

SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE
MONTECITO FIRE PROTECTION DISTRICT

Held at Fire District Headquarters, 595 San Ysidro Road, February 3, 2010. The meeting was called to order by President Jensen at 8:44 am. Present were Chief Wallace, Director Jensen, Director Venable, and Director Newquist. District Counsel T. Amspoker, S. Ferguson, and E. Hvolbøll were also present.

1. Mr. Reisenweber advised that he could not stay at the meeting for the subject of his appeal, but stated that he needs to be in his home, and it will be a hardship if he has to wait for the road issue to be cleared up. If stated that if he is allowed to move in, he will be able to help with the road construction as it progresses.
2. On a motion made by Director Newquist, seconded by Director Venable the Board approved the minutes of January 19, 2010 regular Board Meeting.
3. After a clarification regarding statements made by Mr. Amspoker to Supervisor Carbajal, the January 26, 2010 Special Board meeting were approved on a motion made by Director Newquist, seconded by Director Jensen.
4. Mr. Hvolboll recommended that agenda items 4,5,6 be consolidated for Board consideration. He suggested that the Board hear from public to get an update from them; that the Board receives an update from Mr. Amspoker regarding conversations he has had with the County; that bond counsel be introduced to discuss public finance options, and last to have Fire Chief's update on the fire hydrant.

Director Jensen asked for public comment.

Ms. Collins advised that they working on language to create a petition for the development of an assessment district; however, they are interested in receiving more information about how an assessment district is established. Specifically they would like to see how the parcels would be weighted for the financial responsibility of improving the road.

In the petition, they would ask the Board hire an assessment engineer to determine the dollar amount per property. She advised that they are a community that are used to doing the work and maintaining the road themselves. They are concerned with the \$1.5 million estimate to repair the road, and do not think it will require the complex engineering that has been proposed. They want to include language in the petition that would allow them to be involved in the design and spending on the improvements. Their feeling is that if they are paying for it, they want input into the price tag, subject to

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Board's approval. Ms Collins advised that they do want a safe road that will meet District standards, but they don't want to sign a blank check.

She advised that they have landlocked parcels because of the laws that were in place when the lots were first developed. She is currently in possession of a mutual property easement and maintenance agreement prepared by Susan Petrovich. All of the affected property owners are in agreement except the property owner at 202 E. Mountain Dr.

Ms. Collins advised that regardless of whether they pursue the petition for the bonds or can conform the road on their own and sign an agreement that binds the property owners to conform the road, they still have a problem with the property owner 202 E. Mountain Dr.

She stated that it would be crucial to extend the easement in excess of 18 feet to accommodate the necessary engineering to achieve an actual 18 foot wide road if eminent domain is pursued. The existing easement with 226 and 300 E. Mountain Dr. has been compromised on the uphill side. This will require them to go further into the hillside which adds additional costs because they are being excluded from use of the existing legal easement.

Director Venable advised that he would have difficulty with the suggestion that it be done by the property owners with regard to advising on construction of the road. He noted that the property owners are not engineers and do not have the expertise to contribute to the project as they have suggested. If they had a registered engineer working with them it may be more acceptable. Ms. Collins advised that while they do not have experts in their immediate group, they do have professionals and licensed engineers in the community that are working with them, however, they want to make sure they get the most value that they can for what they are paying for. Mr. Staufenberg added that it is also important that it meet all the standards necessary to make it safe.

Director Venable questioned if the County would accept the project with conditions that portions of it be done by the residents.

Director Newquist stated that the District has spent a lot of time and money researching this project. He would like to see the residents and the Board come together, however, he feels that the Board needs more clarity regarding exactly what the group wants. He understands that they want to build their homes, but he would like to see a written explanation of how they plan to get there. If the Board knows exactly what they want as a community, they can come together to put some covenants, work on financing and whatever else is necessary to get to the desired results.

