

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS MEETING
APPROVED MINUTES
DIABLO ROOM, DIABLO COUNTRY CLUB
TUESDAY, JUNE 11, 7:30 p.m.**

CALL TO ORDER: President Ray Brant called the meeting to order at 7:30 p.m.
ROLL CALL: Secretary Jeff Eorio called the roll as follows:

Directors present: Brant, Urbelis, Becker, Eorio, Isom
Directors absent:

COMMENTS FROM THE AUDIENCE:

Paul Ambrose, Diablo resident, spoke about the settlement agreement and spoke against the Board members who supported the agreement. He stated that the Judge declared Calle Arroyo private property. As such, the DCSD had zero authority to make any statements about who is allowed on the street; especially statements that misrepresent the opinion of the majority of Calle Arroyo homeowners. He spoke about the surveillance cameras and his neighbors who don't want to live on a street where individuals can install whatever signs they want. He stated that instead of seeking community input, certain Board members turned their backs on their constituents, and did what they personally wanted to do in the Tiernan settlement. He indicated that with the Gift Clause resolution, DCSD is justifying that Calle Arroyo road maintenance can be paid for by taxpayer money. The conflict that he pointed out was, and he quotes: "Members of the public who travel on Calle Arroyo to access the Diablo Post Office." He said that in other words, this board has agreed to tell bikers to stay off Calle Arroyo in the Tiernan settlement agreement and then, in its own resolution, it has given a green light to anyone on their way to the Post office to use Calle Arroyo. He stated that the Board has needlessly caved to Tiernan's demands. He stated that after burning hundreds of thousands of dollars to fight his moronic lawsuit, this Board has now encouraged Tiernan to defile our street with his stupid signs and spy on us. Then he said that President Brant failed the residents of Diablo and he respectfully ask for his resignation.

Hal Siebert, Diablo resident, told the Board that he sent an email to them outlining his concerns with the settlement agreement and asked why the Board agree to all of the signs. What did the Board accomplish? He stated that the Board should have solicited community input prior to any action. District Counsel Crawl responded that the Brown Act specifically provides for approval of settlements within the confines of closed session.

Mugs Freeman, Diablo resident stated that she was sad that another lawsuit was filed and that it was another waste of District funds.

Addie Lane, Diablo Resident, asked about the new lawsuit. Ms. Crawl responded for the Board by explaining that a cross complaint had been filed in the same action.

Elizabeth Leftik, Diablo Resident, asked the Board about fire safety and what role the Board has in keeping the community fire safe. She also stated concerns with overhead power lines. President Brant responded that the District has no authority as fire safety is the responsibility of the SRVFPD. Director Becker responded by stating that the Club had worked with PG&E to increase safety with power poles and that residents are encouraged to contact PG&E directly. Director Eorio explained how the issue of undergrounding lines worked in San Ramon and that residents are encouraged to band together and respond directly to PG&E.

ACTION ITEMS:

- a) Approve minutes of May 14, 2019 Special Meeting, Moved Urbelis, Second Becker, approved 5-0
- b) Approve minutes of May 14, 2019 Regular Meeting, Moved Urbelis, Second Becker, approved 5-0
- c) Approve minutes of May 20, 2019 Special Meeting, as amended, Moved Urbelis, Second Becker, Approved 5-0
- d) Adopt Resolution 2019-01 finding that continued provision of District services to Calle Arroyo serves a primarily public purpose. Item moved until later in the meeting following Roads report.

ROADS: Moved out of order to advise the community of the settlement agreement.

Director Becker reported that, pursuant to Government Code section 54957.11(a)(3)(B), the District reports that the Board approved a settlement agreement with the Plaintiffs in Tiernan et al. v. DCSD (Contra Costa County Superior Court Case No. C17-02529) in closed session held on June 6, 2019 and that this settlement agreement was executed and finalized by the Plaintiffs following the adjournment of that closed session. The Board voted for approval 4-1 with Director Eorio being the "nay" vote. Director Becker reported that the general substance of the settlement is as follows: a final judgment will be entered in the case, DCSD and Plaintiffs will bear their own attorneys' fees and costs, DCSD will send notices to the Town of Danville, the Devil's Advocate, local schools, and bike groups informing them of the judgment, DCSD will install signage on Alameda Diablo indicating "no through traffic," and Plaintiffs will dismiss the remaining cause of action against DCSD in the Second Amended Complaint.

