

Minutes

Regular Meeting of the Captiva Erosion Prevention District

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

June 12, 2013 @1:00 P.M.

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

Staff Present: Kathleen Rooker, CEPD Administrator; John Bralove, CEPD Assistant to the Administrator; Hans Wilson, President, Hans Wilson and Associates; Robin Mixon, CFO, Hans Wilson and Associates.

1. Call to Order

Chairman Boyle called the meeting to order at 1:00 P.M

2. Roll Call

The roll was called and the results are outlined above.

3. Approval of Meeting Minutes

Mr. Kaiser moved and Mr. Jensen seconded a motion to dispense with the reading and approve the minutes as written from the May 2, 2013 Briefing Meeting, the May 8, 2013 Regular Meeting, the May 9, 2013 Briefing Meeting, and the May 10, 2013 Emergency Meeting. The motion passed unanimously. Mr. Mullins commented that minutes of the May 10 Emergency Meeting indicate that he said the lease for the Turner Beach Parking Lot expired in 2036 but he had not said that and indeed did not know when the lease expired. Mr. Boyle asked Mr. Bralove to meet with Mr. Mullins to work out the proper wording.

4. Public to be Heard

There were no comments from the public.

5. Financial Report

Mr. Jensen reported there had been a Budget Meeting yesterday (June 11) to discuss the first draft of the 2013-14 budget. Ms. Rooker said she sent out this first draft to the Commissioners via email attachment after the Budget Meeting concluded.

Mr. Jensen continued that there was nothing of note to point out regarding the General Account through the end of May. Regarding the Capital Projects Account through the end of May, the financial statements reflect receipt of the Fifth Third loan of \$9.6 million, which was promptly wired to the Army Corps of Engineers as per the agreement. The statement also reflects in Grant Income account a credit of \$5,658,328, which represents the federal funding portion. The total under the line item Mobilization, Dredging, and Fill is \$16,329,234, including money previously paid to the Corps for design and engineering fees.

Mr. Jensen asked about the last three line items on Page 17 of the Agenda Materials relating to surveys and monitoring. Ms. Rooker explained the line items and said she would follow up with Ms. Paul-Young to make sure these line items were accurate.

6. Old Business

a) Renourishment Project

Chairman Boyle reported CEPD had held a number of discussions with the ACOE and the bid opening date had been moved back a week to June 21, which in turn moves back the other dates one week. The projected start date is now August 18. The reason for this, Chairman Boyle explained, is the need for the Jacksonville District to hold another meeting with the dredger community via webinar to try to answer questions and concerns that have come up and to avoid problems that have surfaced in the bidding process for work in the Northeast.

The Chairman also reported that the ACOE had completed a pre-construction survey and were recommending adding 60,000 cubic yards to the Captiva Project. He said Mr. Keehn agreed with this and the addition would bring the new figure to 722,000 cubic yards, including 22,000 for dunes. The need for additional sand was due to increased erosion since CP&E's last survey in the areas of Sunset Beach and the Village following Hurricane Isaac.

b) Funding Status

o ILA

Chairman Boyle reported consideration of the ILA is on the Board of County Commissioners meeting agenda of June 18. He said the only change was that it no longer included a lease agreement between CEPD and Lee County for the Turner Beach Parking Lot. He said Ms. Rooker had sent to CEPD Commissioners a letter from Sanibel Mayor Ruane to Commissioner Manning indicating that Sanibel was not willing to terminate the parking lot lease agreement. When he got word of this, Chairman Boyle said, he approached Commissioner Manning about an option for CEPD to share in some of the projected causeway toll surplus. The County staff reviewed this and Commissioner Manning reported to Chairman Boyle that this was not an option.

Mr. Mullins commented that at the emergency meeting commissioners were told that the Turner Beach issue had been resolved and he questioned why another emergency meeting was not called. He asked why was CEPD "not able to rely on a Commissioner's word? Are we not understanding him?" Chairman Boyle replied that Commissioner Manning cannot control what Mayor Ruane does.

Mr. Mullins said it was his understanding all along that the County was going to come up with a quid pro quo to make up for Sanibel's loss of revenue from transferring the lease. Mr. Mullins said Commissioner Manning can certainly control a quid pro quo where the incentive is to get Sanibel what they need so that they would be willing to do it. "I think you have been jerking the Board around on this by bringing us to meetings." Mr. Mullins asked "Why is it an Emergency Meeting the first time and when it gets off the table it is no longer an emergency meeting. I really don't understand that."

