

Minutes

Regular Meeting of the Captiva Erosion Prevention District

‘Tween Waters Inn, 15951 Captiva Drive, Captiva, Florida 33924

January 11, 2012 @ Noon

Commissioners Present: Jim Boyle (Chair); Doris Holzheimer (Vice Chair); Harry Kaiser (Secretary); Mike Mullins (Commissioner).

Absent: Dave Jensen (excused).

Staff Present: Kathleen Rooker, CEPD Administrator; JoAnn Paul-Young, CEPD Accountant; John Bralove, CEPD Assistant to the Administrator.

1. Call to Order

The meeting was called to order by Chairman Boyle at 12:01 p.m.

2. Roll Call

The roll was called and the results are outlined above.

Chairman Boyle requested that the agenda be reordered so that Agenda Item 4, Public to be Heard, could be addressed now. There was no objection.

3. Public to be Heard

Chairman Boyle called upon Rene Miville to report on a conversation he had with Robert Neal of the Lee County Division of Natural Resources. Mr. Miville said that the County has proposed a change order with the dredging company that had worked on the Ft. Myers Beach project to do work at Blind Pass. Mr. Miville complimented the County and Mr. Neal on the idea and creativity of the solution. Mr. Miville said that the change order still needed to be approved by the Lee County Board of County Commissioners.

Chairman Boyle called upon Steve Boutelle of the Lee County Division of Natural Resources, who was in the audience, to comment further. Mr. Boutelle explained that the request of the County Commissioners is to waive the bidding process and do a change order, which would save thousands of dollars in mobilization and similar costs. He said that the County still needed to get prices from the dredger and they are doing this now. Mr. Boutelle estimated that 90,000 cubic yards were involved at a cost of \$6.00 per cubic yard. If the dredger does come back, it will be after Easter. When asked if there were still a budget, Mr. Boutelle said that Lee County still has a budget for this project and that the Board of County Commissioners still will ask for cost sharing. He said that he would have hard details by the end of the month. Commissioner Mullins said that the public should be informed when more is known.

Commissioner Mullins then brought up, both as a Board Member and as a member of the public, the issue of getting recordings of public meetings. He said that it was his understanding that if a member of the public requested in advance a recording of a particular meeting, it must

be provided. He said that he asked for a recording of the Briefing Meeting that took place last week that he was unable to attend and was told that there was none. He asked for clarification. Chairman Boyle said that he talked to CEPD's attorney, Nancy Stroud, just a few minutes prior to this meeting. She pointed out that when the Briefing Meetings were first put in place by the previous Board, of which Commissioner Mullins was Chair, they were put in place to allow Commissioners to discuss issues in whatever detail they wanted but that no vote could be taken. The policy, Ms. Stroud reported, was that no recordings of these kinds of meeting would be made. Chairman Boyle said that if the Board wanted to change that policy, he would entertain a motion to that effect

Chairman Boyle asked if there were any Commissioners who would like to see the policy of not regularly recording Board Briefing and similar meetings changed. Commissioner Kaiser said he was in favor of all meetings being open and in favor of having everything recorded. Commissioner Kaiser moved and Commissioner Holzheimer seconded a motion to have all public meetings recorded. The motion passed without dissent.

4. Approval of December Meeting Minutes

Commissioner Mullins moved and Commissioner Kaiser seconded a motion to dispense with the reading of the minutes from the December 14, 2011 Regular Board Meeting and approve them. The motion passed without dissent.

Commissioner Mullins commented that the December 15th Briefing Meeting Minutes did not accurately reflect his position at the meeting. Last evening he submitted to the CEPD administrator a two-page email summarizing his position. Commissioner Mullins asked to have it added to the minutes. Chairman Boyle and Ms. Rooker, two attendees at the December 15th Briefing Meeting, did not agree with Commissioner Mullins summary, saying they thought the minutes as contained in the Board Packet accurately reflected the meeting. The approval of the December 15, 2011 Briefing Meeting minutes was deferred until the next Regular Board meeting at which time, Commissioner Jensen, who also was at the December 15 Briefing Meeting, would be in attendance. Commissioner Mullins emphasized the need to record these briefing meetings to ensure that minutes are accurate. Chairman Boyle said that approval of all December 2011 Board Briefing minutes will be deferred until the next meeting.

