

**MINUTES OF MEETING
FIDDLER'S CREEK
COMMUNITY DEVELOPMENT DISTRICT 1 & 2**

The Board Meetings of the Board of Supervisors of the Fiddler's Creek Community Development Districts # 1 and #2 were held on Wednesday, December 19, 2007, at 9:00 a.m. located at the Fiddler's Creek Club and Spa, 3470 Club Center Drive, Naples, Florida 34114.

Those present for Fiddler's Creek #1 were:

Phillip Brougham	Chairman
Alexander Love	Vice Chairman
James Curland	Assistant Secretary
Peggy Schmitt	Assistant Secretary
James Robertson (via telephone)	Assistant Secretary

Those present for Fiddler's Creek #2 were:

Clifford Olson	Chairman
James Robertson (via telephone)	Vice Chairman
Diane Matire	Assistant Secretary
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Carlo Zampogna	District Counsel
Ron Albeit	Foundation Manager
Tony Pires (1:30 session only)	District Counsel

FIDDLER'S CREEK CDD # 2 ITEMS

FIRST ORDER OF BUSINESS

Roll Call.

Mr. Adams called the meeting to order at 9:05 a.m.

Mr. Adams announced that for CDD # 2, Supervisors DiNardo, Matire, Scott and Olson were present. For CDD # 1, Supervisors Brougham, Schmitt, Love and Curland were present. For both Districts, Supervisor Robertson was present via telephone.

SECOND ORDER OF BUSINESS

Protest Hearing for Lake and Wetland Maintenance.

Mr. Adams turned the meeting over to the District Attorney.

Mr. Zampogna advised that on December 18, 2007, via email, Rolando Santiago filed a withdrawal without prejudice of the bid protest. He advised that staff recommended the Board make a determination to acknowledge a withdrawal of the challenge bidding process and summarily dismiss the bid protest and award the bid to Lake Masters.

On MOTION by Mr. Olson and seconded by Ms. Scott, all were in favor of re-affirming the contract award for lake and wetland maintenance to Lake Masters.

THIRD ORDER OF BUSINESS

Protest Hearing for Landscape Maintenance.

Mr. Adams stated this item will be pushed back as the Board had previously indicated a 9:30 start for this item.

Mr. Adams suggested discussing Joint Meeting items at this time.

FOURTH ORDER OF BUSINESS

Staff Reports.

Engineer

Mr. Cole presented draws for District 2 as follows:

The 2000 Series Bond, pay draw # 51 was for approximately \$8,000, consisting of a variety of landscape planting for Cranberry, Sandpiper and Lake 88 area, (inaudible) and Fiddlers Creek Parkway extension. There were miscellaneous landscape items.

The 2005 Series Bond, pay draw # 23 was for approximately \$854,000, consisting of landscape related work, work related to fountains for Aviamar and landscape plantings in this vicinity.

It was asked whether there is \$14 million left in the Bond. Mr. Cole responded affirmatively.

Mr. Cole presented draws for District 1 as follows:

The 2002 Series Bond, pay draw # 54, was for approximately \$35,000, for work related the repaving work on Championship Drive and some signage. The contractor will get the striping done and install the No Passing signage on Championship Drive.

It was commented that the Board decided not to add signage last month. Mr. Cole stated he will redirect the contractors.

Mr. Cole advised that regarding the 2002 Series Bond, he had confirmed with the developer's representative that the bond will be closed out in the draw for the first part of January. He will then submit a final Engineer's Report for this bond in January. He advised that there will be additional funds that can be used from Bond 4 to specifically put in the sidewalk ramps. Staff will pursue this next year.

Mr. Brougham recalled that he had asked Mr. Cole for costs and quotes for placing reflectors down the middle of Championship Drive. Mr. Cole advised that the contractor will give him a price on this also.

The 2005 Series Bond, draw # 18, was for approximately \$263,000 and consisted of a variety of work primarily for infrastructure related to road work, water mains, sewer mains, irrigation piping and storm drain structures.

Manager

Unaudited Financial Statements as of September 30, 2007:

Mr. Adams presented financial statements through the end of November.

