

**DUBLIN SAN RAMON SERVICES DISTRICT
MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS**

September 6, 2016

1. CALL TO ORDER

A regular meeting of the Board of Directors was called to order at 6 p.m. by President D.L. (Pat) Howard.

2. PLEDGE TO THE FLAG

3. ROLL CALL

Boardmembers present at start of meeting:

President D.L. (Pat) Howard, Vice President Richard M. Halket, Director Edward R. Duarte, and Director Georgan M. Vonheeder-Leopold.

Director Misheloff entered the meeting at 6:01 pm.

District staff present: Dan McIntyre, General Manager; John Archer, Administrative Services Manager/Treasurer; Dan Lopez, Interim Operations Manager; Judy Zavadil, Engineering Services Manager; Carl P.A. Nelson, General Counsel; and Nicole Genzale, Executive Services Supervisor/District Secretary.

4. CLOSED SESSION

At 6:02 p.m. the Board went into Closed Session.

- A. Conference with District's Real Property Negotiators – Pursuant to Government Code Section 54956.8.
Property: 11099 Brittany Lane, Dublin, Assessor's Parcel Number 941-0100-007-54
Agency Negotiator: Dan McIntyre, General Manager
Judy Zavadil, Engineering Services Manager
Rhodora Biagtan, Principal Engineer – Supervisory
Carl P.A. Nelson, General Counsel
Negotiating Parties: N-Dublin Family Partnership
Under Negotiation: Price, Terms and Conditions
- B. Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9: One potential case.
- C. Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: One potential case.

- D. Conference with Labor Negotiators – Pursuant to Government Code Section 54957.6
Agency Negotiators: Dan McIntyre, General Manager
Unrepresented Employees: Assistant General Manager
Administrative Services Manager
Operations Manager
Additional attendees: Carl P.A. Nelson, General Counsel
- E. Public Employee Performance Evaluation Pursuant to Government Code Section 54957
Title: District General Counsel

5. REPORT FROM CLOSED SESSION

At 6:28 p.m. the Board came out of Closed Session. President Howard announced that there was no reportable action from Items 4.A, 4.B and 4.C. He stated that Closed Session Items 4.D and 4.E were not held and will be deferred to the end of the meeting.

6. SPECIAL ANNOUNCEMENTS/ACTIVITIES

General Manager McIntyre announced the District is participating in the Change the Course national *Imagine a Day Without Water* event September 15, 2016. The Board, staff and public are encouraged to support the event by signing the petition to prioritize investment in water infrastructure and resources, and pledging to take a step to conserve water. The District will promote the event via website and social media, and will feature an interview with Principal Engineer Rhodora Biagtan on growing up with an inconsistent water supply. He also announced the District will promote the California Special Districts Association's *District's Make the Difference* video contest, for high school and college students, showing how special districts serve their community. DSRSD sent notices to the Dublin, San Ramon, and Pleasanton Patches advertising the contest and highlighting DSRSD's services. Information on these events will appear in the next General Manager's biweekly report to the Board.

7. PUBLIC COMMENT (MEETING OPEN TO THE PUBLIC) – 6:31 p.m.
There was no public comment received.

8. REPORTS

- A. Reports by General Manager and Staff
- Event Calendar – General Manager McIntyre reported on the following:
 - o The Tri-Valley Water Liaison meeting will be hosted at the City of Pleasanton Operations Center on Thursday September 22, 2016 at 5 p.m.
 - Correspondence to and from the Board on an Item not on the Agenda - None
- B. Agenda Management (consider order of items) – President Howard reiterated that the Board agreed to move Closed Session items 4.D and 4.E to the end of the meeting ahead of Closed Session Item 13. The Board then also agreed to move Item 11.E ahead of Item 11.A.
- C. Joint Powers Authority and Committee Reports – None

9. APPROVAL OF MINUTES – Regular Meeting of August 16, 2016

Director Vonheeder-Leopold MOVED for the approval of the August 16, 2016 minutes. Director Misheloff SECONDED the MOTION, which CARRIED with FIVE AYES.

10. CONSENT CALENDAR – None11. BOARD BUSINESS

Item 11.E was taken ahead of Item 11.A.

E. Adopt Resolution of Necessity for Utility Easement to Reservoir 3A

President Howard opened the Public Hearing.

Engineering Services Manager Zavadil reviewed the item for the Board. She also presented photographic slides showing the Reservoir 3A, and the location of the utility easement, and explained the necessity to have electrical and communication facilities in place at this location to support the District's Supervisory Control and Data Acquisition (SCADA) system. The SCADA system is essential to the operations of the water system. The installation of a power line at this easement was not part of the existing easement which staff discovered upon initiation of construction. Staff has been negotiating with the property owner since April for reasonable compensation for the property rights regarding the easement not covered within the original easement, and for expanding the easement to include a power line. Staff has not been able to come to an agreement with the property owner. Ms. Zavadil reviewed the criteria for adopting the resolution of necessity as presented to the Board this evening.

