxes, and they're expected to be charged about \$398 this year.

Besides extra annual property taxes, that special taxing district collects a fee for every home built. That fee is \$4.66 per square foot.

The average-size Village I house is about 2,200 square feet, which would make the typical one-time fee collected by the taxing district \$10,252.

Including 4,189 in Village I, 4,882 homes have been built in the district.

The districts have collected about \$118 million from local fees and taxes, state contributions, interest bonds to pay for what they contend was Village I's share of school construction costs.

That's not what was supposed to happen.

The special taxing district -- called a Mello-Roos district -- was set up in 1994 as a way to mitigate the impact of 7,031 housing units planned for construction in Village I.

Only 4,673 ended up being built in and around Village I. Rather than reducing how much those fewer-than- expected Mello-Roos property owners were "obligated" to pay for new campuses, officials found ways to justify expanding the \$52.7 million cap to more than \$98.1 million.

They also apparently determined they were allowed to spend about \$31.9 million in state construction funds in addition to the Village I contributions rather than in place of them.

School administrators insist everything was legal and contend there has been "substantial compliance with the mitigation agreement."

Not everyone agrees.

"It sounds to me it's in violation with the agreement we had," said state Sen. Dave Cogdill, who helped negotiate the 1994 deal when he was a member of the Modesto City Council. "It's not right. We had an agreement."

That "School Impact Mitigation Agreement" was reached in June 1994 and formally approved in November 1994 by the city of Modesto, the Modesto City Schools High School District, the Sylvan Union School District and the Building Industry Association of Central California.

Cogdill clearly remembers the complex negotiations.

"We were in a pretty deep recession at the time," Cogdill said. He explained how the city wanted to stimulate the economy by getting building started in Village I, but the school districts needed a way to fund campus construction.

The deal set up a formula to charge developers school impact fees for every house they built, and then to charge homeowners extra annual property taxes to pay for schools.

That included Enochs High School, Savage Middle School, and Freedom and Sanders elementary schools, as well as a yet-to-be-built third elementary school.

The agreement's key provisions were:

The \$52.7 million cap

A requirement that if state building funds were received, those funds would replace what Village I residents were obligated to pay

"That was certainly my understanding of what would happen when we negotiated this agreement," Cogdill said. Because state funds were received, he said, "there needs to be some credit applied. I would hope there's some action the city and the taxpayers can take."

The agreement was signed by Modesto City Manager Edward Tewes, building association Executive Vice President Edward Taczanowsky, Sylvan Superintendent Michael Sibitz and Modesto Superintendent James Enochs. All the men since have retired or moved on to other positions.

The 13-page deal was supposed to provide the framework from which the Modesto and Sylvan school districts formed a joint powers agreement to establish a Mello-Roos taxing district to finance the five campuses in Village I.

"The provisions of this agreement shall govern in the event of a conflict between any provision of the Village I financing plan and this agreement," the mitigation agreement states.

The school districts formed the Mello-Roos district during the fall of 1994. But the legal wording ultimately used in establishing the taxing district was slightly different from that in the deal agreed to by the city, builders and the school districts.

Legal details embedded in the joint powers agreement -- drafted by a San Francisco law firm -- give school officials more leeway in how much can be collected from Village I residents and how state funds can be used.

School officials contend the joint powers agreement is the "ruling document," not the mitigation agreement signed on behalf of the school districts by Superintendent Enochs and Superintendent Sibitz.

The joint powers agreement established what is called the Schools Infrastructure Financing Agency Community Facilities District 1994-1. The school agency -- called SIFA -- essentially is managed by two of Modesto City Schools' staff members: Becky Meredith and Duane Wolterstorff.

Wolterstorff said the provision that called for state building funds to replace Village I property taxes was "a great statement to make ... but in reality it is nearly impossible to do on an annual basis."

By the time state funds were received for construction of Enochs High, Savage Middle and Sanders Elementary, Wolterstorff said, "we had already issued bonds based on an annual revenue stream" from Village I Mello-Roos taxes.

Had the terms of the School Impact Mitigation Agreement been followed, those \$23.5 million in school construction bonds could have been completely paid off once the state construction funds arrived.

That did not happen.

Instead, state funds were spent on top of Mello-Roos funds. They were treated as additional money rather than "replacement funds," as the mitigation agreement specified.

Meredith and Wolterstorff said that was allowed by the joint powers agreement.

Wolterstorff said the School Impact Mitigation Agreement was simply "a memorandum that cannot supercede the formation documents of the SIFA."

Wolterstorff has been a SIFA administrator about 10 years. The Bee provided a School Impact Mitigation Agreement copy to Wolterstorff's office last month. Until then, he said, "I didn't even know that document existed."

A former staff member in Wolterstorff's office disputes that claim.

"I know Duane was intimately aware of it," said Miguel Galvez, who was one of the SIFA administrators from September 2006 until this month, when he was laid off. "When the pedestrian overcrossing was being built (for Enochs High), that's the document we went to."

Galvez said Wolterstorff used the School Impact Mitigation Agreement because it specified how the cost of Enochs' overcrossing would be divided by the school district and the city of Modesto.

