

## **Electronic Correspondence – Piedmont Hills 2-06-10**

*Correspondence received as of 4:30 p.m. 2-05-10*

February 5, 2010

Mayor Friedman and Members of the City Council:

I have just completed reading the Staff Report of February 4, 2010. I am both astonished and saddened at where the Council's ill-considered decision of December 12, 2009 has led the City. The financial predicament the Council's decision has created is truly staggering, and is rivaled only by the audacity of the Staff's recommendation that the Council now throw good money after bad by more than *doubling* the Piedmont Hills bail out.

Less than *two months* after the Council made an unwise economic decision that it was cheaper to complete the project than to stop it, the estimated completion cost has more than doubled. But there still remains no justification whatsoever for the bail out, let alone one doubled in size. Recent legal developments firmly establish that the bail out is improper and illegal. And even if the Council is inclined to force the City more deeply into this financial morass, there is no sound reason to believe that this will be the last cost overrun the District (and the City) will face. Finally, there is simply no reason to rush this decision. Nothing in the Staff presentation on February 1, 2010 suggested that the Council would be asked to more than double the City's financial commitment. The Council should reject the false sense of urgency created by Staff's surprise calculations of the cost overruns, which were only made public late Thursday night.

At the December 12, 2009, special Council meeting, I implored you that the *cheapest* solution to the Piedmont Hills problem is not necessarily the *right* solution. Unfortunately, "I told you so" doesn't feel very satisfying right now. I will avoid for the moment the temptation to point fingers and call for resignations. There will no doubt be much opportunity (and need) for both at a later time.

Instead, I appeal here to your sense of decency and ask you to end this madness. No additional City funds should be expended for this private benefit project. If the homeowners in the District value the project, they should pay for its *true costs*. If they are unwilling to do so, then there is no reason for the City to bail them out. Remember, the District residents got to vote for the project; the rest of us—who are now being asked to pick up the skyrocketing tab—did not. The fact that District boosters have to date raised a little more than \$100,000 (or about 5% of the total cost overruns) suggests that the project is *not* that important to the District residents. If that is the case, why should the City force completion of this project?

The Council's decision is also based on unsound legal advice. As a matter of California law, the Council may not require Taxpayers outside the district to pay for the district, since only the residents of the district are benefitted by the project. As the Council is aware, important legal principles relating to this topic have recently been clarified. On December 31, 2009, the California First District Court of Appeal issued an important ruling in an undergrounding case titled *Town of Tiburon v. Bonander*. The issue in Bonander was the steps Tiburon had to take to impose supplemental assessments on residents of an undergrounding district when cost overruns occurred (an approach this Council would be well-advised to consider). The Court's statement of the controlling legal principle is compelling:

"When determining whether benefits are general or special, we must be mindful of the rationale for making the distinction. The purpose of limiting assessments to special benefits conferred on particular properties is to avoid having property owners in an assessment district pay for general benefits enjoyed by

the public at large. *Conversely, if a project confers particular and distinct benefits upon specific properties in an assessment district, it would be unfair to have taxpayers outside the assessment district pay for those benefits that specifically benefit only property owners within the district.*” (p. 21; emphasis supplied)

Here, there is no serious assertion that undergrounding utilities in Piedmont Hills provides benefits outside that District. Accordingly, as an unequivocal matter of California law, the Council has no legal authority to require Taxpayers *outside* the district to pay for the district. If there was ever any doubt about this point, it was erased by the clear statement of the Court of Appeal quoted above. While the Council did not have the benefit of the *Bonander* opinion in December 2009, there is no excuse for ignoring the law today.

I recognize that some Council members feel that the City is bound by *contract* to continue to pay for Piedmont Hills. Because I have not had access to the contracts, I cannot comment on this conclusion. But at the very least, I question whether any contract could legally compel the City to violate the law as announced in *Bonander*.

Moreover, if the contracts are as the Council has represented them, then the Council plainly received very bad legal advice. Thus, if the Council insists on continuing its “pay now, seek reimbursement from the negligent professionals later” approach, it *must* consider filing a legal malpractice claim against whomever gave the City this advice. I also urge the Council to be very suspicious of any legal advice from those same lawyers about suing other professionals. At the very least, any lawyer who negligently advised the City to enter into these contracts cannot be counted upon to give unbiased advice about which parties the City should sue.

