

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

The Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, April 22, 2009 at 9:30 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

Phillip Brougham	Chairman
James Curland	Vice Chairman
Jim Schutt	Assistant Secretary
James Robertson	Assistant Secretary
Robert Slater	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Anthony Pires	District Counsel
Ron Albeit	Fiddler's Creek Foundation
Mike Charbonneau	Fiddler's Creek Foundation Security
Bill Reagan	Raymond James
Fred Harris	Bond Counsel
Phil Diamond	Bond Holder Counsel
Alice Carlson	AJC Associates

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

The meeting was called to order at 10:45 a.m. Mr. Adams announced that all Supervisors were present at Roll Call.

Mr. Brougham thanked Mr. Curland for all his time and efforts securing the new front lake fountains that are now in operation.

Mr. Brougham said the main topic of the meeting is the discussion on finances and Bond payments, which would be addressed shortly. He requested audience participation and said he prepared an outline to guide the discussion. He asked that the audience wait until the end of each particular topic, as it will be difficult to keep the meeting on focus, otherwise.

▪ **Discussion: Special Assessments**

Mr. Brougham said the first thing he wished to discuss were On-Roll Assessments, which are collected by the Collier County Tax Collector. He reported that the on-roll property taxes were not paid to the County by the Developer, as of March 31. He stated that, when property taxes are delinquent, the Tax Collector advertises Tax Certificates in May, and in early June, these are auctioned. He stated that CDD #1 has a cash balance in the General Fund 001 of \$830,223 and in General Fund 002 (the Hurricane Wilma payment fund), of \$273,111. He advised that, of the monies in General Fund 001, approximately \$500,000 is excess or Reserve Funds. He also stated that the General Fund 002 obligations are paid quarterly and this Fund is at 55% of budget collected. He said the Board will be making recommendations concerning both of these Funds. Mr. Brougham felt a conservative approach is to assume that the CDD will not receive any more revenue. He stated that there is one (1) option to make up for shortfalls, through a Special Assessment on residents of CDD #1. He said this will have to be collected by the District.

With regard to Off-Roll Assessments, Mr. Brougham said this provides the District with some cash flow, as the Developer is current with these payments. He stated that, without further information, the Board might assume that no further off-roll payments will be received from the Developer. Mr. Brougham said he did some preliminary arithmetic on a special assessment. He said by his calculations, for On-Roll Assessments, if no additional money is received, there will be a shortage of \$133,310 in General Fund 001 and \$42,617 in General Fund 002. He stated that for Off-Roll Assessments, the potential shortage would be \$312,841 in General Fund 001 and \$117,668 in General Fund 002. He said, in a worst case scenario, assuming no more revenue is received, the total shortfall would be \$996,000. He stated if the shortfall of \$996,000 is divided by 1959 units, the total would be \$508, per unit. Mr. Brougham recommended that the CDD reduce its Operational Expenses by \$400,000. If the Board approves these reductions, only \$596,000 will be needed, which will bring the Special Assessment down to \$304, per unit. He said this is to get through the remaining fiscal year and October through December, which are typically leaner months, where revenue is concerned. Mr. Brougham recommended the conservative approach of not tapping into the Reserve Funds. A Board Member commented that he paid off his Hurricane Wilma Assessment and had a problem picking up a portion of other residents' payments. It was suggested that the Board determines who made the Hurricane Wilma

payment, versus who did not, and then allocate Special Assessments, accordingly. Mr. Adams said there is a list of those who have paid off the General Fund 002 Assessment, and agreed that it would not be appropriate to charge these residents a Special Assessment. Discussion ensued at length on this point. Mr. Brougham stated that a public meeting will need to be noticed and held to vote on the Special Assessment. He said the CDD should not advertise an amount for the Special Assessment, but instead, an amount not-to-exceed a determined figure.

Mr. Brougham recommended a motion on this topic.

Mr. Schutt said he would not approve any motion or any assessment, until he had a better understanding and has worked through all the numbers, relative to the total number of people involved, and all the dollars involved. He said he preferred a more thorough presentation of the details and said this was too big an issue to approve, based on the limited discussion held today.

Mr. Robertson agreed and said it is too early to vote, based on all the negative assumptions presented today. Mr. Schutt said he had no problem with the worst case scenario discussed, but instead, wanted all Board Members to know all the elements involved, before taking a vote that affected all the residents involved. Mr. Brougham said he agreed with Mr. Robertson and Mr. Curland on both their points. He stressed that there is a 90-day process from Day 1, until the CDD potentially starts to receive some money. He said the longer the Board waited to start the process, the more drain will be placed on the Reserves.