Speaker: Mr. John Doyle, Legal Representative for Nielsen Family – Mr. Doyle addressed the Board and distributed a folder to each Boardmember containing copies of communications between Mr. Doyle and DSRSD staff since April 13, 2016. He requested these documents be included in the record. (These documents are identified in Attachment I to these minutes and are available in electronic or hardcopy from the District Secretary). Mr. Doyle gave the Board a brief history of the Nielsen family and explained the great working relationship normally experienced with DSRSD. He stated the Niensens take their property rights seriously, and expressed the strongest opposition and objection possible to the resolution of necessity, based on legal and practical grounds. He stated the genesis of this matter was not from the Niensens, and explained their belief the project was initiated not for public interest but to pressure the Niensens to agreement, and to resolve a mistake. In review of the project, he indicated the June 2015 certificate of exemption from environmental impact review (EIR) stated minor modifications to an existing easement, however, in 2016 the project became inconsistent with the EIR and the easement boundaries were exceeded with the addition of a tower and power. The Niensens disagree the criteria for the necessity resolution have been met, and assert the 15-foot easement is unnecessary and not the least injurious solution. Resolving the matter per the condemnation process puts the Board in a position of approving the current solution before considering alternatives. During negotiations with the District, he

stated the Niensens agreed to continuation of the project in a sign of good faith, with the caveat that an agreement be reached before power was activated, however, that request was not honored. The Niensens have continued to negotiate with DSRSD Principal Engineer Rhodora Biagtan and General Counsel Carl Nelson but an agreement has not yet been reached. In conclusion, he reviewed and restated the Niensens objections to this proposed action and stated they are prepared to negotiate a resolution, but if the matter cannot be resolved, the trespassing must stop.

Speaker: Mr. Ryan Nielsen, Dublin Resident – Mr. Nielsen addressed the Board stating his intent to illustrate his family's grievances regarding the utility easement project. He asked the Board to consider a reasonable resolution from the perspective of a property owner or customer of DSRSD. He stated that less injurious alternatives are possible but were not presented. He explained his family has a rich history in Dublin with a willingness for betterment and progression of the City, and that he has worked diligently with staff to come to agreement on this matter. He noted appreciation for the efforts of District staff members, Ms. Biagtan and Mr. Nelson. He presented a timeline of project events at the Nielsen property and the easement site beginning in October 2015, and stated that DSRSD staff did not contact them about the work to be done. The family felt their concerns were ignored, and were shocked by District management decision-making given the parties' positive relationship. He expressed that had communication occurred, they would not be facing a deadline tonight and that condemnation should be a last ditch effort, when alternatives, such as staying within the easement, are possible. Mr. Nielsen reiterated that the District had no right to start construction and trespassed, but the Nielsen family worked with the District in allowing work to continue. They feel they were lied to when the agreement regarding the power line activation was disregarded.

President Howard asked Mr. Nielsen what his desired outcome would be.

Mr. Nielsen stated he would like to retain an amicable relationship with DSRSD and receive a 1" water meter for two future homes on the property, or a fire hydrant. Mr. Doyle added that there are five to six points in negotiations that would have satisfied the Nielsen's and cited the following ideas: a 1" water meter for fire suppression, a temporary easement, long-term lease, negotiation of land use issues, and water connection. Mr. Nielsen also stated he wants to ensure the tower does affect their future land use. He stated DSRSD staff admitted the intent was to stay within the easement and he commented a CEQA (California Environmental Quality Act) review would have been necessary when considering expansion of the easement.

Mr. Nielsen sent an email August 1, 2016 to General Manager McIntyre citing their concerns and requesting a meeting with staff. He distributed a copy of the email to each Boardmember. (This document is identified in Attachment I to these minutes and is available in electronic or hardcopy from the District Secretary). He stated Mr. McIntyre responded that the letter was obnoxious and that his concerns were invalid. Mr. Nielsen inquired as to who is making the decisions to continue work when concerns are brought up. The response received indicated staff believed the easement allowed for the work being done, but the Nielsen's stated they had told staff otherwise. The Nielsen's perception is that the District does not care, however, he does not believe that is true of the Board. He stated that his family had been fair and is not asking for much outside the

realm of the District's power. He believes if the Board gave Ms. Biagtan authorization to negotiate with his family, an agreement could be reached.

Director Vonheeder-Leopold inquired as to the difference in elevation of the tank and the end of the property loop where Mr. Nielsen indicated a future house would be located. Mr. Nielsen responded he was unsure as the property is within the county's ordinance, not City of Dublin.

