

**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, May 27, 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 and constituting a quorum 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	Operations Manager
Terry Cole	District Engineer
Anthony Pires	District Counsel
Ron Albeit	Fiddler's Creek Foundation
Mike Charbonneau	Security
Many Residents	

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

The meeting was called to order at 10:25 a.m. Mr. Adams announced that all Supervisors were present at Roll Call.

**SECOND ORDER OF BUSINESS**

**Staff Report: Engineer**

Mr. Brougham recalled that, at the last meeting, the Board discussed Management Fees rendered to the District from the Developer for supervision of construction activities. He stated that the Board instructed Mr. Cole to defer paying those fees; however, since that time, it was learned that these fees are contractual obligations of the District under the Bond agreements; therefore, the District has to pay these fees.

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of directing the District Engineer to pay all the Pay Draws rendered to him from the Developer having to do with Management Fees or Construction Activities.**

Mr. Pires stated that, because of the possibility of a dispute following this, he will not participate in this discussion, due to a potential conflict of interest.

A resident commented that the Developer should pay the off-roll assessments by contract. Mr. Brougham stated that the Developer is paying these. He stressed that the District is legally obligated to pay Management Fees associated with construction. He added that, to date, the Developer is completely current with off-roll assessments. He stated that these payments benefit the District because they help fund the Developer. Mr. Cole stated he will pay Management Fees to the Board's instructions.

Mr. Cole presented Pay Draw #34, in the amount of \$73,000, consisting of clearing of exotic vegetation in the preserve area, older invoices for excavation and clean-up and roadwork striping on Championship Drive.

**THIRD ORDER OF BUSINESS**

**Consideration of Resolution 2009-10, Approving the District's Proposed Budget for Fiscal Year 2010 and Setting a Public Hearing Thereon Pursuant to Florida Law**

Mr. Adams presented Resolution 2009-10 and said this is provided for the purposes of approving a draft Budget, transmitting the Budget to Collier County and establishing a Public Hearing date. Mr. Brougham advised that the Budget is status quo and no changes were made to any contractual agreements. He said the Budget will be discussed in further detail in June and July and this is a very preliminary Budget.

**On MOTION by Mr. Slater and seconded by Mr. Curland, with all in favor of adopting Resolution 2009-10, Approving the District's Proposed Budget for Fiscal Year 2010 and Setting a Public Hearing Thereon Pursuant to Florida Law for August 26, 2009.**

**FOURTH ORDER OF BUSINESS**

**Legal Consideration of Tax Delinquency,  
Assessment (Off-Roll) Delinquency,  
Bankruptcy and Foreclosures**

Mr. Adams advised that Alice Carlson, of AJC Associates, Inc., recently reviewed the outstanding delinquent folios. He stated that, as of yesterday, four (4) delinquent payments were made. He indicated that an updated cash flow plan was provided.

Mr. Adams referred to the General Fund 001 update, indicating cash on hand. He stated expenses have remained the same, thus far, as none of the proposed cuts previously discussed were made. He advised that, with this update, the cost would be \$378 per unit, in the event a Special Assessment is needed to meet cash flow needs through December; however, this number could change, based on what occurs at the Tax Certificate, sale scheduled for Friday.

Mr. Adams referred to General Fund 002, the Hurricane Wilma Loan Repayment, and said he updated the Revenue section. He explained that the Reserve requirement is \$253,515. This could be tapped into, in case the District is short in making one (1) of its quarterly payments. He pointed out there is a shortfall for Fiscal Year 2009 and these funds can be used to make the October 30<sup>th</sup> payment; however, there is a stipulation to replenish these funds within six (6) months. He added that the replenishment of this Debt Service Reserve could come through tax receipts starting at the end of December. He recommended the Board utilize the Reserve to make the short-term payment, realizing that the funds can be replenished. Mr. Adams further stated that the Reserve of \$253,515 is used to make the final payments of this note.

Mr. Schutt commented that he paid off his entire Hurricane Wilma payment, instead of using the pay-as-you-go plan chosen by other residents. He felt it was unfair for only those on the payment plan to pay for the delinquencies. He said, in his opinion, the whole community should be obliged to pay for the Developer's delinquencies and not only those residents who paid on the pay-as-you-go basis.

Mr. Pires expressed the opinion that the property owners, who took advantage of the principal pre-payment option, discharged in full the assessment against their property. He stated that the District cannot increase their costs to cover delinquent assessments.

Mr. Adams said Staff will post Mr. Pires' opinion on this subject on the CDD website.

A resident asked to whom the potential Special Assessments will be addressed. Mr. Pires said they will be addressed to those property owners who have not paid. Mr. Adams said the

Cash Flow Analysis identified the number of on-roll and off-roll delinquent units. He explained that the assessment is placed over all units; this will ultimately provide excess funds, when all units make their payments, which will put the District in a position to provide a credit to all units that paid.

Mr. Brougham requested that everyone read Mr. Pires' legal opinion and commented that this issue can be discussed further in June, based on additional hard facts.

