

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

The Public Hearing and Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, August 26, 2009 at 9:30 a.m.**, or immediately following the Fiddler's Creek Community Development District #2 hearing/meeting, 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 (via telephone)	Vice Chairman
Jim Schutt	Assistant Secretary
James Robertson	Assistant Secretary
Robert Slater (via telephone)	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Doug Gonzalez (via telephone)	Special Counsel, Weiss Serota
Julio Aponte (via telephone)	Trustee Counsel, Greenberg Traurig
Tony Pires	District Counsel
John Ribes	JRL Design
Ron Albeit	Foundation
Mike Charbonneau	Foundation
Al Love	Resident
Jack Perrin	Resident
Glen Fulker	Cardinal Management

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

The meeting was called to order at 10:24 a.m. Mr. Adams announced that all Supervisors were present at Roll Call.

**SECOND ORDER OF BUSINESS**

**Affidavit of Publication for August 26, 2009 Public Hearing and Regular Meeting**

Mr. Adams presented the Affidavit of Publication for the Public Hearing and Regular Meeting.

**THIRD ORDER OF BUSINESS**

**Discussion: Forbearance Agreement/Foreclosure Action**

Mr Aponte discussed the conversations between the Bondholders, Developer and the Developer's Counsel. He stated a draft version of a Forbearance Agreement exists and should be in final form by the end of this week. Mr. Adams requested the Board to continue today's meeting to September 9<sup>th</sup> in order to give the Board enough time to review the Agreement.

Mr. Brougham confirmed that Mr. Slater will be present at September's meeting. He expressed his frustration with the length of the time it has taken to complete a final draft agreement.

Mr. Aponte explained the complexity of the deal, as there are numerous bondholders and different series of bonds that are factors in forming the agreement.

Mr. Curland inquired as to the reasoning to hold an additional meeting, since the Board has yet to see a copy of the agreement. Mr. Brougham stated if the agreement is not completed on September 9<sup>th</sup>, the Board will go ahead with foreclosure.

**FOURTH ORDER OF BUSINESS**

**Presentation of Final Report of Canopy Tree Reduction Program by John Ribes of JRL Design**

***\*\*\*This item, previously the Ninth Order of Business, was presented out of order.\*\*\****

Mr. Ribes expressed the need to trim the sea grapes. He explained the growth rates of the shrub and that top pruning is necessary in order for the tree to fill out at the bottom of the shrub; such pruning does not harm the plant. Mr. Schutt inquired as to the need to trim ficus trees, if the Board passed a previous motion to not replace any fallen ficus trees with another ficus tree. He stated he believed the District is wasting their money trimming plants that, should a hurricane uproot the plant, will not be replaced. Mr. Ribes explained the uprooting of the ficus tree during a hurricane is, most likely, due to the wet soil, rather than the winds. He stated ficus trees are trimmed in order to retain the aesthetic value and prevent obstruction of other areas.

Mr. Brougham explained the Board is going to prune and trim the ficus trees. Mr. Schutt stated he did not have a problem trimming and pruning the ficus trees to prevent interference with buildings.

**FIFTH ORDER OF BUSINESS**

**Staff Report: Engineer**

***\*\*\*This item, previously the Fourth Order of Business, was presented out of order.\*\*\****

Mr. Cole presented Draw #37 for \$15,000; \$2,600 related to the Belle Meade grade clearing and exotic removal; professional fees of \$13,000 as billed by the Developer. He stated the clearing is still on-going.

Mr. Cole stated the District received approval for the sidewalk connections along Championship Drive. He received a proposal from a contractor for approval by the District Manager; the contract is for \$34,000, not including the decorative sign posts that are \$1,100 a piece. The said amount is budgeted from the Construction Funds. He stated 18 posts are needed at \$1,100 each for the decorative sign post, as opposed to \$200 each for the post and the sign. Mr. Curland questioned if the normal posts are in compliance with the Developer's design criteria.

Ms. Crismond questioned the status of the Mallards Landing design review approval to change out the landscaping of the monument. She inquired as to who is the responsible party to pay for the review.

Mr. Brougham stated it is the CDD's responsibility to maintain the original pallet of plant material and replace, at the District's cost, any dead plant material. He expressed his opinion that should the Village decide they do not like the existing shrubbery, and the plant life is alive, then the Village can replace the plants at their own cost, as long as it has been approved by the DRC. Glenn Fulker stated the monument consists mainly of ferns. Ms. Crismond stated the renovation would cost \$3,334.02.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of declining the request for the District to pay for new landscaping at the Mallards Landing entrance monument.**

Ms. Crismond stated the DRC has approved the change.

