

Felton Fire Protection District's Surplus Land Sale

A Fire Sale But No Fire

Summary

The Santa Cruz County Grand Jury investigated a land sale transaction executed by the Felton Fire Protection District's Board of Directors in 2014. Contrary to state laws governing surplus land sales by special districts this sale occurred without public notice and in such a manner as to preclude other interested parties from bidding for the parcel, potentially depriving the district of a substantially higher price.

After reviewing the sale in question, board minutes and budgets, Santa Cruz County assessor's records of this and comparable sales, state and county ordinances regarding disposition of surplus property, and conducting interviews, the Grand Jury believes the sale was conducted in violation of state law and with the appearance of benefitting one member of the community over others.

Background

Felton Fire Protection District (Felton Fire) is one of ten fire protection districts in the County of Santa Cruz, nine of which are wholly within the county. The tenth fire district, Aromas, straddles Santa Cruz and Monterey counties. The nine districts we included in our investigation are:

- Aptos/La Selva
- Ben Lomond
- Boulder Creek
- Branciforte
- Central
- Felton
- Pajaro Valley
- Scotts Valley
- Zayante

Fire protection districts are government entities known as Special Districts,^{[1](#)} a form of local government established to meet specific needs of the community and subject to state laws and annual financial reporting to the State Controller. Special Districts are governed by a locally elected board of directors and are funded by users' fees or special assessments voted on by local residents and collected through property taxes. These districts typically deliver a single service which the community has agreed is not otherwise met or is deemed best met through local control. Two primary motivations for a community establishing a special district are (1) greater involvement and oversight and (2) the ability to collectively pay for a service important to constituents that does not otherwise command the necessary resources.

Fire Protection Districts are non-enterprise districts, meaning they receive their operating revenue primarily through property tax assessments rather than fees for service. Other potential sources of public funds are general obligation bonds, which

must be voted for by a two-thirds majority of district voters; revenue bonds issued by the state or county; and state grants. These limited revenue resources underscore the need for special districts to exercise strong fiscal discipline, properly maintain district assets, and maximize potential revenues from sales of surplus property such as major equipment, land, and buildings.

Land is particularly valuable in California, especially in existing neighborhoods where property values are high and where it is often an appreciating rather than a depreciating asset. Statutory restrictions on the disposition of these properties often increase the need that each sale be handled so as to balance competing community concerns while conforming to all applicable laws, policies, and procedures.

History of the Subject Property's Sale

Felton Fire had been gifted a 7,878 square foot parcel on the corner of El Solyo Heights and Hacienda Way (Subject Property) many years ago, situated within an established residential neighborhood in Felton with few vacant parcels. The owner of one of two contiguous properties made an unsolicited offer to purchase the property for \$1,500. The Board of Directors addressed the offer and agreed on a counter offer as they reviewed these items:

- A letter offering to purchase the land for \$1,500 from the owner of an adjacent parcel was received by the Board.
- The Fire Chief approached “surrounding property owners,” as the board requested, to see if they wanted to purchase the parcel.
- The property was free of acquisition restrictions on a sale of the property.
- The Board researched area lot values for like parcels, such as those with County Assessor designations of [unbuildable](#) and under 15,000 square feet, and found values ranging from \$5,000 to \$7,000 (\$0.63 to \$0.88 per square foot).
- The Board unanimously agreed to proceed with the sale at \$0.30 per square foot and directed the Fire Chief to counter the offer at \$2,365.

The sale was completed on November 12, 2014.

Prior to the close of escrow two other comparable land sale transactions occurred in the same neighborhood:

- | | | | | |
|--------------------|-------------|-----------|----------|------------|
| ● El Solyo Heights | APN07125136 | 9,300 sf | \$16,000 | \$1.72 psf |
| ● Hillview | APN07129207 | 10,500 sf | \$25,000 | \$2.38 psf |

Compare these transactions to the Subject Property:

- | | | | | |
|--------------------|-------------|----------|---------|------------|
| ● Subject Property | APN07105401 | 7,878 sf | \$2,365 | \$0.30 psf |
|--------------------|-------------|----------|---------|------------|

Note: The Subject Property's former APN number no longer exists. The parcel has been combined with the new owner's parcel and the two parcels are now APN07105411.^[2]

The two comparable properties had each been listed by a licensed realtor for \$49,500. Ultimately, the market value for each was established through the common practice of first contacting local real estate agents, listing the property with a licensed real estate brokerage, posting the property on the Multiple Listing Service (MLS) or other public

listing venues, and marketing the property through familiar portals such as local newspapers and web-based listing services. The Subject Property was never listed or marketed.