Vice President Halket asked Mr. Nelson to explain the government code cited in the item regarding what constitutes an offer. Mr. Nelson said it contemplates a monetary offer of the value of the property. Vice President Halket stated the District's offer in the letter to the Nielsen family appears to have been expressed in terms of the value of a 5/8" meter.

Vice President Halket inquired with General Manager McIntyre if there would still be time to continue negotiations if the resolution was passed this evening. Mr. McIntyre responded affirmatively. Upon confirmation by Mr. Nelson of the legal ability to do so, Vice President Halket suggested the Board reconvene in Closed Session under Item 4.A., to which the Board agreed.

President Howard announced that the Board would return to Closed Session under items 4.A, 4.B and 4.C.

At 7:22 p.m. the Board returned to Closed Sessions 4.A, 4.B and 4.C. The Board came out of Closed Session at 7:34 p.m. President Howard announced that there was no reportable action.

President Howard asked for Boardmember comments.

Vice President Halket conveyed that the Board had been apprised of this matter as it developed but is embarrassed by how this project has unwound. He stated his belief that things were not conducted in bad faith and stated his agreement with some, but not all, of the facts presented by the speakers. He emphasized that the SCADA (Supervisory Control and Data Acquisition) system is absolutely critical for operating the water system, the very same system that the Nielsen property uses. The District has been forced from its location at Camp Parks and this circumstance so necessitates this easement and facilities in order for the SCADA system to operate. He strongly encouraged the parties to negotiate a resolution and stated his desire to see this situation resolved without passing the proposed resolution. He then explained three boundaries of a negotiated agreement that he could agree to on behalf of the District:

1. A clean easement. The easement must be sufficiently wide to handle what DSRSD must do, and must incorporate the right language so the District has unencumbered access to perform whatever work is necessary. The easement cannot contain any unreasonable lease language.
2. The District's activities on its own property cannot be encumbered. The District owns the tank and the surrounding areas; the District can be a good neighbor in camouflaging the tank, for example, but the District cannot have future use risk.

He cannot vote to support a solution that would result in the District's property being encumbered by someone else's decisions.

3. No conflict with LAFCo. The Board understands the water is very important to the Niensens, so he can support working with them to provide a meter, for example, in trade for the easement, but he emphasized that whatever the outcome is, it cannot put the District in conflict with LAFCo.

He stated that if this is not negotiated in two weeks, he will be prepared to approve the resolution. He also called for the prevention of a project evolving this poorly again in the future.

Director Duarte stated his firm belief in property rights, and expressed that the Board has heard the Nielsen's concerns. He also expressed that the telemetry required to run the District's system from Reservoir 3A is absolutely vital to run the water system, and doing so is a foregone conclusion. He stated he would like to see this resolved without attorney involvement, and agreed with the terms that Vice President Halket's stated. He stated an amicable solution is possible, but if it is not accomplished, he is also prepared to vote for approval of the resolution at the next meeting.

Director Vonheeder-Leopold stated that she is generally opposed to eminent domain, having lost her grandfather's property in 1972 to East Bay Regional Parks District. She apologized for the mistakes made, acknowledging that this was out of the ordinary. She also agreed with Vice President Halket's suggestions, and stated her belief that a resolution is possible, however, the agreement must meet the three conditions the District requires. She advised that Mr. Nielsen should define what it is that his family would like as well. She inquired if the Board should make a motion.

President Howard stated a motion was not necessary. Vice President Halket stated that the verbal directions as recorded were satisfactory.

Director Misheloff inquired if the Niensens would be willing to meet with Ms. Biagtan to work toward an amicable agreement. Mr. Nielsen responded in the affirmative. Director Misheloff also stated her wish for the parties to respectfully resolve this without having to do so through the courts, and added that she will also vote for approval of the resolution if the matter is not resolved by the next board meeting.

Mr. Nielsen expressed his understanding of the Board's position, and stated that he must confer with his family before agreeing to any conditions regarding future negotiations.

The Board directed staff to work with the Niensens during the next two weeks in an attempt to negotiate an agreement, and to present the agreement to the Board at the next meeting to be held on September 20. The Board will consider such agreement or adoption of the necessity resolution at that time.

Vice President Halket MOVED to CLOSE the Public Hearing. Director Misheloff SECONDED the MOTION, which carried with FIVE AYES.

- A. Approve Reimbursement to City of Dublin for the Recycled Water Pipeline Design and Installation under Task Order No. 6 to the Tri-Valley Intergovernmental Reciprocal Services Agreement

General Manager McIntyre reviewed the item for the Board.

Vice President Halket MOVED to approve Reimbursement to City of Dublin for the Recycled Water Pipeline Design and Installation under Task Order No. 6 to the Tri-Valley Intergovernmental Reciprocal Services Agreement. Director Vonheeder-Leopold SECONDED the MOTION, which CARRIED with FIVE AYES.

