

Upper Captiva Fire & Rescue District

4511 Hodgepodge Lane
P.O. Box 322
Pineland, FL 33945

Phone: 239-472-8899 / Fax: 239-472-1582



servicing the community with pride

Robert Kinniry, Chief: UpperCapFD@aol.com

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

- 42 ○ Fry then suggested that the Chief and LaVallie, as agreed at the last meeting, have a
43 meeting with Huff explaining the issue and asking for him to move his plantings out
44 of the easement and, if Huff fails to comply, the Chief and Chair should make a
45 written complaint, in turn, to Code Enforcement, Community Development, County
46 Manager, and County Commission, again, as agreed at the last meeting
47 ○ And failing all of that, Fry agreed with LaVallie and Sward that it may require
48 Jarmoszuk taking legal action on their own against Huff, that the District can't be a
49 party to
- 50 ● Pritt then connected to the meeting from 10:35-10:45 and stated that:
- 51 ○ The District does not have the authority to enforce pathway locations or legal issues
52 about easements but can maintain the width of the pathways as they currently exist,
53 for transit of fire and rescue equipment
- 54 ○ The District, with proper notice to all property owners, can develop and approve a
55 methodology and assessment roll, and then, after a Board approved Resolution, can
56 implement a Pathway Special Assessment without a new referendum since the
57 existing referendum allows the Board to impose further special assessments without
58 voter approval until 2024/2025
- 59 ○ The Florida Statute (Section 3, Chapter 2004-470) that re-codified the District limits
60 District-paid pathway maintenance for trimming, not surface maintenance, according
61 to the opinion provided by then Attorney General Crist on 28 June 2006
- 62 ● Jarmoszuk plans to submit a written request to the Chief to partially block Gulf Lane
63 ● Chair then returned to the agenda, leaving the Community Committee Update issue
64 open for further discussion later in the meeting
65

66 3) MINUTES: Minutes of the 17 February Regular Meeting were read; **LaVallie moved**, Jenkins
67 **seconded**, and **all voted aye** to accept the minutes with corrections.
68

69 4) TREASURER'S REPORT: The current status of the financial accounts are:
70

- 71 ● Balance Sheet:
- 72 ○ The Ad Valorem checking account had a 28 February ending accrued balance of
73 \$5,019.31
- 74 ○ The Ad Valorem Money Market Account had a 28 February ending accrued balance
75 of \$580,926.79 (with interest of \$257.04), plus a deposit of \$81,793.84 on 15 March
76 ○ The Friend's account had a 28 February ending balance of \$15,289.11 (no change
77 from last month)
- 78 ○ The Special Assessment checking account had a 28 February ending accrued balance
79 of \$4,980.00
- 80 ○ The Impact Fee account had a 28 February ending balance of \$8,085.36 (no change
81 from last month)
- 82 ○ Fry stated that there were no unexpected outstanding liabilities other than the usual
83 transfers of expenses between the General Fund and Special Assessment Fund. Of
84 special note is the \$190,557.68 that the General Fund now owes the Special

85 Assessment, caused mainly by the single money market account for all County
86 deposits. The Special Assessment accounts receivable is down about \$650, after
87 payment of one delinquent Year 1 Special Assessment.

- 88 • Consolidated Income and Expense Report:
 - 89 ○ ~~Four~~ Five months into the new FY, we are 41.67% through the year and have spent
 - 90 38.52% of the budget. In our major spending categories, Pay & Benefits is at 39.93%,
 - 91 Operating Expenses at 36.48%, and Capital is at 21.46%, all below the straight line
 - 92 “glide path”.
 - 93 ○ For Revenues, we are at 75.9% collected through 28 February and that compares to
 - 94 76.1% at the same time last year (about \$3,000 more in collections this year)
 - 95 ○ Fry asked Board for agreement to reallocate the new \$7,295, skid-mounted tank &
 - 96 pump unit from General Fund to 50/50 with Special Assessment. Chief stated that
 - 97 since it was a brand new piece of equipment, not replacing any other existing
 - 98 capability, that it should be Impact Fund eligible. Sense of the Board was for Chief
 - 99 and Bookkeeper to allocate the entire cost to the Impact Fund and, if not eligible as
 - 100 an Impact Purchase, to reallocate 50/50 between General Fund and Special
 - 101 Assessment for this tank & pump unit and future fire service specific equipment
 - 102 purchases. Chair asked about Fuel costs at 54% of the budgeted spend and Fry
 - 103 stated that fuel costs have increased over February 2016 (he paid \$1.48/gallon for
 - 104 unleaded then, not marine fuel, and it was \$1.99 earlier this month); Chief
 - 105 confirmed that marine gasoline was more expensive this year. Sward asked why
 - 106 “Other Expenses” was nearly 100% spent and Fry reminded everyone that the Fun
 - 107 Run costs were allocated by the Bookkeeper to that line, both last year and this year.
- 108 • **LaVallie moved** to accept the Treasurer’s Report, Jenkins **seconded**, all **voted aye**.

