

## Minutes

Regular Meeting of the  
Captiva Erosion Prevention District  
Tweent Waters Inn, 15951 Captiva Drive  
Captiva, Florida 33924  
April 11, 2012 @ Noon

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

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

Consultants Present: Steve Keehn, Coastal Planning & Engineering; Bob Gray, Partners in Progress

### **1. Call to Order**

The meeting was called to order by Chairman Boyle at 12:00 noon

### **2. Roll Call**

The roll was called and the results are outlined above.

### **3. Approval of March Meeting Minutes**

Mr. Kaiser moved and Mr. Jensen seconded a motion to dispense with the reading and approve the minutes as presented from the March 1, 2012 Board Briefing Meeting, the March 7, 2012 Regular Board Meeting, and the March 29, 2012 Board Briefing Meeting. Mr. Mullins said although he would not object, he did not have time to read them and the other Agenda Materials that he received Monday afternoon and would like to raise the issue again about receiving the Agenda Materials the Friday prior to the meeting so that he could read them over the weekend. The motion on the minutes passed with Mr. Mullins opposed.

The discussion turned to the issue of the Briefing Meetings. Mr. Mullins said it would be nice to have an email quorum call, that these meetings are announced or cancelled just two days before, and he has a very busy schedule and cannot make plans based on that notice. CEPD should take an email quorum call. He said that there is just a notice that the meeting is on or cancelled and that he does not think that is appropriate. He said it would be nice to know more than two days in advance. Chairman Boyle said that the Commissioners would discuss this issue as the meeting moves forward.

### **4. Public to be Heard**

Chairman Boyle called upon Jack Cunningham. Mr. Cunningham asked that the Commissioners examine the issue of when the public may be heard in the course of a Board meeting. He asked that the public have the opportunity to ask questions or make comments throughout the course of the meeting rather than just at the beginning. He said that at a minimum the public should have the opportunity to be heard at the end of the meeting but preferably throughout the meeting. Chairman Boyle said that he did not think it was appropriate to have the public comment throughout the meeting nor was it allowed in the District's Rules of Procedure. He said that it would be possible to move the public comments to

the end of the meeting if the Board agrees. Chairman Boyle said that this suggestion would be taken up toward the end of this meeting.

Chairman Boyle then called upon Steve Boutelle, with the Lee County Division of Natural Resources, who was in the audience, to provide an update on the Blind Pass situation. Mr. Boutelle commented that he had heard a rumor that there was a permitting problem and sand could not be put on northern Sanibel. He said that this was just a misunderstanding. He said that the County is moving forward to get Board of County Commissioners' approval for the project as permitted. A date for the County Commissioners to review the contract has been moved to April 24 because of the need for additional review by legal staff. Mr. Boutelle said that the County is meeting with the Army Corps of Engineers next Thursday to complete the permit modification request including putting sand on northern Sanibel.

Mr. Mullins asked whether communications are improving between the CEPD and Sanibel. Judie Zimomra, Sanibel City Manager, commented that they had received the CEPD agenda for this meeting in advance. She reported that the city's outside engineer was completing the take-off numbers for sand deposited on Sanibel. Chairman Boyle mentioned that Mayor Ruane and he had talked the very Friday following the last Board meeting and talked about the communications issues that had been raised.

## **5. Financial Report**

### **Approval of FY 2010/2011 Audited Financial Statements**

Mr. Jensen asked if there were any questions about the financial report contained in the Agenda Materials. There were none. He then turned the Commissioners' attention to the FY 2010-11 audit. Mr. Jensen moved and Mr. Mullins seconded a motion to approve the FY 2010-2011 Audited Financial Statements as presented by Stroemer & Company. Mr. Mullins said that he thought it was important to point out to the audience that CEPD has put itself in good financial standing. The motion to approve the audit passed without dissent.

## **6. Old Business**

### **a) Mycepd.com email address**

Caroline Semerjian, President of Effective Marketing & Creative Concepts (EMC2) and CEPD's webmaster, discussed the merits of CEPD moving to an email system that advertises CEPD's domain name and the other advantages of moving from the current Google email system. She explained that this application was already set up and ready to go after Commissioners verify their participation via an email sent to them, which she said is an easy one-step process. Commissioners made comments and asked questions, which Ms. Semerjian answered. Mr. Mullins suggested a transition or test period before it is rolled out to everyone. Commissioners agreed to move to this new email system and Ms. Rooker was asked to schedule times that each Commissioner, or their technology representative, could meet with Ms. Semerjian if they required assistance.