Director Becker stated that the Board has been attempting to settle the lawsuit and that the signage required in the settlement agreement are inconsequential and that individuals have the right to provide surveillance to their properties. He stated that the new cross complaint needs to be addressed as soon as possible.

ACTION ITEM:

Adopt Resolution 2019-01 finding that continued provision of District services to Calle Arroyo serves a primarily public purpose.

President Brant discussed the necessity of having this resolution and the need to continue to provide maintenance services to Calle Arroyo.

Director Urbelis stated her opposition to the resolution. She stated that this resolution is a response to the "Gift Clause" in the CA Constitution, intended to give the District authority to maintain Calle Arroyo. Her preference was to do that; however, the Resolution, in her opinion, is weak in its arguments to prove "primarily public purpose" for the expenditures. It is also inconsistent with the signage that has been erected on Calle Arroyo as well as the more aggressively anti-public signage that is going to be erected per the settlement agreement which states: "PER COURT ORDER, CALLE ARROYO ROAD IS PRIVATE. GENERAL PUBLIC USE IS NOT PERMITTED. VIOLATORS MAY BE PROSECUTED." The settlement further states that plaintiffs may consider private security for Calle Arroyo, making it even more forbidden to the public. Whether the Resolution, therefore, could stand up to legal scrutiny is of serious concern. She stated that according to legal counsel, the Resolution alone does not give the District the authority to maintain

Calle Arroyo. The Formation Documents are the deciding factor. Thus, maintaining Calle Arroyo could result in a lawsuit from those who believe that is the case. Not maintaining Calle Arroyo could also result in a lawsuit from those who believe that the District should disregard the wording in the Formation Documents. She believes the only course of action that will end this issue is to ask the court for a judicial declaration of the District's obligations in this matter. Therefore, she is voting NO.

Director Becker believes that the judge's decision with respect to the privacy issue is that, and he agrees, the public has the right to use Calle Arroyo to go to the Post Office; and have utilities, deliveries and service providers all access Calle Arroyo; so he believes that there is a public benefit to the road. He does not believe in the scare tactics of some Board members. He discussed the Fair Political Practices Commission complaint against him and that he was exonerated by the Commission and he fully supports this resolution.

Director Eorio stated his strong opposition to the resolution based on his understanding of the Gift Clause of the State Constitution and that he feels this resolution is in direct conflict with the Gift Clause. He discussed the judge's decision and the proliferation of misleading and disgusting signage that has been placed by the Plaintiffs in the lawsuit on Calle Arroyo. He stated that the resolution needed "substantial" benefits and that this resolution is very weak and could be used on almost any private street here in Diablo or in other private communities. He was most concerned that this resolution directly violates the Formation Documents which state that we can only maintain streets in Diablo that have "a public right of way." The judge took that option off the table, Calle Arroyo is a private street. He made a reference to legal counsel's opinion that the District could be at risk for additional litigation, and Ms. Crowl indicated that confidential attorney-client communications should remain confidential or the Board would be at risk of waiving attorney-client privilege as to that issue.

Director Eorio feels that should the resolution pass, the District will face further legal trouble and litigation. He also feels that the only way to avoid further legal issues for the District is to file with Superior Court a much-needed legal filing to, once and for all, settle this issue for the community. He further stated that the District has spent over \$60,000 in outside legal fees (litigation counsel, not District counsel) in an attempt to settle with the plaintiffs. Back in November he stated that he actively pushed for the District to file a cross complaint and get a much-needed final resolution on the private road issues as well as the infamous "cut through" issue. Outside counsel then estimated that the cost to the District to do so would run maybe \$20,000. But he was overruled and the Board attempted to settle with the plaintiffs spending six months and \$60,000. And now LAFCO will be having their public hearing on Diablo's Municipal Service Review. He stated he would be advising LAFCO of the Board's action. Again, he does not want to be in violation of our Formation Documents. He stated he will oppose this resolution and that the only way to move forward is to file a petition, a cross complaint, a validation, some legal mechanism with the Court to decide this issue once and for all.

