

**Upper Captiva Fire & Rescue District**

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***servicing the community with pride***

**BOARD OF COMMISSIONERS**

**REGULAR MEETING**

21 April 2017

COMMISSIONERS PRESENT: Zeke McDonald, Tom Jenkins, Steve Sward, AJ LaVallie, Bill Fry, Attorney Bob Pritt, and Chief Bob Kinniry.

ISLANDERS PRESENT: Jo Ann Beiermeister, John Otis, Sandy Werner, Kristi Riggle, Evan Kreeple, Bill Byrnes, Arthur Mason, and Sue Ann Cousar.

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

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

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

- Balance Sheet:
  - The Ad Valorem checking account had a 31 March ending accrued balance of \$4,472.16
  - The Ad Valorem Money Market Account had a 31 March ending accrued balance of \$586,055.21 (including interest of \$283.35), plus a deposit of \$104,602.13 on 14 April
  - The Friend's account had a 31 March ending balance of \$15,294.76 (with interest of \$5.65)
  - The Special Assessment checking account had a 31 March ending accrued balance of \$4,999.98
  - The Impact Fee account had a 31 March ending balance of \$8,088.35 (with interest of \$2.99)
  - 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 \$206,986.21 that the General Fund now owes the Special Assessment, caused mainly by the single money market account for all County deposits. Sward asked whether we should have two money market accounts and Fry stated that we receive a higher tiered interest rate with higher balances and would have a fee if the first or second account fell below the required minimum balance. The Special Assessment accounts receivable is down about \$2,051.23, after payment of three delinquent Year 1 Special Assessments.

- Consolidated Income and Expense Report:
  - Six months into the new FY, we are 50% through the year and have spent 46.36% of the budget. In our major spending categories, Pay & Benefits is at 47.55%, Operating Expenses at 45.21%, and Capital is at 28.17%, all are well below the straight line “glide path” of 50%.
  - For Revenues, we are at 83.4% collected through 31 March
- **LaVallie moved** to accept the Treasurer’s Report, Jenkins **seconded**, all **voted aye**.

#### 4) CHIEF’S REPORT:

- Calls Last Month: 37 (11 more calls since the last meeting), including a home kitchen fire on Swallow Lane that started in the microwave oven, with only minimal damage that was 5-10 minutes from being a major fire, after firefighters responded within 3 minutes plus a mulch fire on Seair Lane, probably from a cigarette butt.
- 1988 Pierce Engine/Pumper:
  - Most minor repairs are now complete on the engine
  - Still working with mechanic to determine cost to repair an injector leak
  - Chair asked Chief to develop detailed specifications for a replacement firetruck engine/pumper, if the Pine Island/Matlacha engine/pumper isn’t donated
- FEMA Grant for High Volume Pump (750 gallons per minute):
  - No updated status but grants are now being awarded and we haven’t received a rejection letter, possibly indicating that our grant may be approved
  - They seem to announce and release grants on Fridays
- Fire Lane Signs: Received the signs and they are now in place at the Gulf west ends of lanes in Jose’s Hideaway and Punta Robalo
- Beach Campfire Patrols: On-going and, since patrols started, seems to have resolved
- Building Renovation: Delayed until summer, with cost estimate forthcoming
- GovDeals.Com Listings: Delayed until summer
- U191 Utility Vehicle: Water damaged u-joints and differential, claim filed with insurance and pending decision on claim
- Skid-Mounted Tank & Pump Unit: Chief has received the form letter format to make the request to the County Attorney’s Office for use of Impact Funds to reimburse the General Fund and will submit after the meeting
- Island Remembrance Day: The event was held on 1 April and was both well attended and well received by Islanders
- Island Volunteer Program:
  - Volunteer Firefighters require Firefighter I certification and State prefers Firefighter II certifications, requiring more than 200 hours of State training for certification
  - Working to identify what tasks volunteers could accomplish without requiring firefighter training, using the FEMA Community Emergency Response Team (CERT) process as a template for manning the District telephone and radio, running golf cart shuttles for off-island firefighters providing mutual aid, water delivery, set up

draft points, crowd control, island notification, managing spot fires, monitor VHF radio, water supply, hurricane preparedness, etc.