Chairman Boyle said the explanation is in the minutes of the Emergency Meeting that were just approved. Mr. Mullins said he was asking the Chairman for the explanation. Chairman Boyle responded that Commissioner Manning had agreed to go back to Mayor Ruane to re-open the negotiation. This happened after the Emergency Meeting was called and before the meeting

was held. Commissioners were told at the Emergency Meeting that Commissioner Manning “was going to take another run at the lease.” The following Monday, Commissioner Manning received Mayor Ruane’s letter. Mr. Mullins explained what he was trying to understand was Mr. Boyle was acting as CEPD’s negotiator in this regard and had promised to get a 50/50 deal. He added that CEPD is nowhere near that and by next Tuesday, it may have an even bigger chunk taken away. Mr. Mullins said this has been “a very poor negotiation and CEPD has gotten a lousy deal from the County.” He said if CEPD does not get what it wants next Tuesday, he hopes CEPD does not sign it. Mr. Boyle responded that it will be up to the Board.

Mr. Mullins continued by saying that he had recommended getting the community behind it, but Chairman Boyle has chosen to do it a different way by depending on his relationship with Commissioner Manning, and Chairman Boyle is failing. Chairman Boyle asked Mr. Jensen and Mr. Kaiser if they thought he had failed the Board and they said no. Mr. Mullins continued by saying the deal keeps getting worse. Chairman Boyle responded by saying that it was not up to him to negotiate with Kevin Ruane. Mr. Mullins said this was irrelevant, that Commissioner Manning made a promise and if he can’t deliver in one area, he should deliver in another area.

Mr. Mullins continued that regardless of what the County Commissioners decide next week, CEPD should ask for more to replace what it is losing on the Turner Beach lease. He thought CEPD should go back to the people of Captiva and get everybody “riled up,” as had been done in the past, to let people understand what a lousy deal CEPD is getting. Chairman Boyle said Mr. Mullins is not being realistic. The Chairman said every contract, whether it is federal, state, or local, deals in a percentage; none of them have an absolute dollar figure. Chairman Boyle continued that the County has no obligation to do anything for CEPD, which Mr. Mullins disputed, and secondly, it is up to the County - they are the grantor and CEPD is the grantee. CEPD is asking for money; it can’t demand anything. CEPD can negotiate as best it can and the deal on the table right now is a very good deal.

Mr. Mullins said he wanted to correct some of Mr. Boyle’s mistakes. Under CEPD’s enabling legislation, CEPD has the ability to charge the County for property it has. He said he even recommended CEPD go before the court to get an interpretation of what CEPD can charge. Mr. Mullins said in the past, CEPD’s bond attorney suggested CEPD get an opinion from the court, without suing, to understand under the enabling legislation what CEPD can do and not do.

Mr. Mullins then outlined all the sources of taxes that Captivans pay to the County, including the MSTU tax. He added that if the current terms of the ILA are what the Commissioners want to accept, “then god bless them – they are very generous people.” Mr. Mullins said what CEPD received from the County was far lower than what it should get back for the contribution it makes in tax revenues and it was getting a lousy deal. Mr. Boyle said that if Mr. Mullins did not like the deal, he should not vote for it.

Mr. Kaiser asked what the cost to the homeowners in this deal would be. Mr. Boyle responded that if CEPD gets the options it wants in the ILA, between the two projects, Captiva and northern Sanibel, CEPD will receive approximately \$4.9 million, close to a 50/50 split. Chairman Boyle said the project at this time is less costly to the taxpayers than the last one, although bids are not in yet.

Mr. Mullins said he knew what Commissioner Boyle's opinion was of the agreement and asked whether other Commissioners were happy to tell the people of Captiva that CEPD is getting a good deal despite all the tax revenue Captiva provides Lee County. Mr. Jensen and Mr. Kaiser said yes. Mr. Jensen explained his answer by saying that 25% of the Bed Tax goes to the beaches and Mr. Boyle said this came to \$4.8 million and CEPD would be getting \$4.9 million.

After a question from Mr. Kaiser, Chairman Boyle went through the scenario again of the Turner Beach lease circumstances. Mr. Mullins stated again Chairman Boyle had called an Emergency Meeting when it was learned that the lease was off the table and that at the Emergency Meeting, Commissioners were told that the problem had been solved. Chairman Boyle said he did not say the problem had been solved; Commissioners were told that he had been able to get the item back on the table. Mr. Mullins repeated that the County should be asked to make it up. Chairman Boyle repeated that the County was asked to make it up through the tolls but was unable to do so. Mr. Mullins asked why was there then not an option in the ILA for the County to make up the amount of money that was not forthcoming from the Turner Beach lease.

