

Captiva Erosion Prevention District
Monthly Meeting Minutes
July 13th, 2020
Location: Zoom

I. Call To Order

- Chairman Michael Mullins called to order the regular monthly meeting of the Captiva Erosion Prevention District (CEPD) at 1:00pm on July 13th, 2020 in a virtual meeting via Zoom.

II. Roll Call

- The following persons were in attendance:
 - Commissioners:
 - Seat 1, Harry Kaiser, Secretary
 - Seat 2, Vacant
 - Seat 3, Michael Mullins, Chairman
 - Seat 4, Bob Walter, Vice Chairman
 - Seat 5, Richard Pyle, Treasurer

 - Chairman Mullins stated that Commissioner Lanigan resigned in late June and his seat is currently open.

 - CEPD Staff: Joe Wagenti, Administrator
 - CEPD Attorney: Ralf Brookes
 - Members of the Public

III. Approval of Minutes for June 8, 2020 CEPD Board Meeting

- Chairman Mullins requested that the approval of the June 8th CEPD Board Meeting be delayed.

IV. Public Comments

- Administrator Wagenti added the following Public Comments on the behalf of Mr. Michael Lanigan
 - Mr. Lanigan noticed a backhoe being used to move around several large rocks that had been there for many years. This raised the question as to whether the the rocks are decorative in nature or if they have been part of past nourishment projects. He suggested that it may be worth educating property owners where their property ends and the public beach begins.

 - In a recent meeting there was mention of making Dr. Bill Stronge available to meet with a property owner to discuss the apportionment method that the CEPD has used for past renourishments and as the baseline for future renourishments. He does not

believe that CEPD should pay for the meeting if it occurs, as the Administrator is the appropriate person to explain the process.

- He suggested future beach briefs to share information and photos during beach monitoring trips.
- Chairman Mullins asked Mr. Carol Wetzel to address the issue of the meeting with Dr. Stronge, as the resident who requested the meeting (see June 8th meeting for previous testimony). Mr. Wetzel stated that meeting isn't necessary but he needs materials which are available on the public domain and would like to understand how the formula works as he was unable to back into the numbers. Specifically, he requested the Summer Recreational Study and the study in which individuals were interviewed for feedback. Chairman Mullins stated that CEPD has that information and that it is public domain. He requested that Administrator Wagenti send this information to Mr. Wetzel.
- Administrator Wagenti stated he does not have that information and that Dr. Stronge is not willing to provide it, that Dr. Stronge stated it is proprietary information. Chairman Mullins clarified that the Summer Recreational Study was paid for by the CEPD and submitted to the CEPD and repeated the request that Administrator Wagenti forward the study to Mr. Wetzel. Administrator Wagenti stated that he doesn't know how long it may take to research and that he has been unable to locate the study. Chairman Mullins suggested asking Dr. Stronge to resend the study. Vice Chairman Walter stated that the study was paid for, prepared for, and delivered to CEPD and thus the study is not proprietary. Chairman Mullins explained that it may be the model with the detailed calculations that are proprietary.
- Mr. Ralf Brookes (CEPD attorney) stated that he can confirm what specifically he is claiming to be proprietary, then determine if it may be subject to the Sunshine Law and if any statutory exemptions exist.
- Chairman Mullins set a target to resolve this prior to the August Board meeting.

V. CEPD Administrator, Joe Wagenti

- Chairman Mullins stated that he requested that this be added to the agenda in order to consider the employment terms of the Administrator, specifically as to the sustainability for hiring and firing for the position. He stated that Mr. Brookes advised that the Board cannot delegate as such and it requires a process. He explained that since that time, a document with the meeting materials was released and one of the included documents was a disclosure document by the Administrator with potentially damaging allegations regarding the Chairman, Board members, attorney, and accountants and that this should be investigated immediately. He asked Mr. Brookes for advice but stated a preference that this be properly investigated by someone who is not the Chairman.
- Vice Chairman Walter stated that he felt an independent investigation is warranted and that all Board members should step back and wait for an independent investigation to be completed. He suggested that Mr. Brookes find an independent arbiter that can investigate.
- Mr. Brookes stated that his recommendation is to hire an independent investigator and not be involved. He offered to provide a list of three investigator names to Vice Chairman Walter, or go out for advertisement, or simply choose one within the budget.
- Treasurer Pyle abstained from commenting.
- Chairman Mullins confirmed that an independent Commissioner would be needed to function as a liaison and asked Vice Chairman Walter if he could help start the process with

investigators. Chairman Mullins stated that he has written a response to all points.

