

* most of the written communications are in this section

Meeting #573

CAPISTRANO BAY DISTRICT
AGENDA REPORT
August 30, 2011

Approval of Minutes

ITEM F.4

District Police Officer – Armed vs Unarmed

A. *Possibly Losing the District Police Officer*

With the Board action at the previous meeting to disarm the police officer comes the possible unintended consequence of the officer voluntarily quitting his position. Officer Sokol has expressed his concern with working without a weapon for protection.

B. *Possible Brown Act Violation*

The Board's action during the previous meeting of disarming the District Police Officer was not identified and listed as an agenda item for that meeting. Section 554954.2(2) of the Brown Act states "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights,"

Although this topic was discussed and acted upon during the discussion of the SECURITY ACTIVITY REPORT, it was not listed and separately identified as a discussion item.

C. *No Advance Notice to Homeowners*

This ties in with item B in that homeowners had no prior notice that this topic was to be discussed and acted upon and therefore their rights to the 72 hour notification requirement were denied.

**The following 15 pages are written communications addressing the three items listed above. To complicate matters, most of these letters and emails also provide comments on some of the other agenda items for this meeting. They are all inserted here as this is the first subject matter of the letters.

Additional agenda items addressed by these communications are:

- District Admin Office
- Board of Directors Vacancy
- District Management Alternatives

GARY M. TERAGAWA
89 Hartley Drive
Colusa, CA 95932

ITEM NO. F.4

July 22, 2011

(Lt. Teragawa is a retired CHP Commander of the SJC substation)

Mr. Don Russell, General Manager
Capistrano Bay Community Services District

Subject: Armed Police Officer Position

Dear Mr. Russell:

The subject of having an armed police officer for a community services district has always had some controversy. I am very familiar with the Capistrano Bay District having met the former Chief and his staff in December of 1994, when I was assigned as the field operations lieutenant for the California Highway Patrol at the Capistrano Area Office. I retired after a 30 year career in law enforcement in 2008, and currently I am the Chief of Public Safety for the California 44th District Agricultural Association (Colusa County) Fairgrounds.

First, a community services district, as a legal government entity that exercises most of the same municipal powers of an incorporated city does have the same legal responsibility to ensure its one and only peace officer has all of the personal safety equipment in their possession, ALL THE TIME. A law enforcement officer cannot plan events or activities ahead of time where he or she knows when a firearm will needed to defend their own life and the protection of life of the public. In today's changing society, there is no longer such an animal as a, "Routine" call anymore. As a commander of a rural CHP office in Northern California, there have been over 50 incidents in six years where my officers have suddenly come across an incident where the threat of deadly force was encountered, away from their vehicle. In six years as commander, my officers had confronted over 25 persons with firearms and/or large knives. In two incidents, three of my officers were bit multiple times by pit bulls, as suspects released their pit bulls to attack the officers. Each officer needed their firearms to stop the pit bulls. Pepper spray and tasers DO NOT work on pit bulls. Your officer

more →

works alone, there is no guarantee the sheriff's response from Dana Point will always be able to make a difference to save his life if he cannot make it back to his vehicle to obtain his firearm. There is no way to guarantee 100% of the time, that persons from the outside will not enter the district from the beach side. No one can control that 24 hours a day, as honest people will not cause you the problems with crime. That is why I believe there is a need to have your police officer armed, ALL of the time. In today's climate of reduced government services, especially public safety, I want the comfort with the knowledge that there is a fully equipped, armed police officer I can depend on when they are present.

Second, a decision has to be made. You can't have it both ways. Either, your police officer is a fully equipped peace officer that has the full capability of not only protecting himself at all times, and provide for the safety and welfare of the public, or don't have a police officer and maintain a strictly security department, to report and observe, calling the sheriff's office when needed. By the way, a government entity, such as a community services district CANNOT hire private security and give them regulatory or law enforcement responsibility. They have to be employees of the district, not the private security company. The California State Supreme Court ruled that practice illegal.

Don, I hope some of this helps. Please keep me informed on what the final outcome will be. By the way, even in retirement, I now carry my firearm with me ALL of the time. Law enforcement services have been reduced and response times have increased. It is now getting any better, not for another 5 or 6 years.

If I can be of any further assistance to you, please contact me at (530) 632-4074 or email gteragawa@frontiernet.net.

Sincerely,

GARY M. TERAGAWA

Excerpt from the Brown Act

body taken at the meeting for which the agenda or agenda packet was not received.

Agendas

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

* (2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than

TO: District Board of Directors

ITEM NO. F.4

FROM: Sheila Bullock

DATE: July 5, 2011

SUBJECT: Communication

As you know, I was in attendance at the monthly meeting of the Board of Directors that took place last Tuesday, June 28th. I had received an agenda of the meeting by email prior to the meeting. It was a long meeting and non agenda items were discussed in addition to those items that were on the agenda. This, of course, can occur at any meeting, but it is my understanding that action cannot be taken on any item that is not on the agenda except in the case of an emergency. In my opinion the vote on whether or not our post certified officer would be fired if he did not agree to work without his firearm was not an emergency.

