

**REGULAR MEETING #574**  
**CAPISTRANO BAY DISTRICT BOARD OF DIRECTORS**  
**MINUTES**  
**September 27, 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 Bell called the meeting to order at 6:35 PM.

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

Directors Present: Board President Bell, Vice President Levinson, Gutierrez  
Directors Absent: Schwartz  
Staff Present: District Manager Russell  
Guests Present: Brian Sanchez, Securitas Branch Manager

**D. PUBLIC COMMENTS**

Homeowner Jerry Southwick apologized to Board President Bell for a letter previously sent to the Board by another homeowner regarding board member eligibility. He noted that the community supports President Bell and the Board.

**E. APPROVAL OF MINUTES**

*1. Regular Meeting #573 held on August 30, 2011*

Motion was made by Vice President Levinson, seconded by Director Gutierrez, passed 3-0, to approve the minutes of meeting #573 of August 30, 2011. Homeowner Sandy Hoose had a question on the item from the June 28 meeting minutes approval pending the request of missing verbiage on the police officer issue. Manager Russell made the correction. The Board had approved and Manager Russell didn't send out a second time for the Board to review. The question asked was about whether it was o.k. to discuss the issue of an armed officer. The point of the question was whether it was appropriate for the Board to take action. The specific question was, "Is it appropriate to discuss the topic of an armed officer?" Director Gutierrez remembers Director Schwartz or Director Levinson asking, could we vote on it, then Manager Russell had said yes because it was part of the budget discussion/action on the agenda. Homeowner Sandy Hoose says it was not an emergency, that the use of this reason was disingenuous as we have had the police officer for 3 ½ years without any letters of comment regarding firearms.

**F. SECURITY ACTIVITY REPORT**

*1. One month period for August, 2011 (Securitas):* Securitas Branch Manager Brian Sanchez reported that we received over 16,500 gate entries (mostly guests) with a steady 150+ gate entries per hour during the 10AM-5PM time period. Incidents included a parked vehicle that was nearly hit by a speeding vehicle (the speeder was previously issued a citation); a car broken into but nothing was stolen, a car left unlocked that had a laptop and

school supplies stolen. There were two trespassing incidents; the sheriff was called out for one of them. Homeowners/Board members asked if the license plate numbers were going to continue to be disclosed. Per President Bell, the next month's report will not show license plate numbers. Violation/citation numbers are higher than normal due to more guests. Bell asked about the incident with the public out on the beach. Brian/Securitas reported that on August 28, an elderly couple refused to leave the property and the sheriff was called.

President Bell asked about the process to start tracking when the officer takes the radar reading and its result. Brian/Securitas will create a spreadsheet called Radar Log. You will be able to see when a citation was issued. Brian will send a sample to Manager Russell. You will be able to compare citations versus readings. There is a potential liability to log people speeding that did not get a ticket. The vehicle plate numbers will not be shown. The spreadsheet will show the date, time, location/address range, radar reading, result, weather condition (similar to how a citation appears). Levinson asked how many stops show vigorous enforcement. Manager Russell reports the police officer's results on a weekly basis to President Bell. Brian/Securitas, Matt/Police Officer and Manager Russell will work together to produce the same format for both the weekly report and the radar log. Bell asked about a persistent speeder and Manager Russell confirmed that this guest received a citation with a heavy fine. Citations cost around \$400, plus two points that are posted on the driving record; speeding at over double the speed limit results in costly citations.

*2. Further discussion regarding the District Police Officer carrying a sidearm. There is no resolution to this issue yet. Directors Schwartz and Levinson have submitted an argument in opposition to the sidearm. The Board agreed to present written arguments to the community that represented both views. To date, a report in support of the sidearm has not been prepared.* President Bell has received responses on one side of the argument. When the opposite side's response is received, all parties will agree on what is being said and the board will send a communication out to the community. A homeowner asked, will the officer continue to give tickets if no weapon is allowed? President Bell explained the options. Bell's personal opinion is that the officer can write tickets and not carry a firearm. The same homeowner asked the Board to confirm that he would not need to be concerned that he might miss a board meeting where a vote is taken. Bell already sent mailing and e-mails to the community to get feedback. Gutierrez asked if there would be a formal vote? Bell says no, a binding vote will not be taken by the board. Homeowner Hoose noted a problem with the process. We have three board members who don't like firearms and don't want the officer to carry them. This issue has been in front of the Board for several months. Only a small group doesn't want the firearms. Anyone who hasn't responded by now won't respond. Should the police officer be required to work without equipment? Bell's personal opinion is that as Board President, it is his job to represent the citizens on the road, or do what he thinks is right. His opinion is to vote to represent the community. This is each Board member's decision.