There was discussion about the Agenda materials being sent out in advance of meetings. Commissioner Mullins moved and Commissioner Kaiser seconded a motion to post on CEPD's website the agenda and supporting materials as determined by the Chairman and the Administrator on the last business day of the week prior to the Board meeting. Commissioner Holzheimer asked Commissioner Mullins whether this was a reversal of the position he had taken last month. He responded by saying it was not. After discussion, the motion was withdrawn.

Commissioner Mullins moved and Commissioner Kaiser seconded a motion to provide the Commissioners a copy of the agenda and meeting packet the last business day of the week prior to the meeting. Ms. Rooker said that CEPD's Rules of Procedure enable Commissioners to

request an item be put on the Agenda up to two business days before the meeting. According to the meeting schedule, the Monday before the meeting would be the last day.

There was discussion of whether this was practical and how late-arriving materials would be managed. Chairman Boyle said he was fine with this plan as long as staff was not held responsible for late-arriving materials. A vote was called and the motion failed to pass as Commissioners Mullins and Kaiser voted for the motion and Commissioners Holzheimer and Boyle voted against the motion.

Commissioner Holzheimer moved and Commissioner Kaiser seconded a motion to provide the Commissioners a copy of the agenda and meeting packet by 5:00 p.m. the Monday of the week that the meeting is held. The motion passed without dissent.

5. Financial Report

Chairman Boyle said that since Treasurer Jensen was on vacation, he was asking the CEPD Accountant, JoAnn Paul-Young, to give the report. Chairman Boyle mentioned that in an effort to cut down on paper, he had looked at the Rules of Procedure to determine whether full financial statements are required to be reported monthly. He reported that the requirement is that a full financial report be provided every quarter. Commissioners will receive abbreviated reports at the other times.

Ms. Paul-Young reported that 80% of the current ad-valorem taxes have been collected and the general and overhead expenses are in line with what is expected. Commissioner Mullins said that CEPD should not show money in hand until accounts have been reconciled and the money should not be reflected in the financial statements. He further said that CEPD should show possible claims and other recorded liabilities. Chairman Boyle agreed and said CEPD needed to bring in some professionals to look into what options are available. Commissioner Mullins said that CEPD should use the most conservative way.

6. Old Business

a) Sanibel Sea School Request to Present to Board

Ms. Rooker reviewed what had been talked about at the previous meeting. She said that the Sea School could make a presentation from 15 minutes to an hour. Chairman Boyle asked the Commissioners for opinions on what the presentation might be on and how long it should last. Commissioner Mullins suggested that the Sea School make a presentation to the Captiva Community Panel where they would have a much larger audience. The other Commissioners agreed and Commissioner Mullins asked Ms. Rooker to communicate this to the Sea School and also pass on the School's request to the Captiva Civic Association.

b) Interlocal Agreements Status

Chairman Boyle reported that CEPD received a response yesterday from Lee County regarding their input on the Interlocal Agreement between CEPD and Lee County. There has been no response from Sanibel regarding the Sanibel ILA. Chairman Boyle said that the County has come back with a new formula and other additions, deletions, and changes. The County would contribute 44% to the project after the state and federal cost sharing.

Chairman Boyle said based on a \$20-22 million project cost, and assuming \$10 million to \$11 million coming from the Corps of Engineers and the DEP, the County's contribution would be approximately \$4.4 million versus the \$8 million that CEPD has requested at a minimum.

Commissioner Mullins pointed out that the data just mentioned pertained to the Captiva ILA only and that work done on northern Sanibel is a separate Interlocal Agreement. He asked what has changed in the formula. Chairman Boyle asked Mr. Boutelle to respond to this question. Mr. Boutelle stated that the formula is consistent with the one that had been transmitted to CEPD last year except that what has been added is based on precedent that was set on Ft. Myers Beach: an additional portion for storm protection. He said that the 44% is the aggregate between recreation and storm protection.