I realize that the 4th of July and its massive safety plan was going to occur within a week from the date of the meeting (which could be considered an emergency) and that our post certified officer was a part of the safety plan, but the motion that was passed by the Board went far beyond a one time condition for employment.

The rationale behind the law that requires that no action can be taken on non agenda items is intended to prevent a Board of Directors from voting on an issue before they have input from their community. This law has been sometimes ignored in matters that are considered "housekeeping issues", without any effect on the community. However, a decision that could cause the removal from the District of the sole person who can control the speed of automobiles on the road by issuing a ticket that is more than just an empty threat is not just a "housekeeping issue". Prior to our hiring a post certified officer, the Securitas patrol officers could "ticket" speeders, but it was known by most homeowners that the "ticket" had no real penalty. The awareness that there could be an officer on the road that could give them a ticket with real consequences is a deterrent to driving too fast. It would be a perfect world if no tickets were issued because everyone was obeying the speed limit!

I believe that the vote on this item should be revisited. The homeowners should be informed that the Board of Directors will be discussing, and action may be taken, on the subjects of 1) whether we wish to continue having a post certified officer in our employ on a part time basis who has the authority to issue real tickets, and 2) if a post certified officer is in our employ, should the requirement that he not be armed be a part of the job description.

As a final comment, in addition to the item concerning the post certified officer described above, the Board spent quite a bit of time on the non agenda item of whether a professional management company should be hired in addition to or rather than the District Manager and consultants system that we have at present. The only action on this item was the formation of a committee to investigate the matter. This is another subject that calls out for input from the homeowners. As a means to having a well informed constituency, I ask that the Board supplement the required agendaing with additional material that will explain to the community the thinking behind the possible change.

Sheila Bullock

REC'D JUL 11 2011

Don Russell

From: agudel@dc.rr.com
Sent: Sunday, July 10, 2011 1:56 PM
To: Don Russell
Subject: Recent board meeting

ITEM NO. F.4

Dear Don and all members of the board of directors:

I understand from two sources that at the most recent directors meeting that two items not shown on the agenda were discussed and acted upon.

I am vice-president of my HOA in Palm Desert, and do believe you may be in violation of the Brown act, you may want to check on that.

As far as the two items discussed one being, the unarming of our police patrol, and the other considering an outside management firm, I would like to go on record as being opposed to both.

In relation to an outside management firm, I believe we would be very disappointed with the results. You need on hands management as we have now in Don Russell. Who would be on hand with the knowledge of the road, on holidays, during storms etc.? Also I think back to the time the new road was put down, who would organize and handle situations like that? Not a management company!

Respectfully, Al & Jo Gudel
35535 Beach Rd.

Information from ESET NOD32 Antivirus, version of virus signature database 6282 (20110710)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

ITEM NO. F.4

RECEIVED 7/15/11

Capo Beach Board Of Directors:

It has come to my attention (and not thru a timely posting of this months minutes) that the board has made some unannounced and unwise decisions regarding the office location, management and the ability of our trained officer to carry a weapon.

I can't imagine that an outside management organization would have the time and expertise to effectively run the day to day operations of the road. If there is a problem, I call Don and he is right there. Someone has to be on site on a permanent basis, and that means the office is located on the "road". I am sorry if it doesn't fit in with the boards grand scheme, but I assumed that it had been planned for when the entrance was redone. I doubt that something like this was just an oversight, maybe it was the endgame on the part of the board all along.

As for the gun toting officer, I have seen several situations where the Securitas people were threatened by a bunch of drunks and in a very dangerous situation. And at the same residence, with the same occupants, the armed officer was able to take charge without a problem. I am sorry that some people are intimidated by guns, but wake up, sometimes they are necessary.

Now, I know that being a board member is a thankless job and no one wants to do it. But you folks need to keep in touch with all of the various residents and not just the small group of people who lobby for their favorite project.

Many of us are not full time residents, and it is hard to keep up with what is going on. The preliminary minutes posted on the web site helps, if they are posted on a timely basis. We went almost all last summer without a post, and a lot of things were happening that affected all of the owners. Not just the folks that lived here all year.

Please reconsider your positions, and in the future, please do what is right for everyone.

Jim Wilson
35465 Beach Road
Capistrano Beach, CA 92624

REC'D JUL 19 2011

ITEM NO. F.4

From: Joe Dunn [mailto:joe@dunnpropertygroup.com]
Sent: Tuesday, July 19, 2011 8:27 AM
To: 'Don Russell'; 'fiduciaryman@yahoo.com'; 'Dave Gutierrez'; 'Jerry Levinson'; 'Kirk Bell'; 'Steven Schwartz'
Cc: 'pennschafer@cox.net'; Roger Davisson (rcdivisson@gmail.com); capobeachrus@cox.net; David Wilson (fiduciaryman@yahoo.com); shbull@cox.net
Subject: RE: Recap of Meeting

Thanks Don, as I mentioned in our meeting due to business commitments in LA next Tue. & Wed. I am unable to attend the Board meeting 7/26 but want you and the Directors know the Dunn's views on current issues.