Mr. Mullins congratulated Ms. Semerjian on CEPD's newly revised website and the very easy transition to it.

### **b) Replacement Sign**

Mr. Kaiser provided background and history regarding this item. He presented an artist's mock-up of the proposed sign, reported that it had already been approved by the Lee County Division of Parks and Recreation, and no permit was needed. He said that \$10,000 had been budgeted by CEPD this year for the sign and bids totaled about \$5,000 including the cost of the sign, erection of

it, and landscaping around it. Ms. Holzheimer raised the issue of maintaining the landscape around the sign including weeding. Mr. Kaiser responded that the use of native materials will reduce the need for periodic maintenance. Mr. Mullins remarked that the sign did not say "Captiva Erosion Prevention District" on it, and in response Mr. Kaiser said that the strategy was to keep it simple. He added that there is the opportunity to hang something below the main sign.

Mr. Kaiser moved and Mr. Mullins seconded a motion to approve the plans and cost of the sign. Mr. Mullins suggested that a QR code be added to the sign and the other Commissioners agreed. Ms. Rooker agreed to arrange this with the sign maker. Mr. Jensen asked whether CEPD needs to budget in the future for maintenance costs. Mr. Mullins said that it could be added to the parking lot maintenance budget. The motion passed without dissent.

### **c) Legislative and Funding Update**

Chairman Boyle reported that the state budget, which includes the beach nourishment funding, is on Governor Scott's desk and that those in Tallahassee are optimistic that it will be approved in the next two weeks.

Regarding Federal funding through the Army Corps of Engineers, Mr. Boyle reported that local ACOE staff continues to work on it inferring that they must have some sense that CEPD's project is going to be reinstated. He said that many jurisdictions throughout the country have complained about their projects being cut and the ACOE in Washington has said that it is reevaluating their criteria. He added that the Jacksonville staff's goal is to award the contract by September 1, 2012, which means that bids need to be solicited by July 1 and received back by August 1. He thinks CEPD will hear back from Jacksonville COE staff by the end of April one way or the other.

Mr. Boyle continued by saying that CEPD is still working with Lee County on the Interlocal Agreement between the two parties, particularly his desire to see CEPD and the County split the costs after other funding on a 50-50 basis rather than use the county's formula. Mr. Mullins asked if the discussions with the County have been memorialized in writing? Chairman Boyle responded that they had been. Mr. Mullins said that it would be nice if the Commissioners could see an updated version of the ILA. He asked if state funding is contingent on Federal funding and Chairman Boyle replied that it was not. He also asked if it were contingent on beginning the project this year and Chairman Boyle said there was an 18-month clock.

Chairman Boyle said that Blind Pass is complicating the issue: if the County can get authorization for the dredging, there may not be a need to deposit sand on Sanibel as part of the nourishment project. With regard to dovetailing with Collier County, it does not appear possible since their project may not commence until next year. He also said that if CEPD waits until next year and takes COE funding next year, working with Collier County is not possible. He emphasized that the Commissioners will have to decide what course of action to take.

Mr. Mullins asked about the idea of creating deposit areas to bank sand so that CEPD could do things without effecting turtle season or tourist season. He wanted to know whether that opportunity was still available. Mr. Keehn responded that he is still going through with the permit modification, that the COE has been a little slow with the modification, and that banking sand will be in the plan so the option is still available. Mr. Mullins asked if one assumes the Federal money comes through and the project has to start in September, could CEPD start having the Feds stage the sand off Captiva so that it allows

CEPD to complete the construction at a later time so that the benefits doing it that way are taken advantage of? He further asked what does it take to qualify to start in September? Chairman Boyle said that it would require CEPD to go out for bids on its own and not wait for the COE to go out for bids in July. Mr. Keehn said that when we go out, we must give them both the offshore and the beach option at the same time and that it will be up to the contractor whether it would be advantageous to use stockpiled areas, unless CEPD directs otherwise. He said we really can't bid for the project unless everything is ready to go and added that the Corps wants to do everything at once.

Mr. Mullins expressed concern about running out of time to give businesses on Captiva and the community in general adequate notice of construction. He asked whether there is the flexibility of doing the work that causes the most disturbances in the slow season and still qualify for Federal money? Mr. Mullins also asked what is the minimum amount of work that the Corps is going to require CEPD to do, if they say yes, so that CEPD can still take advantage of using banked sand resources and not ruin the season and do the second part of the project further out? Is there a way to qualify, get the money, and not actually do construction? Mr. Keehn responded that it is very difficult for CEPD to require the contractor to split his operation. The money savings comes when one gives the contractor flexibility and opportunities to optimize his schedule. Mr. Mullins asked whether there was some level of work that needs to be done starting in September that allows completion in 2013?

Chairman Boyle said that to keep the COE option open for the October 2012 start date, the Pre-Construction Survey must be done between now and the middle of June to allow the Corps to make whatever adjustments might be necessary after they review the survey and still go out for bids July 1. He referred the Commissioners to CP&E's Pre-Construction Survey proposal in the Agenda Materials. He explained that the proposal keeps Sanibel and Captiva separate since the Sanibel work may not have to be done if dredging of Blind Pass is done. If this were the case, the cost of the Survey would be in the \$40,000 range rather than \$53,000. He said that this is the one decision that needs to be made today. Mr. Jensen asked, given what is known now, is CEPD going to go forward with the project this year even if it does not have COE funding? Chairman Boyle responded that this was a decision for the Board. Mr. Jensen also asked if CEPD is not willing to go forward without the COE money, does the Board have time to make a decision on the Pre-Construction Survey, and by what date does the decision have to be made, in order to get it done in time. Discussion led to the determination that there is not time; the decision needs to be made today. Mr. Keehn said, however, that CEPD could approve the contract based on a "notice to proceed basis," which allows CEPD to instruct CP&E as to when to go forward on the Pre-Construction Survey work. Chairman Boyle asked Mr. Keehn what is the latest date CEPD can give the notice to proceed to CP&E. Mr. Keehn responded that it was the next couple of months.

Mr. Mullins said that he would wait until next year to start the project if COE funding did not come through this year. The money from the state is good for 18 months. Waiting might optimize dredging costs, allow working with Collier County, and Federal money might still be available. With a great deal of work already done, CEPD could then proceed less quickly and have time to communicate with the community. He also said that there is no great need to do the project this year from an erosion point of view. Chairman Boyle said that CEPD still needs to be ready if the COE approves the project. He said that doing the Pre-Construction Survey now even if the COE does not come up with the money is not wasted. Mr. Keehn explained that the survey can be used next year. Mr. Mullins moved

and Mr. Kaiser seconded a motion to approve the contract with CP&E for the Pre-Construction Survey with a notice to proceed given by CEPD to CP&E if and when the COE notifies CEPD that the project has been reinstated. The motion passed without dissent.

Chairman Boyle said that the COE will require \$300,000 to be paid to them immediately upon reinstatement of the project in their work plan. Mr. Boyle requested a motion to approve and authorize this payment if requested by the COE. Mr. Jensen moved and Mr. Kaiser seconded a motion to authorize payment of \$300,000 to the Army Corps of Engineers contingent on CEPD receiving state funding and contingent on the Corps receiving money for the CEPD project and providing a written request. Mr. Mullins suggested that an Emergency Meeting be held to consider this motion so that Commissioners have time to review the plan and design that follows in the Agenda Materials. Mr. Jensen withdrew his motion and Mr. Kaiser, who seconded it, also agreed to withdraw the motion.

**d) Renourishment Schedule**

- o Design
- o Schedule
- o Pre-Construction Survey Scope of Work

Chairman Boyle went over the Project Schedule, a draft of which was contained in the Agenda Materials. He answered questions from the Commissioners with Ms. Rooker and Mr. Keehn assisting. Mr. Mullins remarked that the schedule needed more amplification. Chairman Boyle commented that he did not know what more could be provided. Mr. Gray suggested the plan was based on assumptions and can be revised if the assumptions change. Mr. Mullins talked about a “drop-dead date” and asked what is the least amount of work CEPD can do to meet the requirements of the Army Corps in September so that CEPD can still say we have earned the money but still have plenty of time to do the project that needs to be done. Chairman Boyle responded that the first “least amount” CEPD can do was already done when the Board approved the Pre-Construction Survey contract. He said the next “least amount of work,” if CEPD wants to take advantage of Federal funding this year, assuming that CEPD receives notice that it has Federal funding, is to lock the funding up by paying the advance requested by the COE of \$300,000.