Commissioner Mullins mentioned that the prior agreement had a cap and asked Mr. Boutelle whether this new one had a cap. Mr. Boutelle responded it did not have a cap. Mr. Boutelle also said that, as he had told Ms. Rooker, not all of the variables in the formula are fixed yet, particularly as it pertains to the DEP's contribution.

Chairman Boyle asked that all Commissioners read through the ILA and digest it. He asked the Commissioners how should CEPD structure its negotiations with both the County and Sanibel? He mentioned that he had talked with Nancy Stroud about negotiation of contracts and whether Commissioners are able to talk about the ILA in a meeting similar to a Board Briefing with the exception that it is not open to the public. Ms. Stroud's reply was a clear "no" - they must be public meetings. Chairman Boyle said that it was important that all Commissioners familiarize themselves with the ILA and feel free to ask questions of Steve Keehn or Nancy Stroud as long as they did not violate the Sunshine Laws. Then, Chairman Boyle suggested, the Board should start discussing the ILA at the earliest possible Board Briefing Meeting. Commissioner Mullins suggested that a committee with one commissioner on it or a commissioner and the Administrator working on it would not violate the Sunshine Laws. Chairman Boyle responded that there were two alternatives that could be pursued:

1) The Chair can ask the Administrator to proceed with negotiations and come back to the Board with a proposal and the Board votes on it; or 2) the Board appoints a willing Board member to work with the Administrator and come back to the board with a proposal and the Board votes on it. In this instance, the Board member would interact with the Board of County Commissioners, the Lee County Division of Natural Resources staff, and other personnel of the County. Commissioner Mullins said that he thought the latter method is the way to go. Chairman Boyle said that the Board still needs to be able to talk about the negotiations without the County or Sanibel observing. He said that this need is an issue.

Commissioner Mullins moved and Commissioner Kaiser seconded a motion to authorize the Chairman and Administrator to proceed with the negotiation of the ILA with Lee County and periodically report back with timelines so that the Board knows when it will have to do serious review and bring the ILA negotiation to a conclusion. Commissioner Holzheimer raised concern that with the change of the chairmanship, CEPD loses the experience and continuity related to the ILAs. Commissioner Mullins said he was happy to share his ideas with the Chair and it was also important that everything is shared with the Board. Chairman Boyle said he is happy to bring the negotiation to fruition but he needs support; for example, he needs the Commissioners to be well informed about the ILAs, ask all the

questions they need to, and stay very involved. He will hold periodic Briefing Meetings to keep the Board involved. Commissioner Mullins added emphasis to the need for Commissioners' support of the Chair.

Chairman Boyle cautioned Commissioners not to represent themselves as speaking for CEPD with other parties such as the County during these negotiations. He talked about a prior agreement with Lee County regarding Blind Pass, to which the CEPD Commissioners had agreed, where Ms. Rooker represents CEPD with Lee County staff and the Chair represents CEPD with the Lee County Board of Commissioners. He said that he would like to see if the CEPD Commissioners can get agreement on that very thing again now. Commissioner Mullins thought this needed to be defined, that as a Board the authority of the Board cannot be delegated, but that he was in general in favor of this. He said that what was being talked about should be clearly defined and that he would like to see this agreement stated in writing.

Commissioners Holzheimer, Kaiser, and Mullins said that they certainly would adhere to the prior assignment of the roles of the Commissioners and Administrator in relationships with County staff and the County Board of Commissioners. Commissioner Mullins said that this agreement made it important that the Commissioners be kept informed and that there is great transparency. He also reminded the Commissioners of the need for them to work on relationships individually with various local, state, and federal officials, and that he did not want any agreement to keep him or other Commissioners from contacting and lobbying these officials.

The motion was read again and Chairman Boyle asked that the following wording be added to the motion: "and that the Commissioners agree that the Chair is the only person who will discuss ILA negotiations with the County, the City of Sanibel, the State of Florida, and the Department of Defense." Commissioner Mullins, as the maker of the original motion, and Commissioner Kaiser, as the one who seconded the motion, agreed to add these words to the motion. A vote was called and the motion passed without dissent.

