

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

Held at Fire District Headquarters, 595 San Ysidro Road, January 26, 2010. The meeting was called to order by President Jensen at 8:37 am. Present were Chief Wallace, Director Jensen, Director Venable, and Director Newquist. District Counsel T. Amspoker, and E. Hvolbøll, as well as approximately 21 members of the public were also present.

1. Ms. Friedman had many general comments and questions regarding District's actions and requirements regarding the road in order for them to continue with rebuilding after the Tea Fire. There was no further discussion.

Mr. Hvolbøll reminded the Board that public comment is meant for comments on items that are not already on the agenda. He invited Ms. Friedman to submit her written statement so that it could be included with the other public documents.

Mr. Hvolbøll then suggested that all three agenda items be consolidated, as they all relate to the same subject matter.

2. Mr. Hvolboll suggested that there are three parts to the continued hearing: First, the Board should listen to additional or supplemental comments from the public on information they received or work they've done since the last board meeting; next, the Board should receive a report for the Fire Chief relating to his meetings with the County and what he's learned from County representatives, and last, the Board should hear from Mr. Amspoker, District Counsel, about what he's learned regarding costs and time frames relating to the establishment of an assessment district and eminent domain procedures.

Mr. Jensen invited public comment on the agenda items.

Mr. Staufenberg advised that he was just recently made aware of potential actions that might be taken by the Board. He advised that any increases in taxes will force him out of his home because he is under Proposition 13 tax rules. He advised that while he embraced the idea of a financial agreement for road improvements for those affected, he himself is reluctant to enter that kind of agreement. He also asked if the meeting was properly posted. Mr. Hvolboll advised that it was posted appropriately as a Special Meeting.

Ms. Noel advised that she was informed that the neighborhood could submit a petition to request more information about the formation of an assessment district. She stated that she would like to learn more about what's involved with an assessment district so that she could make an informed decision. She felt that the possibility of extending the road improvement payments over time

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is something that she considers a positive step. She advised that she would encourage more brainstorming with everyone, to be open to all possible ideas, including matching grants from FEMA, the engineering of the road, and water infrastructure. She asked the Board to utilize a specialist to research the possibilities and share the information with the affected property owners.

Chief Wallace advised that he met with Salud Carbajal last week who expressed a lot of interest in a Fire District/County partnership to help with the Hyde Tract community. Supervisor Carbajal did clarify that he is only one of five County Board of Supervisors, and can't speak for the other four supervisors. Supervisor Carbajal appointed his own staff and County Counsel to work on different options and processes to address the needs of the affected property owners.

Mr. Amspoker advised Supervisor Carbajal that the Fire District is not in the business in maintaining roads, so if there were any option that allowed for the road to be built with public cooperation, there would need to be a partnership with the County on the maintenance of the road. Mr. Amspoker spoke with County Counsel Mike Ghizzoni, who has appointed County Counsel staff to work on various options, including the County maintaining the road. There are also a couple of instances of community service districts established where the County maintains private roads, but the Board of Supervisors does not favor this arrangement. They are actively looking at various options.

Mr. Amspoker advised that he also had a meeting with Greg Knudson of MNS Engineers. He had them create a "rough order magnitude" of costs, assuming that all of the District's requirements are complied with, including a 20' wide traveled road with no more than 15% grade. Their estimates, up to what is referred to as "the cave", came to approximately \$2.8 million. They met again with Chief Wallace to determine where costs could potentially be reduced. Chief Wallace indicated that there were some areas along the road where the regulations could be reduced to 16' wide and include up to 20% grade. The new "rough order of magnitude" cost estimate with Chief Wallace's amendments was reduced to \$1,478,986.

Mr. Amspoker advised 60% of ownership can petition the Board to initiate an assessment district. The purpose of an assessment district is to provide up front money to build public infrastructure, such as this proposed road. If the owners petition the Board, the Board can hire the appropriate consultants which would include hiring an engineer, who would prepare an engineer's report to determine the costs and they would also determine how these costs would be apportioned to property owners who would benefit from the road. Next the Board would hold a public meeting to approve the engineer's report. However, because of Proposition 218, the property owners at that meeting have the opportunity to vote approve or deny the development of an assessment district based on the engineer's report. If more than a majority of

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weighted votes of the owners are against the formation of the assessment district, the vote wouldn't pass.

If an assessment district is approved and adopted, a lien would be put on each property in the amount of its fair share. Bonds would then be issued and sold on the market to provide the up front money for road infrastructure costs. Property tax invoices of each property would include a payment for these bonds that would be similar to an amortized loan. Mr. Amspoker advised that the Fire District would not underwrite the bonds; Bond Counsel would be hired to coordinate with financial specialists who would underwrite the bonds. The collateral for the bonds would be the liens that are placed on the affected properties.