Remote Access Program

Mr. Adams recalled that the Board had approved the contract for remote access at the Championship gate, for an amount not to exceed \$40,000. Mr. Adams advised that in follow up discussions with Lee Herman with TEM regarding the ticket printer, he learned there is a one-year warranty from the manufacturer. TEM does not manufacture this component and does not normally deal with this type of printer application. Because of the nature of the printer, staff recommended purchasing a second ticket printer to have on the shelf in the event of a failure instead of waiting for turnaround time it would take to order parts if the printer failure. The price will be \$9,900 and TEM will store the printer for the District at their shop. Mr. Adams advised that since this would amount to a \$10,000

expense, the overall cost will be \$50,000. He added that in his opinion this will be money well spent as an insurance policy.

Ms. Scott asked where TEM's shop is located. In response, Mr. Adams advised their shop is in Naples.

Mr. Robertson asked how many hours of gate guard time this \$50,000 would buy. In response, Mr. Adams said it will buy two-thirds of a year; based on the current operating hours of twelve hours per day, six days a week, staff calculated this as a \$75,000 per year price tag. Mr. Robertson commented that it seemed like paying a lot more money than just putting a human body out there. Mr. Adams commented that initially, the intention was to provide convenience after hours and on weekends so people did not have to go down to the main gate. He added that the Board had envisioned moving this to a 24/7 remote program in the future if there were no bugs in the system.

Mr. Brougham recalled that at the last meeting the Joint Boards had approved the purchase and installation of the necessary remote access hardware and software modifications.

On MOTION for CDD # 1 by Mr. Brougham and seconded by Mr. Love, all were in favor of approving the purchase of the additional printer to be stored at TEM's premises for emergency purposes in case of failure of the primary printer.

Ms. Scott asked what the cost would be to repair the printer. Mr. Adams stated this would depend on what the failure is determined to be. He added that according to the manufacturer, there are not many moving parts within the device. Ms. Matire asked what if the equipment sits there not being used then needs to be upgraded to accommodate future technology. In response, Mr. Adams said this will be a piece of equipment the District owns. He was unsure how often technology is upgraded on such ticket spitters. He commented that he has not seen any exterior changes in ticket spitters in parking garages over the years. He commented that there are probably upgrades on interior mechanisms that process

information from computers. He felt that the basic technology to date stamp and spit out tickets probably does not see a lot of continuous upgrade.

Ms. Matire suggested the Board may ask the manufacturer for personnel to work at the gate in a pinch. Mr. Adams said they have the ability to augment the program as this is required as part of the contract.

Further conversation ensued on this topic.

On MOTION for CDD # 2 by Mr. Olson and seconded by Ms. Matire, all were in favor of approving the purchase of the additional printer to be stored at TEM's premises for emergency purposes in case of failure of the primary printer.

Protest Hearing for Landscape Maintenance

Mr. Zampagno advised of the protest hearing procedures. Those who would be testifying were sworn in.

Mr. Santiago, representing Xscape, distributed documents relevant to what he would speak about.

Mr. Zampagno objected to the bid process presentation documents being distributed at this time and stated these documents are prejudicial to the Board. He advised that he has not had enough opportunity to review these documents. He asked that the Board disregard the arguments given in the presentation documents.

Mr. Santiago stated that the documents distributed merely recite the facts of the case; there are some citations but they are public documents. It was stated that some of the timetables are important to note as this concerns a bid protest and the process. Mr. Santiago said he would attempt to show that compliance with statutes concerning competitive bidding was not followed with regard to selection of the ultimate bidder. Mr. Santiago reviewed timetables of note as follows: On October 24th a document was provided advising the Board to recommend a particular firm for landscaping. On October 26th, Xscape received notice that an award had been made to another bidder. On November 2nd a letter went out by U.S. mail advising of the award. He argued that CDD #2 never adopted Chapter 190.03 statutes rules for the awarding of maintenance contracts. He said that between October 26th and November 26th a series of public records requests were sent to the District. He stated that on November 8th he had requested more

public documents from the District with regard to the bid process. He commented on the lack of correspondence and documentation relevant to the bid process. Mr. Santiago raised further concerns about due process and poor compliance with the requisites of competitive bidding.

