

REGULAR MEETING #571
CAPISTRANO BAY DISTRICT BOARD OF DIRECTORS
MINUTES
June 28, 2011
REGULAR MEETING – 6:30 PM
OPEN TO THE PUBLIC
Palisades United Methodist Church
27002 Camino de Estrella, Capistrano Beach, CA 92624

A. CALL TO ORDER

Board President Board President Bell called the meeting to order at 6:32 PM.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Directors Present: President Bell, Levinson, Gutierrez, Schwartz
Directors Absent: None
Staff Present: District Manager Russell
Guests Present: Brian Sanchez, Securitas Branch Manager

1. *David Wilson, property owner of 35667, is under consideration for the appointment of Director to replace outgoing Board member Robert Bancroft who resigned his position on May 16th, 2011.*

District Manager Russell to send residents 30-day notice via e-mail, mail and posted notice of the pending board appointment of David Wilson. For the posted notice, the Board decided to use a double-sided portable sign stand to be placed on the driver's side of the resident entry driveway. District Manager Russell to send a sign concept drawing to the Board for review.

D. PUBLIC COMMENTS

No public comments at this time.

E. APPROVAL OF MINUTES

1. *Meeting #570 held on May 31, 2011*

Director Gutierrez requested the use of the term *Staff* in the minutes be changed to *District Manager*.

Motion was made by Director Gutierrez, seconded by Vice President Levinson and passed 4-0 to approve the minutes of meeting #570 of May 31, 2011. Directors Gutierrez and Schwartz requested that the agenda be sent to board members one week prior to the meeting for review and input. District Manager Russell to provide a draft agenda one week before the monthly meeting.

F. SECURITY ACTIVITY REPORT

1. *One month period for May, 2011 (Securitas)*

Securitas Branch Manager Brian Sanchez reported 12,000 gate entries for May 2011, consistent with the prior month but with a small increase. Incidents doubled from the prior month, which may indicate a trend. Notables included two missing girls and ten vandalized

vehicles that were keyed. There were a few items stolen from properties including a paddleboard and surfboard. Three people were caught. There are usually five to seven incidents per month; this month there were over ten. Hopefully this is not a trend for summer months. Citations included three radar warnings for speeding over 25 mph. There were some fire lane violations. A community member noticed that the incident reports do not have addresses to indicate where the citations occurred. Securitas will amend the reports to show the incident location. Staff changes: The late shift gate guard was replaced by a new, fully-trained officer, reallocated from a different Securitas location.

2. Review and acceptance of Securitas contract for next two years

Securitas has submitted a 2011-2013 amended contract extension. Securitas proposes a 3.4% fee increase with no further change for fiscal years 2012 and 2013. Vice President Levinson stated the fee increase is too much and requested that Securitas review and resubmit the proposal. Securitas Manager Sanchez reported that the increase is due to a significant increase in fuel costs, increased taxes and an increase in the cost of doing business. Director Gutierrez asked if other security service bids were obtained. Per District Manager Russell, bids were not solicited. Last bids were received in 2003-'04. Director Gutierrez recommended Securitas remain month-to-month while the District obtains bids. Levinson stated that Securitas is doing a great job and the district doesn't want to reduce the fees by changing vendors and then not receive good service. Brian/Securitas to prepare addendum for month-to-month service. District Manager Russell to obtain two more bids for the next board meeting.

3. Fourth of July safety program

Community member Gail Becker received the letters sent by the District outlining the Fourth of July program and thinks too much force is used. Are three guards with guns needed? Community member David Wilson agreed. Three guards on the beach can make arrests. District Manager Russell reminded the group that armed officers were a prior request of the community. Wilson and District Manager Russell had prior meetings which didn't address guns. Guns are a liability issue. Wilson would like to continue the plan for ATV's and radios. Nadine Levinson commented that the community had asked for a coherent plan for ATV's, cell phones, on-site presence; but never anything about guns. Directors Schwartz and Levinson are not in favor of guns. Director Schwartz did a risk analysis that concluded that guns are a concern and a cause for increased liability insurance costs.

Motion was made by Vice President Levinson, seconded by Director Schwartz and passed 3-1 to approve that guards on ATV's will not have guns on the Fourth of July. Securitas carries cell phones but not guns. Beach officers are in a separate division which allows them to carry guns. A community member asked if digital cameras can be used? The cell phones will have cameras. Board President Bell wants to know if three guards will still come if they are without guns? Per Brian/Securitas, the three ATV's will have guns in their vehicle but not on their person. Per District Manager Russell other agencies would probably not come on short notice.

