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Marsha Sutton's Column

“Education Matters”
Turning over the Shores Deed
By Marsha Sutton

The deed is done. The Shores property will soon go to the City of Del Mar, for the fair price of \$8.5 million.

If we accept that the Shores had to be sold, then it's a blessing – and nothing short of a miracle – that the two entities were able to come to agreement over price and terms, after years of strained relations and failed negotiations.

As a Del Mar Union School District taxpayer with my teeny holding in the property, I am wistful over the loss of the Shores and cannot shake this lingering, unsettling sense of regret. It saddens me, as I wrote last week, to see this unique piece of land gone from the school district forever.

But if it had to be sold, then I'm grateful it went to the City of Del Mar, where it will be treasured and appreciated ... and best of all, preserved as open space for recreational use by not just Del Mar residents but by children and families from throughout the Del Mar Union School District.

“Del Mar is greater than the city limits,” said Laura DeMarco, chair of the Friends of Del Mar Parks, a committee of the Del Mar Foundation. “This is a lasting legacy for kids in the entire school district.”

Calling the Shores property a regional resource, DeMarco was recognized at the July 25 school board meeting, where the agreement was announced, by Del Mar Mayor Carl Hilliard, for her hard work and dedication. DeMarco and Del Mar Parks co-chair Joe Sullivan have labored tirelessly to raise awareness, and funds, to purchase the Shores property on behalf of the city.

Hilliard also thanked school board president Annette Easton for spearheading the effort. Indeed, without Easton at the helm to repair the damaged relationship between the two parties, it is doubtful such a favorable resolution would ever have been reached. Her diligence and dogged determination were unflagging.

Easton and DeMarco were indefatigable, despite circumstances that at times appeared overwhelming.

Thanks to Easton's tenacious determination to build bridges and re-establish trust, and DeMarco's fierce refusal to give up and stubborn insistence that such a Herculean task was possible, an agreement that satisfies all parties has been signed.

So we are left with the bittersweet reality that the Del Mar Union School District will soon no longer call that beautiful five-acre bit of land by the sea its home.

Talks disintegrate

Begun in 2003, the dialogue between the school district and the city over the Shores property, located on nearly a block of land at Ninth St. and Camino Del Mar, started optimistically enough, but soon dissolved in a tangle of miscommunication and public accusations.

The breakdown was complete after a stymied city council brought the matter to the public at an April 2006 council meeting to ask for direction.

Frustrated over DMUSD Superintendent Tom Bishop's talk that the land was worth up to five times more than the city's estimates – and fearful that he wanted to sell the land to a developer and ignore or circumvent the existing “public use only” zoning – the city disclosed information to the public that Bishop considered confidential, in order to hear feedback from community members on how to proceed.

The question before the city council was whether to continue to pursue the land and work with the school district under less than amicable conditions, or abandon the effort.

Del Mar residents voiced appreciation for the honest and open exchange between council members and the community, but Bishop and his then school board perceived the public meeting to be a breach of trust and promptly severed relations with the city. Each accused the other of not negotiating in good faith, and the lawyers took over.

The city filed a lawsuit against the school district to preserve the city's right under California law's Naylor Act to purchase a portion of the property for significantly less than fair market value.

Shortly thereafter, the school district became embroiled in a second lawsuit regarding a deed restriction on the Shores when the property was given to the school district in 1946 by the William G. Kerckhoff Company for \$10. The restriction declared that the land could be used “for school purposes only,” a clause the district wanted removed from the deed, thus fomenting suspicion at the city that the school district was seeking a developer to buy the land.

So, for a time, the only winners in this stalemate were the lawyers – until November 2006 when voters elected a new school board majority more sympathetic to the city and determined to resurrect the moribund process.

With two new board members in her corner, Easton became board president, and quickly and decisively began to resolve disagreements. She salvaged negotiations, sought compromise, and in the end was able to conclude the deal less than eight months after taking over the board.

This may be a new record for fulfilling a campaign promise.

Although neither Hilliard nor Easton would say so definitively, they implied that their respective agencies would drop their lawsuits – both of which are now moot, because the city has agreed to accept the land with the deed restriction in place and will pay the asked-for price.

Selling the land not only gives the DMUSD a serious chunk of change with which to build or buy a new district office, but it also significantly reduces the crushing legal bills which, like a pipeline running directly from the school district's coffers to the attorneys' bank account, have mounted higher and higher with each successive month.

At the June 27 school board meeting, it was revealed that the district's skyrocketing legal fees for the fiscal year reached over \$230,000 – about \$40,000 over budget.

At the July 25 meeting, trustees faced more grim news: another bill, this time for a whopping \$61,025, from the Newport Beach law firm of Bowie Arneson, whose attorney Wendy Wiles is handling the Shores legal matters.

Protesting the July payment was board member Katherine White who pulled the item off the consent agenda to air her frustration with the mounting legal fees. In the end, however, the board, under duress, approved the payment unanimously after it became clear that the work had been done, the money was owed, and their hands were tied.

Because the school district currently lacks a reliable system to alert the board when cost overruns are imminent, mechanisms will be put in place in the future, Easton said, to make the board aware when unexpected legal fees begin to exceed projected expenses.

Fair market value

The sale price of \$8.5 million was based upon a fair market value appraisal under current zoning that specifies public use only, Easton said. The figure was accepted without haggling by the city.

The city's only sticking point was its need for more time for the Del Mar Parks group to raise money, after such a lengthy hiatus when talks had stalled for so long. The school district agreed and gave until Feb. 28, 2008 to close escrow.

The Winston School, founded in 1988 by a group of pediatricians and parents to serve the needs of bright children with learning differences, is a partner with DeMarco's committee and the city in the fundraising drive.

A tenant on the Shores property, the Winston School has pledged to raise 35 percent of the \$8.5 million – an amount just under \$3 million – in exchange for a guaranteed 55-year lease, the maximum allowed. This means the Winston School, a valued member of the Del Mar community, can remain in its current location.

“This is a great day for Winston,” said Headmaster Mike Peterson, in a press release. “This deal means that the Winston School is in Del Mar for at least two generations... We've all made an extraordinary commitment to a better future.”

This leaves the Del Mar Parks committee with about \$5.5 million to raise. DeMarco said about half the money has already been promised, and she is optimistic that the rest will be secured in the next seven months.

For its part, the city has agreed to allow the school district's administrative offices to remain on the Shores site for three years if necessary, until another location can be found. The first and second year's rent will be \$1 and the third year's rent will be \$30,000, should the DMUSD need to occupy the site for three years.

According to Easton, any money made on the sale of land cannot, under California education statutes, be used for any purpose other than facilities-related expenses. So no instructional materials, teachers' salaries, new classroom projects, or programs can be financed from the proceeds. The money can be used to buy land, build facilities, renovate or modernize existing campuses, or for maintenance.

However, the sale does provide breathing room. District money that might be needed for facilities purposes can now conceivably be allocated instead to the classroom, Easton said.

Selling off this lovely property that has been in the Del Mar school district for over 60 years, without having anywhere to move to, seems short-sighted. But Easton assured me that the board's immediate priority is to secure a new location, and she expects to announce a decision by the end of the year.

This historic agreement could not have occurred without key players. Easton revived civility and re-invigorated a spirit of cooperation, Hilliard was able to overlook past grievances and move the city forward with trust and an open mind, DeMarco's unremitting pressure and persistence kept the mission alive, and the gentle demeanor and optimistic presence of the Winston School's Peterson reminded everyone that children were watching.

Seeing the land transfer to the protection of the city means that it will stay as it is, so aesthetically little will change. A simple piece of paper, a deed, will be passed from one public body to another.

From a business perspective, it seems the right thing to do. And from the community's perspective, the broader Del Mar and Carmel Valley community, the ball field will remain, dogs can continue to romp there, and the Winston School stays.

Maybe the important change is not the actual deed but rather something less tangible: the revitalized relationship between school district and city.

What's happening here is more than the simple exchange of land. This agreement serves as a model for the proper way two public agencies, once at odds with one another, can eventually come together to recognize common goals and achieve a mutually satisfactory outcome. And that may be the greatest benefit of all.

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