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110 5) CHIEF’S REPORT:

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- 112 • Calls Last Month: 26 or 13 more calls since the last meeting, including a grill/grease trap
- 113 fire at Mango’s, that was put out with a Boats & Fun fire extinguisher, and that the
- 114 Engine, Tank Truck, and Brush Truck all responded to the emergency call; Chair asked
- 115 whether the District conducts fire inspections of the restaurants and businesses on the
- 116 island and Chief stated that he would use Part-Time staff qualified as fire inspectors to
- 117 begin an island-wide inspection regime of commercial kitchens and businesses
- 118 • Beach Campfire Patrols:
 - 119 ○ Firefighters are now doing patrols morning and evening
 - 120 ○ Discovered Spring Break renters with an open campfire on a vacant lot next to their
 - 121 rental house and he called the Sheriff’s Office
 - 122 ○ Sheriff’s Office gave the renters a warning and will support the District’s ban for any
 - 123 other future open burning, since the District doesn’t have any enforcement powers
- 124 • Grant Status for High Volume Pump: No update
- 125 • Fire Lane Signs: Received the signs and, once posts are acquired to mount them, they’ll
- 126 be emplaced in Jose’s Hideaway
- 127 • 1988 Pierce Engine/Pumper:

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

158
159 6) COMMISSIONER REPORTS:

- 160
161 A) LaVallie-Community Committee Update: Partially updated earlier in paragraph 2) above
- 162 plus:
- 163
- 164 ● Chair restated that the Pritt opinion apparently concluded that a new referendum would
 - 165 NOT be required to institute a new fee for all homeowners but it would be limited to
 - 166 maintaining the width of the pathways where they currently exist (not surface
 - 167 maintenance or enforcing the easements as the property records indicate)
 - 168 ● LaVallie stated that we should be concerned about the road surfaces to protect our
 - 169 equipment and staff

- 170 • Sward stated that we shouldn't be talking about a new referendum or funding
171 mechanism since the power of the District is limited since we are not a road commission
172 but a fire protection & rescue service District; clearly, the Pritt opinion supports what the
173 District did with road width maintenance and our funding was sufficient this year for that
174 without another assessment or funding source
- 175 • Fry provided the Board with the responses he received from Pritt about the ambiguity in
176 his opinion:
- 177 ○ Confirmed that the limitation was pathway clearance, not surface maintenance, since
178 it would be "a stretch of a stretch for the District" to care about the road surface
 - 179 ○ Confirmed that we could impose a new special assessment WITHOUT a new
180 referendum vote, which might be a surprise to our voters
 - 181 ○ Confirmed that an additional, separate assessment could be added, as long as a
182 separate "methodology and roll" was developed by our contractor and that it would
183 NOT be limited to our current \$447,400 net assessment, after discounts
 - 184 ○ Verified that Pritt was recommending a new separate assessment specifically for
185 pathway trimming, not additional tasks in our existing fire services special assessment
186 since "It is more convoluted to change purpose of current assessment than to do a
187 new assessment. Don't saddle the current assessment with a new purpose."
 - 188 ○ Asked whether it is permissible to exclude South Banks/Foster Bay from a new
189 assessment, since they don't have roads to maintain and he said that would be a
190 decision of the Board, after reviewing recommendations in a new road services
191 "methodology and roll" document
 - 192 ○ Pritt confirmed that the District would have to directly collect the first year, if
193 implemented after 1 January of any year, since the County requires a 10-month
194 advance notice before they will accomplish the collection, just like the 1st year of the
195 current special assessment
 - 196 ○ Pritt stated that a new Attorney General opinion would likely not provide a different
197 outcome from the existing opinion
 - 198 ○ Fry stated that, even if we would not be required to do a new referendum, we should
199 allow our voters to approve if we make a decision to proceed with a new special
200 assessment, to keep faith with our voters
- 201 • Public question was, once the current fire services special assessment expires in
202 2024/2025, does the District have to do a new referendum to renew the special
203 assessment, if needed. Fry and Chair confirmed that a new referendum would be
204 required.
- 205 • Chair and Sward stated that we should not implement another assessment under the
206 existing referendum approval and Fry agreed
- 207 • LaVallie doesn't agree that the current opinion excludes the ability of the District to
208 assess for surface maintenance and the cost to do that work is a very small amount per
209 property owner for the likely improvement in island property valuations
- 210 • Jenkins agreed with LaVallie that the most common complaints that islanders make is
211 about the road surfaces and that the cost per property owner is very small

