

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

The Continued Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, June 10, 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
Fred Harris (via telephone)	Bond Counsel
Mr. Rowe	Resident
Mr. Burns	Resident
Mr. Houser	Resident
Dr. Gilbert	Resident
Mr. Love	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

The meeting was called to order at 10:00 a.m. Mr. Adams announced that all Supervisors were present at Roll Call.

SECOND ORDER OF BUSINESS

Update on Assessment Collections/Tax Certificate Sales

Mr. Adams advised that, in the last day or two (2), Ms. Carlson went through the Tax Collector's website and determined that all outstanding Tax Certificates for Fiddler's Creek CDD #1 were picked up through the Tax Certificate sale and these funds should be in the

District's account by early July; therefore, all the on-roll assessments have been paid. With regard to the off-roll assessments, the Developer continues to be current on payments and will have a representative present, with a check in hand for the June 24th meeting.

Mr. Brougham said, in light of this news, it does not appear that CDD #1 will need a special assessment for the Hurricane Wilma Fund or for the Operating Fund, at this time. He voiced concern about the CDD assessments that the Developer pays off-roll. He explained that, as a courtesy, historically, the Board has allowed the Developer to pay 1/12th, once per month. This saves the Developer the 4% fee imposed by the Tax Collector; also, the Developer can pay the assessment off, over time. Mr. Brougham said the risk is that the CDD Board has no certainty that it will receive this monthly check. He suggested that the Board consider whether to continue giving the courtesy of off-roll CDD assessments to the Developer or to put all these properties on the County's tax roll. In that case, the Tax Collector will handle all the payments. He said, if the Developer were to stop making assessment payments, the District will need to have enough cash in reserves to be able to fund several months of activities.

Mr. Schutt stated the Board still has to consider that, although the Developer indicated he will pay the June off-roll payment of \$52,500, the Board still has no certainty about the July, August and September payments; therefore, there is a potential of another shortfall, if the Developer does not pay these subsequent payments.

Mr. Rowe, a resident, spoke in favor of putting all the assessments on roll.

Mr. Burns, a resident, said there seems to be a lot of leverage that could be exercised. He suggested finding a way to guarantee the monthly payments, so the Developer could realize the benefits discussed. Mr. Robertson said, by giving the Developer the privilege of paying monthly, the District will have a legal lien on the properties. Mr. Pires stated the assessments constitute a lien on the property, whether it's on-roll or off-roll.

Mr. Brougham suggested that the Board could leave the 609 properties off-roll, but change the payment terms. He said the Board will be considering all these options; however, with respect to the remaining three (3) off-roll assessments, he asked whether the Board could take any actions to request or invoice the Developer to notify that these are due and payable. Mr. Adams said the District is invoicing the Developer monthly. Mr. Pires said the resolution adopted did not differentiate or provide for any monthly or quarterly payment, so there could be an argument that the District could invoice for the remaining unpaid amount. Mr. Adams said

that, at this point, the payments are current and felt the District should continue to invoice monthly. He added that this is an item for strong consideration for the upcoming budget year. Mr. Brougham said the Board does not have to make a final decision until August.

Mr. Houser, a resident, asked if the District is precluded from using the Tax Certificate sale if the off-roll assessments became delinquent. Mr. Brougham said yes and explained that the remedy would be to employ outside counsel, other than Mr. Pires' firm, and one (1) option would be to begin foreclosure proceedings; however, the downside to this is the long waiting period for foreclosure proceedings and expensive filing fees involved.

Mr. Slater said the Board sets a precedent by allowing the Developer to pay on a monthly basis. He asked whether there is any legal way to force the Developer to pay the remaining balance by July 1st. He pointed out that the Developer has paid the District every month and has never defaulted; therefore, he does not want the Board to decide that the Developer will not pay.

Mr. Schutt asked when the payment will be due, if the District were to bill the Developer for the remaining three (3) months. Mr. Adams advised that the next billing goes out July 1st, which gives the Board some time to think about it. He said this would be the time to make a decision to alter the payment arrangement. He cautioned about using this route and suggested modifying the payment terms for the future through a Budget resolution.

Mr. Brougham advised that the District is in better shape, with regard to the Hurricane Wilma loan, as an additional 23 people have paid off their balances.

Mr. Robertson commented that, to date, the Developer has paid 100% on time and has indicated that future payments are forthcoming. He said he questioned the wisdom of invoicing the Developer for the next quarter, instead of the month-by-month payment. He felt the District is not doing itself any favor by trying to advance the Developer's payment in this manner.

Mr. Love said, in his view, the payments should all be put on-roll, for the protection of the residents.

Mr. Schutt asked if there is any benefit to having any dialog with the Developer on this issue. Mr. Adams said he spoke with the Developer and has not received a commitment for anything beyond June. He said the Board can ask the Developer's representative about this at the June 24th meeting. Mr. Schutt asked if there is any reason to think the off-roll assessments would change over next year, in light of the fact that the bonds may be recapitalized. Mr. Adams

said he does not know the company's private financial position. He said he strongly believes the relief they are seeking will be helpful.