- Mr. John Sylvia asked who regularly oversees the CEPD and if there is a regular auditor at the state or county level. Chairman Mullins responded that the district is enabled by state legislation and that an annual financial audit is performed by an independent auditor and the financials are prepared by an independent accounting firm. The report is then submitted to the State, where it is reviewed for compliance.
- Mr. Brookes stated that the letter from the Administrator dated July 10th alleges a “hostile work environment” which would normally go to a human resources department. Due to the size of the organization, there is not a human resources department present. As a result, the CEPD is called upon to perform an internal investigation or to have a due process hearing in which allegations and responses would be heard by the entire Board. He recommended beginning with an investigation and a written report, then taking that to the Board with additional testimony. Typically, he stated, this is an internal complaint that would be investigated prior to going to the Equal Employment Opportunity Commission (EEOC).
- Secretary Kaiser expressed his support of an outside investigation.
- Chairman Mullins described the Board process of reviewing and voting on all proposals and the involvement of independent attorneys and accountants.
- Secretary Kaiser commented on the methods used in the bidding process and the success of the renourishment projects.
- Chairman Mullins stated the allegations are being made under a whistle blower act. Mr. Brookes has advised him to have it pursued according to the standards of the law. He stated that Administrator Wagenti has hired an employment attorney and they have the right to weigh in on the investigation.
- There is additional discussion about the need for a Commissioner to act as a liaison. Chairman Mullins confirmed that he has recused himself from being involved because many of the allegations made by the Administrator pertain to the Commissioner. Vice Chairman Walter is unavailable and Treasurer Pyle has abstained. Secretary Kaiser has also stated he is unable to perform this role, and Commissioner Lanigan has resigned.
- It is suggested that settling the issue of the open seat may be of assistance. Chairman Mullins requested that the Board move forward to the next point on the agenda.
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VI. Interim Board Commissioner Seat 2

- Discussion was held regarding elections. Chairman Mullins stated that Mr. Sylvia won Mr. Walter's seat by acclamation and inquired with Administrator Wagenti as to applicants for the open seat. Administrator Wagenti stated that the only email he received was from Mr. René Miville.
- Vice Chairman Walter asked if Mr. Miville was the only one who expressed interest. Administrator Wagenti replied that he cannot speak on behalf of Mr. Sylvia but he may be interested.
- After further discussion, it was confirmed that in January Mr. Sylvia will take the seat of Vice Chairman Walter and that Mr. Miville is the only applicant for the Seat 2 position.
- Secretary Kaiser motioned for Mr. Miville to fill the Seat 2 position of Mr. Lanigan until the end of the term. Vice Chairman Walter seconded the motion. A vote was held and passed unanimously.
 - For: Secretary Kaiser, Chairman Mullins, Vice Chairman Walter, Treasurer Pyle

- Mr. Miville was appointed by the Board, effective immediately, to fill Mr. Lanigan's vacancy until the end of the year. Mr. Miville accepted the appointment.
- Chairman Mullins summarized the current situation of the allegations made by the Administrator and the need for all who have been accused in the allegations to not be involved in the investigation process. He asked Commissioner Miville if he was willing to proceed with the investigation. Commissioner Miville confirmed.
- Chairman Mullins confirmed that in January the available seats will be: Seat 2 and Seat 5 and they will be appointed at the end of the year. If anyone else in the community is interested, there is a process in place and it will be followed.

VII. Administrator's Letter

- Chairman Mullins asked Administrator Wagenti, "Do you understand what we are saying about doing an independent investigation and giving you an opportunity to present all of your evidence and arguments and have that addressed?" Administrator Wagenti confirmed that he understood.