When asked about that contradictory information, Wolterstorff said, "I am still not recalling ever seeing this document before last month."

There also are discrepancies in what The Bee was told by SIFA officials about inflation-rate calculations, which increased how much Village I property owners are "obligated" to pay in Mello-Roos taxes.

Meredith said that even though the Mello-Roos district's funding originally was not supposed to exceed \$52.7 million, that could be adjusted for inflation until each school's construction contract was awarded.

Wednesday, Meredith said a 4 percent inflation rate "was identified as an average" based on the Engineering News Record's annual building cost index.

That's not true.

The Bee obtained that index from the Engineering News Record for 1995 through 2009. Using its statistics, it appears the Mello-Roos district's "obligation" inaccurately was inflated by at least \$8.9 million because the actual inflation rate was less than 2 percent, not 4 percent.

Example: From January 1995 to January 2004, the Engineering News Record's annual building cost index increased 17 percent. That's roughly the time period required to calculate how much Village I owed for Enochs High.

But rather than inflating the Mello-Roos district's Enochs High "obligation" by 17 percent, SIFA inflated it by 53 percent. That boosted the tax burden for funding Enochs High from \$24.8 million to \$37.9 million, rather than to \$29 million.

The "obligation" for funding Freedom, Sanders, Savage and the yet-to-be-built elementary school also was overinflated, according to the Engineering News Record index.

On Thursday, after The Bee informed Meredith of the discrepancy, she offered a different explanation for how SIFA determined it could inflate prices 4 percent per year.

Meredith said "the initial assumption of 4 percent inflation was consistently carried forward annually," and that SIFA does not require a specific inflation index be used.

There also are questions about other ways school officials increased the Mello-Roos district's "obligation."

According to the joint powers agreement, the \$52.7 million in school costs could be raised if more housing units were added to the Mello-Roos community facilities district.

Originally, the Mello-Roos district was to include 1,691 multifamily units and 5,340 houses. That's 7,031 total.

As of June, however, only 4,882 houses and 327 lots in and around Village I have opted into that Mello-Roos district. That's 5,209 total.

But rather than lowering the district's funding "obligation" because fewer homes have less impact on schools, SIFA raised the "obligation" more than \$5 million. It did that because the Mello-Roos district's boundaries expanded to include some subdivisions outside Village I.

Those outside neighborhoods -- Coffee-Claratina, Empire North and North Beyer Park -- did not equal the number of Village I housing units that opted not to annex into the Mello-Roos district.

A couple of large Village I apartment complexes, for example, apparently chose to pay higher upfront school- impact mitigation fees rather than join the Mello-Roos district and be forced to pay higher annual property taxes. The funds they paid apparently went directly to the school districts and are not counted in SIFA revenues.

So, fewer Village I homes are left to pay larger tax "obligations."

That's not all.

Meredith and Wolterstorff said the SIFA had legal justification to boost the tax "obligation" even higher for things such as "class-size reductions" and "increasing cost budget adjustments."

In fiscal year 2003-04, for example, nearly \$9 million in tax "obligation" was added for Savage, Sanders and the yet-to-be-built campus because school officials determined the 4 percent inflation factor was not high enough. They added \$12.5 million more in "obligation" to reduce elementary class sizes.

The original School Impact Mitigation Agreement specified that its provisions would "completely and finally resolve all school impact fee issues for Village I" and that "this agreement may be amended only by a writing executed by the parties hereto."

That means the building association and the city of Modesto were supposed to agree before such changes were made.

But Meredith expressed confidence that the wording in the joint powers agreement legally allowed every adjustment that was made.

"We spent years of our lives making sure there was no room for doubt ... and so that homeowners paid no more than what they were supposed to," Meredith said. She insists there were "justifiable reasons" for adjustments.

Meredith said it is "an interpretation issue" as to whether all of the \$37.2 million in state construction funds should be been deducted from what Village I homeowners owe.

Only once -- in 2003 -- was state money accounted for in SIFA financial records. The \$5.3 million in state funds received for Freedom Elementary's construction was deposited into SIFA's account, but tax rates were not lowered.

SIFA's accounts do not acknowledge the state contributed \$6.7 million for Sanders, \$12.7 million for Savage or \$12.5 million for Enochs High.

"What is certain," Meredith stated, "is that all (Mello-Roos) funds, and all state funds, were applied to the building of schools."

Village I property owners must continue paying extra Mello-Roos property taxes, she said, because the bonds SIFA issued must be repaid.

"At this time, the tax rate cannot be lowered because there's a contractual obligation between SIFA and bond holders," Meredith said. "To lower tax rates would lead to potential default on the bonds, and it would be a contractual violation to the holders of those bonds."

Meredith insisted that "SIFA has operated in good faith and has not violated the terms of the special tax."

The SIFA board will set the Village I Mello-Roos district's tax levy at its next meeting, at 6 p.m. Aug. 11 in the Sylvan Union School District office,

605 Sylvan Ave., Modesto.

Bee staff writer J.N. Sbranti can be reached at jnsbranti@modbee.com or 578-2196.

© Copyright The Sacramento Bee. All rights reserved.