We are for establishing the district office on the Road ASAP. Solve the bathroom issue. No more stalling!

We are against turning the operation and management of Beach Road over to a professional management company. I've had experience as an owner of a large commercial property management firm as well as an owner of condos working with HOA management companies. These well meaning companies will assign a supervisor who will have several accounts under his or her jurisdiction and cannot afford the time or expertise that our current manager provides us. The CBD has already outsourced many services (security, landscaping etc) and because we are not a HOA and not a condo development but a community of unique single family and duplex homes constantly being built or re-built and subject to the whims of mother nature, the railroad, drainage of the palisades/highway and numerous other factors we need to not only be self governing but self managed.

We are against employing a retired armed police officer to patrol (on a part time basis) up and down Beach Road for the purpose of enforcing the traffic laws and writing tickets. In our opinion we have more than adequate security with a security officer patrolling up and down Beach Road 24/7 every day of the year, even in the dead of the winter. This is more security than our sister communities, 3 Arch Bay, Niguel Shores & Emerald Bay have. These officers can deal with the local residents and renters that occasionally speed and can meet with the owners and their general contractors for new and remodel jobs to state the Districts position on our laws. In my current semi retired status I'm in and out of the Road numerous times a day and I just don't think traffic violations are a big problem. Also occasional petty theft and isolated incidents of minor property damage if not prevented by Securitus's 7/24 patrol a part time armed cop driving 15 MPH up and down 3 miles of road isn't going to make a difference—or be worth the cost including salary, automobile, gas & maintenance, liability insurance etc. We do have the Orange County Sheriff available on a quick response basis.

We support David Wilson as a director for the CBD Board. David is a lifetime resident and along with Nadine is credited with saving the CBRA. He is an ideal candidate.

I understand the desire to inform the community/property owners of any "important" action the Board may be considering and it is the right thing to do. But I would caution taking a vote of

more →

those attending a Board meeting as the will of the people. I think last month 8 property owners attended (a very large turnout). Nor would I put too much credence in a petition on a particular subject unless it had a majority of the 186 property owners. The Board is simply going to have to make some decisions that may not suit some owners.

Once again I wish to thank and commend the Board for their service to the community.

Joseph C. Dunn
Dunn Property Group
35527 Beach Road
Capistrano Beach, CA 92624
T: (949) 496-7899
C: (949) 370-3971
F: (949) 496-4853
E: joe@dunnpropertygroup.com

REC'D JUL 22 2011

ITEM NO. F.4

Donal S. Russell, General Manager
Capistrano Bay Community Services District
35000 Beach Road
Capistrano Beach, CA 92624
drussell@capobay.org
949-496-6576 - office
714-206-4331 - cell
949-487-9224 - fax

From: Alex J. Martinez [mailto:ajmlife@cox.net]
Sent: Friday, July 22, 2011 9:04 AM
To: Donal Russell
Subject: Armed officer or not?

Hi Don,

As you recall from the many years I spent working with you and the many individuals that I served with on the Board of Directors of the Capistrano Bay Community Services District, how all we could do was shake our heads reading the incident reports of individuals pursued by our former security employees and subsequently Securitas, that pretty much ignored or flagrantly dismissed or otherwise berated our attempts to control speed violators on the road.

Now I have to admit that I have not been privy to incident reports since I completed my two terms in December 2008 so I can't state for certain that things have changed for the better since officer Matt Sokol arrived on the scene, but I would like to think it has definitely improved.

I have personally witnessed my very own stepson pulled over and although he was upset and wondering how this officer could have (in his eyes) "been so petty as to pull him over on Beach Road", he nonetheless respected that fact that he was verifiably a true and ordained peace officer. I for one think he probably needed this as sometimes, especially now in our culture, those of younger generations scoff at laws, regulations and norms for that matter.

If my memory serves me well, speeding was more an issue with residents as opposed to service personnel. This leads me to believe that once again the petulance of those whose lives have been touched (annoyed?) by Officer Sokol would rather see him neutered to the point where they can once again ignore the flashing lights of a pursuing vehicle and simply walk into their homes and not answer the door.

It troubles me that some people would rather create a potential problem and ignore all the benefits of having an armed officer, fully-trained and whose past and present livelihood depends on the very judicious use of his firearm in the fulfillment of his duties. This is the kind of mentality that has our federal government and its incessant meddling in the mess it is now and has now become the beast we're all try to fend off as it keeps growing and growing and biting off more of our lives and income.

I just wish the "illuminati" would stop already with their attitude that they know best. That's why we've become a nation of whiners with expectations that we should govern by exception and all laws, regulations and policies should be tweaked accordingly to accommodate the petulant few.

more →

Beyond the speeding issue is the occasional misfit living on the road. Remember the alcoholic that was leasing a property here that eventually side-swiped several cars and could not be roused out of his residence by Sheriff's, presumably losing his ability to drive in CA after many complaints but then came back with Arizona plates in another vehicle? What if the guy had become an alcoholic because he was despondent over some bad card life had dealt him and our officer had tried to stop him late at night on the wild ride?