VIII. Financial Reports June 2020

- Treasurer Pyle led the review of the June financial report. He stated that he had reviewed the report for the general fund and the capital fund, as well the year-to-date numbers and how they compare to the budget. He stated there are no evident issues in the financial reports.
- He stated that from a financial standpoint there is much work to do in order to secure funding requirements for the beach renourishment project that will take place no later than 2022.

IX. Discussion Items

a) General/Capital Budgets – TRIM FY 20/21

- Chairman Mullins stated that additional discussion is needed prior to approving the budget. Treasurer Pyle confirmed that he's available for a budget workshop.
- It was confirmed that the DR-420MM is due on August 4th.
- Administrator Wagenti stated that he will perform the calculation of the millage rate and will then send it to the Department of Revenue to check accuracy.
- Chairman Mullins suggested using the maximum number generated in the last meeting and calculating the millage rates based on that number as was discussed in the last meeting.
- Administrator Wagenti states that the 25% increase puts the budget at \$793,450. It is currently at \$643,450.
- Treasurer Pyle motioned to approve the budget. Vice Chairman Walter seconded the motion. A vote was held and the motion passed.
 - For: Secretary Kaiser, Vice Chairman Walter, Treasurer Pyle
 - Against: Chairman Mullins
- Administrator Wagenti will advise the Board in writing of the meeting for budget review and will send the DR-420MM before getting it back from the Department of Revenue.

b) Administration Report

- Administrator Wagenti met with APTIM last week and prepared a 90-day outlook which is included with the registration report.

- He stated that he met with the Tourist Development Council (TDC) and was informed there was a 40% cut in their budget. As a result, the CEPD's ask of \$600,000 has been reduced to \$400,000 and final approval will be complete in August.
- Chairman Mullins asked for clarification from Mr. Brookes if a reduction of a grant request is within the purview of Administrator Wagenti. Mr. Brookes replied that he would need to review the documents prior to responding. Chairman Mullins stated he would like further research to determine if related SOPs need to be modified moving forward.
- Administrator Wagenti reported that the Florida Department of Environmental Protection (FDEP) did a grant approval of \$6M for the next fiscal year.
- LGFR [Local Government Funding Request]
 - Chairman Mullins requested clarification about the project numbers: an estimated \$30M for the project, the LGFR calculated out a 20% grant, that comes out to match the \$6M. Administrator Wagenti confirmed and stated that if Sanibel is included in the LGFR the percentage may go up from 20% to 22-23%. He stated that a draft ILA will be needed soon. Chairman Mullins agreed and stated this was discussed the previous month.
 - Mr. Brookes stated he sent a draft to Administrator Wagenti that can be used as a basis for the term sheet for the contract, but agreed that Chairman Mullins could send his thoughts regarding the terms and that Mr. Brookes will convert it and return to the Board with a term sheet draft.
 - The importance of including Sanibel and Lee County was discussed.
 - Administrator Wagenti expressed his uncertainty about when the LGFR is due. Chairman Mullins stated it is typically around July and asked him to find the date ASAP and prepare the milestones.
- Administrator Wagenti stated that for the Red Fish Pass project, money is being received from FDEP but that TDC also granted money to CEPD. He stated that under TDC the monies can be moved to pay for other things and that he would like to check with Ms. Nancy MacPhee of the TDC before doing so.
- Administrator Wagenti introduced Todd Hunter, who will be assisting on the beach and in the parking lot.
- Beach and Park Monitoring:
 - Administrator Wagenti stated that they have decided to make sure there is an attendant for holiday weekends.
 - He stated that there is a volunteer group using the CEPD logo wanting to pick up trash along the beach and asked if a Commissioner had approved this. Chairman Mullins stated that he authorized a group for cleanup but was unaware that they'd be using the logo. Mr. Brookes confirmed that the logo should not be used without permission. There was discussion about potential liability. Chairman Mullins agreed to speak with them.
 - Vice Chairman Walter stated that it would be preferable to continue the attendant service every weekend at least until school restarts on August 10th. Administrator Wagenti confirmed that this could be arranged and that he wants an attendant present from 7a to 8p.
 - Administrator Wagenti stated that the parking revenue for the prior month totaled

\$60,000. He stated that this number was not reflected in the financials because there was an error in the meters due to old technology, and that the meters are currently being upgraded. He stated that the additional revenue will be reflected in the next financial report and that no revenue was lost.