SIXTH ORDER OF BUSINESS

Consideration of Proposal for Sandpiper Drive Entrance and Exit Call Box

*\*\*\*This item, previously the Fifth Order of Business, was presented out of order.\*\*\**

Mr. Brougham stated the proposal to share the cost of \$8,000 with CDD #2 is for additional hardware for the Sandpiper Gate. He noted the funds will come out of the Construction Fund. Mr. Adams clarified the camera would be placed in the call box for the guard at the Main Gate to be able to see the visitor(s) at the Sandpiper Gate.

**On MOTION by Mr. Brougham and seconded by Mr. Robertson, with all in favor of approving the proposal for Sandpiper Drive Entrance and Exit Call Box.**

Mr. Curland discussed providing passes to contractors for a given period of time and was in favor of continuing the said policy. This allows the person to use both Championship Gate and Sandpiper Gate. Mr. Charbonneau explained that the employees enter through the gate with the bar code on their vehicle. Mr. Schutt suggested moving the commercial traffic to Sandpiper. Mr. Charbonneau explained that the commercial traffic is a fraction of the total traffic through the gate; USPS service and any school buses must be allowed access through the gate. Mr. Brougham stated, if the overall objective is to reduce the traffic along Championship Drive and the regular vendors are still using Championship Gate, then with the current traffic, nothing is changing.

Mr. Love stated there are more residents in Fiddler's Creek CDD #1; thus, District #1 should supersede the decision of Fiddler's Creek CDD #2.

Mr. Brougham noted that, per the Interlocal Agreement, both Districts must approve any cost increases for the safety and irrigation program, but not changes for service issues. He noted Championship Gate is physically in Fiddler's CDD #1; however, a mechanism does not exist that addresses this issue. He suggested creating a long-term traffic management plan for the community in order to better serve the community and establish better communication between the Districts and the Developer.

A resident expressed that he preferred the community have both gates manned, as the community is growing.

Mr. Brougham suggested manning Championship Gate and unmanning Sandpiper, with the condition that if, in the future, construction traffic increases to any significant extent, the Developer will fund the presence of a Gate Guard at Sandpiper Gate.

Mr. Curland stated he was not in favor. Mr. Pires stated that Mr. Robertson's position as a Supervisor on Fiddler's Creek #1 and #2 did not pose a conflict. Mr. Schutt stated he was not in favor of unmanning of Sandpiper. Mr. Slater stated he was in favor of unmanning Sandpiper.

**SEVENTH ORDER OF BUSINESS**

**Public Hearing to Consider Resolution 2009-12, Adopting the Final Budget for the Fiscal Year Beginning October 1, 2009 and Ending September 30, 2010, Pursuant to Florida Law**

*\*\*\*This item, previously the Sixth Order of Business, was presented out of order.\*\*\**

Mr. Adams noted an incorrect calculation in the Budget. The Fiscal Year 2010 on-roll assessment is \$1,110.66 and the off-roll assessment is \$1,027.36, in comparison to the prior year on-roll assessment of \$1,110.91 and off-roll assessment of \$1,027.59. This brings the adjusted contingency number to \$76,500. He noted the developer-owned units, at the Club and Spa and the Sales and Corporate Center, will be on-roll since they are a finished product. This increases the on-roll ERU's to 1,425 and decreases the direct-bill ERU's to 534. Mr. Pires stated it would be appropriate to ask for the consent of the developer to increase the O & M Assessment and to waive the noticing requirements required under Florida Statute 197 and any other irregularities related to the \$1,110.66 assessment for the 75 units going from off-roll to on-roll. Mr. Adams stated the per-unit assessment amount increases 7%, due to the cost of collection associated with the units being moved to on-roll. On behalf of the Developer, Mr. Albeit stated the Developer consented. Mr. Adams stated, additionally, the prior notice cap, that the District is currently operating under, only reflected the on-roll assessment amounts and was received by all folios. Mr. Brougham requested District Staff to place off-roll versus on-roll assessment discussion on a future agenda for the next fiscal year.

*\*\*\*Mr. Brougham opened the Public Hearing.\*\*\**

Mr. Brougham stated, if the District comes in under budget, the reserve will build up. Mr. Adams stated because the District is a governmental entity and collects on a go-forward basis, the proceeds for the District are not received until December; however, the District fiscal year begins October 1<sup>st</sup>. The goal is to have a fund balance that is 25% of the annual budget; by increasing the contingency line, if the money is not used, it increases the reserve. Mr. Brougham stated the Board attempted to establish a line of credit for emergency situations, but the District was not successful.

