



TOWN OF DISCOVERY BAY CSD

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Board Members

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MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE TOWN OF DISCOVERY BAY CSD

Wednesday, October 21, 2009

1800 Willow Lake Road, Discovery Bay, California

Website address: www.townofdiscoverybay.org

SPECIAL MEETING at 6:00P.M.

A. Roll Call President Tetreault opened the meeting at 6:00pm. Roll Call reflected that President Tetreault, Vice-President Simon and Director Piepho were present.

B. **Announcement of facts and circumstances concerning potential litigation (agenda item "C")** Legal Counsel John Stovall announced the facts and circumstances concerning potential litigation. He stated that item "C" shows two (2) potential cases. He stated that there are two (2) letters which are headed "Demand to Cure" from Mr. Richardson. He passed out copies to the board and audience. He stated that the first circumstance is with respect to the letter that Mr. Mankin had passed in at Closed Session. Mr. Richardson is indicating that, in his opinion, there has been a violation of the Brown Act because it was not made "immediately available" after the meeting in which Mr. Mankin passed it in. He stated that this is an incorrect statement of the law, the Brown Act does not state immediately available but that it is to be available after the meeting and that it is a Public Record. He stated that anybody could have looked at it if they had wanted to, and according to staff only one person had, to date, requested a copy of it. He stated the other letter is called "Demand to Cure" and seems to say the minutes are incorrect and may have been "sanitized" because Mr. Richardson listened to the tape and Mr. Piepho interrupted Mr. Dove and spoke over him so that all that was recorded on the tape was ... Director Piepho asked for the date of the letter. Legal counsel responded it was the letter dated October 5th. Legal counsel also stated there was another letter which was received the day before yesterday in which Mr. Richardson demands that the board abort this special meeting, he stated this letter would not be part of the Closed Session; he wanted to bring it to the board's attention. Legal counsel stated that the letter asks that the meeting be aborted until they cure their illegal messes of noticing potential litigation. He stated that he does not intend to discuss this letter in Closed Session but wanted to tell the board that Mr. Richardson is incorrect. Government Code provides when you have a Closed Session on something that the plaintiff knows about, that you have to make either an announcement of the facts and circumstances, which is what he is doing, or you can put it on the agenda. He stated that Mr. Richardson is indicating that the board must put it on the agenda and that they are keeping people in the dark by not. He stated that he does not think that is a correct statement of the law and so he is going to ignore the letter. He stated that those are the facts and circumstances and that copies are available for anyone that wants them. He then asked the board to go into Closed Session.

C. **CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL**
Potential Litigation. Government Code §54956.9(b)(1)
Two (2) Potential Cases

D. Return to open session; report on closed session.

Legal Counsel reported on the Closed Session. He stated that as indicated in the Facts and Circumstance, Mr. Richardson has made two (2) "Demands to Cure", one dated September 28, 2009 and the other dated October 5, 2009. He stated that the board had met in Closed Session according to item "C", all three (3) directors were present. All three (3) Directors voted ayes to reject both demands and to send a letter to Mr. Richardson and so inform him. Vice-President Simon asked who will send the letter. Legal responded that he would draft the letter and the President would sign.

REGULAR MEETING at 7:00p.m.

A. ROLL CALL

1. President Tetreault called the business meeting to order at 7:00p.m.
2. President Tetreault led in the Pledge of Allegiance. General Manager Koehne called roll. All directors were present.
3. Legal counsel reported that the board had held a Special Meeting at 6:00 pm, item "C" on the agenda was a Closed Session: Conference with Legal Counsel Potential Litigation, two (2) potential cases. He stated that item "B" had been an announcement of the facts and circumstances concerning potential litigation. He summarized that there had been a letter received on September 28th from Mr. Richardson demanding cure on an alleged violation and received another letter from Mr. Richardson dated October 5th demanding cure relating to the minutes. He stated that copies of the letters were made available to the public and are still at the front tables if anyone wants to pick them up. He stated that in the Closed Session, all three (3) directors were present and all three (3) directors voted ayes in the motion to reject both demands to cure and to inform Mr. Richardson to that fact by letter.