Additionally, having an armed officer adds security to this community by creating a presence that becomes a deterrent to employees of service contractors who may be day laborers or otherwise who have access to this sleepy community on the beach where a lot of homes don't appear to be actively occupied or are occupied by elderly folks. It doesn't take a whole lot of craftiness to gain access to this community. One simply has to take a late-night stroll on the public beach.

What about the comfort it provides all the elderly widowed ladies living on the road? I know they feel comfort from knowing there's a real ordained armed peace officer on the road creating this presence and deterrent for criminals scoping out the homes during permitted access to the community.

Our floundering economy is going to create more criminal activity out of desperation and if those that would rather disarm our officer believe it will never reach our "private community" they shouldn't be so naive.

This is one individual who believes Officer Sokol or any other officer hired to fulfill this responsibility should be allowed to perform the job he has been trained to do. If carrying a firearm is required then so be it.

The "illuminati" should stop telling people they know how to do their jobs better.

Alex Martinez

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6316 (20110722) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

REC'D JUL 22 2011

Mr. Theodore E. Rasmussen, Jr.
12028 Philadelphia St.
Whittier, CA 90601-3925

35645 Beach Rd

July 19, 2011

ITEM NO. F.4

Capestrano Bay District
35000 Beach Rd.
Capestrano Beach, Ca 92624
attn: Donal S. Russell, mgr.

Gentlemen:

I am very concerned after receiving and reading community notice 7/11/11.

To disarm any officer in uniform in today's climate is a very foolish and macabre act. Traffic officers are at a disadvantage on any stop and should be afforded any measure of advantage available. A fire arm is the least thing they should have.

I hope that the officers you have disarmed are not killed in line of duty and that his death is not on your head. The extra insurance money you are saving is a stupid investment.

All of the Board of Directors who voted for this measure should be recalled for lack of judgement.

Please reconsider and rescind this foolish decision.

Theodore E. Rasmussen Jr

CHARLES R. HOOSE
P.O. Box 2247
Capistrano Beach, California 92624
(949) 496-3755

ITEM NO. F.4

July 21, 2011

REC'D JUL 22 2011

Capistrano Bay District
Board of Directors
35000 Beach Rd.
Capistrano Beach, CA 92624

Dear Board Members:

I am writing you to express my deep concern for recent actions taken by the Board. I believe they are against the desires of the community and they are clearly not in compliance with the Board's responsibility under the Brown Act.

- 1) The motion made at the June meeting to require our post certified officer to perform his duties unarmed or be terminated is totally unjustified. Police officers carry weapons as part of their equipment in order to allow them to effectively and safely carry out their duties. Your action shows a complete disrespect and ignorance of the demands placed on a police officer.

This major decision was taken with no notice on the agenda and no communication with the community prior to your action. Our speed control program has been operating for more than three years and has been very effective in helping to control the speeding on Beach Road. During this time there have been no concerns expressed by this community about our police officer being armed. Our program was thoroughly discussed during several board meetings before it was implemented. The fact that we have three Board Members who dislike guns is no reason to eliminate the program.

I am asking the Board to reverse this action so that our police officer can resume his duties in an effective manner.

- 2) Board Vacancy – The Board was notified in April that they would have a vacancy as Bob Bancroft was leaving the Board effective in May 2011. There is no record of this issue in the May Board meeting and the Board failed to inform the community of this opening on the Board. The matter was placed on the June agenda to confirm Mr. Wilson to the Board. Due to concerns raised by members of the community the matter was pulled and the manager was directed to send a letter to the community advising them of the opening on the Board, and giving them 30 days to respond.

Capistrano Bay District
July 22, 2011
Page Two

The letter sent to us is no 30 day notice. It was postmarked on the 12th of July and required any interested property owner to reply by the 21st of July in order to be considered. Ten days is not sufficient time for someone to make a decision to put their self up for consideration. I believe you should delay this decision and allow the 30 days for members of the community to respond.

- 3) District Manager's Office -- The community has known for six months that we must submit our application to the City so that we can return his office to the Road. Today we still have not submitted our application and the Board refused to allow the Manager to hire a Civil Engineer to complete the application so that it can be submitted to the City.

The Board should know that the City will not give written approval on any aspect of this issue until they have a valid application from us.

Please hire the engineer and get the application submitted.

- 4) Out Sourcing of District Manager's job -- This issue has been discussed many times by our community and it has always been the desire of the community to have our manager remain a direct employee of the District. It has worked well for us for many years and it should not be changed. Allowing a management company to take over that job is not in the best interests of our community and does not reflect the desires of this community.

Thank you for your consideration of my comments.