But even if the Council insists on looking solely at “the numbers,” doubling the bail out cannot be defended. The Staff Report notes (at p. 3) that the City’s General Fund “cannot sustain a \$1.15 million expenditure at this time...” This is true, of course, because the Council has already unwisely committed an unreasonable portion of the General Fund to the Piedmont Hills bail out. Having drained the City’s General Fund, Staff now proposes to do the same to the CIP budget—looting 83% of the total CIP budget, just for Piedmont Hills. And the cost of shutting down the project, now apparently estimated at roughly \$641,000 (Staff Report, Ex. B), is plainly less than the cost of going forward, and is less than 30% of the proposed total commitment of more than \$2 million in City funds.

How is this possibly an economically wise thing to do?

Moreover, what possible assurance can the Council have that this will be the final request for additional funds? The Council has seen the cost estimates provided by Staff skyrocket in a stunningly short period of time. With all due respect to Staff, the Council must at least seriously question the reliability or credibility of *any* cost estimates Staff provides. While Staff may have an admirable history of service to the City in other areas, their recent track record on this matter has been shockingly poor.

Indeed, the Staff Report itself should give the Council pause about the reliability of the current cost estimate. The Report notes (at p. 1) that the “primary cause” for the *initial* cost overruns was “pervasive rock which was not identified on the project improvement plan and for which the city was paying on a time and materials basis.” Yet on the same page, the Staff Report notes that a substantial part of the *current* projected cost overruns is that several thousand feet of *additional* trenching not previously planned for needs to be done. What assurance is there that this additional trenching will not encounter the same “pervasive rock” that caused the initial cost overruns?

Finally, please do not rush to make this decision. Once again, Staff has put the Council and the Taxpayers in a position where there is a false sense of urgency to make this decision. I assume that most Council Members were as shocked as I was by Ms. Swift's presentation at the Council's February 1, 2010 meeting. And certainly nothing in that presentation even hinted that the Council would be asked to more than double the contribution of City revenues to the Piedmont Hills bail out.

Staff has never identified a compelling need to rush to judgment. Nor have we received any explanation why this information—presumably known *at some level* to Staff as they prepared their presentation for the February 1, 2010 Council meeting—was withheld until *after* the election. The Council, as well as the Taxpayers who are being asked to foot the bill, should not be forced to spend more than \$1 million without time for reasonable reflection and inquiry. Providing this information to the public late on Thursday night before a Saturday special Council meeting is simply unfair.

At the very least, if the Council is inclined to make any further appropriation, more due diligence is needed to confirm the legality of this payment in light of *Bonander* as well as the reliability of the current cost estimates. The People of Piedmont deserve at least this much respect.

Please do not compound the error of the December 12, 2009 decision by rushing to agree to more than double the City's commitment to this fiasco.

Robert Phelps

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To: The Piedmont City Council, Anne Swift, George Peyton  
From: Maria Faer  
Date: February 5, 2010

The most recent examples of mismanagement of the Piedmont Hills Projects raises two concerns which I sincerely hope you will immediately and openly address prior to any decision on Saturday to allocate additional General Fund dollars for a special assessment district. If you cannot demonstrate that you have conducted your due diligence in pursuing these questions, then you continue to put the fiscal viability of our city at risk; potentially create a legal risk well beyond anything that the attorneys have suggested to date; and continue a pattern of mismanagement that could be considered malfeasance and open the doors for the public to request a Civil or Criminal Grand Jury complaint.

1. I urge you to demand a written, legal opinion regarding the legality of using public dollars to support the private benefits of the Piedmont Hills district, particularly in light of the recent December 31, 2009, California First District Court of Appeal important ruling in an undergrounding case titled *Town of Tiburon v. Bonander*.

**Does the allocation of public funds to pay for special benefits in a special assessment district render the district invalid? If the district were to be deemed invalid by either a county civil or criminal court, what are the liabilities to the City?**

At the December special meeting I raised these questions to City Attorney Peyton, but he adroitly rephrased the question to avoid the question and what I suspect to be his lack of knowledge about the law. The actions of the City Council in allocating public funds for a special assessment district may have rendered null and void the Piedmont Hills Underground district, and, as you should know, the validity of such a district is a constitutional matter.

2. I urge you to immediately conduct a third-party, independent and thorough assessment of the process for not only funding this district, but overall, what policies, procedures, and controls exist to guide and govern undergrounding initiatives.

Unfortunately, this may not be an isolated incident, but representative of systemic errors and other mismanagement that must be corrected.