Commissioner Mullins expressed his concern about the ILA and the formula, particularly because of the current position of the DEP. He said that a reduction in what other entities contribute will be a disappointment to Captivans.

c) Schedule for RFQ Selection Committee

Ms. Rooker presented this schedule and discussed it. She said that the goal was to bring recommendations to the Board in April. Commissioner Mullins said that the Chair of the Selection Committee should be a commissioner. Ms. Holzheimer agreed. Commissioner Mullins moved and Commissioner Holzheimer seconded a motion that Commissioner Holzheimer chairs this committee, that Commissioner Jensen and Ms. Rooker are members of the committee, that meetings are open to the public, and that all meetings are properly noticed. The motion passed without dissent. Concern was raised about what would happen if the project is moved up and CEPD needs to get bids early, perhaps concurrent with the qualification process. The consensus was that this would not be a problem since this is a request for qualifications, not a request for bids, and since CEPD will be seeking at least two qualified vendors. After discussion, Chairman Boyle said that CEPD will stay with the proposed timeline.

Ms. Rooker then provided information on what companies had been contacted and other related information regarding the Request for Qualifications

d) Proposed additional consultant update

Chairman Boyle provided background on the issue of adding an additional professional to the staff. He said that \$26,000 had been budgeted for a part-time position but Partners in Progress was proposing a full time person. He raised the issue of whether a full time person was needed and questioned whether the person who had been recommended had been fully vetted. Commissioner Kaiser asked why CEPD needed another person for \$86,000. Commissioner Mullins responded there were a number of reasons: 1) for succession and redundancy purposes; 2) he has a list of things that have not been done; 3) the new project is being accelerated; 4) CEPD saved a lot of money by doing more work in house; and 5) there is more work that needs to be done than the present staff can handle. Chairman Boyle agreed that CEPD might need additional help but the person recommended is not the right person for the job. Commissioner Mullins said that CEPD still needs to solve this problem, progress is not being made, and CEPD should jettison the PIP approach and come up with another approach. The Commissioners took no action on this agenda item.

7. New Business

a) Partners in Progress

Chairman Boyle reported on the meeting he had with Bob Gray, President of Partners in Progress, in December, and went over some of the details of the existing contract. He said he asked Mr. Gray how he thought the consulting staff was doing and how he thought PIP itself was doing. He asked the Board how they thought PIP was doing. Commissioner Mullins said he needed time to think about it and some members of the Board interact with Mr. Gray more than others. He said that relative to the past, CEPD has come a long way. It is prudent to start looking at this contract now. He reminded the Commissioners that it was a deliberate approach not to have employees and that Mr. Gray has performed an instrumental role.

Ms. Holzheimer said the benefits of having PIP have been great and that negotiations for a new contract should start now. She added that she would like to see a strategic plan and what needs to be done before CEPD hires an additional person. Commissioner Kaiser said that he was up in the air about another contract and that he did not have much contact with Mr. Gray. Commissioner Kaiser said that if CEPD adds anyone they should have a technical background. Commissioner Mullins remarked that Mr. Gray had “saved the day” after the death of Ms. Hagerup. He added that Mr. Gray had a lot of knowledge and that he agreed with Commissioner Holzheimer that CEPD should negotiate that best deal it can with Mr. Gray.

Chairman Boyle said that back in '07-'08, he gave Mr. Gray credit for holding things together. He asked does CEPD want another 3-year contract? a 1-year extension? Commissioner Mullins suggested that CEPD increase the demands on Mr. Gray. Chairman Boyle suggested that CEPD ask Mr. Gray for a new contract which would run from June 1, 2012 through December 31, 2013. Commissioner Mullins suggested adding an option for a one year extension to take it to the end of December 2014. Commissioner Holzheimer said

that one issue had not yet been addressed: the need to think further out into the future to a 2021 project and beyond. The complexity of projects has changed dramatically.

