

ST. AUGUSTINE PORT, WATERWAY & BEACH DISTRICT
MINUTES OF REGULAR MEETING
Tuesday, August 20, 2019

The regular meeting of the St. Augustine Port, Waterway & Beach District was held at the St. Augustine Beach City Commission Meeting Room, 2200 A1A South, St. Augustine Beach, Florida, on Tuesday, August 20, 2019.

1. **CALL TO ORDER**

Chairman Barry Benjamin called the meeting to order at 3:05 PM.

2. **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance to the flag of the United States of America followed.

3. **ROLL CALL**

Chairman Barry Benjamin, Vice-Chairman Tom Rivers and Commissioners Matt Brown, Sandy Flowers and Chris Way were in attendance. The meeting was also attended by Mike Trudnak, P.E., of Taylor Engineering, District Counsel Jim Bedsole, Esq., and Secretary-Treasurer Elyse Kemper, E.A.

Vice-Chairman Rivers announced that former Chairman Jerry Dixon died during the past month. Vice-Chairman Rivers asked for a moment of silence in honor and remembrance of Chairman Dixon.

4. **SECRETARY-TREASURER'S REPORT**

Secretary-Treasurer Kemper delivered the financial report. As of July 31, 2019, the district had spent a total of \$77,005 on budgeted projects for the 2018-2019 fiscal year and \$200,000 from District funds set aside the previous fiscal year for the City of St. Augustine Seawall Connectivity Project. Additionally, \$120,565 was spent in operating expenses for a total of \$397,570 expended in the 2018-2019 fiscal year to date.

5. **APPROVAL OF MINUTES**

A motion by Chairman Benjamin to approve the minutes of the regular meeting of June 18, 2019, was seconded by Vice-Chairman Rivers and passed unanimously.

A motion by Chairman Benjamin to approve the minutes of the regular meeting of July 16, 2019, was seconded by Vice-Chairman Rivers and passed unanimously.

A motion by Chairman Benjamin to approve the minutes of the special meeting of July 8, 2019, was seconded by Commissioner Brown and passed unanimously.

6. ENGINEERING REPORT

Mike Trudnak delivered the engineering report on behalf of Taylor Engineering. He said he has coordinated a meeting between Commissioner Flowers and officials of the Florida Department of Transportation and the City of St. Augustine this week to discuss the proposed May Street/Hospital Creek boat ramp. He also reported the bids were in for planting more sea oats on the Summer Haven River project beach berm and that the lowest qualified bid was \$18,500. He recommending awarding the bid to the low bidder. At the request of Commissioner Flowers, Chairman Benjamin delayed the vote to approve the award until later in the meeting.

7. GOVERNMENT REPRESENTATIVE COMMENTS

Officer Keith Oke, St. Johns County Sheriff's Office, reported that a new full-time deputy position has been filled in the SJSO Marine Unit.

Jim Piggott, City of St. Augustine, reported that on September 4, 2019, the FWC will hold a meeting in the Alcazar Room of the City Hall of St. Augustine. The topic will be how officers can determine whether a vessel can be allowed to get back under way after stopping it. In response to a question from Commissioner Flowers, Mr. Piggott said a boat basin on private property on Riberia Street next to the winery has never been developed further and remains privately owned.

Teddy Meyer, St. Johns County Parks and Recreation, said the county board approved matching funds for the improvement of the Doug Crane Boat Ramp with construction beginning in early 2020. Also, the county will be applying to FIND for a 50/50 grant for a maritime master plan for all of St. Johns County. Improvements to the Palmetto Street and Vilano Boat Ramps should be approved in the coming month. In response to questions by Commissioner Flowers, Mr. Meyer said the public works project occupying the Butler Boat Ramp should be concluded in the Fall and the ramp will then be restored to use.

Jason Harrah, Project Manager for St. Johns County for the Army Corps of Engineers, spoke to the board regarding the "CAPS" or Continuing Authority Program for small projects. Many cities and counties use the program for local water management issues. Brooke Hall, planning lead for the ACOE Jacksonville District, spoke about the CAP program. The program is used by non-federal authorities, and is not dependent upon Congressional approval. CAP programs are 3-5 year programs which become the responsibility of the local government entity when completed.

The Aquatic Eco-system program is for restoration of rivers and streams, the Project Modification program is to mitigate the side-effects of federal projects. The Emergency Stream Bank program is to save structures in danger from erosion, and the Hurricane Damage Reduction program is designed to mitigate the future effects of wind and wave action by storms. Other programs exist for small navigation projects, shore damage caused by federal navigation work, the beneficial use of dredged material, and small flood damage reduction projects.

Ms. Hall explained that local authorities need to formally request assistance and evaluation by a letter to the ACOE Jacksonville District. The initial evaluation phase of any project is paid for by the Corps and all work beyond that is by cost-sharing of local and federal funds, usually 65/35 or 50/50. Local authorities will be responsible for all on-going costs after the initial work is complete.

Feasibility reports usually require about seven months. Permitting is still required from State authorities such as FDEP. Ms. Hall said the evaluation can be completed within one month. Other phases require an additional 3 to 5 years to complete.

Commissioner Flowers moved the board to approve sending a letter to the Corps of Engineers requesting an evaluation of a proposed repair to the Summer Haven River. There was no second.

After that comes a feasibility report and at that point, the project becomes competitive and funds are dependent upon the project's ranking among other projects competing for the funds.

In response to a question from Mr. Trudnak, Ms. Hall said the Corps works with the U.S. Fish and Wildlife Service to address "COBRA" related issues. Mr. Harrah said recent legislation has made it easier for the Corps to participate in COBRA zones but that this is determined on a case-by-case basis.

Commissioner Flowers renewed her motion to send a letter to the Corps of Engineers requesting assistance, and the motion was seconded by Chairman Benjamin.

In response to a question from Commissioner Brown, Mr. Harrah said the San Sebastian River has been an on-going, permitted Corps project since the 1950's, and that, if a problem is ever reported there, the Corps can take immediate action to correct it.

At that point, the motion to send a written request for assistance to the Corps of Engineers regarding the CAP Program and the Summer Haven River restoration project was renewed. The board voted unanimously in favor of the motion.

8. NEW BUSINESS

A. Discussion regarding time limit for public comment - Chairman Benjamin.

Chairman Benjamin said the board needed time limits for speakers during the public comment portion of the program as more people were coming to meetings wanting to speak.

The Chairman then moved to set a five (5) minute limit for speakers from the public. Commissioner Flowers seconded the motion and it was unanimously approved.

B. Records Management - District Counsel Jim Bedsole

Mr. Bedsole discussed the condition of the District's paper records which date back to the founding of the District in 1937. He said the records should be organized by a professional archivist and then perhaps fully scanned and digitized for public access on the District's website. He requested permission to contact the State Bureau of Records Management for assistance in planning the work. He said he would report back to the board with an estimated cost at a future meeting.

A motion by Commissioner Way to authorize Mr. Bedsole to research digitizing the District's records was seconded by Vice-Chairman Rivers and passed unanimously.

C. Inquiries to the Florida Attorney General - Commissioner Flowers

Commissioner Flowers proposed the board make a formal written request to the Attorney General for an opinion about three issues. The first is her belief that a government agency cannot lawfully operate without a paid staff of employees as opposed to contractors. The second regards whether the District may lawfully delegate its record-keeping functions to a contractor instead of a paid full-time employee. The third is whether the board may waive the requirement in the District charter for a commissioner surety bond.

Commissioner Flowers then moved to have the board send a letter to the Attorney General requesting an opinion on these topics. There was no second to the motion and no vote.

Secretary-Treasurer Kemper then explained that the District provides all of its records each year to auditors licensed by the State of Florida who review all of the District's financial and operational records for compliance with standard practices and State law. She said each year, the auditors have approved the District's records and practices. Because of the extremely small size and budget of the District, the auditors have allowed the Secretary-Treasurer to both write and sign checks which are then all co-signed by the board's Chairman or Vice-Chairman.

Mr. Bedsole advised Commissioner Flowers she could write the Attorney General herself, as a commissioner, and that the Attorney General would respond to her.

Commissioner Flowers then said the District's contractors for accounting, engineering and legal services are without valid contracts. Mr. Bedsole said each of the District's contractors have served the District for in excess of ten years without problems. Taylor has been the District's engineer for nearly thirty (30) years. Mr. Trudnak said the written version of his firm's contract did, in fact, expire in 2018 but that services have continued to be furnished as usual and without interruption. Ms. Kemper said she is an employee of the CPA firm which holds the contract for accounting services and that it is a multi-year contract which does not expire this year. Mr. Bedsole said his contract exists in the Board's records and minutes in the form of a proposal and acceptance by the board in 2009 and that it has been

unchanged since then and at the same price and terms. Chairman Benjamin said he recalls interviewing a number of attorneys and the board then voted to hire Mr. Bedsole.