Mr. Santiago said that it was not until December 17th that any notice in writing was made about why Xscape was deemed non responsive. Further arguments were put forth concerning the RFP and questioning why Xscape was deemed non responsive. Mr. Santiago asked for specific answers as to how Xscape was deemed non responsive. He objected to what he felt was disparate treatment that is contrary to competitive bidding. He said that in his opinion, it is in the best interest of the Districts to throw out all the bids and rebid as the safest course of action.

Mr. Zampagno advised of the scope of inquiry of a bid protest. He advised that per bid specifications, responsive bidders are defined as "anyone submitting a bid that maintains a permanent place of business, has adequate backup equipment to do the work properly and within the time limit, has adequate financial status to meet the obligations for the work." He further advised that the lowest responsible bidder means, "A bid or proposal submitted by responsible person or firm capable and qualified in all respects to perform fully the contract requirements with integrity and liability which are good faith requirements and timely completion in a responsive manner."

Mr. Zampagno said the decision was made by the Board that Xscape was non-responsive. He entered Exhibit J into the record, an outline explaining why Xscape was deemed non-responsive; most importantly because no bid bond, cash surety, cash or bid deposit was ever made. He asked the District Manager to testify whether this is correct.

Mr. Adams testified: "This is correct."

Mr. Zampagno further explained that Xscape was deemed non-responsive because they are not licensed with an occupational or contractor's license. He added that the Tru-Green firm does have occupational licenses, contrary to Mr. Santiago's argument that it does not.

Mr. Zampagno stated that Xscape did not comply with bid specifications or the bid process as outlined. He advised that the bid was awarded to the lowest responsive and responsible bidder, Tru-Green, which complied with all the specifications.

Mr. Zampagno said the burden of proof rests on Xscape to show that the District has acted fraudulently, arbitrarily, illegally or dishonestly in making its decision. He advised the

Board that it could reject all bids and rebid the whole contract or reject the bid protest of Xscape today and go with Tru-Green.

Mr. Santiago asserted that the Board was arbitrary in its review of Xscape's submittal. He briefly restated his arguments and requested that the Boards throw out all bids and rebid.

Mr. Zampagno explained that Xscape does not have a contractor's license in order to do the work required under the contract being bid. He stated that without a contractor's license, it is impossible for Xscape to receive an occupational license for the work.

In response to Mr. Santiago's arguments, Mr. Adams stated that the bid surety was a glaring, missing item. He explained that is important to have the surety as insurance that the contractor will come to the table and execute the contract. If the contractor fails to do this, the surety can be liquidated to cover expenses incurred and potentially cover the expenses of going through the process again. Mr. Adams added that this was the deal breaker in terms of further considerations for this submittal. He asserted that this stipulation was clearly identified in the advertisement, in the bid request package and clearly highlighted at the mandatory pre-bid meeting.

Mr. Santiago asserted that a check was submitted and argued against Xscape being deemed non-responsive.

Mr. Adams stated there was no check from Xscape. He advised that staff had reviewed the bid submittal page by page. He pointed out that if a bid bond or cashier's check was submitted, then Xscape should have a dated receipt showing it was pulled prior to the bid submittal. Mr. Adams pointed out that no copy of this was forthcoming.

It was stated that bid surety was provided by Xscape in the form of a company check as an oversight, without realizing it had to be a certified copy. It was stated that this was written on a J.D. Edwards money market account. It was further stated that Mr. Adams was advised this check was in the submittal packet.

Mr. Adams reiterated that no check was received and stressed that staff had gone through the submittal on two to three occasions. Mr. Adams stated Xscape was deemed non-responsive primarily due to the absence of surety; however, the submittal was found to be deficient in many other areas.

The argument was made that the Board had approved the Tru-Green submittal contingent upon receipt of their updated occupational license. Therefore the same consideration could have been given to Xscape with regard to resubmitting the proper form of surety.

Mr. Zampagno asked the Board to strike comments read aloud by Mr. Santiago.

Further arguments were made on both sides regarding awarding of the contact.

Mr. Adams spoke of various factors staff took into consideration in recommending awarding the contract to Tru-Green. He stressed that staff has gone through the process appropriately within the law and without being arbitrary.

Mr. Olson requested that for future bids, Mr. Adams provide copies of checks and rating sheets. He suggested going forward with the contract as he felt this was in the best interest of the District.