4. *Pedestrian gate at community entrance*

District Manager Russell requested the pedestrian gate be left in the open position during daylight hours to encourage pedestrians and cyclists to enter/exit on the proper side of the driveway where the sidewalk is located. The latch has to be turned to open the pedestrian gate. Instead, bicycles often exit around the back side of the guard building going against incoming visitor traffic. District Manager Russell conducted a 6-day study count:

<i>Ped-Gate Condition</i>	<i>Exited Ped gate:</i>	<i>Exited wrong side of guard building:</i>
Open	152	58
Closed	63	111

David Wilson and Nadine Levinson suggested that the District notify the community and then do the study count again. Board to pass out notice or add to list. Director Schwartz doesn't want the gate open because it is a private community. District Manager District Manager Russell to create "NO EXIT" sign with materials that match those used on other signs.

G. FINANCIAL REPORT

1. The approved *Claims and Demands* documents are the record of payments made by the District for monthly bills, invoices for goods and services and employee payroll. The payment documents are referred to as payment *transmittals* and are always available for public review during board meetings and at the District office during business hours.

Director Gutierrez asked to review the format for accounting sign-offs. The criteria for needing board approval is when the expense is greater than \$500 and is not in the budget. Gutierrez asked if both the purchase order and insurance certificate numbers can be listed on service invoices. All vendors must have proof of insurance on file.

President Bell noted that District paid \$20,000 to close the Hardy & Harper Paving issue. It should be placed under a different budget account code, not Legal. Manager Russell was directed to shift MJW and Hardy/Harper expenses out of sub-account 1900.01 (legal expenses) and place into sub-account 4605 (entry project expenses). Vice President Levinson asked what amount was billed for the Rutan & Tucker legal resolution. District Manager Russell will verify and reconfirm billing amount.

2. *Report of monthly expenses and year to date status through May 31, 2011.*

Director Gutierrez and board members discussed a reserve study to be conducted by a third party to analyze costs vs. reserves. Director Schwartz spoke to the managers at Rossmoor and Emerald Bay communities. Emerald Bay doesn't really do a third party reserve study. Instead, a couple of board members create a study and present it to the board. Rossmoor does a reserve study and it's tied to PCM. It is required for a homeowner association. The California Special Districts Association (CSDA) should be asked if a reserve study is required for local government agencies. Gutierrez noticed that the budget format from the County is antiquated and requested this be looked at during the reserve study process.

Per Director Schwartz, CSDA will know if there is a regulation and if our district is in compliance. Manager Russell to obtain the reserve study and to follow up with CSDA.

3. Collection of Fees for services.

There are \$9600 in development impact fees (DIF) for current construction projects. The exhibit page of District Ordinance No. 05-206 breaks down the fee calculation based on the amount disclosed in the permit application to the City. Director Gutierrez read that the fee can only be relative to the cost of the project. The City is mandated to do the same. The formula has to relate to our expenses. A prior engineering study was done to create the fee structure and that analysis is around 7 years old.

4. Discussion and approval of Draft Budget for year ending June 30, 2012. Budget items to discuss further before approval are as follows:

- *Liability insurance quote.* Director Schwartz described the District's insurance maintained through SDRMA (Special Districts Risk Management Authority), an insurance risk retention program, a layered insurance program that our district joined in 2003. Inherent insurance issues are a joint powers agreement which mandates our insurance without bid. We now pay double what we should for a poorly designed plan. This package plan will cost \$27,000. Schwartz obtained a quote from Philadelphia Insurance. They have a plus 14/high rating. Their cost would be \$12,209. Issues: It is difficult to secure liability insurance because we have an armed police officer. Our SDRMA insurance renews on July 1st. Director Schwartz received SDRMA's renewal quote on June 28, only a few days before renewal. The SDRMA agreement states that the deadline for notification of intent to cancel services was April 1 (90 days prior to the end of the service year). Since no notice was given, we are obligated to renew for the year. When asked why they didn't provide pricing two months prior to renewal, SDRMA stated they weren't notified by us. Manager Russell was directed to send notice to SDRMA by March 2012 that our district will be terminating membership in the liability insurance program.

- *Administration office renovation costs.*

Board members and some property owners present discussed possible use of a professional management company to manage the District. Vice President Levinson stated that his research indicates that the Government Code allows for a District Manager to be a designee of a management company and that our legal counsel doesn't know this. Vice President Levinson also stated his belief that CSDA says a designated person is the district manager.

Director Schwartz stated are six special districts like us and spoke to Emerald Bay. Their employees are HOA members as they didn't want employees to participate in CALPERS. Rossmoor community uses the management company PCM. Surfside Colony hasn't responded yet. Our District needs oversight other than the Board in order to maintain continuity on current laws/regs, management compliance, controls, etc.

Three Arch Bay uses a vendor list which must be compliant by January 1 for the following year. Homeowner Sheila Bullock noted that in 1996, Roger Davisson headed a group with Wayne Schafer and/or Joe Dunn and provided a community report on the issue of an outside management company, recommending that the District remain with in-house

management. Director Schwartz stated that a management company would be a firewall for the District. Currently we are responsible. The Financial audit can be done for one-third less than the District is currently paying.

Homeowner David Wilson agreed to form an ad hoc group along with homeowner Nadine Levinson and Director Schwartz to study management company alternatives. Currently

Manager Russell is responsible for many different aspects including contractors, insurance, water drainage and flood control, mediator and liaison for homeowners, security, accounting, etc. Homeowner Jan Jahnke asked if this is the right time to make a change since the State of California is looking at special districts more closely. Board President Bell is to receive the ad hoc group report on management company alternatives under the *Old Business* agenda item at the July board meeting.

- *Funding for proposed capital improvement projects.* The Board of Directors Budget Workshop met and finalized next Fiscal Year 2012 budget. Highlights include:

The board decided to segregate Matt's salary.

Landscaping will increase \$5,000 (account code 1400.05).

Legal will increase to \$15,000.

Reduce pavement consultant expense to zero.

Capital improvements are taken out of general reserves.

Police Officer Discussion – Manager Russell was asked by Directors if it was allowed by the Brown Act to have a discussion regarding the District's armed police officer. Manager Russell replied that this would be acceptable as it has some bearing on the proposed budget. Vice President Levinson stated that the District does not need police officer Matt at \$60,000. Per Director Schwartz we have an insurance increase due to the armed officer. If we would have been able to cancel our membership in SDRMA, we would have saved \$15,000. The \$33,000 salary (based on 18 hours per week related to 24 tickets issued per year) plus \$15,000 would total \$48,000. This affects our affiliated cost. We can't get premium insurance rates because we have a police officer who carries a gun. Levinson stated the need for cost cuts to offset future cost increases.

Board discussion followed on the topic of speed control. President Bell recalled that in the past warnings were ignored, resulting in no control of speeding. The hiring of the police officer reduced speeding, and for the last three years, speeding was not a hot topic. Homeowner Jan Jahnke asked if it was possible to just have the police officer for the three months of summer, June 17 to September 17. Per Manager Russell, enforcement of the Vehicle Code requires a POST Certified policeman. A professional policeman will not be willing to do traffic control and stop drivers without protection. Director Schwartz to contact the other six districts to find out what they are doing.

Vice President Levinson and Director Schwartz want to retain the police officer but without a gun. Homeowner Wayne Schafer asked what our liability is if we are sued. Director Schwartz responded that there is more liability with the armed officer here. Schafer suggested that cameras at intervals, radar and motion detectors and signage warning that area is under surveillance can be used to minimize speeding. Vice President Levinson

suggested renting a radar trailer with the illuminated panel that indicates your approaching speed in bright flashing lights.

Director Schwartz reported that he had talked to an insurance expert to evaluate loss control/risk mitigation/risk management at our community, including the road, train and beach areas. The expert noted that the single largest exposure is the weapon on our patrol officer. President Bell stated he wants community opinion before a decision to unarm the police officer. Motion was made by Vice President Levinson, seconded by Director Schwartz to let the police officer go effective one month from June 28. No Vote Taken. Board discussion continued. Levinson amended his motion to immediately request that the District police officer no longer carry a gun but continue his enforcement duties. If he refuses to work without a gun then we release him within two weeks. No Vote Taken. President Bell reminded the Board that we must represent the community. Prior Quality of Life Committee members Nadine Levinson, Jan Jahnke, David Wilson and Gail Becker stated they were present as representatives of the community. Manager Russell to send community notice that the District police officer release is under consideration.

Homeowner Chris Miller asked about the cost for a POST Certified police officer? Per Manager Russell, they must be hired by police department and it takes a year and a half of training and experience to get certified. President Bell recommends community investigation before making a decision. Group discussion on carrying gun vs. no gun. Chris Miller added that the police officer is unnecessary due to economic issues and from safety and security standpoints. President Bell again pointed out that the community needs to be informed that this subject is under consideration.