Sincerely,



Charles (Sandy) Hoose

REC'D JUL 23 2011

ITEM NO. E.4**Don Russell**

From: Bill Matthies [wmatthies@coyoteinsight.com]
Sent: Friday, July 22, 2011 9:24 AM
To: Don Russell
Cc: Bonnie Matthies
Subject: Police Officer Status

Donal, I received your letter regarding the weapon status of Office Sokol and while I cannot make the July 26 meeting, I would like it known that I support allowing him to retain his firearm.

I am sure many envision Beach Road as we would like it be, populated only by individuals who respect the rights of others, who are only there to enjoy the special place it is in a way most of us would agree is appropriate, but that is just not the case. The reality is we have far too many visitors and unfortunately some residents who feel they can do what they please and in some cases, anyone attempting to tell them otherwise is in personal danger. I don't blame Office Sokol if he feels unsafe without his weapon.

I strongly urge the board to allow him to retain his weapon and if the decision is otherwise, I would encourage him to resign as soon as possible for his own benefit. And if that happens the board can then decide how best to deal with the increased legal exposure it and the district will be subjected to when there is a real problem due to a lack of sufficient protection.

Bill Matthies
35567 Beach Road

--

Bill Matthies
Coyote Insight
Business Wisdom
1 714 408-9467

7/23/2011

Don Russell

From: Judy Messer [cbd@capobay.org]
Sent: Tuesday, August 09, 2011 12:59 PM
To: 'Don Russell'
Subject: FW: Armed Police

ITEM NO. F.4

From: Tim Pennington [mailto:TPennington@appleoaks.com]
Sent: Thursday, August 04, 2011 3:05 PM
To: cbd@capobay.org
Subject: Armed Police

Hi Donal,

Please pass on to the board that we support having properly trained armed police. We would rather not have them at a disadvantage to do their job if a gun is required.

There are armed police in every community and we should not be without. If it costs more in insurance, that is fine.

Thanks.

Tim and Melissa Pennington

Information from ESET NOD32 Antivirus, version of virus signature database 6364
(20110809)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

Alejandro J. Martínez, P.E.

August 15, 2011

Capistrano Bay Community Services District
Board of Directors
35000 Beach Road
Capistrano Beach, CA 92624

Dear Directors,

Re: Recent and Pending Actions by the Board of Directors

First, let me start off by expressing my thanks to each of you for dedicating your time to the service of the constituents of this community special district. It goes without saying that all the time you spend doing this service is a sacrifice of personal leisure time, which I also recognize can directly affect family life and your labors for some still actively working.

As a resident who got involved with community affairs when the California Coastal Commission (CCC) imposed a rather onerous local coastal plan on the city of Dana Point in 1997, with the imposition of irrevocable offers to dedicate (IOD) beachfront land in exchange for any development permit beyond 10% of the footprint of a home, the affairs of this community became personal to me (even though at the time we were personally not impacted due to already having completed our current home).

This community rallied to the defense of what was eventually defended by the Pacific Legal Foundation as an unconstitutional taking of land. Together with a few very active members of the community, we were able to affect the outcome of that imposition in a positive manner that benefited *every* current and future homeowner on Beach Road.

Well, the time has apparently come again to rally the community in what appears to be a concerted effort to alter what has been the manner in which the Capistrano Bay District (CBD) has conducted its affairs as a special district under the laws of the state of California.

As you may or may not know, I served not only as a member and president of the Capistrano Beach Road Association (CBRA) for 2 years, but also two full 4-year terms as a director on the CBD Board of Directors, having served three of those years as President. During that tenure, I can say without hesitation that each member of the Board was fully aware of the charge we each had to serve the best interests of the community. Occasional unpopular decisions were made

(albeit, *only* with small minorities), but on the whole, it was always a fair and equitable dispensation of duties with respect to the required services of the special district and with strict adherence to any municipal, county, state or federal laws and regulations.

Anyone serving on the Board of Directors, the direct administrators of the specified service(s) identified in the charter of this special district, should understand the unique nature and trust the community places in those elected (or appointed) to conduct the affairs of the district appropriately.

Having said this let me first address what I consider to be a Brown Act violation on behalf of the Board of Directors on its recent action on an un-posted item to "disarm" the hired police officer on Beach Road.

CBD is unique for a special district in that it has corporate powers (the ability to "do things") along with tax power and police powers. There are very few that have all three. Police powers give the CBD the "authority to regulate private behavior to accomplish a public goal (zoning, licensing, *speed limit and enforcement*, etc, albeit in accordance with jurisdictional law or statutes)".

Until recently, Beach Road had three major problems it had to contend with throughout the years, a inordinately high number of (both resident and non-resident) drivers exceeding the speed limit by more than 10 mph (considerable at a posted 15 or 20 mph limit), a shortage of available parking for non-resident visitors or service personnel (causing a bottleneck along the entry due to parallel parking along the fence line, especially during holidays) and inadequate entry and exit facilities. The latter two were alleviated with the recent enhancement of the entry lanes and the increased parking.