Mr. Walt Mehl recalled that, at the last meeting, the Board advised that if the remainder of the assessment was paid, residents would not be subject to an assessment. Mr. Brougham said this is correct.

Mr. Adams said he had redone the calculations, making use of the Reserve Funds to make the October, 2009 payment. He advised that this reduced any potential Special Assessment figure to \$131.50 per unit.

**FIFTH ORDER OF BUSINESS**

**Continued Discussion: Bond Restructure**

Mr. Adams referred to a handout of three (3) Notices of Non-Payment received from U.S. Bank. He said this memorializes the disclosure made by Mr. Reagan, at the last meeting, that the Trustee has not used any of the Debt Service Reserve Funds to make the May, 2009 payment, at this point, and discussions are ongoing with the Bondholders.

Mr. Brougham said the Developer has been working with the Bondholders to refinance outstanding CDD bonds over several months. He assured residents that they are, in no way, impacted by the success or failure of the bond refinancing effort. He stressed that the bond amortization has been set on units and residents cannot be held liable for any fees or deficiencies; this bond refinancing will not affect residents whatsoever. Mr. Adams said Staff will make the appropriate disclosures to the public depositories as needed and when required.

**SIXTH ORDER OF BUSINESS**

**Discussion: Legal Representation and Potential Replacement Due to Current Conflict**

Mr. Pires recalled that, at the last meeting, he announced that if there were to be any initiation of collection or adversarial proceedings with regard to Developer units, he would have to "conflict out", as his law firm also represents the primary Developer and its affiliated entities.

He read aloud a statement, advising that "if a conflict arises between the District and the primary Developer and its affiliated entities, the law firm would withdraw from and cease representing both the District and the Developer and its affiliated entities." Mr. Pires advised that "if a conflict arises between the District and the primary Developer and its affiliated entities, the law firm would withdraw and cease representing both the District and the developer and its affiliated entities." Also, he stated that "the law firm will not participate in any matters related to the collections of various District levied and imposed assessments not levied on the Tax Bill."

Mr. Brougham stated that Mr. Pires is a Partner in the law firm of Woodward, Pires & Lombardo, which represents the CDD. He explained that if and when the Developer does not continue to pay off-roll assessments in a timely fashion, then the Board will consider foreclosure proceedings on those properties. He advised that, to date, the Developer is current on 609 assessable off-roll units; however, in the event foreclosure proceedings are initiated, because of delinquent payments, the Board will need to seek outside counsel. He indicated he gathered recommendations and brochures from three (3) different law firms. Mr. Brougham provided these to Mr. Adams.

The Board requested that the District Manager research these firms and provide recommendations at the next meeting.

Mr. Brougham announced that the Tax Certificate sale, by the County Tax Collector, begins on May 29<sup>th</sup> and lasts until June 4<sup>th</sup>. He recommended the Board continue this meeting to June 10<sup>th</sup> because, by that time, the success or failure of the Tax Certificate sale will be known.

Mr. Brougham advised he received an email from Pat and Jack Schiavo concerning their opinion on safety issues. Mr. Brougham read aloud the letter requesting that the Board object to any proposal to redirect construction vehicles, trailers and service vehicles through Championship Drive.

**SEVENTH ORDER OF BUSINESS****Approval of April 22, 2009 Regular Meeting Minutes**

Corrections were provided to the minutes as follows:

Line 79 & 85: Replace "Curland" with "Schutt".

**On MOTION by Mr. Schutt and seconded by Mr. Brougham, with all in favor of approving the April 22, 2009 Regular Meeting Minutes, as corrected.**

**EIGHTH ORDER OF BUSINESS****Other Business**

Mr. Brougham stated the potential savings proposed at the last meetings are still on the Agenda and will be discussed at the June meeting. He said ultimately, the Board will vote as to what savings or reductions in services will be implemented, given the community's input. Mr. Brougham advised he approached TruGreen, the Landscape Contractor for both CDDs, and learned they were not able to offer any savings for CDD #2, because their margins were too small; however, they agreed that, for the second year of their two (2)-year Contract with CDD #1, they will not implement the contracted price increase of \$20,000. Mr. Pires said the Board can authorize Staff to prepare an amendment to the Contract, accordingly.

**On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor of authorizing Staff to prepare a Landscape Contract amendment to reflect no change in price from 2009 to 2010.**

Jesse Fritz commented there is a false sense of security to think that, if security is cut, the District will remain the same. He stated he spent some hours at the front gate and did not know many of the people he observed. Mr. Brougham reiterated this will be discussed further at the June meeting.

**NINTH ORDER OF BUSINESS****Staff Reports****a. Attorney**

There being no report, the next item followed.

**b. Manager****i. Unaudited Financial Statements as of April 30, 2009**

Mr. Adams presented the Unaudited Financial Statements as of April 30, 2009.

**ii. Number of Electors Residing in District as of April 15, 2009: 771**

Mr. Adams announced that there are currently 771 electors residing in the District.

iii. **NEXT MEETING DATE:** June 24, 2009 at 9:30 A.M., *or immediately following the Fiddler's Creek Community Development District #2 meeting*

Mr. Adams announced the next Regular meeting was scheduled for June 24, 2009 at 9:30 a.m.

c. **Operations Manager**

Ms. Crismond reported that one (1) of the fountains was not working and repairs were scheduled for later that day.