**Are you assured that the mismanagement of the Piedmont Hills district is not representative of a pervasiveness pattern of malfeasance within the city administration?**

I urge you to immediately convene a Citizen Council charged with developing the facts and circumstances in order to answer the immediate question of what happened and how. If the facts so warrant if, then as our elected representatives, you must file, on our behalf, a complaint in the Alameda County Criminal Grand Jury that would provide you, the City Council, with the information you need to perform your ongoing due diligence in these matters.

**Legal Questions Regarding the Validity of the Piedmont Hills Underground District**

1. Would the Court see that the allocation of public funds for a special assessment district—when none of the specified benefits (e.g., view) are provided to the general public---renders the said district invalid and illegal?

2. If the underground district is rendered null and void, who is now liable for the full costs of the bond and other funding for the district? Will all Piedmont be liable for not just the overruns, but ALL costs of the district?

3. If the City Council establishes the precedence of using public funds for special assessment districts, to what degree does the Council place all General Funds at risk for future district overruns still on the books?

Under law, (Article XIII(d) of the state constitution), property assessment districts can only fund special, not general benefits. General benefits are those allocated to all parcels in the City and funded out of public or general fund revenues. Also reference Municipal Improvement Act of 1913, 10426 of Streets and Highway Code.

The validity of a special assessment district is a constitutional question.

As Bob Phelps so eloquently states in his letter to you:

On December 31, 2009, the California First District Court of Appeal issued an important ruling in an undergrounding case titled *Town of Tiburon v. Bonander*. The Court's statement of the controlling legal principle is compelling:

“When determining whether benefits are general or special, we must be mindful of the rationale for making the distinction. The purpose of limiting assessments to special benefits conferred on particular properties is to avoid having property owners in an assessment district pay for general benefits enjoyed by the public at large. ***Conversely, if a project confers particular and distinct benefits upon specific properties in an assessment district, it would be unfair to have taxpayers outside the assessment district pay for those benefits that specifically benefit only property owners within the district.***” (p. 21; emphasis supplied)

Maria Faer

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Mayor Friedman and council members;

There are not words to describe my reaction to the most recent news regarding the Piedmont Hills undergrounding project. From all appearances, what has gone wrong cannot be fixed with the on-going enormous financial band-aids that have been applied. Instead you should:

Stop the job

Identify the responsible parties - city staff, council members, consultants

- Dismiss staff (What is status of their benefits? It would add insult to injury to pay full retirement and health benefits to employees whose actions have incurred costs for which the city is unlikely to be reimbursed.)
- Pursue professional liability claim against engineers or other responsible consultants
- Give complete disclosure as to city council involvement in approval of change orders
- Hire new city staff (in this economic climate it should not be difficult to find competent and qualified candidates.)
- Sort out the mess that remains including a complete revamping of city policies regarding private improvements.

Lisa Joyce

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Gentlemen,

I just don't know where to begin. I just received this email from Esther Rogers (see below my signature). I understand that the challenges our school district is facing with financing and this travesty of mis-management are completely unrelated, however I can not believe nor understand why you would even consider allocating an additional \$1.15 million of tax payer dollars to benefit just 140 Piedmont homes when our schools face an additional \$700,000 in state funding cuts.

Teachers are being furloughed, minimum days are being enacted, class sizes are being increased (this is BEFORE these additional cuts were even announced!) ....and yet, and yet the PHUD residents and the City Council will sleep soundly knowing that they will not have pesky power lines distorting their views. This is a waste of tax payer dollars and a waste of our energy as citizens. We should be coming together as a community to figure out how to help our schools instead of how to help the PHUD.

I expressed my dissatisfaction with the original \$1 million that you allocated back in December and now to find that another \$1.15 million is being considered by you tomorrow is an absolute disgrace. Honestly if you are concerned about lawsuits then rescind the original \$1 million allocation and use this \$2 million to fight the lawsuit. At least this will be a more honorable approach then continuing to pour good money after bad on a project that was mis-managed from the start.

Sincerely,  
Valerie Williamson

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I am appalled that 4% of families affected by the under grounding debacle have decided to take tax dollars from the entire community to benefit their own narrow interest. Why should the community bear the cost of the engineers' and contractors' incompetence? Don't be intimidated by these homeowners' threats of tax with holding if they do not get their way. I suggest they secure non-public debt financing. The home owners should not be granted any additional tax money.