## **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 that criteria be added to the prior financial packet regarding insurance and other items, such as P.O. numbers. If the insurance is expired, are we not using the subcontractor, or are we getting an updated certificate? Manager Russell explained that we don't change from expired status until a new certificate is received. For example, *ABC Electric's* insurance certificate expires. If the work was done June 1, the insurance certificate expired June 15 and the payable wasn't processed until June 20, we are o.k. because the contractor was covered during the time of work, but we will flag to obtain the certificate for any future work. Backup documentation comes together with the payables. Every time a check is to be signed there will be backup documents and the list showing insurance and PO status.

*2. Report of monthly expenses and year to date status through August 31, 2011.*  
There was no discussion on this item.

*3. Collection of Fees for services.*  
There was no discussion on this item.

*4. Review of vendor insurance and purchase order tracking form.*  
Discussed under agenda item G.1 above.

*5. Discussion regarding the preparation of a Reserve Study.*  
*A single proposal has been received in the amount of \$4180. At the August meeting the Board approved an amount not-to-exceed \$2000 authorizing the Manager to hire a firm to provide this service. To date, four firms have been contacted with only the single proposal submitted.* Manager Russell contacted both firms that Gutierrez had spoken to for a proposal. One proposal received was \$4100+. There was no response from George Snyder. At the Ad Hoc Committee meeting regarding alternative management options, the meeting discussion with the consultant resulted in a referral to another firm for a reserve study. Manager Russell reported he had received a proposal this afternoon from Foresight Financial in the amount of \$1235.00. Director Gutierrez requested that this proposal be approved. When the study is done, Gutierrez wants a copy of the study prior to the October board meeting.

President Bell explained to the homeowners that the purpose of the reserve study is for future projects, i.e. surfacing the road. Homeowner Hoose asked, didn't we already do this? What are we asking for in the study? Director Gutierrez responded since we are not an HOA, now that we have investments, they give the life and will evaluate improvements, unit price, replacement costs, etc. We will know how much we need this year/next year, or ten years from now. We don't know if we have enough or too much money in the reserves. Homeowner Hoose asked how the study can determine what income revenue is based on the redevelopment of Beach Road? There is \$6000 plus in property taxes. We can do without the assessment and still pay operating expenses. How do you make an accurate projection? What good is an estimate on a revenue source? What if you budget for \$8,000 but the expense changes to \$1.3 million? President Bell stated the purpose of the study is not to miss a huge expenditure. Per Homeowner Hoose, for the prior board, budgeting without a reserve study was a "shot in the dark".

**H. ADMINISTRATION OFFICE RELOCATION**

*The Manager was directed, at the August meeting, to hire JT Consulting Engineers (John Tran) to proceed with drawings to submit to OCTA. In the engineer's proposal is the requirement for the payment of a retainer in the amount of \$4000 to begin work. To date the retainer has not been paid and the engineer has not been hired. Manager Russell is ready to send the check to John Tran for drawings, but it hasn't been signed. Vice President Levinson had a question and then it was passed to Director Schwartz. The \$4000 cost is just a retainer. Per Russell, the total cost is \$8000. Levinson agreed to sign the check.*

**I. COMMITTEE REPORTS**

*1. LCP Committee: The Committee has been called back into service to review the details of a notice of violation from the Coastal Act that was recently received by the District. The issue has to do with public access to the beach and will be discussed at the Committee meeting set for Monday, September 26<sup>th</sup>. The verbal report was provided at the Board meeting: Wayne Shafer/LCP Committee member reported that we have shored up defenses, but only from the ocean, as we didn't draft a procedure for how to protect property rights. The security guards weren't prepared. They called for backup. You can't expect the sheriff or our guard to respond without a process. We need a process. A person complained to the Coastal Commission. Our response to the allegation letter we received from the Coastal Commission is due on October 3. We would like to use Jeff Goldfarb/Lead Attorney with Rutan & Tucker law firm to draft the letter.*

President Bell explained to the homeowners that the incident was that a person came onto the property at the south end of our development. He was fishing in whitewater but his gear was on the beach. The security officer asked him to leave. The person then filed a complaint with the Coastal Commission. The Coastal Commission sent us a letter outlining the allegations. We propose to engage Pacific Legal Foundation and Jeff Goldfarb of Rutan & Tucker. There was discussion on recreational activity, pass/repass and mean high tide line. The public has rights to the beach seaward of the mean high tide. The question is where is the line? We know where the mean high tide line is. This gives the Coastal Commission room to extract more room. Legally, we're going to defend it. We need to shore up procedures with our guards. Wayne Shafer, Joe Dunn, Alex Martinez, Jack Tarr and Manager Russell are on the LCP Committee to work on this. Director Levinson asked, what is the role of the Pacific Legal Foundation? It is better to use Rutan & Tucker first to draft a response before Pacific Legal Foundation. A homeowner says we worked with Rutan & Tucker on a prior occasion. Jeff Goldfarb and John Ramirez are at Rutan & Tucker to help us.