Valuations of Vacant Land

Determining value for vacant land is very difficult. Zoning is one of the most important criteria as it dictates potential uses for the land, which in turn determine potential value. Felton is subject to the Santa Cruz County Zoning Ordinance (Title 13 of the County Code)^[3] and overseen by the Santa Cruz County Planning Department. Zoning for the Subject Property is R-1-15. The “15” describes the minimum net developable lot size requirement in thousands of square feet for a single-family dwelling.^[4] This means the subject parcel, at 7,878 square feet, is smaller than the net developable area of 15,000 square feet in the County’s General Plan. However, permissible development for any particular parcel is determined by the Planning Department during the application process or for a fee in a “pre-application review.”^[5] Many neighborhood homes are on less than 10,000 square foot parcels,^[6] although this fact by itself would neither justify nor preclude a [variance](#) for the Subject Property.

Countless other factors are used in valuing vacant land including:

- Features of the land itself, the neighborhood and location, and the broader market
- Environmental mitigations and restrictions, utilities and water access, and other governmental controls
- Broader community interests

Felton Fire derived a value and processed the sale based on an assumption that since the property did not conform to the current zoning requirements, only adjacent property owners would have an interest in purchasing the parcel. The Board did not consider the possibility that some non-contiguous property owner might be interested in acquiring the property to preserve a view, gain additional parking, limit development, or some other near- or long-term use. Advertising the property on the open market would have allowed other potential buyers help Felton Fire establish a true market value.

Scope

The Grand Jury embarked on this investigation of the sale of the Subject Property by Felton Fire to determine whether the transaction conformed with applicable laws and met the standards of fiduciary responsibility and transparency. This investigation did not consider Felton Fire’s role as first responder to its community and to Santa Cruz County, which the Grand Jury acknowledges is the district’s primary and most important role.

In the course of its investigation, the Grand Jury addressed these questions:

- What policies and procedures guided Felton Fire in its sale of the Subject Property and were they compliant?

- Were Felton Fire's actions in accordance with all laws governing the disposition of surplus property by special districts?
- Does Felton Fire's management of its real property comply with the requirements of state law?
- Did Felton Fire's actions comply with the terms of acquisition of the Subject Property?
- Does Felton Fire account for the value of real property on its balance sheets?
- Does Felton Fire meet the standard of fair, open, and unbiased actions in executing its fiduciary obligations to the community in its disposal of surplus property?

Investigation

The Grand Jury's investigation began by identifying the potential scale and scope of Santa Cruz County fire protection districts' surplus property sales.

The Grand Jury first identified California state laws governing special districts and their execution of surplus property dispositions. In order to ascertain the potential impact of surplus property sales we compiled from county assessor records a preliminary list of property held by the nine Santa Cruz County fire protection districts we examined. This initial list was eventually updated based on records requested and obtained from each district. Fire district minutes and agendas beginning with January 2010 were requested from each district to identify any surplus property transactions, all of which require action by the districts' boards of directors. Financial statements for fiscal years 2010-2011 through 2014-2015 were requested to assess the relative impact on net revenue from surplus property sales. Balance sheets from fiscal years 2010-2011 forward were examined when received to learn if, and to what extent, districts are recognizing the value of the property they are stewarding for their communities. Lastly, districts were asked to provide their policies and procedures for surplus property and their listings of surplus properties, both of which they are required to maintain and the latter of which they are required to update and publish annually. Not all requested documents were available or provided but the documentation reviewed was sufficient for our purposes.

Laws Governing Special Districts and Surplus Property Dispositions

California state law explicitly requires that special districts comply with the following statutes for managing and disposing of surplus land:

- A list of all lands owned or controlled must be annually made public.
- All lands owned that are surplus must be publicly identified annually.
- All surplus land must first be offered for sale to other public entities or for public use.
- Prior to executing a sale of surplus land, its intended use must be in compliance with the jurisdiction's General Plan (in this case Santa Cruz County).
- A sale of anything of value may be evaluated based on general law which prohibits a gift by any public entity to any individual or corporation.

