

**REGULAR MEETING #615
CAPISTRANO BAY DISTRICT BOARD OF DIRECTORS
MINUTES**

**Tuesday, September 29, 2015
CLOSED SESSION: 6:00 pm
REGULAR MEETING: 6:30 pm
*OPEN TO THE PUBLIC***

**Location: Palisades United Methodist Church
27002 Camino de Estrella, Capistrano Beach, CA**

1. CALL TO ORDER

Board President Masto called the Meeting to order at 6:40 p.m.

2. PLEDGE OF ALLEGIANCE

Board President Masto led attendees in the Pledge of Allegiance.

3. ROLL CALL & CLOSED SESSION REPORT OF ACTION

Directors Present: Breeding, Clark, Haack, Masto & Muller
Directors Absent: None
Staff: District Manager Russell
Agents: Authorized Agent Morris, Webb Community Management, Inc.
Contractors Absent: No Securitas Representative Present

Board President Masto reported there was no action taken during the closed session.

4. PUBLIC COMMENTS

Liz Davis, homeowner, again brought to the attention of Board Members the seawall case won by homeowners in Sandyland Cove, Carpenteria. In 1983, the lot owners undertook emergency repairs to an existing seawall by constructing a large rock revetment/seawall. It was suggested that the District could also file and win a similar case, should homeowners decide to unite and create a giant, connected seawall. The lawyer connected with the case was Howard Coleman.

5. APPROVAL OF MINUTES - Meeting #614 of July 28, 2015

Board President Masto summarized the July 28, 2015, #614 Meeting Minutes.

MOTION - A motion was made by Director Haack and seconded by Director Muller to approve the Minutes of Meeting #614. The motion was passed by a vote of 5-0

6. SECURITY - Monthly Securitas Report for August 2015

Securitas Branch Manager Keirouz is no longer employed at Securitas. The Securitas Agency has yet to find a replacement representative. It was brought up by homeowner, Chris Miller that the District may want to go out for bid to seek a new Security company due to what he feels is a decline in the quality of service. Miller cited several times where he has had communication problems with the on-duty gate officers.

7. **SECURITY – Discussion on the Following Items:**

1. **NO OPEN GATE ACCESS FOR RENTERS** – District security policy permits an open gate access for property owners as a convenience when they are planning a gathering at their home and have invited several guests. This privilege does not extend to renters. There is word that some renters have been permitted an open gate access. A short investigation found that some of the new security staff had misunderstood the policy, so a memo was sent to all security staff to bring home the point that, under no conditions, shall a renter be permitted an open gate access for their guests.

The Board will re-visit the open gate policy at the next Board Meeting October 27, 2015.

2. **SLOPE EROSION and DAMAGE CAUSED BY KIDS PLAYING** – Homeowners have complained that kids are playing on the sand embankment in several locations on the beach and are causing an accelerated collapse of the slope.
3. **GOLF CART DRIVEN BY YOUNG KIDS** – On Sunday, September 19, 2015, young kids were observed driving around in two golf carts (renters at 35155). The Vehicle Code is specific on golf carts and requires that a legal golf cart for driving on a road or street must be licensed and registered with DMV, must have functional brake and headlights, seatbelts and a foot brake. The kids were stopped and the illegal golf carts were parked and not permitted to be driven.
- 4.
5. **GATE HOUSE PHONE BUSY ON SUNDAY** – Several homeowners were unable to reach the guard shack by phone on Sunday. The gate officer should have notified the District Manager or the Security Supervisor when he became aware of the problem but did not. The Manager was notified of the problem by Board President Masto. A simple restart of the phone modem solved the problem.
6. **BEACHED SAILBOAT AT 35687 BEACH ROAD** – The boat has been aground on the beach since August 21, 2015. Measurements taken at the site indicate that the boat is on an easement for public access that is maintained by the County of Orange. The District retained an attorney to assist with sorting out the statutes and codes and in determining who is responsible, in addition to the boat owner. The County has denied responsibility despite the existence of easement deeds recorded with the County in the early 1980's which were in turn ACCEPTED by the County in 1989. So far, nothing has come of an attempt by the District to place responsibility on the County and the boat remains on the beach. Proposals for removal of the boat range from \$13.5K to \$20K.