- B. Receive Report from Staff regarding the Potential Refinancing of the 2011 Water Bond

Administrative Services Manager Archer reviewed the item for the Board.

The Board received and appreciated the report.

- C. Reject All Construction Bids and Approve Changes to Contractors' Insurance Coverage in Contract Documents for the DSRSD Field Operations Building (CIP 16-A005)

Engineering Services Manager Zavadil reviewed the item for the Board.

The Board and staff discussed the circumstances leading to the recommendation to reject bids, and the proposed changes in contractors' insurance requirements. Ms. Zavadil also confirmed that the burden of self-performance was decreased to 15% from 50% for this second bid request. Additionally, staff is working with the District's safety officer to revise the worker's compensation EMR (Experience Modification Rate) requirement in the contract documents, as this is not a good single-source indicator for safety and can place undue burden on smaller contractors. Director Duarte suggested providing a succinct handout to interested contractors at bid meetings as a reminder of bid requirements.

Vice President Halket MOVED to adopt Resolution No. 54-16, Reject all Construction Bids and Approve Changes to Contractors' Insurance Coverage in Contract Documents for the DSRSD Field Operations Building Project (CIP 16-A005). Director Misheloff SECONDED the MOTION, which CARRIED with FIVE AYES.

- D. Receive Brown Act Briefing from District General Counsel

General Counsel Nelson delivered a Brown Act briefing to the Board, which included a review of the recent revisions to the District's Day of Service policy addressing Boardmember stipends as well as attendance at ceremonial events. Mr. Nelson also gave a slideshow presentation including the following topics:

- Requirements for majority meetings
- Noticing requirements for meetings and closed sessions
- Closed sessions
- Serial meetings

The Board and staff discussed various aspects of the information and topics presented.

12. BOARDMEMBER ITEMS

Vice President Halket suggested the Board hold a discussion at a future meeting about generating interest in District Board elections. President Howard suggested the item be discussed at an External Affairs Committee meeting, which General Manager McIntyre agreed to have staff schedule.

Closed Session Items 4.D and 4.E were held before Item 13.

At 8:09 p.m. the Board went into Closed Session. General Counsel Nelson left Closed Session Item 4.D at 8:16 p.m. for the commencement of Closed Session Item 4.E.

The Board came out of Closed Session at 8:19 p.m. President Howard announced that there was no reportable action.

13. ADJOURNMENT

President Howard adjourned the meeting at 8:20 p.m.

Submitted by,

Nicole Genzale, CMC
Executive Services Supervisor

Attachment: Attachment 1 to Item 11A Staff Report & September 6, 2016 Board Meeting Minutes

Documents submitted by landowner & its attorney:

1. Aug. 1, 2016 email from R. Nielsen to D. McIntyre
2. Request to Appear & Be Heard dated September 2, 2016
3. Sept. 6, 2016 email from R. Biagtan to J. Doyle
4. Sept. 2, 2016 email from J. Doyle to R. Biagtan, R. Nielsen
5. Aug. 15, 2016 letter Letter of Agreement from staff to R. Nielsen
6. July 29, 2016 letter Notice of Resolution of Necessity from D. McIntyre to R. Nielsen
7. Aug. 4, 2016 email from R. Biagtan to J. Doyle
8. July 20, 2016 email from J. Doyle to R. Biagtan, J. Zavadil, R. Nielsen
9. July 19, 2016 email from J. Zavadil to J. Doyle, R. Nielsen
10. July 19, 2016 email from J. Doyle to R. Biagtan
11. June 27, 2016 email from R. Biagtan to J. Doyle
12. June 30, 2016 email from J. Doyle to R. Biagtan
13. July 6, 2015 Recorded Alameda County Environmental Declaration

Documents submitted by staff:

1. July 29, 2016 email from R. Biagtan to R. Nielsen (4:07 p.m.)
2. July 29, 2016 letter Notice of Resolution of Necessity (a copy was attached to the above email)
3. Aug. 11, 2016 email from R. Biagtan to J. Doyle (11:05 a.m.)
4. Aug. 11, 2016 email from R. Biagtan to J. Doyle (11:35 a.m.)
5. Aug. 11, 2016 letter Notice of Resolution of Necessity – Continued (redline draft)
6. Aug. 25, 2016 email from R. Biagtan to J. Doyle (5:22 p.m.)
7. Aug. 26, 2016 letter Notice of Resolution of Necessity – Continued (redline draft)
8. Sept. 2, 2016 letter Request to Appear & Be Heard (copy attached)

The documents listed above are available and on file with the District Secretary Nicole Genzale (925) 828-0515.