Despite Felton Fire’s failure to comply with these state laws, California state law deems such failure does not invalidate the sale (California Government Code §54230.5).^[7]

**California State Statutes and Regulations
Governing the Disposal of Surplus Property by Special Districts
and Felton Fire’s Compliance in the Sale of the Subject Property**

Government Code Section	Summary of Code	Assessment of Felton Fire’s Compliance
§50569 ^[8]	Requires each local agency inventory all lands owned or controlled by the agency by December 31 of each year to determine what land is excess of its foreseeable needs. A description of each parcel shall be made a matter of public record.	There is no documentation that Felton Fire complied with this requirement.
§§54220–54233 ^[7]	Establishes that any public agency selling surplus land must first offer the land for sale to uses such as recreational facilities, school facilities, affordable housing development, or for enterprise zone projects.	There is no documentation that Felton Fire complied with this requirement.
§65402 ^[9]	Requires local governments to determine that the potential use of the surplus land conforms to the jurisdiction’s General Plan before disposal occurs.	There is no documentation that Felton Fire complied with this requirement.
California Constitution, Article 16, Section 6 ^[10]	The legislature has no power "... to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation"	It is unclear if there was a gift of public funds by selling the property for \$2,365 since there is no documentation that the fair market value of the property was established prior to sale.

Source: Specific code references are cited separately above.

Real Estate Owned by Santa Cruz County’s Fire Protection Districts

The Grand Jury found that the nine fire protection districts investigated own a total of 32 properties as of December 2015. The Grand Jury is not questioning the rationales for districts’ ownership of real estate; our concerns are that the properties are managed and accounted for in accordance with all applicable laws.

The following table shows the number of properties owned by each district:

***Number of Real Estate Parcels Owned
and Their Use by District as of December 2015***

<i>District</i>	<i>Fire Stations</i>	<i>Vacant Land</i>	<i>Other Non-Station Use</i>	<i>Total</i>
Aptos/La Selva	3	0	0	3
Ben Lomond	1	1	3	5
Boulder Creek	3	3	2	8
Branciforte	1	0	0	1
Central	4	2	2	8
Felton	1	0	0	1
Scotts Valley	2	2	0	4
Zayante	2	0	0	2
Total	17	8	7	32

Source: Santa Cruz County Assessor's Office, Parcel Tax Rolls

Fire Districts' Operating Margins

Fire protection districts are not for-profit enterprises. Despite the high cost of equipment and operations needed to deliver services, they typically operate on very tight margins, giving them little flexibility for contingencies or improvements. Many take several commendable steps to constrain costs or raise revenue. A large portion are staffed by dedicated volunteers who are members of their communities. Local fund raisers, such as pancake breakfasts, are common. Major equipment needs are often met through interdepartmental transfers; such cooperation enables fire protection districts such as those in our county to upgrade or add to equipment they could not otherwise afford.

A higher sales price for the Subject Property would have meant more discretionary funds for Felton Fire.

Reporting and Maintaining Asset Valuations

Balance sheets record the assets and liabilities of an enterprise and are used to assess financial health. On a balance sheet, land is a non-depreciating asset and unlike other fixed assets such as buildings and equipment, its value does not decrease each year as it has an unlimited useful life. This is unrelated to market value which fluctuates and may or may not be depicted on a balance sheet.

Felton Fire received the Subject Property as a gift many years ago when its owner no longer wanted to maintain the parcel. As far as we can determine no recorded value was ever placed on the parcel. Had the district ascertained the value of the property and reported that value on its balance sheet, the Board may have recognized the property as an asset and thus sought a better price, or not have sold it at all.

Policies and Procedures for the Acquisition and Disposal of Surplus Property

Felton Fire is required by law to have policies and procedures for disposal of surplus property. It is also in its best interest to do so. Policies and procedures help districts act consistently despite board changes and they guide decision making, assuring the public their board will act legally and with consideration for the agency's mandate.