Discussion ensued with regard to tabling this matter for further discussion. Mr. Brougham tabled this item until the remainder of the Agenda was completed.

Mr. Brougham deferred to Bill Reagan to speak further on this matter.

Mr. Reagan, of Raymond James & Associates, gave a presentation on the status of Bond restructuring activities and said there is much concern about the May 1st Debt Service payment. He stated that the Bondholders would have to authorize an extension on this payment deadline; however, if the Bondholders did not agree to this, the Board can authorize the Chairman or Vice Chairman to approve this extension. He stated that his firm was still hopeful that everything will fall into place to proceed with the restructuring.

Mr. Pires instructed the Board to authorize the Chairman to work with the Bondholder and Mr. Reagan to extend the May 1st payment for all outstanding District #1 Bonds and to execute any ancillary documents needed.

Mr. Brougham voiced concern about using the Debt Service Reserve Funds to make the May payment, as this will deplete the Reserves. Mr. Pires addressed various questions about how potential foreclosure action could be addressed by the District.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of authorizing the District Manager, the Chairman and the Vice Chairman (in the Chairman's absence) to negotiate a Debt Service Payment Extension Agreement with the Bondholders and to execute any relevant ancillary documents, as needed.

▪ **Reduction of Operating Expenses**

Mr. Brougham said he wished to address the issue of reducing operating expenses. He reported that there was \$200,000 in the Canopy Tree Reduction Program. He recommended that the District not spend any of these funds and postpone this project for another year. Additionally, he recommended reducing expenses for flowers and mulching. He recommended that the Board consider reducing Roving Patrol services to eight (8) hours per day. He also recommended that the Championship Drive Gate be unmanned, since various items of technology had been purchased for added security. He stated, by his calculations, the total savings for these improvements would be \$178,000, per year. Mr. Brougham said in his opinion, it might be necessary to inconvenience some vendors and some residents, in order to take these measures, in light of the financial circumstances. He said he did not feel it was appropriate to make a Special Assessment for residents, while not reducing Operational Expenses, as well. It was stated that the total presumed savings of budgeted expenses, with these additional reductions, would be around \$400,000.

Mr. Brougham said he felt Staff should be instructed to not spend monies on non-contracted, non-obligatory expenses, until these projects are brought before the Board.

Mr. Curland asked what the implications would be if clearing of the Preserves is not done. Mr. Cole said this is a permit requirement from the County and from the South Florida Water Management District (SFWMD). Mr. Pires clarified that the permit is still held by the Developer, until the District gets to the operational stage; therefore, the Developer would be subject to any enforcement action by the SFWMD for failing to comply with their permits.

Mr. Robertson voiced concern about trying to save monies at the expense of roadway maintenance. Mr. Brougham said he was only referring to cutting monies for street sweeping; however, after further discussion, he agreed to strike this from the list.

Mr. Brougham stated that District #2 is having more significant financial problems with its O&M expenses than District #1. He said one (1) consideration is to stipulate that any funds advanced on behalf of District #2, which are not paid back within 30 days, would be charged interest. He stated that, in his opinion, if District #2 cannot pay its share of irrigation expenses, District #1 owes it to the development to keep the pumps running. He voiced the hope that District #2 would be in agreement with saving some funds and commented that any changes with the security program will have to be agreed to by District #2.

Mr. Brougham presented a motion to direct Staff as follows:

- 1) to implement savings in the Landscaping Program and to cease all activities with respect to spending budgeted monies of \$200,000 on the Canopy Tree Trimming Program;
- 2) to obtain, for review, the dollar amount on the ornamental flower planting and mulching, for the remainder of the year;
- 3) with the concurrence of Fiddler's Creek CDD #2, reduce the Roving Patrol to eight (8) hours per day, seven (7) days per week, 3:00 p.m. to 11:00 p.m.; and
- 4) to make the Championship Drive Entrance Gate unmanned;

Mr. Pires said it will be necessary to review the Agreement with the Foundation, with regard to any revisions made to the Security Agreement.