Ms. Scott commented that a party bidding on a contract of this magnitude should know that a certified check would normally be required. She also commented that the process on both sides was sloppy and that a better job could have been done on communication. She felt Xscape should have been considered responsive with the contingency of providing the correct form of payment within two days; however she was reluctant to go through the whole process again.

On MOTION for CDD # 2 by Mr. Olson and seconded by Ms. DiNardo, all were in favor of re-affirming the contract award to Tru-Green.

A brief recess was called at 11:05 a.m.

The meeting was reconvened at 11:15 a.m. for Fiddler's Creek # 1.

Protest Hearing on Lake and Wetland Maintenance.

Mr. Adams advised the full Board for Fiddler's Creek CDD # 1 was present and turned this item over to the District Attorney.

Mr. Zampagno advised that Mr. Santiago had withdrawn his bid protest without prejudice indicating that he may bring this back at a later time. He advised the Board to acknowledge the withdrawal but not to accept the withdrawal. He stated that Xscape does not have the standing to submit this bid protest. He entered a copy of the withdrawal into the record.

On MOTION for CDD # 1 by Mr. Brougham and seconded by Ms. Schmitt, all were in favor of re-affirming the contract for lake and wetland maintenance to Lake Masters.

Mr. Brougham advised that Item 11, the protest hearing, will be moved to 1:30 p.m. in the adjacent meeting room, the Egret Room.

FIFTH ORDER OF BUSINESS

Supervisors' Requests and Audience Comments

There were no requests from the supervisors or comments from the audience.

JOINT MEETING ITEMS

Mr. Adams advised that all Supervisors for CDD #1 and #2 were present.

SIXTH ORDER OF BUSINESS

Discussion on SFWMD Irrigation Restrictions

Mr. Adams advised that the SFWMD voted to implement Phase 3 water restrictions. He indicated copies of the news release were provided to Board members. He stated this information was also in electronic form and can be placed on the respective websites for the Districts. Mr. Adams stated that per SFWMD restrictions, everyone will cut back to watering once a week. Depending on the last digits of addresses, a respective day will be assigned for watering, within two watering windows: 4-8 a.m. or 4-8 p.m.

Mr. Adams said the community's main irrigation system is controlled through a central irrigation computer system managed by Gulf Bay; the only exception to this is the single family units that have individual clocks. Mr. Adams explained that it is difficult to water in the neighborhoods through the central control system based on last digits of addresses. As a result, Gulf Bay will file a variance to SFWMD requesting the opportunity to water on Wednesdays and Thursdays in the window of 12-8 a.m.

It was asked whether the community could take advantage of two different watering slots: 12-8 and 4-12; this would split up one-fourth of the property on Day 1 between 12-8 and one-fourth between 4-8 and the same thing on the following day. It was suggested that this will allow the community to maximize the amount of water allotted.

Mr. Albeit stated that staff is in the process of applying for the variance but will investigate whether this is an option.

SEVENTH ORDER OF BUSINESS

Brief discussions regarding District related emails

Mr. Adams indicated that Board members had received copies of the article in the *Naples Daily News* a week earlier. It was requested that Board members retain emails subject to public record. He said that if Board members are concerned about retaining emails on their own systems, they can copy him; these emails will then go into the WHHA server system for storage.

Mr. Adams suggested that Board members set up a separate email account with "CDD" incorporated into the email address and use that as the email address distributed to the community.

EIGHTH ORDER OF BUSINESS

Reconsideration and Approval of Minutes of the October 24, 2007 Joint Board Meeting

Mr. Brougham re-emphasized that CDD #1 Board members have lobbied heavily for verbatim minutes. He also questioned why minutes from November were missing.

Mr. Adams stated this was a timing issue as the meeting was moved up one week.

Mr. Brougham stressed the importance of seeing minutes at least one month after meetings. He added that if additional expense has to be incurred in order to provide this, then staff can bring this before the Board for consideration.

Mr. Adams said staff will continue to provide greater detail versus true verbatim which is very difficult to follow.

On MOTION for CDD # 1 by Mr. Brougham and seconded by Mr. Love, all were in favor of approving the October 24, 2007 minutes as amended.

On MOTION for CDD # 2 by Ms. Scott and seconded by Ms. Matire, all were in favor of approving the October 24, 2007 minutes as amended.