Andrea Hazell

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City Council,

I would like to add my name to the growing list of people expressing outrage at the mismanagement of the undergrounding project. I feel strongly that no further city money should be spent on this project. If that halts all work until litigation proceeds, so be it. Alternatively those homeowners who voted to proceed with this project can attempt to come up with the shortfall themselves.

I also believe Council must now demand resignations by those who either incorrectly passed off management of this project, or who were individually responsible due to their own omissions.

Regards,  
Robert Houser

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Dear Mayor Friedman and fellow City Council members:

It is my understanding that the the staff intends to ask the City Council - once again on short notice - to allocate an additional \$1.15 million (on top of the \$1 million already approved in December) to PHUD. As you know from my earlier correspondence to you on this issue and the editorial pieces I have put in the newspapers, I believe the use of public funds for undergrounding is completely inappropriate and should be rejected by the City Council. However, as I have been clear, my primary concern was to move forward and make sure that the residents of Piedmont were adequately protected. Although I understand the rationale underlying your earlier allocation of funds, the situation has clearly spiraled out of control. Moreover, now more than ever, the management of this project should be a matter of dire concern to you both as our elected representatives and as fellow citizens of Piedmont. The fact that we still do not know the basic timeline on how the monies for this project were spent, or even who authorized the payments once the contingency funds were spent, is beyond comprehension to me. The City needs to put a halt to this project (as well as the Hampton/Seaview lawsuit) without any further delay and take a hard look at how the city management got into this situation.

With great concern,

Leon Bloomfield

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Dear City Council,

Please, please do not appropriate \$1.15 million from CIP funds to pay for the additional cost overruns for the Piedmont Hills Undergrounding project. The project should be shut down now. If residents of that undergrounding district want to continue with the project, they can have another vote to raise the funds within themselves. It is completely unreasonable to ask Piedmont taxpayers to take on another \$1.15m in responsibility for this project. The first \$1m bailout was bad enough, but I understood how, among many bad options, it was pretty much the only decision to make at that time. Taking another \$1.15m out of the city budget, however, is pushing things way too far. In these difficult financial times, careful stewardship needs to be exercised over our reserves (wherever they are in the budget). In addition, it just wouldn't be fair to nearly deplete the CIP reserve for a project that only benefits a small part of the city, when there are other projects citywide that likely wouldn't be able to happen because of this. Also, I urge you to move forward **quickly** with investigating how management of this undergrounding project came to be so out of control.

Margaret Ovenden

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It is dismaying to read in the same week that the schools will have a \$1 million shortfall resulting in furloughs for our underpaid teachers and staff, and yet the city is poised to spend \$2.15 million to increase the value of a very limited number of homes in town. Approval of this appropriation sends a terrible message to the community. Sometimes, breach of contract is a reasonable business decision, and it seems that the time has come to halt this project until the PUHD commits to paying for the shortfall.

Thank you,  
Kara Christenson

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***Correspondence received as of 12:00 noon 2-05-10***

Dear Council Members:

I was strongly opposed to the appropriation of over \$1,000,000 in December and again strongly oppose the appropriation of another \$1,150,000 now for the Piedmont Hills undergrounding. Most citizens believed that the original December "open ended" amount would not be sufficient to complete the project and the same holds true now. In December you depleted the general fund reserves by 1/3. Now, your finance director, Mr. Bichsel has told you that the general fund cannot afford another \$1,150,000 charge, so staff is just dipping into another fund that also cannot really afford it. Taking the money from capital improvements will hurt the city for years.

How do you know that next month you won't find yourselves in the same position and looking at another million dollar appropriation? Enough is enough. Stop work now until you know for sure what is going on and find a reasonable source of funds for the project. Furthermore, staff's actions from July through December showed that they were not competent to administer this project. Why do you believe they can do it now? You gave them the authority to spend 1/3 of our reserves in December and now you are placing your confidence back in the same people that got us into this mess. Face up to the fact that senior staff can't handle this engagement, terminate them and move on. You will never finish the project by placing your trust in the people that have been in charge to date. Until such time as you have 100% new senior staff, Piedmont cannot afford to complete this project.

Thank you

Joe Hurwich

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Ladies and Gentlemen:

I have been following the cost overruns with great concern. It was my understanding that this project was to be funded by the citizens that voted for the special assessment district and who will be the sole beneficiaries of the completed project.

Continued message.

I apologize for the incomplete message. To continue: I believe that there have been grave mistakes made and mismanagement by the counsel and staff. I do not believe that the counsel and staff can be trusted to perform a proper review and audit.