Commissioner Flowers then moved to hire an outside counsel to review the board's contracts with its engineer, attorney and accountant. The motion died for lack of a second and there was no further discussion.

9. OLD BUSINESS

A. Summer Haven - Commissioner Flowers

In response to questions from Commissioner Flowers, Mr. Bedsole explained the appeal process taking place with FEMA and the Florida Department of Emergency Management (FDEM) regarding the District's request for financial assistance with the cost of emergency repairs conducted by the District after Hurricane Irma destroyed, for the second time, much of the Summer Haven River restoration project. He said the District engineer submitted the application and that FEMA had determined the District was entitled to approximately \$92,000 in assistance, if eligible. Later, FEMA notified the District that it was ineligible for assistance based on several factors. At the same time, the Florida Department of Emergency Management erroneously delivered to the District a check for the same \$92,000 in funds. Hearing nothing from either agency regarding the conflict, the District's counsel appealed to both agencies in writing and requested clarification and an extension of time in which to supplement the appeal of FEMA's determination, whatever it may be. FDEM granted the appeal and requested that the appeal be supplemented within sixty (60) days, which was accomplished. The District now awaits a determination by FEMA. FDEM eventually issued an official request for a return of the \$92,000 pending the appeal, and the money was returned during the past month. The District now has no FEMA funds as a result of the request for assistance.

In response to questions by Commissioner Brown, Mr. Trudnak said the Summer Haven contractor complied with the construction contract by obtaining the required insurance and by completing the work as required. He explained that FEMA made its own independent review based on records submitted to them. Their denial is based on the fact that there was no final inspection and official turn-over of the work site to the District prior to Hurricane Irma. Therefore, FEMA concluded the District was not responsible for the work site at the time the storm hit and did not qualify for FEMA assistance as a result.

A discussion then took place regarding whether it is possible for the District to make a claim based on the casualty insurance policies in place at the time of the hurricane. Mr. Bedsole indicated that a claim would be possible.

Chairman Benjamin moved to file an insurance claim against the casualty policies available at the time of Hurricane Irma. Commissioner Flowers seconded the motion which passed unanimously.

Commissioner Flowers next discussed her belief that an expert-witness-consultant in dredging was necessary to determine what had happened during the Summer Haven Project.

Commissioner Flowers moved to have the District hire an expert-witness-consultant in dredging. There was no second and no vote.

In response to questions from other board members, Mr. Trudnak said it was not necessary to hire another surveyor or expert as the District already has an as-built survey of the river. Commissioner Flowers expressed suspicion that the survey, even though verified by the District's engineers, was somehow fraudulent. She also said that an expert-witness-consultant could determine whether the contractor or the engineers had been negligent and that a claim could be made against their professional liability insurance. Mr. Bedsole then advised Commissioner Flowers to avoid making public accusations of negligence for which there was no proof, as the parties involved could possibly claim damage to their professional reputations by her speech.

Mr. Trudnak went on to add that a new as-built survey would cost approximately \$30,000. Vice-Chairman Rivers advised Commissioner Flowers to get an estimate if she wanted more information. Commissioner Flowers then said Turnbull Engineering should never have received a final payment. Mr. Trudnak and Mr. Bedsole explained that, in approving the final change order, the board had approved the final payment upon substantial completion of the work. Mr. Trudnak reiterated that the contractor had completed the work required by the change order and that Commissioner Flowers had voted to approve the change order.

Commissioner Brown moved to approve the expense of \$18,500 for planting sea oats on the Summer Haven River berm pursuant to the permit and the bids received, this being the lowest qualified bidder. Commissioner Way seconded the motion and it passed by a 4 to 1 vote with Commissioner Flowers dissenting.

Commissioner Flowers then displayed a short video depicting an excavator machine appearing to remove sand from an area of the Summer Haven River, then showing a dump truck depositing sand under a home on stilts. She said this was a violation of environmental regulations and possibly a theft of soil from the river. She said complaints have already been filed with the appropriate authorities and suggested the District should also file a complaint. Other commissioners said the District had no need to file a complaint as authorities had already been notified.

A motion by Commissioner Flowers to have the District file a complaint regarding the alleged illegal dredging and filling in the video died for lack of a second. No vote was taken.