Mr. Brougham said most of these considerations are speculative. He stated the Board Members were elected by residents to act in their best interests, financially, and to ensure that CDD #1 is well maintained and well operated. Mr. Brougham said he is not going to put the residents at risk, if there is anything he can do to prevent this.

Mr. Schutt said the Developer has the opportunity to relieve the Board's concern about what he will do in the future, if he learns that the Board is considering billing for three (3) months in July; therefore, he has the opportunity to assure the Board that all remaining three (3) payments are forthcoming. He reiterated that this is an opportunity for dialog with the Developer.

Mr. Brougham advised that, in light of the current hurricane season, he was investigating the possibility of a line of credit to be used only for emergencies. He stated that, initial efforts were fruitless, but there is a possible glimmer of hope with Broward Community Bank, which Mr. Wrathell is pursuing.

THIRD ORDER OF BUSINESS

Staff Report: Engineer

Mr. Cole said he has no report.

Mr. Brougham asked for an update on the remaining handicap mats. Mr. Cole said he will follow up on this. Mr. Brougham asked whether sidewalk cuts were moving forward on Championship Drive. Mr. Cole replied affirmatively.

FOURTH ORDER OF BUSINESS

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

Mr. Brougham asked if there were any questions on this topic.

Dr. Gilbert, a resident, suggested that Gulf Bay get into the resale business; they may be able to unload some of their inventory, which would prop up sales and taxes and get Mulberry off the delinquency roll. Mr. Brougham said the Board has no influence in this regard.

FIFTH ORDER OF BUSINESS

Continued Discussion: Bond Restructure

This item was carried over to the June 24th meeting.

SIXTH ORDER OF BUSINESS**Discussion: Legal Representation and Potential Replacement Due to Current Conflict**

Mr. Brougham explained that, if the District had to go through a foreclosure proceeding for off-roll assessments for delinquent properties, Mr. Pires' firm would have to "conflict out" because one (1) of the partners, Mr. Woodward, also represents Gulf Bay. Mr. Pires stated that his firm would not participate at all, on behalf of either party, in any of those proceedings. Mr. Brougham asked Mr. Adams to investigate other legal firms for the future. Mr. Adams said he looked at three (3) firms that were provided and believed that, in the event of a foreclosure proceeding, Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. would be the best suited firm for the District's needs, in light of all their governmental background. He advised that the firm of Gray Robinson also has experience in CDD General Counsel representation, along with Straley & Robin. Mr. Adams said, if the Board wanted representation beyond foreclosure steps, he would recommend Straley & Robin; however, if the Board wanted representation only for the foreclosure process, he would recommend Weiss Serota, as this firm can handle the paperwork process and the governmental legal representation process.

Mr. Brougham asked to keep the top firms warm, with some idea of their rate structures and response time. Mr. Adams said he will have this dialog with Weiss Serota and Straley & Robin.

Mr. Brougham made an "editorial comment" that he has the utmost faith in the integrity of Mr. Pires and any discussion of potential employment of another legal firm does not reflect adversely on his integrity, whatsoever.

▪ Waiver of Conflict of Interest for Bond Counsel

Mr. Brougham stated that Mr. Harris was present via telephone. Mr. Pires referred to a letter from Greenberg Traurig, requesting that the District waive the Conflict of Interest. He referred to Page 3 and suggested changing language stating, "if there were to be a situation in the unlikely event that the Trustee representation becomes adverse to the Bond Counsel representation, that not only will the firm resign from Bond Counsel representation, but not

participate in any part of the transaction because they would be adverse to other parties.” Mr. Pires deferred to Mr. Harris.

Mr. Harris, of Greenberg Traurig, said he has represented the District previously in bond transactions. He explained that Bond Counsel is traditionally engaged by the issuer of the Bond. He said his firm has recently been asked to assist in the evaluation of certain activities. He pointed out that the Bond Recapitalization did not come to fruition and, at the moment, his firm is not actively engaged in any activity for the District. Mr. Harris explained the role served by the Trustee in protecting the Bondholders and enforcing the terms of the indenture. He said if there were any potential distress in a bond situation, such as assessments not being paid, the Trustee has to decide what remedies to pursue. One (1) remedy is to institute foreclosure proceedings against delinquent properties, or refunding the Bonds and making the next payment due in two (2) years. Mr. Harris said there is a strong potential that something may happen in the future where there is a need for Bond Counsel for the District; however, he is “not able to undertake such representation for the District in a situation where his partner is on the other side of the deal.” Mr. Harris said he felt an obligation to bring this to the Board’s attention. He stated that he did not put the provision in place that Mr. Pires referred to on Page 3; rather, this was included by the Trustee. Mr. Harris said he was advised that the Trustee would not be willing to make the change Mr. Pires suggested. He apologized for any inconvenience this might cause and added that the Board has plenty of time to replace him. Mr. Pires explained that, right now, the way the provision is structured, “in the unlikely event that the Trustee’s representation becomes adverse to the Bond Counsels’ representation, Greenberg Traurig will resign from representing the District as Bond Counsel, but would still represent the Trustee in matters adverse to the District and to Bond Counsel.” Mr. Harris said the Trustee would be concerned that Mr. Harris might get strategic information from his partner, if there were any conflict. Mr. Harris said the only way he could continue to represent the District as Bond Counsel, under the circumstances being faced now, is if the Board agrees to the Waiver that he presented.