- Fry suggested that Chief present his thoughts at the UCCA meeting on Sunday and how he intends to restart the volunteer program next Season in October so that interested folks can plan their participation
- Photo Board: We now have a photo board showing all Commissioners and Firefighters in the Meeting Boardroom and, once we revitalize our volunteer program, we'll add pictures of our individual volunteers and Friends of the Fire Department
- Friends of the Fire Department: Bill Byrnes is taking over from Gene Murphy as the leader of the Friends, with Murphy's pending home sale; everyone on the Board thanked Murphy for his efforts and support
- State Park Firebreak: With the dry conditions, winds coming from the southeast and the large number of wildfires in the County, we need to press the State to clear the firebreak south of Panama Shell; Chief and LaVallie will run B192 up and down the firebreak tomorrow to knock down the heaviest vegetation
- No Open Burning on Upper Captiva: The County is looking to implement a county-wide ordinance and Chief will issue a written memo stating that open burning is not allowed
- Public Question: Will the District do anything about refuse and landscaping debris piles that are a fire hazard, especially with our current dry and windy conditions? The Chair responded that the District can't police everything
- The Board accepted the Chief's Report

## 5) COMMISSIONER REPORTS:

### A) LaVallie-Community Committee Update:

- Second Legal Opinion on Lane Surface Maintenance by the District:
  - Attorney Pringle provided a written opinion that stated that surface maintenance is within the authorization of the 2004 law that re-codified the District
  - Chief stated that, if the District is going to do lane maintenance, we need to go to referendum to verify that our voters want the District to do this rather than being perceived as a "tax and spend" District
  - LaVallie stated that our pathways need to be smoother, without potholes, to allow emergency response vehicles to quickly and safely respond to fires and medical emergencies
  - Chair asked where it ends? What about the piles of debris along the sides of the roads, children operating golf carts on the pathways, the speed of golf carts, etc. since those are also safety concerns of the Fire Department but they are things that we can't fix and it would be a can of worms that we would be opening, trying to be the solution to every problem on the island
  - Sward asked when the spending would end since we could spend hundreds of thousands of dollars on the roads and Chair agreed, saying that a hurricane could wipe away that work and money spent

- Jenkins stated that clearly volunteer organizations and voluntary donations aren't working and, as our community continues to grow, we need to do something different and Kelley's and LaVallie's proposal sounds reasonable
- Fry stated that although he made the motion that allowed LaVallie to request the second opinion, there are concerns that many on the Board share:
  - As the UCCA discovered decades ago, any discussion about our roads takes over the entire agenda of meetings and crowds out other issues since people are so passionate about the roads, so they created the old UC Road Commission but nobody is ever happy with what is done with the roads and it is a thankless job
  - But LaVallie is right that there is nobody else who can maintain our private pathways that are open for public use
  - And that we all seem to agree that there should be a binding referendum before we take on this new function for our community
- Fry then stated that before we can even consider a referendum, we have a number of details that we need to work through and that probably needs to be done by a group that knows what needs to be done and it isn't this Board:
  - Should we have a community board, subject to Sunshine laws, with a Board member as the Chair and membership from each subdivision on the island tasked to work the details in the next 3 months, if we want to go to referendum this November?
  - To what standard do we want the road surfaces to be maintained?
  - What is the makeup of the roads and what would be required to bring them to that desired standard?
  - What is the priority or sequence of road repairs since there will never be enough money to repair every road every year, no matter how much money is assessed?
  - How much would the new assessment fee be, based on that estimated total cost and initial annual priority of work?
  - Unless we are willing to do this work, then we are just wasting our time continuing to talk about this issue
- Sward said that he agrees that this is far beyond the scope of what we have always been responsible for and that he would prefer that a Municipal Services Taxing Unit (MSTU) be developed focused solely on the roads rather than turning the District into a Roads District
- Pritt reminded the Board that after Hurricane Charley, the County created an MSTU to pay for post-hurricane clean-up and LaVallie reminded everyone that creating a new MSTU would require a signed petition of over 50% of the 700 property owners that mechanically is difficult at best, versus 50% of the voters approving a new fee on those 700 properties that would accomplish the same thing
- Pritt said that the County didn't require a petition then but LaVallie pointed out that was likely because it was a response to an emergency clean-up and unlikely to be repeated in today's environment
- Public Comments: The Community needs to re-create a new Road Commission and donations would pour in. Another comment was that it should remain with voluntary donations, with an explanation about how the money would be spent. Chair

reminded everyone that the three questions before the Board are trimming the width of the roads that we supported with funding this year but now we are being asked to maintain the surfaces of the road and enforce the location of the roads, based on the recorded easements that would likely lead to litigation costs as well. LaVallie stated that ignoring the problem won't make it go away.