Homeowners adjacent to the boat's current location have expressed concern and want to see some action in the next week or two, either by the County or the District, as to the removal of the sailboat.

ACTION – District Manager Russell will be drafting and hand-delivering a letter, on behalf of the property owners and the District, to State Assemblyman, Bill Brough concerning the urgency of removing the sailboat. The longer the sailboat remains, the greater is the hazard and potential danger not only to the curious public, but also to the safety of the adjacent private property.

8. SECURITY – Proposed Revisions to Ordinance No. 06-203

“AN ORDINANCE OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT ESTABLISHING RULES AND REGULATIONS FOR THE CONTROLLING OF RECREATIONAL OUTDOOR WOOD BURNING FIRES WITHIN THE COMMUNITY.”

Pursuant to the discussion and direction by the Board at the previous meeting, the intent of the Board is to put more teeth into enforcement of this ordinance by increasing the level of fines in the Section 6, as follows:

- First Offense is increased to \$250 from \$50
- Second Offense is increased to \$500 from \$250
- Third Offense remains at \$1000

And adding clarifying enforcement language in Section 7, as follows:

“In addition to the criminal enforcement of this Ordinance, the Capistrano Bay Community Services District may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established in Section 6 herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the court of appropriate jurisdiction in the County of Orange.”

MOTION – A motion was made by Board President Masto and seconded by Director Haack to repeal previous Ordinance No. 06-203 and approve newly revised Ordinance No. 15-203. The motion passed by a vote of 5-0.

9. FINANCE – Report of Monthly Expenses Through August 2015

Board President Masto reviewed the August Financials and relayed that all looked in order.

10. FINANCE – Process New Bank Signature Card

District Manager Russell is working on gathering Director’s signatures to update the Bank Signature Cards for Sunwest Bank and Farmers & Merchants Bank.

11. FINANCE – Protection of District Funds on Deposit in the Local Wells Fargo Bank

This report is somewhat of a repeat of the July report although this deals specifically with the District’s local Wells Fargo non-interest-bearing account with a current balance of \$249,960. The balance has been intentionally held at this amount to ensure FDIC protection. In learning more from the auditor regarding the Local Agency Deposit Security Law, it turns out that ALL California banks are mandated by law to provide collateralized protection for public funds on deposit in their institution that exceed the FDIC limit. The District is now, and apparently has always been, entitled to full collateralized protection of ALL funds in this account at all amounts above the FDIC level of \$250,000.

It is being recommended that the Board move this account to a simple interest-earning account and begin regular monthly or quarterly deposits and authorize the District Manager to establish a wire-transfer agreement to simplify the process of transferring portions of our annual tax apportionments into this account. This would create three separate banking institutions for the District’s deposits. Below is the written statement from our auditor confirming the mandate being referred to above:

As we discussed, the district's public funds are collateralized by assets held by the financial institutions holding the public funds. Financial institutions are required by the California Government Code to maintain certain collateral for all local government funds held by the institution. The collateral is monitored by and reported to the Administrator of Local Agency Security in the Department of Financial Institutions of the State of California. As part of our audit procedures, we confirm with the Administrator of Local Agency Security that the District's financial institutions have sufficient required capital to cover the District's balances. As of June 30, 2014 the Administrator of Local Agency Security confirmed collateral for the District's accounts held with Sunwest Bank, Farmers & Merchants Bank and Wells Fargo Bank N.A. For more details on the collateral requirements, please refer to Note (2) Cash and investments of the District's June 30, 2014 financial statements. If you have any further questions on this please let me know. Thanks!