Motion Restated and Amended by Vice President Levinson, seconded by Director Gutierrez and passed 3-1 (Bell opposing) to have the District police officer cease carrying a gun while on duty and if he refuses to work unarmed then the District will let him go.

Budget Approval: See Page 2, Item G.4 of meeting packet.

Under *Funding for Proposed Capital Improvement Projects*, planned improvements to be discussed prior to approval of the Year 2012 budget are: seal coating of road surface (in 2012), District admin office, guard building improvements, storm drain #2 (35125), landscaping in Northgate.

- *Seal Coating of road surface (in 2012)*

Manager Russell to get recommendations and bids from three paving contractors for minor road repairs and slurry sealing the road.

- *District admin office*

Manager Russell provided a rough cost estimate to the board at a previous meeting and the Board felt the estimate was too low. Manager Russell's drawing to go to Kyle for approval before District spends more time or expense.

District Manager Russell was directed to obtain written letter from the City with Kyle Butterwick and Mark Sutton to approve drawing, stating what is needed or not needed, i.e. ADA. The Manager is to contact the Board if Mark Sutton has any issues. Board will reply

to the Manager with a strategy. When letter from the City is obtained, Manager Russell, Directors Gutierrez and Schwartz will meet with John Tran.

Manager Russell reminded the group that we have prior license agreement from OCTA to have the office on their easement. Director Schwartz stated we don't want the issue of illegal utilities. A new decision is needed if Mark Sutton doesn't approve. Schwartz further stated that the admin office cost is contingent on ADA requirements and location. The Manager's cost estimate is probably not accurate. If City approves, do we hire John Tran? An ADA assessor already determined that ADA was not needed. Gutierrez stated that continuity of aesthetics is important to Kyle/City. He wants to see aesthetics that are the same as the entry. The cost estimate may increase due to demo, curb, utility locations, etc. Gutierrez to work with Manager Russell to revise the cost estimate after the city's response. If it works out, Tran to do drawings.

Homeowners expressed concerns: the possibility of OCTA demanding the office be moved; why a redesign is necessary. Homeowner Chris Miller suggested utilizing the rear of the guard building as the District office. Why pay \$13,000 for an off-site office? Guard building cannot be used due to space limitations. Homeowner Wayne Schafer stated that the project's important factors are cost, how quickly will it be done, and will it be approved.

- *Guard building improvements*

Guard building improvements are temporarily postponed. District admin office and storm drains are the current priorities.

- *Storm drain #2 (35125)*

A video was done of the inside of the drain pipe. The total pipe length is 110 feet. It must be sleeved or replaced with new 24" pipe. The other pipe is on the beach. Manager Russell to send a copy of the hydrology report to Director Gutierrez. Are there landscape replacement and demolition costs? The pipe is deeper as it moves toward the beach. Per Manager Russell, the property owner adjacent has landscaped the easement. The adjacent homeowner has been made aware that the District will need to tear it some of his landscaping. Director Gutierrez requested a bid or budget. Manager Russell explained the process involves sleeving the existing old rusted metal pipe and excavating to tie in to existing pipe on the beach. Gutierrez asked about the estimate of \$22,000. Is a permit needed? Gutierrez and Russell to find out from the city. Due diligence is needed. Should the size be 24" inch or 36" inch pipe? Vice President Levinson says the two drain filters were removed and are sitting next to the drain on the ground. Per Manager Russell the filters were removed for video recording the inside of the existing pipe and will be put back in.

President Bell shared his opinion that the District admin office and the storm drain are top priorities, with the guard house upgrade, Northgate landscaping and seal coat to be completed afterwards. Director Gutierrez asked if \$20,000 should be kept in or pulled out of the budget for the future upgrade of the guard house. President Bell stated that this expense is over budget so it would be necessary to use part of the \$37,600 coming from existing reserves. Vice President Levinson thinks the District admin office budget may potentially increase. Director Gutierrez would like to wait for the reserve study.