- Chair would like to continue on the path that LaVallie has started to get the answers to the detailed questions that face the Board before any decisions to proceed can be made. LaVallie reminded everyone that he is the only one of us with a full-time job.
- Sward stated that a re-energized road commission should take the lead and that the District could donate money to bring the roads up to our required standard and that the road company should solicit private donations to bring the roads up to a standard that is greater than the District needs for our equipment.
- Public Comment: The District shouldn't be discussing this since the roads are perfectly acceptable for the fire equipment after the last trimming was completed. The Board should just take the summer off!
- Pritt stated that the Board has 3 legal opinions; first is the Attorney General's opinion that says that taxpayer funds can't be used; Pritt's opinion was that money could be spent for a public purpose up to a limit; and that Pringle's opinion was a little more bold about spending taxpayer money
- Chair agreed that there are times when the roads are impassable, especially on the north end and a prime example is the utility vehicle in the Chief's Report that was damaged by driving through standing water but many of the roads are passable for our equipment but not for residents' golf carts
- Public Comment: Most of our roads are perfectly passable for most of the year, roads like hers on Oro Pesos, and that we shouldn't be thinking of maintaining our roads like a city since it is so expensive. The problem is mostly the major roads and a lot of damage on those roads is from construction vehicles, not firetrucks or golf carts. On the easements, we have a number of owners that have blocked the easement and road, like on Nighthawk.
- LaVallie stated that we probably need a court decision on easements and we may have that soon with the Jarmozuk/Huff issue and if we just wait, that may occur soon
- Chair suggested that we table this discussion until that resolution occurs
- **McDonald moved** that we table indefinitely any further discussion about pathways and easements until a Board vote to reopen the issue to discuss further, **seconded** by Sward, **vote 4-1 (Jenkins against)**.

B) Sward-Legal Update: Sward presented a draft resolution to accept the proposed legal settlement and that, if the resolution is approved, Attorney Brantley's Public Records Request will be withdrawn.

- Chair read Resolution 2017-042117 in full
- **Sward moved** that we approve the resolution, seconded by **Jenkins**, Chair called for Public Comment and there being none, **all voted aye**.

- Sward reminded the Board and Chief that the settlement was confidential and that no further discussion should occur other than our response being “It is resolved”. Pritt stated that the document is a public record but that the Board and Chief should not make any damaging or disparaging comments to anyone.
  - Chair then signed the settlement agreement and Chief will arrange for the \$4,250 check payment to Pepper’s retirement plan, to be provided after Pepper signs the agreement
- C) Sward-Public Records Request: Sward had previously instructed Chief to hold Brantley’s check for his records request; once the agreement is signed by Pepper, Chief will return the check to Brantley
- D) Update on First Year Special Assessment Delinquent Collections:
- Updated during the Treasurer’s Report
  - Pritt stated that specific liens are not needed and that any failure of the closing attorney to collect the delinquent payments becomes the lawyer or title insurance company’s responsibility to pay
- 6) OLD BUSINESS:
- A) Draft Public Facility Report: Chair to re-send his specific paragraph language about the District’s Station was the center of the community after Hurricane Charley to Chief and Fry will finalize the document for Chief’s signature by 12 May
- B) Enforcement of Pathway Easements:
- Tabled indefinitely by earlier decision; LaVallie stated that Public will have to show interest, support, and meaningful assistance to resurrect these issues
  - Jenkins and McDonald stated that they would be glad to discuss outside of the meetings as private citizens about the roads and Sward stated that should be okay since the topic was tabled
  - Fry stated that even though the topic is tabled, it is still a subject for the Board and that would appear to be a violation of Sunshine
  - Pritt opined that current case law indicates that there is no violation of Sunshine if two or more Commissioners are at the same meeting but should not participate in discussions as a back and forth conversation on any topic that is under consideration, even if tabled
- C) Pritt Resignation:
- Chair stated that he received a resignation letter that was originally effective immediately and Pritt stated that he will provide the Chair an updated email that will push the effective date until after the next meeting

- Pritt stated that he has a potential conflict related to easements and, since that was tabled, the client conflict did not currently exist

## 7) NEW BUSINESS:

### A) Summer Board Meeting Schedule:

- June:
  - Chair and LaVallie can't attend the 16 June meeting
  - Fry can extend his time on island through 2 June to meet the quorum requirement
  - Board agreed to change the June meeting to 2 June and Chief will publish with News Press
- July: McDonald, Jenkins, and LaVallie will attend the 21 July meeting with Sward and Fry dialing in
- August & September: McDonald, Jenkins, LaVallie, and Fry will attend 18 August (Special Assessment Roll acceptance), 9 September (Preliminary Budget Meeting), and 16 September (Final Budget Meeting) meetings with Sward dialing in

