

Minutes

Regular Meeting of the Captiva Erosion Prevention District

Tween Waters Inn, 15951 Captiva Drive, Captiva, Florida 33924
March 12, 2014 @ 1:00 P.M.

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

Staff Present: Kathy Rooker, Administrator; John Bralove, CEPD Assistant to the Administrator; Bob White, 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

Commissioner Holzheimer pointed out that on Page 2 of the minutes, under "Permit Status," it should read "Commissioner Holzheimer" rather than "Ms. Holzheimer." Commissioner Mullins moved and Commissioner Kaiser seconded a motion to dispense with the reading and approve the minutes, as amended, from the February 12, 2014 Regular Board Meeting. The motion passed unanimously.

4. Public to be Heard

Ben Jones spoke from the audience about the revetment in front of his house and why this revetment should be considered in the allocation of the cost of the project to his property. Chairman Boyle said Mr. Jones had brought his concern to the Board at a previous meeting and CP&E's engineer had provided an explanation. Commissioner Mullins moved and Commissioner Boyle seconded a motion to perform a careful analysis of the situation and provide a thorough engineering reply to Mr. Jones. Commissioner Kaiser said a letter should be provided to Mr. Jones and the Chair agreed. Chairman Boyle called for the vote and the motion passed unanimously.

5. Financial Report

Treasurer Jensen provided the Financial Report. Regarding the General Fund, he said the ad valorem taxes collected were close to the budget. Regarding the Capital Project Fund, parking lot revenue was holding up.

Treasurer Jensen continued by saying the special assessment collections were in line with the budget. He said collections were \$40,000 behind meeting the 12-month budget with 7 months left in the fiscal year. Ms. Rooker said this was the last year for collection of non-ad valorem taxes for the 2006 Project.

6. Old Business

a) Renourishment Project Completion

Chairman Boyle went over the summary by contractor of the 2013/14 Project construction costs, comparing the bid price, actual cost, and the budget. All categories were favorable and the final totals showed CEPD finishing \$224,832 under budget.

Commissioner Mullins commented that no posts and ropes had been installed in front of the dunes by his house and to the north. Ms. Rooker responded that the Board had approved a scope of work that included posts and rope for high access areas to keep people off the newly planted dune. She said the scope of work was clear that CEPD would not post and rope the entire island. Commissioner Mullins said he would like to have someone get more posts and rope for him as well as to the north of him. Chairman Boyle said that CEPD is purchasing more signs for the higher traffic areas and would get some more posts and rope.

Relative to sand put on the beach, Chairman Boyle said the bid called for 725,000 cubic yards on Captiva; the pay volume came to 740,000; and the survey work that still is being done looks like it will come to about 750,000.

b) Permit Status

The Chair called Commissioners' attention to the Agenda Materials containing the formal application to the DEP. It is being sent today and the DEP has 30 days to respond.

Commissioner Jensen said he did not know if this were the time to bring it up, but asked about the easement problem as CEPD looks to the next project. Is it an issue CEPD needs to consider? The Chair responded that it is up to the Board to decide what they want to do. He mentioned the previous discussion he had with the Army Corps when he, Col. Dodd, and a civilian employee of the Corps looked at the 'Tween Waters stretch. Chairman Boyle said he was told that if CEPD wanted credit for the road frontage in front of 'Tween Waters, as it had received in the past, CEPD would need to have public parking along this stretch. Col. Dodd said he did not see how CEPD could do that. Commissioner Jensen asked if CEPD could get a briefing from Steve Keehn as to what was happening up north relative to this issue. The Chair said Mr. Keehn could come to a Board meeting. However, Chairman Boyle explained, he had not planned to have a discussion of the easement issue at this point since it was not on the agenda. He said it could be brought up under Commissioners' Comments.

c) June Special Meeting Date

Chairman Boyle suggested a meeting date of Thursday, June 5, at 5:00 P.M for the Special Meeting to discuss with the public the special assessment and finalize it. He thought an evening meeting would allow more people to attend. Commissioner Kaiser said this might be too close to Memorial Day. Chairman Boyle said Memorial Day was a little earlier this year and CEPD needed to have the meeting in early June to allow the information to be transmitted to the Tax Collector by August 31 in order to appear on the 2014 tax bill. He explained that in order to meet this target, Dr. Stronge will be at the April Board meeting to present the first draft of the apportionment and allow the Board to discuss it. This first cut will assume CEPD pays down the loan by \$3 million. The Board will then have the opportunity to see a second draft at the May meeting, which Dr. Stronge will also attend. At this meeting the Board will make a final decision about the tentative assessment. He added that both drafts will be sent to Board members a week in advance of the meetings to allow time for review.