If there was any particular owner who was not willing to convey the necessary easement(s), the District does have the power to utilize eminent domain with a 2/3's vote. If the Board wants to consider this process, they would need to authorize staff to hire an appraiser who would appraise the easement on any particular property. The amount of the appraisal would then be offered to the property owner. If they are unable to negotiate an agreement, the Board would have the power at a future public meeting to exercise its eminent domain power to acquire the easement. It is District Counsel's opinion that there would be a public justification for that use of eminent domain in this circumstance.

Chief Wallace invited public questions to Mr. Amspoker's presentation.

A property owner asked, referring to Mr. Staufenberg's property, if the road already works to his property, is his benefit assessment lower? Mr. Amspoker advised that this would need to be addressed by an expert in this area.

Ms. Noel asked for clarification on how the liens would affect their Proposition 13 limits. Ms. Gottsdanker explained that the lien would increase their payments, but it wouldn't affect their Proposition 13 assessment values.

Ms. Gottsdanker advised that their community has been the beneficiary of a lot of specialty pro bono work and asked if they can continue utilizing pro bono specialists (including engineers) to bring costs down. Mr. Hvolboll advised that he is not aware of any requirement that would prevent this.

Ms Collins pointed out that while pro bono labor does reduce costs, it does take longer to process.

Director Venable asked to define Proposition 13 vs. the assessment payments attached to their taxes. Mr. Amspoker advised that they are two separate issues: Proposition 13 affects the assessed value of the property. The assessment district payment is not related to fair market value of the property, it is an amortized payment on the weighted assessment of the properties

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responsibility for the road. While the assessment district payment is paid along with their property taxes, it is separate from assessed value.

Mr. Amspoker was asked if the payments are deductible, however he was unsure and would need to verify the extent if any, that payments it could be deducted.

Mr. Hvolboll advised the Board that there are three decisions that can be made at this point, and the Board has broad discretion. He explained that the Fire Chief is implementing the rules that have been adopted, and two property owners have appealed his interpretation of those regulations.

One option is that the Board has the ability to direct staff to return with findings to override the Fire Chief's decisions and allow the two houses to be built. The Board can also set a public meeting in latter part of next week to include time and cost estimates for establishing an assessment district, (which should include Bond Counsel and County input).

Mr. Hvolbøll added that one Board member commented that he, as an individual Board member, may be expecting a unanimous request from the public, but it appears that is unlikely to happen. If a unanimous request is unlikely to happen, then the Board needs to decide if they will agree with the Fire Chief's decision or grant the two appeals and give direction for future appeals. He clarified, that one choice for the Board is to say yes to the appeal, one choice is to say no and deny the appeal, and another choice is to get more information. The special assessment district would fall into the "maybe" category because it requires experts to provide firm answers to the questions that have been posed.

Director Newquist advised that there needs to be a mechanism to move this forward, and proposed that the Board consider condemnation of the easement at 202 E Mountain Drive. He advised that this needs to be looked at seriously because of the safety concerns.

Ms. Gottsdanker advised that they would like condemnation to be a last resort in dealing with easement issues at 202 E. Mountain Drive. There are other options available to Ms. DeSitter if she were willing to sit down and have conversations with the group.

Director Newquist suggested that the discussion with all property owners, including Ms. DeSitter occur, and asked for a 20 minute break to allow affected property owners to discuss their options.

The Board took a break at 9:26 am.

The Board reconvened at 10:05 am.

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Director Newquist made a motion to direct District Counsel to hire an appraiser to appraise the subject easement at 202 E. Mountain Drive. Director Venable seconded the motion, which was approved unanimously.

Ms Collins stated that the neighbors, including Ms. DeSitter, have entered into a dialog and that they will go back to Mike Gones to explore the costs of moving the retaining wall further to the east.

Ms. DeSitter stated that she is being asked to expand the existing easement to 25 feet to allow for an 18' wide the road. She stated that she is open to this proposal if the easement is shifted to the uphill side and did not disturb her property. She also stated the Ms. Collins' easement clearly spells out that all costs associated with the easement are the burden of property owners at 226 E. Mountain Drive, and she will not contribute to any costs associated with improving the easement. Additionally, Ms. DeSitter pointed out that she would be entitled costs associated with the expansion of the easement. She stated that if the process involved eminent domain, it would drag this process out for years to come.

Director Jensen suggested that the Board postpone making decisions on the two appeals one more week so that they can gather the necessary information to answer the questions associated with establishing an assessment district and exercising eminent domain.

Peter Novak asked if the Board has considered amending the FPC's to allow them to move forward with construction. Mr. Hvolbøll advised that the Board has not met at any times other than posted meetings, and no decisions have been made.

