

Minutes

Regular Meeting of the Captiva Erosion Prevention District

Tween Waters Inn, 15951 Captiva Drive, Captiva, Florida 33924
December 12, 2012 @ 2:30 pm

Commissioners Present: Jim Boyle (Chair), Harry Kaiser (Secretary), Dave Jensen (Treasurer), Mike Mullins (Commissioner) –arrived 5 minutes after meeting was convened.

By Telephone: Doris Holzheimer (Vice Chair)

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

1. Call to Order

Chairman Boyle called the meeting to order at 2:30 pm.

2. Roll Call

The roll was called and the results are outlined above.

3. Move Regular Board Meeting Time

Mr. Kaiser moved and Mr. Jensen seconded a motion to move the meeting time of the December 12, 2012 Regular Board Meeting from Noon to 2:30 p. m. in accordance with Section I, Rule 1.03 of CEPD's Rule of Procedure to allow Commissioners to attend the Memorial Service for Tim Gardner.

Chairman Boyle provided background about why the meeting time was moved. He apologized for not canvassing the other Commissioners about moving the time. He said CEPD had complied with Florida's Sunshine Laws and had even consulted the Florida Attorney General Special Assistant for Open Government, Pat Gleason, to assure that there was no violation of the Sunshine Laws. However, CEPD's Rules of Procedures were inadvertently violated and the motion was suggested by Pat Gleason to assure compliance with both Florida Sunshine Laws and the Rules of Procedure. Mr. Boyle said that if the motion passed, the meeting can continue; if it is not passed, then the meeting would be cancelled.

Mr. Mullins expressed a number of concerns: this action jeopardizes action taken if someone were to protest that this is not an official meeting and action would be undone; it sets a bad precedent; it violates Commissioners' fiduciary responsibility; it is disrespectful to Commissioners; and it breaks the letter of the law. Mr. Boyle responded that it would not set a precedent, but to be safe, everything voted on should be confirmed at the next Board Meeting. Further, he said, a vote on the DEP Agreement could be deferred until the next meeting. Mr. Mullins said Mr. Boyle could have called an Emergency Meeting to deal with the DEP Agreement. Mr. Boyle responded that he looked at this possibility but the circumstances did not meet the criteria for calling an Emergency Meeting which clearly stated it is only called for a bona fide emergency. Mr. Kaiser said he had come to Captiva from the north just for this meeting and did not want to see it cancelled. Mr. Mullins said the meeting might continue but

that no votes should be taken. Mr. Boyle said the meeting will not involve anything on which a significant vote must be taken to mitigate any risk.

Chairman Boyle called for a vote on the motion. Commissioners Jensen, Kaiser, Holzheimer, and Boyle voted for the motion; Commissioner Mullins voted against the motion. The motion passed and the meeting continued.

4. Approval of November Meeting Minutes

Mr. Jensen moved and Ms. Holzheimer seconded a motion to dispense with the reading and approve the minutes as written from the November 14 Regular Board Meeting. Commissioners Jensen, Kaiser, Holzheimer, and Boyle voted for the motion; Commissioner Mullins voted against the motion. The motion passed

5. Public to be Heard

Chairman Boyle called upon Hans Wilson to talk about a possible new funding source. Mr. Wilson reported on the Florida Restore Act, which involves 27 counties affected by the BP Oil Spill. Lee and Collier Counties, Mr. Wilson said, are included in this consortium. This is an effort to determine the civil outcome between BP and the US Government under the Clean Water Act. The criminal outcome had already been settled. He also talked about the civil settlement procedures and what projects qualify. Beach restoration may qualify, he said. Mr. Wilson also talked about a group of local counties forming an Eco-System Restoration Program. He added the amount of money potentially involved was between \$5 billion and \$20 billion. Lee County Board of County Commissioner Manning is the representative for Lee County. Mr. Wilson will be meeting with Commissioner Manning next week about the marine industries aspect and will talk to Mr. Manning about CEPD interests. Mr. Mullins suggested that CEPD send a letter from the Chairman to Mr. Manning. Mr. Boyle said he, Ms. Rooker, and Mr. Wilson will collaborate on this.

Chairman Boyle called upon Steve Boutelle with the Lee County Division of Natural Resources, who was in the audience, for an update on Blind Pass. Mr. Boutelle reported the change order had been approved, dredging landward of the bridge will begin in mid-January, 30,000 cubic yards of material is to be dredged (which will be reevaluated before the dredging starts), the dredged material will be placed between Monuments 110 and 114, and the work should be completed in 90 days. Mr. Boutelle added that there had been good cooperation from the Army Corps and Fish and Wildlife.

Mr. Boutelle asked if the meeting were still in public comments, and being told that it was, said that on Agenda Item 8 (other cost share formulas for other projects), while the formats are different and it may be hard to discern the calculation of the formulae, they are in there. They might need some translation and he would be happy to provide that.

6. Financial Report

Mr. Jensen reported that in the General Fund administrative expenses were higher than budgeted due to travel in November and ad valorem taxes were a little ahead of budget. On the Capital Fund side, parking lot revenue increased a little bit more this month than was expected. Mr. Jensen called for questions; there were none.