Ms. Crismond reported that Staff received approval to install one (1) wind sensor on top of the corporate building. She indicated she obtained a quote from the electrician to do this installation for \$2,600. Mr. Curland explained the wind sensors are set to drop the level of the flow and height of the fountains as the wind increases. He said the sensors were not currently working and, as a result, the fountains operate at full blast, regardless of the wind. He explained, with too much blow off, brackish water can blow over and start destroying landscaping. This is prevented through the use of the wind sensors.

The Board authorized Staff to proceed with installing the wind sensor for a cost not to exceed \$2,600.

Ms. Crismond reported that Staff continues to tour with Lake Masters and Supervisor DiNardo of CDD #2. Recently, some issues with Spike Rush were discovered; this will be monitored.

Ms. Crismond reported that Staff continues to tour with Tru Green and said hard cutting of the Sea Grapes is continuing.

Ms. Crismond advised there was an area of turf at the end of Fiddler's Creek Parkway and Cherry Oaks that was recently determined to be CDD property. Mr. Brougham said there was a large area of dead turf that needed to be resodded. He felt the CDD should take care of this, as it is a minimal cost.

The Board authorized Staff to proceed with resodding this area, for a cost not to exceed \$1,200.

Ms. Crismond advised that the Canopy Tree Reduction Project is on hold; however, the architect did submit its specifications.

**Sheriff Patrol Service:** Ms. Crismond reported that during May, there were 16 stops, with warnings issued.

**Monuments:** Ms. Crismond reported that Management had the monuments on Championship Drive, at US-951, cleaned on May 13<sup>th</sup>.

**Street Lights:** Ms. Crismond reported she spoke with the District Engineer about the life expectancy rate and deterioration; his estimate was that repainting of the light poles should occur every 8-10 years, but was unsure about the life expectancy of the actual poles.

A Board member asked Staff to look at the old oak trees along a portion of Fiddler's Creek Parkway and Club Center Drive, as they look terrible. Ms. Crismond agreed to this request.

**TENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Brougham said the issue of potential Special Assessments is simply a potential. He reiterated that the Board is not making this decision today. He said the Developer is completely and absolutely current with off-roll payments. He explained the CDD is not paying Gulf Bay's taxes; instead, what the CDD is trying to address is how it would pay for landscaping and other costs, in the event that assessments are not collected in a timely fashion and there is a revenue shortfall. He stated if a Special Assessment is imposed, this money is not lost and gone forever; this money will come back at some future point to each resident who pays. Mr. Brougham encouraged all residents to contact Supervisors with any questions or concerns.

A resident asked what will happen if Gulf Bay sells to another entity, which then changes the rules. Mr. Pires said the District's lien or assessment is of equal dignity with local, state and federal taxes and have priority over any mortgages. He said this mechanism ensures the repayment of the District's assessments at some point in time.

Al Love, a resident, asked about the historical data on the Tax Certificates. Mr. Pires said to his understanding, two (2) years ago, there were 6,000 parcels for which Tax Certificates were sold; last year there were 8,000 and this year, there are 14,000.

A resident asked about the time frame for the Tax Certificate sale. Mr. Pires explained that the Tax Certificate sale was scheduled for May 29<sup>th</sup> through June 4<sup>th</sup>. He explained that buyers bid interest; the lowest interest bid prevails. This buyer then pays the taxes on the property and any charges for conducting the sale. The Tax Certificate holder has to wait two (2) years from the date the Tax Certificate is issued, before applying for a Tax Deed sale. He stated



this is all conducted by the Tax Collector. Mr. Adams added that the owner of the property has the right to step in and clear up the tax payment anytime within the two (2)-year period. Mr. Brougham said the Board will have more facts for further discussion at the June 10<sup>th</sup> meeting. He stressed the Board will do its best to inform residents what is going on.

A resident asked what happens to the proceeds derived from the Tax Certificate sale. Mr. Pires said the Tax Collector will calculate how much will go to the various governmental bodies and will distribute this sometime in July.

**ELEVENTH ORDER OF BUSINESS**

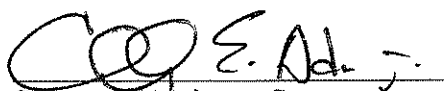
**Adjournment**

The Board scheduled the continuation of this meeting to June 10, 2009 at 10:00 a.m.

A resident asked how they can find out what occurs after the meeting on June 10<sup>th</sup>. Mr. Brougham advised residents to log on to the CDD #1 website, [www.fiddlerscreek1.net](http://www.fiddlerscreek1.net), for a meeting summary. Mr. Adams pointed out that if the CDD is made whole through the Tax Certificate sale, there will not be a need for the June 10<sup>th</sup> meeting.

**On MOTION by Mr. Curland and seconded by Mr. Schutt,  
with all in favor of continuing the meeting to June 10, 2009, at  
10 a.m.**

The meeting was adjourned 11:53 a.m.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman