Meeting #690

CAPISTRANO BAY DISTRICT
AGENDA REPORT
December 6, 2022

Old Business

ITEM 9a

Advisory Committee Report – *(six pages)*

There was no Committee report at the last Board meeting (combined October/November). A Committee meeting was scheduled, but because the Committee conducts these meetings remotely via Zoom, an unexpected disruption of our office internet system prevented the meeting from taking place. The Committee did, however, meet successfully on November 30th. The following items were discussed:

Legal Opinion on Funding Authority by the District

The Committee has engaged with legal counsel from Meyers Nave LLP to research the Govt. Code and provide an opinion on what funding procedures are available to the Committee and the District for obtaining financial support from property owners. District Reserves are available only to the end of this fiscal year ending on June 30, 2023, and then the District will need to seek financial assistance from property owners to continue the Committee's efforts. Without going into great detail, the opinion of counsel is that *"the District has the authority to impose special taxes to generate revenue for purposes related to the preservation and protection of Beach Road."* While this sounds simple enough, the law is very specific regarding the procedure to set up such a mechanism, which will require the services of special legal counsel, an assessment engineering firm and other consultants, and additionally, a certified vote of property owners. In speaking directly with Willdan Financial Services (assessment engineering firm) they've estimated this could take the better part of a year to put together. The law requires only a simple majority of the voters but if the District can get a two-thirds majority, it greatly reduces the formation costs and the steps required to create the special tax. Given the time-line estimate from the assessment engineer, the Committee and the District need to launch this process soon.

Evaluation of Homes for Test-Case Candidates and Possible After-the-Fact Permits

The premise here relies on determining a good property-owner candidate who would be willing to offer their property for processing a Coastal Development Permit for a seawall of some kind, in a 'test' scenario intended to either obtain an actual permit for some kind of shoreline protection or force a litigation, either of which would be to establish a precedent for other property owners to follow. The Committee's attorneys are getting close to setting criteria for various test-case scenarios, the details of which will inform the District in the selection process.

Also discussed and agreed upon is the need to send out an informational letter to property owners.

***The following pages are the monthly Committee reports starting back in May.*

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Report from September Meeting

Committee members and the consulting team are now returned from summer vacations and are back to work developing a pathway and guidelines for property owners in dealing with shoreline erosion, the City and the Coastal Commission.

The unexpected coastal damage from recent Hurricane Kay has completely destroyed the seawalls at three properties here on Beach Road. All three homes were built long before the passage into law of the Coastal Act (Jan 1977) and all three homes have no unpermitted beachfront armoring, thus opening what should be a clear pathway for all three to seek permits.

The consulting team from the Shoreline Advisory Committee was brought together with the three property owners in a meeting to discuss the issue and advise them on a process that would enable the owners to replace the lost seawalls.

It is now up to the individual owners to choose how they want to proceed through the permit process. Two options are available to them:

- Get an exemption from the City (older pre-coastal home with no Coastal Act violations)
- Apply to the CCC for an Emergency CDP

These three properties represent the first cases that would be processed for lost seawalls since February when the Shoreline Advisory Committee was formed. Since there are no previous cases of the same nature, the challenge for the Committee and the uncertainty for the homeowners is not knowing how the process will be dealt with by the City or the CCC. It would be very helpful if there was some precedent to take advantage of which makes the choice by the homeowners very difficult.

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Report from August Meeting

Progress in August has been interrupted by summer vacations. However, the Committee has been successful in engaging with a qualified coastal engineer, Dave Skelly of GeoSoils Inc. Dave was the Committee's first choice and he has committed to providing coastal engineering services to the Committee for at least the next twelve months.

In addition to finally securing a coastal engineer, the Committee has also engaged with attorneys from Meyers Nave, a firm that primarily represents Special Districts in California. Their job will be to research and provide guidance to the District and the Advisory Committee regarding mechanisms for creating funding to keep the Committee work moving forward. This engagement is expected to be a shorter term process and not necessarily for the long term as with our other consultants.

The Committee is well aware of the high costs associated with certain funding mechanisms such as assessment district formations (1915 Assessment Act), and will be exploring other procedures that produce the needed funding while limiting overhead costs. The Board has approved $300K for this year and now is the time to understand the District's fundraising authority before the current budget runs out.

Additional next steps include finishing the evaluation of the homes in the community for determining a candidate property for pursuing a Coastal Development Permit and dealing with the alleged violations from the Coastal Commission.

The Committee's primary goal is to pursue a course of action that results in the protection of the homes, the roadway and infrastructure from coastal flooding and shoreline erosion.

This requires a concerted effort in dealing, first of all, with the allegations from the CCC alleging violations of the Coastal Act by Beach Road homeowners. Along the way, several issues have come up that cannot be ignored and while our consulting team has been partially occupied on these other matters (which cannot be avoided), the primary focus still remains with the alleged violations. Some of those unexpected issues are:

- Surprise LCP Amendments requested by the CCC
- Unusual CCC Appeal of permit application for a new home at 35525
- Older 1954 home (pre-coastal) with recently damaged original seawall
- Defining the term 'existing development'
- CCC threat to use some new boundary line other than the Mean High Tide Line to define the separation between public and private property

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Report from July Meeting

In the month of July, the Committee and consultants have gained ground in the overall effort at solutions for Beach Road property owners:

- Progress with immediate home protection (allegations by CCC of permit violations) by obtaining unequivocal support from the City to hold their ground on jurisdiction. Regulation of development landward of the Mean High Tide Line rests with the City while seaward of the Line falls to the Coastal Commission. This means the pathway of access to permits for any shoreline protection is with the City of Dana Point. The District surveys the location of the Mean High Tide Line (MHTL) in both January and June of each year, therefore we know where the line is out on the beach.

- The Committee is closely following and participating as a stakeholder in the County Regional Coastal Resiliency Plan for region-wide beach restoration. The Committee has been active in this effort since mid-December of 2021.

- Engaging with the City of Dana Point on Sea Level Rise Local Coastal Plan amendments which can be beneficial to Beach Road property owners as long as our Committee continues to have a seat at the table during this process. At this point, the City is welcoming our participation with guidance from our coastal law attorneys and consultants.

- Lastly, the Committee is now working to engage with a highly qualified coastal engineer to begin identifying engineering designs that will be required by the City for submitting for permits for shoreline protection measures.

As a final note, the District and the Advisory Committee are not going to be able to continue funding these efforts without future assistance and support from property owners.

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Report From June Meeting

The month of June was spent dealing with a surprise short-notice bombshell of news from the City regarding a pending Coastal Commission Hearing on an amendment to the City's Local Coastal Program. The Local Coastal Program (LCP) is the Planning Document that sets the 'rules of engagement' so to speak, for development in the Coastal Zone. All coastal municipalities in California are required to have an LCP that is certified by the CCC and have it incorporated into their Zoning Code. Along with this is a requirement for updates to the LCP on an interval basis of maybe every ten years or so, hence the notice from the City for the amendment to the LCP.

The amendment, as originally submitted by the City to the Coastal Commission, was basically a review with a few insignificant changes, and really nothing that would impact Beach Road. However, the Coastal Commission Staff returned the document to the City with 'suggested modifications', many of which would have some onerous repercussions for Beach Road owners, thus further limiting the ability of property owners to remodel, redevelop, rebuild, and protect.

The Committee has ultimately requested that the hearing for the LCP Amendment be completely withdrawn so that the consultants for the Committee could have adequate time to conduct an in-depth review and make recommendations. As of this writing (June 25th) it is not known if the CCC has agreed to completely withdraw to a later date.

If the Advisory Committee and the consultants were not in place to monitor the City's movements, the suggested modifications put forth by the CCC would most likely have been approved and another limiting layer of difficulty would be incorporated into the development standards and Zoning Code for Beach Road owners.

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Report From May Meeting

Following last months's productive meeting (April) with Dana Point City Staff, the Committee has since met with Mayor Joe Muller and our 5th City District Councilmember Mike Villar, to inform them of our earlier meeting with City staff and the unequivocal agreemente by all that the City will NOT cede its jurisdiction to the Coastal Commission.

The matter relates directly to the business of the ongoing shoreline protection that is being placed, the relationship to the Mean High Tide Line (MHTL), and the City's Local Coastal Plan (LCP) that has been certified by the Coastal Commission. Language in the LCP specifically indicates that regulation of development (sandbags and boulders) seaward of the MHTL falls to the Coastal Commission directly, while development landward of the MHTL falls to the City of Dana Point *(see attached sample beach photo).*

The concern by the Advisory Committee was that it might be tempting for the City to cede its jurisdiction to the CCC in the face of having to deal with a flood of 186 permit applications all at the same time. Regardless of what the workload could be on the part of the City, it is imperative that the City retain its jurisdiction. Establishing this understanding has been a high priority of the Advisory Committee. Next step is to educate our legal consultants on the individual details of the existing conditions of the homes along Beach Road.

It's important to note here that the Committee has been active on other fronts, in addition to ensuring this common ground with the City. As has been reported in the past, the Committee continues to participate in the efforts by the County with its regional stakeholders project titled *Coastal Resiliency Strategic Plan,* that brings together every private owner and every agency that could benefit from shoreline protection solutions here in South OC. Secondly, the Committee is following developments and progress with another shoreline protection-related group called *Smart Coast California.* While the County's project is narrowed to a sector roughly from Laguna Beach to South San Clemente, the *Smart Coast* group is more of a statewide coalition. This group recently held an all-day seminar in Long Beach to present itself in a large public forum to generate a larger public awareness of who they are and what they're doing for private ownership interests within the entire California coastal zone.