NINTH ORDER OF BUSINESS

Consideration and Approval of Minutes of the November 28, 2007 Joint Board Meeting

Minutes were not available for approval.

TENTH ORDER OF BUSINESS

Adjournment – Fiddler’s Creek # 2

Mr. Adams advised that Fiddler’s Creek #2 meeting can be adjourned and wished everyone Happy Holidays.

There being no further business, the Fiddler’s Creek # 2 meeting was adjourned at 10:55 a.m.

FIDDLER’S CREEK CDD # 1 ITEMS

ELEVENTH ORDER OF BUSINESS

Protest Hearing for Lake and Wetland Maintenance

This item was addressed earlier in the meeting.

TWELFTH ORDER OF BUSINESS

Protest Hearing for Landscape Maintenance

Mr. Adams advised that this item was moved to 1:30 p.m. and requested that the Board continue this meeting to 1:30 p.m.

Mr. Robertson asked whether Mr. Santiago’s comments will be as lengthy in the second protest hearing.

Mr. Brougham stated he was aware of the redundancy. He said he intended to abbreviate comments as everyone sat through the first protest hearing earlier.

Mr. Love advised he would not be able to attend the 1:30p.m. meeting in person but would call in from his car.

THIRTEENTH ORDER OF BUSINESS

Staff Reports

Engineer

This item was addressed jointly earlier in the meeting.

Manager

1. Unaudited Financial Statements as of November 30, 2007

2. Annual Continuing Disclosure Report

Mr. Brougham referred to page 1, under General Fund, under Assets and said he did not see any line item saying "due from developer." He commented that there was no record of any assessment received from the developer for the month.

Mr. Brougham commented that the balance sheet shows Total Assets as \$374,710 whereas the previous page shows Total Assets of \$384,609 – which is a difference of \$9,899. He requested that Mr. Adams email the Supervisors with an explanation of this.

Mr. Brougham asked when the true-up report for the last fiscal year will be provided. Mr. Adams advised that staff will email this out.

Mr. Brougham referred to page 3, under Access Control Services, and commented that the District is running well ahead of budget on many expenses. Mr. Adams stated he will run through this section once again.

Mr. Brougham referred to page 8, and commented that there is no asset listed as due from developer, as the assessment for the Wilma fund was not received.

Mr. Brougham referred to page 9, under General Fund 2, and asked what the \$245,365 Operating Transfer was. Mr. Adams advised this was excess funds from the close out of the Sun Trust loan; this was transferred out into the General Fund to offset expenses during the year.

A question was raised about page 3, Landscaping Contingency Fund indicating 156% of planned budget was already spent. Mr. Adams advised that he will check the account detail on this as something might have been miss-posted.

FOURTEENTH ORDER OF BUSINESS

Supervisors' Requests and Audience Comments

Mr. Robertson thanked Corinne for her service to the CDD.

Boardwalk Repairs. Ms. Crismond stated she had contacted Polkow Construction, the winning bidder for this project to request hard copies of documentation to put together a contract. The bidder responded with a price increase, stating that the bid price originally submitted was quoted incorrectly. She explained that the price was raised because different size composite

materials were required which would cost more money. Ms. Crismond said she had asked Polkow Construction to absorb this error but was told the firm would not proceed as it will not make any money.

The District Attorney was asked whether this bidder could be held to the original price quoted when the contract was awarded.

Mr. Adams stated this was an informal proposal and not a formal bidding process. He suggested going with the other bidder or proceed with Polkow Construction but stipulate the contract is set for a not-to-exceed figure.

Mr. Brougham stated his knee jerk reaction is to tell Polkow Construction thank you very much and award the contract to JTM. He voiced concern that this bidder did not bother to contact the supplier when initially preparing the bid; he said this raises red flags about the quality of work this firm will provide.

Ms. Schmitt asked what size material JTM specified in their proposal. Ms. Crismond replied that for composites, it had to be 2x4 and 2x6. She added that JTM had submitted their proposal according to the guidelines after doing their homework.

On MOTION by Mr. Love and seconded by Mr. Brougham, all were in favor of awarding the contract to JTM.

Conversation followed on the dimensions being proposed for the hand rail. Ms. Crismond explained that the bidder is proposing to use 2x6 and 2x4 material side by side.

It was requested that staff review this and finalize the color.

The motion was withdrawn.

Directional Signage. Ms. Crismond stated there are 9 signs with bolted paddles and 12 signs with welded paddles. The signs with welded paddles have to go back to the shop which will cost \$400 each. Mr. Adams advised staff has spent \$7,640 to get new inserts in all the signs.

Mr. Brougham commented that complaints have been ongoing about the direction of the signs. He recommended incurring the additional cost to have the signage pointing the right way.

On MOTION for CDD #1 by Mr. Brougham and seconded by Mr. Love, all except Supervisor Robertson, were in favor of approving the contract to address changing directional signs for improved viewing, for the additional cost of \$6,600.

Mr. Robertson commented that street signs in Naples appear to follow a universal convention where the sign points into the street and not out in the street.

Lake Fountains. Ms. Crismond stated this is an ongoing item. Mr. Adams advised that staff is still pursuing quotes.

Lake Maintenance. Ms. Crismond indicated that specifics on lakes that have been identified for plantings.

Mr. Adams advised that The Rookery intends to enter into a contract with Lake Masters so there will be consistency with the District managing one side of the lake and The Rookery managing the other side.

Landscaping. Ms. Crismond advised that staff just completed replacing palms. She explained that one royal palm was installed at the wrong size and will be replaced.

It was pointed out that this palm at Venetta was in CDD #2.

Stake Removal. Ms. Crismond advised that the lowest price was received from Stiles Landscaping at \$4.25 per tree including disposal, for a total cost of \$15,920.

Mr. Brougham voiced concern that the District had to pay to put the braces on, pay for the lumber, and pay to have the braces taken off. Mr. Adams stated that the firm is not interested in the used 2x4s so they will not give the District any credit for the lumber.

Mr. Adams pointed out that the lumber is not treated and started rotting once the first raindrop hit.

Lift Station. Ms. Crismond advised that she and Mr. Love had both met with Jim, the senior field supervisor of Wastewater Collections. She advised that as soon as she can get the specifications for the project, she will send them over for his approval; they will also be forwarded to the Foundation to have this project approved.

FHP Patrol. Ms. Crismond advised that the Florida Highway Patrol will commence patrol later in the month and will be submitting activity reports. For every two warnings they give, they will give two citations.

Mr. Brougham commented that unmarked cars will be more effective.

Ficus Hedge Trimming. Ms. Crismond stated the ficus hedge on Montrose is extremely tall. One Source had started trimming this but they do not understand whether the trees should be between 8 and 10 feet or should be a little taller.

Mr. Brougham said that whatever staff decided will be fine.

It was commented that most communities had ficus hedges of about 10 feet.

Bob Slater, a resident, suggested that residents be advised as a warning that state troopers will be patrolling the community instead of having residents find out the hard way.

Mr. Brougham suggested that Mr. Albeit advise residents that both CDD Boards are continuing to enforce traffic rules.

FIFTEENTH ORDER OF BUSINESS**Adjournment – Fiddler's Creek # 1**

There being no further business, the meeting was continued to 1:30 p.m.

Protest Hearing for Landscape Maintenance

The meeting was reconvened at 1:30 p.m. Mr. Adams advised that Supervisors Curland, Brougham and Schmitt were present in person and that Supervisor Love was attending by telephone.

Mr. Brougham stated some of the same testimony would be heard even though this concerns a separate protest. Mr. Brougham gave each party's attorney five minutes for an opening statement. Mr. Brougham advised of the rules for the protest hearing.

All those who would be testifying were sworn in.

[Mr. Robertson joined the meeting via telephone.]

Mr. Santiago advised that his presentation would raise concerns about the bid process. He stated he wished to adopt the earlier protest presentation for the record.

Mr. Adams questioned whether it is appropriate to adopt the earlier presentation into the CDD # 1 record as it concerned facts and testimony for a different district.

Mr. Pires advised that this is inappropriate as this protest involves a separate entity, a separate proceeding, a separate contract and a separate deliberation and separate questions of fact. Mr. Adams concurred.