While it is true that the mayor has a day job and that we all are thankful to the counsel for our beautiful parks, recreation facilities, etc., I believe all funding of the project should be suspended until an independent audit by qualified citizens of Piedmont is made. Perhaps the Alameda County Grand Jury should also be involved.

Sincerely,

Dean G. Miller

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Mr. Friedman,

I wrote you a month ago, and have yet to get a response. I have heard, not surprisingly, that staff are requesting more funds beyond that which council has already approved, to pay for the continued overruns on this project. That this project threatens the solvency of the City, and at the very least imperils any other public works projects that may have been anticipated in this year, makes it a matter of considerable curiosity among the residents who are not having their utilities buried.

I think that the questions posed in my previous email are legitimate, and deserve an answer. I would like to know who knew about the 8/28/09 change order, and who on the council knew about the authorization of that \$228k overrun. My concern is that council, in its zeal to get utilities undergrounded, overlooked many important issues, one of them being the impossibility of getting the project done within the budgeted funds. Rather than risk the project being halted in an open meeting of council, the authorization was given by some subset of the council for the staff to use up half of the contingency fund which would make the investment in the project so large that it couldn't be responsibly stopped.

If I do not hear from you within the week, I'll assume that you don't intend to respond and will seek other channels for getting these questions answered. Thank you for your consideration of this matter,

Dan Phillips

Mr. Friedman:

In looking at the PHUD and the cost overruns on the undergrounding project, I found out that on 8/28 Valley submitted a change order for \$229,474. There was already a \$50k change order for hitting rock, so this is over a quarter of a million dollars in overruns within six weeks of starting the project. Given the size of the overrun and how early it was uncovered in this process, I find it hard to believe that Larry Rosenberg would take the responsibility for authorizing this payment without talking to someone. Were you informed of this over-run before the payment was authorized? Was Geoffrey Grote informed of this overrun? At what point were you made aware of the overruns and their scope?

Please respond as soon as possible as I would like to know who is responsible for this action.

Thank you,

Dan Phillips

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Dear Council,

I just read about your meeting 6 Feb. to discuss increase costs in the undergrounding fiasco. At this point I am sure you are doing everything possible to SAVE money although it looks like Piedmont is going to pay dearly for your error. Not all of Piedmont of course..those who will benefit are happy.

I urge the City Council to get out of the undergrounding business. I also urge you not to take on risk with the Blair Park Complex. The same thing will happen...the city will be left to pay the bill.

This is a small town. Please stick to the basics and maintain our services without taking on big special interest projects. You have been burned...stay away from the fire now!

Best Regards,  
Lynn Dee

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Is there a City Council meeting on Saturday at 9AM regarding additional funds needed for the PHUD?

Apparently staff informed the Council of this issue last night (there is no written report on the City Council web site).

When will the incompetence and cavalier fiscal attitude end? It is beyond an outrage that additional funds for the failed PHUD are under consideration after the \$1M+ appropriation in December (done under duress in an extortion-like context).

When will you put an end to this negligence and naiveté? You have the responsibility to manage the City staff. If staff can't get the job done without a bailout from the Council, then staff is clearly in over their head and must be replaced. Or you will be replaced for failing to do what is best for all the citizens of Piedmont.

In the meantime until the City has competent staff, every single Piedmont public works project must be halted. There is clearly no one competent to run these projects let alone make contracts with construction and service providers that don't unreasonably risk the City finances nor provide adequate transparency regarding public funding.

Sincerely,

Marc Bryan

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Dear City Council Members:

I want to echo and adopt the concerns and comments raised by Tim Rood about the outrageous approval of cost over-runs to effect a purely aesthetic improvement that impacts only a small number of Piedmont citizens, while our schools suffer and all of us pay for it. Whoever is responsible for approving the early

cost-overruns should be exposed to the public so that we may vote accordingly in the next election, or demand their resignation. Stop wasting our taxpayers dollars on private beautification projects when state and federal support of our schools is down.

Suzanne A. Luban

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Dear Council Members,

I understand you will again be asked to allocate funds in a special meeting this Saturday to the PHUD project.

Only time and an audit will tell us what went wrong with the process that resulted in the previous million-dollar bail out of PHUD you stuck the taxpayers with only a few weeks ago, despite the protestations of our professional city staff that they had got the figures right this time, it appears to still not be enough money.