Director Newquist recognized that they have made progress, but he does not feel they are at the point that he is comfortable with making any specific decisions. He advised that the Board will invite Bond Counsel to the meeting next week to determine the next steps in that process. He suggested that the property owners meet again prior to the Board meeting to solidify their plans for the road.

Ms. Gottsdanker asked Chief Wallace what it would take for him to shift the permitting process from the time of permit to time of occupancy. Chief Wallace advised that his concern is that the group can still vote down the creation of an assessment district; therefore, he will not issue FPCs until a written, binding, agreement can be provided by the property owners guaranteeing that the road will be installed. Mr. Hvolbøll clarified that this would occur after the Proposition 218 vote to establish an assessment district. Mr. Amspoker advised that a 51% majority can vote the assessment district down based on each property's weighted apportionment.

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Ms. Collis asked if the group felt that there was enough support to form an assessment district. A show of hands indicated that 11 property owners would support the process.

Mr. Connelly asked if the assessment could cost be based on two estimates presented earlier so that they would know the cost ranges. Mr. Amspoker advised that the ranges could potentially be reduced substantially by additional engineering and study. Mr. Connelly advised that he is concerned that the bond specialists may get ahead of the engineers which could slow the process down. Mr. Amspoker advised that the cost ranges mentioned earlier are only estimates which included a 20% contingency, and the engineer who developed the estimates cannot be bound by them at this point.

Ms. Collins requested that Greg Knudson take the engineering files that were sent to him by Mike Gomes for the initial third of the road and respond back to the Board with cost estimates that would include the shifting of the road entirely to the eastern border of the easement on Ms. DeSitter's property.

Ms. Collis asked if there is any way to narrow the entrance on Ms. DeSitter's property to 16 feet. Chief Wallace advised that when an engine from another agency responds to a fire, and they are not familiar with the roads in our community, it is important for the road to provide visual reassurance that they will be able to maneuver their equipment on the road. If they see the narrow tight entrance and tight turns ahead on the road, it would not be portrayed as a safe road for them to enter.

Director Newquist made a motion to continue the meeting and hearing to Wednesday, February 3, 2010 at 8:30 a.m. and directed District Counsel to bring bond assessment representatives to the meeting. Additionally he asked that the property owners develop a home owner's association for the maintenance of the road. Ms. Gottsdanker reminded Director Newquist that they are already a part of the Mountain Drive Community Association (MDCA) home owner's association which already maintains their roads and mailboxes. He stated that he was not aware that their membership in MDCA was all inclusive.

Mr. Novak asked about the status of Director Newquist's original motion at the January 19, 2010 Special Meeting. Mr. Hvolbøll advised that there was no second to the motion. Director Newquist advised that his motion became more of a suggestion for issues that needed to be addressed during the meeting.

Mr. Hvolbøll clarified that the motion on the table now is to continue the hearing on both appeals and to continue the discussion of item 4 on the current agenda to next Wednesday, February 3, 2010 at 8:30 am. Director Venable seconded the motion. The motion was unanimously approved.

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Mr. Reisenweber and Ms. Noel advised that they will not be able to attend the meeting if it is on Wednesday. Ms. Noel advised that she is concerned that if it comes to a vote, she wants to be able to submit her response. Director Newquist suggested that if Ms. Noel had any comments, that she provides it to the Board in letter form.

Director Venable advised that he is concerned about the property owner who indicated that he had timing issues and his need to have something done right away. Director Venable asked if the establishment of an assessment district would be helpful for that property owner. Chief Wallace indicated that he will not sign FPCs until the group can provide a written, binding, agreement from the property owners guaranteeing that the road will be installed. However, there are two appeals submitted to the Board to override the Chief's decision. If the Board feels they have enough reassurance to move forward with issuing the FPCs before any agreements are established, they can grant the appeal.

Ms. DeSitter asked for clarification on eminent domain and what parameters would be included. She stated that she has a legal right to contest this in court, and it will be a lengthy legal battle.

Mr. Hvolbøll advised that Ms. DeSitter is incorrect. The public agency has the right to acquire the property, but the argument in court will be about the amount of money to be paid for the property, not the terms of occupancy.

Mr. Amspoker stated that the public agency has the right to acquire whatever is publicly justifiable, which would be determined by the engineers. If the Board authorizes eminent domain, it is his opinion that the District has the power take the necessary easement through court. The court has the ability, which is very routine, to give the District possession of the easement in advance of the property owner's compensation being determined. It is his opinion that there would not be a valid challenge against the District taking possession of an easement. The question, which would be up to a jury to decide in court, would be determining the amount to be paid for the easement. Ms. DeSitter asked if there are any sample properties in Santa Barbara where this has occurred. Mr. Amspoker advised that there are, but he does not have that information. Ms. DeSitter would have to ask the County of Santa Barbara for those records.

Director Jensen adjourned the meeting at 11:34 am.