Mr. Mullins said he wants to get comfortable that CEPD is not going to spend \$300,000 and not get Federal money and the project does not proceed. Mr. Keehn responded that the Corps will not ask for the \$300,000 unless they have the funding. Additional discussion took place about funding the project through a bond or a loan, the timing of the borrowing, a “drop-dead date,” and other timelines. Mr. Jensen moved and Mr. Mullins seconded a motion to authorize the CEPD Administrator to pay \$300,000 to the Army Corps of Engineers contingent on CEPD receiving state funding and contingent upon the Corps giving CEPD the go ahead. Discussion ensued about what the payment covered and whether it could be recovered if the COE spends it and decides not to build the project. Mr. Keehn said it might depend on whether the Corps considers the money for design or construction. Ms. Rooker was asked to get answers to this question and report back to the Board. Mr. Keehn thought that the probability of losing the money was quite low. Mr. Mullins commented that both spending the \$53,000 on the Pre-Construction Survey and the \$300,000 was worth the risk to get \$4 to \$5 million in funding and it is important that the

community understand this. Mr. Keehn said that one way to look at spending this money is to look at it as earnest money. Chairman Boyle called for a vote on the motion and it passed unanimously.

The Commissioners then reviewed the project design drawings contained in the Agenda Materials. Mr. Keehn said he is working closely with the COE and provided a PowerPoint presentation that showed graphics of erosion rates and shoreline changes on Captiva's beaches since the last project and through the last survey, which occurred in February 2011. He also showed data and graphics comparing base beach lines to actual shoreline.

Chairman Boyle brought up the need to sign another \$10,000 "blanket order" or hourly contract with CP&E to cover ad hoc work not already included in the 2 other contracts CEPD has with CP&E. Mr. Keehn explained what this contract was for. Mr. Jensen asked where this expense is categorized in the budget and was told that it was in the Capital Project Budget under Engineering Services. Mr. Mullins objected to the 11<sup>th</sup> hour notice from CP&E and would like to have had more notice. Mr. Jensen moved and Mr. Mullins seconded a motion to approve the additional \$10,000 with the proviso that in the future, such requests by CP&E are made at least 30 days in advance. The motion passed without dissent.

**e) Partners in Progress Term Sheet**

Chairman Boyle reviewed why CEPD had requested a 3-6 month extension of the Partners in Progress contract. Commissioners were referred to the documents in the Agenda Materials. Mr. Gray, President of PIP, said he was willing to do the extension at the new proposed rates and explained why he is asking for the increase. Mr. Mullins sought and received clarification on the amount of money involved. There was discussion then among the Commissioners of the advantages and disadvantages of executing this extension.

Chairman Boyle said the list of tasks or Scope of Services contained in Mr. Gray's proposal needed clarification. He said that there is a lot that is not included that is routinely done and is not addressed in the contract. Mr. Gray explained why this was and how it related to the Standard Operating Procedures that PIP had developed. Mr. Mullins pointed out that one of the reasons an extension had been proposed was to allow time for the Scope of Services to be further clarified. Another reason for an extension, he said, was that there will be a lot more information available to the Commissioners in the next few months and this would enable the Commissioners to make more informed decisions regarding the PIP contract. There was further discussion of the Scope of Services.

Chairman Boyle asked Mr. Gray that if there is an agreement between CEPD and PIP for the next 3 to 6 months, will some of that increase be passed on to the two current consultants? Mr. Gray said yes and that some of the increase had already been passed on. He added that he would align contracts with the consultants to whatever the period of PIP's contract is. Mr. Kaiser raised his concern about the consultants having to sign a non-compete clause. There was discussion about this issue. Mr. Jensen asked Mr. Gray if he would entertain 3 months with an option for another 3 months? Mr. Gray replied yes. Chairman Boyle asked if Mr. Gray would be willing to write into the contract the following four points: (1) he will not precipitate any changes to the current consultant staff without Board approval; (2) he will ensure that he has contracts in place with the two current consultants; (3) he will get Board approval on any replacement to the consulting staff; and (4) he will pass along the temporary increase to staff. Mr. Gray said he was certainly willing to do this. He added that he thinks he and Ms. Rooker have a terrific working relationship. He

said that he had already checked with Ms. Rooker because he wasn't interested in renewing or extending the contract with CEPD if she isn't interested. He said that Ms. Rooker is an integral part of CEPD and PIP and the reason why this works.

Mr. Gray explained how the Standard Operating Procedures interface with the Scope of Services, how they delineate what tasks are performed, and how they contribute to the measurement of PIP's performance. He also reminded the Commissioners that there were two contracts with PIP, administrative and project, and the tasks that might not appear in one contract are in the other. Mr. Gray said he was willing to further develop the contracts and add additional tasks. It was decided that Mr. Gray would put together a letter outlining what had just been discussed and get it back to the Commissioners in time for them to approve the extension at the next meeting.

Mr. Gray then brought up the ASBPA Best of the Best Restored Beaches award voting. He suggested that CEPD fund some of his teenage nieces and nephews to use Facebook to urge people to vote for Captiva. He based this recommendation on some testing he had done at his own cost in the past two days to see if CEPD could get more votes. He said that the testing had garnered CEPD many more votes than if he had not done this test. Mr. Mullins asked how much would this cost and Mr. Gary replied \$2,000.

Mr. Mullins moved the discussion back to approving the PIP contract extension, saying that he felt the Commissioners should approve something now because of the possibility that a quorum might not be present at the next meeting. Chairman Boyle agreed. Mr. Jensen moved and Mr. Kaiser seconded a motion to approve a 3-month extension of the PIP contract, with an option for another 3 months, that includes the four points that Chairman Boyle made earlier in the meeting to which Mr. Gray agreed to put in a letter to be received by the Board before the next board meeting. The motion passed unanimously.

The discussion then turned back to the ASBPA award voting. Mr. Mullins suggested that CEPD split the cost with Partners in Progress for the Facebook campaign. Both Mr. Mullins and Ms. Holzheimer thought there was great public relations value in winning this award. Mr. Mullins moved and Ms. Holzheimer seconded a motion to approve \$1,000 for PIP to continue the Facebook effort. The motion passed 3 votes to 2; Mr. Jensen and Mr. Boyle voted against the motion.

## **7. New Business**

There was none.

## **8. Report of the Senior Administrator**

### **a) TDC Funding Request**

Ms. Rooker briefed the Commissioners on the new Tourist Development Council funding request. It includes \$21,284 for the Hagerup Beach maintenance, including a second Mobi-Mat handicap access mat for the second picnic table, and money for a beach survey. She said that the beach survey request would be withdrawn if CEPD goes ahead with the renourishment project. She said that CEPD would hear from the TDC in May or June about whether they approved the grants and then the approved requests would be sent to the Lee County Board of Commissioners for their approval in September.

### **b) Technology Upgrades**

Ms. Rooker reported on the technology upgrades that CEPD had recently undergone with the assistance of Computer Solutions of America. Upgrades included moving to Windows Home from Vista, upgrading Microsoft Office, adding Microsoft Project, installing a file server, and

implementing various measures and safeguards for file backup. The cost to do this was \$3,200.

**9. Commissioner Comments**

Mr. Boyle called upon Jack Cunningham, who had addressed the Commissioners earlier in the meeting. Mr. Cunningham said he would like to revise his request to allow the public to be heard at both the beginning and end of the meeting. He also commented on the sign discussion saying that the sign should be in compliance with the Captiva sign code. He suggested that the \$300,000 for the COE could be re-directed to the design of a future project and asked how much money was authorized for emergency nourishment.

Chairman Boyle responded to Mr. Cunningham and said that the Rules of Procedure allow for public comments at the beginning or end of the meeting or both and this will be done starting at the next Meeting since the Commissioners were in favor of this. Mr. Mullins said that CEPD has a bigger issue with communications and CEPD needs to redefine its communications and public relations efforts. Mr. Jensen suggested that the Chair should be allowed to exercise some discretion regarding when the public can be heard. Regarding the sign, Chairman Boyle said it had been approved by the County and was 4 feet by 4 feet. Regarding the \$300,000, Mr. Boyle asked Ms. Rooker to follow-up on this idea but he thought it was highly unlikely. He said that the emergency funding amount was \$15 million.

Mr. Mullins reiterated both that he would like to see the latest draft of the ILA with Lee County and his opinion that the County matches CEPD with a 50/50 split in the new ILA agreement. Chairman Boyle said that this was his goal.

**10. Adjourn**

The meeting was adjourned at 4:50 p.m.