Enough is enough, stop spending city funds on a small portion of the city.

I urge you to engage an independent auditor and to impose a moratorium on any further undergrounding work until the true, final costs of your mismanagement have been recovered by the taxpayers.

Leslie Pannell

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Dear City Council

This is just to let you know that you have our 100% support for the job you are doing.

Overruns on unforeseen elements of any construction project are to be expected. The taxes we pay for a good school system in Piedmont, including the facilities involved, is a bargain when compared with the long term benefits that accrue to our community.

Thank you for your leadership and continuing efforts on our behalf,

-Steve and Mary Welch

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to: Piedmont City Council

re: Feb.6 Special Meeting Correspondence

The Dec. 31, 2009 Marin County Appeals Court ruling concerning a Tiburon private undergrounding district is directly applicable to our situation in Piedmont and the Hills Undergrounding Utility District (HUUD). The engineer hired by Tiburon “concluded that 100 percent of the proposed improvements were of direct and special benefits to the properties located within the Original District.” (Tiburon v Bonander II A119918 Marin County Sup. Ct. CV062153 12/31/09). Judge James R. Ritchey in his decision agreed with the engineer on this specific matter: “We conclude The Town has met its burden to establish that properties in the Supplemental District receive a particular and distinct benefit not shared by the district in general *or the public at large*” (Ibid Part III)

In a report dated Dec. 7, 2009 our City Attorney ruled there is general benefit to the City of Piedmont by undergrounding and therefore expenditures by taxpayers from the General Fund are not a gift. This ruling is contrary to the findings in Tiburon v Bonander II. Giving further funds to complete the Hills Underground District is an outright gift. Though my first choice is no further expenditures of taxpayers funds, should you decide to spend additional taxpayer funds to finish the project kindly identify this as a gift. *We taxpayers minimally deserve a measure of honesty for all our tax dollars being spent on a project that will only benefit those in the HUUD.*

George Peyton in his capacity as City Attorney reviewed and signed the contracts and it is his fiduciary responsibility to assure the city these contracts would follow city policy that private undergrounding districts pay 100% of their cost. These contracts are grossly defective as beyond the \$1,000,400 gifted on Dec. 12, 2009 HUUD has also received \$296,000 for repair work on Crest Road, countless hours of City Staff in managing the project and taxpayer funded engineering scrutiny of Valley Utility billings. The Sea View Underground District Steering Committee and the City are defendants in a lawsuit yet 100% of the litigation defense, \$262,000 and counting, has been paid by Piedmont Taxpayers. *I request that action be commenced to obtain recourse from City Attorney Peyton’s insurance carrier for these defective contracts.*

I request the Alameda County Civil Grand Jury do the examination of this entire matter. The civil grand jury is authorized to inspect and audit books, records and financial expenditures to ensure the public that public funds are properly accounted for and spent. All Piedmont Staff involved in this matter should voluntarily release all emails and written correspondence on this matter to the Council and Piedmont Citizens. A citizen audit committee should be appointed and given full access to all documents. Regardless, the Council Audit Committee certainly cannot operate effectively without full access to all documents in this matter.

Rick Schiller

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Dear Council Members,

I am unable to attend the special meeting on Saturday as I will be out of town on business, so please enter these comments into the record.

It is truly, deeply regrettable that the million-dollar bailout of PHUD you stuck the taxpayers with only a few weeks ago, despite the protestations of our professional city staff that they had got the figures right

this time, is turning out to be not enough money. I am sure the citizens will hear more earnest protestations on Saturday that the new overruns were also innocent mistakes that could not have been anticipated, along with new reassurances of our Council members' fiscal acumen, and we will doubtless hear again that this time, staff has the matter firmly under control. With all due respect, I think the record doesn't support any of those claims.

While we await the findings of your Audit Committee, at least some the facts of the matter are well established, as Daniel Phillips has noted in his unanswered letters to Mayor Friedman. Some subset of Council members appear to have authorized change orders to the tune of \$750,000 within the first 6 weeks of the project, but we haven't yet been told who was responsible. If Council was not involved, our Public Works Director clearly exceeded his authority, yet no disciplinary action has been taken.

