

## Minutes

**Regular Meeting of the  
Captiva Erosion Prevention District**  
15951 Captiva Drive, Captiva, Florida 33924  
April 13, 2011 @ Noon

Commissioners Present: Mike Mullins (Chairman); Dave Jensen (Treasurer); Harry Kaiser (Secretary); Rene Miville (Commissioner).

Absent: Doris Holzheimer (excused).

Consultants Present: Kathleen Rooker (CEPD Senior Administrative Consultant); John Bralove (CEPD Administrative Consultant).

Lee County Staff Present: Douglas Meurer, Asst. County Manager; Steve Boutelle, Division of Natural Resources; Robert Neal, Division of Natural Resources.

**1. Call to Order**

The meeting was called to order by Commissioner Mullins at 12:10 p.m.

**2. Roll Call**

The roll was called and the results are outlined above. Mr. Mullins welcomed the visitors from the Lee County staff.

**3. Approval of March Minutes**

Mr. Kaiser moved and Mr. Jensen seconded a motion to dispense with the reading of the minutes from the March 10, 2011 meeting and approve them. The motion passed without dissent.

**4. Public to be Heard**

There were no comments from the public.

Mr. Mullins announced that Mr. Jensen asked to defer the financial report so that discussions that might involve issues the County staff might be interested in could take place early

**6. Old Business – Report of the Senior Administrative Consultant**

**c) Blind Pass Update**

Mr. Mullins reported that the reconciliation of funds with the Florida Department of Environmental Protection is still ongoing. He stated that the range that DEP is estimating is from \$400,000 and \$700,000. He also said that the DEP is missing some information that brings the amount closer to \$400,000 or less.

Mr. Mullins also discussed the attempt to reconcile project figures with the County and whether CEDP owes Lee County money from the previous project. A meeting will take place between the

CEPD and the County to compare figures. Mr. Boutelle confirmed that Ms. Rooker and County staff are working on the numbers and there will be a meeting to reconcile them. Mr. Mullins asked whether a formal claim was being made by the County and Mr. Boutelle said that they are content to wait until CEPD comes back with its data.

Mr. Mullins also reviewed why CEPD thinks that it has not received its fair share of funding from the County in the past, explained CEPD's position on policies, issues and concerns as they relate to Lee County, presented some historical background, and explained how CEPD works. Mr. Miville also added some comments on the history and also expressed concern about Captiva not getting its fair share.

Mr. Kaiser expressed interest in administering the parking lot at Blind Pass. Mr. Mullins provided some background on how Sanibel acquired the contract with Lee County to run the lot.

There was additional discussion about the County "formula," the proposed additional 1 cent bed tax, and other ways of funding projects. Mr. Jensen asked whether there is a funding formula that Lee County uses. Mr. Mullins replied that CEPD has seen it now and CEPD can now forecast what expenses are going to be on the next project. Mr. Jensen asked whether CEPD has reached an agreement on it with the County. Mr. Mullins asked Mr. Boutelle whether he thought so and Mr. Boutelle said that as far as he knew, the County has not yet received back an official position from CEPD. Mr. Keehn commented that he is using that formula in his financial projections and spreadsheets. Mr. Mullins said that he was going to recommend to the CEPD Board that the formula is acceptable to CEPD.

Regarding Blind Pass, the mitigation of the Sanibel sand erosion issue and the 2008 Blind Pass opening project was discussed with some background and history added, including information on both interlocal agreements. Mr. Mullins said that there might be interest in combining both interlocal agreements and asked Mr. Boutelle to comment on this. Mr. Boutelle said that indeed the idea was discussed at an April 11 meeting between Lee County, Sanibel, and CEPD, but by the time it was talked through, he was not sure it was a good idea.

Ms. Rooker reported on the meeting that was held on April 11 on the status of Blind Pass and Interlocal Agreement among the County, Sanibel, and CEPD. Her report on this meeting was contained in Agenda Item 6c. Mr. Boutelle was invited to add his comments on this meeting. Mr. Boutelle mentioned that one thing that was touched upon was that those at the meeting can't speak for the elected officials. Anything thought to be a good idea is merely recommendation. He said that all three parties need to be involved in any discussion of an appropriate solution. It was good to see that everybody was there to find a solution and work toward it. It may take some time, he said, to work through all of this but we have time because the interlocal agreement has several years yet to run. But staff thought it was a good time to start the dialogue and help move it forward. He reiterated that ultimately the Board of County Commissioners will make a decision that may have constraints, including fiscal ones, on the options. Each party has their opinion on the pros

and cons and there is an attempt to find a balance. Mr. Boutelle concluded by saying that that the first decision is whether to keep the pass open and that as far as he knew, there is majority support on the County Board for keeping Blind Pass open.