The speeding issue, however, has been a problem that was discussed at just about every meeting I attended and verified by review of incident reports, and I'm sure this was the case at meetings of earlier Boards. If it is not a concern of the current Board, it means the previous actions to address this must have impacted the situation positively.

During the 8 years I served on the Board, we explored every option available from speed bumps (which everyone hated but were effective) to speed humps (which the OCFA decided violated their conditions of service to the community) to the collapsible ones that exist to today that help regulate speed (although limited to the few OCFA would allow us to install). Without speed control elements at specified intervals to control speed (and further annoy residents on the road), it became necessary in the eyes of the Board of Directors, after many years and much study, to inquire about having a real police presence in the form of an occasional Sheriff's patrol car "cruising" the road.

When deemed "unfeasible" by the local commander of the OC Sheriff's Department in Dana Point given their available resources, the Board decided it would be in the best interest of the community to have a hired certified police presence to establish a "respected law enforcement element" on the road. To my knowledge, the hiring of this officer has been the only measurable control factor to the speed issue that has plagued Beach Road.

Why, you might ask? Is it that a true peace officer who does not look like a security employee does not get berated or flagrantly ignored (reference past years incident reports) as did our officers before and after the transition to Securitas as our security force? It's fairly conclusive in my estimation.

We have to face the fact that when we improved the road from the pot-hole laden road we used to have, people are now more focused on navigating it faster than dodging the next pothole. The annoyance shifted from dodging holes to "it takes too long to drive to the south end at 15-20 mph".

The veteran officer, driving a different patrol vehicle than the security personnel, with its unique markings and red lights, the uniform and yes, the sidearm, were all part of that "presence" that has made all the difference in the world apparently to moderate speed on the road whereas it was not very controllable in the past. It must be working as I stated before if speeding is not a concern to this Board as it has been to the Boards I served on from 2000-2008.

As to the Ralph M. Brown Act, covered in CA Government Code Sections 54950-54963, it would serve this board well to read it. It states explicitly that "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created" (Section 54950).

Continuing, the board cannot consider or take action on any business not mentioned in a public notice *unless*, 1) they are emergency situations, 2) have a need for immediate action that cannot *reasonably* wait until the next meeting (with a requirement that the item come to the board's attention after the agenda has been published), or 3) are items posted in a previous agenda that was continued for a subsequent meeting no more than 5 days later (Section 54954.2 (b)).

As enforcement, the Brown Act specifically states that "Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor" (Section 54959).

As a remedy, the district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency" (Section 54960 (a)).

Clearly, the recent action on an un-posted, less-than-trivial but certainly not an emergency, non-agenda item to disarm the police officer is a violation of these provisions of the Brown Act.

With respect to the discussion of changing our current on-site management to a remote, limited-service type management company similar to those functioning with homeowner's associations (HOAs), personal feelings aside, I have to say that neither treating this matter as trivial or as a "way to get rid of Don" (as has been reportedly stated by a few on the road) is not appropriate representation in the sense of public service.

This special district, as are all special districts, is a "focused service" district, created wholly for the purpose described in the original charter in 1959, designed to "deliver public services and public facilities that (our) *constituents* want".

State law defines a special district as "any agency of the state for the local performance of governmental or proprietary functions within limited boundaries". These special districts "localize the costs and benefits of public services" and "obtain the services the public wants at a price they are *willing* (sic) to pay".

Special districts are "autonomous government entities, *accountable* (sic) to voters or landowners they serve". While autonomous in that sense, they are still under the jurisdiction of the state government through submission of annual financial reports to the State Controller and with strict adherence to "state laws pertaining to public meetings, bonded debt, record keeping, and elections" to name a few.

Our community special district was created under statutory authority as a "special act" district, a multi-function non-enterprise district tailored to the unique needs of Beach Road. While most non-enterprise districts do not generally charge user fees for their services, relying primarily on non-fee revenue (tax apportionment), we have had a need for a voter-approved user-fee to supplement the operations and management of Beach Road for years pre-dating my existence on Beach Road. Again, for "services the public wants at a price they are *willing* to pay".

If the argument to change from our current form of management is a financial matter (which I doubt would yield true savings), I would suggest that any savings would be far exceeded by the loss of benefit to property owners as a whole, no longer having an onsite manager, not to mention Don's vast intimacy with the property owner base, the everyday activity, interagency cooperation and infrastructure of the road.

In spite of his perceived shortcomings, loss of this benefit to the community in exchange for a remote, off-site management, with profit (minimizing service) as their driving force would be a tremendous loss to Beach Road. We've managed adequately all this time with an onsite manager.

If the Board persists there is savings to be had and the benefits would not be lost then I would argue that this is an argument for a lowered or eliminated user fee. Again, let's remember special districts "localize the costs and benefits of public services" and "obtain the services the public wants at a price they are willing to pay". To date, I have heard no one on the road complaining our cost to have an onsite manager is exceedingly high and refuses to pay for this service.