As Mr. Phillips noted, on 8/28 Valley submitted a change order for \$229,474. There was already a \$50k change order for hitting rock, so this is over a quarter of a million dollars in overruns within six weeks of starting the project. Given the size of the overrun and how early it was uncovered in this process, I find it hard to believe that Larry Rosenberg would take the responsibility for authorizing this payment without talking to someone. Was Mayor Friedman informed of this over-run before the payment was authorized? Was Geoffrey Grote informed of this overrun? At what point were Council Members made aware of the overruns and their scope? I would like to know who knew about the 8/28/09 change order, and who on the council knew about the authorization of that \$228k overrun.

Like Mr. Phillips, my concern is that Council, in its zeal to get utilities undergrounded, overlooked many important issues, one of them being the impossibility of getting the project done within the budgeted funds. Rather than risk the project being halted in an open meeting of Council, it appears the authorization was given by some subset of the council for the staff to use up half of the contingency fund which would make the investment in the project so large that it couldn't be responsibly stopped.

I continue to be sickened by the staff and Council's incompetence at managing the public purse, the secretiveness and minimal public notice provided, and the shocking and appalling waste of taxpayer money on this supposedly private project.

I urge you to engage an independent auditor and to impose a moratorium on any further undergrounding work until the true, final costs of your mismanagement have been recovered by the taxpayers.

Sincerely,

Timothy Rood

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Mr. Mayor and Council Members,

If you approve underwriting the additional \$1.5M cost of undergrounding, I will organize a campaign for Piedmont residents to withhold their real estate tax payments.

It is not legally, fiscally or morally defensible to apply tax dollars to a project that benefits an exclusive few in the community.

I urge you to work with the residents of the community to find non-public debt financing for the project.  
Greg Fawcett

Mr. Mayor and Council Members-

We cannot afford a public appropriation for the Piedmont Hills Underground Utility District, a project that was to be funded privately with dubious public benefit. With a cost overrun approaching 100%, poor planning can only be part of the problem. Our tax dollars cannot be appropriated for the benefit of a few within the community.

I encourage you to be responsible and vote down the appropriation. Failing such a vote, you must put this matter over for public comment.

Thank you for your consideration.

Sincerely,  
Greg Fawcett

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Dear City Council,

In no uncertain terms as a Piedmont taxpayer paying for services and infrastructure that benefits all city residents, I insist that you unanimously reject any further funding requests for the PHUD including the latest request from city staff [http://www.ci.piedmont.ca.us/html/govern/staffreports/02-06-10/phu\\_approp.pdf](http://www.ci.piedmont.ca.us/html/govern/staffreports/02-06-10/phu_approp.pdf)

It's painfully obvious that no one is managing the project except Valley Utility, who understands how to run their business in a challenging economy. It's clear to anyone who has negotiated with a contractor that Valley is calling the shots and city staff is unable or unwilling to confront Valley and demand they complete the project. Hopefully, Mr. Nakahara and Mr. Bichsel can bring this project back into line, but you too must get directly involved and get Valley Utility back in line. Seriously, folks, Valley sees Piedmont as a bank and they are writing all the checks.

The threat of legal action from the PHUD residents certainly pales in comparison to the effective extortion from Valley Utility. The residents of PHUD must be part of the solution. Perhaps one or more of the PHUD residents has strong negotiating skills and would donate their time and effort to resolve the gross mis-calculation of the project.

Piedmont residents have many talents and this is a time when Piedmont can take advantage of its best asset (its people) or continue to be taken advantage of by commercially savvy public works contractors.

In summary, reject the additional funding request, negotiate with Valley Utility, and get the project done with funds already allocated.

Best Regards,  
~Marc Bryan

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Councilman Chiang:

The staff report released last night at 11:00 p.m. asks the City Council to allocate an additional \$1.15 million (on top of the \$1 million already approved in December) to PHUD. Council will vote on this proposal tomorrow at 11:00 a.m. The report indicates that the funds will be diverted from the Capital Improvement Project budget. The means that CIP projects that benefit all of the residents will be sacrificed to fund undergrounding for approximately 140 families who live in the PHUD. **The report**

indicates that the need for the additional funds is due in part to staff miscalculations. THIS INCOMPETENCE IS UNACCEPTABLE AND SHOULD NOT BE TOLERATED ANY LONGER!

We are against this additional \$1.15M allocation especially in light of the recently approved \$1M allocation. This is an outrage!

Sincerely,

Alan & Elena Kong

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**Subject:** More money to bail our the PHUUD????

I am astounded and appalled at the gross mismanagement of this project. The continued level of negligence on the part of the City in getting their arms around this issue is highly distressing. I say NO to another dime of taxpayer money being spent enuring to the private benefit the 140 families in this City.