Ms. Collins advised that there is a consensus among the residents, (with the exception of 202 E. Mountain Dr.) regarding the language that would be in an

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agreement that Mr. Amspoker has assisted with. She advised that it should be finalized today, and that they would bring a signed and notarized copy for the Board. They are clear on their options and limitations, and they are moving forward. What is not clear is whether the costs associated with acquiring additional easements from 202 E. Mountain would be paid for by Fire District, or lumped into the assessment district bonds. They all agree (with the exception of maybe one resident) that they need a better road and water delivery system. The costs of the project are still in question and a big concern for all affected residents is whether they will be able to afford it.

Director Venable stated that they need an engineer to establish the costs and parcel apportionment, but this can't be answered until they sign the petition to begin the assessment district process.

Mr. Holiday (a local architect) advised that he appreciates the work the Board is doing to address the road issues. He stated that the two big issues are cost and time. He believes there are two options: the first option appears to be having the Fire District and the County work together to take responsibility of road and get it done. They are then responsible to get it built to the standards they feel are appropriate. How does this option affect the property owners that want to get their homes built *now*. The second is that of a private effort. He asked if there is any time difference regarding the releasing of permits depending on which option is chosen, because timing seems to be the focus. Would the permits be released sooner if the road is taken on by the agencies, knowing that it *will* be done, and that it would be done the way they want it. As opposed to waiting for the community to solve their dilemma.

Mr. Amspoker advised that he met with several representatives of the County, including Michael Harris, Office of Emergency Services Director, Dace' Morgan, Deputy Director of County Roads Department, and Michael Ledbetter from County Counsel's office. Their understanding was that if there is public financing of the road, it would require public ownership of the road. County staff informed him that they are unwilling to recommend that the County take over operation, ownership or maintenance of the proposed road. They feel that the County has enough problems with their current inventory, and it is not a burden they feel they should undertake. Ultimately, the decision would be up to the Board of Supervisors, but County Staff would vigorously recommend that they not take ownership or operate Upper Hyde Road if public dollars were used. Ms. Collins advised that she would have more conversations with Supervisor Carbajal. Mr. Amspoker advised that Mr. Harris is here today and can answer questions if necessary.

Mr. Amspoker advised that, as directed at the previous meeting an MAI appraiser was hired to appraise the easement at 202 East Mountain Dr. They met with the District's engineer, and had a site visit in vicinity of the property. In addition, and a letter was sent to Ms. DeSitter notifying her that an

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appraiser had been obtained, and she was invited to meet with the appraiser to discuss her property and the potential easement. She stated that she would not be available for several weeks. Mr. Amspoker advised that he hoped that that they can meet to obtain her input.

It is the District's decision, not Dr. DeSitter's with respect to the determination of the easement's location. There is an area towards the beginning of the road where Ms. DeSitter's improvements apparently encroach on the existing 18 foot wide easement. If the Board chooses to adopt a resolution of necessity, the Board's determination of the easement's location is a conclusive finding. This is why they asked for Ms. DeSitter's input, and Mr. Amspoker advised that he is available to discuss this with Ms. DeSitter at any time. The appraiser will then complete his appraisal and the amount of the appraised value can then be offered to Ms. DeSitter. Next, negotiations are required to occur in good faith. At that point, if no potential agreement is reached, the Board will then provide Ms. DeSitter two week's notice that there will be a public meeting for the Board to determine if they choose to exercise the District's powers of eminent domain.

Director Venable asked who would own the property if eminent domain occurs. Mr. Amspoker advised that initially it would be owned by the District; however the District would have the option to keep the property, convey it to the County or to the property owners.

The Board can choose to pay for the eminent domain process, or they can ask for the property owners to pay for it, which would require an agreement. It doesn't matter who pays, the question regarding the eminent domain process is determining that there is a public use and a public need for the easement, and it District Counsel's conclusion that those conditions have been met. Director Newquist asked if Mr. Amspoker can act on behalf of the appraiser to negotiate the easement with Ms. DeSitter. He advised that he can.

Mr. Amspoker introduced Scott Ferguson who has been hired as bond and assessment district counsel. His firm does nothing but prepare assessment districts and address bond issues. Mr. Ferguson emphasized that (with very few exceptions) improvements must be owned by an agency when an assessment district or Mello Roos district is used to finance the improvements.

Ms. Gottsdanker pointed out that this will be a problem since the County appears unwilling to take ownership of the road.