Mr. Boyle asked for other questions and there being none, went on to the next Agenda Item.

c) Proposed Designation of Critical Habitat of Loggerhead Sea Turtles

Ms. Rooker said she had gotten back to the Fish and Wildlife Services with CEPD's comments that are on Pages 37-40 of the Agenda Materials. She also pointed out that many congressional legislators raised opposition as outlined in Pages 41-42 in the Agenda Materials. Mr. Mullins asked how important does CEPD think this is and Ms. Rooker replied it was very important because it would make it difficult for CEPD in future projects to nourish Captiva or Sanibel. Mr. Mullins volunteered to be CEPD's ambassador and to have a conversation with the Fish and Wildlife Service since he knew Dan Ashe, the Director. Ms. Rooker said she was not sure whether the time for public comment had expired. She said she would find out if the comment period had expired, where they were in the process, when the decision will be made, get other critical dates, and report back to the Commissioners. Mr. Mullins asked for a sense of the Board as to whether he should get in touch with Dan Ashe. Mr. Jensen said he would like to involve CEPD's lobbyist. The consensus was to wait until Ms. Rooker came back with her information. Mr. Mullins said he would talk to Mr. Ashe representing himself only.

7. New Business

a) Permit Renewal Services Scope of Work

Chairman Boyle explained that CEPD's permit will expire in November 2014 and Mr. Keehn of CP&E had provided the proposal found in agenda materials. Chairman Boyle said he thinks it is important to start a new permit application now since reports suggest it is taking longer to get a permit given the new DEP staff. Mr. Jensen asked whether action needed to be taken at this meeting and Chairman Boyle replied that it had already been postponed at the last meeting. Discussion involved whether the motion precluded CEPD from going to another firm, what were the consequences of not having a permit, getting other bids, negotiating with CP&E, and whether it is wise to bring in another firm at this time. Mr. Mullins moved and Mr. Kaiser seconded a motion to amend the Resolution, Section 1, to add the words "of an amount not to exceed \$140,000" after "expenditure," and to remove the words "Coastal Planning and Engineering" from the same section. After discussion, Mr. Mullins moved and Mr. Boyle seconded a motion to amend the amendment to add "and such project as described in Section

1 shall be contracted for at the decision of the Board no later than the July Board Meeting 2013.” The vote was called for the amendment to the amendment and it was approved unanimously. The vote was called for on the original amendment and it was approved unanimously. Mr. Boyle asked Mr. Mullins to read Resolution 2103-8 in full as amended, which he did. The Resolution passed unanimously.

Mr. Mullins said he failed to include in the reading of the Resolution the amendment about approving the contract by the July Board Meeting. Therefore Mr. Mullins moved and Mr. Kaiser seconded a motion that the resolution that was just approved be acted upon by the Board no later than the July Board Meeting. The motion passed unanimously.

Mr. Mullins summarized the next steps, which are to renegotiate the proposal with CP&E and ask CEPD’s other qualified consultant, ATM, for a bid.

b) Van Scoyoc Associates Retainer

Chairman Boyle explained this agenda item involved a move from a monthly contract with VSA to a monthly retainer. After discussion, Mr. Mullins offered and Mr. Kaiser seconded a motion to adopt Resolution 2013-9 approving the expenditure of up to \$18,750 for Federal advocacy services at a cost of \$1,250 per month. Mr. Mullins was asked to read the Resolution in full, which he did. The motion passed unanimously.

c) Procedure for Special and Emergency Meetings

Mr. Boyle reminded Commissioners that Mr. Mullins had asked for a written legal opinion of counsel about this issue and that opinion is in the Agenda Materials. Mr. Mullins said he had recommended that votes not be allowed to be taken at Briefing Meetings and only taken at Regular Meetings. He asked whether this was what was trying to be done here. Mr. Boyle said no and Ms. Holzheimer reminded Mr. Mullins that he had asked for a clarification from Board Attorney Nancy Stroud as to whether votes could be taken at a Briefing Meeting. Mr. Boyle suggested that similar to Emergency Meetings, where votes taken must be affirmed at the next Regular Board Meeting, votes at Briefing Meetings could be handled in the same way. Mr. Kaiser said he thought this was fine. Mr. Boyle suggested CEPD change its Rules of Procedure to reflect this. He continued that CEPD should leave the ability to take a vote at a Briefing Meeting and affirm them at the next Regular Board Meeting.

Mr. Mullins said he strongly disagreed with Ms. Stroud’s opinion, first because she was the one who advised CEPD originally that votes should not be taken at anything but a Regular Board Meeting. Secondly, Briefing Meetings were originally conceived as information meetings. They were not intended to change the nature of the District so that Commissioners would be meeting virtually every week and taking votes. He thought it had taken on a meaning beyond briefing. It puts an undue burden on Commissioners who have to attend weekly Briefing Meeting and discourages people from running for Commissioner. Mr. Boyle said he did not think the Board should give up its flexibility. Mr. Mullins said if a vote is needed, call an Emergency Meeting.

Mr. Kaiser asked why all these Briefing Meetings were necessary. Mr. Boyle responded it was a Board decision. Mr. Mullins moved to eliminate Briefing Meetings on the calendar and if a vote were necessary, call an Emergency Meeting. Mr. Kaiser seconded the motion. Mr. Boyle said that he did not think it is the right time to do this with a project coming up. He reminded

Commissioners that he had recommended last year that Briefing Meetings be held just once a month. He agreed that there should not be a Briefing Meeting every Thursday but reminded Commissioners he was in the minority when he suggested it last year.

Mr. Mullins and Mr. Kaiser withdrew their motion. Mr. Mullins then moved and Mr. Kaiser seconded a motion to leave the calendar as it is and if there is a need for a vote, call an Emergency Meeting. Mr. Boyle called for the vote. Mr. Jensen voted no; all the other Commissioners voted yes and the motion passed.

d) Accounting Services

Chairman Boyle reported that the District's accountant, Ms. Paul-Young, has accepted additional responsibilities with another existing client and would no longer be available to the District after this week. Ms. Paul-Young has offered to assist with the transition to a new accountant. Chairman Boyle said Ms. Rooker put out feelers for a replacement and he had asked Hans Wilson and Associates for assistance during the transition. The Chairman introduced Robin. Mixon, CFO of HWA, and reported that Ms. Mixon had spent quite a bit of time with Ms. Paul-Young and he is comfortable with her to fill in until the end of their contract, August 31. Mr. Mullins raised the issue of whether checks and balances were compromised if HWA were to take over the accounting function but he was comfortable with this on an interim basis. Mr. Boyle suggested HWA submit as part of their renewal contract two proposals - one with accounting services included and one without. Mr. Mullins suggested that this discussion be brought up again at the July meeting to determine whether CEPD should go out for alternatives.

Mr. Mullins raised another question: Is Hans Wilson going to be bonusing Ms. Rooker based on additional people being on the job or anything of that kind? Mr. Wilson asked Mr. Mullins for clarification of what he meant and Mr. Mullins said Ms. Rooker "and her prior employer had certain incentives to manage the staff and to do certain things in which she got certain compensation." Ms. Rooker said this was not true and Mr. Mullins said that this was his understanding and even if it were not true, it could be true. Ms. Rooker once again said it was not true.

Mr. Mullins officially requested the compensation of Ms. Rooker, Mr. Bralove, and Ms. Mixon be shared with the Board. Mr. Wilson said this issue had been dealt with when the initial contract had been signed and no such arrangement existed. Mr. Mullins said this could have changed. Mr. Wilson explained how he was making sure that staff back-ups were in place if something were to happen to current staff and there was overlap. Mr. Mullins said that in the selection of HWA, it was never revealed what the salaries of Ms. Rooker and Mr. Bralove were. Mr. Mullins expressed that he was very concerned that "Ms. Rooker's judgment about the quality of anyone's performance is not going to be based upon her individual remuneration based on them staying on the job or booking more hours or whatever." Mr. Jensen expressed concern about asking what HWA pays its people. Mr. Mullins replied that it was a matter of public record.

Mr. Mullins said he would like to see Ms. Mixon's curriculum vitae – perhaps she could be the one to take over if Ms. Rooker were to leave. He expressed his ongoing concern that he thinks it is a weakness in the organization that CEPD is going into a project without overlap. He does not want CEPD to have all its dependency in one basket.