**\*\*\*Mr. Brougham closed the Public Hearing.\*\*\***

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of approving Resolution 2009-12, Adopting the Budget for Fiscal Year Beginning October 1, 2009 and Ending September 30, 2010, Pursuant to Florida Law, as amended.**

**EIGHTH ORDER OF BUSINESS**

**Consideration of Resolution 2009-13, Levying a Non Ad Valorem Maintenance Assessment for the General Funds and a Non Ad Valorem Assessment for the Debt Service Funds of the Fiddler's Creek Community Development District #1 for the Fiscal Year 2010**

**\*\*\*This item, previously the Seventh Order of Business, was presented out of order.\*\*\***

Mr. Adams stated that the first bolded number will change to \$2,131,308. He noted the schedule is identical to previous years.

**On MOTION by Mr. Brougham and seconded by Mr. Robertson, with all in favor of approving Resolution 2009-13, Levying a Non Ad Valorem Maintenance Assessment for the General Funds and a Non Ad Valorem Assessment for the Debt Service Funds, as amended.**

**\*\*\*The meeting recessed at 12:03 p.m.\*\*\***

**\*\*\*The meeting reconvened at 12:10 p.m.\*\*\***

Mr. Curland was not present.

**NINTH ORDER OF BUSINESS**

**Discussion: Claim by OneSource Landscape & Golf Services, Inc., Against District**

*\*\*\*This item, previously the Eighth Order of Business, was presented out of order.\*\*\**

Mr. Brougham stated the OneSource agreement was terminated last year and held back some monies, pending inspection and any possible deficiencies. He stated partial payment was made by the District to OneSource of approximately \$19,000. He clarified the Board should not discuss the possibility of taking further action and/or legal strategies.

Mr. Pires stated that, as this is public record, he would not discuss legal strategies, weaknesses and strengths; the Sunshine Law has exceptions for closed door proceedings, if there is pending litigation. He stated that he desires the advice of the Board as to the pending litigation, he requested a Closed Door Session, and to establish and advertise a Notice of a Closed Door Session with the Board, District Manager and the District Attorney. He clarified Board Members must be physically present at the meeting and are not allowed to call in to the meeting. He requested having the closed door session on September 9, 2009 at 10:00 a.m., to be followed by an open session. The Board concurred.

**TENTH ORDER OF BUSINESS**

**Discussion: Hard Pruning of Vegetation**

This item was discussed earlier in the meeting.

**ELEVENTH ORDER OF BUSINESS**

**Approval of Minutes**

- **July 8, 2009 Continued Meeting**

Mr. Adams presented the July 8, 2009 Continued Meeting Minutes for the Board's consideration.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of approving the July 8, 2009 Continued Meeting Minutes, as presented.**

- **July 22, 2009 Regular Meeting**

Mr. Adams presented the July 22, 2009 Regular Meeting Minutes for the Board's consideration.

Line 27: Farrin to Perrin

Line 104: insert "and commercial traffic" after residents

Line 248: Farrin to Perrin

**On MOTION by Mr. Slater and seconded by Mr. Brougham, with all in favor of approving the July 22, 2009 Regular Meeting Minutes, as amended.**

**TWELFTH ORDER OF BUSINESS**

**Other Business**

Mr. Brougham discussed the issue of the payments for Continued Meetings. He stated the Board is allowed a maximum compensation of \$4,800 per year. Mr. Pires stated an increase in compensation is possible, but only through a referendum. Mr. Adams stated Staff incorrectly paid Board Members for two (2) Continued Meetings and those payments will act as a credit for two (2) upcoming Regular Meetings. Mr. Adams stated, in some cases Continued Meetings are necessary due to advertising issues.

**On MOTION by Mr. Brougham and seconded by Mr. Robertson, with all in favor of reimbursing Supervisors for travel expenses when attendance is necessary to constitute a quorum.**

**THIRTEENTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

Mr. Pires stated that, in order to assure compliance with the Sunshine Law, only one (1) Board member can vocalize District issues at Fiddler's Creek CDD #2 meetings.

**b. Manager**

**i. Unaudited Financial Statements as of July 31, 2009**

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

**ii. Fiscal Year 2010 Proposed Meeting Schedule**



Mr. Adams presented the Fiscal Year 2010 Proposed Meeting Schedule. The Board modified the start time to 8:00 a.m.

**On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor and with Mr. Robertson dissenting, approval of the Fiscal Year 2010 Proposed Meeting Schedule and amending the Schedule's start time to 8:00 a.m., at the same location.**

**iii. NEXT MEETING DATE: September 23, 2009 at 9:30 A.M., or immediately following the Fiddler's Creek Community Development District #2 meeting**

**c. Operations Manager**

Mr. Brougham reviewed the Operations Manager Report.

**FOURTEENTH ORDER OF BUSINESS**

**Audience Requests**

**Comments/Supervisors'**

There were no Audience Comments or Supervisors' Requests.

**FIFTEENTH ORDER OF BUSINESS**

**Adjournment**

The meeting was continued to September 9, 2009 at 9:30 a.m., at the same location.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman