

## Minutes

### Regular Meeting of the Captiva Erosion Prevention District

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

August 15, 2012 @ Noon

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

Staff Present: Kathleen Rooker, CEPD Administrator; JoAnn Paul-Young, CEPD Accountant; John Bralove, CEPD Assistant to the Administrator; Nancy Stroud, CEPD Attorney – by telephone.

#### 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 July Meeting Minutes

Mr. Kaiser moved and Mr. Jensen seconded a motion to dispense with the reading and approve the minutes as presented from the July 10, 2012 Board Budget Meeting and the July 11, 2012 Regular Board Meeting. The motion passed unanimously.

#### 4. Public to be Heard

Jack Cunningham urged Chairman Boyle to reconsider Mr. Boyle's resignation from the Captiva Community Panel. Mr. Boyle said he thought it best to take the counsel of the District's attorney as he had outlined in his resignation letter. Mr. Boyle said he had received a verbal opinion from the District's attorney, Nancy Stroud. Mr. Mullins opined that the justification for Mr. Boyle's resignation was not appropriate and requested a copy of the attorney's opinion. Chairman Boyle responded that, as there was no written opinion, he agreed to request one from the District's attorney.

#### 5. Financial Report

Mr. Jensen pointed to the financial documents in the Agenda Materials. He asked whether the Board should consider one more Briefing Meeting to discuss the FY 2013 Budget prior to its presentation at the Tentative Budget Hearing on September 6. After discussion, the consensus was that such a meeting was not necessary. Mr. Mullins asked that a detailed breakout of legal fees associated with the management consultant effort be provided at the next Board meeting.

#### 6. Old Business

##### a) Resolution Approving Staff Engineering Services to CEPD Board

Chairman Boyle reviewed why a resolution might be needed to authorize the contract with CP&E that was approved via a motion at last month's meeting. Mr. Mullins requested a ruling from the Parliamentarian, Mr. Kaiser, as to whether this needed to be done in the future in similar circumstances. Mr. Kaiser said he thought it should be done and the

consensus was that it should be done all the time. Ms. Rooker read Resolution 2012-2 aloud. Mr. Mullins moved and Mr. Kaiser seconded a motion to approve Resolution 2012-2. The motion passed unanimously.

**b) Legislative and Funding Update**

- **Lee County ILA**

Chairman Boyle reported that there had not been any additional discussion with the County on this subject. He said he thought the County was waiting for the state decision and asked Steve Boutelle of the Lee County Division of Natural Resources, who was in the audience, to comment. Mr. Boutelle confirmed this.

- **DEP Grant Agreement**

Ms. Rooker updated Commissioners on this subject. She said the DEP will compose a letter with their response to CEPD's comments, send it to the CEPD, and if CEPD agrees with it, DEP will do a new corrected version of the grant agreement. Ms. Rooker said CEPD is still waiting for that letter and said that DEP is waiting on feedback from their bureau chief.

Mr. Mullins asked whether the outstanding issues with FEMA had been resolved. Ms. Rooker responded that they had. Mr. Mullins moved and Mr. Boyle seconded a motion to send a letter to DEP informing them of the final closeout. The consensus was that there is no reason not to do this to make sure there are no surprises. Chairman Boyle wondered whether a letter to the County should also be sent and Mr. Boutelle said it was not needed. The motion passed unanimously.

- **Army Corps of Engineers**

Chairman Boyle reported that CEPD's project would not be reinstated in the 2012 work plan. He said he was told competition both for this funding and emergency maintenance was very tough and CEPD would be well advised to engage a lobbyist.

Chairman Boyle moved the agenda to Agenda Item 7(b).

**7. New Business**

**b) Request for Federal Lobbyist Proposals**

Ms. Rooker reported that 3 firms, Van Scoyoc Associates, Marlowe and Company, and Hogan Lovells responded to CEPD's Request for Proposals. She said the one other company had declined to send a proposal due to a conflict of interest. Ms. Rooker provided a synopsis of each proposal. Mr. Mullins reminded the Board that a decision had not yet been made as to whether to engage a lobbyist at all. The consensus was that without a lobbyist, CEPD is at risk to lose both new project federal funding for 2013 or 2014 and emergency maintenance funding for Tropical Storm Debby damage because of intense competition for limited funds.

There was discussion of the merits of each proposal. Ms. Rooker pointed out that the benefit/cost ratio that Marlowe quoted is not the same one she has. Commissioner Mullins commented on indications from Howard Marlowe that there would be little chance for the District to receive funding from the Army Corps. Mr. Mullins said he thought there was a lot more to read and understand about the proposals and therefore he would vote "no" at this time to engage a lobbyist. Mr. Mullins asked whether the lobbyist would work on emergency

funding only and Chairman Boyle responded that they would work on both. Additional discussion included the cost of the proposals, length, cancellation, and potential conflicts of interest. Mr. Boutelle was asked who Lee County uses and what they do. Mr. Boutelle said the County uses Van Scoyoc. Based on Mr. Boutelle's response and the issue of conflict of interest, Mr. Mullins thought CEPD had an opportunity to get TDC funding for lobbying. Ms. Rooker said that CEPD would not be able to put in a funding request to TDC until next year and if approved, it would not be funded until October 2013.

After further discussion, Mr. Jensen moved and Mr. Boyle seconded a motion to approve Resolution 2012-3 to engage Van Scoyoc Associates Inc. (VSA) on a month-to-month basis at \$6,500 per month to assist CEPD in obtaining funding for both emergency maintenance and project funding. After discussion about the possibility of negotiating other terms with VSA, Chairman Boyle called for the vote on the motion. The motion passed 4 to 1 with Mr. Mullins voting against the motion. Ms. Rooker then read Resolution 2012-3 aloud. The Board passed the resolution 4 to 1 with Mr. Mullins voting against it.

Ms. Rooker was asked to get answers to the issues and discrepancies that were revealed in the Marlowe proposal. Ms. Rooker said Greg Burns of VSA would look into this and she would report back at the next meeting.

Chairman Boyle moved the agenda to Agenda Item 6(c).

## **6. Old Business**

### **c) Renourishment Project**

Chairman Boyle reported that the changed circumstances regarding federal funding opened up the opportunity for CEPD to partner with Collier County, according to Steve Keehn, CP&E engineer. Mr. Boyle said that Collier County wanted to start their project September 15, 2013, which would mean that CEPD would start its project around June 1, 2013 if it were to partner. The savings to CEPD could be as much as \$1 million. He added that CEPD options currently were to partner with Collier, go on its own, or work with the ACOE. Chairman Boyle asked for Commissioners' thought about this.

Discussion included starting during turtle nesting season or interfering with the peak tourist season. Chairman Boyle reminded Commissioners about the 18-month window of eligibility for state funding, which began July 1, 2012. Mr. Boyle asked whether CEPD should set a target for June 1, 2013. Mr. Jensen said yes if it is going to save \$1 million. Mr. Mullins said he did not see any down side to doing this and dates tend to slip anyway. He added CEPD should continue with discussions with Collier County. Mr. Boyle agreed and added that CEPD should starting looking now at permitting, financing, and planning that has to be done around a June 1 date if CEPD wants to partner with Collier. If it does not happen, he said, then the date would move back to September 1. He is looking for some direction from the Board relative to a June 1 start date. Mr. Mullins suggested that CEPD had a lot to gain and nothing to lose and Mr. Kaiser agreed. Mr. Mullins moved and Mr. Kaiser seconded a motion to continue discussions with Collier County and put together some beneficial agreement with them. Chairman Boyle asked who should contact Collier County. Mr. Mullins volunteered himself along with Mrs. Rooker. He suggested that Ms. Rooker write Collier County advising them that CEPD is interested and would like to find a mutually agreeable time for everyone to meet. Ms. Rooker suggested that Steve Keehn continue to

be involved in this since he has been CEPD's "go-between" with Collier. Ms. Holzheimer asked that SCCF be contacted. The vote was called and the motion passed unanimously.

**d) DEP Rule Making Report– Lobby Efforts**

Chairman Boyle reported that the DEP has not asked for public comments yet. Ms. Rooker reported that FSBPA has been working on this issue with DEP, has sent documentation to CEPD, and Ms. Rooker in turn has sent CEPD comments back to FSBPA. Ms. Rooker said she is also following things on DEP's website and pointed Commissioners to the Agenda Materials for a listing of CEPD's comments to date. She said that she will forward any additional Commissioners' comments and the sooner she received them the better. Chairman Boyle asked Ms. Rooker to move forward as appropriate.

**e) Management Consultant Services**

Chairman Boyle provided background on this agenda item and commented that it was down to two finalists after Commissioners had reviewed the responses at the Briefing Meeting on August 9: Partners in Progress, Inc. and Hans Wilson and Associates Inc.

Chairman Boyle reported on the additional information he was asked to get at the August 9 Briefing Meeting about the letter Mr. Wilson had sent to the state attorney in January 1987 asking for an opinion on a possible conflict of interest. He said he thought Mr. Wilson's action in seeking the opinion reflected positively on him. Mr. Mullins said he thought Mr. Wilson should have remembered such an important point when asked about it in the interview and Mr. Wilson had waffled in his response. Chairman Boyle also reported on the comments Mr. Wilson had allegedly made at a CAC meeting in April 2009. Mr. Boyle read the verbatim transcript from that portion of the meeting (Page 66 of the Agenda Materials) and said that it did not contain the venom that he had originally associated with it now that he had read what was actually said. Mr. Mullins commented that he did not think it was as much venom as an attitude and it was suggestive of a bias against Captiva.

Mr. Jensen asked Ms. Stroud to comment on any changes in either of the proposals since the meeting on August 9, which she did. Both Mr. Jensen and Mr. Mullins asked about Mr. Wilson's change in the cost in his proposal down to \$184,000 with an \$11,000 contingency. Ms. Stroud explained that CEPD must authorize the use of the \$11,000 contingency.

Mr. Mullins commented on Mr. Wilson's response to questions asked him by Ms. Stroud which were contained in the Agenda Materials - specifically where Mr. Wilson says he would have to vacate his position on the Coastal Advisory Committee as an at-large member, that Ms. Rooker would have to do likewise, and that CEPD would appoint him as CEPD's representative to avoid any conflict with the Sunshine Laws. The more voices CEPD has there, Mr. Mullins said, the better. Why wouldn't CEPD want Ms. Rooker to continue? He asked whether Ms. Rooker's attendance was outside the Scope of Services Mr. Wilson outlines. Chairman Boyle asked for an opinion from Ms. Stroud, who replied that that this was not so much an issue of what was within the Scope of Services as it was Mr. Wilson's concern about being in violation of the Sunshine Laws. Chairman Boyle asked for an opinion from Mr. Boutelle, who chairs the CAC about whether CEPD would be able to continue in the same manner, namely that CEPD has an appointed member (currently Chairman Boyle), Ms. Rooker is an at-large member appointed by a County Commissioner, and Mr. Wilson

remains as an at-large member. Mr. Boutelle said that this is a question that needs some legal counsel because there have been concerns in the past that it would be difficult for an employer/employee relationship to function in the Sunshine when both are independent voting members of the same committee. Ms. Rooker said she agreed with both Mr. Wilson's and Mr. Boutelle's opinions. Mr. Mullins said CEPD would lose something if Ms. Rooker had to step down and would also like to know whether Mr. Wilson's Scope of Services precluded Ms. Rooker attending. He added that if CEPD chooses to have Ms. Rooker as CEPD's representative, it is included in Mr. Wilson's Scope of Services. Mr. Jensen and Mr. Boyle agreed.

There was additional discussion that included questions about termination of the contract, staffing of the office, bias, overlap between what Mr. Wilson's firm does and what CP&E does, an additional staff member, and a succession plan. Mr. Jensen moved and Mr. Kaiser seconded a motion to approve Resolution 2012-4 to engage Hans Wilson and Associates Inc. commencing September 1, 2012 under the terms and conditions proposed. The motion passed 3 to 2 with Mr. Mullins and Ms. Holzheimer opposed. Ms. Rooker then read aloud Resolution 2012-4. Discussion ensued about the length of the contract and the cancellation period. Ms. Rooker then read part of Resolution 2012-4 again. Chairman Boyle called for the vote and the resolution passed 4 to 1 with Mr. Mullins voting against it.

Ms. Stroud requested a correction for the record: there was a comment that somehow Mr. Wilson received information that others did not. She said one bidder requested certain information and to ensure the process was fair, all bidders received that information. Ms. Holzheimer thanked Ms. Stroud for putting all this together and added that she thought it was a fair process.

## **7. New Business**

### **a) FY 12/13 Proforma Project Budget**

Chairman Boyle introduced this Agenda Item by saying that this budget assumed a project start date of June 1, 2013. Commissioners asked questions about the various line items. Mr. Mullins requested that the next iteration have a column that showed a range for grant income and Chairman Boyle said this would be done. Mr. Mullins then suggested that CEPD raise parking rates and asked Mr. Boutelle to comment on CEPD's ability to do this. Ms. Rooker said she would verify the information that Mr. Boutelle passed on with the various agencies involved and report back to the Board. Mr. Mullins asked whether a motion was needed now and was told no. Ms. Holzheimer asked that the assumptions in the budget be footnoted in the budget and Chairman Boyle said this would be done. Mr. Mullins suggested that CEPD consult with Dr. Stronge to avoid errors that occurred in previous years. He then moved and Mr. Kaiser seconded a motion to go forward with this budget for the September Budget Meetings. Ms. Paul-Young asked, in light of the approval of the lobbyist, how the additional \$78,000 should be handled. Chairman Boyle said this was a good observation. Mr. Mullins said he thought there was enough flexibility in the budget so that he would not worry about it. Chairman Boyle called for the vote and the motion passed unanimously.

### **c) LGFR Resolution**

Ms. Rooker explained that each year the Board submits a Resolution to the DEP's Department of Beaches and Shores to support CEPD's project and the local portion funding

for it. Mr. Mullins moved and Mr. Jensen seconded a motion to approve Resolution 2012-5 as written. The Resolution passed unanimously.

## **8. Administrator Report**

### **a) Letters from SSIR and Tween Waters**

Ms. Rooker reported on letters she had received from two of the resorts on the island concerning the condition of the beach after Tropical Storm Debby and referred Commissioners to those letters in the Agenda Materials. Chairman Boyle led the discussion about the ability and feasibility of beginning a project by December 1, 2012, as well as securing a permit. Chairman Boyle said that CEPD needed to respond to both organizations. He added that Ms. Rooker had several meetings with South Seas Resorts to discuss and assist them with solutions. Ms. Rooker commented that South Seas had looked into trucking sand in, but because of the expense, is now going to let Mother Nature take her course. Mr. Boyle said CEPD has told South Seas that it would provide the resort the maximum support possible in their effort and work for permitting. He added that this report is informational only and no action by the Board is required.

### **b) FEMA and Army Corps Emergency Funds Update**

Ms. Rooker updated the Commissioners, referred them to the appropriate pages in the Agenda Materials, and pointed out the next steps to secure emergency funding. She added that she is waiting until she gets data from CP&E about the sand volume loss which they are working on now, which will be part of the package forwarded to the ACOE. Ms. Rooker also said that she is working with FEMA on an application for assistance and a project plan. She said both of these areas are being looked at for grants to correct the beach and are being processed at this time.

### **c) Important Dates**

Ms. Rooker reminded the Board of the following important dates:

- Tentative Budget Hearing Sept, 6 at 5:01PM in Ding Darling Room, Tween Waters, Reg. Meeting at 3PM.
- Final Budget Hearing Sept. 20 at 5:01PM, Wakefield Room
- FSBPA Conference Sept. 26-28
- ASBPA Conference Oct. 9-12

### **d) Summer Newsletter**

Ms. Rooker called attention to draft copy of the Summer Newsletter contained in the Agenda Materials. She reported that it is at the printer and will be mailed at the end of this week. Commissioner Holzheimer commented that the newsletter was well done.

## **9. Public to be Heard**

Chairman Boyle called upon Steve Boutelle to make comments on the dredging of Blind Pass. Mr. Boutelle reported there was just 100 feet of sand to be dredged on the Gulf side, and with good weather, it would be completed this weekend. He said that this Friday the County would be receiving a plan from the dredger as to how they will proceed in getting a dredge into the Bay side of Blind Pass and refueling it. He answered questions about the amount of sand that had been moved and compared it to the projections.

#### **10. Commissioner Comments**

Chairman Boyle talked about a brief conversation he had with Connie Mack at a reception regarding Mack's assisting CEPD with the ACOE and DEP. He asked Commissioners whether they thought there was a need to hold the Briefing Meeting tomorrow (August 16). After discussion, Mr. Mullins moved and Mr. Kaiser seconded a motion to cancel the August 16 Briefing Meeting. The motion passed unanimously. Chairman Boyle also asked Commissioners about cancelling the October Regular Board Meeting and the consensus was that this could be discussed at the September Regular Board Meeting held on September 6.

Adjourn – There being no other business, Chairman Boyle adjourned the meeting at 4:00 p.m.