

Sebastian Inlet Tax District

Wednesday, August 12, 2020 at 4:00 p.m.

Regular Commission Meeting

Virtual via Zoom and in accordance with Resolution No. 03-30-20-1

Minutes

Present at the meeting were Chairman Jenny Lawton Seal, Vice Chairman Michael Rowland, Commissioner Chris Hendricks, Commissioner Beth Mitchell and Commissioner Lisa Frazier. Also in attendance were: Executive Director James Gray, Contracts & Accounting Manager Dave Kershaw, Public Information Associate Michelle Malyn, SID Legal Counsel Jack Kirschenbaum, Sebastian Inlet State Park Manager Jennifer Roberts, Bryan Flynn (ESA), Doug Skurski (ESA), Eric Charest (Indian River County), Pete Seidle (ATM), and Justin Bartusek (citizen).

Under Agenda Item I

Call to Order – Chairman Lawton Seal called the meeting to order at 4:00 p.m. and asked SID Legal Counsel Mr. Kirschenbaum to read the Zoom meeting instructions for participants and the general public.

Chairman Lawton Seal noted for the record that all Commissioners were present.

Under Agenda Item II

Approval of the Minutes of the regular Commission meeting of July 8, 2020. Commissioner Mitchell made a motion to approve the minutes. Commissioner Rowland seconded the motion. **Motion carried 5-0.**

Under Agenda Item III

Information and Discussion Agenda

A. Media and Information – As the District’s clipping subscription service will be renewing in October/November, Mr. Gray asked the Commission for input as to whether this is a useful service in preparing monthly media coverage packets for review. Consensus to renew subscription.

B. Executive Director’s Reports

1. COVID19 Discussion

Mr. Gray reported the office continues to be open during normal business hours, M-F, 8:30-4:30. Staff is working a combination of in-office and remote on a rotating schedule. Mr. Gray indicated he was very impressed with staff productivity while working remotely. The District continues to function efficiently and effectively. Mr. Gray suggested the current staffing schedule will continue at least through September and likely be extended further to November/December.

2. Update on Beach Easements – Sediment Bypassing Projects

Mr. Gray indicated a mailing to homeowners was sent approximately 3 weeks ago, requesting property owners grant the District easement to place sand on their private property in preparation of the upcoming beach and dune repair project and for future projects conducted by the District. As of the August meeting, The District has received 26 of 88 easements, signed and notarized, for a 30% response rate. Mr. Gray has spoken with a number of homeowners and is working with legal counsel Mr. Kirschenbaum to address questions. For the most part, Mr. Gray reports a positive response. There are 3 easements going to the IRC Board of Commissioners for approval on August 18. Mr. Gray is predicting a good response rate facilitating a project later this year.

Commissioner Rowland asked if there was a certain percentage response rate that was needed to proceed. Mr. Gray indicated that while IRC sets a response rate threshold, he hasn’t determined such % threshold for the District project and indicated that because of the District’s unique bypass requirements, the likely

consideration will be the ability to place the 50,000 cubic yards of sand from the DMMA onto the properties that do grant easement, rather than a % response rate. Commissioner Mitchell noted that in a recent phone call with Mr. Gray, he indicated one property owner seemed to be organizing other homeowners against signing the easements. She asked Mr. Gray to talk about the objections he is running into and how that is being handled. Mr. Gray confirmed that was the case and added that a few other homeowners have raised objections. The main objection is the duration of the easement which is perpetual. Another issue refers to public access on the newly constructed beaches. Like other neighboring counties there is language that speaks to public use and access. Mr. Gray indicated he was working out those details with those homeowners currently and with the assistance of legal counsel. Commissioner Mitchell asked if any negotiated terms would come to the Commissioner for approval and if the terms could vary from property owner to property owner. Mr. Gray indicated the goal is to get a standard easement signed by all but there is room for negotiation of terms suggested by the District. Commissioner Rowland asked for clarification on the geographic boundaries of the easements being sought by the District. Mr. Gray noted the District conducted a June 2020 survey of the vegetation line, the landward limit of the easement being requested. The easement runs from that point seaward to the Mean High Water line or in our case, the Sector 2 region established Erosion Control line which is another fixed boundary. The District is requesting easements along the sandy beach portion between the landward limit of the vegetation line and the Erosion Control line. Mr. Gray had not intended to bring negotiated easement changes to the Commission unless the preference is for him to do so. He indicated that the original easement was not brought to the Commission for approval, District legal counsel is engaged and in his experience, the Indian River County Commission did not review/approve easements requested. Commissioner Mitchell voiced concern over having different easements along the property area, not sure that would be equitable with regard to all those who have signed the easement as originally drafted. She also asked for confirmation that negotiating terms is standard practice.

Mr. Kirschenbaum provided a legal overview. Rather than doing individual and costly surveys of each property – as some people own to mean high tide, some properties are platted, all with subtly different boundaries – an easement instrument that applies to all was developed flagging the easement boundaries as previously described. In order to run pipe for the project and place sand within that footprint, we must have the owner's permission. The best case scenario is that each property owner signs the same easement with uniformity in length and so it is equitable. However, people do not have to give the District easement and if so we do not have the legal authority to place sand on their beach. In some projects, individual properties are skipped. This is not optimal for the property owner or for the project, and therefore minor changes to the easement should be considered on a case-by-case basis. Ultimately, if the owner refuses to grant easement, the District has the power of condemnation through eminent domain proceeding. This is also not optimal, however, Brevard County has done that.

Commissioner Mitchell sought input from other Commissioners as to whether property owners requesting amendments to the easement should be reviewed by the Board. Discussion ensued. Commissioner Rowland indicated he would not be open to making exceptions at this time. Commissioner Hendricks asked that Mr. Charest from Indian River County speak to whether the county ran into similar issues with easements for Sectors 5, 3 and 7 projects. Mr. Charest confirmed they had. Commissioner Hendricks suggested that Mr. Gray and Mr. Kirschenbaum be given more time to work on securing easements with help of the North Beach Civic Association. Chairman Lawton Seal verified that the property owners were aware they would be skipped as part of the project. Mr. Gray indicated he had made that clear to homeowners with which he had spoken. Commissioner Frazier asked for a reminder on when the mailing had been sent and then asked what the deadline was for securing the easements. Mr. Gray indicated October, prior to the start of the project in November/December.

Commissioner Mitchell reiterated her concern about property owners signing different easements/terms. She requested that amendments to the easement as written come back to Commission for approval. Chairman Lawton Seal agreed, and Commissioner Frazier indicated she would support that where negotiations fail and properties are in jeopardy of being skipped. Commissioner Frazier noted she is not generally in favor of different easements for different property owners, but all options should be examined. Commissioner Mitchell asked in the event the District was unable to secure easement for certain properties,

what the plan would be. Mr. Gray indicated he hoped it did not get to that point, but it would need to come back to the Commission for discussion based on the circumstances. If only a handful of properties owners decline, those could be skipped as part of the project. If a larger number of parcels grouped together declined, that may warrant discussion on whether to proceed with the project. Commissioner Hendricks noted this aligns with his experience with the IRC easement process, referencing photos showing a property that had been skipped during a project as a helpful tool. He concurred that a property here or there could be skipped, but if a higher number of adjacent properties all declined, it may warrant further consideration of doing the project.

3. Update on 2021 DMMA Sand Excavation and Beach Placement Project

Mr. Gray reported that the bid package will be ready soon and is scheduled to be advertised on August 28. It will be truck haul project to screen and move the 50,000 cubic yards of sand in the DMMA to the beaches for placement between R10-R17. Mr. Gray is anticipating construction to begin this December and continuing through March.

4. Review of District 2019/2020 Accomplishments and 2020/2021 Goals and Objectives

Mr. Gray noted the handout included in the Commission package for review, highlighting several of the accomplishments as we close out the current FY and goals/objectives for the coming FY.

5. Follow-up Discussions on the Proposed Agreement between FWC and the District for as needed Law Enforcement Services

Noting the discussion at the last Commission meeting, Mr. Gray indicated further review of the MOA and visiting thereafter with SISF and FWC officials. Per the review and those discussions, the District no longer has maintenance and security-related responsibilities related to the North Jetty fishing pier. As such, staff believes it is prudent to respond to FWC identifying that we are no longer pursuing a contract for additional security on the North Jetty at this time. Mr. Gray indicated wanting concurrence with the Commission's direction. Commissioner Frazier confirmed that at the last meeting the recommendation from staff was to move forward with and fund the contract with FWC for additional security, asking for clarification on why the departure from that stance. Mr. Gray referenced the report he sent, outlining the meeting with SISF and FWC, and further review of the MOA. Given the 50% capacity at SISF due to Covid and the reduction in reports of incidents, he does not feel additional security is relevant and needed right now. Commissioner Frazier asked if it was off the table entirely or just at the present time. Mr. Gray confirmed it was just at the present time. Commissioner Rowland was open to keeping the options open to contract with FWC particularly given the start of snook season coming up on September 1.

6. Discussion of Consent Agenda - (see Agenda Item VIII)

Motion to approve the Consent Agenda made by Commissioner Rowland. Seconded by Commissioner Mitchell. **Motion carries 5-0.**

C. Public Outreach Activities – Mrs. Malyn referred to a summary of activities in the Commission packets and offered to answer any questions. She highlighted several items: 1-Commissioner Mitchell gave a virtual presentation on the District the Sebastian Exchange Club, 2-As referenced by Mr. Gray, we have released the first in a series of 6 videos highlighting District projects, programs and monitoring efforts across all social media platforms and on our website, 3-story in the August edition of Vero Beach Magazine with interview with Mr. Gray and SISF Manager Jennifer Roberts.

Under Agenda Item IV

Detailed Budget Discussion – FY 2020-2021

Mr. Gray noted, based on previous Board discussion, the two-column budget spreadsheet with option A (column E) and B (column F) for the Commissions' review. Mr. Gray pointed out the distinction between the two in line 40 with either \$174,000 or \$135,000 budgeted in Reserve. The only other change in the document since the last Commission meeting is budgeting for the single audit in the corresponding line item. Mr. Gray indicated the current reserve would cover 2 ¼ months of operating costs and the increase proposed in Option A would cover 3 months of operating. Commissioner Mitchell reiterated her comments from last month, preferring to see an increase of \$250,000 in Reserve.

Commissioner Mitchell made a motion to increase the Reserve by \$250,000. Motion seconded by Commissioner Rowland. Following discussion, **Motion carries 3-2 with Commissioners Hendricks and Frazier voting no.**

Discussion re: the motion made ensued. Commissioner Frazier asked if it would affect the mileage rate and where it would be coming from within the budget. Mr. Gray indicated it would not effect the mileage rate and it would be coming from another line item/fund within the budget. Mr. Gray further indicated speaking with CRI whose formal recommendation was 3 months of operating reserve. Commissioner Frazier asked from which line item in the budget the \$250,000 would come from to increase the Reserve. Commissioner Mitchell noted it would come from line 180, the subtotal for Sand Trap Dredging that currently has \$8M+. Commissioner Hendricks noted an actual of \$701,000 in unassigned reserve or equity when looking at the Balance Sheet. He noted he was not in favor of adding an additional \$250,000 as part of the FY20-21 budget. Commissioner Frazier asked if there were time limitations on spending funds and if there were classification restrictions on reserves that required them to be assigned to a specific project. Commissioner Hendricks said an accounting entry approved by the Board would be necessary to move funds earmarked for specific projects. The formula for determining if you have enough cash flow says the amount should be around \$200,000-\$250,000 and the District has \$701,000 in unassigned reserves. Commissioner Hendricks confirmed for Commissioner Frazier that Government Equity Funding principles and rules do not apply to the District. There is a running list of projects kept by Mr. Gray that correspond to the \$11M in assigned reserves on the Balance Sheet. Commissioner Hendricks and Frazier agreed that adding additional funds to Reserve may prompt questions about further lowering the mileage rate rather than adding funds to unassigned reserves.

Under Agenda Item V

Park Matters – Jennifer Roberts, SISP Park Manager

Mrs. Roberts noted the Park has been busy with the nice, summer weather and they have had a lot of manatees in the tide pool for visitors to enjoy. 100 grates were removed from the tip of the jetty in anticipation of the last storm and almost all had now been replaced. Mrs. Roberts reported over 1,000 sea turtle nests counted in the 3 ½ mile stretch of beach so far this season.

Under Agenda Item VI

Legal Counsel Update – Jack Kirschenbaum, Gray Robinson & District Legal Counsel – nothing to note.

Under Agenda Item VII

Public Comment Period – none noted.

Under Agenda Item VIII

Consent Agenda

- a. Authorized work for Commission Review:
 - i. District Electronic Meetings – Extension Resolution No. 08-12.20-1

Mr. Gray detailed this resolution that would effect virtual/electronic monthly Commission meetings through December 31, 2020.

- ii. Recommended Selection of Consultant for RFQ No. 2020002 Continuing Professional Coastal Engineering and Biological Support Services

Mr. Gray informed the Commission that a selection committee made up of Dr. Gary Zarillo, Florida Tech, and Joe Chiason, Jupiter Inlet District Executive Director, and Mr. Graymet to review all proposal submitted in response to this RFQ. A total of 35 firms requested the bid package via demandstar.com and the District received six (6) formal submissions. The top 3 final ranking (high-low) and recommendations from the selection committee are as follows;

- 1-Applied Technology Management (ATM)
- 2-Atkins North America
- 2-Environmental Science Associates (ESA)

There was a tie for rank 2 between Atkins North America and Environmental Science Associates.

Recommendation to approve rankings and authorize District staff to enter into contract negotiations with these three firms to provide continuing professional coastal engineering and biological support services.

- iii. Work Order No. 1920-022-CRI (Carr Riggs Ingram) Audit of Financial Statements for the Period ending September 30, 2020 and Florida Single Audit Requirement

Mr. Kershaw has received an engagement letter from CRI to conduct the FY 19-20 audit as included in the agenda package. This year, given we have State of Florida total project expenditures that exceed \$750,000, the District will need to have a State single audit completed as well. As was the case with last FY. Detailed roles and responsibilities are included in the agenda package. Audit cost is \$19,700, a \$200 increase from last year. The fee for the State single audit is \$4,500, the same as it was last year. Recommendation of staff is to have the Executive Director sign the letter of engagement to start the audit process for FY 19-20.

- b. Recommended for Approval – none at this time.

Under Agenda Item IX

Commissioner Items –

Commissioner Mitchell – Staff continues to do an excellent job managing District operations remotely.

Commissioner Frazier – Remote meetings have been very convenient in her view.

Commissioner Hendricks – none noted.

Commissioner Rowland – Orlando Magazine, August edition, has an article/feature on Sebastian Inlet.

Chairman Lawton Seal – Chair Lawton Seal echoed Commissioner Mitchell’s comments.

Under Agenda Item X

Unfinished Business – Nothing at this time.

Under Agenda Item XI

New Business

Under Agenda Item XII

Adjournment – Chairman Lawton Seal adjourned the meeting at 5:18 p.m.

Secretary/Treasurer

Date

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