The City needs to take a big "time out" until they get people who actually know what they are doing involved to assess the options. Simply saying that you are proceeding with legal action to recoup some of the costs doesn't necessarily mean that you will ultimately be able to shift the blame for your failings onto other parties.

Frankly, I don't trust the City at this point to make good decisions.

I saw pictures of some of you toasting your victories Tuesday. Piedmont citizens, myself included, voted just the other day to keep the incumbents on the council. Let us see that those votes were not in vain. Jeff, you having second thoughts yet?

This comes on the same morning that we received a letter advising that there is a real danger of our teachers having to get pink slips in March due to a \$700,000 State budget cut. Voting to spend ANOTHER \$1.1M+ on the undergrounding at the same time our teachers get pink slips is a disgusting thought and if that happens you should all be ashamed of yourselves.

**Susan M. Bryan, ARM, AIC**

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I am sickened by this news. Shame on all of you for waiting until after the election to release this. This information should be sent to **all Piedmont residents by the city**--- not passed along to us all by my neighbor who happened to get this information.

See you at the meeting-  
Terry Kiskaddon

This was sent to our neighborhood (Monticello, Lorita and Park Way) by Esther Rodgers early this morning.

"The staff report released last night at 11:00 p.m. asks the City Council to allocate an additional \$1.15 million (on top of the \$1 million already approved in December) to PHUD. Council will vote on this proposal tomorrow at 11:00 a.m. The report indicates that the funds will be diverted from the Capital Improvement Project budget. The means that CIP projects that benefit all of the residents will be

sacrificed to fund undergrounding for approximately 140 families who live in the PHUD. The report indicates that the need for the additional funds is due in part to staff miscalculations."

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Please do not approve extra funds.  
Christine Allen

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Council members,

I am extremely disappointed in our city's mismanagement of undergrounding districts. After reading the staff report and request for an **additional** \$1,150,000 dollars for the PHUD,

I truly can't understand how the project can be over budget by over \$2 million dollars and no one is held accountable. I would encourage you to stop referring to "staff" and instead name the responsible parties by name. Continuing to refer to "staff" puts a negative light on the many excellent city staff members who have no connection to the PHUD project's ongoing mismanagement, and cost overruns.

**The PHUD must pay for the costs.** We've already bailed their project out for over a million dollars. It's time to stop paying for this project and insist that the residents who directly benefit from the project agree to pay the full costs *before* proceeding any further.

Sincerely,

Len Gilbert

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Dear Council Members,

I am unable to attend the special meeting on Saturday as I will be out of town on business, so please enter these comments into the record.

Once again, material facts known to staff and at least some Council members have been hidden from the public. This time, it may have affected an election.

Surely at last Monday's regular council meeting, staff had at least some indication that another million dollars or so would be needed. Yet our Mayor and City administrator, and possibly other Council members and staff, chose to keep this information out of public view until the election was over.

For that matter, had the then-known extent of the cost overruns been made public in November, we might have had a very different set of candidates running for Council - I know a number of attorneys in town have taken a very close interest in these proceedings, and there has even been discussion of filing a civil grand jury complaint so that staff and Council members would have to testify under oath regarding what they knew and when.

The staff report indicates that the contractor's estimate of the cost to shut down the project is approximately \$650,000. Please save the taxpayers half a million dollars and vote "no" on this appropriation. Shut the project down and require the members of the district to pass a supplemental assessment for the additional funds needed, plus a 100% contingency, before any further work proceeds.

It must be noted the \$2.2 million you are spending to put wires underground would have gone a very long way toward a replacement swim facility, additional field space, and many other important community priorities. There is a very real possibility that 1/3 of the electorate could vote against the next municipal parcel tax in protest against this blatant misallocation of public funds. That would truly put the City in a difficult situation.

The evasiveness with which these appropriations are being made is absolutely outrageous and is antithetical to democracy. Groups of three Council members have been observed meeting privately with staff, in violation of the Brown Act. At the special Saturday meeting in December when you approved the first million-dollar bailout, the City attorney introduced a handwritten estimate of liability to the City from not proceeding with the project, which was not available to the public beforehand but was cited as a justification for the appropriation. I hope that similar shenanigans will not occur at this Saturday's meeting, but you should be aware that Piedmont has a highly knowledgeable and engaged citizenry.

Those of you who vote "yes" today should be subject to a recall election.

Thank you for your attention.

Timothy Rood

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