7. Old Business

a. Parking Fees

Chairman Mr. Boyle summarized what had been discussed at the November Meeting. Mr. Jensen asked whether Parks and Recreation had passed on the new fees and Ms. Rooker replied that they had. Ms. Holzheimer asked about the status of a new machine. Mr. Boyle responded that a quotation had been received but there were some unanswered questions so this subject will be reviewed again at the January meeting. He added that a motion to approve the new fees was not necessary; a consensus was sufficient. Mr. Mullins asked that the discussion be delayed until January because he had a limited amount of time today. Mr. Boyle said unless there was objection, this agenda item would be deferred until next month. There was no objection.

b. Renourishment Project

Chairman Boyle summarized the status, reporting that there are 6 entities in Florida that have qualified for emergency funding and Captiva is first on that list. However, the ACOE decision date from Washington has been moved from January 18 to March 4 because resources from the Jacksonville District have been moved to the Northeast due to Hurricane Sandy. He also mentioned concerns about the Hurricane Sandy damage consuming emergency funds. He reported that Greg Burns, CEPD's lobbyist, said there is \$200 million of unobligated emergency funds left from a December 2011 appropriation still available, CEPD is eligible for it, the funds are not currently being used for Sandy damage repair.

Mr. Boyle also mentioned as the Board had decided at the November Meeting to go out for bids in December for the June 1, 2013 to September 1, 2013 window and that the announcement had gone out.

Mr. Boyle turned the discussion to the involvement of Long Boat Key and Collier County and "sequencing." He explained there was not enough time now to put together an interlocal agreement among the potential "partners." However, it might be possible to sequence dredgers and save money. He reported that a meeting had taken place among the parties, along with CP&E staff, last Wednesday, a report of which was in the Agenda Materials. He said Long Boat Key appeared ready to move, lacking only the ACOE permit. They want their work to be done by November 1, 2013. Collier County might be ready after November 1. All parties were concerned about the impact that damage in the Northeast might have and the possibility that the ACOE might commandeer the medium to large dredgers. Finally, Mr. Boyle said that another meeting would take place with Long Boat Key, Collier County, etc. in early January before CEPD's next Board Meeting.

Mr. Mullins asked why he had not been included in this meeting since he thought he had been appointed the point man on this. Mr. Boyle responded that the joint partnering among Long Boat Key, Collier County, and CEPD, for which Mr. Mullins had volunteered to be CEPD's representative, had fallen through in mid-September. The meeting held last Wednesday was a different meeting on the possibility of sequencing. Ms. Holzheimer added that during the Naples FSBPA conference in late September, Collier did not want to talk to us.

Mr. Mullins excused himself from the meeting to attend to other business at 3:22.

Discussion ensued regarding what sequencing was and what advantages it held. Mr. Boyle explained the possible sequencing of dredgers from CEPD to Long Boat Key to Collier County and this sequencing could save each entity a great deal of money through economies on the mobilization costs. He added that if sequencing became viable, there would be need to issue addendums to the bid announcements.

Funding Status

- **DEP Grant Agreement**

Mr. Boyle said unless there was objection, this agenda item would be deferred until next month. There was no objection.

- **ACOE**

Chairman Boyle said most of this agenda item had been covered earlier. Ms. Holzheimer asked what might be the impact on CEPD's timeline if ACOE funding is delayed. Mr. Boyle responded that the start date might be moved back to October or November, there is a risk that dredgers are not available, and CEPD would need to appeal to the State Legislature to extend state funding beyond the current expiration date of December 31, 2013. In addition, depending on dredge availability, we need to be mindful that the ten year permit expires in 2014.

- **ILA**

Chairman Boyle summarized the status of the Agreement, including reports on meetings with new County Commissioners Pendergrass and Kiker. He also reported on a joint meeting held Monday with Commissioner Pendergrass, Lee County staff Doug Meurer, Andrea Frasier, Roland Ottolini, and Steve Boutelle, and Mr. Boyle and Ms. Rooker. Chairman Boyle reported that at Monday's meeting, he expressed CEPD's preferences as to funding option calculations: first choice was a dollar amount; second choice was a percentage; and the worse option was the formula.

Mr. Boyle explained the County did not allow both he and Ms. Rooker to attend this meeting since they were both on the Coastal Advisory Council. Ms. Rooker had resigned her position on the CAC and therefore she was able to attend this meeting. Both Mr. Boyle and Mr. Wilson remain on the Council.

He also said he emphasized the importance Captiva Drive both from a safety viewpoint for police, fire, and rescue vehicles, and that it was the only evacuation road off Captiva if a disaster were to strike. It is unique in Lee County in that it is the only evacuation route so close to the water. Mr. Boyle also said he feels strongly that CEPD should continue its focus on beach renourishment funding. It is CEPD's sole purpose.