Director Isom expressed his support for the resolution and requested the removal of the words "hazardous conditions" from Item 3 c and f.

With no further discussion by the Board, President Brant Moved to approve Resolution 2019-01 with amended language eliminating the words "hazardous conditions" as proposed by Director

Isom. Director Becker Second. Vote: Ayes, Brant, Becker, Isom. Nays, Urbelis, Eorio. Motion passed 3-2 and Resolution was approved.

REPORTS

DIABLO COUNTRY CLUB: Hank Salvo reported that the golf course is now closed for renovation and that the recycled water program is under CEQUA (environmental) review.

CONTRA COSTA COUNTY: Alicia Nuchols was absent.

DIABLO PROPERTY OWNERS REPORT: Dana Pingatore reported about the Town Hall next week on the 18th hosted by the County for its General Plan update. She stated that the DPOA is looking at hosting some summer block parties and of course, Halloween. She stated that the DCSD has been assisting in the maintenance of the "island" on Alameda Diablo since November of 2017, preventing vegetation from encroaching on the roadway. The District was spending \$100 per month through the DPOA for this maintenance. On June 6 of this year, President Brant notified the DPOA via email that the DCSD can no longer participate in the cost of maintaining the island. Hence, weekly maintenance will cease at the end of June. President Brant will notify the property owners of the fact that the DCSD can no longer assist with the maintenance of this private property.

SECURITY: Deputy Sheriff Dan Buergi introduced Lt. Haynes and Robert Nelson of the Sheriff's Department. Mr. Nelson introduced himself and stated that he is assisting the Department with better communication with all communities within the County. Deputy Buergi spoke about some vandalism on the golf course that is occurring with the renovations and of minors driving golf carts around Diablo, which is against the vehicle code.

FINANCIAL: Director Isom presented the updated financial information and stated that all accounts were up to date.

ACTION ITEM: Adopt the 2019-20 Budget. Moved by Urbelis, Second Eorio.. Motion passes unanimously, 5-0, and budget was approved.

ACTION ITEM: Adopt Resolution 2019-02 directing auditor to levy Special Tax for FY 2019-20 per Measure B (Improved lots \$682.13, Unimproved Lots \$131.90, Diablo Country Club \$24,148.02). Moved, Urbelis, Second Brant. Motion passes unanimously, 5-0, and Resolution was approved.

CALL OF NEXT MEETING/ADJOURNMENT:

The President called the next meeting for August 13, 2019. There being no further business, the President adjourned the meeting at 8:20 pm.

Diablo Community Services District by

Jeff Eorio, Secretary

RESOLUTION NO. 19-01

**RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT FINDING
THAT CONTINUED PROVISION OF DISTRICT SERVICES TO CALLE ARROYO
SERVES A PRIMARILY PUBLIC PURPOSE**

WHEREAS, in December 2017, Plaintiffs Robert Tiernan and other residents of Calle Arroyo ("Plaintiffs") initiated litigation against the Diablo Community Services District ("District") and others (Tiernan et al. v. Diablo Community Services District et al., Contra Costa Superior Court, Case No. CI 7-02529), seeking, among other things, a judgment quieting title to the Plaintiffs' properties "such that as of the date each Plaintiff and Defendant who lives on Calle Arroyo purchased their property, the portion of Calle Arroyo road (sic) on their respective properties was private property, and remains private property, and that no non-homeowner Defendants, including the general public, have any rights, liens and/or interests whatsoever in said properties or in Calle Arroyo road (sic)" and