- 212 • Chair reiterated that we can budget each year for pathway trimming and that, in 2021
213 when the pepper eradication begins to be enforced by the County, those costs would
214 lessen while maintaining the road surfaces could become a huge amount of money,
215 based on what the UCCR spent for the section of Seair/Spanish Gold that was completed
216 over a year ago
- 217 • Sward restated the District was not instituted or qualified to perform or supervise
218 pathway surface maintenance
- 219 • **Fry moved** that we authorize LaVallie to contact Attorney Pringle for a proposal for
220 Pringle's costs and recommended process to implement a new special assessment by the
221 District to maintain road surfaces and to enforce the deeded easements by a new binding
222 referendum, **seconded** by LaVallie.
- 223 • LaVallie confirmed that the District should evaluate whether we can legally assess for
224 both road surface and road trimming and Fry repeated that we already have an opinion
225 for road trimming that we did this year but not surface maintenance or enforcing the
226 location of the pathways based on the recorded deed easements
- 227 • Jenkins asked if funding would be available for future years for road trimming and Fry
228 stated that would be a Board decision but that it would be proposed again for next year,
229 just as it was proposed for this year, probably in the amount of \$15,000
- 230 • Sward stated that we shouldn't be attorney shopping for a different legal opinion
- 231 • Public comment was that the motion was out of order since the District is a fire district,
232 not a road district and the District could put approval of a future Fire Services special
233 assessment at risk, before the current assessment expires. Additional comment was that
234 even though the UCCA paid \$12,500 of the \$27,500 of the total cost this year, many of
235 the UCCA Board were opposed to the UCCA contribution since it happens every year and
236 that it isn't fair that the limited UCCA membership pays a bill that the whole island
237 benefits from and should pay for
- 238 • Chair called the question and the motion was **approved 3-2 (McDonald and Sward**
239 **opposed)**
- 240 • Further public comment was that the Attorney General opinion seems to support
241 government expenditure of taxes and fees for road maintenance and trimming since our
242 roads really are "public roads" used by the entire public on the island (owners, guests,
243 day-trippers, contractors, etc.), even though they are on private property easements and
244 that the County should be approached to pay for our pathway maintenance since we are
245 already paying taxes for road maintenance
246
- 247 B) Sward-Legal Update: Sward will continue to work with Attorney Velasquez, Attorney
248 Brantley, and Attorney Pritt to work on language for a future proposed resolution that the
249 Board can approve, without making any medical determination, before the next meeting
250
- 251 C) Update on First Year Special Assessment Delinquent Collections:
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- 253 • Fry stated that the current accounts receivable from unpaid first year assessments is
254 down to \$13,599.52 from \$14,239.13 at last meeting, after collection of \$639.61 for

255 4471 Panama Shell on 22 February 2017 and hope to see 5-6 additional payments as
256 those pending property sales complete closing, totaling \$7,000-\$8,000

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

259

260 7) OLD BUSINESS:

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262 A) No Parking in Fire Lane Signs: Covered in Chief's update

263

264 B) Certificates of Thanks for Fun Run Donors: Covered in Chief's update

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266 C) Draft Public Facility Report: Deferred to April meeting for additional Board comments
267 within 2 weeks

268

269 8) NEW BUSINESS: None

270

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

280

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

282

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

284

285 Respectfully submitted,

286

287

288

289 Bill Fry

290 Secretary/Treasurer