

Upper Captiva Fire & Rescue District

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servicing the community with pride

BOARD OF COMMISSIONERS

REGULAR MEETING

17 March 2017

COMMISSIONERS PRESENT: Zeke McDonald, Tom Jenkins, Steve Sward, AJ LaVallie, Bill Fry (by phone), and Chief Bob Kinniry.

ISLANDERS PRESENT: Jo Ann Beiermeister, Diane Jarmoszuk, Bob Pritt (by phone from 10:35-10:45), Bill Byrnes, and Arthur Mason.

1) CALL TO ORDER: Chairman McDonald called the meeting to order at 10:03 AM.

2) Chair asked Board's consent to suspend the agenda, without objection, and move to Public Comment to hear Diane Jarmoszuk for the Community Committee (LaVallie):

- Concerned about property owners that place plantings, fences, and other impediments inside the pathway easement. The impact on her property on Gulf Lane is that they have essentially provided the entire 15' of the pathway, while the neighbor across the lane (Huff) has placed plantings more than 15' from their easement line. Their recent survey confirms that the middle of the road is right where the plantings are. Jarmoszuk plans to start construction soon and they need to block at least 7-1/2 feet for construction equipment and materials staging, leaving only 7-1/2 feet or less for the District's fire and rescue equipment transit.
- Chair agreed that the Board has the same concerns island-wide. Chief confirmed that the District's concerns are focused on maintaining 15' wide by 15' high passage for our fire and rescue equipment. LaVallie stated Board has received a mixed bag of legal opinions on how to resolve these and other issues but that it may require individual homeowners to seek redress in court or through arbitration. Sward stated that the easement language is different depending on which unrecorded subdivision the property is located in and that will require significant research on specific language but that he had concerns about "adverse possession and prescriptive easements" that may have some effect on the affected property owners. Chair then stated that when the Upper Captiva Community Panel raised the issue, they were told that the entire island would need to be surveyed before the County would take any action.
- Fry suggested that what Jarmoszuk is asking for are specific recommendations from the District, not continued restatement of the problem, so:
 - Fry suggested that they make a written request to Chief Kinniry but that would likely have to be disapproved since 7-1/2' is too narrow for District equipment passage

- Fry then suggested that the Chief and LaVallie, as agreed at the last meeting, have a meeting with Huff explaining the issue and asking for him to move his plantings out of the easement and, if Huff fails to comply, the Chief and Chair should make a written complaint, in turn, to Code Enforcement, Community Development, County Manager, and County Commission, again, as agreed at the last meeting
- And failing all of that, Board agreed that it may require Jarmoszuk taking legal action on their own against Huff, to which the District can't be a party
- Pritt then connected to the meeting from 10:35-10:45 and stated that:
 - The District does not have the authority to enforce pathway locations or legal issues about easements but can maintain the width of the pathways as they currently exist, for transit of fire and rescue equipment
 - The District, with proper notice to all property owners, can develop and approve a methodology and assessment roll, and then, after a Board approved Resolution, can implement a Pathway Special Assessment without a new referendum since the existing referendum allows the Board to impose further special assessments without voter approval until 2024/2025
 - The Florida Statute (Section 3, Chapter 2004-470) that re-codified the District limits District-paid pathway maintenance for trimming, not surface maintenance, according to the opinion provided by then Attorney General Crist on 28 June 2006
- Jarmoszuk plans to submit a written request to the Chief to partially block Gulf Lane
- Chair then returned to the agenda, leaving the Community Committee Update issue open for further discussion later in the meeting

3) MINUTES: Minutes of the 17 February Regular Meeting were read; **LaVallie moved**, Jenkins **seconded**, and **all voted aye** to accept the minutes with corrections.