- Chairman Mullins reminded the Board to be mindful of the complaints that are coming in from community members about pricing.
- Administrator Wagenti stated that they are developing a warning tag for large trash and furniture left on the beach. Secretary Kaiser supported the idea.
- He stated that the administration office has scanned 37,000 documents in the last 2.5 weeks.
- Administrator Wagenti stated that an SOP was issued for Human Resources (HR) and that he strongly disagrees with it. He stated that he felt the HR manual should be implemented today, but recommends postponing it for the independent investigation of the work environment. Chairman Mullins agreed that the draft HR document should not be implemented in its current form.
- Chairman Mullins addressed a line item noted in the Administrator's report, which stated: "Working Conditions: To Ensure a Psychologically Safe and Professional Working Environment, the Chairman is Banned From the Administration Office."
 - He stated that he doesn't believe that Administrator Wagenti has the authority to make this decision and asked for input from Mr. Brookes as to whether or not a statement of this type should be included in a public document. Mr. Brookes replied that he believes Administrator Wagenti has put forth his position in the July 10th letter. He stated that he feels it is not a directive from the Board, but rather a request from the Administrator.
 - Secretary Kaiser stated that the Chairman should always be able to go to the office, even though it's not done frequently. Chairman Mullins requested that the item be removed from the report. Commissioner Miville stated that he strongly recommended it be struck out.
 - Vice Chairman Walter motioned to deny the request that the Chairman be banned from the administration office. Secretary Kaiser seconded the motion. A vote was held and passed unanimously.
 - Administrator Wagenti agreed to remove the statement and resubmit the report.
- Administrator Wagenti stated that because the workshop meetings don't involve a vote, meeting minutes are not required. Mr. Brookes stated that under the Sunshine Law, meeting minutes are required regardless of the length or nature of the meeting. Multiple participants agreed that this was existing policy.
- Vice Chairman Walter motioned that all meetings will have minutes and be open as according to Sunshine Laws. Secretary Kaiser seconded. A vote was held and passed unanimously.
- Administrator Wagenti stated that he wants to increase the annual salary of Kimmy Foulds to \$48,000. Chairman Mullins clarified that historically, the Administrator has never unilaterally made this type of decision. He reviewed the methods and reasons used to determine the salary for the position of Ms. Foulds and requested that this salary increase be delayed pending the results of the independent investigation. Commissioner Miville requested additional information about Ms. Foulds' scope of work and duties.

- Administrator Wagenti stated that employment records related to Ms. Foulds are internal documents. Vice Chairman Walter stated that he disagrees. Mr. Brookes clarified that under the Sunshine Law there is no exception for evaluations of employee performance except for a public school system and hospital employees. He confirmed that the employment records of Ms. Foulds are public record. Administrator Wagenti agreed to send the performance evaluation and her resume.

X. New Business

- Chairman Mullins requested an update on project planning. Administrator Wagenti referred to the 90-day outlook he'd previously referred to. Chairman Mullins expressed that this is not sufficient. Commissioner Miville described what the process has looked like historically and the importance of timing. Chairman Mullins stated that he is proceeding under the originally approved plan and will work with Mr. Bob Gray directly.

XI. Commissioners' Comments

- Vice Chairman Walter: No additional comments
- Treasurer Pyle: No additional comments
- Secretary Kaiser: Expressed that all parties should do the job and shake hands.
- Commissioner Miville: Expressed the intent to focus on getting the project done, saving money and making things happen.

XII. Adjournment

- Secretary Kaiser motioned to adjourn the meeting. Vice Chairman Walter seconded the motion. Meeting was adjourned.