Mr. Pires stated the scope of inquiry concerned whether competitive bidding was subverted. Mr. Pires gave opening arguments asserting that the District did not operate fraudulently, arbitrarily, illegally or dishonestly in disqualifying Xscape's bid. Mr. Pires entered into the record a memorandum dated December 17, 2007 and attachments sent via email to Mr. Santiago relevant to this issue.

Mr. Pires advised that the Board can reject the bid protest or reject all bids and re-advertise for rebid.

Mr. Santiago stated he was arguing against an arbitrary bid process through which Xscape was deemed an unresponsive bidder. He indicated he had a copy of a check submitted by Xscape as bond surety.

It was requested that Mr. Santiago simply present facts of the case.

Mr. Santiago indicated that Mr. Gregory Jenkins, the corporate representative for Xscape was present to speak on behalf of the company. In response to Mr. Santiago, Mr. Jenkins stated that he asserted a copy of the check #2057 was submitted by Xscape with its bid package. He stated that the amount of the check was \$44,830.60, or 5 percent of the overall bid both for CDD 1 and CDD 2. In response to Mr. Santiago, Mr. Jenkins acknowledged Exhibit C, a memorandum stating Xscape was deemed to be non-responsive.

Mr. Santiago referred to Exhibit J, a document identifying deficiencies in Xscape's bid. Mr. Santiago asked Mr. Jenkins if One Source complied with all the bid requirements. Mr. Jenkins asserted that the occupational license for One Source was expired for ten months prior to bid submittal. He then asserted that One Source basically submitted a fraudulent license.

Mr. Pires commented that at the time the intent to file a protest was voiced, Mr. Jenkins was employed by One Source on October 26, 2007. He asserted that this was relevant as to Mr. Jenkins' credibility.

Mr. Brougham asked if there were prior documents presented from existing public records at the time of the bid submittal. It was responded that there were.

Mr. Pires asked Mr. Jenkins if he had a chance to look at Exhibit K and asked if he is aware that Exhibit K reflects that the occupational license for Xscape is for a home occupation. Mr. Pires asked where Xscape stored its equipment. Mr. Jenkins stated the equipment is stored at "that location and multiple others." Mr. Pires asked what type of equipment is stored. Mr. Jenkins responded that "all types of machinery, vehicles and parts." Mr. Pires said the occupational license said "No contractor work." Mr. Jenkins commented that it says, "Maintenance." Mr. Pires said that Xscape is not allowed to be engaged as a contractor.

Mr. Jenkins disagreed. He raised the question: "Are we allowed to go to a client and say we can provide a service of landscape maintenance for your property? If they say yes, then we will sign a contract for the purpose of providing landscape maintenance, yes, we are allowed to."

Cross examination followed with additional arguments and evidence brought forth by both parties.

Mr. Pires argued that Xscape does not have the appropriate contractor's or occupational license that allows them to perform in this contract role.

Mr. Jenkins stated that his argument is, at the time of the bid, One Source did not have a license, but the Board made an exception to this and waived this requirement to allow One Source an opportunity to obtain that license prior to commencement of the contract. He commented that if Xscape's license was not found to be appropriate, they should have received the same treatment. He added that if you look at all the contracts submitted, this bid protest announcement is very narrow because Xscape did not have all the documents and had not received them until Monday. He asserted that all the documents to file the protest were prepared with no information. He asserted that the license submitted by One Source in the bid package was expired and was not theirs. He asserted that the license Xscape submitted in the bid package was an official license from Collier County for landscape maintenance, which can be verified through the code on the license. He argued that Xscape was treated differently than the other company involved.

Mr. Pires asked Mr. Adams address the issue of the public records request.

Mr. Adams testified as follows: Initially we received numerous notices of intent to protest from a couple of attorneys representing Mr. Jenkins. As a follow up, staff scheduled a specific time for these attorneys to come and look at the documents being requested. Those documents were made available on November 8. At that time, we were made aware of documents they wanted marked as part of the public records request. As part of this process, staff is allowed to provide copies for a cost. Staff went through all the pages and determined the cost of copies. The amount needed was provided. Within a few days the copies were available in our office. Mr. Adams stated I was not present when they did actually come by to pick up the documents but it is my understanding -- Ms. Crismond would better answer this more specifically -- I believe it was one week or ten days ago that they actually did come by, presented a money order to offset those costs and were handed the package already previously copied.

Mr. Pires asked Mr. Adams if the documents were available for pick up within the last two weeks but were just picked up within the last week. Mr. Adams responded affirmatively. Mr.

Pires asked if there was any impediment to the attorneys for Xscape picking up the records 3-4 weeks ago. Mr. Adams responded, "Not at all."

Further questioning followed regarding dates relevant to provision of public records.

Mr. Pires asked Mr. Adams if based on his knowledge of county requirements, the maintenance services occupational license presented by Xscape sufficient for them to perform the landscape service for Fiddler's Creek pursuant to bid specifications. Mr. Adams responded, "In my experience, no."

Additional cross examination followed.

Mr. Santiago asked if Mr. Adams reviewed the bids after they were submitted. Mr. Adams responded, "Personally, no." He testified that the person who reviewed those documents was not present at the meeting and no longer with his firm.

Mr. Santiago asked Mr. Adams if he has personal knowledge of the selection criteria to determine the lowest responsible bidder. Mr. Adams responded, "Yes, I do." He also said that the specific criteria reviewed is contained in writing in the bid package. However there is no written document outlining the tabulation process.

Mr. Pires restated the rules of procedure for the bid protest.

Mr. Brougham asked if there were any further questions specifically addressing the cash deposit and the One Source license.

Mr. Santiago asked Mr. Adams if he understood that One Source had a valid occupational license at the time of the bid submittal. Mr. Adams responded, "No."

Mr. Santiago asked Mr. Adams if One Source had a valid contractor's license at the time of the bid submittal. Mr. Adams responded, "Yes." He stated he has a copy of this.

Mr. Santiago asked Mr. Adams if Xscape also had a valid occupational license at the time of the bid submittal. Mr. Adams responded, "It was not included in the package that we reviewed. I don't have direct personal knowledge of that. I was advised we didn't have that."

Mr. Brougham objected to implications that there was an alteration to documents presented in the bid package and to implications that there is a difference between what was presented and what everyone was currently seeing. He commented that a lot of facts and testimony has been heard and that the Board has a clear understanding as to what the issues are in the bid protest.

Mr. Pires asked Mr. Adams if he looked through the bid package submitted by Xscape to ascertain whether any check was sent with the landscape bid package for Fiddler's Creek #1. Mr. Adams replied, "I was not there when it was opened. I was not there when it was reviewed for the purpose of creating the recommendation award memo. I have looked at the documents as a follow up and my understanding was that the check was not there when it was opened; the check was not there when it was reviewed. It was looked at several times to ensure that it wasn't hidden somewhere in that package, overlooked by Ms. Norton, and I understand in a follow up conversation with Ms. Crismond, following this morning's bid protest hearing, that she also reviewed the package and a bid surety was not located.

Mr. Brougham said he found it hard to understand how a judgement call made by the Board can be challenged. He said he appreciated Xscape's position but pointed out that the Board is entitled to make this call. He pointed out that there is business to take care of for the best interest of the residents. He did not want to incur added expenses sitting arguing both sides of the issue. He said that in his opinion, it was a very simple matter than Xscape's bid proposal was incomplete or deficient. He felt the topic was beaten to death and wished to move forward and make a decision.

Mr. Pires stated the Board can choose to reject all bids and rebid the project or reject the bid protest and reaffirm the award of contract to One Source.


Mr. Brougham stated that to his recollection the contract was awarded to One Source on the condition that they obtain all necessary licenses prior to commencement of the contract. He commented that as all bids were already public record, it is ludicrous to rebid.

Closing statements were made by both parties. Mr. Love's phone connection was disconnected and did not participate in any voting.

On MOTION for Fiddler's Creek #1 by Mr. Brougham and seconded by Ms. Schmitt, all voted in favor of 1) rejecting the bid protest from Xscape; 2) reaffirming that the bid filed by Xscape was non-responsive in many material ways and 3) reaffirming the award of the contract to One Source.

There being no further business, the protest hearing concluded at 2:55 p.m.

For Fiddler's Creek #1:


Secretary/Assistant Secretary


Chairman/Vice Chairman

For Fiddler's Creek #2:


Secretary/Assistant Secretary


Chairman/Vice Chairman