Chairman Boyle continued that the Board needs to approve a tentative assessment roll at the May meeting so that assessment letters can be sent to all taxpayers by May 21. This mailing would allow for taxpayers to have their assessment letters in enough time to review them and submit any written appeals or objections prior to the tentatively scheduled June 5 meeting. Commissioner Mullins asked what version of the tax roll will be used for the assessment. Ms. Rooker responded that it was the October 2013 certified roll. Commissioner Mullins said he was concerned about people like himself who had successfully appealed their appraised value after October. Ms. Rooker responded that CEPD will receive an updated list of the value adjustments at the end of this month once they are finalized. She added that those who received value adjustments that are not on the list can present evidence from the tax office and Dr. Stronge will incorporate the adjustments. Commissioner Mullins moved and Commissioner Jensen seconded a motion to set the date for the Special Meeting for June 5 at 5:00 P.M. The motion passed unanimously.

7. New Business

a) Resolution 2014-3 Approving Hard Bottom Survey Scope of Work

The Chair said that without objection, the Board would move to Agenda Item 7b. There was no objection.

When the Board returned to this Agenda Item (7a), Chairman Boyle reported that the DEP has requested a dive effort to confirm that there is no further growth of the minor amount of coral, hard bottom, and certain grasses around the sand borrow site since the last survey done about 10 years ago. The Scope of Work proposed in this Agenda Item responds to this request. It is 4 days and will cost \$31,162. He added the DEP is requiring this prior to considering CEPD's permit. Ms. Rooker explained that CEPD had established a buffer to protect this small hard bottom area but the DEP position is that since this was 10 years ago, conditions might have changed. Therefore, CEPD needs to verify that the area has not changed.

Commissioner Mullins asked if there were a way to get the DEP to back off this request and the Chair responded that CEPD had attempted to dissuade them but they had not relented. When asked who could do this work, the Chair explained the company doing the work needed to be certified. He added the current permit expires in November 2014 and a delay in getting this work done will delay the permit approval.

Commissioner Mullins asked if this were the permit that allows emergency renourishment. Commissioner Boyle responded that any dredging work requires a permit but that it would be a good idea to get Nicole Sharp on the phone to respond. When Ms. Sharp came on the speaker phone, Commissioner Mullins explained his question: Why does CEPD need to renew the permit that expires in November in such a hurry when there is an emergency permit in effect? He thought CP&E had secured an emergency permit on CEPD's behalf. Ms. Sharp said the only permit CEPD has is the one that expires in November. She went on that in the past, CEPD was able to apply for an emergency CCL permit that would allow placement of sand above the mean high water line and not go through the more rigorous process. However, the rules had changed in the last six months so that there is no such thing as a CCL permit. There is currently no emergency permit. Commissioner Mullins asked if CEPD's Emergency Plan had been updated to reflect these new rules. Mr. Keehn came on the phone and confirmed that the Emergency Plan had been updated about two years ago. Commissioner Mullins asked him, given the DEP changes, does CEPD have to update the plan again? Mr. Keehn responded the

permit renewal application in progress will ask for all the permissions needed. Between now and then, Mr. Keehn said, there are two authorities under which CEPD can act: (1) use the current permit until it expires, which would allow CEPD to place sand both on the beach and in the water; and (2) acting as the appropriate government authority, declare an emergency and within 30 days place sand only on the dry beach.

Commissioner Jensen asked Ms. Sharp about the consequences of not renewing the permit by the November 2014 deadline. She responded there is more of a risk the DEP could make it more complicated to get a permit if a storm were to hit if the permit is allowed to expire. She added permits for repeat projects such as CEPD's get expedited treatment. The Chair said it was not worth the risk for a barrier island with only one evacuation road and asked for a motion to approve CP&E's proposal for the Scope of Work for a Borrow Area Hard Bottom Survey and fee of \$31,162. Commissioner Jensen offered such a motion and Commissioner Kaiser seconded it. The motion passed unanimously. The Chair asked Ms. Rooker to read Resolution 2014-3 approving the expenditure not to exceed \$31,162 for the CP&E Scope of Work for a Borrow Area Hard Bottom Survey. Commissioner Jensen offered the Resolution and Commissioner Kaiser seconded it. The Resolution passed unanimously.

b) Cost Charged to Project Assessment

Chairman Boyle said there were 3 proforma schedules to look at: #1 assumes that CEPD would pay down the loan amount by \$2.5 million from \$9.6 to \$7.1 million; #2 assumes a pay down of \$3.0 million to \$6.6 million; and #3 assumes a pay down of \$3.5 million to \$6.1 million. He said CEPD has scheduled a meeting with Steve Boutelle and County Commissioner John Manning during the first week of April to discuss raising the County's cap on the ILA for their portion of the project from \$6.1 million to between \$6.7 to \$6.9 million since CEPD did not receive Army Corps funding. The numbers in the schedules could change if the cap is raised. He also explained that the Capital Bank Balances shown in the lower left portion of the schedules do not include CEPD's CD and balances from the SBA accounts, the total of which is \$460,000.