Legal Counsel then asked the board to add an item to the agenda. He stated that on #3 under General Manager's report there is a report and update on sound system, which is not an action item. He asked that the board add an action item since staff originally thought that the system would be under \$5,000.00 and the General Manager received information after the agenda was posted that the system would more likely be in the range of \$12,000.00. He explained resolution #98-31 regarding the purchasing system. He stated that according to the resolution the General Manager would need the approval of the board to go out to bid for anything over \$5,000.00. He stated that there is a need to act because there is also a letter from Mr. Richardson threatening action under the American with Disabilities Act. Vice-President Simon made a motion to add #8 to the agenda for Board Consideration to allow the General Manager to get quotes under the formal bidding procedure. Director Piepho 2nd the motion. Mrs. Richardson commented that she appreciated that the board is doing something about the sound system. The motion passed. (3 ayes, 0 nos, 0 abstain)

B. PUBLIC COMMENTS (Public Comments will be limited to a 3-minute time limit)

Karyn Cornell updated the board that they had received a News Release from the Bureau of Reclamation stating that they would be holding three (3) workshop meetings regarding the 2-Gates Project. She stated the first is in Fresno next Monday, the second is Tuesday, October 27, 2009 in Discovery Bay at the Elementary School from 6:30 pm to 8:30 pm and the third is in Stockton on Wednesday. She stated that their office had received a copy of a letter from Congressman McNeerney to Secretary Salazar, of the Interior, regarding the Delta and his comments in follow up to a conversation he had with the five (5) county representatives. Don Flint asked if the official Draft of the minutes of the November 12, 2008 Community Center meeting had been approved.

Battalion Chief Burris made his report. He reported that Station 58 ran 22 medicals, 1 auto accident, 1 car fire, 1 hazardous condition, 2 structure fires with no loss of life, 5 vegetation fires, 3 exterior fires and 5 public service calls. He reported that Station 59 ran 17 medicals, 1 hazardous condition, 7 vegetation fires, 1 exterior fire, 6 auto accidents, 1 public assist, 4 alarm soundings, 3 structure fires, 1 wake board accident, and 1 move up. He reported about the fire on Coney Island and at the Golden Gate Ski Club. Mrs. Richardson thanked him for the work they did on her son's house fire. An audience member asked if the 2-Gates system would affect the response time of the fire boat. Battalion Chief Burris was unaware of the 2-Gates project and if it would, he explained how they work in that area. Director Piepho asked about wharf hydrants. Battalion Chief

Burris said he would bring pictures of them and make a brief presentation about how they work and how successful they have been.

C. CONSENT CALENDAR

1. Director Piepho made a motion to approve the Consent Calendar. Vice-President Simon 2nd the motion. Mark Doran asked if the vendor "Minutes for Hire" was a licensed entity. Legal Counsel commented that it would have to be looked at. Mark Doran asked about the board policy for vendors, and if it is a valid entity. President Tetreault suggested he talk to General Manager Koehne about this issue and if it cannot be answered to his satisfaction then they could possibly make it an agenda item in the future. The motion passed. (3 ayes, 0 nos, 0 abstain)

D. CHAIR REPORT

President Tetreault had no report.

E. DIRECTORS' COMMENTS

Vice-President Simon had no comment.

Director Piepho reported that they had written the letter to the County to ask that the sidewalk be extended across from the school. He reported that he had attended two (2) meetings, one (1) regarding the Community Center and the other was the Contra Costa Special Districts meeting. He turned in written reports for those meetings.

F. REQUEST FOR BOARD CONSIDERATION

1. **Presentation by Contra Costa County on East County Area of Benefit (Tetreault)** Mary Halle, Associate Civil Engineer with Contra Costa County made a presentation about the East County Area of Benefit. She passed out a handout which is on file at the District Office. She then explained Area of Benefit and how it pertained to Discovery Bay. She explained that fees are charged at the time of development and the funds are put back into the area for projects, such as roads or road improvement. There was some discussion about who pays the fees and what projects are for Discovery Bay and if they are currently funded.
2. **Discuss and Approve Purchase of UV System to replace Existing System at Plant #2 (Koehne)** General Manager Koehne presented this item to the board. He explained that he had gone out to bid per board authorization. He stated that the specifications that had been required had brought in two (2) quotes. He recommended the Trojan 3000 Plus and explained the reason why. He stated that the price page of this item had been left out of the packet and that he had made copies for the directors and the audience. Director Piepho made a motion to approve the purchase of the Trojan 3000 Plus not-to-exceed \$450,000.00. Vice-President Simon 2nd the motion. The motion passed. (3 ayes, 0 nos, 0 abstain)
3. **Discuss and Possible Action on Surplus of Existing Fisher -Porter UV System (Koehne)** General Manager Koehne presented this item to the board. Director Piepho made a motion to authorize staff to work with our contractor to see how much they can get for this system and report back to the board. Vice-President Simon 2nd the motion. The motion passed. (3 ayes, 0 nos, 0 abstain)
4. **Discuss and Possible Action regarding the Community Center Committee (Tetreault)** President Tetreault pulled this item.
5. **Discuss and Approve Revised "District Representative" Listing (Koehne)** Legal counsel stated that since there were two (2) resignations of board members, the list needs to be updated. He also commented that according to the CSD Law we do things by the majority of the membership and the membership is defined as five. He stated that the Brown Act talks about the majority of the members which could mean any two who attend a meeting would be a majority of the members meeting and discussing something. He presented his draft suggestion of a revised listing to make a single representative for each assignment. President Tetreault asked if they would be doing this again when they appoint new members. Legal Counsel responded that they probably would. There was discussion about whether to change the listing at this time and that the board members are aware of the issue of attending meetings with more than one member at this time. No action was taken.
6. **Discuss and Comment on DRAFT Revision of District Reimbursement of Expenses and Travel Policy (Koehne)** Legal Counsel stated that he had taken what was written and had redone it two (2)

ways, item "C"- put in on the end, gave it it's own roman numeral and did away with the footnote and expanded it. He stated he had also spilt it for easier reading. He stated that they are not asking for any action at this time, but to bring it back to the next meeting for possible action. He passed out copies of the revision to the board and audience. No comment, they will bring back later.

7. **Discuss and Possible Action on Board to Consider Moving up "By-pass Pipeline" CIP Project from 2010-2011 year to 2009-2010 year (Koehne)** General Manager Koehne explained the bypass pipeline and what it is for. He asked that the By-pass Pipeline Project be moved up from 2010/2011 budget year to the 2009/2010 budget year to assist with the replacement of the UV System. There was discussion about the need for this pipeline to help with the processing of the wastewater during the time of the replacement of the UV System. Vice-President Simon made a motion that we move the By-Pass Pipeline Project from the 2010-2011 year to the 2009-2010 year. Director Piepho 2nd the motion. The motion passed. (3 ayes, 0 nos, 0 abstain)
8. **Discuss and Possible Action on Board to Direct General Manager Koehne to Use the Informal Bidding System for the Improved Sound System.** Director Piepho made a motion to consent to the informal bidding. Vice-President Simon 2nd the motion. Vice-President Simon asked about the cost and ways that it could be done less costly. There was discussion about the types of systems and what the quotes would be. The motion passed. (3 ayes, 0 nos, 0 abstain)

G. GENERAL MANAGER REPORT

1. Large User Update
2. Veolia Monthly Report (September)
3. Report and Update on Sound System

General Manager Koehne reported that there had been some vandalism and that the repairs had been done with more vandal proof parts. He reported that the State of California Department of Health has a new Ground Water Rule that he thought we had a waiver for, but we had been denied and asked for additional information that is being worked on with them. He reported that there had been a couple of water leaks and those had been repaired. He reported that staff is commenting on some fines from the State of California. He reported that staff is being inundated with Public Records Requests which are tying up staff to get day-to-day work done. He reported that staff is working on the Public Address System. He reported that our contractor has started on the process of the Vac Truck Dump Station by providing staff with submittals. He reported that there are bids due the end of the month for the Equipment Cover. He reported there had been a 12 hour power outage at Lift Station "S" on Saturday. He reported that there had been a tree branch blown over on Discovery Bay Boulevard and it had broken a car window, but the branch actually came from a tree that belongs to the Country Club, but that staff had gone out to help to clear the boulevard. He reported that all large users are on with the exception of the School. Vice-President Simon asked about the Willow Lake Landscape Project. General Manager Koehne responded that it had gone out to the newspapers and that they are due in Mid-November. There was discussion about what the fines were for. He also passed out the Veolia Quarterly Report and suggested that Veolia go over it at the next meeting after the directors have had time to go over it.

H. LEGAL COUNSEL REPORT

No report.

I. CORRESPONDENCE – (Possible Action or Discussion)

1. Agenda for CCC Aviation Advisory Committee Mtg. – Oct 20, 2009
2. Minutes of CCC Aviation Advisory Committee Mtg. Minutes (August 18, 2009 and July 21, 2009)

J. FUTURE AGENDA ITEMS

President Tetreault asked that next meeting they have to discuss whether or not to do away with the second meeting in November.

Director Piepho asked to have the Solar Power issue brought back to a meeting when there is time. He asked for a report from the County regarding the Community Center procedure. He also asked that at the next meeting he would like a report about the 2-Gates issue and maybe have the Bureau of Reclamation make a presentation.

Jeff Barber asked that at the meeting there be an agenda item to cover the Stipend issue from top to bottom.

Legal counsel commented that he would try to get ready for the next meeting; he is still waiting for some information from other agencies.

Mr. Richardson asked for the Wetlands Project to be put on the agenda.

Vice-President Simon asked for the Wetlands Project to be put on the meeting after next.

There was discussion about the meeting that would be cancelled and it was decided that they would like to talk about cancelling the first meeting in December instead of the second one in November.

K. ADJOURNMENT

The meeting was adjourned at 8:39 pm to next regular meeting of November 4, 2009.