Nathan Statham, CPA, MBA Senior Accountant

ACTION – District Manger Russell and Authorized Agent Morris will be implementing the moving of District Funds out of the current Wells Fargo Non Interest Bearing checking account into an interest-earning account within Wells Fargo and setting up re-occurring deposits into said account with a percentage of the regular tax apportionments issued to the District from the County Auditor-Controller. The percentage has not been established at this time but is intended to be the excess of deposits that must be maintained in the Sunwest and Farmers & Merchants accounts to cover the District's monthly operational expenses.

12. ADMINISTRATION OFFICE & ENTRY AREA –

1. EXTERIOR IMPROVEMENTS TO OFFICE – Zornosa Construction is currently working on prefabrication of some carpentry items in their shop and will be on site on Monday, September 28, 2015, to commence with actual work on the building. Bids are not in yet for the sidewalk phase but are expected very soon and then that portion can get underway as soon as the lava stone masonry work is completed.

2. LANDSCAPING and GRASS – The sprinkler system was interrupted three weeks ago while the concrete slab was being constructed. This was during a very humid heat wave and much of the grass and strawberry ground cover was damaged. Irrigation has been restored and the grass is starting to come back. With the addition of the office slab and the sidewalk, the overall grass area will be reduced by about 75%. Bemus will have to replant strawberry groundcover in those areas where it was burned from the excessive heat.

3. ACCENT LIGHTING and SIGNAGE – The landscape lighting was originally set up with photo cell sensors to activate the six separate lighting stations when it gets dark. Over time, the vegetation has grown and has covered and shaded some of the sensors, causing them to read the shade as darkness and nightfall, thus keeping those light circuits on during the day. Bemus is in the process of refitting the light controllers with manual timers as a solution to the shade problem. This will only be required at the three control stations that are currently deep behind the bamboo and bird of paradise trees where there is unusually dark shade during the day. Regarding signage, out of some desperation and in an effort to expedite the movement of incoming rental vehicles on Saturdays in the summer, a large red/white instructional sign was placed along the guest driveway instructing drivers to stop behind the speed bump to keep back far enough so as not to block the view of the license plate camera that captures the plates of the first vehicle in the lineup. This worked with a minimal degree of success and will most likely not

be implemented next rental season – its unsightliness far outweighs the limited usefulness of the sign.

13. OLD BUSINESS – Discussion on the Following Items:

APPLICATION TO THE COASTAL COMMISSION FOR A PERMIT TO PLACE A ROCK REVETMENT (SHORELINE PROTECTION) ON THE BEACH - The Board is considering making an application to the Coastal Commission for a permit to armor the beach with large rocks to protect homes and property. With the beach continually eroding over the past ten years, the potential for inundation is becoming an imminent threat.

A possible argument in support of a rock revetment is the natural tendency of the homeowner to protect his/or her home to prevent a claim on his/or her National Flood Insurance. This, however, seems in direct conflict with the restrictive policies of the Coastal Commission. On the one hand, there is the federal agency (NFIP) that expects an insured client to take measures to protect their home and thereby limit the potential for large claims, while on the other hand, the CCC places insurmountable hurdles in the way making it practically impossible for a homeowner to carry out their constitutional right to protect their property.

Rocks have been placed on the beach in the past but it has been several years and it would be useful to solicit some bids to get an idea of today's cost for the work.

Homeowners were in favor for approaching the city as a whole and to file a Coastal Development permit to get a continuous rock revetment all along the entire beachfront.

Board President Masto encouraged the homeowners to solicit the OC Register and the Dana Point Times to do a write up on the sand erosion along Beach Road and the homeowner's desire for a continuous rock revetment to protect their homes.

MOTION – A motion was made by Director Clark and seconded by Director Breeding to craft a letter to the Homeowners of Beach Road surveying their agreement and/or disagreement to the possibility of placing a rock revetment that would extend the full length of the beach from end to end, 1.7 miles long. The ultimate purpose of this rock sea wall would be protection for all of the homes, slowing down the sand erosion. The motion was unanimously passed by a vote of 5-0.

ACTION – Board President Masto will be drafting the survey letter to Beach Road homeowners concerning their agreement and/or disagreement towards the construction of this proposed sea wall. Manager Russell was directed to obtain an estimate of the potential cost of a rock seawall should the District move forward with this plan.

MOTION – A motion was made by Director Breeding and seconded by Director Clark to approach the City of Dana Point with a community wide permit for a rock revetment that would extend from one end of Beach Road all the way to the opposite end of Beach Road for the betterment and public safety of the community. The motion was unanimously passed by a vote of 5-0.

ACTION – District Manager Russell will be obtaining an application from the City in order to proceed with the filing of a Coastal Development Permit and to file it as a community wide project.

BEACHED SAILBOAT AT 35687 BEACH ROAD - A sailboat that ran aground on August 21, 2015, is still sitting on the beach between the addresses of 35687 and 35691 Beach Road. The District has determined that the boat is sitting on County-maintained property and has asked the County to handle their maintenance and public safety responsibilities. The County has denied any such responsibility. The District then sent them proof; recorded copies of the public access easements that were deeded back in the early 1980's and the County Board of Supervisors' Resolution accepting the easements in 1989. There has been no further response from the Director of OC Parks, Stacey Blackwood.

14. NEW BUSINESS - Proposed Revisions to Ordinance No. 05-116
“AN ORDINANCE OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT PROHIBITING LITTERING AND THE RELEASE OF CONTAMINANTS AND POLLUTANTS.”

The current District ordinance for littering and pollution is somewhat vague regarding the discharge of pollutants from parked vehicles. The intent of the Board is to expand the coverage of this ordinance to include discharges from parked vehicles. A new Section H is being added that is to read as follows:

H. No person shall leave a vehicle parked in the community on the road or on a driveway that is leaking oil, brake fluid, gasoline, diesel, power steering fluid, antifreeze or other contaminants.

MOTION – A motion was made by Director Muller and seconded by Director Haack to repeal previous Ordinance No. 05-116 and approve newly revised Ordinance No. 15-116. The motion passed by a vote of 5-0.

15. WEBB MANAGEMENT – Monthly Report through September 18, 2015
Financial Statements for the month of July were completed and emailed to the Board on August 31, 2015 and Financial Statements for the month of August were completed and emailed to the Board on September 18, 2015.

Filed the SDRMA Worker's Compensation Annual Payroll Reconciliation Report on August 13, 2015.

Emailed Capistrano Bay District's FY 15-16 Budget to the Orange County Auditor Controller on August 21, 2015.

Filed the GCC Report (Government Compensation in California Report) to the California State Controller's Office on August 21, 2015.

Audit is in process with Rogers, Anderson, Malody & Scott, LLP.

The Financial Transaction Report is to be filed by Rogers, Anderson, Malody & Scott, LLP

16. QUALITY OF LIFE ISSUES – Discussion on the Following Items:

Discussion ensued on the following topics with no action taken at this time.

- Meet with Coastal Commission to discuss the Dana Point short-term rental survey.
- Beach Road survey on short-term rentals.
- Weddings, parties, rental enforcement and fines.

17. WRITTEN COMMUNICATIONS

Fall Newsletter coming soon.

18. BOARD AND STAFF COMMENTS

Director Muller gave an update on the undergrounding of utilities. He indicated that a rough estimate of the cost to underground the utilities would be \$3.8 million. He hopes to have someone come to a future Board Meeting to give homeowners a clearer picture of what would be involved with the undergrounding of utilities and what their fiscal responsibility would be.

The Board of Directors reminded the audience that the October Board meeting is regularly scheduled for October 27th and the November/December meetings will be combined into one meeting on December 15th to allow for the Thanksgiving and Christmas holidays.

19. ADJOURNMENT

Board President Masto officially adjourned the Meeting at 9:50 p.m.

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 #615 held on September 29, 2015.

Donal S. Russell
DONAL S. RUSSELL, Manager
Capistrano Bay Community Services District

October 27, 2015
DATE