Ms. Rooker asked to make a statement and it is part of the record because she resented Mr. Mullins implication that by bringing on Ms. Mixon, she would receive more compensation for supervising her. Ms. Rooker continued that Partners in Progress had made that offer to her when Partners in Progress and Mr. Mullins wanted to bring on an additional staff member. She said she turned down the offer based on her principles and ethics. Mr. Mullins replied you "should not be working in the public domain if you are going to have thin skin about something." When Ms. Rooker attempted to reply, Mr. Mullins said "As a Commissioner when I am talking you should not be talking. You finished, I started, okay. So don't interrupt me. I represent the people; I am elected by the people, and my job is to be a good fiduciary to see monies are spent appropriately." Mr. Mullins still wanted to know what the compensation package is "and will judge for himself then how that comes about" because there are many ways that one could accomplish that and he wants to be assured that CEPD is representing the best interest of the people.

Mr. Mullins continued to express concern that CEPD still needs redundancy and overlap. Mr. Boyle said as a matter of public record, Mr. Mullins will receive copies of Ms. Rooker's and Mr. Bralove's contract. He also said Commissioners will receive a copy of Ms. Mixon's CV. Mr. Wilson said he agreed with the concern about checks and balances. He and Ms. Mixon will come back with ideas to ensure proper checks and balances are in place when he presents a new contract proposal.

Mr. Mullins said he thought the bigger piece was that the Board should look at this as an opportunity to learn a lesson about overlap. He said he thought that Mr. Bralove should be overlapping more in the administrative duties but he was aware that Mr. Bralove was not looking to be here for the long haul. When Mr. Bralove sought to correct the commissioner, Mr. Mullins said, "Will you remember your place sir? I resent the fact that we even have so many administrators sitting around the board room. Why do we need, you know, basically the office clerical person attending?" Mr. Bralove replied "Because I take minutes" to which Mr. Mullins replied "We have recordings." Chairman Boyle and Commissioners Jensen and Kaiser indicated that they wanted District staff present.

Mr. Jensen commented that when there was discussion about hiring Hans Wilson and Associates, the reason he was in favor of them was because he felt confident that HWA would provide the backup. Mr. Jensen continued that since the initial decision, he even felt better about HWA's ability to do this, especially in light of what has happened with the accounting. He thought that if something were to happen to Ms. Rooker, he had total confidence that Mr. Wilson could step in and take care of it. Mr. Boyle and Mr. Kaiser agreed.

e) Hans Wilson & Associates Contract

Chairman Boyle asked Mr. Wilson to bring to the Board two proposals regarding the renewal of his contract for the July Board Meeting, one that continued the present services and one that included an option for accounting services with the appropriate and necessary checks and balances to safeguard the system. In the meantime, Chairman Boyle said, CEPD will continue to operate with Robin Mixon on an interim basis until the Board makes a final decision.

8. Administrator Report

a) Calendar of Budget Planning Meetings and Budget Public Hearings

Ms. Rooker reviewed the key meeting dates coming up. She mentioned that at the July 9 Budget Planning Meeting, scheduled for 1:00 P.M. at the CEPD office, CEPD would have the property values from Lee County, the budget, and an ad valorem rate based on the property values and budget. She also brought up the issue of whether there would be a quorum for the September 5 Tentative Budget Hearing. After discussion, Mr. Mullins moved and Mr. Boyle seconded a motion to change the Tentative Budget Hearing to September 3 at 5:01 P.M. The motion passed unanimously.

b) Replacement of fence at Hagerup Parking Area

Ms. Rooker reported that she had been working with Lee County Parks and Recreation on replacing the fence at Hagerup Beach Park. She handed out the architect's drawing and pointed out the materials that would be used and the dimensions of the fence. She also said that this was being done at no cost to CEPD. Ms. Holzheimer thanked Ms. Rooker for her efforts. Mr. Mullins asked when the work would be completed and Ms. Rooker said she estimated the work would be done by the end of July.

c) FSBPA Annual Conference

Ms. Rooker called attention to the dates of the FSBPA Meeting in Delray Beach (September 25-27) and said if Commissioners wanted to attend to let her know and she will register them. She added that Commissioners would have to make their own hotel reservations and to be sure to ask for the conference rate. Mr. Mullins said he planned to attend.

9. Public to be Heard

There were no comments from the public.

10. Commissioner Comments

Ms. Holzheimer asked whether there was any follow-up about Ben Jones' concern with the Army Corps. Mr. Boyle said no and Mr. Mullins mentioned that he had seen Ms. Rooker's memo to Mr. Jones and asked whether Mr. Jones had responded. Ms. Rooker said no.

Adjourn

There being no other business, Chairman Boyle adjourned the meeting at 3:02 P.M.