Mr. Miville wondered whether estimates of future costs for Blind Pass were high, and commented on the lack of discussion of the recreational benefits of keeping Blind Pass open. Mr. Boutelle said that it was the one clearly defined benefit that everyone did agree to. Mr. Miville asked why couldn't Blind Pass be considered a sand borrow source and wondered what the County's game plan was. Mr. Mullins reiterated what had been discussed and that everything should be on the table. He added that all parties had something to gain by sharing in the process and discussion, as the County had already said.

Mr. Miville continued by saying that that the approach to keeping Blind Pass open should not be penny wise and pound foolish; that is, wait for it to close up and turn a \$1 million project into a \$2 million project. Mr. Mullins mentioned that there may be a dredge off Ft. Myers Beach in June. Mr. Neal commented that for engineering purposes he did not recommend dredging last fall but there was always the possibility to take advantage of the equipment in the area this summer for possible dredging. Mr. Mullins said he would like to see the possible additional dredging as part of a longer term solution and that all parties should look at both a tactical and strategic solution. Mr. Miville thought that the project ought to be finished. Mr. Mullins thought that CEPD needs to look at the bigger picture. He also mentioned that cash is scarce and that CEPD was prohibited from using certain funds if they were designated for other purposes.

Mr. Miville thought that there was money available and suggested that the County find it. He also wondered why the County would take on a new project when Captiva had a management company (CEPD) on site. Mr. Mullins mentioned that the Board had decided at its last meeting that even if it were offered management of the project, which it wasn't, that it would not accept it and that among its priorities, the next nourishment project is the District's priority. He also said that in light of the Governor Scott's new budget, money for projects such as this one was scarce and reserves throughout the state are dwindling. There is not a lot of easy money out there and at the moment CEPD must assume that there is no money there.

Mr. Mullins then asked Mr. Miville to present Agenda Item 7a.

## **7. Old Business**

### **a) Karyn Erickson, P.E. Blind Pass Study**

After reporting on some of the background and history, Mr. Miville said he talked to Ms. Erickson. He suggested that the Board recommend to Lee County that they have a "transparency session" with Ms. Erickson to clear the air. Mr. Kaiser asked what this issue had to do with Blind Pass and CEPD. Lee County representatives were asked to comment and Mr. Neal said that Ms. Erickson fulfilled her contract, and Mr. Boutelle added that the contract was between the County and Ms.

Erickson's firm. CEPD was not a party to the contract. Mr. Mullins suggested that this was history and there would not be anything to be gained.

**b) Projection of future costs associated with Blind Pass Project**

Ms. Rooker presented data on the future costs associated with the Blind Pass Project, a copy of which was on Page 17 of the Board's agenda materials. She reminded that Board that is was a projection. Mr. Mullins totaled the figures and mentioned that it was just over \$200,000, which has been budgeted.

**c) Approval to pay invoice # 1698 Lee County Division of Natural Resources \$22,459.28**

Mr. Jensen moved and Mr. Kaiser seconded a motion to pay this invoice. The motion passed without dissent.

**d) Lee County Final Project Closeout Claim/Budget Discussion**

This agenda item was discussed earlier under the financial report. A meeting will be held between CEPD and Lee County to reconcile the differences between the County's computation and CEPD's. Lee County staff present had explained earlier that this was not a formal "claim" against CEPD. Mr. Mullins explained that since it is not a claim, no formal accounting liability needs to be set up.

**e) Florida DEP Funding Challenges for Beach Nourishment**

Ms. Rooker reported on the funding challenges facing DEP in the coming year. She said that CEPD ranked quite high on the priority list (#5), that CEPD's request for the coming year was contained in both Florida House and Senate bills, but cautioned that the Governor could always veto them

Ms. Rooker then turned to the issue of reimbursement to the DEP for money from the 2006 project. Mr. Mullins mentioned that there was still a possibility that CEPD owes the DEP as much as \$660,000. Ms. Rooker reported that the reimbursement will be less based on Mr. Keehn's observation that some of the money the DEP claims it is owed has already been accounted for and the identification of 1999-2001 payments and invoices that the DEP is counting against this project.

Ms. Rooker mentioned that the Army Corps of Engineers had sent an economist to meet with her to update a benefit analysis that had to be completed by the Corps by May 1 in order to get a place in the President's 2013 budget for CEPD's upcoming project.

**8. New Business**

**a) 5 Year Monitoring Report and Survey – Steve Keehn, P.E.**

Mr. Keehn reported on two issues:

#1 – The extra work his firm did on Captiva, the highlights of which were:

- There is improvement since September 2009.
- There are season impacts.
- The impact on Blind Pass is waning.
- There has been a return to a comparable range of the 1995-6 project.