- *Landscaping in Northgate*

Director Gutierrez asked what the \$2000 landscaping cost included. The cost is to extend the sprinkler line, etc. and install semi drought-tolerant landscaping. Gutierrez thinks the District will need City approval and feels the reserve standpoint is low. All improvements have a life. The Board has the ability to revise the budget. President Bell asked what if additional amounts are needed? Board members suggested continuing with the District admin office but no guard house improvements. Continue storm drain (no seal coat or Northgate landscaping). David Wilson asked if there was a budget for the reserve study. Gutierrez estimates reserve study will cost around \$3000. One option is DRE Specialties: contact is Donna Worts in Laguna Niguel. *(note to board members – I can't find anything on this firm – one of you had suggested using them)*

Motion by Board President Bell, seconded by Vice President Levinson and passed 4-0 to approve the FY2012 budget contingent on bids for District admin office, seal coat, storm drain, guard shack building improvements, and reserve analysis bid.

\$1600-\$1800 was previously paid to the City for the CDP application fee for the admin building improvements. City said it would return the fee deposit but kept it. Director Gutierrez requested that we contact the City to refund the deposit for now and we can pay it again later. Where are refunds on fees allocated as revenue? Manager Russell responded that they are in a sub-account included within a pre-pay account. He will check with Accounting re: deposits received back. Gutierrez asked about the status of \$500 plus promise for dump fees approx. \$3500? District to determine temporary deposits account location. It is placed in a deposit account, but it is not really income.

H. ADMINISTRATION OFFICE RELOCATION

1. Discussed under previous agenda item G.4.

I. COMMITTEE REPORTS

1. LCP Committee

The annual MHTL beach survey was completed on June 21st during the morning low tide.

2. CBRA Activity report

There is no written report from the CBRA.

J. MANAGER'S REPORTS

1. Review of Manager's Priority List (including Poche water quality project)

Director Gutierrez spoke for Jack Tarr. Tarr wanted the Poche water quality item to stay on the board agenda until completed. Tarr wanted community support to get Poche cleaned up. Water coming into the area comes from the City of San Clemente. All agencies are involved. The filter is within the City of Dana Point. Gutierrez asked City engineers Matt Sinacori to review. The city's map is not accurate. Is there any liability if non-buildable lot? Map shows that we own it. Gutierrez thinks it is common area. Board to call Jack Tarr and obtain status.

K. OLD BUSINESS

1. Discussion of repair plans storm drain no. 2 (next to 35121 Beach Road)

Regular Meeting #571
June 28, 2011

Discussed in section G above under Finance/Budget approval items.

L. NEW BUSINESS

1. Discussion of District Open House policy for home sales.

We have no control over a for-sale sign on a property. Currently, if there is a gate access problem with a real estate prospective buyer, we call the realtor. Per Gutierrez, if there is an open house, the sign must be off site. The interested buyer must call the realtor and make an appointment. The gate officer can issue them a special pass that is good for one hour. They meet the real estate agent at gate. The agent needs to know parking limitations. If homeowner has authorized the real estate agent, we are to notify the agent for approval when a prospective interested party arrives. If the agent has not been authorized, then we call the homeowner. Parking must be pre-arranged. Existing parking rules apply.

In future, it is possible to limit unauthorized parking by noting what date and time in the computer fields. David Wilson requested to add a computer field for 1 hour. If parked over the time limit, tow the car. Gutierrez asked if we need to identify buyer vs. guest or resident. Wilson suggested we make the time 1 hour and write the exact time range such as 10-11 AM. Securitas can write the time on the temporary pass. For future open house events, the homeowner authorizes the real estate agent to qualify prospects. Interested parties call the real estate agent. The real estate agent calls the gate to authorize the date/time. The gate writes the date/time range allowed on the temporary parking permit.

David Wilson related that some unauthorized persons passing through the gate state they are a certain resident and use a resident's name. Securitas needs to enforce identification requirements.

M. WRITTEN COMMUNICATIONS

1. Letter from Jerry Southwick, 35735 Beach Road, regarding the district Admin Office. See Agenda Item G-4.

N. BOARD AND STAFF COMMENTS

Director Gutierrez asked if the entry guards could dress in Hawaiian shirts instead of the gray military attire? For example, Levinson noted that Shady Canyon uses safari attire. Discussion about how the current attire sets a tone of authority. President Bell will add "Guard Uniforms" to the next agenda.

O. ADJOURNMENT

The meeting was officially adjourned at 9:50 PM.

ATTEST:

State of California)
County of Orange)ss
Capistrano Bay District)

I, Donal S. Russell, Manager of the Capistrano Bay Community Services District hereby certify that this is a **DRAFT** copy of the Minutes of meeting #571 held on June 28, 2011.

Regular Meeting #571

June 28, 2011

DONAL S. RUSSELL, Manager

DATE

, 2011