The absence of policies and procedures led the Board to make these errors:

- Sold the Subject Property for less than comparable neighborhood land sales
- Used sale proceeds to cover fees relating to the sale instead of having the buyer doing so
- Left the Subject Property tied up in escrow for a very long time as the buyer delayed completing the transaction
- Gave the impression the Board did not meet the standard of impartiality in transacting this sale, given that the Fire Chief and the buyer have worked together

Central Clearinghouse for Surplus Property

In our investigation it became apparent the lack of a central, county-wide clearinghouse for the disposition of all surplus property inhibits the ability of districts and the county to receive full and fair value for their assets. There is a limited county-run surplus sale site^[11] for small, unlisted items, and an auction site,^[12] apparently intended for surplus vehicles, with nothing observed listed. Neither of these existing sites would seem to be appropriate for real estate or other substantial properties.

Some districts use private listing, sale, or auction sites, especially for major equipment such as fire engines.

A public, central listing of surplus property could ensure interested residents of Santa Cruz County are aware of what is available, for personal use and for monitoring the actions of their districts. We see little reason for each district to develop its own site for surplus property as there would be considerable duplication of effort, and the public would not be as well served. At the very least, we would expect surplus land to be listed on a widely disseminated listing service, but that would not preclude it also being listed on a central clearinghouse.

With some land and equipment values ranging above \$500,000 it is important that the sale of these properties return the maximum price to the constituents who paid for them.

Facts

- Felton Fire sold the Subject Property for \$2,365.
- A failure to follow state law does not invalidate the sale of surplus property by Special Districts (California Government Code §54230.5).
- The Board neither sought an appraisal nor documented any attempts to obtain a value for the property based on comparable sales beyond one director's assertion.
- The property was purchased by someone with a relationship to the Fire Chief.
- There is no documentation that the Board advertised the property.
- Felton Fire does not have written policies and procedures for the acquisition or sale of real estate.
- There is no documentation that Felton Fire complied with California Government Codes §50569, §65402 and §§50568-50573 and may be in violation of California Constitution, Article 16, Section 6 in its sale of the Subject Property.
- Felton Fire does not report the value of all of its land assets on its balance sheets.
- County fire protection districts, including Felton Fire, own a combined 32 properties, only 17 of which are fire stations.
- There is no central online surplus property clearinghouse for the county.
- Santa Cruz County maintains a surplus property list that does not include real estate or listings by districts.
- Surplus real estate is not required to be listed on public listing services such as the MLS or other public listing venues.

Findings

- F1.** Felton Fire is in violation of California Government Code §50569 which requires each government agency to annually inventory their property and make available to the public a description of excess property.
- F2.** Felton Fire violated California Government Code §§54220-54233 and §65402 which govern the manner by which Special Districts must conduct sales of surplus properties and which require confirmation that proposed uses conform with the county's general plan.
- F3.** By not openly advertising the Subject Property or obtaining an independent appraisal of the property's value, the Board did not establish market value and may not have obtained the highest price for the district.
- F4.** Felton Fire did not maintain impartiality by permitting the Fire Chief to transact the sale with a colleague.
- F5.** The Board did not account for the value of all of the District's land holdings on its balance sheet, denying its constituents a full accounting of the District's assets and liabilities.

Recommendations

- R1.** An annual inventory of District-owned real estate and surplus property should be publicly available. (F1)
- R2.** All proposed sales of surplus property should be publicly advertised in a manner that reaches and informs the general public. This may include signage posted on the property, listing in online forums (such as the MLS and other classified advertisers), and notices on the District's website. (F2, F3)
- R3.** The Board should comply with the law and adopt policies and procedures for acquiring, managing, and disposing of surplus property. All policies and procedures should be posted on their website. (F2, F4)
- R4.** All of the District's assets should be included on its balance sheet. (F5)

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Felton Fire Protection District Board of Directors	F1–F5	R1–R4	90 Days September 19, 2016

Definitions

- **Balance Sheet:** In financial accounting, a balance sheet is a summary of the financial balances of a business or organization. Assets, Liabilities and Equity are listed as of a specific date, such as the end of its financial year. A balance sheet is often described as a "snapshot of financial condition."
- **Comparable Sale:** A valuation technique in which a recently sold asset is used to determine the value of a similar asset.
- **County Assessor:** The Santa Cruz County Assessor. The County Assessor establishes the assessed value of your property by appraising the value of that property under applicable State laws. The assessed value is then placed on a list with all other properties in Santa Cruz County and this list is called the "Assessment Roll." The Assessor also approves and applies all exemptions, which are added to the Assessment Roll. The Assessment Roll is then presented to the Santa Cruz County Auditor Controller. ^[13]
- **Market Value:** The price at which an asset would trade in a competitive auction setting.
- **MLS:** Multiple Listing Service, a consolidated real estate listing service governed by the National Association of Realtors.
- **PSF:** Abbreviation for Per Square Foot.