Commissioner Flowers then discussed the presence of many live-aboard boaters in the San Sebastian River who appear to her not to regularly use available pump-out facilities. She said they are probably dumping human waste directly into the river and that a pump-out boat is needed to prevent this from happening.

Commissioner Flowers moved to have the District gather information about owning its own pump-out boat. The motion died for lack of a second and no vote was taken.

She then said the City of St. Augustine's mooring field contains as many as 40 mooring balls in areas of Salt Run which are too shallow at low tide to moor a vessel. Chairman Benjamin responded generally that the City's mooring field was the City's responsibility, not the District's. Commissioner Way suggested the city should move the mooring balls to a better location such as south of the 312 Bridge. Jim Piggott, Director of General Services for the City, said the balls were installed in the proper depth of water when the mooring field was built, but that silt has gradually accumulated, causing them to get shallower. He said the City will eventually get a permit modification allowing them to dredge the shallow areas beneath the mooring balls.

10. PUBLIC COMMENT

Ed Slavin appeared and discussed environmental crimes such as dumping human waste in local waters. He also complained about the fact he can legally be charged for obtaining some public records from the District. Then he added that Commissioner Flowers has given him direct access to the District's records room.

Cornelius Ingram, Summer Haven, said he would like to see the Summer Haven River and the breach fully restored because the breach and river protect Highway A1A, and the area has great historic, recreational, environmental and ecological value.

Jay Bliss, former District commissioner, said the District gets little recognition for all that it does and suggested the meeting times be posted on the sign board outside the building. He also said the beach at Summer Haven needs a heavy revetment in order to survive and that, in its current condition, another breach will occur soon. Vice-Chairman Rivers thanked Mr. Bliss for his service on the board.

Commissioner Flowers then moved to televise board meetings. The motion died for lack of a second and no vote was taken.

Ellis Zahra, Summer Haven, discussed an article which appeared in the St. Augustine Record quoting him regarding the Summer Haven River restoration project. He said the article was written without his review or input as to its content and that he had only talked to the reporter by phone one time. He said Commissioner Flowers posted online a highly vitriolic and unfounded attack on him after the article appeared accusing him of lying to the board about the outcome of the dredge work in the river. He said his reputation had been damaged by her comments and that he had a right to sue Commissioner Flowers personally and sue the board. Commissioner Flowers said he should not have spoken to a reporter from that newspaper and that she had a right to say what she did. She then went on to encourage Mr. Zahra to sue her and the board. Mr. Zahra said the board has ceased to function normally, and that it is dominated by an atmosphere of confrontation, inflammatory statements and threats, and is

no longer able to disagree, debate, and vote in a rational manner because its decisions are affected by the fear of reprisal and public embarrassment. Commissioner Flowers said she could drag him through the mud because he did not complain to the Record about the article. She added that her constituents do not like the Summer Haven project.

Linda Ginn, Summer Haven, recounted how the Summer Haven project began eleven years ago. She said the project has become her full-time job even though she is retired. At her request, the audience stood to signify their support of the project. She said the river is a very public resource, unlike some of the beaches to be restored in the county, and that it serves the recreational and scientific community, as well. Much remains to be completed with plantings and fencing, and perhaps twenty thousand more cubic yards of sand removed.

Walter Coker, 2901 Cubbedge Road, said he has observed the river for years and has wondered how it can be protected in the future. He said without completely armoring the Summer Haven beach, the river will never be safe.

Mr. Trudnak responded that it is possible to permanently protect the river but that the beach will require maintenance and sand renourishment regularly in order to succeed. He said that in addition to dredging, sand is available by truck from a number of FIND donor sites within a few miles of the beach.

Jay Ginn, Summer Haven, thanked the board for its continuing support. He said the river is important to local ecology and to the health of Matanzas Inlet. He said the river flows into the important habitat area of Pellicer Flats to the west of the Intracoastal Waterway, and that it should be restored and preserved for all of these reasons.

11. COMMENTS BY COMMISSIONERS

Vice-Chairman Rivers said board members need to work together to be a part of a cohesive unit and that no lone commissioner can speak for the board.

12. NEXT MEETING:

Chairman Benjamin announced the next regular meeting of the board will be held at 3:00 PM on Tuesday, September 17, 2019, in the St. Augustine Beach City Commission Room.

13. ADJOURN

There being no further business, Chairman Benjamin adjourned the meeting at 5:05 PM.

Secretary-Treasurer

Chairman