Per Director Gutierrez, we fought on this eight years ago. How long will this fight take? President Bell replied it will take least two months. The cost wasn't in the budget. Per Bell, we have \$10,000. We need to increase the legal budget by \$5,000 to cover this expense. Gutierrez asked if there is a plan or strategy. Per Bell, the committee has a list of action items. Gutierrez commented we need a protocol for security guards and a protocol for residents. Alex Martinez has a brochure that will eventually have to be reviewed by counsel. Manager Russell will send out the LCP meeting notes. Homeowner Sheila Bullock was on the Board when Pacific Legal made an exception because the rule is they only take items on appeal. Committee member Jack Tarr says no, not any more. Manager Russell

mentioned our annual contribution to PLF is being paid this month which will serve as some incentive for PLF to hear our issue. Motion was made by President Bell, seconded by Director Gutierrez, passed 3-0, to amend the budget to increase Legal from \$10,000 to \$15,000. Homeowner Bill Matthies pointed out that the Budget already states \$15,000 for legal expenses. Manager Russell confirmed that the budget for legal expenses had already been increased by the Board. President Bell made a new Motion to Rescind Prior Motion to amend the legal budget, seconded by Levinson and passed 3-0.

*2. CBRA Activity report.*

Carole Wunderly, CBRA President, will send a notice of the next meeting to be held Friday, Nov. 4 at 5:30PM. This time was chosen in an attempt to avoid scheduled football games.

*3. Ad Hoc Committee Report – Outside Management Company. Report by ad hoc committee David Wilson, Nadine Levinson, Director Steve Schwartz. The Committee met on Friday, September 16<sup>th</sup> with a property management company and discussed management-support options and alternatives. Manager Russell has sent minutes out. During the last meeting, they interviewed with the property management company for questions & answers. Homeowner Ambrose Masto reported that there were two meetings: first, a general meeting to discuss pros/cons; second, discussions with Peggy and Tom Webb who run a management company that takes care of Cotton Point and some other larger communities. There are no decisions or recommendations yet.*

Committee member Nadine Levinson wanted to add ad hoc committee members: Ambrose Masto and Mike Haack. They have not been officially recognized by the Board. Motion was made by President Bell to add Ambrose and Mike to the ad hoc committee (no vote taken); however, Gutierrez asked Manager Russell to research, as Gutierrez had read an article where it stated that an ad hoc committee can not have more members than the Board. There would be six members on the ad hoc committee; therefore, a new Motion was made by Bell, seconded by Levinson, passed 3-0, to appoint Ambrose Masto and Mike Heck as members and appoint two ex officio members: Manager Russell and Director Steve Schwartz. The minutes of the ad hoc committee need final acceptance by the Board. They can agree on accuracy but still need Board approval. David Wilson had sent a draft and will e-mail a final pdf version to Manager Russell on September 28 for Russell to send to the Board. Sheila Bullock stated that the minutes need to be accepted, not approved. If action items are present, the minutes are accepted. If consent is required, the board must move to approve them. The Ad Hoc committee minutes acceptance item will be placed on the next board meeting agenda. Gutierrez stated that this acceptance needs to be done for LCP Committee as well. This should be placed under the schedule for minutes of the regular meeting.

**J. MANAGER'S REPORTS**

Director Gutierrez notes that at the last board meeting there were small miscellaneous items that had dropped off of the radar as the old/new business items are sometimes blank. These items will be rolled over into the manager's priority list. President Bell will send the action list to the Board members.

*1. Review of Manager's PRIORITY list (including POCHE water quality project)*

The guard shack remodel will be held until the entry is moved. Manager Russell sent a communication requesting a proposal for drawings about the storm drain to the engineer who did the hydrology study. He should hear back from the engineer this week. Director Gutierrez reminded that the guard house improvements were internal i.e. interior paint, trim, etc. Gutierrez asked about the 15-20 houses near the exposed open channel. Why isn't this channel enclosed in pipe? Per Russell it doesn't belong to the District. The water comes from outside the community. It is a possible mix of City and County. It has been an open channel forever. Could we give a courtesy bid to put in a pipe in future? Costs for a 48-inch pipe might be \$28,000 or \$128,000. Director Levinson commented that if it is a city project, we wouldn't replace the pipe. Homeowner Alex Martinez stated he doesn't think that drain is an easement of the community. Do we maintain it? Other walkways were quit claimed. Gutierrez asked Russell to check the status of the easement. Russell to check file of all walkway easements before the October board meeting, as Gutierrez wants to know who owns them.