WHEREAS, the District was not a party with respect to Plaintiffs' quiet title cause of action; and

WHEREAS, on November 19, 2018, the Honorable Charles Treat granted Plaintiffs' Motion for Summary Adjudication as to their quiet title cause of action, thereby ruling, as a matter of law, that Calle Arroyo is a private street that is not subject to a public easement or right-of-way; and

WHEREAS, pursuant to California Community Services District Law, Government Code section 61000 et seq., the District's formation documents grant the District the authority to provide certain services and describe the District's functions and purposes; and

WHEREAS, the District's main functions are to maintain roads and provide security within its boundaries; and

WHEREAS, Article XVI, Section 6, of the California Constitution provides that neither the state legislature nor any public agency can gift "any public money or thing of value to any individual, municipal, or other corporation" unless the expenditure serves a primarily public purpose (the "Gift Clause") (see, e.g., *Wine v. Boyar* (1963) 220 Cal.App.2d 375; *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453); and

WHEREAS, certain members of the Diablo community and others have questioned whether, in light of the Court's ruling and in conformance with the Gift Clause, the District can continue to use District funds to provide services on Calle Arroyo; and

WHEREAS, the Board of Directors has determined, based on, among other things, the District's purpose and authorized powers as set forth in its formation documents and the California Community Services District Law, the historic use of Calle Arroyo, and the location of Calle Arroyo in relation to other roadways and various facilities within Diablo and the greater Diablo area that the use of District funds to continue to provide its services to Calle Arroyo benefits the public and would serve a primarily public purpose.

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals and staff report accompanying this Resolution are true and correct and made a part of this Resolution.

2. Based on the substantial evidence before it, including but not limited to the facts and evidence contained in the staff report accompanying this Resolution, the Board of Directors hereby finds that the use of District funds to provide its services to Calle Arroyo road in Diablo, California, serves a primarily public purpose and does not violate the Gift Clause of the California Constitution.

3. Specifically, the use of District funds to provide its services to Calle Arroyo, including but not limited to maintaining and repairing the roadway, lighting, culverts, and other facilities along Calle Arroyo and providing security services along Calle Arroyo as a significant roadway within Diablo, remains safe for members of the public, persons providing public safety and public utility services, Diablo residents and their guests, and others, including but not limited to:

- a. Residents of Canada Via who must travel on Calle Arroyo to access their homes
- b. Members of the public who travel on Calle Arroyo to access the Diablo Post Office;
- c. Members of the public who are forced to use Calle Arroyo if traffic is diverted from Diablo Road through the Diablo community due to road closures (e.g. in 2017, the Town of Danville diverted traffic from Diablo Road through the Diablo community for over 36 hours due to a fallen tree on Diablo Road);
- d. First responders, such as police and firefighters, who must use Diablo's roads to access Diablo to provide security and safety services in the community as well as potentially to the Mt. Diablo area and nearby open space areas in the event of residential or wildfires;
- e. Members of the public who use Calle Arroyo to access the Diablo Country Club, including members of the Country Club, members of the general public that visit the Country Club for events, and employees or contractors of the Country Club; and
- f. Members of the public who may need to use Calle Arroyo to evacuate Diablo and/or the highly congested Diablo Road-Blackhawk Road corridor in the event of an emergency or due to road closures.

4. Additionally, the use of District funds to provide security to all of Diablo serves the District's purpose of providing public safety to the entire community such that no portion is left unattended or unpatrolled.

5. Continued provision of District services to Calle Arroyo involves only the regular operation, maintenance, and repair of existing District roads and involves no expansion of use and therefore will not have a significant effect on the environment and is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections 15061 (b)(3) and 15301 of the CEQA Guidelines.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE DIABLO

COMMUNITY SERVICES DISTRICT on this 11th day of June, 2019, by the following votes:

AYES: Brant, Isom, Becker

NOES: Urbelis, Eorio

ABSENT: None.

ABSTAIN-. None.

Approved: 
Ray Brant, President

ATTEST: 
Jeff Eorio, Secretary