#2 – Blind Pass, the highlights of which were:

- Ebb channel is currently migrating south along Sanibel Island.
- There is significant shoaling since October 2010.
- Currents, cross-sections and Tidal Prism are smaller than design intent.
- Blind Pass is experiencing Instability.
- Scour and infilling has occurred just beyond (north) of the cut area.
- This scour material filled some channels east to Pine Island Sound and cross channel 2.
- A more detailed survey and analysis is warranted to find the primary cause of instability.
- On Captiva, 68% of the volume placed since construction remains within the project area.
- Fill requirements for the upcoming renourishment are projected to be 888,000 cubic yards on Captiva (R-84 to R-109)

**c) FY11, FY12, and FY13 Financial Statements Audit Proposal**

Mr. Mullins requested that discussion on this item be postponed until all the Commissioners are present. Mr. Kaiser suggested that CEPD consider a 2-year contract rather than a 3-year contract.

Mr. Mullins then moved the agenda back to Agenda Item 6b - Report of the Senior Administrator- Presentation to the Sanibel-Captiva Kiwanis.

**6. Report of the Senior Administrative Consultant**

**b) Presentation to Sanibel-Captiva Kiwanis**

Ms. Rooker reported on the response to her presentation.

**8. New Business**

**d) Approval of Scope of Work for Pipeline Corridor Modification**

**e) Approval of Scope of Work for Borrow Area Modification**

These two agenda items were combined in the discussion. Ms. Rooker explained why this item is on the agenda now – because a TDC grant which covers some of these costs runs out on September 30. Mr. Keehn explained that a pipeline modification would make it more efficient and cost effective to bring sand ashore. Mr. Keehn explained that he wants to go to the DEP first, which in his proposal will cost \$5,145, to discuss this issue and the future of the entire project. If the DEP does not approve the modification, CEPD will not incur additional costs for pipeline modification. Ms. Rooker recommended that any agreement be subject to review by CEPD's attorney since CP&E was acquired by another firm and has sent additional terms that need to be reviewed. The Commissioners agreed.

Mr. Kaiser moved and Mr. Jensen seconded a motion to approve the \$5,145 upfront, and a total of \$160,000 (the original proposal was for over \$181,000) for all 3 phases as outlined in the CP&E proposal of April 10, 2011, with a commensurate reduction for the portion related to the Pipeline Corridor Modification should the DEP not approve this part. The motion passed without dissent.

**f) South Seas Island Resort Vendor Proposal**

Ms. Rooker presented maps and information on the desire to place a vendor at or near Sunset Beach. Questions were raised about the authorization and use of a motorized vehicle and other issues. Mr. Keehn suggested that CEPD review the erosion control line rules the state agreed to with the upland property owners for further clarification on what can be allowed. Staff was instructed to do this and the issue will be discussed again at the next meeting.

**g) Economic Value of Beaches**

This agenda item was not discussed.

**h) Presentation to Sanibel-Captiva Chamber of Commerce**

Ms. Rooker reported that she and Mr. Mullins were scheduled to present at the Chamber of Commerce meeting scheduled on August 9 at 11:30.

**i) Copy of City of Sanibel Resolution and Study - Home Rule powers with respect to nitrogen and phosphorus control ordinances**

Commissioners discussed the merits of this agenda item. Mr. Jensen moved and Mr. Kaiser seconded a motion to approve a resolution (Resolution 2011-2) "to limit the excessive nitrogen and phosphorus entering local waterways by strongly urging the state legislature to respect the constitutional and statutory home rule authority of local governments with respect to enactment, monitoring, and enforcement of nitrogen and phosphorus control ordinances which include prohibitions on excessive fertilization of lawns and similar vegetation." Commissioners Mullins, Kaiser, and Jensen voted "yea;" Commissioners Miville and Holzheimer were absent. The motion passed.

Mr. Mullins returned the agenda to Agenda Item 5 – Financial Report

**5. Financial Report**

Mr. Jensen wanted to make sure that the loan payment for this year had been budgeted. Mr. Mullins reminded the Commissioners of their fiduciary responsibilities and legal restrictions, and specifically mentioned that funds authorized for loan repayment cannot be used of other purposes. He said that with reduced reserves, CEPD needs to be cautious with regard to additional funds spent on Blind Pass, future costs are projections and can change, and CEPD's first priority is beach nourishment.

Mr. Mullins returned to Agenda Item 8b – Commissioner Attendance Policy

**8. New Business**

**b) Commissioner Attendance Policy**

Ms. Rooker read the current policy from the Rules of Procedures. Mr. Mullins suggested that the policy may need to be rewritten. One of the issues is what is an excused absence? He mentioned that the Board should approve absences that have not been pre-excused. He also suggested that a commissioner needs to attend the full meeting. Mr. Jensen suggested that a rewritten policy be effective from the time it is adopted – that it not be retroactive. Ms. Rooker was asked to present a rewritten policy for the Board's consideration at the next meeting.

**9. Commissioner Comments**

There were none.

**Adjourn**

The meeting was adjourned at 4:30 p.m.