

Shores property restricted to school site use, contends family who donated land

By Roman S. Koenig

A relative of the family who donated the embattled Shores property to the Del Mar Union School District says a deed restriction only allows the district to use it as a school site.

In a letter to be presented to the school board at its meeting May 24 (after press time for this newspaper), Del Mar resident Elise Kerckhoff states "the Kerckhoff Company gave your predecessors the 5-acre site for the Del Mar Shores School. This was a restricted gift. The land can only be used as a school site and not for any other purpose."

The letter, released May 22, follows the school district's release of an estimated property value based on a portion being rezoned residential. That appraisal is set at \$32 million.

The family donated the property to the school district in the 1940s, according to Elise Kerckhoff. The district's plans to possibly sell all or part of the property to finance new executive offices has set off a furor in Del Mar.

"In honor of that gift and its specific intent, the district accepted a deed restriction that if the Shores site was ever used for anything other than as a school, the property would revert back to the Kerckhoff Company," Kerckhoff states in her letter.

District officials were unavailable for comment as their offices were already closed for the evening when the letter was released,

Part of the controversy over the Shores site stems from the city of Del Mar's interest in the property. The district and city have exchanged barbs over the past few weeks as they negotiate a possible deal. The city is filing suit over the district's handling of the negotiations.

The controversy has grown, however, with allegations of lax legal procedures and violations of the Brown Act, California's open-meeting law. Among Kerckhoff's concerns:

- Rezoning the property as residential: "Any such rezoning would be in direct violation of the Kerckhoff gift and the property's deed restriction," her letter states.
- Improper public notice: Kerckhoff, who says she lives six blocks from the property, claims no true attempt was made by the district's legal counsel to locate family members concerning the property's status. "Your attorney claimed at your May 17 special meeting that she could not find the heirs to the Kerckhoff Company," the letter states. "Instead of exercising even cursory due diligence through the phone book where I am listed or the Internet where she would have found other immediate Kerckhoff descendents, she stated that she had to petition the court to serve notice by publication. In other words, she obtained court approval to put a small legal notice in a newspaper hoping that no Kerckhoff would ever see it."
- Limited public input: "Despite holding a 'special closed session meeting' on the potential public auction of the Shores property on May 17, you have nothing pertaining to this explosive issue on the agenda for your upcoming May board meeting on the 24th," the letter states.

Fallout from the letter could influence the on-again-off-again talks between the district and the city.

As of May 18, the parties were apparently going back to the negotiating table after talks had abruptly stalled.

In an announcement, city leaders said the parties would begin talking again after district trustees gathered May 17 in what some call a suspicious and hastily organized meeting over the heated negotiations.

"On behalf of my fellow council members in Del Mar, I want to thank (school board president Barbara Myers) and the school board for agreeing to meet with us,"

Mayor Crystal Crawford said in the announcement. "We have always felt that we could make good progress and come to a better understanding of each other's position by having the principals meet."

The city plans to follow through with its lawsuit against the school district, however, despite resumption of the talks.

"We haven't withdrawn the lawsuit, so the lawsuit still stands," assistant city manager Joe Hoefgen said May 19.

Collision course

The situation had been described in recent weeks as two trains headed for a collision on the same track. The collision apparently happened May 9 — or May 11 — depending on the parties' earlier statements.

The school district canceled negotiations with the city after it filed suit over the possible sale of the district's Del Mar Shores property.

If the school district and the city are the trains, the property is the track. Until May 9, both parties had been in negotiations for the city to purchase the property, which the district had declared as surplus.

The value of the land is the diesel that fueled the trains. \$12 million was one estimate widely discussed in the community, though district superintendent Tom Bishop said it was "purely conjecture and is entirely misleading." The city claimed an estimate of about \$6 million based on an original appraisal of \$4 million.

District officials have released an estimated value of \$32 million for the property, an appraisal based on rezoning the land as residential on the western part of the site. The city and vocal Del Mar residents want to see the property remain zoned for public use, however.

Like the date of the collision, whose action sparked whose reaction is also open to interpretation, based on the announcements.

The school district's May 11 announcement covers the city's "hostile" action to sue the district over its refusal to extend the negotiations, called a tolling agreement. The city's May 9 announcement covers the school district's cancellation of the negotiations, with no mention that the lawsuit could've sparked the district's walkout.

The city stated in its announcement that it would pursue legal action even as negotiations were under way and that district officials knew it.

Meeting in question

After the school board's May 17 meeting, the tone apparently warmed after the city got a call from board president Myers.

But even as negotiations are apparently on again, the district's handling of its meetings has some in the community fuming. The school board met May 17 to discuss an auction of the property.

"It's bizarre," Del Mar resident Laura DeMarco said. "It's really, really bizarre."

In response to the May 17 meeting, which she said she attended, DeMarco sent a letter to Bishop accusing the school board of violating provisions of the Brown Act. In the letter, DeMarco states the meeting agenda "omits the name of any potential negotiating party ... this code section only allows a closed session 'with its negotiator prior to the

purchase, sale, exchange, or lease of real property' not an auction."

Part of the problem, critics said, is that the district was also refusing to name an interested party it was discussing in closed session.

Bishop did not return a phone call May 18 seeking comment on the Shores property controversy.

DeMarco also took issue with how the press was notified of the meeting. "It's obviously a Brown Act problem," she said.

DeMarco's letter states, "Two reporters of newspapers of general circulation in the district have already complained that they weren't sent notice including one who has made previous written requests."

After the apparent complaints, the district released the name of that "potential negotiating party" — the California Trust for Public Schools.

According to the organization's Web site, the nonprofit California Trust for Public Schools "serves as a vehicle for school districts to maximize the revenue generated by the sale, lease, exchange or development of underutilized properties."

The Web site, www.neighborhoodschools.com, gives no contact information or links for the organization.

However, according to a Nov. 27, 2004, report in the San Diego Union-Tribune, the Sweetwater Union High School District in Chula Vista proposed using California Trust for Public Schools' services in a plan to build new executive offices, among other facilities.

In a proposal the report referred to as "financial alchemy," Sweetwater had planned to expand its facilities through a series of land swaps and purchases.

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