

**REGULAR MEETING #531
CAPISTRANO BAY DISTRICT BOARD OF DIRECTORS
MINUTES**

**October 30, 2007
OPEN MEETING – 7:00 PM**

**Palisades United Methodist Church
27002 Camino de Estrella, Capistrano Beach, CA 92624**

A. CALL TO ORDER

President Southwick called the regular meeting to order at 7:00 PM.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Directors Present: Southwick, Bancroft, Martinez, Laster & Bell

Directors Absent: None

Staff Present: Manager Russell

Guest Present: None (Securitas representative had a prior commitment)

D. PUBLIC COMMENTS

There were no public comments

E. APPROVAL OF MINUTES

1. Regular Meeting #530 of September 25, 2007

Motion was made by Director Martinez, seconded by Director Bell and passed 5-0 to approve the minutes of meeting #530 held on September 25th, 2007.

F. SECURITY ACTIVITY REPORT

1. The report for September, 2007 was presented for review

The Board agreed to have Securitas conduct random late night personnel inspections, for the next few months, of the activities of the duty patrol officers working the graveyard shifts.

2. Progress on community speed control

Manager Russell reported that the Police Department has placed a speed radar trailer on the road to measure and record vehicle speeds exceeding 18 mph. After one week of collecting data the information will be reviewed to determine the peak time of speed violations so a police motor officer can come into the community and monitor speed at that peak time. This effort is necessary as attempts to write letters to repeat offenders has not had the intended result of slowing drivers. The option to bring back speed humps has still not been fully worked out with the OCFA. Director Laster has been working to obtain approval from OCFA but there are a few hurdles remaining to complete the approval process. The Board reminded the public that this is not a new problem, that the Board has for years and to the best of its ability been devising an adherence program that to date has not yet found a novel solution. In closing, Director Martinez emphasized that inconvenience is not a legitimate excuse for anyone exceeding the posted speed limit regardless of the length of their drive.

3. Possible hiring of a District Police Officer (PC832 rated)

Board President Southwick pointed out that if our current speed control program fails to produce the desired effect then it may become necessary to go out and hire a new District employee who can be put on duty as a legal sworn peace officer to begin running true traffic stops on violators and issuing real citations that would go to the court system. A study has been completed to determine the cost, the District can afford the expense and the Board is ready to act on this option pending results during the month of November. Nadine Levinson, 35131 Beach Road, commented that there should be a written plan in place before the District spends a lot of money hiring a special officer.

G. FINANCIAL REPORT

1. The claims and transmittals were presented for review.

2. Monthly expenses and year to date reports through September were presented for review.
There were no comments on this item.

3. Collection of fees for services.

Manager Russell reported on the following:

Development Impact Fees

There is currently one permit for which fees are due:

35685 (\$2674.99)

Total DIF unpaid as of 10/26/07	\$ 2,674.99
Total DIF collected this fiscal year	\$ 13,257.00
Total DIF collected since the program began	\$70,000.00 (approx. figure)

User Fees

Statements for the current fiscal year were mailed out on 7/19/07. As of 10/26 the collections amount to \$218,380 with \$6,271 (5 accounts) still outstanding. Staff has been phoning the unpaid accounts with a reminder.

RR Parking Fees

Billing for the coming calendar year 2008 will go out in November.

Renter Recovery Fees

Total renter fees collected for the fiscal year	-	\$700.00
Total renter fees collected since the program began	-	\$22,700.00

Summer Trash Collection Program/Fees

This program ended for the season on Friday, 9/14. Billings went out in October. As of 10/26 payments amount to \$1700 with \$1300 still outstanding. Reminder calls may begin about mid November after more payments have been received.

H. LCP COMMITTEE REPORT

1. The next MHTL and cross section survey is scheduled for the week of December 10th.

I. MANAGER'S REPORTS

The manager reported on the following items:

1. Progress on 2nd entry lane project (additional incoming lane at entrance)

For another month Metrolink has not processed approval. A site meeting was scheduled for the week of October 22nd but was cancelled due to the fire disaster which effected Metrolink's operation. Calls to Metrolink will continue. The entry improvement project cannot proceed without this approval.