*Open Outfalls/Drains.* Homeowner Alex Martinez asked about the open drains. Now that the outfalls are open, are they cleared before suspected rains? Manager Russell answered they are inspected prior to storms. After the last storm, we cleaned up the beach and straightened what firepits we could. Director Gutierrez asked how far the flapgates will open. Manager Russell replied you can lift the opening to 90 degrees. Rainwater that builds up behind the flapgates will push the gates wide open during a heavy rain fall.

*2. Community entrance area landscape/lighting maintenance report*

District Manager Russell discussed the topic of changing the existing landscape lighting. Changing to 7 watt LED instead of the existing 30-50 watt halogen bulbs would be half the cost for power operations.. The existing light fixtures are designed to use halogen bulbs. Retrofit LED bulbs (with no guaranteed life expectancy) were another option. The cost of \$35 each to retrofit all fixtures was a bid total of \$3200. This is a good investment presuming the retrofit bulbs last 5-7 years. The manufacturer has no guarantee on the retrofit bulbs. If we want a guarantee, we can exchange the halogen light fixtures for properly designed LED fixtures, which would provide about 7 years of service on the bulbs.. Homeowner Alex Martinez asked about the electricity bill. Russell answered \$300 per month. New fixtures cost \$200 each. Martinez estimates it would take over four years to return the investment. Per Manager Russell, we would have to test over time. We might take one area, put in the LED retrofit bulbs and see how long they last. Bell added we should buy a couple of the LED's. Manager Russell responded that five were installed to see how the illumination looked. It was acceptable around the lower plants but weak for the taller palm trees.

Manager Russell explained that because we are having premature bulb burnout he has directed Bemus Landscaping to conduct a voltage inspection at each light fixture and transformer to verify the exact power going to each fixture and to cross-reference the designer's specs to make sure the specified wattage for each fixture is correct.

Alex Martinez pointed out how grease and oils from your hands and fingers can get on the bulb surface and can cause the bulbs to wear out prematurely and to be careful to wear protective gloves to prevent this from happening.

**K. OLD BUSINESS**

Director Gutierrez asked how the saga of the *quiet zone/railroad improvements* was going. Manager Russell answered that when they are not here, the crew is working at another grade crossing. Gutierrez asked about the *barricades with the bike trail*. Can we take the barricades out and mount the bike trail sign? It can be attached to the pole/standard in front of the monument. Per Manager Russell, the City was scheduled to do the standard today. Gutierrez noted the *new pedestal at the north gate emergency exit* is 2 feet off of the edge of the road. The right of way must be 24 feet for emergency vehicles. Manager Russell to research.

Homeowner Ambrose Masto asked how the *recent power outage* affected the railroad signal. Manager Russell and another homeowner stated the railroad must have their own backup power source such as a battery or generator. Homeowner Martinez asked if there was a *protocol during power outages* similar to the tsunami protocol with a system for assisting elderly or other residents needing assistance. What should we be doing? Can we implement *Neighbors Helping Neighbors*, for example, using teams of five homes each? This can be a good CBRA project. Martinez can provide brochures on grass roots planning, i.e. ensuring that your car does not have an empty gas tank, as gas was not readily available during the power outage.

**L. NEW BUSINESS**

No new business discussion at this time.

**M. WRITTEN COMMUNICATIONS**

No written communications were received this month. Homeowner Alex Martinez thanked Manager Russell for sending a memo to the community in response to Martinez' request to eliminate dumping of car wash liquids/ housecleaning detergents. Per Director Levinson, residents can call the City to notify of violations and the City will come out to the community. Manager Russell has asked the City for handouts to remind residents/guests of the regulations for residential car washing.

**N. BOARD AND STAFF COMMENTS**

Director Gutierrez asked about the status of appointing a new board member (*to replace a current board vacancy to fill the unexpired term of resigning Director Bob Bancroft through December 2014*). Has the community been notified? Per President Bell, e-mails and notification letters were sent.

**O. ADJOURNMENT**

The meeting was officially adjourned at 8:00 PM.

Regular Meeting #574  
September 27, 2011

**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 an *APPROVED* copy of the Minutes of meeting #574 held on September 27, 2011.

Donal S. Russell  
DONAL S. RUSSELL, Manager

December 12, 2011  
DATE