A question was raised as to whether the issue of conflict might be the result of the restructuring of the bonds. Mr. Harris explained that there could potentially be a conflict when doing a restructuring. He said if things were to break down during negotiations, he would not want to be involved if there were any potential conflict.

A Board member commented that the District employed Mr. Harris as Bond Counsel, prior to the Trustee seeking representation by one (1) of the Greenberg Traurig partners. He asked why the District is being dropped, instead of the Trustee, who contacted the firm on a secondary basis. Mr. Harris replied that his firm is actively involved in transactions with the Trustee; however, at the moment, there is no active representation with the District.

Mr. Brougham clarified that if a conflict were to arise, Mr. Harris would resign and the Board would need to employ new Bond Counsel. Mr. Harris replied affirmatively. Mr. Brougham asked if there is any harm in simply waiting until the need arises to find new Bond Counsel. Mr. Harris said there are certain Florida Bar rules that do not allow him to "stand by" when there is any potential conflict. He stated that he is required to give advance notice to the District while his firm's partner is actively engaged with the Trustee.

Mr. Slater said he did not see why this is still being discussed and asked that the Board consider securing new Bond Counsel right away.

Mr. Schutt asked if the time period would be extensive, in terms of bringing new Bond Counsel up to speed. Mr. Harris said the District's transactions are all memorialized in Bond transcripts. He pointed out that this is not a unique situation, as such activities are occurring in CDDs across the state. Mr. Pires added that there are transcripts and CDs of the Bond transactions, that any new counsel would be able to refer to, in order to achieve desired results.

Mr. Robertson said, as he understood the discussion, it would be in the Board's best interest to have new Bond Counsel in place before any future restructuring efforts begin.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of authorizing Staff to pursue new Bond Counsel and provide recommendations for the June 24th meeting.

SEVENTH ORDER OF BUSINESS

Other Business

There being no Other Business, the next item followed.

EIGHTH ORDER OF BUSINESS

Staff Reports

- a. **Attorney**

There being no report, the next item followed.

b. Manager

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

The next meeting was scheduled for June 24, 2009 at 9:30 a.m.

c. Operations Manager

Ms. Crismond reported that a storm cell came through the previous week and about 47 trees were blown down. These are currently being put back up.

NINTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

A resident commented that, in his experience, when a tree is blown down and put back up, it falls down again. He asked whether the CDD is being charged for the second trip. Ms. Crismond said the District will not be charged, unless another storm comes through.

Mr. Curland asked whether the Operations and Maintenance projects that were put on hold will go back on track. Mr. Adams said he looked to the Board for its opinion on this. Mr. Brougham suggested making a decision at the June 24th meeting. Mr. Curland pointed out that there is still a period of uncertainty as to what the Developer will do for a three (3) month period on the off-roll assessments of \$160,000. He felt the Board should seriously come to some conclusion about some of these activities, as there are opportunities to save money. He said, in his view, the Board would be remiss if it did not address measures to save money. Mr. Brougham agreed and said these items will be discussed one (1) at a time at the next meeting.

A resident spoke of a tree that blew down that needed to be properly propped back up. Mr. Brougham suggested that he report this to Ms. Crismond. A Board Member agreed and said, if this tree is within the community, it is the community's responsibility to prop it up. He suggested that the resident have the professionals take care of this, whether they are the CDD's professionals or the Village's professionals.

A resident suggested that the grass could be cut every ten (10) days, instead of every (7) days, everywhere.

Mr. Slater advised that he will not be present at the June 24th meeting.

Mr. Robertson said he wanted to go on record that he was against cutting the Safety and Security Program, which he felt was not in the community's best interest. A Board Member


commented that there are several communities around that do not have daytime patrols and he has not heard of any crime waves. He said, currently, the Board is dealing with opinions and not facts, at this time.

TENTH ORDER OF BUSINESS

Adjournment

**On MOTION by Mr. Curland and seconded by Mr. Schutt,
with all in favor of adjourning.**

The meeting was adjourned at 11:00 a.m.


Secretary/Assistant Secretary


Chairman/Vice Chairman