Commissioner Mullins said there was another variable: continuity. He said that 3 Commissioners are up for re-election. He mentioned that in previous years he had suggested dividing the office responsibilities between day-to-day activities and managing projects. Ms. Rooker remarked that it was important to have a mission and that when strategic planning is done, those plans align with the mission.

Chairman Boyle said he was looking for direction from the Board. Commissioner Mullins suggested that CEPD ask PIP for a proposal. Commissioner Mullins moved and Commissioner Holzheimer seconded a motion asking PIP to submit a contract through December 31, 2013 with a one year option to extend it through December 31, 2014. Commissioner Mullins mentioned that just like in the case where he initiated negotiations for a new office lease well before the lease expired, it was appropriate to do the same thing here. The motion passed without dissent.

Chairman Boyle said he would talk to Mr. Gray about the new hire since the person Mr. Gray proposed was not acceptable to the Board. He would also talk to Mr. Gray about the feedback he had received from the Commissioners. Commissioner Mullins said the CEPD should not allow itself to get into a position where a person is not expendable. He also said that the Board might have to take over the search.

b) Report of Citizens Committee

Ms. Rooker reviewed a schedule of committee actions and went over her 2-page Citizens Committee Meeting Summary dated 12/21 that was in the Agenda Materials as well. She also talked about her presentation to the San-Cap Board of Realtors last week. The presentation was well received by approximately 80 attendees.

Commissioner Mullins said that he had started this process but he was a little surprised when he received unsolicited feedback from realtors of how well the presentation had gone. Commissioner Mullins said that he had no knowledge that the meeting was going to occur on that date and he might have wanted to go to the meeting. He raised concern about the discontinuity - of not getting any information about the work of this committee. He said that the email he received from Commissioner Jensen stating that Commissioner Jensen had it under control was inappropriate, that even when turning something over he would still like to be kept informed, and all Commissioners should be informed of these meetings and events and invited to attend them. Commissioner Mullins expressed surprise that the communications had dried up and information had not been shared.

Commissioner Mullins also said that he had a second point he wanted to make: is there a letter going out from the CCA? He had not heard anything. Ms. Rooker responded by saying that Jack Cunningham from CCA had taken suggested letters with him and he had also asked for electronic copies. Commissioner Mullins asked whether a Beach Brief was planned and Ms. Rooker responded that she would talk with Commissioner Jensen when he returns from vacation.

c) DEP Request for Information # 1

Ms. Rooker reported that the CP&E's response to the Request for Additional Information will go back within the next day or two. She also said that the Army Corps of Engineers' Request for Additional Information had not yet been received because of a backlog of work there. Commissioner Boyle said that the proposed new pipeline corridor is being questioned and that Steve Keehn thinks it stems from misunderstanding the intent. Mr. Boutelle clarified Commissioner Boyle's next comments about doing work during turtle nesting season and said that the County is in favor of it.

8. Report of the Senior Administrator Consultant

a) Causeway Toll Count and Parking Lot Ticket Sales

Ms. Rooker briefly went over the data that appears in the Agenda Materials. She said that this data would be regularly shared with the Commissioners. December ticket sales were up compared to December 2010.

b) Parking Lot Equipment

Ms. Rooker explained that Lee County Parks and Recreation staff had recently visited Hagerup Beach Park and asked that CEPD replace the trash containers there with new ones that conform to Parks and Recreation standards. She referred to the Agenda Materials where the recommendations were pictured with specifications and estimated costs. In addition to the two double trash containers and the one single trash container, the CEPD staff was also recommending the purchase of a 20 cubic foot storage container to be placed behind the portable toilets. Commissioner Mullins moved and Commissioner Kaiser seconded a motion to accept the recommendation as outlined in the Agenda Materials and move to purchase the items forthwith. The motion passed without dissent.

c) Welcome to Captiva Sign

Both Commissioner Kaiser and Ms. Rooker reported on this topic. They are recommending a sandblasted sign, have identified 3 local companies from who CEPD can get bids, and are working on a design. They think that it should say "Welcome to Captiva" and have the CEPD logo on it. Commissioner Mullins suggested that the sign be somewhat elevated so that something could be hung under it such as a "storm ready" designation plaque. He also suggested that the sign have CEPD's name on it. Ms. Rooker asked the Commissioners how large the sign should be and Commissioner Mullins suggested that she talk to the DOT. Commissioner Kaiser said that CEPD would also talk to the DOT about where the sign can be located. Commissioners Kaiser and Holzheimer will talk about the possibility of a "storm ready" designation sign. Chairman Boyle asked that Parks and Recreation be contacted about the unsightly newspaper boxes.

d) Florida Legislative Session Update

Ms. Rooker presented an update on this item. She said that although CEPD's project was highly ranked, there are several others that have a higher ranking. However, she said, some of the higher ranked projects were not eligible for federal matching funds. She hoped that legislators will look more favorably at projects that are eligible for federal matching funds when funding is considered. Ms. Rooker said she is in touch with Debbie Flack regularly. Ms. Flack was hopeful that some of the funds for the larger project would be reduced. Ms. Rooker handed out sample letters to Florida legislators for the Commissioners to modify and send or email.

Commissioner Mullins asked what was being done to touch base with state legislators. Ms. Rooker said that Ms. Flack thought that Senators Richter and Bennett were the key people to contact. Commissioner Mullins said that CEPD needs to find a way to engage the CEPD Commissioners with these people. He also mentioned that Senator Nelson would be at a fund raiser at Rene Miville's house and at SCCF. Commissioner Holzheimer said that someone from CEPD should go to the FSBPA technical conference in February and Chairman Boyle mentioned that he might go. Ms. Rooker said that she had talked to Ms. Flack and gotten advice about the best way to reach U.S. Members of Congress, which is to contact them directly whether they are in their home districts or in Washington.

9. Commissioner Comments

Commissioner Mullins said that an economic impact study of beaches and coastal waterways on the overall Lee County economy is important and that CEPD could sponsor it or ask the Coastal Advisory Council to recommend to the TDC that they conduct it. He said that economic impact is the key to support.

Commissioner Mullins said that he was not getting all of his emails on "mycepd@gmail.com" routed over to him as he should, that such emails were part of the official public record, and that when he asked Ms. Rooker for the District's password to allow him to access all CEPD emails, which are part of CEPD's public records, he was denied because of some security issue. He said that he was told that Commissioner Boyle had talked to the District's attorney, Nancy Stroud, and they had agreed that the password was not something that should be given out to anyone due to the absolute requirement to maintain the integrity of the public records files. He objected to the CEPD Administrator being able to decide what information a commissioner can see or not see, and to suggest that he would be flippant with this and it would get out into the public was absurd. Ms. Rooker added the accidental addition of a virus would affect the integrity of the public records file.

Commissioner Mullins continued by saying if ones goes into the office, one can supposedly get this information on line, but he has his doubts because there is no degree of supervision on the part of the Board to say that it is happening. He said that the Standard Operating Procedure he looked at does not say that the administrator has the right to deny a commissioner this information, that it says that passwords are provided as necessary, and that it was up to the commissioners to determine what they need to do their job, not the Administrator. He said that during the time he was chairman, he never felt the need to call CEPD's attorney to find out whether a fellow Commissioner needed something.

He said there is some history within the last month of problems with G-Mail and asked why, if he were having problems, emails were not sent to his personal mycepd account. Instead, he said, what he got was a wall that said he could not have the password and the attorney and chairman support this. He said that Ms. Rooker asked him to identify which emails he was not getting, which he found patently absurd. He said that other commissioner may not know if they are missing emails. Commissioner Mullins moved and Commissioner Holzheimer seconded a motion that Commissioner Mullins be given the password and that the procedure that the Administrator can make a decision to withhold information from a commissioner be addressed.

Commissioner Holzheimer asked what the problem was. Ms. Rooker explained that as the CEPD-designated legal Custodian of Records, she is responsible for ensuring the protection of the official records of the District, which includes emails sent to and from CEPD. Limiting access to the official email log by limiting who has the password is the only way she can certify that nothing has been corrupted, something she must do each year. Chairman Boyle agreed that this was a matter of security and also mentioned that viruses might corrupt the file. He also said that he had consulted CEPD's attorney, Nancy Stroud, at least twice or more about this matter and that she continues to be clear that the password should not be given out and it be kept in a secure place. Chairman Boyle said that if discussion of this issue continues, CEPD could invite Nancy Stroud to the next meeting. Commissioner Mullins responded by saying that doing this would be ridiculous since Nancy Stroud does not establish the procedures. There is no law that requires that. He told Chairman Boyle that the Chair's interpretation of what an attorney is doing for CEPD is different from his. He said that CEPD has gone elsewhere for services at times because CEPD has received mixed opinions about Ms. Stroud. When CEPD researched this public record issue relative to recording, she was wrong. He said that perhaps Chairman Boyle is not explaining the issue to her properly. Commissioner Mullins said that one can always get an answer out of an attorney that you want if you are not properly explaining it. Chairman Boyle offered to get something in writing from Ms. Stroud but Commissioner Mullins said he did not want that and he had a motion on the floor.

Commissioner Kaiser asked what is so special about this file? Ms. Rooker explained that it is a password not a file; what happens when an email comes in; and that it is a public record at this point. She continued that if the password is given out and is beyond her control as Custodian of Records, anything can happen to those records.

Commissioner Mullins explained that he is concerned that records are possibly lost if emails do not go properly to a log since they are public records. Nancy Stroud has told CEPD that these emails must be kept. He said that he needs access so that he can get a better handle on what traffic is coming and going, and because it is his fiduciary responsibility to see that staff is doing their jobs right. He said he would sign an affidavit that he will not misuse the password and protect it. He asked what else might be found going forward that Ms. Rooker determines or Ms. Stroud determines that Commissioners don't have access to?

Chairman Boyle raised the issue of Commissioner Mullins not receiving emails. Chairman Boyle said that there is no attempt on anyone's part to hide or withhold information from any Commissioner. He stated that at no time did he instruct anyone not to communicate with Commissioner Mullins and repeated the exact same sentence a second time. He said that this is a public records issue and that he will rely on CEPD's attorney's opinion that the password not is given out, having been told that by her twice. He said that if Commissioner Mullins is not receiving emails, then that is a technical issue that CEPD will fix. Commissioner Mullins said that he felt that there had been no attempt to fix his email problems. Ms. Rooker outlined what she had done to determine what the problem was. Commissioner Mullins said that he did not think enough was done and that he has never seen where the attorney gets into the level of detail of defining procedures. Chairman Boyle mentioned that Bob Gray of PIP had been consulted on this issue of the password and had agreed with the attorney's opinion.

Chairman Boyle called for a vote on the motion. Commissioner Mullins invoked the privilege of the maker of the motion having the last word on the subject and said that he believes one

Commissioner should be supervising the recording of emails to ensure that all emails go to a central log. He also said the present restriction puts too much control in the hands of the Administrator, and access is something he needs to meet his fiduciary responsibilities. Commissioner Holzheimer asked whether there were another way to accomplish this? Commissioner Mullins responded that he wants to be able to see if the Administrator is copying emails to the journal and there is no other way of doing this. He believes one Commissioner ought to be supervising this and there should be more than just one single individual in the organization supervising this information, and he would like to be that person since he feels he is the most qualified.

Ms. Rooker said that if the board decision were to provide others access to the password, she would no longer serve as the Custodian of Records because legally she cannot execute her obligations under that responsibility. Ms. Rooker also explained how the password is kept secure and that it can be retrieved should something were to happen to her. Commissioner Mullins asked to modify his motion to include the wording "subject to clear opinion of counsel on this subject." The reason for the addition is that he believes the attorney is dead wrong or that it is being explained to her inappropriately. He also said that he wants to work on the wording of the letter that goes to CEPD's attorney so that it represents what he is looking for. He suggested that he could write a letter for Chairman Boyle's signature to be sent to the District's counsel. Chairman Boyle responded that he only signs letters he writes.

Chairman Boyle said that he agreed that the Commissioners' fiduciary responsibility is very real and all CEPD Commissioners have a responsibility to protect the security and integrity of this public record. He further stated that it would be ill advised for CEPD to go against the advice of the District's attorney.

Commissioner Mullins called for the vote again. Commissioner Kaiser said that there had not been a vote on the amendment. Commissioner Mullins said that there was not an amendment; he had withdrawn the original motion and had presented a new one. Chairman Boyle said that the discussion had reached a point where the presence of the CEPD attorney was necessary, that the full Board needed to be present, and it would be best to move this to the next meeting. Commissioner Mullins raised a point of order that there was a motion on the table and moved the motion and asked for a second. Commissioner Kaiser seconded it. Both Commissioners Holzheimer and Kaiser said they would like to have legal advice before voting to do it or not to do it. Commissioner Mullins explained further the rationale for his motion for an opinion of counsel – something in writing from the attorney. He said that he wants CEPD's attorney to cite the law that governs that the password must be kept confidential in one person's hands and not shared in a controlled manner. If she cannot, then it is merely her opinion. Commissioner Holzheimer said that it is her opinion that we pay her for. Commissioner Mullins replied that Commissioners don't ignore their own guidance and their own business experience. He stated that the CEPD attorney is wrong on this. The vote was called. Commissioners Holzheimer, Kaiser, Boyle voted against the motion. Commissioners Mullins voted for the motion. The motion failed.

Ms. Rooker said that the Commissioners and the public can always come into the CEPD office and view the records, although she must be there as the Custodian. Commissioners Mullins said that this was even a greater risk than what he is proposing since Ms. Rooker is not going to stand over the person's shoulder. Therefore CEPD is at risk that they change something. Ms.

Rooker said that staying with the person is part of the responsibility of being Custodian of Records. Commissioner Mullins replied that this is not practical. The Commissioners agreed that Commissioner Mullins would write a letter to CEPD's attorney asking for an opinion of counsel on this matter. They also agreed that the email problem must be fixed. Chairman Boyle suggested that perhaps it was time to bring in experts other than CEPD's webmaster. Commissioner Mullins talked about a previous plan to go to the "professional" version of email but this had not happened.

Commissioner Mullins brought up a concern that the change of the Board Briefing date from January 5 to January 6 violated the Rules of Procedure because the Board had not approved it. Chairman Boyle read the December 22 email announcing the change. He held up the News-Press Notice of Public Meetings which included the January 6 Briefing Meeting date, the posted schedule, and two other emails notifying Commissioners of the January 6th date. Commissioner Mullins said Chairman Boyle did not have to read the other emails. Commissioner Mullins said these are the kinds of safety net issues that he has talked about in the past; that Commissioners should not just trust the people in the trenches to catch problems; and the way they get handled is having somebody overseeing them. Chairman Boyle apologized for the procedural error.

Commissioner Mullins said he had asked that every CEPD public meeting, including Board Briefing Meetings, be recorded and that they be sent to him. He asked whether the Commissioners and Ms. Rooker remembered this request. Chairman Boyle responded that Ms. Rooker had brought this request to his attention and that the request for Board Briefing Recordings was outside the current policy that Commissioner Mullins had established when he was Chair, and he had checked with Nancy Stroud, who suggested that the current policy could be changed by a Board motion. Commissioner Mullins said he had never established such a policy, there was no standard operating procedure for this, and that when he was Chair, unless there was a request for the meeting to be recorded, it would not be recorded. He said there was no policy; it was a matter of practice. Commissioner Mullins continued that if a request is made for a recording, a recording must be provided. He said Chairman Boyle had received bad legal advice. Chairman Boyle said that from this point forward, every public meeting will be recorded as motion to that effect had passed earlier. He said that if the Board wants to make a motion now that emergency meetings also are recorded, he would entertain a motion now. Commissioners Mullins and Holzheimer said a motion was not necessary; it was already done. Chairman Boyle explained his reasons why Board Briefing Meetings had not been recorded in the past, although it was moot now.

10. Adjourn

Chairman Boyle adjourned the meeting at 4:22.