### B) Contract for Year 4 of Special Assessment Methodology:

- Engagement Letter from Russ Weyer/Real Estate Econometric, Inc. for \$2,500 this year and Treasurer recommends the Board approve and Chair sign
- Sward asked whether the fee was the same and Fry stated that it was a \$700 increase due to all of the extra work last year for the submerged land and Fry will verify that it is a one-time increase that will be rolled back for the Year 5 work, presuming that this year doesn't entail extra work on Weyer's part between August and next May
- Treasurer then stated that specific guidance needed to be approved and passed on to Weyer for him to complete his work this year:
  - Do we continue to exempt the Salty Approach LLC airstrip and the small stand-alone docks from the Assessment?
    - **Fry moved** that we add Salty Approach LLC airstrip and the small stand-alone docks to the assessment, **seconded** by Sward, and Chair called for discussion
    - Chair stated that both groups have been excluded, just as we have excluded government lots, tax-exempt lots, and submerged lots, in past years because the docks and the airstrip provide a benefit to the island for air and water patient evacuations and that the airstrip functions as a firebreak
    - Fry stated that adding those properties wouldn't change the total collected but every other property owner on the island will see a small reduction in their assessment if those properties are added to the assessment roll
    - LaVallie said he saw insignificant benefit to adding the airstrip or the docks just to reduce the assessments for every other property owner by tiny fractional amounts

- Jenkins stated that he should abstain since he owns stand-alone docks that would be exempted and Fry stated that would require McDonald to abstain since he was an owner of Salty Approach LLC
  - Sward stated that there are fire and safety risks for both types of properties since both airplanes and boats are gasoline powered, that they present potential risks for fire, and that they should be included
  - McDonald pointed out that it was 7-1/2 acres and Fry stated that the Special Assessment is about \$250 for a typical quarter acre lot or about \$1000/acre for all other home and vacant lot owners
  - Motion **failed 2-3 (McDonald, Jenkins, and LaVallie opposed)**
  - Do we agree to set the 4<sup>th</sup> Year of the Special Assessment to \$447,400 (net) as in the past 3 years?
    - Treasurer recommends no increase or decrease
    - Board agreed
  - Do we add the Safety Harbor Club's OTW Restaurant to the tax-exempt list, as we did this year?
    - Treasurer recommends that we exempt it with the other two SHC common element properties
    - Board agreed
- C) Safety Harbor Club Modifying Southern SHC Entrance at Bartlett, Rum, and Harbor Bend: Chair asked Chief to work with SHC to ensure that the road will be wide enough, the curves gentle enough, and the new roadway level enough to not inhibit operation of our longer and wider fire equipment
- D) Officer Chain of Command: The Chief, as the sole full-time employee, doesn't have any identified back-up if he had a medical or family emergency event or became incapacitated; Chair asked the Chief to provide a written plan and organization chart to the Board at the next meeting
- E) Pritt/Roetzel & Andress Continued Legal Representation:
- McDonald moved to retain Pritt and Roetzel & Andress until the May meeting, seconded by Sward. Chair called for discussion, by each Commissioner in turn around the table:
    - Fry reminded the Board that last year, when he suggested that we should request proposals from R&A and other firms, he was roundly shouted down; Fry believes that Pritt and R&A should remain until the end of this FY but that we should have a signed pricing and/or retainer agreement with whomever our legal representative is by 1 October
    - Sward stated that Pritt brings a great deal of historical and political knowledge to the District, is opposed to getting competing bids, isn't opposed to alternative billing/retainer methods, and would want to retain Pritt/R&A if Pritt wants to continue as our attorney



- LaVallie reminded the Board that apparently Pritt and/or R&A have a conflict on the issue related to road/utility easements and that if we return to that subject later, he wouldn't be able to provide any advice, that Attorney Pringle represents a number of fire districts including North Fort Myers, Alva, Lehigh Acres, Fort Myers Shores, Tice, Iona-McGregor, is the Glades County Attorney that includes their fire department, and the Gerber Grove Water District's attorney; Pringle could be potential source for representation
- Jenkins is in favor of Pritt and R&A but would consider an alternative in the future, depending on Pritt's future desires and plans
- McDonald spoke in favor of Pritt, we have had good representation since our previous attorney (Uley) dropped us due to a real estate conflict of interest more than a decade ago, Pritt is also the attorney for Pine Island, Sanibel, and Captiva Fire Districts, and he has provided superb advice during emergencies like after Hurricane Charley, and his abilities to keep up with changes to statutes has been key
- Fry proposed a friendly amendment to the motion to retain Pritt/R&A not just until the May meeting but into the near future pending award of a written agreement before the start of the next fiscal year
- **All voted aye.**

8) PUBLIC COMMENT: UCCA invites LaVallie or Fry to update the community at the Sunday meeting on the roads/easement issue that was tabled by the Board; the NO PARKING signs in Jose's Hideaway are not working; thanked the District and everyone that attended the crew boat dedication earlier in the week; and appreciated the FD support at the Island Fest since the small number of children enjoyed being around the fire engine.

9) NEXT DATE: Next Regular Meeting on Friday, 19 May 2017, beginning at 10 AM.

10) ADJOURN – **Moved by Sward, seconded** by Jenkins; meeting adjourned at 2:13 PM.

Respectfully submitted,

Bill Fry  
Secretary/Treasurer