Under this scenario, a looming danger exists in continuing to amass funds in a financially-strapped state that actively reviews "reserves" and has for some time expressed concern over their high levels. The tax apportionment granted to this district has already been reduced over the years from as high as 34% to over 21% and finally to just over 18%. The previous Board's have already made cuts in anything considered discretionary or non-vital. It would serve the district's best interest to show we cannot take another reduction at the risk of losing vital services.

Regardless of the Board's desire to acquiesce to a handful of people on Beach Road that find Don caustic and undesirable, this is not a trivial matter to decide at a board meeting. Especially when the winds yell out that a few have made the declaration that "this is the chance to get rid of Don".

The Brown Act states that serial meetings (where a majority of directors have communicated on an issue and developed a collective concurrence (consensus building)) are not allowed. This can be direct or indirect communication in any form that leads to this concurrence including a "daisy chain" type of communication, either in writing or verbally, in person, by phone or any electronic conveyance.

Hearing comments like "this is the chance to get rid of Don" almost cry out that some consensus building may be taking place. I would hope as Directors you would be cautious not to involve yourselves in any of this to prevent any violations of this kind.

Fortunately for our community, and any special district, when the public is not pleased with the actions or activities of the district, its management or board, the remedy prescribed is direct democracy in the form of initiative, referendum or recall. Please be advised that this is notice to seek remedy by referendum on any action to change to the Capistrano Bay Community Services District management.

This remedy allows the community to directly vote on this matter, essentially allowing the entire property base the power to put any board actions on a ballot to officially reject them *before* they go into effect (check with your legal counsel).

Any decision by the Board of Directors to change the form of management the community as a whole is, to my knowledge, comfortable with (based on very little clamor to change but for a few people) will be challenged by referendum. Please consider that the entire property owner base should be allowed to make this decision. After all, they have comfortably been willing to pay the cost of having this type of management. Any accelerated action on the part of the Board will be considered an attempt to circumvent the democratic process allowed under the California Government Code.

While you're digesting this, I would suggest you consider allowing the entire community to also decide whether an armed officer on the road is a perceived disadvantage or benefit at whatever the incremental cost in liability insurance. After all, his livelihood, professional training and service lend itself to his judicious use or non-use of a sidearm. Any officer of the law will tell you that a sidearm is preferred as a deterrent and the last thing they want to do is actually discharge it.

The facts show that having this officer in full dress did in fact, impact the speed issue positively.

Thank you for taking the time to read my long-winded letter. If the way the affairs of this community are conducted wasn't personal to me as a concerned resident, I wouldn't have taken the time to write it.

Respectfully,

Alex Martinez
35431 Beach Road
Capistrano Beach, CA 92624

08/18/2011

ITEM NO. F.4

Beach Road Board of Directors:

I am a residence of Beach Road of 6 years, residing in my home most of the year and leaving for 3 months during the summer to travel. Recently, it has come to my attention that some significant changes have been made. At this time, I have three major concerns in regards to these changes. I will be brief and to the point.

- 1) Lack of communication: The information that I receive in regards to decisions made on behalf of residences is extremely brief and lacks necessary details. No response by homeowners, on any subject, has been requested by the Board of Directors prior to or after the decision has been made. If communication is only to be done at meetings I need to find out how to change this policy, as it is ineffective way to manage a large district – especially one with many owners being absent for the majority of the year.
- 2) Armed Guard: The disarming of the “armed” guard is an example of NO communication to homeowners. I would like to receive communication in regards to why the board voted on this issue without the homeowners' approval? As a resident, who pays for this “armed” guard, I believe I have the right to voice an opinion in regards to my own safety and sense of security.
- 3) District Management Company: What possible reasons would anyone want to deal with a management company instead of having Don, a knowledgeable professional?

As a homeowner, I would like answers by “e” mail to the above issues in a timely manner. Response via USPS will not be accepted as a form of response, as I am out of town.

As a homeowner and paying member of the association, I feel that my opinion is to be heard and addressed – whether you agree with it or not. I challenge you, the Board of Directors, to read on and address my opinions on the above concerns which are detailed below...

- 1) Lack of communication: I am extremely disappointed in the manner in which I find out about changes including how I found out about the “no gun” vote. My husband happened to be out doing yard work when a neighbor passing by decided to converse with my husband on the topic. In the past, I have also received information via “e” mail from the ladies' luncheon. Although I have not been able to attend a lunch, I do love communication with the Ladies of Beach Road. I challenge you to show me where there is detailed information in regards to the discussions that have taken place for the guard with no gun or Don being replaced. I'm assuming we all know that the details include the “pros & cons” on all issues and how the final decision was made.
- 2)
- 3) Armed Guard: This is the 6th home that I have owned, each time I have moved up into a better neighborhood. My first home being in the not so good area of San Bernardino. The reason I mention this is that I have never been robbed until I moved to
- 4) Beach Road; here I have been robbed twice. I was raised in Orange County so I know what type of people the beach cities attract. I also know that these type of people stay in areas that they know there is less of a threat of being caught. An armed officer is one way of keeping repeat offenders off Beach

Road. I believe this is a better option than having the homeowner arm themselves, which is a consideration I will have if the armed guard is dismissed permanently.