Commissioner Mullins suggested a different approach: ask the County for the same percentage as in the ILA but apply it to the \$7.5 million that CEPD did not receive from the Army Corps. The Chair responded that this is not what the ILA calls for. Commissioner Mullins said the CEPD should set a higher expectation with the County; the County should do more. Chairman Boyle said CEPD should respect its legal agreement. Commissioner Mullins asked that it go on the record that he thinks CEPD lost \$7.5 million despite all the lobbying that was paid, CEPD is at a net negative below that, and CEPD should look for an opportunity to over reach with the County.

Returning to the proforma schedules, Chairman Boyle said Dr. Stronge will be asked to base his work on a \$3.0 million pay down of the loan. Some of the assumptions on which the schedules were based were explained and discussed, including a 2% cost of collections fee. Ms. Rooker explained that the Tax Collector discounts payments received if taxes are paid in November (4%), December (3%), January (2%) and February (1%) and these discounts apply to money collected on behalf of CEPD. The 2% tends to offset the Tax Collector's discounts. Commissioner Mullins asked whether CEPD can submit to the Tax Collector a figure that offsets these discounts. Ms. Rooker said the enabling legislation allows CEPD to charge interest on the loan and up to 2% for the cost of collecting. She explained that the only other thing CEPD could do is add to the cost of the project the interest CEPD pays up front (\$169,161) - the first year's

interest CEPD has to pay before any principle repayment. After additional discussion of these and related issues, Chairman Boyle suggested that Nancy Stroud be consulted as to what CEPD can do. It was suggested that CEPD's accountant also be consulted.

Chairman Boyle returned the discussion to the schedule showing the financial implications if CEPD paid down the loan by \$3.0 million.

Commissioner Mullins asked about the Rules of Procedure that require a 20% set aside for the next project. Chairman Boyle said CEPD will look into this. Commissioner Jensen said he did not know what the Rules of Procedure required, but Commissioners in the past always talked about having at least \$1 million in reserves going into the next project. Chairman Boyle said Dr. Stronge will prepare by the end of March an assessment roll based on a \$3 million pay down. This will be the starting point of the discussion with Dr. Stronge at the April Board Meeting. Commissioner Mullins read from the Rules of Procedure regarding the 20% set aside. Commissioners agreed that the wording was not clear. There were additional questions about expenses in the proforma displays and the timing and schedule of the assessment process.

Commissioner Mullins said when the 2010 preliminary apportionment was done, some organizations did not receive an assessment. He said at some point CEPD needs to determine whether Dr. Stronge is planning to send these properties, like the Captiva Civic Association, Island Water, and the Gulf Way access property, assessments. He thought all properties should pay something and this is a good time to deal with this issue. Chairman Boyle said he did not think the Board could decide today on the Gulf Way access because it is a complicated issue. However, he said, there are some things that Commissioner Mullins has brought up that the Board could decide on if it wants – for example the CCA. He asked whether it was the feeling of the Board to levy an assessment against them for the beach because the Board could request that Dr. Stronge put it in his calculation. Commissioner Mullins said the general rule in the past had been that everyone pays something. He said he thought the CCA should pay something. The Chair asked if Commissioner Mullins wanted to make a motion. Commissioner Mullins moved and Commissioner Jensen seconded a motion to put a value on the Civic Association property and give them some assessment. Chairman Boyle asked whether the CCA had a value assigned to it and Commissioner Mullins said it did not. Ms. Rooker said part of the calculation in the enabling legislation is based on the property value the Property Appraiser assigns. CEPD does not set the value. Commissioner Jensen agreed with Commissioner Mullins that all properties should pay something but the motion should include all properties, not just the Civic Association. Commissioner Mullins withdrew his motion and Commissioner Jensen agreed to withdraw his second. Chairman Boyle said according to the enabling legislation there must be a value assigned to the property by the Property Appraiser and if there is no value assigned; there is nothing that can be done. He said CEPD will get Nancy Stroud and Dr. Stronge involved in this and research what CEPD can legally do. He added that he agreed with the general principal that CEPD should assess anybody CEPD is legally capable of assessing.