4) TREASURER'S REPORT: The current status of the financial accounts are:

- Balance Sheet:
 - The Ad Valorem checking account had a 28 February ending accrued balance of \$5,019.31
 - The Ad Valorem Money Market Account had a 28 February ending accrued balance of \$580,926.79 (with interest of \$257.04), plus a deposit of \$81,793.84 on 15 March
 - The Friend's account had a 28 February ending balance of \$15,289.11 (no change from last month)
 - The Special Assessment checking account had a 28 February ending accrued balance of \$4,980.00
 - The Impact Fee account had a 28 February ending balance of \$8,085.36 (no change from last month)
 - Fry stated that there were no unexpected outstanding liabilities other than the usual transfers of expenses between the General Fund and Special Assessment Fund. Of special note is the \$190,557.68 that the General Fund now owes the Special Assessment, caused mainly by the single money market account for all County

deposits. The Special Assessment accounts receivable is down about \$650, after payment of one delinquent Year 1 Special Assessment.

- Consolidated Income and Expense Report:
 - Five months into the new FY, we are 41.67% through the year and have spent 38.52% of the budget. In our major spending categories, Pay & Benefits is at 39.93%, Operating Expenses at 36.48%, and Capital is at 21.46%, all below the straight line “glide path”.
 - For Revenues, we are at 75.9% collected through 28 February and that compares to 76.1% at the same time last year (about \$3,000 more in collections this year)
 - Fry asked Board for agreement to reallocate the new \$7,295, skid-mounted tank & pump unit from General Fund to 50/50 with Special Assessment. Chief stated that since it was a brand new piece of equipment, not replacing any other existing capability, that it should be Impact Fund eligible. Sense of the Board was for Chief and Bookkeeper to allocate the entire cost to the Impact Fund and, if not eligible as an Impact Purchase, to reallocate 50/50 between General Fund and Special Assessment for this tank & pump unit and future fire service specific equipment purchases. Chair asked about Fuel costs at 54% of the budgeted spend and Fry stated that fuel costs have increased over February 2016 (he paid \$1.48/gallon for unleaded then, not marine fuel, and it was \$1.99 earlier this month); Chief confirmed that marine gasoline was more expensive this year. Sward asked why “Other Expenses” was nearly 100% spent and Fry reminded everyone that the Fun Run costs were allocated by the Bookkeeper to that line, both last year and this year.
- **LaVallie moved** to accept the Treasurer’s Report, Jenkins **seconded**, **all voted aye**.

5) CHIEF’S REPORT:

- Calls Last Month: 26 or 13 more calls since the last meeting, including a grill/grease trap fire at Mango’s, that was put out with a Boats & Fun fire extinguisher, and that the Engine, Tank Truck, and Brush Truck all responded to the emergency call; Chair asked whether the District conducts fire inspections of the restaurants and businesses on the island and Chief stated that he would use Part-Time staff qualified as fire inspectors to begin an island-wide inspection regime of commercial kitchens and businesses
- Beach Campfire Patrols:
 - Firefighters are now doing patrols morning and evening
 - Discovered Spring Break renters with an open campfire on a vacant lot next to their rental house and he called the Sheriff’s Office
 - Sheriff’s Office gave the renters a warning and will support the District’s ban for any other future open burning, since the District doesn’t have any enforcement powers
- Grant Status for High Volume Pump: No update
- Fire Lane Signs: Received the signs and, once posts are acquired to mount them, they’ll be emplaced in Jose’s Hideaway
- 1988 Pierce Engine/Pumper:

- Pine Island/Matlacha has delayed declaring their engine/pumper excess since they are beginning construction on Station #4. Even though a new engine has been ordered, they don't want to dispose of the engine until the new equipment is received in another 6-12 months
- Based on the unknown delay, Chief is scheduling work on our existing engine, including a pump and hose test; cost estimate is unknown at this point
- Fun Run Thank-You Certificates: Completed
- State Park:
 - Fish & Wildlife Service is the enforcement agency for the Park, including enforcement of no campfires in the Park
 - Park Service will schedule, at some future date, widening the pathway from Rum Road down to the state beach, improving our equipment access to the South Banks
 - Park Service will also schedule, at some future date, reestablishing the fire break in the Park that parallels Panama Shell Lane
- Station Fire/Smoke Alarm System: After being out of service for more than 2 years, the circuit board was replaced; repair cost was \$1,241
- Building Renovation: Delayed until summer, with cost estimate forthcoming
- District Audit: Auditor was on-island last week gathering financial data and once their work is complete, they will schedule a presentation to the Board, just like last year
- Island Remembrance Day: With UCCA and Bill Byrnes, Chief is scheduling a remembrance service for friends lost in 2016 on 1 April, starting at 11AM, with UCCA and UCFRD providing refreshments afterward
- GovDeals.Com Listings:
 - Red Club Cart is now off-island and will be listed for sale shortly
 - Green Ez-Go Cart and Old Skiff Tower haven't been taken off-island yet
- Skid-Mounted Tank & Pump Unit:
 - Now installed on U192 and in service
 - U192 is still experiencing intermittent engine overheating even though the warranty work replaced motor head/block last quarter was supposed to resolve the problem
- The Board accepted the Chief's Report

6) COMMISSIONER REPORTS:

- A) LaVallie-Community Committee Update: Partially updated earlier in paragraph 2) above plus:
- Chair restated that the Pritt opinion apparently concluded that a new referendum would NOT be required to institute a new fee for all homeowners but it would be limited to maintaining the width of the pathways where they currently exist (not surface maintenance or enforcing the easements as the property records indicate)
 - LaVallie stated that we should be concerned about the road surfaces to protect our equipment and staff

- Sward stated that we shouldn't be talking about a new referendum or funding mechanism since the power of the District is limited since we are not a road commission but a fire protection & rescue service District; clearly, the Pritt opinion supports what the District did with road width maintenance and our funding was sufficient this year for that without another assessment or funding source
- Fry provided the Board with the responses he received from Pritt about the ambiguity in his opinion:
 - Confirmed that the limitation was pathway clearance, not surface maintenance, since it would be "a stretch of a stretch for the District" to care about the road surface
 - Confirmed that we could impose a new special assessment WITHOUT a new referendum vote, which might be a surprise to our voters
 - Confirmed that an additional, separate assessment could be added, as long as a separate "methodology and roll" was developed by our contractor and that it would NOT be limited to our current \$447,400 net assessment, after discounts
 - Verified that Pritt was recommending a new separate assessment specifically for pathway trimming, not additional tasks in our existing fire services special assessment since "It is more convoluted to change purpose of current assessment than to do a new assessment. Don't saddle the current assessment with a new purpose."
 - Asked whether it is permissible to exclude South Banks/Foster Bay from a new assessment, since they don't have roads to maintain and he said that would be a decision of the Board, after reviewing recommendations in a new road services "methodology and roll" document
 - Pritt confirmed that the District would have to directly collect the first year, if implemented after 1 January of any year, since the County requires a 10-month advance notice before they will accomplish the collection, just like the 1st year of the current special assessment
 - Pritt stated that a new Attorney General opinion would likely not provide a different outcome from the existing opinion
 - Fry stated that, even if we would not be required to do a new referendum, we should allow our voters to approve if we make a decision to proceed with a new special assessment, to keep faith with our voters
- Public question was, once the current fire services special assessment expires in 2024/2025, does the District have to do a new referendum to renew the special assessment, if needed. Fry and Chair confirmed that a new referendum would be required.
- Chair and Sward stated that we should not implement another assessment under the existing referendum approval and Fry agreed
- LaVallie doesn't agree that the current opinion excludes the ability of the District to assess for surface maintenance and the cost to do that work is a very small amount per property owner for the likely improvement in island property valuations
- Jenkins agreed with LaVallie that the most common complaints that islanders make is about the road surfaces and that the cost per property owner is very small