8. New Business

- **ILA Negotiation Strategy**

Mr. Boyle expressed regret that Mr. Mullins had to leave the meeting early. Mr. Boyle wanted to discuss statements made about County Commissioner Manning at the November Captiva Community Panel by Mr. Mullins. Chairman Boyle said that Mr. Manning did not take office until August 2010. Mr. Boyle also said that Bob Janes was the Commissioner when the TDC beach and shoreline rate was dropped from 32% to 27%. He also pointed out that CEPD's Summer 2012 Newsletter recognized Mr. Manning

for being instrumental in getting emergency classification for CEPD from FEMA and the ACOE after Tropical Storm Debbie. He added Mr. Manning has been a good friend of the district. Mr. Jensen and Mr. Kaiser agreed.

- **Local Cost Shares of County Beach Nourishment Projects**

Commissioner Boyle said this item was put on the agenda at the request of Mr. Mullins and referred Commissioners to Page 49 of the Agenda Materials. Mr. Jensen mentioned that in the Public Comments section, Mr. Boutelle had offered to explain how these cost share numbers were arrived at. Mr. Jensen thought it important that the local cost share information be clear, especially to Ms. Rooker and Mr. Boyle. Mr. Boyle said Ms. Rooker and Mr. Boutelle will work to unravel how someone got to those numbers and to understand the details. Then there will be a follow-up meeting with County personnel.

- **Tourist Development Tax – Captiva History**

Chairman Boyle explained this too was on the agenda at the request of Mr. Mullins. He said the schedule in the Agenda Materials includes all rentals through agencies. It does not include private rentals where the individuals renting their properties do not report taxes to the County.

Mr. Boyle continued that he and Ms. Rooker had attended a CAC meeting in December, where they learned that 20% of the TDC funds must be spent on sports. He reviewed the state statutes and commented that the funding is really designed for sports, entertainment, convention centers, etc. He said there is little mention of beach renourishment. He suggested that CEPD get the State Legislature to put in language that when coastal counties have critically eroded beaches as determined by the Florida DEP, the county must spend the 4th and 5th pennies of the bed tax on remedying the situation.

Chairman Boyle called upon Kevin Ruane, Mayor of Sanibel, for his comments. Mr. Ruane said this would not fly. He recommended that the three issues, water quality, maintenance, and beach renourishment, work together. He advised not to fracture beaches and work with all the beach communities. If beaches are divided, then marketing wins out. Mr. Boyle said he and Mr. Ruane had different approaches to the same problem, but he acknowledged Mr. Ruane's greater experience in dealing with these matters.

- **Economic Impact – Beaches/Shorelines**

This item was put on the agenda at the request of Mr. Mullins and since he had left the meeting, there was no discussion.

9. Administrator Report

- **DEP Rule Making**

Ms. Rooker reported Commissioners had received everything that Debbie Flack and the FSBPA had sent out on this. She said FSBPA is doing a good job and the DEP seems to be accommodating to the FSBPA and their concerns. Ms. Rooker added that on December 18, there will be another rules workshop teleconference and she will participate. There have been more changes and those changes will be discussed at this workshop. She

also reminded Commissioners of the February 26 through 28, 2013 ASBPA Conference and asked them to let her know if they want to register.

- **Tentative Meeting Dates for Budget Hearings**

Ms. Rooker reminded the Commissioners the budget hearing dates for 2013 are tentative because they cannot conflict with the Board of County Commissioners or the Lee County School Board Budget Hearings. The County Board and School Board dates have not been set and will not be until the spring.

Mr. Jensen asked about the Local Delegation meeting. Ms. Rooker said a notice was put out this week of a meeting in late January. She added the CAC is planning on doing a presentation about the importance of beaches and the state program for beach management at the county delegation meeting. Ms. Rooker asked Mr. Boutelle to comment and he said he thought that beaches would be included in the county's list of legislative issues but he did not know for sure. Whether it is included is determined by the county administration. He added CAC has asked to be included on the list of legislative priorities. He advised independent entities to ask for a slot on the Legislative Delegation Meeting agenda just to cover the bases. Ms. Rooker said CEPD would plan to be on the agenda.

10. Public to be Heard

Jack Cunningham talked about the comments he made at the last CEPD Board Meeting regarding taking the lead in communications. Based on comments at the recent Captiva Community Panel meeting, he was concerned that perhaps his comments had been misinterpreted. He explained that what he was really asking for was that when the point when it is helpful for individuals or organizations to step forward and be heard is reached, CEPD should let them know. Mr. Jensen thanked Mr. Cunningham for his clarification and Mr. Boyle echoed Mr. Jensen's comments. Mr. Boyle added it was very important that any community effort by any group that uses the name of the CEPD needs to make sure they get Board direction. Mr. Kaiser also expressed his thanks for Mr. Cunningham's clarification.

11. Commissioner Comments

Ms. Holzheimer said she supported Chairman's Boyle's idea to amend the Florida Statute. Mr. Boyle responded that any further discussion of this should be deferred until the full Board can be available and then it can be decided which path to follow.

Mr. Boyle once again apologized for any confusion or inconvenience the change of the time of this meeting caused and wished everyone a happy holiday and a healthy and prosperous New Year.

Adjourn

There being no further business, Chairman Boyle adjourned the meeting at 4:28 pm.