2. Discussion regarding disaster preparedness and outreach to community

Director Martinez requested this item be continued over to the November meeting.

3. Review of Manager's Priority List

There were no comments.

J. OLD BUSINESS

1. Review and possible approval of District website proposal

Motion was made by Director Martinez, seconded by Board President Southwick and passed 5-0 to approve the proposal of *PurposeMedia* at a cost of \$4155 plus 5% allowance, pending a review of their references, to commence development and design of a District website.

2. Approval of cost-sharing request by CBRA for Christmas lighting

Motion by Board President Southwick, seconded by Director Martinez and passed 5-0 to approve a cost of \$1000 for Christmas lighting at the community entrance, with the expense coming out of budget sub-account #2400.

K. NEW BUSINESS

1. Discussion on overcrowding in a rental property on Beach Road

Board President Southwick began this discussion by explaining that there is concern regarding both the possibility of overcrowding and the soliciting of beach weddings for the rental duplex at 35093 Beach Road. The rental owner, Dave Palmer, commented that there was a mistake on the part of District staff in the complaint issued to the City alleging that he was advertising for beach weddings. He assured the Board that the reference to beach weddings was removed from the website, the District Manager verified this, and it was also added that the owner does not want to conduct further weddings. Mr. Palmer further commented that the total number of allowable overnight guests in his duplex was reduced from 30 to 26 and also questioned the Board's reasoning for the complaint to the City on an issue that is outside the District's authority to regulate. President Southwick asked Mr. Palmer what formula he used to come up with the allowable number of guests he sleeps in each unit of his duplex. Mr. Palmer stated he uses the City's guidelines of 120 sq.ft. per person excluding hallways, kitchens storage areas, stairwells and bathrooms.

Board President Southwick and Director Martinez both explained that it is the District's responsibility to respond to complaints by residents when something possibly illegal is being conducted within the community or if the Directors themselves witness an illegal act. This sometimes requires contact with the City by bringing it to their attention. President Southwick added that there is also concern by the Board that the City has been reluctant to respond in writing to the District's complaints on this issue. Nadine Levinson, Beach Road resident, asked if it would be worthwhile to sit down with the City and have a conversation about the District's concern. President Southwick explained that there have been several conversations with the City Manager for which there has been no committed response.

(At this time the Board shifted to the topic of rentals in general, moved to item L.1, and left the discussion of overcrowding).

L. WRITTEN COMMUNICATIONS

1. Letter from Sandy Hoose, Beach Road property owner, regarding his opposition to allowing short-term rentals in residential neighborhoods.

Director Martinez began with the comment that as the law stands right now, this (rental activity) is illegal activity and the Board would like a written response from the City. President Southwick added that the City needs to change the code and not leave the District hanging to regulate it itself which, by law, it cannot do. Nadine Levinson responded with the comment that the rental activity should be legal by *de facto law* since it has been allowed to go on for so many years. Director Martinez stated that the City's code should be changed to make the rental activity legal.

Gail Becker, Beach Road resident, stated that she feels the reason the Board is continuing to pursue this issue is because the Directors personally do not want rentals in the community. Director Martinez responded that it only takes one complaint from a property owner about an illegal activity to obligate the Board into pursuing a notification to the City, adding that the Directors are bound by ethics and an oath to respect and uphold the laws of the jurisdictional bodies under which the District operates with respect to how they might affect all property owners.

Sandy Hoose, Beach Road resident, commented that he strongly believes that according to the City's own code, short-term rentals are illegal, that the activity is incompatible with a residential neighborhood setting. Gerald Levinson, Beach Road resident, pointed out that perhaps the activity is legal by *de facto law* and "grandfathered" in by the fact it has been allowed for so many years. Nadine Levinson questioned why the Board feels it needs a written response when it appears the Board has fulfilled its obligation by notifying the City in writing and should then simply leave it alone.

President Southwick responded that the Board felt it had an obligation to the District as a whole to make it official that the City had been notified of this issue and any repercussions be placed solely in the City's hands. He also stated that if no response was forthcoming from the City after receiving a certified letter, the District would feel relieved from any future action of noncompliance of law. Someone from the audience added that at the last CBRA meeting Mayor Harkey had made it clear that the City had decided that they were going to leave the issue alone and that no written response from the City to the District's letter was indeed, in itself, an answer, meaning the City had agreed to allow short-term rentals to continue and the District should cease any further communication with the City on this issue. President Southwick reminded all that the District had received legal counsel stating that it is in the District's purview to pursue some written response from the City by virtue of having engaged them in a legal discussion. Director Martinez suggested those

affected homeowners protesting this consideration hire their own legal counsel to render an opinion to the contrary if they felt so inclined to pursue it.

Sheila Bullock, Beach Road resident, commented that she cannot see how the District could be held liable and sued over this issue when it is, first of all, the City's jurisdiction and second, that it has been allowed for so many years, she doesn't understand how the District could be so fearful of a lawsuit. President Southwick answered that the Board felt obligated to the District to cover its bases as best it could from any potential lawsuits regarding the lack of enforcement by the City of its codes. Mrs. Bullock suggested that a committee be formed to organize the community and establish some guidelines and rental policies that all the rentals would have to adhere to.

David Wilson, Beach Road rental owner, agrees with Sheila Bullock's suggestion and stated that the Board should form an *ad hoc committee* made up of Beach Road rental and non-rental owners and establish some guidelines, not only to address renter activity but on a larger community scale to deal with quality of life concerns.

Ken Ross, owner of Capistrano Realty, pointed out that he has pending sales of homes on Beach Road that could be negatively impacted by having to disclose to a prospective buyer that he may not be able to rent his property. He feels that it is vitally important to bring this issue to a close and suggested that he would be willing to meet with the City Manager and try to get a response on the short-term renter issue.

The Board agreed to allow Ken Ross to try to get an answer from the City. Director Martinez will also make a phone call to the City Manager for another request of the City to respond in writing. The Board also took the following action:

Although the question remained as to whether it necessarily required official Board action (Director Martinez believed it did not), as a matter of formality a Motion was made by Director Bell, seconded by Vice President Bancroft and passed 5-0 to consent to the formation of a non-binding *ad hoc committee*, at the request of Sheila Bullock, Nadine Levinson and David Wilson, made up of representatives of both rental and non-rental property owners, with oversight from the Board and Director Bell, to address quality of life issues in the community, who will report to the Board on a monthly basis.

M. BOARD AND STAFF COMMENTS

President Southwick thanked Director Laster for his assistance in laying the ground work for possible OCFA approval of speed cushions and Director Bell for helping to research the possibility of hiring a new PC832 police officer.

Director Bell stated he would like the Board meetings to begin at 6:30 instead of 7:00 PM. This was met with agreement and the Board took the following action:

Motion was made by Director Bell, seconded by Vice President Bancroft and passed 5-0 to change the time of the regularly scheduled monthly Board meetings to 6:30 PM.

Regular Meeting #531
October 30, 2007

Director Martinez asked if the next two scheduled Board meetings should be changed to accommodate personal travel plans through the holidays. Both Directors Martinez and Laster will not be present for the November meeting and that the December meeting was going to be questionable as well.

The holiday Board meeting schedule for November and December will be as follows:

- November 27th
- December 18th

Beginning in January, the regular schedule of meetings on the last Tuesday of each month will resume.

N. **ADJOURNMENT**

The meeting was officially adjourned at 9:42 PM.

ATTEST:

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

I, Donal S. Russell, Manager of the Capistrano Bay Community Services District hereby certify that this is a copy of the Minutes of Meeting #531 dated October 30, 2007.

DONAL S. RUSSELL, MANAGER

DATE