On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor of authorizing Staff as follows: 1) to implement savings in the Landscaping Program and to cease all activities with respect to spending budgeted monies of \$200,000 on the Canopy Tree Trimming Program; 2) to obtain, for review, the dollar amount on the ornamental flower planting and mulching, for the remainder of the year; 3) with the concurrence of Fiddler's Creek CDD #2, reduce the Roving Patrol to eight (8) hours per day, seven (7) days per week, 3:00 p.m. to 11:00 p.m.; 4) to make the Championship Drive Entrance Gate unmanned; pending review of the Agreement with the Foundation, with regard to any revisions made to the Security Agreement. (Motion passed 5-0)

******The meeting recessed briefly.******

******The meeting was reconvened at 12:15 p.m.******

Mr. Robertson voiced concern about taking the previous action without more in-depth analysis of the numbers. Mr. Brougham said he agreed that decisions should not be made based upon inaccurate numbers; however, he indicated that financial reports were presented, that were presumably accurate, with respect to prospective deficiencies of the Developer at this point. He added, that, if any Board Members are not satisfied, this meeting can be continued.

A lengthy review of the Statistical Report on Developer assessments, provided by Ms. Carlson, followed.

Mr. Robertson took issue with reviewing the financial reports presented. Mr. Brougham said a continuance of this discussion would not produce any numbers that were different from those presented that day. He asked Mr. Adams whether the Financial Statements presented are accurate. Mr. Adams said the Financial Statements presented by Staff were accurate.

In light of continued objections voiced by Mr. Robertson, Mr. Brougham asked for a vote on whether the Board wished to continue this meeting to another date, or move forward.

**On MOTION by Mr. Curland and seconded by Mr. Brougham, with Mr. Schutt and Mr. Slater in favor of moving forward with this review, and with Mr. Robertson dissenting.
(Motion passed 4-1)**

Review of the financial reports continued.

Ms. Carlson addressed various questions from the Board with regard to assessment collections and determining who has and has not paid taxes.

Straw Poll: Mr. Brougham asked for a straw poll as to “whether the Board is comfortable authorizing Staff to initiate the process to advertise a Special Assessment special hearing for a not-to-exceed amount.”

Mr. Slater replied affirmatively. Mr. Curland replied affirmatively. Mr. Schutt replied affirmatively. Mr. Robertson objected.

Mr. Brougham clarified that Staff can advertise a not-to-exceed Special Assessment. Following this, a Special Meeting will be held with residents and the Board, when the final calculation of the Special Assessment will be determined.

Mr. Adams reminded the Board that without CDD #2's concurrence on some of these items, the numbers might change.

SECOND ORDER OF BUSINESS

Staff Report: Engineer

****This item was discussed out of sequence.****

Mr. Cole indicated that he had prepared a summary of work that should be completed. Mr. Cole presented Pay Draw #33 for the 2005 Series, Phase 4 Bond, in the amount of \$403,000. He said the work consisted of retainages that had not yet been put through, along with some soft costs for different projects and professional fees.

Mr. Brougham said the objective, that day, was to logically complete and then curtain future infrastructure construction.

Mr. Cole referred to the summary sheet of costs related to works in progress. The Board provided direction on the following outstanding projects:

▪ **Sidewalk Connections**

On MOTION by Mr. Robertson and seconded by Mr. Brougham, with Mr. Schutt and Mr. Slater in favor of authorizing Staff to delay installation of sidewalk connections along Championship Drive, with Mr. Curland dissenting. (Motion passed 4-1)

▪ **Handicap Mats**

Mr. Brougham said this project is required by ADA and needs to be completed.

▪ **South Commercial Center**

The Board directed Staff not to proceed, pending advice from District Counsel or District Management.

▪ **Structure Behind The Rookery Clubhouse**

Mr. Cole reported that infrastructure was completed and conveyed to the County; however, this assembly needed to be moved to provide added protection. He recommended keeping this structure, to avoid using irrigation for fire protection.

▪ **Spraying and Clearing of Exotics/Replanting**

Mr. Cole said Staff hopes to meet with the County to show them that clearing work was done. He added that some replacement plantings will be needed. Mr. Robertson pointed out that failing to replant where needed, may negatively impact Mr. Reagan's efforts to complete Bond refinancing.

A Board member suggested postponing replanting until it is determined what will happen to the CDD property. Mr. Cole said the actual costs anticipated for this may be \$200,000.

With regard to the \$1 million expense on hold, it is pending further input from the County as to whether the CDD has to complete the replanting.

Mr. Cole said he will advise the Board about the progress of the meeting with the County.