3)Management Company: I have dealt with management companies personally and professionally; and while they serve a purpose, we on Beach Road, are fortunate to have a person that is dedicated to us. We have been given his cell phone number and he is easily informed of any issues we have. Whomever has suggested we change to management company, in my opinion, has a personal issue with Don, a hidden agenda, or has never dealt with a management company when a problem arises or needs an answer to a question.

I do appreciate anyone who volunteers for the Board of Directors. I believe it takes commitment and a special type of person to deal with issues especially when you are not being paid. I do want to thank all of you for your time and effort that you spend on the issues at hand.

Sincerely,



Connie Waldron
35401 Beach Road
Capistrano Beach, CA

PETITION

07-14-11

We are asking the District to continue to employ our Police officer and have him remain in his current uniform including his utility belt and weapon.

With the transient traffic we have including construction workers and short term renters and easy access to our homes from the beach and over the wall we feel it is imperative to have at least the appearance of having an active official police officer present on site. His full uniform distinguishes him from the regular security officers. No one knows when or where the officer is deployed and we think this may help keep some people from seeing us as vulnerable. This officer has shown to be effective in speed reduction and should remain on post as much as possible.

	PRINT NAME	ADDRESS	SIDGNATURE
1.	Jerry Southwick	735	J. Southwick
2.	Sheila Bullock	737	Sheila Bullock
3.	Anthony Giesanti, wd	355	Anthony Giesanti, wd
4.	Mickey BENWICK	455	Mickey Benwick
5.	JANET JAHNKE	671	Janet Jahnke
6.	Noreen Rose	575	n Rose
7.	Darlene Anzell	791	Darlene Anzell
8.	Phyllis MASTO	141	Phyllis Masto
9.	James F. Wain	615	James F. Wain
10.	Pat Hoffman	615	Pat Hoffman 805/807
11.	JAY Longley	615	Jay R Longley 835/889
12.	SANDY HOOSE	565	Sandy Hoose
13.	CINDY HOOSE	565	Jacinda Hoose
14.	Vikki BIRD	121	Vikki Bird
15.	Eileen SHort	441	Eileen Short
16.	RICHARD BEAUCHAMP	801.797	Richard Beauchamp
17.	DON GRIFIN	741	Don Griffin
18.	Wayne Schaefer	811	Wayne Schaefer
19.	Pete Doiley	361	Peter Doiley
20.	Beverley Alberti	755	Beverley Alberti

REC'D JUL 22 2011

07-14-11

We are asking the District to continue to employ our Police officer and have him remain in his current uniform including his utility belt and weapon.

With the transient traffic we have including construction workers and short term renters and easy access to our homes from the beach and over the wall we feel it is imperative to have at least the appearance of having an active official police officer present on site. His full uniform distinguishes him from the regular security officers. No one knows when or where the officer is deployed and we think this may help keep some people from seeing us as vulnerable. This officer has shown to be effective in speed reduction and should remain on post as much as possible.

- | | PRINT NAME | ADDRESS | SIDGNATURE |
|-----|-------------------|------------------------|---------------------------------|
| 1. | JOSAPHINE TURNHGE | 33351 BEACH RD | Josaphine Turnhge |
| 2. | Tar Huber | 35181 Beach Rd | T. Huber |
| 3. | JOHN GREENWOOD | 445 BEACH RD. | [Signature] |
| 4. | ROSS BLOUIN | 705 [unclear] Blahiton | [Signature] |
| 5. | KAREN KOSS | 771 BEACH RD | [Signature] |
| 6. | Kurtis Breeding | 244 Beach Rd | [Signature] |
| 7. | STEVE McELRATH | 635 BEACH RD | [Signature] |
| 8. | Karen Tarr | 35841 Beach Rd. | KAREN TARR |
| 9. | Jenny Gillon | 35757 Beach Rd | Jim GILLON |
| 10. | [unclear] | 35255 Beach Rd | MIKE AACK |
| 11. | Lonnie E Laster | 35195 Beach Rd | Lonnie Laster |
| 12. | WILLIAM NASSOUR | 35777 Beach Rd | [Signature] |
| 13. | Louis H. Stear | 35775 Beach Rd | Louis H. Stear |
| 14. | Michael Casey | 35781 Beach Rd | [Signature] |
| 15. | Jan O'Spin | 35561 Beach Rd | [Signature] |
| 16. | Jan O'Spin | 35561 Beach Rd | Jan O'Spin |
| 17. | Diane Ferguson | 35725 Beach Rd | Cap Boh 92624 |
| 18. | KAY ROSOFF | 35189 Beach Rd | Cap Boh 92624 |
| 19. | PAT MCDONNELL | 35067 BEACH RD | 92624 CAPO BOH, CA. [Signature] |
| 20. | Mike Giurbino | 35077 Beach Rd | CAPO, CA 92624 |
| 21. | Nancy Proddan | 35331 Beach Rd | [Signature] |