Mr. Ferguson pointed out that there is always the option for the road to stay in private hands and for the owners to come together to find their own financing.

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Mr. Ferguson advised that there are two options for public financing: an assessment district and a Mello Roos district. While they both arrive with same end result, they use different methodology to get there.

With an assessment district, an engineer estimates the costs of the project, and establishes what the special benefits are to the affected parcels. He noted that any general benefits cannot be assessed to the parcels. Next the engineer apportions the special benefit component of the project to each of the parcels, which can be very complicated.

Mello Roos does not require that the assessment distribution be based on special benefit to the properties; the only requirement is that it be reasonable. It is more flexible, and easier to do in a way that conforms to law.

An assessment district only requires bare majority weighted vote; a Mello Roos district requires that 12 or more registered voters within the affected neighborhood approve the establishment of the district by 2/3's vote.

Either method requires the property owners to make the request with a petition to the Board. Once the petition is received, the Board would then adopt a resolution of intention, which formally starts process. Next the Board would engage the engineer to determine all costs associated with the project. The Board could then hire a separate firm (or it could be the same firm) to allocate the costs amongst the parcels. but another professional is needed to determine the "benefit spread" (for an assessment district) or, for a Mello Roos district, to apportion the special tax.

Ballots are then sent to all of the property owners. After a certain time period, the ballots are opened, and they can move forward if it is approved by the appropriate vote.

Mr. Ferguson estimated that it would take approximately 6-7 months from the first action of adopting a Resolution of Intention to the final action of issuing bonds. The bonds would be municipal bonds issued by the Fire District, and carried on the District's books. The debt service on the bonds would be solely from the assessments of the special taxes collected. There would be no general fund obligation; it is not like a "COP", it is a limited obligation.

The District would hire an administrator who would manage the assessments. The assessments would be levied and collected on their property tax bills.

The administrator would look at the debt service and other costs, and they would be levied annually in June or July, and sent to the County in August. Payments are processed in January, then again in April or May. The District will forward the January payment to the bond trustee, to pay interest in March, then the May payments (along with anything left from the January payment),

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would be used to pay down the principal and interest that are due in September.

The assessment is a burden of the parcel and is transferred with the property ownership; there is not a personal liability to owner. There is also the ability to prepay; on the assessment district, it's built in, however, with a Mello Roos district, once bonds are sold, prepayment can be more complicated.

Mr. Hvolbøll asked if the building and maintenance of the road and water improvements can be included. Mr. Ferguson advised that it can all be included and the maintenance costs would adjusted in the annual levy. Water improvements would require an agreement with Water District. He then asked if Mr. Ferguson had any estimate of how much this would cost.

Mr. Ferguson advised that their firm's fees would be payable out of bond proceeds; engineers often ask for payment up front depending on the level of detail that is asked of them, and some portion would be contingent on the sale of the bonds. Director Venable asked if the assessments are deductible. Mr. Ferguson advised that the owners would have to ask their own tax advisors.

Director Newquist asked Mr. Amspoker to meet with Ms. DeSitter today. He added that he would also like to have a closed session with board and counsel to discuss their meeting. Mr. Hvolbøll advised that a closed session could not occur at this meeting because it is not on agenda, but the Board can call a special meeting, or it can be added to the next regular meeting.

Mr. Venable asked about the success rate of the bonds. Mr. Ferguson indicated that the default rate on municipal bonds as a whole is miniscule, but within the realm of municipal bonds, those that are land secured have a higher default rate. This is more typical of developers' subdivisions that are unsuccessful.

Director Venable asked what would happen if this District were merged with another agency. Mr. Ferguson advised that it would be part of the LAFCO process.

Mr. Connelly asked if the County or a public entity would be more inclined to take ownership of the road if the community took responsibility of the maintenance and repair of the road.

Mr. Harris asked for clarification on how potential increases in the cost of maintenance and construction are addressed in an assessment district. Mr. Ferguson advised that if the costs are higher than the proceeds collected from the bonds, it is a real problem. The public agency has to cover the costs out of pocket and then go to the homeowners for reimbursement. The District can also form a second assessment district to raise the funds. Mr. Harris posed a

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hypothetical scenario, where the road becomes a County road, and an event occurs later that requires additional funds to fix the problem. Those increased costs to fix the road would go to another vote, however, if they do not approve the vote, the road is ultimately still a County road.

Mr. Harris advised that taking ownership of the road requires engineering, construction, and ongoing maintenance. There are a number of these kinds of roads that already exist in the unincorporated County; it is County Staff's perspective is that taking ownership of this road may establish legal precedence on a broad perspective. Another consideration is the broader County community benefit. Is this a road that will benefit a lot of people, such as a thoroughfare, or would it be limited to a small group? If it were to become an assessment district, they would be required to put out an RFP for engineering. The benefit assessment would also be required to pay the County for their engineer to double check to ensure the engineering report is credible. General County funds can't be used to pay benefit assessments. Additionally, when the County issues construction contracts, they have certain issues that they must address, such as the use of fair wage provisions. Inherently it is more difficult in dealing with the County with these types of issues.

Roger Collis, asked if there are provisions regarding emergency funding that could be employed given the emergency that occurred. Mr. Harris advised that Ms Collins and Ms. Gottsdanker have researched different hazard mitigation grants, but they require 25% agency matching grants. Using tax payer dollars to fund improving a private road may pose a problem for property owners who are not affected.

Mr. Amspoker advised that if the Fire District (not the County) were to adopt the assessment district, it would be the Fire District who would be responsible for awarding the contracts. After the road is built Fire District could own and operate the road, however, to his knowledge, the Fire District has never operated roads before. Another option is for the County to maintain and operate the road which would require an agreement between Fire District and the County. This is clearly the sticking point with the establishment of an assessment district. Mr. Connelly stated that it is problematic because the County doesn't want to own the road or maintain it.

Mr. Jensen asked for clarification on the appeals and what their decisions would mean. Mr. Connelly asked the Board reconsider that they be required to widen the road at all.

Mr. Hvolbøll advised that there are two appeals. Mr. Reisenweber was given FPC, however, he is not in compliance. He is now asking that he be allowed to occupy his home, which is not in compliance with the FPC requirements. He has also said he is willing to participate in upgrading the road, and wants to do it after he moves in.

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Mr. Hvolbøll advised that property owner of the second appeal, Mr. Connelly, has complied with the current FPC that allowed him to install his foundation, but additional construction is stalled until the road improvements are made, or secured. He is asking to be relieved of that obligation so that he can continue building his home and the road simultaneously, and have his occupancy contingent on the completion of the road.

Mr. Hvolbøll reiterated that if the Board votes yes on the first appeal they would allow the property owner to move into his property, which was not the original agreement, but the Board does have the right to override that. The property owner has stated that he would continue to work on the road after he moves in. The second appellant has asked to continue to work on the house and the road improvements simultaneously, and make his occupancy contingent on completion of the road.

Mr. Hvolbøll suggested that if the Board does want to approve the appeals, that they make a conceptual motion to direct District Counsel to come back with a written decision to consider at the next meeting. He also suggested that they receive written agreements from both appellants that clarify what they have asked for and what they are agreeing to.

Director Jensen stated that if this happens, the responsibility for road would be the same as it always has been. Mr. Hvolbøll advised that the responsibility would be the same, but if they get the promises from the property owners and they follow through with them, some improvements would be made.

Director Venable asked what leverages are available to them if they default on their agreements. Mr. Hvolbøll advised that they could take court action, or hold any future permits. They could also put in a financial penalty, or hold up occupancy clearance.

Director Newquist asked if they could they draft a set of covenants, where each home owner agrees to them, and with that signed agreement, the Board can then begin issuing FPC's. Mr. Hvolbøll advised that this could be a form of approving the appeals with conditions.

The Board took a break at 9:50 am.

The Board reconvened at 10:15 am.

Chief Wallace advised that in addition to the road improvements, fire suppression and water delivery are additional issues that need to be addressed.

Assistant Fire Marshal Kirk Johnson displayed a map that showed the distances measured out to each property from the proposed hydrant. The

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proposed hydrant location is 525' from the Mountain Drive and based the estimated highest elevation that would provide the necessary delivery.

He advised that Mr. Connelly, Mr. Reisenweber and Mr. Staufenberg would be served by this hydrant. If the property owner at 300 East Mountain Drive (which didn't burn down) wanted to do improvements in the future, they would need to install sprinklers. 244 East Mountain Drive would not need to be sprinklered. 258 and 252 East Mountain Drive would require sprinklers. Any properties beyond those addresses would require water tanks for fire suppression. Chief Wallace advised that 15,000 gallons is our standard, but he could make provisions to allow 2 properties to share a 15,000 gallon tank.

Ms. Gottsdanker asked if there is any trade off or negotiation to the water requirements if the materials used to build have a slower burn rate, which would provide enough time for engines to arrive before sprinklers ever engaged. Chief Wallace advised that the water requirements are for life safety, not property protection. A longer response time (which would include setting up hose from a further distance) could endanger occupants.

Ms. Toms advised that the end of the footprint of their main house marks a distance of 700 feet. She asked if they will be allowed to rebuild their guest cottage (or workshop) if it is beyond the 700' mark? Captain Johnson advised that it would need to be sprinklered if it is within 30 foot of the existing residence; if it is a guest cottage it would definitely have to be sprinkled. It needs to fall within 200 foot delivery from Fire District hose from the most remote location to allow water.

Mr. Staufenberg asked if there is anything gained if they go a different route to get to the hydrant location. Captain Johnson said how they get to the location doesn't matter, it's how far it is from each residence.

Director Newquist made a motion that staff move forward to develop language to approve Mr. Connelly's appeal at the next board meeting, and to continue Mr. Reisenweber's appeal to the next meeting. The motion was seconded by Director Venable.

Ms. Gottsdanker asked why the appeals were separated, and if there is something the Board needs to approve Mr. Reisenweber's appeal.

Mr. Hvolbøll advised that he can articulate that there are two differences in the appeals. First, Mr. Connelly has complied with all of the conditions, and Mr. Reisenweber has not. Second, Mr. Connelly has asked to defer occupancy until the road is constructed and Mr. Reisenweber is asking for occupancy *before* the road is constructed. Mr. Connelly's request is different from Mr. Reisenweber.

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Ms. Collins advised that they have developed an agreement for easement, maintenance, and development of road. She proposed sending the agreements to Board and Counsel for review. And if the District is satisfied that the interest of the community and the Fire District are met and there are no changes to the language, they are dedicated to 100% sign off on the easement, maintenance and conforming agreement which would then be filed on each property. This would provide future owners notification of the agreements. They still have issues with 202 East Mountain Dr. and they need the District's help.

Director Newquist advised that these covenants and agreements need to be issues for the Board to review at the next meeting. Mr. Hvolbøll, staff may also have comments or covenants, and that would be part of Mr. Connelly's appeal approval.

Ms. Gottsdanker asked would it be possible for District Counsel to review their documents prior to the Board meeting so that they could be reviewed and modified if Counsel feels it's necessary. Director Newquist advised that this is exactly what he was referring to: having the District and the neighbors work together. Ms. Collins stated that this is where they were to begin with, but they were derailed by the issues relating to an assessment district; now they have returned to their "Plan B"

Mr. Hvolbøll stated that the goal would be to include the information in the board packet, and they would need to have it the Friday before the meeting. Mr. Hvolbøll added that nothing in the motion precludes the use of public financing.

Mr. Connelly asked if he should come prepared to sign a document at the next meeting. Mr. Hvolbøll suggested that they get a copy of the staff report that will be available on the Friday before the meeting, and ensure that everyone has had seen the documents, and input has been provided.

Mr. Hvolbøll restated Director Newquist's motion directing Staff, the Fire Chief and District Counsel to provide a written proposal with findings and conditions to approve Mr. Connelly's request at the next Regular Board Meeting, Tuesday February 16, 2010 at 8:30 am, and to continue Mr. Reisenweber's request. He added that the same agenda item regarding discussions of the road and water delivery system will also be on the agenda.

The Board unanimously approved the motion.

Director Newquist requested that the February 16 meeting include a closed session.

Director Jensen adjourned the meeting at 10:30 am.