- Chair reiterated that we can budget each year for pathway trimming and that, in 2021 when the pepper eradication begins to be enforced by the County, those costs would lessen while maintaining the road surfaces could become a huge amount of money, based on what the UCCR spent for the section of Seair/Spanish Gold that was completed over a year ago
 - Sward restated the District was not instituted or qualified to perform or supervise pathway surface maintenance
 - **Fry moved** that we authorize LaVallie to contact Attorney Pringle for a proposal for Pringle's costs and recommended process to implement a new special assessment by the District to maintain road surfaces and to enforce the deeded easements by a new binding referendum, **seconded** by LaVallie.
 - LaVallie confirmed that the District should evaluate whether we can legally assess for both road surface and road trimming and Fry repeated that we already have an opinion for road trimming that we did this year but not surface maintenance or enforcing the location of the pathways based on the recorded deed easements
 - Jenkins asked if funding would be available for future years for road trimming and Fry stated that would be a Board decision but that it would be proposed again for next year, just as it was proposed for this year, probably in the amount of \$15,000
 - Sward stated that we shouldn't be attorney shopping for a different legal opinion
 - Public comment was that the motion was out of order since the District is a fire district, not a road district and the District could put approval of a future Fire Services special assessment at risk, before the current assessment expires. Additional comment was that even though the UCCA paid \$12,500 of the \$27,500 of the total cost this year, many of the UCCA Board were opposed to the UCCA contribution since it happens every year and that it isn't fair that the limited UCCA membership pays a bill that the whole island benefits from and should pay for
 - Chair called the question and the motion was **approved 3-2 (McDonald and Sward opposed)**
 - Further public comment was that the Attorney General opinion seems to support government expenditure of taxes and fees for road maintenance and trimming since our roads really are "public roads" used by the entire public on the island (owners, guests, day-trippers, contractors, etc.), even though they are on private property easements and that the County should be approached to pay for our pathway maintenance since we are already paying taxes for road maintenance
- B) Sward-Legal Update: Sward will continue to work with Attorney Velasquez, Attorney Brantley, and Attorney Pritt to work on language for a future proposed resolution that the Board can approve, without making any medical determination, before the next meeting
- C) Update on First Year Special Assessment Delinquent Collections:
- Fry stated that the current accounts receivable from unpaid first year assessments is down to \$13,599.52 from \$14,239.13 at last meeting, after collection of \$639.61 for

4471 Panama Shell on 22 February 2017 and hope to see 5-6 additional payments as those pending property sales complete closing, totaling \$7,000-\$8,000

- Chair asked Sward again to question Pritt to see if specific liens need to be filed on all 20 of the delinquent properties that are currently unpaid

7) OLD BUSINESS:

- A) No Parking in Fire Lane Signs: Covered in Chief's update
- B) Certificates of Thanks for Fun Run Donors: Covered in Chief's update
- C) Draft Public Facility Report: Deferred to April meeting for additional Board comments within 2 weeks

8) NEW BUSINESS: None

9) PUBLIC COMMENT: Requested that the District have staff and the fire truck at the UCCA Island Fest on 6 April. Also, comments about illegal dumping that is continuing on the island, even after the most recent island clean-up. Safety Harbor Club's support to the last island clean-up will be chipping many of the piles of vegetative debris that remain on the island but it isn't possible for them to chip everything. Without witnesses or proof of who is doing the illegal dumping, the only action that is possible is for Islanders to make complaints to County Code Enforcement, who will then cite the property owner, not the illegal dumper. Last comment was about piles of debris on Coral Circle as well and, with the dry and windy conditions, we are a stray cigarette butt from a large and spreading fire there and at other debris piles.

10) NEXT DATE: Next Regular Meeting on Friday, 21 April 2017, beginning at 10 AM.

11) ADJOURN – **Moved by LaVallie, seconded** by Jenkins; meeting adjourned at 1:01 PM.

Respectfully submitted,

Bill Fry
Secretary/Treasurer