Mr. Cole stated that a total of \$3 million of recommended works in progress was presented on the summary. He stated that additional work to the east was not reflected in this summary, as those projects were not currently viable.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of authorizing no further expenditure of Bond Funds that directly benefit the Developer, until further notice; however, payment for contractor direct expenses should be processed.

THIRD ORDER OF BUSINESS

Consideration of Assessment Methodology Agreement between Fiddler's Creek CDD #1 and Fishkind & Associates, Inc.

Mr. Adams recommended approval of this Agreement, with the provision that professional fees would only be paid upon successful issuance of the new refinancing bonds, except for qualifying reimbursable expenses.

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor of approving the Assessment Methodology Agreement with Fishkind & Associates, Inc., with a modification indicating professional service fees will be contingent upon successful Bond issues and with the exception of qualifying reimbursable expenses.

FOURTH ORDER OF BUSINESS

Consideration of Certain Bond Refinancing Documents

****This item was discussed out of sequence.****

FIFTH ORDER OF BUSINESS

Approval of March 25, 2009 Regular Meeting Minutes

Corrections were provided to the minutes as follows:

Line 79: Replace "Pires" with "Cole".

Line 180: Strike "all in favor". Replace with "all in favor except Mr. Slater".

Line 335: Strike "all in favor". Replace with "all in favor except Mr. Slater".

On MOTION by Mr. Slater and seconded by Mr. Schutt, with all in favor of approving the March 25, 2009 Regular Meeting Minutes, as corrected.

SIXTH ORDER OF BUSINESS

Other Business

There being no Other Business, the next item followed.

SEVENTH ORDER OF BUSINESS

Staff Reports

a. Attorney

i. Presentation of Revised/Final Resolution Regarding Operating Parameters for District Treasurer

This item was addressed/approved, with modifications at the previous meeting.

ii. Restated Interlocal Agreement

****This item was an addition to the Agenda****

Mr. Pires distributed a handout and summarized proposed revisions to the Interlocal Agreement.

On MOTION by Mr. Robertson and seconded by Mr. Curland, with all in favor of approving the restated Interlocal Agreement.

b. Manager

i. Unaudited Financial Statements as of March 31, 2009

Mr. Adams presented the Unaudited Financial Statements as of March 31, 2009.

ii. NEXT MEETING DATE: May 27, 2009 at 9:30 A.M., or immediately following the Fiddler's Creek Community Development District #2 meeting

The next meeting was scheduled for May 27, 2009 at 9:30 a.m.

c. Operations Manager

Fountains: Ms. Crismond reported that the fountains were running; however, the anemometers were turned off, as the wind feature controllers needed to be adjusted or repositioned.

Mr. Brougham said that in very high wind, the tops could be blown off and may potentially damage some vegetation. Mr. Brougham asked Staff to explore measures to address this further.

Landscaping: Ms. Crismond reported that a quote for \$25,000 was received for landscaping on Club Center Boulevard, across from Cherry Oaks, which now will be placed on hold.

Tree Canopy Reduction Program: Ms. Crismond reported that the Tree Canopy Reduction Program was on hold.

Sheriff Patrols: Ms. Crismond reported that, in March, there were 29 stops with six (6) citations and 23 warnings issued.

Street Lights: Ms. Crismond reported that street lighting, cleaning and repainting work was on hold. Mr. Robertson questioned the decision to postpone this work, as they would further deteriorate. Mr. Brougham agreed and asked Staff to provide a professional opinion as to when steps must be taken to repair and maintain these.

EIGHTH ORDER OF BUSINESS

Audience Requests

Comments/Supervisors'


A resident asked whether meeting minutes are available to the public. Mr. Adams advised that residents can go to the CDD website about one (1) week ahead of a Regular Meeting to see the Agenda and draft minutes for review. Final minutes are not posted until approximately one week following the approval of minutes by the Board.

A resident questioned whether the Board can simply cut \$200,000, instead of cutting \$400,000, worth of improvements to the community. Mr. Brougham spoke of the CDD's responsibility to maintain the landscaping; he stated that the downside of not doing the Canopy Reduction Program is the potential for more damage during a hurricane. Mr. Schutt questioned whether enough of the tree canopy would be cut to make a substantial difference.

NINTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of continuing this meeting to May 13, 2009 at 10:00 a.m.


Secretary/Assistant Secretary


Chairman/Vice Chairman