- **Real Property:** Real property is any property that is attached directly to land, as well as the land itself. Real property not only includes buildings and other structures, but also rights and interests.
- **SF:** Abbreviation for Square Foot.
- **Unbuildable (Assessor's designation):** Assessor Use Codes state:^[14]
Disclaimer: Use codes have been developed by the Santa Cruz County Assessor's office to aid in the appraisal of property for assessment purposes only. Use code information associated with individual parcels may not reflect the property's legal use, may be out of date or may not be accurate. This information has been provided to allow easy access and a visual display of County Assessor information. The County of Santa Cruz assumes no responsibility arising from use of this information. THESE USE CODES AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Do not make any business decisions based on this data without validating the data.
- **Variance:** A request to deviate from current zoning requirements. If granted, it permits the owner to use his land in a way that is ordinarily not permitted by the zoning ordinance. It is not a change in the zoning law, but a waiver from the requirements of the zoning ordinance.

Sources

References

1. California Special Districts Association. Accessed on May 15, 2016. <http://www.cstda.net/special-districts/>
2. Santa Cruz County Assessor's Office, Parcel Search. Accessed on May 15, 2016. <http://sccounty01.co.santa-cruz.ca.us/ASR/>
3. Santa Cruz County Code. "A Codification of the General Ordinance of Santa Cruz County, California." Accessed on May 15, 2016. <http://www.codepublishing.com/CA/SantaCruzCounty/>
4. Santa Cruz County Code. Title 13 "Zoning Regulations" Chapter 13.10 "Development standards for residential districts." Accessed on May 15, 2016. <http://www.codepublishing.com/CA/SantaCruzCounty/?SantaCruzCounty13/SantaCruzCounty1310.html#13.10.323>
5. Santa Cruz County Planning Department. Pre-Application Services. Accessed on May 15, 2016. http://www.sccoplanning.com/Portals/2/County/Planning/zoning/Preapplication_trifold.pdf

6. Santa Cruz County Assessor's Office. Parcel Map 07105 for Subject Property and Surrounding Parcels. Accessed on May 15, 2016.
http://gis.co.santa-cruz.ca.us/PublicGISWeb/Scans/ASR_Maps/07105.pdf
7. California Government Code. Article 8. 2015. §§54220-54233. Accessed on May 7, 2016.
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=54001-55000&file=54220-54233>
8. California Government Code. Article 10. 2015. §§50568-50573. Accessed on May 7, 2016.
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=50001-51000&file=50568-50573>
9. California Government Code. Article 7. 2015. §§65400-65404. Accessed on May 7, 2015.
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65400-65404>
10. California Government Code. Article 16. 2015. Accessed on May 7, 2016.
http://www.leginfo.ca.gov/.const/.article_16
11. Santa Cruz County Surplus Sales. Accessed on May 7, 2016.
<http://www.co.santa-cruz.ca.us/Departments/GeneralServices/Purchasing/SurplusSaleAnnouncement.aspx>
12. First Capitol Auction. Accessed on May 7, 2016.
<http://www.co.santa-cruz.ca.us/Departments/GeneralServices/Purchasing/FirstCapitolAuctionCountySurplusSales.aspx>
13. Santa Cruz County Assessor's Office. "What Does the Assessor Do?" Accessed on May 15, 2016.
<http://www.co.santa-cruz.ca.us/Departments/AssessorsOffice/PrimaryFunctionsandResponsibilities.aspx>
14. Santa Cruz County Assessor's Office, Assessor Use Codes. Accessed on May 15, 2016.
<http://www.co.santa-cruz.ca.us/Departments/AssessorsOffice/AssessorUseCodesDisclaimer.aspx>

Site Visits

Subject Property at the corner of Hacienda Way and El Solyo Heights, Felton, CA