Chairman Boyle said he wanted to respond to Commissioner Holzheimer's concern raised at an earlier meeting about a backup plan for Dr. Stronge's work. He said Ms. Rooker and he had a conference call with him about 10 days ago. Dr. Stronge agreed to document every step of the assessment process and model and provide CEPD with a copy of the documentation. The Chair said in a later conversation he had with Dr. Stronge, Dr. Stronge's long-term plan was to create a partnership with one of his graduate students, but this might not work out. If this does not

work out, Chairman Boyle reported, he asked Dr. Stronge to give the Board a number to buy the business and the model. Commissioner Mullins said he thought anything CEPD bought was in the public domain and that CEPD already has the model. Commissioner Mullins went on to say that he thought Dr. Stronge's value was as an expert whose opinion was less likely to be refuted than if the opinion came from CEPD.

Chairman Boyle returned to Agenda Item 7a.

8. Administrator Report

a) FEMA Update

Ms. Rooker reported she had attended a meeting in Washington on February 12 with FEMA staff, including FEMA's Chief of Policy, Greg Burns (CEPD's lobbyist), and representatives of Charlotte County. She said it was a positive meeting. At that meeting, CEPD presented documentation to support the District's argument that the Atlanta Division was interpreting the definition of a damaged beach incorrectly, especially regarding the northern part of Sanibel. The Chief of Policy told CEPD he would follow up with Atlanta as to whether they were following policy as written by FEMA or not. The Chief also talked about the appeal process and CEPD learned there was an opportunity to appeal a judgment twice if CEPD were not to get a favorable ruling. Part of this process includes the issue going back to the Chief of Policy. However, she said, the appeal process can take a very long time – several years. Ms. Rooker continued that CEPD has heard back from the Atlanta Division after the Chief of Policy got in touch with them. They have requested additional documents, which CEPD has provided. She said she did not expect to hear back from Atlanta for many months. Commissioner Kaiser asked how much money was involved. Ms. Rooker replied that the original determination was \$1.7 million but she had provided documentation that the cost had gone up since then. Ms. Rooker added it was important to ensure that FEMA interpret policy correctly so that all coastal communities, not just CEPD, not lose out.

Commissioner Mullins asked whether CEPD is able to recoup administrative costs in going after something like this or even for the completed project. Ms. Rooker said CEPD can recoup some administrative costs from FEMA for a project but probably not for this appeal. Commissioner Mullins asked whether the same was true for the state and county. Ms. Rooker said neither the state nor Lee County allow for recouping administrative costs.

9. Public to be Heard

There were no comments from the public.

10. Commissioner Comments

Commissioner Mullins said he had comments about the DEP. He said some time ago, DEP was going to classify certain beaches a certain way and as a result CEPD would run into issues with the Federal DEP when it tries to do a renourishment. Ms. Rooker asked if he meant the change for the turtles. Commissioner Mullins said this indeed was what he was talking about and had this been resolved? Ms. Rooker responded that it had not. Commissioner Mullins asked whether the DEP had been more streamlined. Ms. Rooker responded that CEPD will find out soon based on the permit application. Commissioner Mullins said he was strongly in favor of starting the process of getting the "new form" easements now and this should be put on the agenda for the next appropriate meeting, maybe in September. He said he thought CEPD should also increase access where it can.

He suggested that perhaps a survey be done to find out what the community wants. He added that the Community Panel's survey asked some questions about this and the general sense of that response was homeowners were not in favor of increasing parking because it meant more people. He said he is comfortable that CEPD use the Panel's survey as its answer to say that the District is not going to do anything more to increase access. But, he said, he thought it ought to be something that CEPD deliberately votes upon.

Commissioner Kaiser commented that the beach access issue up north was a huge problem, especially because of the Army Corps' new interpretation of beach access. He thought relative to Captiva's easements, it started off as very simple. Now people want beach access for weddings and other events. He said there are going to be huge problems with places such as Osprey Way. CEPD needed to start controlling beach accesses and how they are used. Owners do not want people illegally using the property and parking all over. He said since CEPD is involved with the beach, it should look at all the avenues and decide what it wants to do. Chairman Boyle said that in terms of enforcement, it was the County Sheriff's jurisdiction. Commissioner Mullins brought up the issue of drones being used for photo shoots over accesses and this may be an issue in the future.

Commissioner Jensen asked about the reserve requirement that had been brought up earlier. Commissioner Mullins said CEPD should figure out what it wants and change the Rules of Procedure. Ms. Rooker read what was involved in changing the Rules of Procedure. Chairman Boyle suggested it go on next month's agenda. Ms. Rooker asked for suggestions for new wording.

Adjourn

There being no further business, Chairman Boyle adjourned the meeting at 4:02 P.M.